

**BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

**In the Matter of the Petition of The Empire )  
District Electric Company for Approval of Its )  
Customer Savings Plan )**

**Docket No. 18-EPDE-184-PRE**

**DIRECT TESTIMONY**

**PREPARED BY**

**JUSTIN T. GRADY**

**UTILITIES DIVISION**

**KANSAS CORPORATION COMMISSION**

**March 1, 2018**

## Contents

I.	Introduction, Qualifications, Purpose of Testimony .....	1
II.	Executive Summary .....	3
III.	Request to Recover Asbury Investment as Regulatory Asset.....	5
A.	Description of Empire's Request .....	5
B.	Empire Support for its Request .....	7
C.	Staff's Response to Empire's Request .....	9
D.	Support for Staff's Position on Regulatory Asset Request .....	10
E.	Used and Useful Standard in Public Utility Ratemaking .....	11
F.	Recent Kansas Decision Regarding Used and Useful Principle .....	13
G.	Other States' Regulatory Treatment of Retired Plant Investment.....	14
H.	Effect of Empire's Capital Investment Plan on Staff's Position.....	16
I.	Rationale for Deviation from 15-116 Docket Order.....	17
J.	Customer Impact of Different Recovery Options for Asbury .....	17
IV.	Request for Application of K.S.A. 66-1245. ....	18
A.	Description of Empire's Request .....	18
B.	Staff's response to Empire's Request.....	19
V.	Request for Initial Depreciation Rate if Wind is Built .....	20
A.	Description of Empire's Request .....	20
B.	Staff response to Empire's Request .....	20

## I. Introduction, Qualifications, Purpose of Testimony

### Q. Please state your name and business address.

A. My name is Justin T. Grady and my business address is 1500 Southwest Arrowhead Road, Topeka, Kansas, 66604.

### Q. By whom and in what capacity are you employed?

A. I am employed by the Kansas Corporation Commission (KCC or Commission) as the Chief of Accounting and Financial Analysis.

1 **Q. Please summarize your educational and employment background.**

2 A. I earned a Master of Business Administration degree, with a concentration in General  
3 Finance which includes emphases in Corporate Finance and Investment Management, from  
4 the University of Kansas in December of 2009. I also hold a Bachelor of Business  
5 Administration degree with majors in Finance and Economics from Washburn University.  
6 I have been employed by the KCC in various positions of increasing responsibility within  
7 the Utilities Division since 2002. I have been employed in my current capacity since May  
8 2012.

9 While employed with the Commission, I've participated in and directed the review  
10 of various tariff/surcharge filings and rate case proceedings involving electric, natural gas  
11 distribution, water distribution, and telecommunications utilities. In my current position, I  
12 have supervisory responsibility for the activities of the Commission's Audit section within  
13 the Utilities Division. In that capacity, I plan, manage, and perform audits relating to utility  
14 rate cases, tariff/surcharge filings, fuel cost recovery mechanisms, transmission delivery  
15 charges, alternative-ratemaking mechanisms, and other utility filings which may have an  
16 impact on utility rates in Kansas including mergers, acquisitions, and restructuring filings.

17 **Q. Have you previously submitted testimony before this Commission?**

18 A. Yes. I have submitted written and oral testimony before this Commission on multiple  
19 occasions regarding various regulatory accounting and ratemaking issues. This work  
20 includes testimony filings in 50 dockets, including this one. A list of the other dockets that  
21 encompass this experience is available upon request.

22 **Q. Please briefly describe the matter before the Commission in this Docket.**

1 A. In this Docket, Empire District Electric Company (Empire) is requesting Commission  
2 approval of its proposed plan to retire the recently-retrofitted Asbury Coal Fired Generating  
3 Unit (Asbury) and build up to 800 MW of Wind Generation. Additionally, Empire is  
4 requesting Commission approval to create a regulatory asset for the undepreciated amount  
5 of Asbury and to recover this regulatory asset in rate base over 30 years. Empire claims  
6 that this plan will create up to \$325 million in savings for its customers over the next 20  
7 years, thus, it has dubbed the plan the Customer Savings Plan.

