MISSOURI COURT OF APPEALS
WESTERN DISTRICT

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, **RESPONDENT-APPELLANT,**

OFFICE OF PUBLIC COUNSEL,

APPELLANT-RESPONDENT,

MIDWEST ENERGY CONSUMERS GROUP, **INTERVENOR-RESPONDENT,**

v.

PUBLIC SERVICE COMMISSION

RESPONDENT.

DOCKET NUMBER WD84090 Consolidated with WD84117

DATE: July 27, 2021

Appeal From:

Public Service Commission

Appellate Judges:

Division Four: Cynthia L. Martin, Chief Judge, Presiding, Gary D. Witt, Judge and Edward R. Ardini, Jr., Judge

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Attorneys:

Nathan Williams, Jefferson City, MO, for appellant-respondent Office of Public Counsel.
Jennifer Heintz, Jefferson City, MO, for respondent Public Service Commission.
Erwin O. Switzer, St. Louis, MO, for respondent-appellant Empire District Electric Company.

MISSOURI APPELLATE COURT OPINION SUMMARY

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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, RESPONDENT-APPELLANT,

OFFICE OF PUBLIC COUNSEL, APPELLANT-RESPONDENT,

MIDWEST ENERGY CONSUMERS GROUP, INTERVENOR-RESPONDENT,
v.
PUBLIC SERVICE COMMISSION, RESPONDENT.

WD84090 (Consolidated with WD84117) Public Service Commission

Before Division Four Judges: Cynthia L. Martin, Chief Judge, Presiding, Gary D. Witt, Judge and Edward R. Ardini, Jr., Judge

The Office of Public Counsel ("OPC") and The Empire District Electric Company ("Empire") each separately appeal from the Amended Report and Order ("Order") of the Public Service Commission ("Commission") in Empire's rate case, and those appeals are consolidated herein. On appeal, the OPC claims that the Commission erred by including the historical financial impacts of a retired coal-fired generating plant in its projection for the future because that plant had been retired and taken out of service. Empire claims that the Commission erred in using an adjusted capital structure of Empire's indirect parent, which treated guarantees consistent with the treatment of debt.

AFFIRMED.

Division Four holds:

When evaluating and designing utility rates, the Commission used an historical test year with a true-up period following the test year, which is designed to balance historical data with known and measurable future changes. For post-test-year events to be included in the analysis, they must not only be known and measurable, but also promote the proper relationship of investment, revenues, and expenses, and be representative of the conditions anticipated during the new rate's effective period. The Commission did not include the retirement of Empire's Asbury plant in its rate calculation because it concluded that the full effects were not known and measurable, because some of the plant's facilities might still be used in the production of electricity, and savings incurred in retiring the plant would be offset by Operations and Management

costs for the retirement process. Instead of including estimates of the financial effects of the Asbury plant's retirement, which might well be significantly inaccurate, the Commission instead utilized an accounting authority order ("AAO") to capture the cost savings of the plant's retirement, which it found to be an "extraordinary event," to be considered in Empire's next general rate case. We do not find this to be an abuse of the Commission's considerable discretion.

In setting utility rates, the Commission is not bound to any set methodology, but may consider all facts which might have any bearing on the rates, which should yield a reasonable rate of return to the utility, provide for surplus and contingencies, and yet balance these interests against those of the utility consumer. In performing this balancing, the Commission must consider the utility's capital structure, including its debt to equity ratio, and, if the utility is a subsidiary, it may also consider the capital structure of the utility's parent. If the Commission does not find that the respective capital structures would lead to just and reasonable utility rates, because they do not sufficiently reflect the *effective* capital structure, the Commission has the discretion to fashion a reasonable hypothetical capital structure where appropriate. This is the case even where a stipulation among some parties defines the capital structure of the utility, as contracts among parties cannot limit the Commission's authority to fashion just and reasonable rates. The Commission was within its discretion to adjust Empire's capital structure to account for debt guaranteed by Empire's parent to create a just and reasonable utility rate that yielded Empire a return on equity within the "zone of reasonableness," which is within one percentage point of the national average for similar utilities.

Opinion by: Gary D. Witt, Judge July 27, 2021

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