BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of The Empire District Electric Company's Request for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in its Missouri Service Area	)))	Case No. ER-2019-0374

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE EMPIRE DISTRICT ELECTRIC COMPANY

COMES NOW The Empire District Electric Company, a Liberty Utilities company ("Empire" or the "Company"), and respectfully submits Proposed Findings of Fact and Conclusions of Law for consideration by the Missouri Public Service Commission ("Commission").

The pre-filed testimony and other exhibits that have been offered for admission in this case will allow the Commission to issue a lawful and reasonable report and order, including detailed findings of fact and conclusions of law, such as those set forth below, approving the terms of the Stipulation as a complete resolution of this rate case proceeding.

I. Procedural History

A. Tariff Filings, Notice, and Intervention

1. On August 14, 2019, The Empire District Electric Company ("Empire" or "Company") filed tariff sheets designed to implement a general rate increase for utility service. The tariff sheets bore an effective date of September 13, 2019. In order to allow sufficient time to study the effect of the tariff sheets and to determine if the rates established by those sheets are just, reasonable, and in the public interest, the tariff sheets were suspended until July 11, 2020.

2. The Commission directed notice of the filings and set an intervention deadline. The Commission granted intervention requests from the following entities: The Missouri Department of Natural Resources-Division of Energy ("DE"); Midwest Energy Consumers Group

("MECG"); Sierra Club; National Housing Trust ("NHT"); Empire District Retired Members & Spouses Association ("EDRA"); The Empire District Electric SERP Retirees, LLC ("EDESR"); International Brotherhood of Electrical Workers, Local Unions No. 1464 and 1474 ("Locals 1464 and 1474"); Renew Missouri Advocates d/b/a Renew Missouri ("Renew Missouri"); and Natural Resources Defense Council ("NRDC").

B. Local Public Hearings

3. The Commission conducted local public hearings in Bolivar, Joplin, and Branson.[1]

C. Stipulation and List of Issues

4. On April 15, 2020, Empire, the Staff of the Commission ("Staff"), MECG, EDESR, EDRA, Renew Missouri, NRDC, and NHT filed a non-unanimous Global Stipulation and Agreement to provide a complete resolution of this rate case (the "Stipulation"). On April 16, 2020, the Office of the Public Counsel ("OPC") filed "Public Counsel's Objection to Parts of the Global Stipulation and Agreement Filed April 15, 2020." Therein, OPC objected to certain portions of the Stipulation. As a result of OPC's timely objection, the Stipulation is considered a joint position statement of the signatory parties.[2]

5. OPC specifically did not object to the following Stipulation provisions: the changes to Empire's FAC set out in subparagraphs c., d., f., and g. of Stipulation paragraph 6; Stipulation paragraph 7; Stipulation paragraph 9 (including all of subparagraphs a. to k.); Stipulation paragraphs 10 to 23; and Stipulation paragraphs 27 to 29.

6. Empire is willing to accept the following individual terms of the Stipulation in conjunction with a more traditional revenue requirement determination: paragraph 5 (no changes

---

[1] Tr. Vols. 2-5.
[2] Commission Rule 20 CSR 4240-2.115(2).

to the customer charges in this proceeding); paragraph 6 (FAC), subparts c, d, e, f and g; paragraph 7 (FAC-wind); paragraph 8 (SRLE mechanism); paragraphs 9 and 10 (Adjustments Related to Meter Reading and Billing); paragraphs 11-19 (Rate Design); paragraphs 20-22 (Energy Efficiency and Low-Income Programs); paragraph 23 (Stakeholder Meeting on COVID-19 and Capital Expenditures); paragraphs 27 and 28 (Retired Employees Provisions); and paragraph 29 (SERP Retirees Provision).

7. The parties informed the Commission that the following issues were no longer in dispute: Issue 2 (Rate Design, Other Tariff, and Data Issues), subparts f-q and s-y, resolved pursuant to the terms of the Stipulation; Issue 5 (FAC), subparts b, second sentence of d-ii, d-iii, and e, resolved pursuant to the terms of the Stipulation; Issue 15 (energy efficiency), resolved by OPC withdrawing the issue; Issue 22b (reliable service), resolved by OPC withdrawing the issue; Issue 23 (estimated bills), resolved pursuant to paragraph 9 of the Stipulation, to which OPC did not object; Issue 45 (retirement), resolved pursuant to paragraphs 27-29 of the Stipulation, to which OPC did not object.

D. Evidentiary Hearing

8. On April 8, 2020, the Commission issued its *Order Suspending the Evidentiary Hearing, Modifying the Procedural Schedule, and Delegating Authority to the Regulatory Law Judge*. Therein, as unanimously requested by the parties in "Staff's Progress Report and Request for Extension of Filing Dates," the Commission acknowledged the parties waiver of their rights to cross-examine witnesses pursuant to Section 536.070(2), RSMo; suspended the evidentiary hearing scheduled for April 14, 2020 through April 22, 2020, to allow the parties to submit their case on the record; and reserved the right to set evidentiary hearing dates or on the record presentation dates as necessary to accommodate Commission questions or concerns.

9. On April 28, 2020, the Commission issued its *Commission Questions*, which included certain questions for the parties to answer. The questions were answered by the parties in the form of supplemental testimony.

E. Case Submission

10. Through its ____________, the Commission received numerous exhibits into evidence. Briefs were filed according to the procedural schedule. The final briefs were filed on May 18, 2020, and the case was deemed submitted for the Commission's decision on that date.[3]

II. General Matters

A. Findings of Fact Applicable to All Issues

11. Empire is an electrical corporation and public utility that provides electric service to the public through its tariffs in Missouri.[4]

12. OPC is a party to this case pursuant to Section 386.710(2), RSMo, and by Commission Rule 20 CSR 4240-2.010(10).

13. Staff is a party to this case pursuant to Section 386.071, RSMo, and Commission Rule 20 CSR 4240-2.010(10).

14. Empire provides electric utility service in Missouri, Kansas, Arkansas, and Oklahoma. As of September 30, 2019, Empire serves approximately 174,000 retail electric customers throughout its system of which approximately 155,000 are Missouri customers.[5] Empire's service area encompasses 133 incorporated communities in 26 counties in the four state area. Most of the communities in the Company's service area are small, with only 35 containing a

---

[3] "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 20 CSR 4240-2.150(1).

[4] Ex. 1, p. 3; Ex. 101, p. 3.

[5] Ex. 101, p. 3.

population in excess of 1,500. Only 12 communities have a population in excess of 5,000, and the largest city, Joplin, Missouri, has a population of approximately 50,000.[6]

15. Empire was indirectly acquired by Liberty Utilities Co. ("LUCo") on January 1, 2017. LUCo, which is owned by Algonquin Power & Utilities Corp. ("APUC"), owns utilities serving approximately 800,000 customers in thirteen states across the United States through electric, gas, water and wastewater utilities. In addition to its regulated utility business, APUC also operates its Liberty Power business, which owns approximately 1.36 GW of renewable generation in the United States and Canada.[7]

16. The proposed tariffs filed by Empire in this case were designed to generate an aggregate revenue increase of approximately $26.5 million, which is an overall revenue requirement increase of 4.93%.[8] At true-up, Empire revised its rate request to $21.9 million.[9]

17. As part of its initial rate case filing, Empire requested the implementation of a Weather Normalization Rider ("WNR") pursuant to RSMo. §386.266.3.

18. As an alternative to the Company's proposed WNR, Staff recommended the adoption of a Sales Reconciliation to Levelized Expectations ("SRLE") mechanism pursuant to RSMo. §386.266.3.

19. As part of its initial rate case filing, Empire requested the continuation of its Fuel Adjustment Clause ("FAC") pursuant to RSMo. §386.266.1.

20. The cost of service for a regulated, investor-owned public utility can be defined by the following formula:[10]

---

[6] Ex. 1, p. 3.
[7] *Id*.
[8] Ex. 1, p. 7; Ex 4, p. 5.
[9] Ex. 7, p. 3.
[10] Ex. 100, p. 4.

Cost of Service = Cost of Providing Utility Service

or

COS = O + (V – D)R where, COS = Cost of Service

O = Operating Costs (Fuel, Payroll, Maintenance, etc.), Depreciation and Taxes

V = Gross Valuation of Property Required for Providing Service (including plant and additions or subtractions of other rate base items)

D = Accumulated Depreciation Representing Recovery of Gross Depreciable Plant Investment

V – D = Rate Base (Gross Property Investment less Accumulated Depreciation = Net Property Investment)

(V – D)R = Return Allowed on Rate Base

21. The test year income statement represents the starting point for determining a utility's existing annual revenues, operating costs and net operating income. "Annualization," "normalization" and "disallowance" adjustments are made to the test year results when the unadjusted amounts do not fairly represent the utility's most current, ongoing and appropriate annual level of revenues and operating costs.[11] The test year for this case is the twelve months ending March 31, 2019.[12]

22. A proper determination of revenue requirement is dependent upon matching the rate base, return on investment, revenues, and operating costs components at the same point in time. This ratemaking principle is commonly referred to as the "matching" principle. It is a standard practice in ratemaking in Missouri to utilize a period beyond the established test year in which to match the major components of a utility's revenue requirement. By updating test year financial

---

[11] Ex. 100, p. 5.
[12] Ex. 101, pp. 3-4; Ex. 100, pp. 5-6.

results to reflect information beyond the established test year, rates can be set based upon more current information. An update as of September 30, 2019, has been established in this case.[13]

23. A true-up date generally is established when a significant change in a utility's cost of service occurs after the end of the test year update period, but prior to the operation-of-law date, and the significant change in cost of service is one the parties and/or Commission has decided should be considered for cost-of-service recognition in the current case. The Commission also ordered a true-up period ending January 31, 2020, in order to account for any significant changes in Empire's cost of service that occurred after the end of the test year period but prior to the tariff operation of law date.[14]

24. Utility rates are intended to reflect normal ongoing operations. A normalization adjustment is required when the test year reflects the impact of an abnormal event.[15]

25. Annualization adjustments are required when changes have occurred during the test year, update and/or true-up period, which are not fully reflected in the unadjusted test year results.[16]

26. Disallowance adjustments are made to eliminate costs in the test year results that are not considered prudent, reasonable, appropriate and/or not of benefit to Missouri ratepayers and thus not appropriate for recovery from ratepayers.[17]

27. Pro forma adjustments reflect the impact of items and events that occur subsequent to the test year. These items or events significantly impact the revenue, expense and rate base relationship and should be recognized to address the forward looking objective of the test year. Caution must be exercised when including pro forma adjustments in a recommended cost of

---

[13] Ex. 100, pp. 5-6.
[14] *Id*. at 6.
[15] *Id*. at 8.
[16] *Id.*
[17] *Id*. at 8-9.

service to ensure that all items and events subsequent to the test year are also examined and any appropriate offsetting adjustments are included as well.[18]

28. As among its signatories, the Stipulation represents a complete resolution of all issues in this case. Since OPC objected to the Stipulation, the terms of the Stipulation constitute the joint position of the signatories on all issues addressed in the Stipulation. With regard to issues not specifically addressed in the Stipulation, the terms of the Stipulation constitute the joint position of the Signatories on all revenue requirement, WNR/SRLE, and FAC issues to be decided by the Commission.

29. The Stipulation resolves the majority of the revenue requirement issues by providing that there will be no changes to the Company's retail base rates in this proceeding, no changes to the FAC base factor, no changes to the customer charges, continuation of the tax addendum, and the establishment of a phase-in rate mechanism pursuant to RSMo. §393.155.1 to capture the return "on and of" related to the net increase in plant in service and other rate base related items between the Company's filed test year balance in this proceeding and the end of the true-up in this proceeding.

30. If the terms of the Stipulation are accepted as a complete resolution of this case, there will be new tariff sheets to implement the SRLE and minor changes to the FAC tariff sheets. As the Stipulation terms provide for no changes to retail base rates and no changes to the customer charges, there would be no rate design changes reflected in revised tariff sheets.

31. If the Stipulation is approved in its entirety, the O&M expenses being recovered from customers would contain zero O&M costs associated with affiliate transactions from APUC as these costs will remain at the authorized levels prior to the acquisition.[19]

---

[18] *Id*. at 9.

32. If the Commission were not to accept the terms of the Stipulation as the complete resolution of the case, the Commission would need to issue the traditional revenue requirement and rate design determinations.

33. As a result of this case, Empire should be allowed an increase in revenue and thus would be entitled to a rate increase, and this needed increase in revenue is primarily due to an unusually large increase in the Company's rate base.

34. Empire's Plant in Service increased $112,831,119 from the end of the test year to the true-up period, January 31, 2020. This increase was largely driven by investments in Transmission and Distribution for projects such as Operation Toughen Up which improves system reliability and for substation upgrades and replacements.20

35. Based on the above general findings of fact and the issue-specific findings of fact set forth below, the Commission finds that Empire, in the absence of Empire's urging of approval of the Stipulations terms as a complete resolution of this case, would be entitled to an annual revenue requirement increase in excess of $15 million, to take effect on the operation of law date for this case.

36. The application of a carrying cost rate of 7.3, as provided for in the Stipulation, equates to $9,834,369, inclusive of taxes, on an annual basis.

37. The return on (depreciation/amortization) attributable to the additional increases in plant, as provided for in the Stipulation, equates to $5,265,093, inclusive of taxes, on an annual basis.

38. The Commission finds that any given witness' qualifications and overall credibility are not dispositive as to each and every portion of that witness' testimony. The Commission gives each item or portion of a witness' testimony individual weight based upon the detail, depth,

---

[19] Ex. 1017, Richard Supplemental, p. 22.
[20] Ex. 39, Westfall Direct.

knowledge, expertise, and credibility demonstrated with regard to that specific testimony. Consequently, the Commission will make additional specific weight and credibility decisions throughout this order as to specific items of testimony as is necessary.[21]

39. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.[22]

B. Conclusions of Law Applicable to All Issues

40. Empire is an "electrical corporation" and a "public utility" as defined in Sections 386.020(15) and 386.020(43), RSMo, respectively, and as such is subject to the personal jurisdiction, supervision, control and regulation of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes. The Commission's subject matter jurisdiction over Empire's rate increase request is established under Section 393.150, RSMo.

41. RSMo. §386.266.1 provides that, "(s)ubject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge, or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation. The commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to

---

[21] Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony." *State ex rel. Public Counsel v. Missouri Public Service Comm'n*, 289 S.W.3d 240, 247 (Mo. App. 2009).
[22] An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).

improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities."

42. RSMo. §386.266.3 provides, in part, that any "electrical corporation may make an application to the commission to approve rate schedules authorizing periodic rate adjustments outside of general rate proceedings to adjust rates of customers in eligible customer classes to account for the impact on utility revenues of increases or decreases in residential and commercial customer usage due to variations in either weather, conservation, or both. No electrical corporation shall make an application to the commission under this subsection if such corporation has provided notice to the commission under subsection 5 of section 393.1400."

43. RSMo. §386.266.5 provides that the Commission "shall have the power to approve, modify, or reject adjustment mechanisms submitted under subsections 1 to 4 of this section only after providing the opportunity for a full hearing in a general rate proceeding, including a general rate proceeding initiated by complaint. The commission may approve such rate schedules after considering all relevant factors which may affect the costs or overall rates and charges of the corporation, provided that it finds that the adjustment mechanism set forth in the schedules:

> (1) Is reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity;
> (2) Includes provisions for an annual true-up which shall accurately and appropriately remedy any over- or under-collections, including interest at the utility's short-term borrowing rate, through subsequent rate adjustments or refunds;
> (3) In the case of an adjustment mechanism submitted under subsections 1 and 2 of this section, includes provisions requiring that the utility file a general rate case with the effective date of new rates to be no later than four years after the effective date of the commission order implementing the adjustment mechanism. However, with respect to each mechanism, the four-year period shall not include any periods in which the utility is prohibited from collecting any charges under the adjustment mechanism, or any period for which charges collected under the adjustment mechanism must be fully refunded. In the event a court determines that the adjustment mechanism is unlawful and all moneys collected thereunder are fully refunded, the utility shall be relieved of any obligation under that adjustment mechanism to file a rate case;

(4) In the case of an adjustment mechanism submitted under subsection 1 or 2 of this section, includes provisions for prudence reviews of the costs subject to the adjustment mechanism no less frequently than at eighteen-month intervals, and shall require refund of any imprudently incurred costs plus interest at the utility's short-term borrowing rate."

44. RSMo. §386.266.6 provides that "(o)nce such an adjustment mechanism is approved by the commission under this section, it shall remain in effect until such time as the commission authorizes the modification, extension, or discontinuance of the mechanism in a general rate case or complaint proceeding."

45. RSMo. §393.130 and §393.140 mandate that the Commission ensure that all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable. Section 393.150.2, RSMo, makes clear that at any hearing involving a requested rate increase the burden of proof to show the proposed increase is just and reasonable rests on the corporation seeking the rate increase. As the party requesting the rate increase, Empire bears the burden of proving that its proposed rate increase is just and reasonable. In order to carry its burden of proof, Empire must meet the preponderance of the evidence standard.[23] In order to meet this standard, Empire must convince the Commission it is "more likely than not" that Empire's proposed rate increase is just and reasonable.[24]

46. In determining whether the rates proposed by Empire are just and reasonable, the Commission must balance the interests of the investor and the consumer.[25] In discussing the need for a regulatory body to institute just and reasonable rates, the United States Supreme Court has held as follows:

---

[23] *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996), citing to, *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804, 1808, 60 L.Ed.2d 323, 329 (1979).
[24] *Holt v. Director of Revenue, State of Mo*., 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999*); Rodriguez v. Suzuki Motor Corp*., 936 S.W.2d 104, 109-111 (Mo. Banc 1996); *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).
[25] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603, (1944).

> Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.[26]

In the same case, the Supreme Court provided the following guidance on what is a just and reasonable rate:

> What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.[27]

The Supreme Court has further indicated:

> '[R]egulation does not insure that the business shall produce net revenues.' But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.[28]

47. In undertaking the balancing required by the Constitution, the Commission is not bound to apply any particular formula or combination of formulas. Instead, the Supreme Court has said:

---

[26] *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 690 (1923).
[27] *Bluefield,* at 692-93.
[28] *Federal Power Commission v. Hope Natural Gas Co.,* 320 U.S. 591, 603 (1944) (citations omitted).

> Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.[29]

Furthermore, in quoting the United States Supreme Court in *Hope Natural Gas*, the Missouri Court of Appeals said:

> [T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.' … Under the statutory standard of 'just and reasonable' it is the result reached, not the method employed which is controlling. It is not theory but the impact of the rate order which counts.[30]

48. The Commission may approve the terms of a non-unanimous stipulation, even when there has been a timely objection filed, but the Commission's report and order must be supported by adequate findings of fact and conclusions of law.[31]

49. "Every decision and order in a contested case shall be in writing, and . . . include or be accompanied by findings of fact and conclusions of law. The findings of fact shall be stated separately from the conclusions of law and shall include a concise statement of the findings on which the agency bases its order."32

50. A decision or order of the Commission in a contested case need not include or be accompanied by findings of fact and conclusions of law in cases disposed of by stipulation, consent order, or agreed settlement. Id.

51. RSMo. §393.155.1 provides: "If, after hearing, the commission determines that any electrical corporation should be allowed a total increase in revenue that is primarily due to an unusually large increase in the corporation's rate base, the commission, in its discretion, need not allow the full amount of such increase to take effect at one time, but may instead phase in such

---

[29] *Federal Power Commission v. Natural Gas Pipeline Co*. 315 U.S. 575, 586 (1942).
[30] *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n*, 706 S.W. 2d 870, 873 (Mo. App. W.D. 1985).
[31] *Fischer v. Public Service Commission*, 645 S.W.2d 39 (Mo.App. W.D. 1982).
[32] RSMo. 536.090; *Glasnapp v. State Banking Board*, 545 S.W.2d 382 (Mo.App. 1976).

increase over a reasonable number of years. Any such phase-in shall allow the electrical corporation to recover the revenue which would have been allowed in the absence of a phase-in and shall make a just and reasonable adjustment thereto to reflect the fact that recovery of a part of such revenue is deferred to future years. In order to implement the phase-in, the commission may, in its discretion, approve tariff schedules which will take effect from time to time after the phase-in is initially approved."

III. Overall Resolution and Decision

52. Pursuant to the above general findings of fact and conclusions of law applicable to all issues and the issue-specific findings of fact, conclusions of law, and decisions set forth below, the Commission concludes that approval of the terms of the Stipulation, in total and without substantive modification, represents the proper resolution of this entire rate case.

IV. Issues Presented to the Commission

Issue 1. Rate of Return - Return on Equity, Capital Structure, and Cost of Debt: (a) What return on common equity should be used for determining rate of return? (b) What capital structure should be used for determining rate of return? (c) What cost of debt should be used for determining rate of return?

Findings of Fact

Empire, Staff, and OPC presented testimony on the rate of return issues. For Empire, testimony was presented by Sheri Richard, Mark Timpe, John Cochrane, and Robert Hevert.

If the Commission were rendering traditional revenue requirement determinations in this case, the Company's testimony demonstrates that the return on common equity ("ROE") to be used for determining the rate of return could be 9.95 percent, within an overall range of 9.80 percent to 10.60 percent. The Company's testimony also demonstrates that the capital structure to be used for determining the rate of return should include 53.07 percent common equity and

46.93 percent long-term debt, and that the Company's actual filed cost of debt, which is the same as the cost of debt at the true-up period, should be used.

OPC recommends a ROE of 9.25 percent. Staff witness Chari testified for an ROE range of 9.05 to 9.8.

The Cost of Equity is the return that investors require to make an equity investment in a firm. That is, investors will only provide funds to a firm if the return that they expect is equal to, or greater than, the return that they require to accept the risk of providing funds to the firm. From the firm's perspective, that required return, whether it is provided to debt or equity investors, has a cost.[33]

"Cost of Debt" and "Cost of Equity" are separate concepts, but, together, they are referred to as the "Cost of Capital."[34]

The Cost of Capital (including the costs of both debt and equity) is based on the economic principle of "opportunity costs." Investing in any asset, whether debt or equity securities, implies a forgone opportunity to invest in alternative assets. For any investment to be sensible, its expected return must be at least equal to the return expected on alternative, comparable investment opportunities. If it is not, investors will sell the "over-valued" security, and buy the "under-valued" security until the expected returns on the two are aligned.[35]

Although both debt and equity have required costs, they differ in certain fundamental ways. Most noticeably, the Cost of Debt is contractually defined and can be directly observed as the interest rate or yield on debt securities. The Cost of Equity, on the other hand, is neither directly observable nor a contractual obligation. Rather, equity investors have a claim on cash

---

[33] Ex. 36, Hevert Direct, pp. 5-6.
[34] Ex. 36, Hevert Direct, p. 6.
[35] Ex. 36, Hevert Direct, p. 6.

flows only after debt holders are paid; the uncertainty (or risk) associated with those residual cash flows determines the Cost of Equity.[36]

Because equity investors bear that additional "residual risk," they require higher returns than debt holders. In that basic sense, equity and debt investors differ; they invest in different securities, face different risks, and require different returns.[37]

Whereas the Cost of Debt can be directly observed, the Cost of Equity must be estimated or inferred based on market data and various financial models. Each of those models is subject to its own set of assumptions, which may be more or less applicable under differing market conditions. In addition, because the Cost of Equity is premised on opportunity costs, the models typically are applied to a group of "comparable" or "proxy" companies. The choice of models (including their inputs), the selection of proxy companies, and the interpretation of the model results all require the application of reasoned judgment. That judgment should consider data and information, both quantitative and qualitative, that is not necessarily included in the models themselves.[38]

The estimated Cost of Equity should reflect the return that investors require in light of the subject company's risks, and the returns available on comparable investments. A given utility stock may require a higher return based on the risks to which it is exposed relative to other utilities. That is, utilities may be viewed as a "sector," but that does not mean that all utilities require the same return.[39]

---

[36] Ex. 36, Hevert Direct, p. 6.
[37] Ex. 36, Hevert Direct, p. 6.
[38] Ex. 36, Hevert Direct, pp. 6-7.
[39] Ex. 36, Hevert Direct, p. 7.