8 **Q. What is the purpose of your testimony in this matter?**

9 A. In the testimony that follows, I will provide Commission Staff's response to Empire's  
10 request to recover a return on and a return of the undepreciated portion of Asbury through  
11 a regulatory asset over 30 years. Additionally, I will address Empire's request for an  
12 interim depreciation rate for the proposed wind projects and I will address Empire's request  
13 to retain a portion of net revenues associated with the proposed wind farms under K.S.A.  
14 66-1245. Staff witnesses Nicholas Puga and Collin Cain address the remaining aspects of  
15 Empire's request.

## 16 **II. Executive Summary**

17  
18 **Q. Please provide an executive summary of your testimony.**

19 A. In the testimony that follows, I will present and support the following conclusions:

- 20 1. While Staff does not support the retirement of Asbury, if it is retired, Empire should  
21 not be allowed to earn a return on the undepreciated balance of the plant. Instead,  
22 Empire should be allowed to recover the balance through amortization of a  
23 regulatory asset to the cost of service over 17 years, the remaining life of Asbury.

1           Alternatively, the Commission could allow Empire to recover its investment in  
2           Asbury over a shorter period of 10 years, similar to the approach approved by the  
3           Commission for the recovery of the undepreciated balance of electric meters caused  
4           by an extraordinary retirement in Docket No. 15-KCPE-116-RTS. Allowing  
5           Empire to recover its original investment in Asbury but not earn a return on that  
6           investment, will best balance the interests of Empire's customers and investors.

7           2. Staff recommends that the Commission deny Empire's request to retain 10% of the  
8           net revenues from the sale of electricity from any wind generation facility built in  
9           a Kansas county experiencing less than 5% growth between the last two decennial  
10          censuses. Empire's request is based on its interpretation of K.S.A. 66-1245,  
11          however, in response to Staff's discovery on this topic, it is clear that Empire does  
12          not have a clear grasp on the meaning of "net revenues" in the statute, especially  
13          given the new reality of the Southwest Power Pool (SPP) Integrated Marketplace  
14          (IM).<sup>1</sup> Additionally, there is a question whether the wind projects contemplated  
15          in Empire's Customer Savings Plan would fall under K.S.A. 66-1,184a instead of  
16          K.S.A. 66-1245. Ultimately, this is not a decision the Commission needs to make  
17          now because it is not clear whether any of Empire's wind projects will qualify for  
18          this incentive. If Empire ultimately builds wind projects that qualify under K.S.A.  
19          66-1245, the statute *requires* the Commission to allow the incentive, therefore, no  
20          predetermination finding is necessary regarding this statute.

21          3. As discussed by Staff witnesses Puga and Cain, Staff does not support Empire's  
22          plan to build an additional 800 MW of wind, however, if Empire's request to build

---

<sup>1</sup> See Empire Response to Staff Data Request No. 65.

1 additional wind is approved, Staff believes the request to establish an initial  
2 depreciation rate of 30-years until a full depreciation study can be performed is  
3 reasonable.

4 **III. Request to Recover Asbury Investment as Regulatory Asset**  
5

6 **A. Description of Empire's Request**  
7

8 **Q. Please provide a description of Empire's Request as it relates to the recovery of the**  
9 **undepreciated value of Asbury.**

10 A. Part of Empire's request in this Docket is to retire the recently-retrofitted Asbury Coal-  
11 Fired Generating Facility and to recover the undepreciated balance of this investment  
12 (approximately \$204 million at the requested retirement date of April 2019) through a  
13 regulatory asset that will receive rate base treatment and be amortized over 30 years.  
14 Absent early retirement, Asbury is being depreciated over its remaining life of 17 years or  
15 through 2035.