The assessment of relative risk and its effect on the Cost of Equity requires the application of reasoned, experienced judgment applied to a variety of data, much of which is qualitative in nature.[40]

The Stipulation involves a construct that is investment driven and not expense driven, and, as such, it is difficult to compare the filed positions of the parties to the Stipulation terms. The Stipulation signatories represent that the Stipulation resolves the rate of return issues by providing for a carrying cost rate of 7.3% on the balance created by the phase-in rate mechanism to be established pursuant to RSMo. §393.155.1.

With regard to the establishment of a phase-in mechanism as decided below, as of January 31, 2020, the Rate Base increase is $102,575,958. The depreciation and amortization for Plant in Service and Intangible Plant is $4,009,889.

While the weighted average cost of capital was not stated in the Commission order resolving Empire's last general rate case, Case No. ER-2016-0023, the authorized ROE was addressed. As stated in the Commission's Order issued on August 10, 2016, the Company's revenue requirement, as determined by the Commission in Case No. ER-2016-0023, was based on a ROE range of 9.5 to 9.9 percent.[41]

For AFUDC purposes (Allowance for Funds Used During Construction), the Company currently utilizes the midpoint of the ROE range from Case No. ER-2016-0023, or 9.7 percent.[42]

Although the Stipulation does not specify an authorized ROE, the phase-in mechanism carrying cost can be tied to an ROE range of 9.4 to 9.8, depending on the capital structure to which it is applied and the cost of debt that used.

---

[40] Ex. 36, Hevert Direct, p. 7.
[41] Ex. 1017, Richard Supplemental, pp. 22-23.
[42] Ex. 1017, Richard Supplemental, p. 23.

The 7.3 carrying cost provided for in the Stipulation is reasonable and properly reflects the goals of establishing just and reasonable rates and having a financially strong utility that will be able to continue providing safe and reliable service.

Conclusions of Law

In order to set a fair rate of return for Empire, the Commission would be required to determine the weighted cost of each component of the Company's capital structure. One component is the estimated cost of common equity, or ROE. Estimating the cost of common equity capital is a difficult task, as academic commentators have recognized.[43] Determining a rate of return on equity is imprecise and involves balancing a utility's need to compensate investors against the need to keep prices low for consumers.[44]

Missouri court decisions recognize that the Commission has flexibility in fixing the rate of return, subject to existing economic conditions.[45] "The cases also recognize that the fixing of rates is a matter largely of prophecy and because of this commissions, in carrying out their functions, necessarily deal in what are called 'zones of reasonableness,' the result of which is that they have some latitude in exercising this most difficult function."[46]

The United States Supreme Court has instructed the judiciary not to interfere when the Commission's rate is within the zone of reasonableness.[47]

Since the Commission has concluded that no rate changes will be made at this time and that the Commission need not determine a traditional revenue requirement, the Commission is not required to reach individual decisions regarding the rate of return components.

---

[43] *See* Phillips, *The Regulation of Public Utilities*, Public Utilities Reports, Inc., p. 394 (1993).
[44] *State ex rel. Pub. Counsel v. Pub. Serv. Comm'n*, 274 S.W.3d 569, 574 (Mo. App. 2009).
[45] *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, 570-571 (Mo. App. 1976).
[46] *Id.*
[47] *State ex rel.Public Counsel v. Public Service Commission*, 274 S.W.3d 569, 574 (Mo. App. 2009); s*ee, In re Permian Basin Area Rate Cases,* 390 U.S. 747, 767, 88 S.Ct. 1344, 20 L.Ed.2d 312 (1968) ("courts are without authority to set aside any rate selected by the Commission [that] is within a 'zone of reasonableness'").

The 7.3 carrying cost provided for in the Stipulation is lawful and properly reflects the goals of establishing just and reasonable rates and having a financially strong utility that will be able to continue providing safe and reliable service.

The Commission is not required to use any single formula or combination of formulae in determining rates, and the Commission's ratemaking duty involves the making of "pragmatic adjustments." "Under the statutory standard of 'just and reasonable' it is the result reached, not the method employed which is controlling. It is not theory but the impact of the rate order which counts."[48]

RSMo. §393.155.1 authorizes the Commission, in certain instances, to phase in a revenue increase over a reasonable number of years. "Any such phase-in shall allow the electrical corporation to recover the revenue which would have been allowed in the absence of a phase-in and shall make a just and reasonable adjustment thereto to reflect the fact that recovery of a part of such revenue is deferred to future years."

Decision

The Commission concludes that approval of the Stipulation terms is the proper resolution of the three rate of return issues presented to the Commission. As a result of this rate case proceeding, there will be no changes to the Company's retail base rates and the tax addendum, currently credited as a separate line item on each rate schedule as "tax rate reduction," will remain in place.

The balances of protected and unprotected excess accumulated deferred income taxes of $101,146,004 and $25,621,649, respectively as of March 31, 2019, will be frozen, and

---

[48] *State ex rel. Associated Natural Gas Co. v. Public Service Commission*, 706 S.W. 2d 870, 873 (Mo. App. W.D. 1985).

amortization of these amounts will be recorded to expense by Empire starting with the effective dates of rates in Empire's next general rate proceeding.

An amortization of the balance of the stub period amortization of $11,728,453, in the amount of $5,000 monthly, is included in the revenue requirement for this case. The amortization balance, and the appropriate amortization period, will be reevaluated in the next general rate case.

The Commission establishes a phase-in rate mechanism pursuant to Section 393.155.1, RSMo, with regard to plant in service and other rate base items. The phase-in mechanism will capture the return "on and of" related to the net increase in plant in service and other rate base items between the Company's filed test year balance in this proceeding and the true-up. In addition to plant in service, the mechanism will capture the change in the rate base components for CWC, Prepayments, Materials, Supplies, Fuel Inventories, Customer Deposits, Customer Advances, Regulatory Assets, Regulatory Liabilities and ADIT since test year end.

The phase-in mechanism shall utilize a carrying cost rate of 7.3%. The rate base and phase-in mechanism balances shall be included in the Company's adjudicated rate base in its next general base rate proceeding, subject to prudency challenges. The amortization period for what is captured by the phase-in mechanism shall be determined in Empire's next general base rate proceeding.

Currently authorized Regulatory Assets/Trackers and Regulatory Liabilities/Trackers will remain in place under the currently authorized terms and at their current authorized amortization periods. These are listed on Stipulation Appendix A.

New Regulatory Assets/Trackers and Regulatory Liabilities/Trackers will be established with the balances specified in Stipulation Appendix B. All amounts included associated with the

new regulatory assets for the Asbury and Iatan units will be booked against the accumulated depreciation reserve in Empire's next general rate case. All amounts associated with the new regulatory asset associated with the Riverton units will be amortized for ratemaking purposes starting with Empire's next general rate proceeding, with the amortization period to be determined in that proceeding. Any amount of proceeds from sales of ash at the retired Riverton units will be offset against the new regulatory assets/trackers, and any coal ash sales proceeds for Asbury will be booked to the accumulated depreciation reserve in Empire's next general rate case.

Issue 2. Rate Design, **Other Tariff and Data Issues:** (a) Should the GP and TEB rate schedules be fully consolidated? (b) Should the CB and SH rate schedules be partially consolidated? (c) Should "grandfathered" multifamily customers taking service through a single meter be given the option of being served on the CB/SH rate schedule? (d) How should Empire's revenue requirement be allocated amongst Empire's customer rate classes (Class revenues responsibilities)? (e) How should the rates for each customer class be designed? (f) What should be the amount of the residential customer charge? (g) Should Empire continue its Low-Income Pilot Program as is, or modify it? (h) Should Empire be ordered to consolidate the PFM rate schedules into the GP/TEB rate schedule in a future proceeding? (i) Should Empire be ordered to incorporate shoulder months into the Special Contract / Praxair rate structures in the next rate proceeding? (j) Should Empire be ordered to work to incorporate shoulder months into the rate structures of all non-lighting rate schedules? (k) Should Empire be ordered to retain each of the following: Primary costs by voltage; Secondary costs by voltage; Primary service drops; Line extension by rate schedule and voltage; Meter costs by voltage and rate schedule? (l) Should Empire be ordered to use of AMIs for near 100% sample load research as soon as is practical, but no more than 12 months after 90% of AMI are installed? (m) Should Empire be ordered to retain individual hourly data for future bill comparisons? (n) Should Empire be ordered to retain coincident peak determinants for use in future rate proceedings? (o) How should the amount collected from customers related to the SBEDR charge be billed and if the item should appear as a separate line item on customers' bills? (p) By when should Empire move customers served on CB/SH that exceed the demand limits of those schedules to the appropriate rate schedule? (q) What, if any, revenue neutral interclass shifts are supported by the class cost of service study? (r) How should any revenue requirement increase or decrease be allocated to each rate class? (s) How should any residential revenue requirement increase or decrease be apportioned to the energy (kWh) rates? (t) What, if any, changes to the CB, SH, GP and TEB customer charge are supported by the class cost of service study? (u) What, if any, changes to the CB, SH, GP and TEB customer charge should be made in designing rates resulting from this rate case? (v) How should any CB and SH revenue requirement increase or decrease be apportioned to the energy (kWh) rates? (w) How should any GP and TEB revenue requirement increase or decrease be apportioned to the demand (kW) and energy (kWh) rates? (x) How should any LP revenue

requirement increase or decrease be apportioned to the demand (kW) and energy (kWh) rates? (y) What, if any, changes to the current SC-P energy (kWh) rates should be made to align with Market Prices? (z) How should production-related costs be allocated to each rate class? (aa) How should plant accounts 364, 366 and 368 be classified? (bb) How should primary and secondary distribution plant facility costs be allocated to each rate class? (cc) How should General plant facility costs be allocated to each rate class?

Findings of Fact

The parties have reached complete agreement on issues 2(f)-2(q) and 2(s)-2(y), with the agreed upon resolution being the terms of the Stipulation.

Issue 2(a): Staff proposes to consolidate the GP and TEB rate schedules based on the lack of an apparent cost-related distinction between the service of customers on these rate schedules. Staff states that due to the seasonality of Empire's demand charges and the hours use rate structure of these rate schedules, it is reasonable to merge these rate schedules at this time.[49]

Empire states that there may be benefits in the consolidation of rate schedules GP and TEB. Namely, the rate schedules have identical customer charges and rate structures; the rate schedules have similar underlying costs of service; and, consolidating rates and charges in general helps to simplify rate administration efforts and customer communication. However, there is concern with the possibility that the consolidation of the rate classes may cause some customers to experience significant bill impacts.[50]

Since the rate impact of the consolidation of the GP and TEB rate classes has not been analyzed to determine if all customers are not significantly impacted, the rate classes should not be consolidated at this time.

The Company should provide, in the next general rate case, a rate impact analysis of the consolidation of the GP and TEB rate classes.

---

[49] Ex. 104, Staff Direct Report – Class Cost of Service, p. 18.
[50] Ex. 28, Lyons Rebuttal, p. 14.

Issue 2(b): Staff proposes to align the customer charge, head-block, and summer tail-block energy charges for the CB and SH rates while maintaining a distinct winter tail-block charge.[51]

Empire states that there may be benefits in the partial consolidation of the CB and SH rates by making customer charges, head block, and summer tail block rates equal, while maintaining distinct winter tail block rates. The possible benefits include: identical rate structures and customer charges; the cost of service differences can be recognized by maintaining distinct winter tail block rates; potential bill impact concerns related to the proposed rate changes can be addressed by maintaining distinct winter tail block rates; and, consolidating rates and charges in general helps to simplify rate administration efforts and customer communication.

The rates should not be partially consolidated since energy charges are sufficiently different between the CB and SH rate classes due to the concern that some customers may experience significant bill increases as a result of the consolidation of the rate classes.[52]

Since the bill impact of the partial consolidation of the CB and SH rate classes has not been analyzed to determine if all customers are not significantly impacted, the rate classes should not be partially consolidated at this time. The Company should provide, in the next general rate case, a rate impact analysis of the partial consolidation of the CB and SH rate classes.

Issue 2(c): Staff states that multiple-family dwellings within a single building that are served from one meter instead of separately metered are served on the residential tariff based on the total number of dwelling units. Staff suggested that Empire modify its tariff to allow such master-metered customers to be served on the CB tariff instead of the residential tariff.[53]

---

[51] Ex. 104, Staff Direct Report – Class Cost of Service, pp. 16-17.
[52] Ex. 28, Lyons Rebuttal, p. 14.
[53] Ex. 104, Staff Direct Report – Class Cost of Service, p. 34.

Empire states that the Company's Class Cost of Service ("CCOS") includes these customers in the residential rate class and does not reflect the appropriate costs and revenue in the alternate classes.

No evidence exists in this case to support the modifications of the tariff to allow these customers to take service under an alternative rate class. As such, there is no assurance that the costs associated with service are accounted for in the target rates.[54]

Since the CCOS incorporates the cost of serving these customers in the residential rate and no evidence exists to support the modification of the tariff to support the service of multiple-family dwellings under the CB rate, these customers shall continue to be served on the residential rate based on the total number of dwelling units.

Issue 2(d): Staff states that, in the event of a reduction in revenue requirement, the Feed & Grain rate schedule should revert to its pre-tax reduction tariffed revenue level. Staff recommends that the Residential, Contract Transmission, and Lighting rate schedules retain the current level of revenue production which is net of the current temporary tax reduction rider, and that the CB/SH, GP/TEB, and LPS class revenue requirements be adjusted by the following process, in the event that imputed load shapes are relied upon for rate schedules on which few customers take service:

> 1. Reduce class revenue requirements by the level of the temporary tax reduction;
> 2. Determine the amount of additional reduction available after the above-referenced reductions have been applied, (approximately $18.5 million at Staff's recommended revenue requirement);
> 3. Further reduce the CB/SH and LPS revenue requirements by 25% each of the amount identified in step 2;
> 4. Further reduce the GP/TEB revenue requirements by 50% of the amount identified in step 2.[55]

---

[54] Ex. 26, Lyons Direct, p. 28.
[55] Ex. 104, Staff Direct Report – Class Cost of Service, p. 2.

Staff also states that if it is preferred to use customer-specific loads for the classes with few customers, then the LPS reduction should be reduced to 23% of the Step 2 amount, and Praxair should be reduced by 2% of the Step 2 amount.[56]

MECG recommended that the Commission eliminate 25% of the residential subsidy, leading to a 4.2% increase for the residential class and improved competiveness of all commercial and industrial classes.[57]

The Company states that an overall goal of rate design is to ensure that the various rates are fair and equitable in that they minimize inter-class subsidies. The revenue requirement should be allocated among the customer rate classes in a manner that reflects an aggregate movement toward the system rate of return ("ROR"). This is accomplished by assigning a larger increase to classes that produce a lower ROR than the system ROR.[58]

If there is a traditional rate increase authorized in this proceeding, in lieu of the Stipulation terms being approved, Empire proposes the following process to guide revenue allocation.

- The Residential, Miscellaneous Service, Municipal Street Lighting, and Special Lighting rate classes require higher increases relative to the system average to achieve the system rate of return.
- Based on these results, the revenue targets should set based on a four-step process that balances the rate design principles, including the equity and bill continuity and gradualism concerns.
- In the first step, the proposed revenues should be increased by a lower than average percent for those rate classes whose current rates recover more than 110.0 percent of their cost of service. This step ensures that the rate increase for these rate classes is less than the overall rate increase.
- In the second step, the proposed revenues should be increased by a slightly higher percentage than that in step 1, but slightly lower than the system average increase percent for the Large Power rate class. This step ensures that the rate increase for the Large

[56] Ex. 121, Lange Rebuttal, p. 18.
[57] Ex. 350, Maini Direct, p. 35.
[58] Ex. 26, Lyons Direct, p. 28.

Power rate class is somewhat less than the overall rate increase since their current rates recover more than their cost of service. In addition, the Commission should recognize that customers in the Large Power rate class tend to be energy-intensive businesses that are highly sensitive to rate changes and thus develop a separate step in setting revenue targets.

- In the third step, the proposed revenue increase should be capped a reasonable increase above the system average for those rate classes that would require significant increases to achieve the system rate of return. This step ensures that no rate class receives an unreasonable increase to address continuity and gradualism concerns.
- In the fourth and final step, the remaining revenue deficiency should be assigned to all other rate classes in proportion to their current revenues. This step represents those rate classes whose current rates recover slightly more or less than their cost of service. Ex. 26, Lyons Direct, pp. 30-31.

Rates should be fair and equitable and revenue allocation should minimize inter-class subsidization. This is to be accomplished by allocating revenue in a manner that reflects an aggregate movement of classes toward the system rate of return. To that end, if there were to be a rate increase rather than no changes to the base rates, the revenue requirement should be allocated to each class using the steps proposed by the Company for revenue allocation.

Issue 2(e): The Stipulation provides for no changes to the customer charges, and all parties are in agreement that the residential customer charge should not be changed in this proceeding.

Issue 2(z): Staff proposes to allocate production plant costs based on a Highest 100 Hours allocator.[59] MECG supports an Average and Excess 6 NCP methodology for allocation of production plant costs.[60] The Company states that production plant should to be allocated on the Average and Excess 12 NCP method. This production plant allocator is consistent with how costs are incurred, allocating a portion of production plant based on energy consumption and the remaining portion based on peak demands. Specifically, the energy portion of plant costs is

---

[59] Ex. 104, Staff Direct Report – Class Cost of Service, p. 27.
[60] Ex. 350, Maini Direct Rate Design, p. 29.

allocated to each rate class based on average kWh sales throughout the year, while peak demands are based on peak kW demands throughout the year.[61]

Production plant, as with all costs, should be allocated to customers in a manner consistent with how customers cause those costs to be incurred. In the case of production plant, a portion of the production plant costs is caused by customers' demand and a portion is caused by the energy consumed by customers. An Average and Excess 12NCP production allocator is appropriate since it reflects the manner in which customers cause production costs.

Issue 2(aa): Staff proposed a zero-intercept methodology to classify certain costs as customer related.[62] MECG states that Staff analysis is either not incorporating all the costs or is using inconsistent comparisons and the results show significant unexpected differences between the zero-intercept method and the Company's minimum system method. MECG recommends that Staff should vet its analysis and not utilize the results in this case. Ex. 351, Maini Rate Design Rebuttal, p. 14.

The Company proposed a minimum system method to classify costs as customer related. The Company stated that it does not oppose the use of the zero-intercept method proposed by staff, however, the Company presents evidence that the data used in staff's calculations contains issues which cause significant differences in the classification results. For example, Staff's approach classifies 22.6 percent of Account 364 costs as customer-related, while the Company's methodology classifies 53.1 percent of Account 364 costs as customer-related. The Company identified the following issues with Staff's calculations:

- For Account 364 (Poles), Staff's methodology does not consider the cost of anchors and guys that are recorded in Account 364. The Company's minimum system study accounts for anchors and guys which contributes to higher

---

[61] Ex. 28, Lyons Rebuttal, pp. 23, 35-36.
[62] Ex. 104, Staff Direct Report – Class Cost of Service, pp. 27-29.

customer-related costs. Thus, the Company recommends utilizing the Company's minimum system study.

- For Account 366 (Underground Conduits), Staff's methodology does not consider the cost of vaults and pedestals that are recorded in Account 366. The Company's minimum system study accounts for such costs which shows that the minimum system costs are equal to or higher than total system costs. As a result, the Company's study classifies Account 366 as 100.0 percent customer related. The Company recommends utilizing the Company's minimum system study.
- For Account 368 (Transformers), Staff conducted a zero-intercept study using limited data (i.e., two data points): a 15kVA overhead transformer cost, and a 25kVA underground transformer cost. These costs are not apples-to-apples as installation of a 25kVA underground transformer may include higher costs than installation of a 25kVA overhead transformer. This would help to explain Staff's study results which show a negative zero-intercept. As a result, the Company recommends classification of Account 368 costs utilizing the Company's minimum system study.[63]

Significant differences are not expected between the minimum system and zero-intercept methods used to classify the costs within accounts 364, 366, and 368 as customer-related and demand-related. The Minimum System method used by the Company is reasonable and provides reliable results.

Issue 2(bb): Staff states that primary distribution facilities should be allocated based on the sum of each class' coincident peak demands measured at primary voltage. Secondary distribution was allocated by staff based on the sum of each class' coincident peak demands at secondary voltage.[64]

MECG states the distribution costs should be allocated using a class non-coincident peak (1NCP).[65]

---

[63] Ex. 28, Lyons Rebuttal, pp. 25-26.
[64] Ex. 104, Staff Direct Report – Class Cost of Service, pp. 29-30.
[65] Ex. 351, Maini Rate Design Rebuttal, pp. 9-10.

The Company states that the 6 NCP allocator is appropriate since it reflects both how costs are incurred and how the Company plans for distribution system capacity; namely, to support local peak demand in both the summer and winter months.[66]

The allocation of distribution facilities costs should reflect how customer cause costs to be incurred. The Company's 6 NCP allocator is the correct allocator since it reflects how costs are incurred and also reflects how the Company plans for distribution system capacity.

Issue 2(cc): MECG states that Staff's allocation of general plant facility costs under the category of miscellaneous and unassignable costs allocated using an energy allocator is inappropriate and should be allocated using the same allocator used in the previous case.[67]

The Company states that general plant facility costs are generally used by the Company and should be allocated based on the Company's proposed composite of labor-related O&M expenses. This approach reflects the driver of these costs and is consistent with the allocation method for these costs described in the NARUC Cost Allocation manual.[68]

Allocation of general plant facilities should reflect the causation of those costs. Energy-based allocation is not reflective of the purpose for general plant facilities and should not be used for the allocation of these costs. The Company's proposed composite of labor-related O&M expenses is reasonable and fairly allocates these costs.

Conclusions of Law

There are no additional conclusions of law for this section.

---

[66] Ex. 28, Lyons Rebuttal, p. 27.
[67] Maini Rate Design Rebuttal, pp. 15-16.
[68] Ex. 28, Lyons Rebuttal, p. 29.

Decision

After reviewing the Stipulation and the parties' positions and arguments on the remaining contested rate design issues, the Commission independently finds and concludes that the rate design terms of the Stipulation are a reasonable resolution of all rate design issues in this matter and should be approved.

In conjunction with approval of the terms of the Stipulation as a complete resolution of this case, there will be no changes to retail base rates in this proceeding, and there will be no changes to the customer charges in this proceeding.

The Company shall incorporate the following in its direct filing in its next general base rate proceeding:

a. Allocation of interruptible credits for SC-P rate schedule consistent with MECG's recommendation in this case;
b. Allocation of the cost of the economic development rider discount on revenues pursuant to Section 393.1640.2;
c. A firm-up interruptible revenues to match with cost allocation of production plant.

Prior to the filing of its next rate case, the Company shall identify and provide the data required to determine: primary distribution costs by voltage; secondary distribution costs by voltage; primary voltage service drops; line extension by rate schedule and voltage; and, meter costs by voltage and rate schedule. If the required data is not readily available, the Company shall identify and implement the actions necessary to obtain it as quickly as possible.

As the Company deploys AMI, it shall retain the data necessary to: (a) commit to use of AMI data to enhance the accuracy and applicability of its load research data as soon as is practical; (b) retain individual hourly data for use in providing bill comparison tools for customers to compare rate alternatives and (c) retain coincident peak determinants for use in

future rate proceedings. With regard to (a), the Company shall make available the following information to the extent practicable:

1. For each rate schedule the total number of customers served on that rate schedule on the first day of the month and the last day of the month;
2. For each rate schedule on which customers may take service at various voltages the number of customers served at each voltage on the first day of the month and the last day of the month;
3. For each rate schedule the number of customers served on that rate schedule on the first day of the month and the last day of the month for which interval meter readings are obtained;
4. For each rate schedule on which customers may take service at various voltages the number of customers served at each voltage on the first day of the month and the last day of the month which interval meter readings are obtained;
5. For each rate schedule on which customers may take service at various voltages the sum of customers' interval meter readings, by interval and by voltage;
6. For each rate schedule on service is available at a single voltage the sum of customers' interval meter readings, by interval;
7. If any internal adjustments to customer interval data are necessary for the company's billing system to bill the interval data referenced in parts 5 and 6, such adjustments should be applied to each interval recording prior to the customers' data being summed for each interval;
8. Individual customer interval data shall be retained for a minimum of fourteen months. If individual data is acquired by the company in intervals of less than one hour in duration, such data shall be retained in intervals of no less than one hour.
9. From time to time the Commission may designate certain customer subsets for more granular study. If such designations have been made, the information required under parts 1 – 8 should be provided or retained for those instances.

The Company shall submit a rate impact analysis for the alignment of GP/TEB rates in its next rate case.

The Company shall submit a rate impact analysis for the alignment of CB/SH rates in its next rate case.

The Company shall propose the elimination of the Feed & Grain rate in its next general rate case.

The Company shall work with parties to explore modification of the rate structures of all rate schedules to subdivide the current "Winter" billing season into a "Peak Winter" and two

"Shoulder Month" seasons, to reflect at a minimum the difference in the cost of market energy among current "Winter" months to the extent it is consistent with reasonable rate design principles.

When the Company files its next rate case, the Company shall include testimony regarding whether or not it proposes to change its tariffs to allow mastermetered apartments to be served under CB/SH.

The Company shall develop determinants suitable for use in the design and development of time of use ("TOU") rates as part of the next rate case.

3. Jurisdictional Allocation Factors: What are the appropriate jurisdictional allocation factors to be used in the cost of service?

Findings of Fact

The terms of the Stipulation represent a complete resolution of this rate case, whether or not an issue is specifically addressed.

The Stipulation provides for Empire's monthly FAC submissions to include a detailed listing of all the costs incurred due to the Missouri Joint Municipal Electric Utility Commission ("MJMEUC") contracts and the revenues that Empire receives from MJMEUC including but not limited to revenue for energy generated, revenue for capacity, and reimbursement of fuel, variable O&M, and start-up costs. The Stipulation also provides that (i) the level of revenues will represent an offset to lost revenues from the current municipal customer contracts and thus will be retained by the Company until the allocations are reexamined in the next general rate case and (ii) Staff's recommendation for Empire to file additional reporting requirements with its FAC monthly reports and Fuel Adjustment Rate filing workpapers will be adopted. These additional reporting requirements will demonstrate that the energy purchased from Empire related to MJMEUC's agreement will be billed to the cities (Monett and Mt. Vernon, Missouri) via MJMEUC and will

thereby reduce a portion of the fuel expense that is allocated and billed to Empire's retail customers. This reduced portion of fuel expense will clearly illustrate that the energy purchased for these specific cities via MJMEUC is not flowing through the FAC.

The Stipulation does not provide for any changes to the jurisdictional allocation factors.

OPC did not present any evidence on the issue of the appropriate jurisdictional allocation factors to be used in the cost of service, although OPC states any allocation factors for affiliate transactions should be based on the costs and values of the goods or services provided and received.

Staff allocated jurisdictional costs using demand-related and energy-related allocators. Fixed costs, such as the capital costs associated with generation and transmission plant, were allocated on the basis of demand. Variable costs, such as fuel, were allocated on the basis of energy consumption. Then, demand-related and energy-related costs were divided among three jurisdictions: Missouri Retail Operations, Non-Missouri Retail Operations and Wholesale Operations. The particular allocation factor applied was dependent upon the type of cost that is being allocated.

Empire states it generally agrees with the methodologies used by Staff to develop the jurisdictional demand and energy allocators. However, Empire states Staff's application of the jurisdictional allocators or in some instances the test year balances to which the allocators were applied, resulted in significant allocation errors.[69]

---

[69] Ex. 5, Richard Rebuttal, pp. 37-38.

Empire states that the test year balances Staff utilized for FERC accounts 501 (Fuel) were incorrect. When utilizing the correct balances to apply the allocator to, it results in an under allocation of cost to the Missouri jurisdiction of $860,902.[70]

In addition, the jurisdictional allocator utilized for FERC account 565414 should have been a retail only allocator, according to Empire. Utilizing the correct allocator results in an under allocation of costs to the Missouri jurisdiction of $704,344.[71]

Empire also states that Staff incorrectly applied its jurisdictional allocator to all depreciation expense accounts to derive a Missouri retail test year amount. Distribution depreciation expenses are direct assigned. Therefore, the depreciation expense allocated to the Missouri jurisdiction resulted in an approximate under allocation of $2.5 million.[72]

If Empire's positions are accepted regarding the proper application of the jurisdictional allocators, Empire's Missouri jurisdiction cost of service increases by $4.1 million.

The Commission finds the jurisdictional allocation methodology to be reasonable as utilized by Staff and supported by Empire.

The Commission, however, finds Empire's demonstration of Staff's improper application of the factors persuasive. Therefore, an adjustment increasing the Company's Missouri jurisdiction class cost of service by $4.1 million would need to be made.

Conclusions of Law

Since the Commission has concluded that no rate changes will be made at this time in conjunction with approval of the stipulation terms as a complete resolution of this case, the

[70] Ex. 156, Bolin Supplemental Testimony, p. 10.
[71] Ex. 57, Jurisdictional Allocations Workpaper, p. 2; Ex. 156, Bolin Supplemental Testimony, p. 10.
[72] Ex. 156, Bolin Supplemental Testimony, p. 11.

Commission is not required to reach a decision regarding the proper jurisdictional allocators for establishing a traditional revenue requirement.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

4. WNR and SRLE Adjustment Mechanisms: (a) Should the Commission approve, reject, or approve with modifications Empire's proposed Weather Normalization Rider? (b) Is it lawful for the Commission to authorize Empire to implement a Sales Reconciliation to Levelized Expectations ("SRLE") mechanism, such as those Staff and Empire are proposing in this case? (c) Should the Commission adopt Staff's Sales Reconciliation to Levelized Expectations Proposal ("LRSE") or approve the SRLE with modification as suggested by the Company?

Findings of Fact

Empire proposed in this case, pursuant to RSMo. §386.266.3, a weather normalization mechanism identified as the WNR. As an alternative to the Company's proposed WNR, Staff recommended the adoption of a Sales Reconciliation to Levelized Expectations ("SRLE") mechanism pursuant to RSMo. §386.266.3.

Empire has not provided notice to the Commission under subsection 5 of RSMo. §393.1400 (Deferral of Depreciation to Regulatory Asset).

Due to the Company's agreement to accept the Staff's SRLE over the Company's proposed WNR, the Commission need not make additional findings or conclusions regarding the WNR.

Electric utility costs are largely fixed and change very little in the short run as usage levels change. However, electric utility rates have a significant variable or consumption-based component that produces revenue changes as kWh consumption changes. Electric utilities incur three types of costs in providing electric service to customers: (i) fixed costs – including meter,

billing and a portion of distribution costs that generally vary by the number of customers; (ii) demand-related costs – including transmission and distribution costs that generally vary by demand; and (iii) energy-related costs – including variable O&M expenses that generally vary by kWh sales or energy consumed.[73]

Utility rates are designed to recover all of these costs. However, especially for residential and small commercial customers, a significant portion of the costs are recovered on the basis of kWh consumption charges reflecting usage (based on normal weather) at the time rates are established (*i.e.*, rates are based upon the level of usage embodied in a historical test year). Thus, to the extent that actual usage is significantly lower than the level assumed in rates, then utility rates no longer recover the cost of service. Conversely, to the extent that actual usage is significantly higher than the amount assumed in rates, then utility rates may recover revenues in excess of the cost of service.[74]

Empire's current rates exhibit this misalignment between rates and costs. The portion of the Company's rates based on consumption (kWh sales) is significant – 92% for Small Heating (SH), 89% for Commercial (CB), and 90.9% for Residential (RG).[75]

The SRLE will stabilize customer bills and the Company's revenues over time resulting in benefits to both the Company and its customers by correcting for the mismatch between utility rates and costs.[76]

The SRLE is designed to address the misalignment of variable rates and fixed costs that is present in Empire's rates.

---

[73] Ex. 26 (Direct Testimony of Timothy S. Lyons), p. 52.
[74] Ex. 26, pp. 52-53.
[75] Ex. 26, p. 53.
[76] Ex. 26, p. 59.

With regard to the revenue impacts Empire has experienced due to weather and/or conservation that would justify the need for the SRLE or WNR, Staff noted its $4,550,884 weather normalization adjustment in this case.[77]

The portion of the Company's rates based on consumption (or kWh sales) is significant. Because this misalignment can result in an under or over-collection of costs, the SRLE would mitigate customer bills as well as company revenues. Customers would receive a credit under the SRLE mechanism for higher revenues related to weather.[78]

The SRLE is well designed to provide Empire with a sufficient opportunity to earn a fair return on equity and to make sure that customers do not pay more than is necessary to achieve that goal.

The SRLE proposed by the Staff is a reasonable mechanism to address the variability of revenues that are beyond the control of Empire as the result of weather and conservation.

Conclusions of Law

The Commission's authority to approve the SRLE is found in RSMo. §386.266.3, which states as follows:

> Subject to the requirements of this section, any . . . electrical corporation may make an application to the commission to approve rate schedules authorizing periodic rate adjustments outside of general rate proceedings to adjust rates of customers in eligible customer classes to account for the impact on utility revenues of increases or decreases in residential and commercial customer usage due to variations in either weather, conservation, or both. No electrical corporation shall make an application to the commission under this subsection if such corporation has provided notice to the commission under subsection 5 of section 393.1400. For purposes of this section: for electrical corporations, "eligible customer classes" means the residential class and classes that are not demand metered . . . . As used in this subsection, "revenues" means the revenues recovered through base rates, and does not include revenues collected through a rate adjustment mechanism authorized by this section or any other provisions of

[77] Ex. 164 (Staff Responses to Commission Questions), pp. 4-6.
[78] Ex. 26, Lyons Direct Testimony, p. 53; Ex. 29, Lyons Sur. and True-Up Dir., p. 7.

law. This subsection shall apply to electrical corporations beginning January 1, 2019, and shall expire for electrical corporations on January 1, 2029.

RSMo. §386.266.3 recognizes that electric utility revenues are subject to increases and decreases due to variations in weather and conservation and authorizes the Commission to approve rate adjustments to correct for the impact of weather and conservation variations outside of a general rate proceeding.[79]

It is lawful for the Commission to authorize the implementation of either Empire's WNR or Staff's SRLE mechanism. Both of these mechanisms are consistent with §386.266.3.

Decision

The Commission authorizes the establishment of a mechanism for Empire to make periodic rate adjustments outside of general rate proceedings to adjust rates of customers in eligible customer classes to account for the impact on utility revenues of increases or decreases in residential and commercial customer usage due to variations in weather and conservation, pursuant to §386.266.3. The design of the mechanism shall be as set forth in the Stipulation.

5. FAC: (a) What is the appropriate incentive mechanism in Empire's FAC for sharing between Empire and its retail customers the difference between its actual and base net fuel costs? (b) What FAC-related reporting requirements should the Commission impose? (c) What is the appropriate base factor? (d) What costs and revenues should flow through Empire's FAC, including, but not necessarily limited to, the following? (i) What is the appropriate percentage of transmission costs for the FAC? (ii) What, if any, portion of the MJMEUC contract should be included or excluded from the FAC? Should the Company provide any additional reporting requirements within its FAC monthly reporting in regards to MJMEUC? (iii) Should any wind project costs or revenues flow through the FAC before the wind projects revenue requirements are included in base rates? (iv) Should any short-term capacity costs flow through the FAC from the effective date of this rate case? (e) When should Empire be required to provide its quarterly FAC surveillance reports?

[79] Ex. 29 (Surrebuttal and True-Up Direct Testimony of Timothy S. Lyons), pp. 6-7.

Findings of Fact

As part of its initial rate case filing, Empire requested the continuation of its Fuel Adjustment Clause ("FAC") pursuant to RSMo. §386.266.1. No party opposes the Company's request for the FAC to continue.

The parties have reached complete agreement on FAC issues (b), second sentence of (d)(ii), (d)(iii), and (e), with the agreed upon resolutions for these issues being the terms of the Stipulation.

OPC witness Lena Mantle testified that changing the current sharing mechanism of 95%/5% would increase the incentive for Empire to manage its FAC costs that it incurs and passes on to its customers.[80] OPC argues that the 95%/5% is somewhat arbitrary and ought to be 85%/15% to match the Plant In Service Accounting ("PISA") that was passed in 2018 by the Missouri Legislature in Senate Bill 564. OPC also argues that even with an 85%/15% sharing mechanism, Empire would still recover 99% of its total fuel costs.[81]

There is potential for significant harm to result from the implementation of OPC's recommendation for the FAC sharing mechanism. First, this issue should not be framed around shifting from 99.9% recovery to 99.7% recovery, as those percentages would not be fixed recovery amounts.[82] If the Company had an 85/15 sharing percentage during the years 2017-2019, the differential would have been approximately 0.77%, and not the 0.2% OPC argued. This amount would have resulted in Empire absorbing approximately $1.3 million/year for prudently incurred fuel costs during this period.[83]

---

[80] Ex. 203, Mantle Direct, p. 9.
[81] Ex. 203, Mantle Direct, pp. 31-35.
[82] Ex. 1011, p. 5.
[83] Ex. 15, Tarter Rebuttal, pp. 5-6

Staff agrees that the percentages ought to remain at the 95%/5% level. Staff stated that through a review of this case and review of previous prudence cases, they found no reason to recommend changing the sharing mechanism.[84]

Due to the fact that Empire has not been found imprudent in this case or prior prudency reviews and that the costs that pass through the fuel adjustment clause are significant, volatile, and beyond the ability for the utility to control, the FAC sharing mechanism should remain at 95%/5%.

The current FAC base factor of $24.15 was established in the Company's last general rate case, upon consideration of all factors. The FAC base factor and the amount of FAC eligible costs in base rates work in concert with each other. Since a portion of fuel recovery occurs in the base rates and any over or under recovery is contingent on the FAC base factor, which is calculated in the FAC rider, it is very important that the base factor correctly matches the base energy costs and revenues in the revenue requirement so the correct amount of prudently incurred FAC eligible costs are collected in total.[85]

OPC did not provide a response for the appropriate base fuel cost but stated that the base factor ought to be reduced by approximately $1.3 million due to the closure of Asbury. OPC states that Empire ought to increase its FAC base to reflect the removal of the estimate of Asbury's SPP market revenue.[86]

The $1.3 million or $0.24/MWh difference in the base fuel rate as calculated by OPC is incorrect, in that OPC failed to remove the net impact of fuel administration costs and consumables. If the correct calculation was used, it would result in only a $0.09/MWh

---

[84] Ex. 112, Mastrogiannis Rebuttal, pp. 2-3.
[85] Ex. 1011, Tarter Supplemental, p. 2.
[86] Ex. 203, Mantle Direct, p. 23.

difference, or less than $500,000. Furthermore, if the FAC costs are left unchanged and the estimate is precisely as Empire's fuel run predicted, Empire's customers will have the benefit of only paying 95% of the $0.09/MWh increase.[87]

A review of the last seven Fuel Adjustment Rate ("FAR") filings filed since Empire's prior general rate case, results in a finding of four under-recovered periods and three over-recovered periods, which speaks to the balance of the factor.[88]

The Stipulation is a fair compromise which leaves the current FAC base rate of $24.15/MWh and leaves the current FAC components unchanged from the existing tariff.

OPC states that the revenues received from the MJMEUC contract, which are for fuel and O&M reimbursement, ought to be flowed back to Empire's customers through the FAC. [89]OPC states that this is not a full or partial requirement sales contract to a municipality. OPC states that the MJMEUC contract is not a FERC electric tariff contract, that the capacity is from designated resources, and that MJMEUC will receive energy not from Empire directly, but through SPP.[90]

The revenue from the MJMEUC contract ought to be excluded from fuel due to the requirement sales exclusion in the Off-System Sales Revenue ("OSSR") definition of Empire's FAC tariff. Customers will see reduced fuel expense related to the financial arrangements for the purchase of energy in the contract.[91] The capacity is not from designated resources and is in fact the exact same capacity that is currently serving the cities. Empire provided the Assignment Reference numbers 90812906 and 90812930 which were posted on the Open Access Same-Time Information System ("OASIS") with distinct listings of "Resource Name" and the sink to

---

[87] Empire's Suggestion In Opposition To Public Counsel's Motion To Modify Test Year, p. 5.
[88] Ex.61, Mastrogiannis Supplemental, pp. 2-3.
[89] Ex. 203, Mantle Direct, pp. 16-18.
[90] Ex. 205, Mantle Surrebuttal, pp. 10-11.
[91] Ex. 20, Doll Rebuttal, pp. 7-8.

provide evidence of the identical capacity. Empire is serving the same cities, with the same capacity under a different tariff that is FERC governed under Empire's Market Based Rate ("MBR") authority, and the level of revenues that the Company receives for these contracts will be retained until the allocations are reexamined in the next general rate case.[92]

Staff agrees with Empire that the revenue from the MJMEUC contracts should not flow through the FAC because the definition of OSSR in Empire's FAC tariff explicitly excludes revenue from full and partial requirement sales to municipalities. The MJMEUC contract is a "full and partial requirement sales to municipalities" contract.

Due to the nature of the MJMEUC contract and the provision in Empire's FAC precluding the sharing of revenues from full or partial requirement sales contracts as a component of OSSR, the revenues for these contracts shall be retained by Empire until the allocations are reexamined in Empire's next general rate case. The same customers, though now aggregated, are being served by the same capacity, via a rollover of their transmission rights, makes it clear that these revenues are not different from the existing revenues that are precluded from inclusion in the FAC.

OPC recommends that any short-term capacity be removed from Empire's FAC tariff sheet. OPC states that Empire shut down a 200 megawatt high-capacity factor baseload generating unit, invested in intermittent wind, and entered into a new capacity arrangement with MJMEUC which resulted in Empire's capacity balance for the Summer of 2020 to be zero MW.

As a compromise position, Empire agrees with the removal of the provision allowing short-term capacity charges to flow through the FAC until June of 2021.

---

[92] Ex. 1010, Doll Supplemental Responsive, pp. 1-2.

Even though the Company decided to retire its Asbury coal plant, which had capacity factors of 70.3% and 78.2% in 2012 and 2013, respectively, and only 48% and 47.7% in 2018 and 2019, respectively, it had adequate capacity to meet its reserve obligations in 2020 and could provide that information after SPP provides official acceptance.[93]

The Stipulation is a fair compromise which alters the current FAC to address the concern raised by Staff and OPC.

Conclusions of Law

There are no additional conclusions of law on this issue.

Decision

After reviewing the Stipulation and the parties' positions and arguments on the remaining contested FAC issues, the Commission independently finds and concludes that the FAC terms of the Stipulation are a reasonable resolution of all FAC issues in this matter and should be approved.

Empire will continue to have an FAC, there will be no change to the FAC base in this proceeding, and FAC tariff language changes shall be limited to those necessary to implement the below decisions.

Any fuel related costs or market related charges or revenues incurred at Asbury or related to Asbury after January 1, 2020 shall not be eligible for inclusion in the FAC. Short-term capacity costs shall not flow through the FAC until on and after June 1, 2021.

Empire's monthly FAC submissions shall include a detailed listing of all the costs incurred due to the MJMEUC contracts and the revenues that Empire receives from MJMEUC including but

---

[93] Ex 20. Doll Rebuttal, p. 3; Ex. 21, Doll Surrebuttal, p. 3.

not limited to revenue for energy generated, revenue for capacity, and reimbursement of fuel, variable O&M, and start-up costs.

The Company shall work with stakeholders to determine the appropriate unit commitment data to support the analysis underlying Empire's unit self-commitment decisions in advance of the next fuel prudence review.

Regarding the MJMEUC issue, (i) the level of revenues will represent an offset to lost revenues from the current municipal customer contracts and thus will be retained by the Company until the allocations are reexamined in the next general rate case and (ii) Staff's recommendation for Empire to file additional reporting requirements with its FAC monthly reports and Fuel Adjustment Rate filing workpapers will be adopted. These additional reporting requirements will demonstrate that the energy purchased from Empire related to MJMEUC's agreement will be billed to the cities via MJMEUC and will thereby reduce a portion of the fuel expense that is allocated and billed to Empire's retail customers. This reduced portion of fuel expense will clearly illustrate that the energy purchased for these specific cities via MJMEUC is not flowing through the FAC in order to be collected from all Empire's retail customers.

OPC and other parties to this case shall be provided the notices and the additional reported FAC submission information requested by Staff.

Empire's quarterly FAC surveillance report submissions shall, unless otherwise agreed upon or ordered by the Commission at a later date, be provided by:

Quarter Ending:	Submission Deadline
March 31	End of May
June 30	End of August
September 30	End of November

December 31 End of February

With respect to Empire's North Fork Ridge, Neosho Ridge, and Kings Point wind projects, the FAC tariff language shall be revised and clarified to explicitly prohibit costs associated with the wind projects and revenue generated from the wind energy sold to the Southwest Power Pool ("SPP") from being passed through to customers via the Fuel Adjustment Clause before the wind projects' revenue requirements are included in rates.

6. Credit Card Fees: (a) Should Empire's credit card fees be included in Empire's revenue requirement? (b) If so, what level of fees should be included?

Findings of Fact

OPC alleges that inclusion of credit card fees in the cost of service would unduly benefit customers who utilize the service.[94]

Staff recommends this cost be allowed recovery in rates. Staff has included an annualized amount for credit card processing fees for Empire, based on the number of actual credit card payments occurring during the test year, multiplied by the current fee per transaction. Staff recommends inclusion of $1,165,283 (jurisdictional),[95] as opposed to the $1,297,266 recommended by Empire.[96]

The difference between these numbers is that Staff used the number of transactions processed during the twelve months ending March 31, 2019 (the test year)[97] to calculate its number, while the Company used the twelve months ending January 31, 2020 (the true-up period).[98]

---

[94] Ex. 200, Conner Direct Testimony, p. 9.
[95] Ex. 101, Cost of Service Report, page 82; Ex. 129, Bolin Surrebuttal Testimony, p. 5.
[96] Ex. 58, Workpaper - Credit Card Fees (Richard).
[97] Ex. 101, Cost of Service Report, page 82; Ex. 129, Bolin Surrebuttal Testimony, p. 5.
[98] Ex. 58, Workpaper - Credit Card Fees (Richard).

The credit card service is available to all customers. While a customer may be unable or unwilling to use the service at a specific time, it does not mean that will continue to be the case for an individual customer indefinitely. Also, lack of use in the past does not mean that there is no value to the availability of a service.

Having the service available to customers without the disincentive of a transactional fee is a benefit.

Customers have expressed previously that this option would be seen as a benefit. Customers have consistently reported that ease of bill payment is a priority for them, including having no fees for card payments.[99]

The Company's calculation of $1, 297,265 is closer to what will be experienced during the period new rates would be in effect.

Empire experienced an increased desire on the part of its customers to pay electronically by card, and payments made by card have been increasing. Payments made by card increased 36% from 2016-2018. Given that trend, the more recent period used by the Company is a better measure of the number of transactions that are likely to be experienced by Empire on a going-forward basis.[100]

The Commission finds Empire's evidence for inclusion of the credit card fees in its costs of service persuasive. This a policy question for which the Commission finds in favor of allowing the company to recover these costs from all ratepayers rather than imposing these costs on only some customers.

---

[99] Ex. 1, Baker Direct, p. 9.
[100] Ex. 1, Baker Direct, p. 9.

The Commission previously found the inclusion of credit card fees in a Company's cost of service to be reasonable and to not result in an undue preference among customers.[101]

If the terms of the Stipulation are adopted by the Commission as a complete resolution of this case, credit card fees will continue to be paid by individual customers, and the costs will not be included in the Company's cost of service.

Conclusions of Law

The premise that those who cause a cost should pay for that cost is an appropriate maxim to consider when designing utility rates, but it is not an absolute limitation on the structure of rates. No customer has a right to pay only their particular costs for receiving utility service, because the cost to serve each customer is different.[102]

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

7. Rate Case Expense: (a) How much of Empire's rate case expenses should be included in Empire's revenue requirement? (b) Should Empire's prudent rate case expenses be normalized or amortized, and over what period of time? (c) Should Empire's prudent rate case expenses be shared between Empire's shareholder and Empire's retail customers? If so, how?

---

[101] *See* Report and Order in Case Nos. GR-2017-0215 and GR-2017-0216. "Public Counsel's argument is based on the premise that those who cause a cost should pay for that cost. That is an appropriate maxim to consider when designing utility rates, but it is not an absolute limitation on the structure of such rates. No customer has a right to pay only their particular costs for receiving utility service, because the cost to serve each customer is different. If nothing else, each customer lives a greater or lesser distance from the interstate pipeline and requires a greater or lesser length of distribution system to obtain their gas supply. If each customer paid only their own individualized costs, Spire Missouri would have to establish thousands of different rates. In this case, it is reasonable to allow Spire Missouri to recover fees resulting from the use of credit and debit cards to pay LAC bills from all LAC customers rather than from just those customers who use the credit or debit cards to pay their bills, just as it currently does for MGE customers. That policy does not result in an undue or unreasonable preference among customers because all customers can use the convenience of a credit or debit card if that tool is available to them. Ultimately, this a policy question for which the Commission finds in favor of allowing the company to recover these costs from all ratepayers rather than imposing these costs on only some customers."

[102] Report and Order, Case Nos. GR-2017-0215 and GR-2017-0216.

Findings of Fact

The Stipulation does not specifically address rate case expense. The Stipulation resolves most revenue requirement issues by providing that there will be no changes to the Company's retail base rates and customer charges in this proceeding, no changes to the FAC base factor, continuation of the tax addendum, and the establishment of a phase-in rate mechanism pursuant to §393.155.1 with regard to plant in service and other rate base items.

Outside of the Stipulation, Empire states an annualized amount of $222,736 for rate case expense should be included in its revenue requirement, with the total amount of prudent rate case expense of $445,472 being amortized over a period of two years.[103]

Two years is reasonable, considering the Company intends to file its next rate case shortly after the conclusion of the current case.[104]

OPC suggests that rate case expense should be "normalized" over a three-year period. Three years is unreasonable given the known utility plant construction that Empire has underway and the fact that, not surprisingly, the Company intends to file its next rate case in the third quarter of this year (2020) to address that construction.[105]

While Staff suggests a two year period like Empire, Staff also recommends that the rate case expense be normalized, rather than deferred and amortized. Both Staff and OPC recommend that there be a sharing of rate case expense.

To normalize an expense is to account for an expense that is not expected to regularly occur by spreading out the cost of the expense over a number of years.[106]

---

[103] Ex. 7, Richard True-Up Direct, pp. 13, 16-17; Ex. 59 (Rate Case Expense Workpaper of Sheri Richard).
[104] Ex. 5, Richard Rebuttal, p 35.
[105] Ex. 1017, Richard Supplemental Testimony, p. 17.
[106] In the Matter of the Application of Kansas City Power & Light Company, 2006 Mo. PSC Lexis 1734, 102 (Mo. P.S.C. December 21, 2006).

Staff and OPC do not recommend reducing the cost of service for other required compliance filing costs. Because Empire was required to file a rate case in this instance, the Commission finds that rate case expenses should be treated as any other compliance filing and included in the cost of service in total.

As the Commission is aware of Empire's plan to file a new rate case shortly after the conclusion of this case, the Commission finds that a two-year amortization period would be reasonable.

Conclusions of Law

Pursuant to RSMo. §386.266.4(3), Empire was required by law to initiate this particular rate case proceeding.

Since the Commission has concluded that no rate changes will be made at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the Commission need not reach a decision as to the amount of rate case expense to be used in determining a traditional revenue requirement.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

8. Management Expense: Should any of Empire's management expenses not be included in Empire's revenue requirement?

Findings of Fact

The Stipulation does not specifically address management expense. The Stipulation resolves the revenue requirement issues, including management expense, by providing that there

will be no base rate changes, no changes to the FAC base factor, and that a phase-in rate mechanism pursuant to §393.155.1 will be established.

OPC witness Conner states Empire's management expense includes meal costs for business meetings in the amount of $686,087. The proposed disallowance of all other charges OPC has deemed unreasonable or unjustifiable due to lack of justification of how these charges benefit Empire's retail customers is $3,021,797. OPC states the total test year disallowance should be $3,707,884.

Empire demonstrated that it was reasonable to provide meals during lunch time meetings; and that often this is the only time available for an internal meeting and most if not all of the people attending these meetings are not paid for the additional hours of work and do not receive any overtime compensation.[107]

Providing a meal for just one person can save 30 minutes of time. Multiply that times four to five people in a meeting and the Company gains 2 to 2.5 hours of productivity.[108]

It is inappropriate to expect someone to give up their lunch hour for additional work time without including a meal.[109]

Staff does not agree with some of the assumptions OPC relied upon to reach its recommendation on the exclusion of certain management expenses and noted that support has not been provided by OPC for OPC's proposed $3.7 million disallowance.

The Commission finds the positions of Staff and Empire on this issue to be persuasive and reasonable.

---

[107] Ex. 5, Richard Rebuttal, pp. 30-31.
[108] Ex. 5, Richard Rebuttal, pp. 30-31.
[109] Ex. 5, Richard Rebuttal, pp. 30-31.

Due to a lack of sufficient evidence challenging the subject expenditures to defeat the presumption of prudence as to management expenses, the $3.7 million of management expense are deemed to be prudent and should be included in Empire's cost of service.

Conclusions of Law

In the context of a rate case, the parties challenging the conduct, decision, transaction, or expenditures of a utility have the initial burden of showing inefficiency or improvidence, thereby defeating the presumption of prudence accorded the utility.[110]

Prudence is measured by the standard of reasonable care requiring due diligence, based on the circumstances that existed at the time the challenged item occurred, including what the utility's management knew or should have known. In making this analysis, the Commission is mindful that the utility has a lawful right to manage its own affairs and conduct its business in any way it may choose, provided that in so doing it does not injuriously affect the public.[111]

Since the Commission has concluded that no rate changes will be made at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the Commission need not reach a decision as to the amount of management expense to be used in determining a traditional revenue requirement.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

---

[110] *State ex rel. City of St. Joseph v. Public Service Commission,* 30 S.W.2d 8, 14 (Mo. banc 1930); In the Matter of Missouri-American Water Company's Tariff Sheets, Report and Order, Case No. WR-2000-281 (August 31, 2000).
[111] *State ex rel. City of St. Joseph v. Public Service Commission,* 30 S.W.2d 8, 14 (Mo. banc 1930); In the Matter of Missouri-American Water Company's Tariff Sheets, Report and Order, Case No. WR-2000-281 (August 31, 2000).

9. Allowance for Funds Used During Construction: What metric should be used for Empire's carrying cost rate for funds it uses during construction that are capitalized?

Findings of Fact

The Stipulation does not specifically address the metric to be used for Empire's carrying cost rate for funds it uses during construction that are capitalized.

OPC asserts that only short-term debt should be applied to all of the CWIP (construction work in progress) balances when calculating AFUDC, because Empire is no longer financially managed as a stand-alone entity.

Staff's position is that its treatment of AFUDC in this case was fully consistent with the requirements for calculation of AFUDC amounts found in the Uniform System of Accounts.

Empire's position is that the appropriate metric to use for funds used during construction that are capitalized is the metric prescribed by the FERC Uniform System of Accounts ("USOA") Electric Plant Instructions.

The FERC instructions state the formula and elements for the computation of the allowance for funds used during construction shall be as prescribed in the Electronic Code of Federal Regulations: Title 18, Chapter 1, Subchapter C, Part 101.[112]

The USOA further states the rates utilized in the AFUDC formula shall be determined annually and the balances for long-term debt, preferred stock and common equity shall be the actual book balances as of the end of the prior year. Empire states it properly utilizes its actual book balances as prescribed by the Electric Plant Instructions. The rates used to apply to those balances for long-term debt and preferred stock are the weighted average cost as determined in

[112] Ex. 60 (Richard Electric Plant Instruction AFUDC); Ex. 61 (Company's Response to OPC DR 3045).

the manner prescribed in §35.13 of the Commission's Regulations Under the Federal Power Act.[113]

The Commission finds the positions of Staff and Empire on this issue to be persuasive and reasonable. Altering from the USOA prescribed formula for calculating AFUDC, as requested by OPC, would not reflect the true cost of funds Empire incurs when investing in capital projects and would be contrary to Commission requirements that the Company follow FERC accounting.

Conclusions of Law

Pursuant to Section 393.140(4), RSMo., the Commission has the authority to prescribe uniform methods of keeping accounts, records and books and has promulgated its Rule 20 CSR 4240-20.030, Uniform System of Accounts – Electrical Corporations.

The Commission's rules provides that every electrical corporation subject to the Commission's jurisdiction "shall keep all accounts in conformity with the Uniform System of Accounts Prescribed for Public Utilities and Licensees subject to the provisions of the Federal Power Act, as prescribed by the Federal Energy Regulatory Commission (FERC) and published at 18 CFR Part 101 (1992) and 1 FERC Stat. & Regs. paragraph 15,001 and following (1992), except as otherwise provided in this rule."

Decision

Empire should calculate AFUDC in accordance with the formula as described in the FERC USOA which includes long-term debt and common equity. With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

---

[113] Ex. 60 (Richard Electric Plant Instruction AFUDC); Ex. 61 (Company's Response to OPC DR 3045).

10. Cash Working Capital: (a) What is the appropriate expense lag days for measuring Empire's income tax lag for purposes of cash working capital? (b) What is the appropriate expense lag days for cash vouchers? (c) Should bad debt expense be a component of cash working capital? If so, what is the appropriate lag days? (d) What is the appropriate expense lag days for employee vacation?

Findings of Fact

The Stipulation does not specifically address these cash working capital questions. The Stipulation resolves the revenue requirement issues by providing that there will be no base rate changes, no changes to the FAC base factor, and that a phase-in rate mechanism pursuant to §393.155.1 will be established.

Cash Working Capital ("CWC") is the amount of funding necessary for a utility to pay day-to-day expenses incurred in providing utility services to its customers. Cash inflows from payments received by the Company and cash outflows for expenses incurred by the Company are analyzed using a lead/lag study. The lead/lag study involves analysis of the timing of when funds are paid to suppliers and when the utility receives the good or service compared to when the utility receives revenues from customer bills for the utility services it provides. Analysis is also performed for pass-through expenses where funds are collected and remitted such as sales taxes and employee payroll withholdings.[114]

The CWC requirement can be negative or positive. If the requirement is negative, it demonstrates that the utility's customers are providing the working capital for the test year, which indicates customers paid for the utility's expenses before the Company incurred them. Under this circumstance, CWC would represent a reduction to rate base. A positive CWC requirement indicates that the utility pays its expenses before receiving payment from the

[114] Ex. 101 (Staff Report Cost of Service), pp. 19-20.

customers, which means that the shareholders are providing the funds. In this instance, CWC would represent a rate base addition.[115]

The CWC requirement proposed by Empire was based on the results of a lead-lag study performed by the Company, which compares the net difference between the revenue lag and expense lead. The revenue lag represents the number of days from the time customers receive their electric service to the time customers pay for electric service, *i.e.,* when the funds are available to the Company. The longer the revenue lag, the more cash the Company needs to finance its day-to-day operations. The expense lead represents the number of days from the time the Company receives goods and services used to provide electric service to the time payments are made for those goods and services, *i.e.,* when the funds are no longer available to the Company. The longer the expense lead, the less cash the Company needs to fund its day-to-day operations. Together, the revenue lag and expense leads are used to measure the lead-lag days.[116]

The lead-lag study in the Company's filing is based on financial data for all of the Company's four jurisdictions (i.e., Arkansas, Kansas, Missouri and Oklahoma) and represents an accurate assessment of the actual CWC needs during the test year for the Company's Missouri jurisdiction.[117]

According to Staff and Empire, in regards to CWC, the proper lag for income tax expense is 39.38 days based on the provisions of the Internal Revenue Code and Empire's specific payment schedule.[118]

OPC claims Empire is not responsible for income tax liability and has proposed that Empire should add 365 days of lag to account for that lack of income tax liability. OPC further

---

[115] Ex. 101 (Staff Report Cost of Service), p. 20.
[116] Ex. 26 (Direct Testimony of Timothy S. Lyons), p. 44.
[117] Ex. 26 (Direct Testimony of Timothy S. Lyons), p. 45.
[118] Staff Initial Brief, p. 63

states that the Company should face a $14 million reduction to its CWC account due to its not paying income tax for the past four years.[119]

Empire indicates the appropriate expense lag days for cash vouchers is 29.21 days. The Company's calculation of lead days associated with cash vouchers is based on a stratified sample of invoices paid. The Company first calculates the lead days associated with each stratum and then weights the lead days in each stratum by proportion of total transactions in each stratum.[120] Staff's indicates the appropriate expense lag days for cash vouchers is 35.14 days. Staff used the Company's sample to calculate the weighted average for the invoices included in the sample. Staff's method and recommended lag days of 35.14 days accounts for a weighting of the dollar amount of invoices in the sample. It is Staff's position that the sample was representative of all invoices and no additional analysis is needed beyond the results that the sample produced.[121] The cash working capital impact of this difference is significant. The Company's calculation produces 29.21 lead days while Staff's calculation produces 35.14 lead days. The difference is largely related to three invoices within the Company's sample of 274 invoices. Specifically, there are three in the highest stratum 5 (i.e., those invoices greater than $2,500) with an average lead day of 77.20 days, while the remaining 48 invoices in stratum 5 have an average day of 24.50. The Company's approach to weight each stratum in proportion to the number of transactions addresses this variance.[122]

Empire recommends the inclusion of the Company's bad debt write-off in CWC. The appropriate revenue lag days for bad debt expense is 42.13 days.[123] This lag is representative of

---

[119] OPC Initial Brief, p. 45.
[120] Ex. 29, TSL-SR1.
[121] Staff Surrebuttal Testimony of Jared Giacone, pp. 5-8.
[122] Ex. 27, Lyons Revenue Requirement Rebuttal, pp. 5-6.
[123] Ex. 27, Lyons Revenue Requirement Rebuttal – pp. 3-9, Rebuttal Schedule TSL-R1, p.1.

the collection lag from the time a customer bill is considered uncollectible and charged to bad debt expense to the time payment is received from customers.[124] Staff's position is that bad debt is a non-cash item.[125]

Empire recommends the appropriate expense lag days for employee vacation is 182.50 which is based on a more traditional approach that assume that employees take vacation uniformly throughout the year. That is, employees receive their vacation allotment on January 1 and take their vacation by December 31. This approach assumes vacation is taken at the midpoint of the year rather than at the end of the year. Staff recommends 365 lead lag days for employee vacation. This recommendation assumes employees receive their vacation allotment on January 1 and take their vacation on December 31.[126]

The Commission finds that (a) the Company's lead-lag study reflects lead days consistent with payment due dates in IRS Publication 502. Payments are due on the 15th day of the 4th, 6th, 9th and 12th months of the corporation's year. Based on the Company's fiscal year ending December 31, the estimated payments are due on April 15, June 15, September 15 and December 15.[127] The appropriate expense lag days for measuring Empire's income tax lag for purposes of cash working capital is 39.38 days.[128] OPC's recommendation of a $14 million reduction is not supported.

The Commission finds that (b) Staff did not consider specific stratum in its considerations and thereby its calculation of lead days for cash vouchers is incorrect. The Company's calculation of lead days associated with cash vouchers, which is based on a stratified

---

[124] Ex. 27, Lyons Revenue Requirement Rebuttal, p. 7.
[125] Ex. 132, Surrebuttal Testimony of Jared Giacone, pp. 3-5.
[126] Ex. 27, Lyons Revenue Requirement Rebuttal, p. 7.
[127] Ex. 27, Rebuttal Testimony of Timothy S. Lyons, pp. 4.
[128] Ex. 29, Lyons Surrebuttal and True-Up Direct Testimony, Sched. TSL-SR1.

sample of invoices, is appropriate. The appropriate expense lag days for cash vouchers is 29.21 days.[129]

The Commission finds that (c) bad debt expense should be a component of cash working capital. The appropriate revenue lag days for bad debt expense is 42.13 days.[130]

The Commission finds that (d) it is reasonable to utilize the Company's lead days associated with vacation pay which produces a result of 182.50 expense lag days for employee vacation.[131]

Conclusions of Law

Since the Commission has concluded that no rate changes will be made at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the Commission need not reach decisions as to cash working capital and the lead/lag days to be used in determining a traditional revenue requirement.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

11. Accumulated Deferred Income Tax: (a) Should Empire's booked accumulated federal income tax include a reduction for net operating loss? (b) Should FAS 123 deferred tax asset for stock-based compensation be included in ADIT balances for rate base?

Findings of Fact

The Stipulation does not specifically address these ADIT issues.

---

[129] Ex. 29, TSL-SR1.
[130] Ex. 29, TSL-SR1.
[131] Ex. 29, TSL-SR1.

The Company incurred a net operating loss ("NOL") due to the use of accelerated tax depreciation, which in effect reduces current income tax expense to a negative number. In accordance with numerous IRS private letter rulings, an NOL deferred tax asset resulting from accelerated tax depreciation should be offset against a Plant deferred tax liability also resulting from accelerated tax depreciation, resulting in a reduction to the overall ADIT.[132]

Staff agrees with Empire that Empire's booked accumulated federal income tax should include a reduction for net operating loss.[133]

OPC indicates Empire's NOL should be disregarded.

The Company included the FAS 123 deferred tax asset in rate base as a component of ADIT. FAS 123 is an accounting pronouncement related to accounting for stock-based compensation, and the related deferred tax represents a book deduction for which there has not yet been a tax deduction; a tax benefit has not yet been received. Staff did not include FAS 123 deferred tax asset for stock-based compensation since Staff is not including any stock-based compensation in normalized payroll levels.[134]

Nothing filed before the Commission provides persuasive reasoning for excluding Empire's current NOL balance from its Accumulated Deferred Income tax amount in rate base. Therefore, the Commission finds that when bonus depreciation and other tax deductions push the company's taxable income into the negative, the available tax deduction cannot offset any tax liability and no "free" cash (or interest-free loan) is generated. In that circumstance, the Company must record an offsetting NOL. The NOL offsets the ADIT liabilities and, therefore, the NOL has the effect of increasing the rate base. In accordance with numerous IRS private

---

[132] Ex. 5, Richard Rebuttal, pp. 7-9.
[133] Staff's Cost of Service Report, pp. 24-25.
[134] Staff's Cost of Service Report, pages 24-25; Foster Surrebuttal/True-Up Direct, page 2.

letter rulings, an NOL deferred tax asset resulting from accelerated tax depreciation, resulting in a reduction to the overall ADIT. This is an appropriate treatment, since the ADIT created by bonus depreciation did not reduce current income tax payments and did not provide the Company with a no-cost source of capital.[135]

The Commission finds it is appropriate to include the FAS 123 deferred tax asset related to accounting for stock-based compensation because the normalized payroll levels included costs associated with stock-based compensation. Therefore, it is appropriate to include this component in ADIT.

Conclusions of Law

In ratemaking, the main component of ADIT arises from differences in how a utility's assets are depreciated for ratemaking purposes (straight-line) versus how they are depreciated for federal income tax purposes (accelerated). For example, tax law sometimes allows a company to claim accelerated depreciation in calculating its taxes, which is greater than the straight-line depreciation used in setting rates. The same amount of taxes eventually must be paid using either accelerated or straight-line depreciation, as long as the tax rate is unchanged. However, the early period tax reductions provide companies that use accelerated depreciation with what amounts to an interest-free loan equal to the amount of their deferred taxes. To keep utility customers from paying a rate of return on an interest-free loan, the utility's rate base is reduced by an amount equal to the utility's ADIT.[136]

---

[135] Ex. 5, pp. 8-9.
[136] *In the Matter of Union Electric Company d/b/a Ameren Missouri Tariff*, 2015 PSC Lexis 380, 22-23, 320 P.U.R.4th 330, ER-2014-0258 (April 29, 2015).

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

12. Tax Cut and Jobs Act of 2017 federal income tax rate reduction from 35% to 21% impact for the period January 1 to August 30, 2018: (a) How should the Commission treat the 2017 TCJA regulatory liability the Commission established in Case No. ER-2018-0366 when setting rates for Empire in this case?

Findings of Fact

Ordered paragraph four of the Commission's Report and Order in Case No. ER-2018-0366 provides that "The Empire District Electric Company shall record a regulatory liability for the financial impact of the Tax Cut and Jobs Act of 2017 on the electrical corporation for the period of January 1, 2018, through August 30, 2018. Recovery of the amounts deferred through the regulatory liability shall be determined in Empire's next general rate proceeding."

The period of January 1, 2018, through August 30, 2018, is referred to as the "stub period."

The stub period revenue was collected by Empire in good faith, pursuant to lawful, approved tariffs.

Pursuant to the Commission's Report and Order in Case No. ER-2018-0366, the Company established a regulatory liability for the stub period revenues. The balance of the regulatory liability related to the stub period is $11,728,453.[137]

In the Report and Order in Case No. ER-2018-0366, the Commission stated that "(e)ven if section 393.137.3 does not apply to Empire, it would still be appropriate for the Commission

[137] Richard Corrected Direct, pp. 13-14; Richard Rebuttal, p. 16.

to exercise its authority to order Empire to establish an AAO for that period." The Commission further stated in its Report and Order in Case No. ER-2018-0366:

> Staff expresses concern that an attempt by the Commission to require Empire to return excess earnings resulting from the tax rate reductions to its ratepayers would constitute retroactive ratemaking, which is barred by the constitutions of the United States and of Missouri. However, the issuance of an AAO is not the same as a ratemaking decision. Rather, the purpose of an AAO is to defer a final decision on current extraordinary costs until a rate case is in order. By issuing an AAO in this case, the Commission is not making any ratemaking decision about whether Empire's excess earnings resulting from the tax rate reductions can, or should, be returned to the company's ratepayers. That decision will be made in Empire's next general rate proceeding, and a decision about the constitutionality of any ordered rate reduction also will be made at that time.

Only Empire has presented specific evidence in this case regarding the proper ratemaking treatment for the deferred amounts.

The Company reviewed its financial performance from January 1 to August 30, 2018, and determined it earned less than its allowed return during that period. As a result, it is the Company's position that it would be inequitable to credit the retained sums to customers, creating significant under-earnings during this period.[138]

The Company will be filing its next rate case shortly after the conclusion of this case.[139]

Paragraph 3(b) of the Stipulation provides as follows: "An amortization of the balance of the stub period amortization of $11,728,453, in the amount of $5,000 monthly, is included in the revenue requirement for this case. The amortization balance, and the appropriate amortization period, will be reevaluated in the next general rate case."

An order in this case directing Empire to refund the stub period revenue could be detrimental to the Company. This is because an order in this case directing the Company to refund all or even part of the $11.7 million of stub period revenue could significantly impact the

---

[138] Ex. 4, Richard Corrected Direct, pp. 12-14; Ex. 5, Richard Rebuttal, pp. 35-36.
[139] Ex. 1017, Supplemental Testimony of Sheri Richard, p. 19.

Company's cash flow, which is already compromised as a result of the COVID-19 pandemic and the Company's revised policies regarding no disconnects and the deferral of late fees. In addition, the Company is experiencing a significant reduction in revenue due to businesses being closed as a result of the COVID-19 pandemic and from loss of load related to abnormal weather.[140]

If an order is issued in this case for the Company to begin refunding the collected stub period revenue, no matter the time period for the return, cash flow problems could be created for the Company.[141]

Conclusions of Law

In Case No. ER-2018-0366, the Company was directed to establish a regulatory liability regarding the stub period revenues, and no ratemaking determination was made.

The issuance of an AAO is not the same as a ratemaking decision. Rather, the purpose of an AAO is to defer a final decision on current extraordinary costs until a ratemaking decision is in order.

The amounts collected by the Company during the stub period were collected pursuant to lawfully approved tariffs.

The filed rate doctrine precludes a regulated utility from collecting any rates other than those properly filed with the appropriate regulatory agency. This aspect of the filed rate doctrine constitutes a rule against retroactive ratemaking.[142]

The prohibition against retroactive ratemaking was founded on the Constitution and not upon Missouri statutes.

---

[140] Ex. 1017, Richard Supplemental, p. 19.
[141] Ex. 1017, Richard Supplemental, p. 19.
[142] State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n, 954 S.W.2d 520, 530-31 (citing Columbia Gas Transmission Corp. v. F.E.R.C., 831 F.2d 1135, 1140 (D.C. Cir. 1987)).

Decision

No refund of the stub period revenues is being ordered at this time. An amortization of the balance of the stub period amortization of $11,728,453, in the amount of $5,000 monthly, is included in the revenue requirement for this case. The amortization balance, and the appropriate amortization period, will be reevaluated in the Company's next general rate case.

13. Asbury: (a) Is it lawful to require Empire's customers to pay for Asbury costs through new rates? (b) Is it reasonable to require Empire's customers to pay for Asbury costs through new rates? (c) If it is unlawful and/or unreasonable to include the costs of the retired Asbury plant in rates, what amount should be removed from Empire's cost of service?

Findings of Fact

The Company began developing plans to construct the Asbury plant in the late 1960s, and it was commissioned in 1970. Asbury Unit 1 is a Babcock & Wilcox cyclone steam generator which originally had a nominal rating of 206 MW and sourced its coal onsite via mine mouth operation. In 1990, the plant was converted to use a blend of low-sulfur Wyoming coal and local bituminous coal. This included the installation of a rotary car dumper to unload railcars traveling from the Powder River Basin in Wyoming.[143]

Previously, Asbury exhibited an availability factor in excess of 90% and a low forced outage rate. More recently, due to its age, its heat rate (i.e., efficiency) was not as competitive as new, larger coal-fired facilities thus impacting its dispatch profile in the Southwest Power Pool ("SPP") market. Over the last few years, it saw short periods of economic shutdown due to low cost natural gas and wind generation available in the SPP Integrated Marketplace that it had not seen throughout its history.[144]

---

[143] Ex. 41, Wilson Direct, p. 3.
[144] Ex. 41, Wilson Direct, pp. 3-4.

The plant was originally constructed with an electrostatic precipitator ("precipitator") for removal of fly ash. In the mid 1970's, an additional set of precipitators was installed. A selective catalytic reduction system was installed in 2008 to reduce nitrogen oxide emissions in order to comply with provisions of the Clean Air Interstate Rule. In 2014, in order to continue operating in compliance with the Mercury Air Toxic Standards and the Cross State Air Pollution Rule, Asbury was required to retrofit the plant with an AQCS that included the addition of a circulating dry scrubber to reduce sulfur dioxide emissions, a pulsejet fabric filter to reduce particulate emissions, powder activated carbon injection to control mercury emissions, conversion from forced draft to balanced draft, a new stack, and the upgrade of the steam turbine to increase efficiency. The upgraded steam turbine increased nominal output by approximately 11 gross MW, offsetting the additional auxiliary load due to the AQCS.[145]

The need for the AQCS at Asbury was discussed in the Company's 2010 Integrated Resource Plan ("IRP") filing (Commission Case No. EO-2011-0066). Within that filing, the Company outlined actions needed to implement its compliance plan and strategy (the "Compliance Plan") which largely followed the IRP "preferred plan" presented at that time. The Company also filed its 2012 IRP Annual Update with the Commission (Case No. EO-2012-0294) describing the updated costs and schedule based on actual contracts and approved five-year business plan. The 2013 triennial IRP (Case No. EO-2013-0547) again included discussion of the AQCS retrofit and updated modeling. These capital improvements were the subject of testimony in the Company's 2014 and 2016 rate cases filed with the Commission, and the cost of

---

[145] Ex. 41, Wilson Direct, p. 4.

the capital improvements were included in the Company's rates in Case Nos. ER-2014-0351 and ER-2016-0023.[146]

Effective October 19, 2015, the EPA promulgated a final rule to regulate the disposal of coal combustion residuals ("CCRs") as a non-hazardous solid waste under federal law. Under this CCR rule, Asbury would be prohibited from placing any CCR in its existing surface impoundments after October 2020. If the Asbury facility were not in compliance with this rule by October 2020, the Company would be subject to enforcement by states and individual citizens under the citizen suit provisions of applicable federal law. Specifically, the CCR rule requires that surface impoundments must meet specific location restrictions. Empire concluded that, in order to comply with the CCR rule, it would need to construct a new landfill and convert existing bottom ash handling from a wet to a dry system at a cost in excess of $20 million.[147]

On June 28, 2019, Empire filed its Triennial IRP in which Empire addressed the Asbury plant. In its Triennial filing, Empire observed that in 2018, Asbury had a 48% average capacity factor and:

> The IRP modeling demonstrates that because of the additional capital investment that would be necessary to meet environmental regulations relating to Asbury's coal ash handling system and the energy market created by the Southwest Power Pool's (SPP) integrated marketplace (IM), which are factors that are generally outside the control of Liberty-Empire, the Asbury plant is not a cost-effective resource for customers going forward. Asbury generates limited energy margin selling into SPP in the hours when it operates. This trend is not expected to materially improve. Asbury has significant non-fuel operations and maintenance costs that currently overwhelm the plant's energy margin. In addition to ongoing maintenance and operations costs, maintaining Asbury beyond 2020 would require a significant incremental capital investment of approximately $20 million. These costs are associated with converting the existing bottom ash handling system at Asbury from a wet to a dry system. Even assuming some value for Asbury's capacity, lower-cost alternatives exist for meeting Liberty-Empire's requirements. In the Preferred Plan, future capacity and energy needs are met by

---

[146] Ex. 41, Wilson Direct, pp. 4-5.
[147] Ex. 41, Wilson Direct, p. 5.

> solar, wind, and storage technologies, which are lower-cost than retaining Asbury.[148]

At that time, Empire determined that it would retire the Asbury plant no later than June of 2020. Doing so would eliminate the needed capital investment to meet the environmental regulations relating to the coal ash handling system and the capital investment that would be needed to rebuild transmission lines as well as any required substation upgrades.[149]

On November 13, 2019, the Company filed its Updated Asbury Informational Notice in this matter, stating that, although the exact retirement date was unknown, based on current coal supplies and other factors, the Company believed the plant would be retired no later than March of 2020.

The Asbury Power Plant was de-designated from the Market at the end of March 1, 2020.[150]

The Company identified certain Asbury assets to be reused and/or repurposed for the operations and maintenance of other generation units, and the Company continues to evaluate the ultimate plan for the remaining Asbury assets. For accounting purposes, the assets currently not utilized elsewhere in the Company have been removed from service as of March 1, 2020. In general, the office buildings, maintenance shop, fire system, cooling lake, fencing, impoundment, parking lots and others are to remain.[151]

Black and Veatch was engaged to perform a multi-part study for Empire with regard to the closure of Asbury. The goal of Phase 1 was to develop an initial Plant Retirement Plan that would be used to support the preferred plan for the plant final disposition by analyzing multiple

---

[148] Ex. 41, Wilson Direct, p. 6.
[149] Ex. 41, Wilson Direct, p. 6.
[150] Ex. 1012, Wilson Supplemental, p. 1.
[151] Ex. 1012, Wilson Supplemental, pp. 1-2.

options. The Company is still in the process of working through the final stages of Phase 1. Phase 2 will be the creation of the final plan based on the Company's decision on the ultimate disposition of the facility. The results of the Phase 1 study provided the Company bookends of the final disposition of the plant. These bookends are (a) selling on the market as an operating facility or (b) completely dismantle the unit. The costs for these bookends were $134M and $36M respectively.[152]

The Company determined there was not an acceptable market for the unit as an operating coal fired power plant which is over 50 years old, and the Company will not be pursuing this path any further. The Company will however still work with Black and Veatch, and others, to find possible buyers of individual pieces of equipment to reduce the dismantlement costs.[153]

The Company has received proposals to do additional studies to explore the possibility of utilizing the campus for new technologies including battery storage and solar. At this time, the Company has not moved forward with these studies. Black and Veatch will perform one additional study under Phase 1 which will be to analyze the risks and costs associated with abandoning-in-place instead of full dismantlement. Once complete, the Company will make a decision and move onto Phase 2.[154]

The closure of the Asbury plant is an extraordinary event that falls outside of the true-up period in this case.[155]

The Company's decision to retire its Asbury plant was not usual in nature or a frequent occurrence and is consistent with the FERC definition which allows for special treatment of certain items.[156]

---

[152] Ex. 1012, Wilson Supplemental, pp. 2-3.
[153] Ex. 1012, Wilson Supplemental, p. 3.
[154] Ex. 1012, Wilson Supplemental, p. 3.
[155] Ex. 1017, Richard Supplemental, p. 21.

Conclusions of Law

Instruction number seven of the FERC uniform system of accounts describes an extraordinary event as an event that is significant and different from the ordinary and typical activities of a company.[157]

The purpose of an AAO is to defer a final decision on current costs until a future rate case and that, in that future rate case, the parties and the Commission are not bound by the terms of the AAO in setting new rates.

In future proceedings, Empire will have the right to request recovery of both a return of and on its investment in Asbury, as well as present arguments on all other issues related to the impact of the closure of the Asbury power plant on the Company's cost of service, while the other parties will have their respective rights to oppose the Company's positions.

The issuance of an AAO is appropriate where "events occur during a period which are extraordinary, unusual and unique, and not recurring."[158]

Decision

It is both lawful and reasonable for costs related to the Asbury power plant to remain in rates, and no amount should be removed from Empire's cost of service at this time to reflect the closure of the Asbury power plant. The Commission, however, with the agreement of the Company, authorizes the establishment of an Accounting Authority Order ("AAO") with regard to the retirement of the Asbury power plant. The Company shall establish a regulatory asset/liability, beginning January 1, 2020, to reflect the impact of the closure of Asbury and shall

---

[156] Ex. 1017, Richard Supplemental, p. 21.
[157] Ex. 1017, Richard Supplemental, p. 21.
[158] The Office of the Public Counsel and Midwest Energy Consumers Group vs. KCP&L Greater Missouri Operations, File No. EC-2019-0200, Report and Order; *In the Matter of the Application of Missouri Public Service for the Issuance of an Accounting Order Relating to its Electrical Operations,* Case No. EO-91-358, Report and Order, 1 Mo. P.S.C. 3d 200, 205, 1991.

separately track and quantify the changes from the base amounts, as reflected in Stipulation Appendix D, of the following categories of rate base and expense:

a. Rate of return on Asbury Plant,
b. Accumulated Depreciation,
c. Accumulated and Excess Deferred Income Tax,
d. Fuel inventories assigned to the Asbury Plant,
e. Depreciation expense,
f. All Non-fuel/ non-labor operating and maintenance expenses,
g. All labor charges for maintaining and operating the Asbury Plant,
h. Property taxes assigned to the Asbury Plant,
i. Any costs associated with the retirement of the Asbury Plant, including dismantlement and decommissioning - Non-Empire labor excluded.

14. **Fuel Inventories:** What is the appropriate number of burn days to use for Asbury fuel inventory?

Findings of Fact

The appropriate number of burn days to use for Asbury fuel inventory is 60 days.[159] OPC takes the position that no amounts associated with Asbury should be included. Staff used 18 days for the Asbury fuel inventory.

Empire's proposal recognizes that Asbury had not operated as much as it did in the past during the test year and true-up period. However, the lower level of operation for Asbury is already reflected in the average daily burn (in MMBtu) that Staff used in the calculation.[160] That lower average burn rate serves to appropriately lower the total fuel inventory cost, even with the use of the 60-day fuel inventory used by the Company.

The Stipulation does not specifically address fuel inventories.

---

[159] Ex. 15, Tarter Rebuttal, pp. 15-16.
[160] Ex. 15, Tarter Rebuttal, pp. 15-16.

If the terms of the Stipulation were not being accepted as a complete resolution of this case, the Commission would need to establish a traditional revenue requirement for the setting of new rates.

Conclusions of Law

Since the Commission has concluded that there will be no rate changes and no changes to the FAC base factor at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the Commission need not reach a decision at this time regarding the number of burn days to use for Asbury fuel inventory.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

15. Energy Efficiency: (a) Should Empire's cost of service include an amount for promoting energy efficiency and demand-side management? (b) If an amount remains in Empire's cost of service for energy efficiency, should EM&V be performed as was agreed to in Empire's last general rate case?

This issue was presented to the Commission by OPC, and has since been withdrawn by OPC. With regard to this issue, however, paragraph 20 of the Stipulation provides: "There will be no changes to energy efficiency funding levels in this case." This provision of the Stipulation was not objected to by OPC, and the Commission independently finds and concludes that the Stipulation provision is reasonable and should be approved.

16. **Operation and Maintenance Normalization:** (a) What is the appropriate level of operation and maintenance expense to be included in the cost of service? (b) Should inflation factors be used to calculate operation and maintenance expense? (c) What is the appropriate normalized average of years to be used for the Riverton, State Line Combined Cycle Unit, the Common Unit and State Line 1 Unit?

Findings of Fact

If the Stipulation is approved in its entirety, the O&M expenses being recovered from customers would remain at 2016 levels.

The Stipulation resolves the revenue requirement issues by providing that there will be no base rate changes, no changes to the FAC base factor, and that a phase-in rate mechanism pursuant to §393.155.1 will be established.

The O&M expense referred to in this issue concerns non-labor O&M costs for each of the Company's generating units.[161] Determining a normalized level of these expenses is a challenge as those expenses tend to fluctuate from year to year, since unscheduled outages occur at irregular and unpredictable times, and major planned outages do not occur annually.[162] The amounts included in the Company's cost of service reflect an appropriate level of operation and maintenance expense. Those amounts are described by unit on Ex. 62 (Generation O&M Expense Workpaper of Sheri Richard) and total $32,124,367. The Company's filed cost of service represents the test year actual amounts, in addition to an adjustment to normalize the maintenance related to the boiler plant.[163]

Staff's position before jurisdictional allocations are applied for the appropriate normalized level of operation and maintenance expense to be included in cost of service is $28,877,386.[164] This number was determined by using historical averages based on the major overhaul schedules for each generating unit.[165]

---

[161] Ex. 5, Rebuttal Testimony of Sheri Richard, p. 18
[162] Ex. 101, Staff Report Cost of Service, p. 70
[163] Ex. 7, Richard True-Up Direct, p.15
[164] Ex. 124, Staff True-up Accounting Schedules; Ex. 143, Sarver Surrebuttal/True-up Testimony, pp. 6-8.
[165] Ex. 101, Staff Direct Report, pp. 70-73.

Empire states Staff's proposed O&M level is not reasonable, as Staff averaged each of the plant's O&M costs based on incorrect maintenance schedules. In addition, Staff did not include all the chemical costs related to the Mercury and Air Toxics Standards ("MATS") when performing their adjustment for Iatan 1.

Empire suggests that if the Commission were to accept the methodology to average the O&M expenses used by Staff, an inflation factor should be applied in order to show true costs in today's dollars.[166]

The appropriate normalized average of years to be used for Riverton is 3 years. The appropriate normalized average of years for State Line Combined Cycle Unit, the Common Unit and State Line Unit 1 unit is 5 years.[167]

OPC states no O&M expenses should be included for Asbury.[168]

Historical averaging based on maintenance schedules does not appropriately address the problem of determining a normal level of O&M costs, in part because of the variability in maintenance schedules.

The Commission finds the costs identified by Empire as a reasonable amount to be included in the cost of service.

Conclusions of Law

Since the Commission has concluded that no rate changes will be made at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the Commission need not reach decisions on these particular O&M questions.

---

[166] Ex. 5 (Richard Rebuttal), p. 18.
[167] Ex. 101, Staff's Direct Report, pp. 71-72; Ex. 143, Surrebuttal/True-up Testimony of Ashley Sarver, pp. 6-8.
[168] Ex. 217, Direct Testimony of John Robinett, pp. 4-7; Ex. 218, Rebuttal Testimony of John Robinett, pp. 1-4; Ex. 219, Surrebuttal Testimony of John Robinett, pp. 1-8.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

17. **Pension and OPEB (FAS 87 and FAS 106):** (a) Should "regulatory accounting" or "acquisition accounting" be used in setting rates for pensions and OPEBs? (b) Should FERC account 426 be included in test year pensions and OPEBs expense? What is the appropriate amount of Prepaid Pension that should be included in Empire's cost of service? (c) Should the "payment basis" or the "expense basis" be used to calculate SERP? In addition, what allocation percentage is appropriate. (d) What should the appropriate rate base and tracker amortization balances be for accounts 182353 and 254101? (e) What is the appropriate balance of prepaid pension?

Findings of Fact

The Stipulation provides that all currently authorized Regulatory Assets/Trackers and Regulatory Liabilities/Trackers will remain in place under the currently authorized terms and at their current authorized amortization periods.

The Stipulation resolves the revenue requirement issues by providing that there will be no base rate changes, no changes to the FAC base factor, and that a phase-in rate mechanism pursuant to §393.155.1 will be established.

When Empire was indirectly acquired by LUCo, the accounting rules required that certain pension and OPEB balances be eliminated as part of the acquisition accounting.[169] However, these balances should remain in place for regulatory purposes. As a result, the Company is provided two actuarial valuations. One valuation is based on acquisition accounting and is used for external financial reporting purposes. The second valuation is done as if the acquisition did not occur and is used for regulatory purposes. The Company's direct filing,

[169] Ex. 12 (Rebuttal Testimony of James A. Fallert), p. 2.

September 2019 update, and January 2020 true up are all based on the valuation for regulatory purposes.[170]

The balances referenced in the prior paragraph are amortized. This amortization expense is included in pension and OPEB expense used in setting rates. Eliminating these balances from the pension calculation would therefore change the amount of pension and OPEB expense included in rates due to the acquisition. This result would be contrary to orders of the Commission in Case No. EM-2016-0213. To this end, the Company's actuary provides a calculation of pension expense on a regulatory basis.[171]

Acquisition accounting is based upon the unadjusted data presented in actuarial reports.[172]

Empire states that a recent change to the accounting rules requires that non-service pension and OPEB costs that were previously charged to FERC account 926 must now be booked separate from service cost. The Company is charging these non-service costs to FERC account 426 instead. Staff's methodology needs to be updated to recognize this change, and Staff needs to include the FERC 426 accounts.[173]

Staff does not typically include "below the line" costs in its rate recommendations. "Below the line" costs refer to certain expenses that are presumptively subject to disallowance from utility rates, such as political lobbying costs. According to the Electric Uniform System of Accounts, account 426 is a "below the line" account.[174]

---

[170] Ex. 13 (True-Up Direct Testimony of James A. Fallert), p. 2; Ex. 12, Fallert Rebuttal, p. 2, ln. 11-18, pp. 3- 5; Ex. 13, Fallert True-Up Direct, pp. 2-3, p. 5 ln. 1-18; Ex. 47, Fallert – Errors in Staff True-Up Calculations.
[171] Ex. 12, Fallert Rebuttal, p. 2, ln. 11-18, pp. 3- 5; Ex. 13, Fallert True-Up Direct, pp. 2-3, p. 5 ln. 1-18; Ex. 47, Fallert – Errors in Staff True-Up Calculations.
[172] Sarver Surrebuttal, pages 2-3.
[173] Ex. 12, Fallert Rebuttal, p. 2, ln. 11-18, pp. 3- 5; Ex. 13, Fallert True-Up Direct, pp. 2-3, p. 5 ln. 1-18; Ex. 47, Fallert – Errors in Staff True-Up Calculations.
[174] Sarver Surrebuttal, page 2.

Empire explains that basing SERP recovery on expense rather than payments is a preferable approach because (1) the expense amount is independently determined by the company's actuary, (2) it is consistent with the calculation of similar items (qualified pensions and OPEBs), (3) the recognition of SERP on an expense basis, rather than a payment basis, more closely matches the benefits provided to customers. The allocation percentage used in Staff's direct case was based on FAS 87 pension expense. This methodology is problematic because it applies an allocation percentage developed for one category of expense (qualified FAS 87 pension expense) to a completely different category (non-qualified SERP expense). Staff acknowledged this in its true up calculations and used an allocation percentage that is directly applicable to SERP.[175]

Staff states that payment basis should be used to calculate SERP. SERP costs are not pre-funded. The allocation percentage used for SERP expense should be 82.15%.[176]

Staff's true up calculations included two errors to the balance of account 182353: (1) Staff included entries to remove FAS 88 settlements on an acquisition accounting basis from the tracker balance and replace it with FAS 88 settlements on a regulatory accounting basis. Staff included an entry specifically removing the acquisition basis amount from the tracker balance. However, Staff also included a "FAS 88 Settlement Adjustment", the net effect of which was to add FAS 88 on a regulatory accounting basis and subtract FAS 88 on an acquisition basis. Thus, the FAS 88 amount of $1,569,840 on an acquisition basis was removed twice. (2) There was a reclassification entry in December 2018 which reclassified $639,992 from account 182353 to account 254101. Staff's true up calculation included the impact of this entry on account 254101

---

[175] Ex. 12, Fallert Rebuttal, p. 2, ln. 11-18, pp. 3- 5; Ex. 13, Fallert True-Up Direct, pp. 2-3, p. 5 ln. 1-18; Ex. 47, Fallert – Errors in Staff True-Up Calculations.

[176] Sarver Rebuttal, pages 2-4; Sarver Surrebuttal, pages 3 - 4.

but did not include the impact on account 182353. As a result, both the tracker balance and rate base were understated by $639,992.[177]

Staff concludes that the appropriate rate base balance for account 182353 is ($1,578,563) and the tracker amortization is ($315,713). Staff used a 5-year amortization for the tracker. Staff concludes the appropriate rate base amount for account 254101 is ($639,992) and tracker amortization is ($127,998). Staff used a 5-year amortization for the tracker.[178]

Paragraph 10 of the Stipulation and Agreement in the Company's previous rate case, Case No. ER-2016-0023, states: "The prepaid pension asset balance as of March 31, 2016 is $23,314,960, Missouri jurisdictional." The Company's calculation of prepaid pension asset in this case starts with that balance and rolls forward with activity from that point.[179]

Staff states that the appropriate total company balance for prepaid pension as of January 31, 2020, to include in rates, is $27,784,306 and, after applying jurisdictional allocations, the Missouri Jurisdictional amount should be $24,325,577.[180]

The Commission finds that utilizing a calculation of pension expense on a regulatory basis is reasonable and appropriate and finds that the amounts included in FERC 426 accounts should also be included in the calculations. The Commission finds that the cost of service should utilize the expense, for SERP recovery, rather than payment calculations. The Commission finds that the appropriate rate base and tracker amortization balances for accounts 182353, 182359 and

---

[177] Ex. 12, Fallert Rebuttal, p. 2, ln. 11-18, pp. 3- 5; Ex. 13, Fallert True-Up Direct, pp. 2-3, p. 5 ln. 1-18; Ex. 47, Fallert – Errors in Staff True-Up Calculations.
[178] Sarver Surrebuttal, page 4.
[179] Ex. 12, Fallert Rebuttal, p. 2, ln. 11-18, pp. 3- 5; Ex. 13, Fallert True-Up Direct, pp. 2-3, p. 5 ln. 1-18; Ex. 47, Fallert – Errors in Staff True-Up Calculations.
[180] Sarver Surrebuttal, page 4.

254101, should be $12,260,836.[181] The Commission finds that the appropriate amount of Prepaid Pension to be included in Empire's cost of service is $26,269,345.

Conclusions of Law

The Stipulation and Agreement in the acquisition case (Case No. EM-2016-0213), was approved by the Commission's Order Approving Stipulations and Agreements and Authorizing Merger Transaction and issued on September 7, 2016. Paragraph 3 of the Stipulation and Agreement in that case stated in part: "The Joint Applicants will ensure that the merger will be rate-neutral for Empire's customers." It is necessary to utilize the regulatory valuation (expense) approach to determine cost of service as it relates to ongoing Pension and OPEB balances and provide the "rate-neutral" treatment called for by the Order. For these reasons, the Commission should utilize a calculation of pension expense on a regulatory basis.

Paragraph 10 of the Stipulation and Agreement in the Company's previous general rate case (Case No. ER-2016-0023) states, in part: "The prepaid pension asset balance as of March 31, 2016 is $23,314,960, Missouri jurisdictional." The Company's calculation of prepaid pension asset in this case starts with that balance and rolls forward with activity from that point.

Since the Commission has concluded that no rate changes will be made at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the Commission need not reach decisions on these particular Pension and OPEB questions.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

---

[181] Ex. 13, p. 5.

18. **Affiliate Transactions:** (a) Are Empire's transactions with its affiliates imprudent? (b) Do Empire's transactions with its affiliates comply with Commission Rule 20 CSR 4240-20.015 (Affiliate Transactions)? (c) What amount should be included in Empire's revenue requirement for its transactions with its affiliates?

Findings of Fact

The Stipulation does not specifically address affiliate transactions. Instead, the Stipulation resolves all revenue requirement issues by providing that there will be no changes to the Company's retail base rates in this proceeding, no changes to the FAC base factor, and that a phase-in rate mechanism will be established pursuant to §393.155.1, with regard to plant in service and other rate base related items.

During the test year, Empire received approximately $32.9 million in direct and indirect allocations through cost allocations.

The Company follows its Cost Allocation Manual ("CAM"), which includes the Missouri-specific Appendix, when engaging in affiliate transactions. The Missouri Appendix satisfies the requirements of Commission Rules 20 CSR 4240-20.015 and 20 CSR 4240-40.015 by providing the criteria, guidelines, and procedures the affiliated regulated utilities in Missouri will follow when engaging in affiliate transactions. This provision ensures that costs are appropriately allocated between Empire and its affiliates.

The CAM was filed for approval on August 23, 2011 in Case No. AO-2012-0062. On October 20, 2016, the Commission granted a request to suspend the procedural schedule in Case No. AO-2012-0062 on the condition that the utilities file a new CAM application within six months of the closing of the Algonquin merger. In compliance with the Commission's condition, on June 30, 2017, the Missouri utilities, including Empire, filed an application seeking approval of their then-current CAM (Case No. AO-2017-0360). The Company's application remains pending before the Commission, while the case is currently stayed.

OPC asserts that all of Empire's affiliate allocations are imprudent, including all salaries. OPC, however, fails to provide details to support these allegations, except with regard to one particular financing transaction.

The affiliate transactions rule does not apply to a specific point in time for refinancing maturing long-term bonds. The rule does, however, apply specifically to the goods or services required by the Company, and supplied by an affiliate.[182] With regard to the financing transaction at issue, the good or service required by the Company was long term debt.

LUCo continually monitors the status of the capital markets, its short term debt balances, future maturity schedules and projected cash flows in determining the timing of its next return to the capital markets. The impact of the COVID-19 pandemic has only made the monitoring of these items even more critical as the Company evaluates daily its options related to capital markets and cash flows.[183]

Regarding the referenced June 1 refinancing, the floating short-term rates do not represent the promissory note's fully distributed cost ("FDC") under the Commission's rule, as LUCo has not permanently financed the 4.53% 15-year long-term promissory note, issued by Empire, with floating rate short-term debt for the next 15 years.[184]

The FDC for this transaction, which is to replace $90 million of maturing long-term debt with new long-term debt, should be the fair market terms obtained through LUCo's most recent $750 million competitively bid issuance of long-term notes through a private placement on

---

[182] Ex. 44, Cochrane Surrebuttal, p. 6.
[183] Ex. 1015, Timpe Supplemental, p. 2.
[184] Ex. 44, p. 7.

March 24, 2017, which was used as the basis for pricing the promissory note. The FDC should be based on the actual goods or service required by the Company, which is long-term debt.[185]

The Empire loan from LUCo and the borrowing by LUCo are not like transactions. Empire sought and received a 15-year fixed rate loan which serves to protect its customers from rising interest rates, while LUCo bears the entire risk of funding that loan until its next long-term debt placement. It is not a fair comparison to simply look at the Empire loan rate and LUCo's cost to fund that loan without giving weight to the risk transferred to LUCo.

Under the Stipulation terms, the O&M expenses being recovered from customers would contain zero O&M costs associated with affiliate transactions from APUC as these costs will remain at the authorized levels prior to the acquisition.[186]

Conclusions of Law

There are no additional conclusions of law for this section.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification. Empire's transactions with its affiliates are not found to be imprudent and they are found to be in compliance with Commission Rule 20 CSR 4240-20.015. As such, there should be no disallowances or exclusions related to affiliate costs.

19. **Riverton 12 O&M Tracker:** (a) Should the Riverton 12 O&M Tracker continue? (b) What is the updated balance of the Riverton 12 O&M tracker regulatory asset and the related amortization that should be included in Empire's cost of service? (c) What level of O&M expense should be included in the cost of service for Riverton 12?

---

[185] Ex. 44, p. 8.
[186] Ex. 1017, Richard Supplemental, p. 22.

Findings of Fact

The Stipulation provides that all currently authorized Regulatory Assets/Trackers and Regulatory Liabilities/Trackers will remain in place under the currently authorized terms and at their current authorized amortization periods.

The Stipulation resolves the revenue requirement issues by providing that there will be no base rate changes, no changes to the FAC base factor, and that a phase-in rate mechanism pursuant to §393.155.1 will be established.

Empire submits that the Riverton 12 O&M Tracker should continue, because the hours of operations have continued to vary significantly from year to year. In addition, the unit starts and trips are inconsistent from year to year. The tracker continues to protect customers from these fluctuations.

The balance of the Riverton 12 regulatory asset as of January 31, 2020, is $13,717,733, which is the Company's position on the amount that should be included in rate base.[187] The annual amount of amortization associated with this regulatory asset is $2,743,547, which represents a five-year amortization period.[188] The amount of expenses that the Company believes should be included in the cost of service related to Riverton 12 is $8,349,230.[189,190] This amount represents the balance of these expense accounts as of January 31, 2020.

Staff's position is the unamortized balance for the tracker regulatory asset it $14,258,325 and the related annual amortization is $2,851,665.[191] Staff included a normalized operation and maintenance expense level in the cost of service of $8,133,625 before jurisdictional allocations

---

[187] Ex. 63 (Riverton 12 Reg. Asset & Amort Workpaper of Sheri Richard).
[188] Ex. 7 (True-Up Direct Testimony of Sheri Richard), pp. 13 (IS ADJ 26), 17-18.
[189] Ex. 7 (True-Up Direct Testimony of Sheri Richard), pp. 13 (IS ADJ 26 and 36), 17-19.
[190] Ex. 64 (Riverton Expense True-Up Workpaper of Sheri Richard).
[191] Ex. 143 (Sarver Surrebuttal), p. 9

are applied. Staff used a 3 year normalization of historical costs to determine its recommended level.[192,193]

The Riverton 12 O&M Tracker was established in Commission Case ER-2014-0351.[194] The Riverton 12 Tracker was intended to normalize, or smooth, costs of the Riverton 12 long term maintenance agreement ("LTSA"). The annual cost includes three parts: equivalent operating hours ("EOH"), the annual fixed fee, and the amortized initial fee.[195]

An EOH can be derived in three ways. First, each hour the unit operates is one (1) EOH. Second, each time the unit is started, the unit will incur ten (10) EOH. Third, if the unit trips unexpectedly during operation, the unit will incur a number of EOH dependent upon the load the unit was operating at when it tripped. As part of the LTSA, Liberty-Empire is charged a dollar amount for each EOH the unit operates. This is a variable fee based on operating characteristics of the unit.[196]

Since the implementation of the Southwest Power Pool Integrated Market, the hours of unit operation have continued to vary significantly from year to year. In addition, the unit starts and trips are also inconsistent from year to year. It is evident, based on the tracker balance, the tracker has served to protect customers from fluctuations and smooth costs.[197] Due to the continued uncertainty of operations and the potential for significant variations in the EOH charges, the Commission finds it reasonable and appropriate for the tracker to continue.

Conclusions of Law

There are no additional conclusions of law on this issue.

---

[192] Ex. 104 (Staff's Cost of Service Report) pp. 71-72.
[193] Ex. 117 (Sarver Rebuttal) pp. 4-5.
[194] Ex. 4 (Corrected Direct Testimony of Sheri Richard) p. 22.
[195] Ex. 5 (Rebuttal Testimony of Sheri Richard), p. 4.
[196] Ex. 5 (Rebuttal Testimony of Sheri Richard) pp. 4-5.
[197] Ex. 5 (Rebuttal Testimony of Sheri Richard) p. 5.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

20. Software Maintenance Expense: (a) What is the appropriate normalized level for software maintenance expense?

Findings of Fact

The appropriate level of normalized software maintenance expense is $924,820 (total company). Staff normalized the level of expense to the update period, rather than for the true-up period. Therefore, Staff's number does not reflect a normalized amount of software expense for the pro forma period.[198]

Staff believes the appropriate amount of software maintenance expense, to be included in rates before the jurisdictional allocation is applied, is $836, 858.[199] Staff included a normalized amount of expense related to software expense in its case. Staff updated its number based on the update period in this case, but it does not include this item in its true-up as not all items can be trued-up.

The Commission finds the appropriate level of normalized software maintenance expense, as normalized through the true-up period, is $924,820 (total company).[200]

Conclusions of Law

Since the Commission has concluded that there will be no rate changes and no changes to the FAC base factor at this time in conjunction with approval of the Stipulation terms as a

---

[198] Ex. 5 (Rebuttal Testimony of Sheri Richard) p. 36-37; Ex. 65 (Richard Workpaper, Software Maintenance Norm. Expense).
[199] Sarver Surrebuttal, p. 9.
[200] Ex. 65 (Richard Workpaper, Software Maintenance Norm. Expense).

complete resolution of this case, the Commission need not reach a decision at this time regarding the appropriate normalized level for software maintenance expense.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

21. Advertising Expense: What is the appropriate amount of advertising expense to include?

Findings of Fact

Staff does not fully support the disallowance for all the costs included in their adjustment; therefore, the Company disagrees with Staff's advertising expenses balance to be included in the cost of service. The appropriate amount of advertising expense to include in the cost of service is $155,552 (Missouri jurisdictional).[201]

Staff removed $25,669 in invoices which Staff claims lacked information to justify inclusion, $1,972 in institutional/goodwill advertising, $1,800 in invoices paid during the test year but dated months earlier, and $770 recorded to below the line accounts 182303 and 182318.

The Commission finds that the appropriate amount of advertising expense to include in the cost of service is $155,552 (Missouri Jurisdictional).[202]

Conclusions of Law

Since the Commission has concluded that there will be no rate changes and no changes to the FAC base factor at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the Commission need not reach a decision at this time regarding the appropriate amount of advertising expense.

---

[201] Ex. 66 (Richard Workpaper, Advertising Expense).
[202] Ex. 66 (Advertising Expense Workpaper of Sheri Richard).

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

22. Customer Service: (a) Is Empire providing satisfactory customer service? (i) If not, what should the Commission order to ensure better customer service? (b) Is Empire providing reliable service? (i) If not, what should the Commission do?

Findings of Fact

OPC points to the issue of estimated bills, while arguing that Empire should be penalized through an ROE reduction. OPC also points to various metrics and rankings that were addressed by Company witness Baker.

It is the Company's goal to become top quartile in customer satisfaction. In some of our operations at Empire, they have top and 2nd quartile performance in operational areas, such as bad debt performance, SAIDI, SAIFI, and safety performance. The Company's goal is to become top quartile in operations and customer experience as well.[203]

Regarding OPC's allegations on cost, Mr. Baker explained that according to the Company's class cost of service study, the average residential usage is 1,064 kWh per month, which is $146.60 per month or $1,759 per year. While the current cost at Empire is higher than investor owned peers in Missouri, necessary investments in reliability and improvements in Empire's system are also spread among a less densely populated service area - similar to cooperatives. A rate comparison to Barton Electric Cooperative to the north of the Company's territory shows a monthly cost of $157.90 or $1,894.70 per year if a customer were to use 1,064

---

[203] Ex. 2, Baker Rebuttal, p. 7.

kWh per month. A comparison using the same amount of usage also shows Empire's rates to be similar to its investor-owned peers.[204]

Empire takes customer complaints seriously and has made significant strides in addressing the concerns raised in this proceeding.

To the extent concerns were raised in this proceeding regarding customer service, implementation of the terms of the Stipulation is a just and proper resolution.

Issue 22(b) was presented to the Commission by OPC, and has since been withdrawn by OPC.

Paragraph 10 of the Stipulation provides: "The Company will benchmark across utilities for reliability and present this information in its direct testimony in its next rate case and in subsequent reliability reports (annual basis) for the years 2021 and 2022. The Company will provide a 6-year retrospective benchmarking analysis of investor-owned utilities in Kansas, Arkansas, Oklahoma and the utilities identified in Table 1 of the surrebuttal testimony of Geoff Marke in its next rate case based on publically available EIA data and to then be filed in the Company's Reliability Reports for 2021 and 2022. Metrics include SAIDI, SAIDI w/out Major Event Days, SAIFI, SAIFI w/out Major Event Days. To the extent known to the Company and based on publicly available information, the Company will indicate whether the utilities used for benchmarking are reporting using the IEEE-1366 standard or some other standard."

Paragraph 10 of the Stipulation was not objected to by OPC.

Paragraph 9 of the Stipulation addresses estimated bills, and that provision of the Stipulation was not objected to by OPC.

---

[204] Ex. 2, Baker Rebuttal, pp. 7-8.

Conclusions of Law

There are no additional conclusions of law for these issues.

Decision

The Commission finds and concludes that the Stipulation provisions, paragraphs 9 and 10, are reasonable and should be approved as a resolution of these issues.

23. Estimated Bills: (a) Should Empire be ordered to incorporate data into its monthly reports to Commission Staff regarding the number of estimated meter readings, the number of estimated meter readings exceeding three consecutive estimates, the number of bills with a billing period outside of 26 to 35 days, and the Company and contract meter reader staffing levels? (b) Should Empire be ordered to evaluate the authorized meter reader staffing level and take action to maintain adequate meter reader staffing levels in order to minimize the number of estimated bills? (c) Should Empire be ordered to initiate action to more clearly communicate on customer's bills when they are based on estimated usage? (d) Should Empire be ordered to ensure that all customers who receive estimated bills for three consecutive months receive the required communication regarding estimated bills and their option to report usage? (e) Should Empire be ordered to ensure that all customers who receive an adjusted bill due to underestimated usage are offered the required amount of time to pay the amount due on past actual usage? (f) Should Empire be ordered to evaluate meter reading practices and take action to ensure that billing periods stay within the required 26 to 35 days, unless permitted by exceptions listed in the Commission's rule 20 CSR 4240-13.015.1(C)? (g) Should Empire be ordered to file notice within this case by September 1, 2020, containing an explanation of the actions it has taken to implement the above recommendations?

This issue has been resolved by the parties, with the resolution being paragraph 9 of the Stipulation, which provides as follows: "Regarding Empire's estimated billing process, the Company shall do the following for the years 2020, 2021, and 2022:

a. Incorporate data into its monthly reports to Commission Staff;
b. Initiate quarterly reports to the Commission Staff and OPC regarding the number of estimated meter readings;
c. Initiate quarterly reports to the Commission Staff and OPC regarding the number of estimated meter readings exceeding three consecutive estimates;
d. Initiate quarterly reports to the Commission Staff and OPC regarding the number of bills with a billing period outside of 26 to 35 days; and
e. Initiate quarterly reports to the Commission Staff and OPC regarding the Company and contract meter reader staffing levels;
f. Evaluate the authorized meter reader staffing level and take action to maintain adequate meter reader staffing levels in order to minimize the number of estimated bills.

g. Company will meet with Staff and OPC to discuss bill redesign possibilities for the future.
h. Ensure that all customers who receive estimated bills for three consecutive months receive the appropriate communication regarding estimated bills and their option to report usage as required by Service and Billing Practices, Rule 20 CSR 4240-13.020(3).
i. Ensure that all customers who receive an adjusted bill due to underestimated usage are offered the appropriate amount of time to pay the amount due on past actual usage as required by Service and Billing Practices, Rule 20 CSR 4240-13.025(1)(C).
j. Evaluate meter reading practices and take action to ensure that billing periods stay within the required 26 to 35 days, unless permitted by those exceptions listed in the Commission's rules.
k. File notice within this case by September 1, 2020, containing an explanation of the actions the Company has taken to implement the above recommendations related to billing and bill estimates.

This provision of the Stipulation was not objected to by OPC, and the Commission independently finds and concludes that the Stipulation provision is reasonable and should be approved.

24. Material and Supplies: (a) What is the appropriate balance for material and supplies to be included in the cost of service? (b) What is the appropriate balance to remove from inventory as it relates to Non-Electric items?

Findings of Fact

The Company submits that the appropriate amount of electric only materials and supplies included in the cost of service is $33,031,612 and the appropriate amount to be removed from inventory related to non-electric items is $67,179. These both represent a 13-month average as of January 31, 2020.[205]

Staff states the appropriate amount to include in the 13-month average of Materials and Supplies is $32,773,580.[206] Staff goes on to state the appropriate balance to remove from

---

[205] Ex. 10 (True-Up Direct Testimony of Leigha Palumbo), p. 2; Ex. 7 (True-Up Direct Testimony of Sheri Richard), p. 5; Ex. 67 (Materials and Supplies Workpaper of Leigha Palumbo); Ex. 68 (Removal of Non-Electric Inventory Workpaper of Leigha Palumbo).
[206] Ex. 104 (Staff's Cost of Service Report), p. 22; Ex. 140 (Niemeier Surrebuttal) pp. 6-7.

inventory as it relates to Non-Electric items is $76,714 before Missouri jurisdictional allocations.[207]

The Commission finds the appropriate amount of materials and supplies to be included in rate base is $33,031,612, which represents a 13-month average as of January 31, 2020, for electric inventory only.[208]

The Commission also finds the appropriate amount to be removed from inventory as it relates to Non-Electric items is $67,179, which also represents a 13-month average as of January 31, 2020.[209]

Conclusions of Law

There are no additional conclusions of law for this section.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

25. Asset Retirement Obligations: Should Asset Retirement Obligations be included in rate base as a regulatory asset and amortized?

Findings of Fact

Staff states the ARO costs had already been incurred and were for various environmental activities at several of the Company's power plants and that, as such, the costs should be eligible for rate recovery by Empire.[210]

---

[207] Ex. 140 (Niemeier Surrebuttal) pp. 6-7.
[208] Ex. 10 (True-Up Direct Testimony of Leigha Palumbo), p. 2; Ex. 67 (Materials and Supplies Workpaper of Leigha Palumbo).
[209] Ex. 10 (True-Up Direct Testimony of Leigha Palumbo) p. 2; Ex. 7 (True-Up Direct Testimony of Sheri Richard), p. 5; Ex. 68 (Removal of Non-Electric Inventory Workpaper of Leigha Palumbo).
[210] Oligschlaeger Sur-Surrebuttal, p. 2.

The OPC did not state a position on AROs.

The Company states its ARO balances it requested for inclusion in rate base as well as the amortization thereof is for costs paid to remove asbestos at the Asbury and Riverton generating units, as well as, costs paid to settle obligations related to the coal ash ponds at Asbury, Iatan, and Riverton. The Company goes on to explain that AROs are legal obligations that the Company has incurred. The costs are known and are measurable, and they have not previously been recovered through rates.[211]

The Commission finds the Company incurred costs to remove asbestos and to settle legal obligations related to the coal ash ponds at its generating units.

Conclusions of Law

There are no additional conclusions of law for this section.

Decision

The Commission directs the Company to establish a regulatory asset for the costs for inclusion in rate base and include the amortization of those costs in the calculation of rates as proposed by Empire, pursuant to the Stipulation terms. With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

26. LED Replacement Tracker: (a) Should a tracker be established for the costs associated with replacement of mercury vapor light fixtures with LED light fixtures for private lighting customers? (b) Should a tracker be established for the costs associated with replacement of mercury vapor light fixtures with LED light fixtures for Municipal customers?

Findings of Fact

With regard to Empire's (1) Municipal Street Lighting Tariff, Schedule SPL, PSC Mo. No. 5, Sec. 3, 17th Revised Sheet No. 1 and 7th Revised Sheet No. 1a, and (2) Private Lighting

---

[211] Ex. 154, Sur-Surrebuttal Testimony of Oligschlaeger, p. 2; Ex. 6, Richard Surrebuttal, pp. 3-6.

Service, Schedule PL, PSC Mo. No. 5, Sec. 3, Revised Sheet No. 2, Empire proposes to replace all Company-owned, mercury vapor ("MV") light fixtures with LED light fixtures (or High Pressure Sodium ("HPS") fixtures if specified by a lighting customer).[212]

LED lighting is a low maintenance lighting that produces a white light that provides directional illumination and is designed to match natural daytime light. LED lighting is more aesthetically pleasing and is known to be more efficient over other lighting options, including both MV and HPS.[213]

While MV light bulbs are still available, the MV fixtures are not available in the market. LED lights are more energy efficient than MV lights, have reduced maintenance costs and a longer life, and are more energy efficient and environmentally friendly. During Empire's prior LED pilot program, the LED streetlights demonstrated much lower energy usage in comparison to HPS lights of similar lumens. Empire found that the LED lights used less than half of the kWh used by HPS lights over the course of a year. Not only are the LED lights more efficient and use less energy, the LED lights last longer, are more durable, have the ability to operate at lower temperatures, and provide a higher quality light output.[214]

Changing a MV light to LED will save 422 KWH per year. Over 20 years, changing the light will save 8,400 KWH. Changing 8500 MV lights to LED, as proposed by the Company, will save 3,500 MWH per year, or almost 72,000 MWH over 20 years. Further, most of the MV lights on the Company's system are 30 to 40 years old. Although they have not failed, as that

---

[212] Ex. 35 (McGarrah Surrebuttal), p. 2.
[213] Ex. 35 (McGarrah Surrebuttal), p. 2.
[214] Ex. 35 (McGarrah Surrebuttal), pp. 2-3.

term is generally used, they are not serving their intended purpose. The MV lights glow, but they fail to produce light on the street.[215]

Empire requested approval from the Commission for regulatory treatment to capture the costs associated with the MV light fixture replacement programs. For its Municipal Lighting Service, Empire requested that a regulatory asset or liability be established to account for the difference between the actual cost incurred and the actual revenues collected from customers as they move to the LED light fixtures. For its Private Lighting Service, Empire requested that the Commission approve regulatory treatment to (i) capture the costs associated with the MV light fixture replacement program and (ii) track the difference between estimated and actual revenues and costs of the LED light fixtures. Empire requested that a regulatory asset or liability be established to account for the difference between the actual cost incurred and the actual revenues collected from customers that choose to move to the LED light fixtures.[216]

The Company estimates that it will cost approximately $4.5 million to replace the 8,500 municipal MV lights. During the development of the LED tariff, the cost for installing the minimum size light was $372.88. As such, the cost to install 8,500 LED lights may be over $3.1 million. There will also be additional costs for locations with series circuits that will require the installation of a new conductor. There are over 13,500 MV private lights, and the cost for installation is approximately $240 per light, with the cost varying depending on size. As such, the installation cost at a minimum is $3.25 million, not accounting for the cost to remove and dispose of the old fixtures. The LED "charge per lamp" proposed in this proceeding is based on

[215] Ex. 35 (McGarrah Surrebuttal), p. 4.
[216] Ex. 35 (McGarrah Surrebuttal), p. 3.

the proposed HPS municipal street light rate adjusted for lower energy usage and maintenance costs derived from the prior Missouri LED pilot study.[217]

The amounts provided by the Company are estimates, as actual costs need to be determined and will not be known until the Company is granted permission to perform the conversion. For both programs, the Company considers both the costs and the benefits of the proposed LED replacement to be material to the Company and its customers.[218]

If the Stipulation terms were not being approved as a complete resolution of this case, it would be reasonable and appropriate for the Commission to authorize a tracker for the costs associated with replacement of MV light fixtures for private lighting customers.

If the Stipulation terms were not being approved as a complete resolution of this case, it would be reasonable and appropriate for the Commission to authorize a tracker for the costs associated with replacement of MV light fixtures for municipal customers.

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

27. May 2011 Tornado Unamortized AAO Balance: Should the unamortized AAO Balance for the May 2011 Joplin Tornado be included in rate base?

[217] Ex. 35 (McGarrah Surrebuttal), pp. 4-5.
[218] Ex. 35 (McGarrah Surrebuttal), pp. 4-5.

Findings of Fact

As of January 31, 2020, Empire had an unamortized balance of $1,274,630 in Account 182.3 for tornado related expenses.[219]

Empire states this amount should be included in rate base. The exclusion of this balance would deny the Company a return on the investment it made in the system to restore electric services to its Missouri retail customers, and the exclusion of this account does not coincide with the order from the Commission granting the deferral of these costs.[220]

The Commission issued an order on November 30, 2011, that approved and incorporated a Stipulation and Agreement in Case No. EU-2011-0387. In that Stipulation and Agreement, the parties agreed to allow Empire to defer to Account 182.3 Other Regulatory Assets the following items: incremental operations and maintenance expenses associated with the repair, restoration and rebuild activities associated with the May 22, 2011 tornado; and depreciation and carrying charges equal to its ongoing Allowance for Funds Used During Construction rates associated with tornado-related capital expenses. The Company agreed that if it filed a general rate case in Missouri by June 1, 2013 (which it did), then Empire would begin to amortize the deferral balance over a ten- year period.[221]

The Commission finds the unamortized AAO balance resulting from the 2011 Joplin tornado should be specifically included in rate base. The Commission recognizes the exclusion of this balance would deny the Company a return on the investment it made in the system to restore electric services to its Missouri retail customers in an expeditious manner.[222]

---

[219] Ex. 70 (Tornado Regulatory Asset Workpaper of Sheri Richard)
[220] Ex. 5 (Richard Rebuttal) pp. 6-7; Ex. 70 (Richard Workpaper, Tornado Regulatory Asset).
[221] Ex. 101 (Staff Direct Report) p. 53.
[222] Ex. 5 (Rebuttal Testimony of Sheri Richard), pp. 6-7.

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

28. Depreciation and Amortization Expense: (a) What is the appropriate level of depreciation and amortization expense of plant to include in the cost of service? (b) Should depreciation expense for transportation equipment that was charged through a clearing account be removed from depreciation expense? (i) What are the authorized depreciation rates for accounts 371 & 373 to be used in the cost of service?

Findings of Fact

Empire suggests that the appropriate levels of depreciation and amortization expense at January 2020, are $71,515,922 and $3,821,588, respectively.[223] The Company goes on to state that the depreciation costs for transportation equipment charged through a clearing account should be removed from depreciation expense.

Empire believes the depreciation rates that should be used in this case for accounts 371 and 373 are 4.67% and 3.33%, respectively, as those are the last approved depreciation rates from Case No. ER-2016-0023.

Staff's states the appropriate amount of depreciation expense to allow is $71,423,882 and the appropriate amount of amortization of electric plant is $3,387,871.[224] Staff's believes that the amounts in the clearing accounts are charged to construction projects that will eventually be

[223] Ex. 7, Richard True-Up Direct, p. 15; Ex. 71 (Annualized Depreciation Expense Workpaper); Ex. 72 (Annualized Amortization Expense Workpaper).
[224] Ex. 124 (Staff's True-Up Accounting Schedules)

plant in service, in which the costs will be recovered through depreciation over the life of the assets, and therefore should be removed from depreciation expense.[225]

Staff's states the depreciation rates for accounts 371 and 373 should remain at the ordered in Case No. ER-2016-0023. rates of 4.67% and 3.33%, respectively.

There is a relatively small difference between Empire and Staff as to this issue. The difference is a result of Staff's use of two depreciation rates that were not consistent with Empire's last approved rates. Staff used a rate of 2.5% for FERC accounts 371 and 373, which does not agree to the last approved depreciation rates from Case ER-2016-0023. Thus, the Company and Staff differ by $92,040 as to depreciation and $433,717 as to the amortization.

OPC's position on this issue concerns only the treatment of the Asbury associated depreciation and amortization expense.

The appropriate depreciation rates for accounts 371 and 373 are 4.67% and 3.33%, respectively, as approved from Case No. ER-2016-0023.

The Commission finds the appropriate levels of depreciation and amortization expense at January 2020, are $71,515,922 and $3,821,588, respectively.

The Commission also finds depreciation costs for transportation equipment charged through a clearing account should be removed from depreciation expense.[226]

Conclusions of Law

Since the Commission has concluded that there will be no rate changes and no changes to the FAC base factor at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the Commission need not reach a decision at this time regarding these expenses.

---

[225] Ex. 104 (Staff's Cost of Service Report) p. 90

[226] Ex. 5 (Rebuttal Testimony of Sheri Richard) pp. 31-32.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

29. Iatan/Plum Point Carrying Costs: (a) What is the appropriate level of unamortized Iatan/Plum Point Carrying Costs to include in rate base? (b) What is the appropriate level of Iatan/Plum Point Carrying amortization to include in amortization expense?

Findings of Fact

Pursuant to Empire's regulatory plan approved by the Commission in Case No. EO-2005-0263, Empire deferred certain "carrying costs" associated with the Iatan I AQCS investment past its in-service date into Account 182308, Iatan Deferred Carrying Costs, and certain "carrying costs" associated with the Iatan 2 generation unit investment past its in-service date into Account 182332, MO Iatan II Df Chr ER-2010-0130.

The deferral of carrying costs after a project's in-service date is also known as "construction accounting."[227]

Pursuant to Commission approval of the Non-Unanimous Stipulation and Agreement and Joint Proposal Regarding Certain Procedural Matters dated February 25, 2010, in Case No. ER-2010-0130, Empire deferred certain "carrying costs" associated with the Plum Point generating unit investment past its in-service date into Account 182331, MO PlumPT Def Chgs ER-2010-0130.[228]

---

[227] Ex. 101 (Staff Direct Report), pp. 25-26.
[228] Ex. 101 (Staff Direct Report), pp. 26-27.

Empire agreed with Staff's adjustments to update the Iatan Plum Point O&M Regulatory Assets, as long as such update was extended through the true-up date (January 31, 2020).[229] Staff updated those amounts through January 31, 2020.[230]

Empire indicates the appropriate level of unamortized Iatan/Plum Point Carrying Costs at January 2020 is $6,514,585.[231] Staff indicates the appropriate amount as of January 31, 2020, the true-up date in this case is as follows: Iatan 1, $3,939,778; Iatan 2, $2,148,142; and Plum Point, $100,923 for a total of $6,188,843.[232]

The appropriate level of amortization for the Iatan/Plum Point Carrying Cost is $217,451.[233] Staff indicates based on their proposed balances of the respective carrying costs the appropriate level of amortization expense for the carrying costs are $84,729 for Iatan 1, $44,828 for Iatan 2 and $1,987 for Plum Point for a total of $131,544.[234]

The Commission finds the appropriate balance of the unamortized Iatan/Plum Point Carrying Costs at January 2020 is $6,514,585 which agrees to the Company's books and records. Furthermore, the Commission finds the appropriate balance of the associated amortization expense is $217,451.

Conclusions of Law

There are no additional conclusions of law on this issue.

---

[229] Ex. 5 (Rebuttal Testimony of Sheri Richard), pp. 9-10.
[230] Ex. 129 (Surrebuttal Testimony of Kimberly K. Bolin), p. 12.
[231] Ex. 74, Richard Workpaper, Iatan & Plum Point Carrying Costs.
[232] Staff's Cost of Service Report pages 53-54.
[233] Ex. 74, Richard Workpaper, Iatan & Plum Point Carrying Costs.
[234] Staff's Cost of Service Report pages 53-54.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

30. Incentive Compensation: What is the appropriate level of incentive compensation to be included in the cost of service?

Findings of Fact

Staff states the appropriate level of cash incentives based on performance goals to include in the cost of service is $1,245,016. Staff determined this level by reviewing all incentive goals and disallowing all actual payouts to Empire employees associated with achievement of goals that Staff contends benefit Empire's shareholders and not Empire's ratepayers.[235]

Also, Staff states that executive stock awards should not be included in the cost of service because these awards are based on measures that primarily benefit shareholders, such as shareholder return (maximizing the dividends paid to shareholders) and stock price goals (the value of the stock increasing over time).[236]

Empire has a portfolio of incentive compensation plans offered to its employees. There is one Long Term Incentive Plan ("LTIP"), and three different short-term incentive plans: the "Empire Legacy Bonus/Incentive Plan", the Shared Bonus Plan ("SBP"), and the Short-Term Incentive Plan ("STIP").[237]

The incentive compensation plans offered by Empire are a routine and widely-accepted mechanism for motivating employees to strive for excellence in whatever service, function, task

---

[235] Ex. 101 , Staff's Cost of Service Report, pp. 66-68; Ex. 113, Rebuttal Testimony of Caroline Newkirk, pp. 2-3; Ex. 139, Surrebuttal Testimony of Caroline Newkirk, pp. 2-3.
[236] Ex. 101 , Staff's Cost of Service Report, pp. 66-68; Ex. 113, Rebuttal Testimony of Caroline Newkirk, pp. 2-3; Ex. 139, Surrebuttal Testimony of Caroline Newkirk, pp. 2-3
[237] Ex. 101, Staff Cost of Service Report, p. 66

or activity they are undertaking on behalf of the business and the customers it serves. As a result, incentive compensation has become an essential part of the Company's overall compensation package necessary to attract and retain employees.[238] Empire states that because these plans are such an integral part of a competitive compensation package today, such amounts of compensation should only be disallowed where there is evidence that the total level of salaries (base compensation plus incentive compensation) is too high or imprudent.[239]

Staff did not assess if the overall cost for acquiring and retaining an employee is prudent, rather they looked at the calculation of the components of compensation without analysis or evidence of prudence of total compensation. For example, the Company could pay an engineer a market-based salary of $130,000 a year and few would question that expenditure. However, if the combination of the base compensation and incentive compensation for that engineer totals to the same market-based salary, some would challenge the appropriateness of the compensation related to incentive pay. The question should be whether the $130,000 is an appropriate level of pay or not.[240]

Empire goes on to state that there are two aspects of utility service that are of paramount interest to customers – the quality of the utility service they receive and the cost of that service. The Commission has recognized that incentive compensation based on operational or service goals can benefit customers by improving the quality, timeliness or other customer-centric attributes of the service they receive. However, customers also benefit when employees respond positively to financially-based incentives. Whether that response results in increased revenues or

---

[238] Ex. 5, Rebuttal Testimony of Sheri Richard, p. 27.
[239] Ex. 5, Rebuttal Testimony of Sheri Richard, p. 26.
[240] Ex. 5, Rebuttal Testimony of Sheri Richard, pp. 27-28.

decreased costs (and produces better earnings in the short-term), customers ultimately reap the benefits.[241]

The total compensation package provided to the Company's employees is market-based and necessary to attract and retain employees so that the Company may properly serve its Missouri retail customers. Incentive compensation should be included in the Company's cost of service in the amount of $4,078,229 (total company).[242]

As far back as in the March 2012 *Public Utilities Fortnightly*, it was recognized that: "Some U.S. regulatory commissions have explicitly acknowledged that utilities' employee compensation strategies are developed to attract, retain, and motivate employees, and that the proper concern of regulators is whether a utility can demonstrate that the overall level of employee compensation expenses is reasonable." Examples from Indiana, Nevada and Florida were identified in the article. Somewhat similarly, this Commission previously stated:

> Staff should not be in the business of trying to design a compensation plan for AmerenUE. Staff is not qualified to do so and its attempts to manage the affairs of AmerenUE are inappropriate. That does not mean that anything goes for the company. Staff certainly must evaluate AmerenUE's incentive compensation plans. However, it must do so at a higher level and not get bogged down in the details. AmerenUE's incentive programs must stand or fall as a program. If the overall program is appropriate, AmerenUE should be able to recover the costs of that program through rates. If the overall program is unacceptable, then the entire program will be excluded from rates. The Commission will not attempt to manage the details of those programs.
>
> Looking at the short-term compensation programs as a whole, the Commission finds them to be appropriate for recovery through rates. Incentive compensation programs are very common in business in general and in the utility industry in particular. Among AmerenUE's peer utility companies, 36 out of 37 offer short-term incentive plans for their executives. Thus, AmerenUE needs to offer similar plans to compete for employees with other utilities.

---

[241] Ex. 5, Rebuttal Testimony of Sheri Richard, p. 27.
[242] Ex. 75, Company's Response to Staff DR 0033.1 (Richard).

> For example, if AmerenUE's research determines that the market rate for a certain position is $60,000 per year, it will evaluate the appropriate base-level of compensation and determine an appropriate amount that should be offered through incentive compensation. It is clear that if AmerenUE simply abandoned its incentive plan and offered market rates as base pay, it would have no difficulty in recovering all those costs through rates. However, AmerenUE has chosen to implement an incentive compensation plan so that it has the ability to reward its employees for achieving the performance goals set by the company. So long as the overall program does not contain incentives that could be harmful to ratepayers, such as the purely financial incentives that caused the Commission to disallow recovery of AmerenUE's long-term compensation plan, AmerenUE should be able to recover the costs of incentive compensation through rates.[243]

The Commission finds that the total compensation package provided to the Company's employees is reasonable and necessary to retain the necessary employees to properly serve its Missouri retail customers. Therefore, absent approval of the Stipulation terms in total, the Commission finds that it would be reasonable and appropriate for the total company level of incentive compensation included in the Company's cost of service to be $4,078,229.

Conclusions of Law

Since the Commission has concluded that there will be no rate changes and no changes to the FAC base factor at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the Commission need not reach a decision at this time regarding the appropriate level of incentive compensation to be included in the cost of service.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

---

[243] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs*, Case No. ER-2008-0318, 2009 Mo. PSC Lexis 71, 150-152 (February 6, 2009).

31. Customer Demand Program (DSM): (a) What is the appropriate rate base amount for the customer demand program? (b) What is the appropriate amortization amount for the customer demand program?

Findings of Fact

Empire's Account 182318 contains costs of the Company's demand-side management ("DSM") programs that are in various stages of development and implementation. Staff participated in the previously authorized (and now expired) Customer Programs Collaborative ("CPC") and participates in the current authorized DSM advisory group established to assist Empire in the development of DSM programs. Based upon Staff's participation in these groups, as well as Staff's review of the costs in Account 182318, Staff has amortized the amounts incurred by Empire prior to the end of its Regulatory Plan (June 15, 2011) over ten years. Any amounts incurred after the end of the Regulatory Plan to date are amortized over a period of six years.[244]

The Company states that the rate base amount for the customer demand program in the general ledger at January 31, 2020 is $4,269,460.[245] The Company also states the appropriate level of amortization expense related to the customer demand program is $1,422,715.[246]

The Commission finds that (a) the appropriate rate base amount for the customer demand program to be included in the cost of service is $4,269,460 and (b) that the appropriate amount of related amortization expense to be included in the costs of service is $1,422,715.

Conclusions of Law

There are no additional conclusions of law for this issue.

---

[244] Ex. 101, Staff Direct Report, p. 52.
[245] Ex. 76, DSM Regulatory Asset and Amortization (Richard).
[246] Ex. 76, DSM Regulatory Asset and Amortization Workpaper (Richard).

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

32. Bad Debt Expense: (a) What is the appropriate level of bad debt expense to be included in the cost of service?

Findings of Fact

Staff determined that the appropriate level of Bad Debt Expense to include in rates is $1,883,442. This normalize level was determined by using a five-year average of the actual write-offs ending March 31, 2019 to develop the uncollectible rate of 0.1046%. Staff applied this rate to their amount of annualized revenues to get the above level of expense.[247]

The Commission finds that the appropriate amount of bad debt (or uncollectible) expense that should be included is ($143,419).[248] This amount represents a normalized uncollectible expense as of January 31, 2020, using a five-year average historical uncollectible percentage.[249]

Conclusions of Law

Since the Commission has concluded that there will be no rate changes and no changes to the FAC base factor at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the Commission need not reach a decision at this time regarding the appropriate level of bad debt expense to be included in the cost of service.

---

[247] See Staff's Cost of Service Report, page 79.
[248] Ex. 7, Richard True-Up Direct, pp. 13-14.
[249] Ex. 4, Richard Corrected Direct, p. 16, lines 8-11; Ex. 5, Richard Rebuttal, p. 21, lines 9-15; Ex. 7, Richard True-Up Direct, p. 13-14; Ex. 77, Richard Workpaper, Bad Debt Expense.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

33. Retail Revenue: (a) What is the appropriate amount to remove from retail revenue for unbilled revenue, franchise tax revenue, and FAC revenue? (b) What is the level of billing determinants per rate schedule that should be used to calculate retail rate revenue in this case? (c) Should the billing adjustment and the retail revenues be trued up to January 31, 2020 in the cost of service?

Findings of Fact

The recording of unbilled revenue on the books of the Company recognizes sales of electricity that have occurred but have not yet been billed to the customer.[250]

Franchise taxes are removed because city franchise tax is not a revenue source for Empire. It is a municipal tax Empire is obligated to collect and remit to the various municipalities where the Company provides electric service. Generally, there is no impact on Empire's earnings related to the collection of city franchise taxes, because revenues are offset by an equal amount of expense.[251]

Empire states the appropriate amount to be removed from retail revenues for unbilled revenues is $5,497,448, franchise tax revenues is $9,319,510, and FAC revenues is $5,203,205. These balances represent balances as of January 31, 2020. The level of billing determinants to be used in the calculation of retail rate revenue for the test year are included in Schedule TSL-10 of the direct testimony of Timothy S. Lyons. Empire believes this should be adjusted to reflect the

---

[250] Ex. 101 (Staff Report Cost of Service), pp. 49-50.
[251] Ex. 8 (Direct Testimony of Leigha Palumbo), pp. 3-4; Ex. 101 (Staff Direct Report) p. 50.

true-up period of January 31, 2020. The billing adjustment and retail revenues should be updated to the true-up period of January 31, 2020.[252]

Staff asserts the appropriate amount to remove for unbilled revenues is $6,391,485 and the appropriate amount to remove for franchise tax revenues is $9,923,350. Staff asserts the appropriate amount to remove for FAC revenues is $17,047,207.[253]

In regard to retail revenue, OPC again refers only to its position as to Issue 13 (Asbury).

The Commission finds the appropriate amount to be removed from retail revenues for unbilled revenues is $5,497,448, franchise tax revenues is $9,319,510, and FAC revenues is $5,203,205. These balances are as of January 31, 2020.[254]

The Commission also finds the level of billing determinants to be used in the calculation of retail rate revenue for the test year are included in Schedule TSL-10 of the Direct Testimony of Timothy S. Lyons.[255] These should be adjusted to reflect the true-up period of January 31, 2020.[256]

The Commission finds the billing adjustment and retail revenues should be updated to the true-up period of January 31, 2020. Doing so is necessary to maintain a proper matching of the rate components.

Conclusions of Law

Since the Commission has concluded that there will be no rate changes and no changes to the FAC base factor at this time in conjunction with approval of the Stipulation terms as a

---

[252] Ex. 7, Richard True-Up Direct, pp. 8, 11, 12; Ex. 8, Palumbo True-Up Direct, p. 3, lines 13-21; Ex. 26, Lyons Direct, pp. 31-37; Exhibits 78-80 (Richard Workpapers); Ex. 96, Company's Response to Staff DR 0097 (Richard); Exhibits 97-1009, Richard Workpapers.
[253] Ex. 104 (Staff's Cost of Service Report) pp. 49-51; Ex. 139 (Newkirk Surrebuttal) pp. 1-2.
[254] Exhibits 78-80 (Richard Workpapers).
[255] Ex. 26 (Lyons Direct Testimony).
[256]Exhibits 97-1001.

complete resolution of this case, the Commission need not reach a decision at this time regarding these expense levels.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

34. Other Revenue: What is the appropriate normalized level of revenue for rent revenue, other electric revenue, and fly ash revenues?

Findings of Fact

Other operating revenue includes revenues from such items as forfeited discounts, reconnect charges, rent from electric property, and other miscellaneous charges.[257]

"Coal fly ash" is a byproduct created as a result of the burning of coal in generating stations to produce electricity. Fly ash has a number of possible industrial uses, primarily as an ingredient in concrete products. Over the past several years, Empire has been selling its fly ash to several different industrial companies to be used in concrete. By recycling fly ash, Empire not only receives a profit, but also provides positive environmental benefits.[258]

Empire states that the appropriate normalized amount of rent revenues is $1,026,462, and other electric revenues is $354,638. The normalized level of fly ash revenues that should be included in the cost of service at January 2020 is $36,107. The rent revenues balance was updated to September 30, 2019, as recommended by Staff witness Caroline Newkirk in Direct

[257] Ex. 101 (Staff Report Cost of Service) p. 35.
[258] Ex. 101 (Staff Report Cost of Service) pp. 50-51

Testimony. The other electric revenues were normalized to a three-year average as of September 30, 2019.[259]

The Commission finds that the appropriate normalized amount of rent revenues is $1,026,462, and other electric revenues is $354,638.[260] The rent revenues balance should be updated to September 30, 2019. The other electric revenues to be normalized to a three-year average as of September 30, 2019.[261] The normalized level of fly ash revenues that should be included in the cost of service at January 2020 is $36,107.[262]

Conclusions of Law

Since the Commission has concluded that there will be no rate changes and no changes to the FAC base factor at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the Commission need not reach specific decisions on these issues.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

35. Tax Cut and Job Acts Revenue: (a) What is the appropriate amount of tax cut and job act revenue to remove from test year revenues? (b) Should revenues associated with the tax cut and job act stub period be removed from revenue?

---

[259] Ex. 4 (Richard Corrected Direct) p. 18; Ex. 5 (Richard Rebuttal) p. 37, lines 8-9; Ex. 7 (True-Up Direct) pp. 8, 10, 11); Ex. 81 (Richard Workpaper, Rent Revenues); Ex. 82 (Richard Workpaper, Other Revenues); Ex. 83 (Richard Workpaper, Fly Ash Revenues).
[260] Ex. 81 (Rent Revenues Workpaper of Sheri Richard); Ex. 82 (Other Revenues Workpaper of Sheri Richard).
[261] Ex. 7 (True-Up Direct of Sheri Richard) p. 11.
[262] Ex. 83 (Fly Ash Revenues Workpaper of Sheri Richard).

Findings of Fact

Empire proposed an adjustment to calculate the appropriate amount of tax cut and job act (TCJA) revenues as of January 31, 2020, that should be included in the cost of service, which shows an increase to revenues by $12,024,852. This is because the adjustment trues up the revenues to reflect the annual amount ordered by the Commission in Case No. ER-2018-0092 of the deferred revenues related to the change in federal income tax rate as a result of TCJA. Staff proposes the appropriate amount of tax cut and job act revenue to remove from test year revenues is $7,760,076.[263] Staff's proposed adjustment removes the income tax impact to revenues for each rate class by multiplying the actual test year kWh for the months of April 2018 through August 2018 by the appropriate class' tax credit as established in the above case.[264]

Empire indicates the adjustment proposed to reflect the appropriate amount of TCJA revenue to remove from test year revenues encompasses the stub period as part of the annual amount ordered.[265] Staff supports the removal of the revenues associated with the tax cut and job act stub period as Empire recorded an accrual amount for the tax cut and job act stub period. The amount recorded was $11,728,453.[266]

The Commission finds it is appropriate to remove the revenues associates with tax cut and job act stub period from revenue. Furthermore, the Commission finds the appropriate amount of the tax cut and job act revenue to remove from test year revenues is $12,024,852, as this amount represents the amount as of January 31, 2020.

---

[263] Ex. 101 (Staff's Cost of Service Report) page 49.
[264] Ex. 101 (Staff's Cost of Service Report) page 49.
[265] Ex. 4 Richard Corrected Direct, p. 24, lines 9-12; Ex. 5, Richard Rebuttal, pp. 11, 17; Ex. 7, Richard True-Up Direct, p. 11, lines 6-9; Ex. 84, Richard Workpaper, TCJA Revenue Adjustment.
[266] Ex. 101 (Staff's Cost of Service Report) page 49.

Conclusions of Law

Since the Commission has concluded that there will be no rate changes and no changes to the FAC base factor at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the Commission need not reach decisions on this issue at this time.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

36. Property Insurance: What is the appropriate test year amounts before comparing to the current premium amounts?

Findings of Fact

Insurance expense is the cost of protection obtained from third parties by utilities against the risk of financial loss associated with unanticipated events or occurrences. Utilities, like non-regulated entities, routinely incur insurance expense in order to minimize their liability (and, potentially that of their customers) associated with unanticipated losses.[267]

Empire has determined that the appropriate level of property insurance is $2,027,854 (total company).[268]

Staff states that the appropriate test year amount for Property Insurance is $2,137,160 (Missouri Jurisdictional). This is the amount of property insurance recorded in Empire's general ledger.[269]

---

[267] Ex. 101 (Staff Direct Report), p.77-78)
[268] Ex. 5, Richard Rebuttal, p. 29-30; Ex. 7, Richard True-Up Direct, p. 16, ln. 5-8; Ex. 85, Richard Workpaper, Property Insurance Test Year Expense
[269] See Staff's Cost of Service Report, p. 77-78; Arabian Surrebuttal, page 3.

The Commission finds that the appropriate level of annualized property insurance, to be used in the revenue requirement determination absent approval of the Stipulation terms, is $2,027,854 (Total Company).[270]

Conclusions of Law

Since the Commission has concluded that there will be no rate changes and no changes to the FAC base factor at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the Commission need not reach a decision at this time regarding the appropriate test year amounts before comparing to the current premium amounts.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

37. Injuries and Damages: What is appropriate amount of injuries and damages expense to include in the cost of service?

Findings of Fact

From time to time, claimants sue Empire seeking payment of damages. If Empire loses the lawsuit, Empire will likely make a payout to the aggrieved party. Alternatively, it may choose to enter in to an out-of-court settlement, also resulting in a payout.[271]

Empire and Staff agree that the appropriate level of injuries and damages to be included in the cost of service is $312,562 (Total Company).[272]

---

[270] Ex. 85 (Property Insurance Test Year Expense Workpaper of Sheri Richard).
[271] Ex. 101 (Staff Direct Report), p.81
[272] Ex. 7, Richard True-Up Direct, p. 16, ln. 5-8; Ex. 86, Richard Workpaper, Injuries and Damages to include in Cost of Service; Staff's Cost of Service Report, p. 81.

The Commission finds that the appropriate level of injuries and damages to be included in the cost of service would be $312,562 (Total Company).[273]

Conclusions of Law

Since the Commission has concluded that there will be no rate changes and no changes to the FAC base factor at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the Commission need not reach a decision at this time regarding the amount of injuries and damages expense to include in the cost of service.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

38. Payroll and Overtime: (a) What is the appropriate test year amount of payroll expense? (b) What is the appropriate test year amount for overtime expense?

Findings of Fact

The Commission finds all costs related to affiliate transactions sufficiently comply with the Commission's Affiliate Transactions Rule. The Commission further finds that in order to determine the pro forma amounts of regular payroll and overtime expense they must be compared back to a true test year level of those expenses. Including the test year level of incentive compensation in any adjustment other than the incentive compensation adjustment would in fact not be representative of a true test year level of regular and overtime payroll.

---

[273] Ex. 7, Richard True-Up Direct, p. 16, ln.5-8; Ex. 86, Richard Workpaper, Injuries and Damages to include in Cost of Service; Staff's Cost of Service Report, p. 81.

Therefore, the reasonable and appropriate total amounts to be included in the test year level of payroll and overtime expense would be $33,190,797 (total company) and $4,502,541 (total company), respectively.

Conclusions of Law

Since the Commission has concluded that there will be no rate changes at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the Commission need not reach a decision at this time regarding the amount of these expenses to include in the cost of service.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

39. Retention Bonuses: Should proposed retention bonuses for lineman be included in the cost of service?

Findings of Fact

It is important that the Company have an adequate number of trained employees in order for the Company to provide reliable service.[274] Today, there is a very high demand for employees that have the unique skillset of journeyman lineman. Utilities, cooperatives, and contractors across the nation are competing for a highly skilled workforce to support their efforts of increased reliability, infrastructure upgrades, and increased responsiveness to customer requests. This has caused this high demand for this skillset. This has been more prevalent within the utility contractor industry. With this high demand, utility contract companies are now willing to offer high premium pay and other benefits including daily per diems in an effort to meet their

[274] Ex. 39, Direct Testimony of Jeffery Westfall, p. 12.

workforce needs. In most cases, employees have been able to double and even triple their compensation. This increased competition for skilled journeymen has taken a toll on several utilities and cooperatives across the country.[275]

Utilities and cooperatives today are trying many different ways to combat this including sign on bonuses to help attract this skillset, retention bonuses to help retain existing employees, increased wages and more lucrative work practices (increased callout minimums and more overtime availability etc.).[276] This problem grew considerably worse for Empire leading up to the filing of this rate case. As such, the Company established a program to offer monthly retention bonuses until the increased competitive job market for journeymen subsides.[277] The program has helped the Company attract and retain individuals with the unique skillset of journeyman lineman and has assisted the Company in providing safe and reliable service. Specifically, since this program was initiated, Empire has only lost two journeymen linemen. Prior to the implementation of this retention program, the Company lost 16 journeymen linemen between March and August of 2019. This program has also helped with the recruitment efforts to replace 20 employees that had previously left the Company.[278]

Empire states a total of $1,021,080 should be included in the cost of service related to lineman retention bonuses.[279]

The Commission finds that retention bonuses are a necessary incentive for the Company to adequately serve its Missouri customers, and therefore, the expenses should be included in the cost of service.

---

[275] Ex. 39, Direct Testimony of Jeffery Westfall, pp. 12-13.
[276] Ex. 39, Direct Testimony of Jeffery Westfall, p. 13.
[277] Ex. 40, True-Up Direct Testimony of Jeffery Westfall, p. 3.
[278] Ex. 40, True-Up Direct Testimony of Jeffery Westfall, p. 3.
[279] Ex. 7, True-Up Direct Testimony of Sheri Richard, pp. 20-21; Ex. 88, Retention Bonus Calculations Workpaper (Richard).

Conclusions of Law

Since the Commission has concluded that there will be no rate changes at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the Commission need not reach a decision at this time regarding the amount of these expenses to include in the cost of service.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

40. Employee Benefits: What is the appropriate level of employee benefits to include in the cost of service?

Findings of Fact

Empire itself has no employees. Liberty Utilities Service Corporation ("LUSC") serves as the employer for most of the U.S.-based utility employees, who are then assigned to specific utilities.[280] Those employees are offered Dental, Vision, Healthcare, and Life Insurance benefits. Empire books these expenses in Account 926. To determine the level of employee benefits to include in Empire's cost of service, Staff normalized each expense by examining the individual costs over a three - year period. Averaging over a three-year period accounts for potential fluctuations in expense from year to year. Based upon this methodology, Staff recommends the appropriate level of employee benefits included in the cost of service is $7,506,683 (Total Company).[281]

---

[280] Ex. 101, Staff Direct Report, p. 30.
[281] Ex. 101, Staff Direct Report, p. 63, pp. 109-110.

Staff recommends that the vast majority of Empire's transactions with its affiliates sufficiently comply with the Commission's Affiliate Transactions Rule,[282] including those related to employee benefits. Thus, Staff recommends no adjustment to remove amounts related to affiliate transactions are necessary.

Staff's number only examined the trailing three years through the update period ending September 30, 2019.[283] The appropriate amount of employee benefits, including dental, vision and healthcare, that should be included in the Company's cost of service is $6,682,463 (Missouri jurisdictional), when the balances are updated as of January 30, 2020.[284]

The Commission finds that all costs related to affiliate transactions sufficiently comply with the Commission's Affiliate Transactions Rule. The Commission finds the appropriate amount of dental, vision, and healthcare costs to be included in the cost of service is the jurisdictional balance at January 30, 2020, $6,682,463.

Conclusions of Law

Since the Commission has concluded that there will be no rate changes at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the Commission need not reach a decision at this time regarding the amount of these expenses to include in the cost of service.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

---

[282] See 20 CSR 4240-20.015.
[283] Ex. 101, Staff Direct Report, p. 63.
[284] Ex. 89, Employee Benefits to include in Cost of Service Workpaper (Richard).

41. Property Taxes: (a) What is the appropriate amount of property taxes to include in the cost of service? (b) What is the proper method to be used for calculating the property tax amount to be included in the cost of service?

Findings of Fact

Empire proposes the appropriate Missouri jurisdictional amount of property taxes to be included in the cost of service is $25,985,842. Staff indicates that the appropriate level of property taxes to include in the cost of service is $25,138,294. OPC's position concerns only the treatment of the Asbury plant associated depreciation and amortization expense.

Empire indicates the State of Missouri assesses property tax for Electric Utilities using the Income Approach in its evaluation of property tax assessments in addition to the property value. Taking into consideration the Company's income, as well as the value of its property, more accurately reflects the amount of property tax expense the Company will incur.[285]

Because the Asbury plant was owned by Empire as of December 31, 2019, it will be included in the calculation of the property taxes to be paid by the Company in 2020. The Commission finds the appropriate amount of property taxes to include in the cost of service is $25,985,842 as the method utilized by the Company is a better representation of the calculation of property taxes as of the end of true-up period of January 31, 2020 and more closely aligns with how property taxes are assessed for an electric utility. Furthermore, Staff erred in their method by using the value of the property at December 31, 2019 and an annualized property tax rate of .972%.

Conclusions of Law

Since the Commission has concluded that there will be no rate changes at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the

[285] Ex. 5, Richard Rebuttal, pg. 36; Richard True-Up Direct, pg. 16; Ex. 90, Richard Workpaper, Property Tax Calculation.

Commission need not reach a decision at this time regarding the amount of these expenses to include in the cost of service.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

42. Dues and Donations: (a) What is the appropriate amount of dues and donations that should be included in the cost of service? (b) Should Edison Electric Institute dues be included in the cost of service?

Findings of Fact

The Commission has generally found that dues and donations may be included in the cost of service where they have benefit to the customers or are necessary for the provision of safe and adequate service.[286]

EEI, much like NARUC, conducts research, and seeks to educate its members or other users of its published information, and communicates to its members to keep them apprised of current developments. EEI has a Restoration, Operations, and Crisis Management Program which is aimed at improving industry-wide responses to major outages, continuity of industry and business operations, and support and coordination of the industry during times of crisis. EEI also focuses on advancing the application of new technologies that will strengthen and transform the power grid. The EEI membership is committed to an affordable, reliable, secure, and clean energy future and it promotes the sharing of information, ideas, and experiences among the electric power industry.[287]

---

[286] Ex. 101 (Staff's Cost of Service Report), p. 76.
[287] Ex. 5, (Rebuttal Testimony of Sheri Richard), p. 22.

Empire states that the appropriate amount of dues and donations to be included in the cost of service is $309,778 (Total Company). In addition, Edison Electric Institute ("EEI") dues that are not related to lobbying should be included. The Company, as well as Staff, utilize information from EEI to conduct business. This information is invaluable to the Company with regard to its provision of safe and reliable service. As such, the payment of this amount of benefits customers and should be included in the Company's cost of service.[288]

Staff states that the appropriate amount of dues and donations that should be included in the cost of service is $130,086. Staff excluded $203,473 for dues and donation. Staff states that EEI does not provide any direct benefit to ratepayers and is not necessary for the provision of safe and adequate service.[289]

The Commission finds that the Company, as well as Staff, utilize information from EEI to conduct business to the benefit of Empire's customers; therefore, $179,693 should be added to the cost of service.[290]

Conclusions of Law

Since the Commission has concluded that there will be no rate changes at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the Commission need not reach a decision at this time regarding the amount of these expenses to include in the cost of service.

---

[288] Ex. 5, (Rebuttal Testimony of Sheri Richard), pp. 21-22.
[289] See Staff's Cost of Service Report, p. 77.
[290] Ex. 91 (Dues and Donations Workpaper of Sheri Richard), p. 5.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

43. Outside Services: What is the appropriate amount of outside services to include in the cost of service?

Findings of Fact

Various outside (independent) contractors and vendors provide legal, auditing, and other services to Empire to carry out its operational activities as needed. Empire's outside services expenses are booked to Accounts 923045 and 923047. Empire states that the appropriate amount of outside services to be included in the cost of service is $2,326,254.[291] This amount represents the total Company's five-year average of the two outside service expense accounts.[292]

Staff's position is that the appropriate amount of outside service expense is $2,036,670. This was calculated by using a five year average of outside services incurred by Empire.[293]

The Commission finds the appropriate amount of outside services to be included in the cost of service is $2,326,254. This amount represents Missouri's portion of a five-year average of the two outside service expense accounts.[294]

Conclusions of Law

Since the Commission has concluded that there will be no rate changes at this time in conjunction with approval of the Stipulation terms as a complete resolution of this case, the

---

[291] Ex. 92 (Workpaper – Outside Services to include in Cost of Service).
[292] Ex. 7 (True-Up Direct Testimony of Sheri Richard), p. 19.
[293] Ex. 101 (Staff's Cost of Service Report), p. 82.
[294] Ex. 5 (Richard Rebuttal) p. 37, line 15; Ex. 7 (Richard True-Up Direct) p. 19, lines 14-18; Ex. 92 (Richard Workpaper, Outside Services to include in Cost of Service).

Commission need not reach a decision at this time regarding the amount of these expenses to include in the cost of service.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

44. Common Property Removed from Plant and Accumulated Depreciation: What is the appropriate method and amount for removal of common property from plant in service and accumulated depreciation?

Findings of Fact

A portion of certain common plant assets on Empire's books are related to non-electric service and should be removed.[295] FERC Accounts 389-398 not only include electric only plant, but also include plant that serves other regulated and unregulated business.[296]

Empire indicates in order to calculate the appropriate amount of plant and accumulated depreciation that should be removed from the cost of service, the "mass rate" allocation factor should be applied to only the specific asset balances that are being shared with Liberty-Empire's non-electric businesses ("common plant"), rather than being applied to the entire balances in FERC accounts 389 through 398, as proposed by Staff. There should be a total company adjustment to reduce plant and accumulated depreciation by $4,882,321 and $2,839,974, respectively.[297] This differs from Staff's amount of $11,059,772 as Staff applied its allocation factor to the entire balances in FERC accounts 389 through 398.[298]

[295] Ex. 4 (Corrected Direct Testimony of Sheri Richard), p. 11.
[296] Ex. 5 (Rebuttal Testimony of Sheri Richard), p. 3.
[297] Ex. 7, (Richard True-Up Direct), p. 6; Ex. 93 (Common Property Adjustment Workpaper).
[298] Staff's Cost of Service Report page 19 and Barron Surrebuttal pages 3-4.

OPC's position on this issue concerns only the treatment of the Asbury associated depreciation and amortization expense.

The Commission finds the entire balances in FERC accounts 389 through 398 are not all considered common plant. When the balances are updated to January 2020 and Empire's method is applied, this results in a total company adjustment to reduce plant and accumulated depreciation, $4,882,321 and $2,839,974, respectively.[299]

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

With regard to the case in total and this issue in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive modification.

45. Retirement: (a) Should Empire be required to externally fund, through a Rabbi Trust, its SERP benefits obligation? (b) Should Empire be required to provide, to a designated EDRA contact, the following documents of The Empire District Electric Company in the years 2020-2026: (i) IRS filings (specifically Form 5500 for each plan), (ii) Actuarial valuation reports, (iii) Financial disclosures, (iv) Annual funding notice to pension plan participants (v) Annual health care premium and coverage letter to retirees, (vi) FERC Form 1 and summary and full annual reports. (c) In addition, should the company be required to designate a contact person for EDRA to contact regarding these matters?

This issue has been resolved by the parties, with the resolution being paragraphs 27-29 of the Stipulation, which provide as follows: "The Company shall provide, to a designated EDRA contact, the following documents of The Empire District Electric Company in the years 2020-2026:

a. IRS filings (specifically Form 5500 for each plan),

---

[299] Ex. 4, Richard Corrected Direct, pg. 11, ln. 10-14; Ex. 5, Richard Rebuttal, pp. 3-4; Ex. 7, Richard True-Up Direct, p.6, ln. 1-4; Ex. 93 Richard Workpaper, Common Property Adjustment.

b. Actuarial valuation reports,

c. Financial disclosures,

d. Annual funding notice to pension plan participants,

e. Annual health care premium and coverage letter to retirees,

f. FERC Form 1 and summary and full annual reports.

In addition, the company will designate a contact for these matters.

EDESR and the Company shall discuss with Staff and OPC, in or prior to July of 2020, the possibility of external funding (Rabbi Trust) of SERP benefits. If an agreement is reached between EDESR, the Company, Staff, and OPC in which: (1) EDESR, Staff, and OPC agree that, using reasonable assumptions, the annual costs and expenses of funds contributed by Empire using a Rabbi trust (including contributions to the trust) to provide benefits are essentially the same or less than the costs and expenses to customers of providing the alternate of SERP benefits from Empire's general funds and (2) none of these parties (EDESR, Staff, OPC) oppose the rate recovery of the Rabbi trust consistent with the Willis Towers Watson SERP funding analysis dated July 17, 2019 (but with currently approved weighted average cost of capital) in place of the SERP funded from general funds and will support said rate recovery in future cases, Empire will fund SERP benefits via a Rabbi trust within 30 days of execution of the written agreement."

These provisions of the Stipulation were not objected to by OPC, and the Commission independently finds and concludes that these Stipulation provisions are reasonable and should be approved.

46. Case No. EM-2016-0213 Commission-ordered conditions: (a) Has Empire complied with Condition A.4 the Commission imposed in Case No. EM-2016-0213? (i) If not, what relief should the Commission grant? (b) Has Empire complied with Condition A.5 the Commission imposed in Case No. EM-2016-0213? (i) If not, what relief should the Commission grant? (c)

Has Empire complied with Condition A.6 the Commission imposed in Case No. EM-2016-0213? (i) If not, what relief should the Commission grant? (d) Has Empire complied with Condition G.3 the Commission imposed in Case No. EM-2016-0213? (i) If not, what relief should the Commission grant?

Findings of Fact

The Stipulation does not specifically address these merger conditions. Instead, the Stipulation resolves all revenue requirement issues by providing that there will be no changes to the Company's retail base rates in this proceeding, no changes to the FAC base factor, and that a phase-in rate mechanism will be established pursuant to §393.155.1, with regard to plant in service and other rate base related items.

OPC argues Empire has not satisfied merger condition A4 which requires the Company to demonstrate that any increase in its cost of capital is unrelated to the merger or its affiliate relationships.

The Cost of Equity is based on the economic principle of opportunity costs or the forgone return on investments of comparable risk. The Company's proposed ROE of 9.95 percent in this case, therefore, is based on a group of proxy companies, none of which are affiliates of, or affiliated with Empire or APUC.[300]

Merger condition A5 provides that if Empire's "book capital structure" differs from LUCo's, the Company must demonstrate its capital structure is "the most economical." The difference in book capital structures between the two is minimal; 53.00 percent common equity at LUCo relative to 52.90 percent equity at Empire. There was no requirement that Empire reconcile that modest difference.[301]

[300] Ex. 36, Hevert Direct, pp. 6-7.
[301] Ex. 38, Hevert Surrebuttal, p. 49.

If the Commission assumes the ten-basis point difference between the two rises to the threshold of a difference for the purpose of merger condition 5, the central issue is whether Empire's capital structure is the most economical.

OPC's proposed 46.00 percent equity ratio cannot be seen as the most economical. Empire's proposed equity ratio on the other hand, is consistent with industry practice, reflects the fundamental financing principle of duration matching, recognizes the importance of maintaining a strong balance sheet during unstable markets, and properly reflects the relationship between debt leverage and the Cost of Equity. It is the most economical.[302]

As discussed under Issue 18, Affiliate Transactions, the Commission finds that the refinancing of Empire's $90 million first mortgage bonds that matured on June 1, 2018 was conducted in compliance with the Commission's affiliate transactions rule, and, as such, was in compliance with the financing merger condition.

In objecting and responding to data requests in this case, the Company has fully complied with the merger stipulation and the Commission's rules. The merger stipulation specifically contemplated objections for lack of relevance.[303]

There is no motion pending before the Commission in this case requesting a ruling on any data request objections or seeking the compulsion of any data request responses.

Conclusions of Law

There are no additional conclusions of law for this section.

Decision

With regard to the case in total and these issues in particular, the Commission concludes that the terms of the Stipulation should be approved in total and without substantive

[302] Ex. 38, Hevert Surrebuttal, pp. 52-58.
[303] Ex. 6, Richard Surrebuttal, pp. 8-9.

modification. The Company has fully complied with the merger conditions from Case No. EM-2016-0213, and, as such, no action on the part of the Commission is required and none would be appropriate.

V. Additional Issue to be Addressed by the Commission

As set forth above, the Commission concludes that approval of the terms of the Stipulation, in total and without modification, represents the proper resolution of this entire rate case. The following Stipulation term was not addressed in conjunction with the discussion of any of the issues presented to the Commission by the parties for decision: "The Company will meet with stakeholders to discuss expected customer-impact of planned capital expenditures in 2020 of prolonged and/or significant economic downturn in light of COVID-19 before the Company's next filed rate case." Stipulation, ¶23.

In conjunction with approval of the terms of the Stipulation as a complete resolution of this case, and given the Company's agreement, the Commission finds this to be a reasonable condition to be imposed in this proceeding.

Conclusion

Implementation of the Company's requested rate increase, based on an annual revenue requirement deficiency of $21,916,462, as set forth in and supported by the Company's pre-filed direct, rebuttal, surrebuttal, and true-up testimony, would be lawful and reasonable. The Company, however, being mindful of the financial challenges facing Empire's customers and the Company's obligations, urges the Commission to approve the terms of the Stipulation as a complete resolution of this rate case. A report and order in line with the above proposed findings of fact and conclusions of law will allow the Company to continue providing safe and reliable

service and will allow Empire's retail customers in Missouri to not experience a base rate increase until the effective date of rates resulting from the Company's next rate case.

WHEREFORE, The Empire District Electric Company submits its Proposed Findings of Fact and Conclusions of Law for the Commission's consideration.

Respectfully submitted,

/s/ Diana C. Carter

Diana C. Carter MBE #50527
428 E. Capitol Ave., Suite 303
Jefferson City, Missouri 65101
Joplin Office Phone: (417) 626-5976
Cell Phone: (573) 289-1961
E-Mail: Diana.Carter@LibertyUtilities.com

Certificate of Service

I hereby certify that the above document was filed in EFIS on this 18th day of May, 2020, with notification of the same being sent to all counsel of record.

/s/ Diana C. Carter