16 **Q. Why is Empire requesting to establish a regulatory asset to accomplish the recovery**  
17 **of Asbury once it is retired?**

18 A. This request is addressed in the Direct Testimony of Robert Sager. Mr. Sager testifies that,  
19 absent a regulatory asset, Generally Accepted Accounting Principles would require Empire  
20 to write-off the undepreciated balance of Asbury at the time of retirement. Mr. Sager  
21 describes this entry as an impairment loss due to the loss of the economic value of the asset.  
22  
23  
24

1 **Q. Given normal retirement rules allowed under the Federal Energy Regulatory**  
2 **Commission (FERC) Uniform System of Accounts (USOAs), do you agree with Mr.**  
3 **Sager that the retirement of Asbury would trigger an impairment loss that would be**  
4 **required pursuant to GAAP?**

5 A. I'm not sure I agree that the retirement of Asbury in-and-of-itself would cause an  
6 impairment loss. Normal retirement accounting procedures allowed in the FERC USOAs  
7 would allow Empire to reduce accumulated depreciation (normally an offset to rate base)  
8 by the same amount as the reduction to plant in service (normally an increase to rate base),  
9 making the net impact to rate base zero. However, if Empire's regulators considered this  
10 retirement an extraordinary retirement (as I believe it is) and disallowed the resulting  
11 deficiency in accumulated depreciation from an Empire ratemaking proceeding, that would  
12 certainly lead to an impairment loss or write-off of the undepreciated book value of Asbury.

13 **Q. Do you disagree with the special accounting treatment requested by Empire to**  
14 **reclassify the remaining book value of Asbury into a regulatory asset?**

15 A. I do not disagree with Mr. Sager's conclusion which is that a regulatory asset should be  
16 established to handle the retirement of Asbury if it is indeed retired early. As discussed  
17 below, I do disagree with the time period over which this regulatory asset should be  
18 recovered and whether or not Empire should receive a return on the asset during this  
19 recovery period.

**B. Empire Support for its Request**

**Q. What Support does Empire provide for the reasonableness of its request to retire Asbury while earning a return on and a return of the undepreciated value of Asbury over 30 years?**

**A.** This request is addressed in the Direct Testimony of Empire witnesses David Swain and Chris Krygier. Mr. Swain states the following on page five of his Direct Testimony:

**Q. IS IT REASONABLE AND IN THE PUBLIC INTEREST FOR THE COMMISSION TO APPROVE SUCH A REGULATORY ASSET?**

A. Yes. That approval is critical. Empire and its investors are entitled to a return on and of their previous investments; investments that have been deemed prudently incurred and necessary in past rate proceedings. While Empire could have asked for accelerated depreciation on the Asbury plant balances, the Company is proposing to spread the remaining recovery of prudently incurred costs over thirty years to minimize the impact on customers. Therefore, customers not only benefit from avoiding additional capital costs related to environmental compliance and ongoing costs to operate and maintain the Asbury plant, they are also going to benefit from Empire's proposal to create a regulatory asset and recover its investment over a longer period of time. Without the assurance of a regulatory asset to recover Empire's investment to date, the Company will not be able to move forward with its Customer Savings Plan. It would be too much of a financial strain to both be unable to receive its recovery of previous Asbury plant capital investment and to finance 800 MW of a wind generation construction project. As a result, the wind acquisition and the Asbury retirement are inextricably tied together.

In this passage, Mr. Swain is making the argument that Empire and its investors are *entitled* to a return on and of its previous investment in Asbury, despite the fact that the plant will no longer be used and useful since it is not producing electricity for Empire's customers. Mr. Swain also presents the Commission with a take-it-or-leave-it ultimatum, stating that without the Company's requested treatment of the Asbury stranded investment costs, the utility will not be able to move forward with its Customer Savings Plan.

1 Mr. Chris Krygier echoes Mr. Swain's statement when he states the following on  
2 page 8 of his Direct Testimony:

3 **Q. HOW DOES THE CONTINUED RECOVERY OF EMPIRE'S**  
4 **ASBURY INVESTMENT BENEFIT EMPIRE'S CUSTOMERS?**

5  
6 A. The \$172-\$325 million in savings proposed by the Customer Savings Plan,  
7 and discussed in Company witness McMahon's testimony is premised on the  
8 retirement of Asbury and the establishment of a regulatory asset allowing for  
9 the return on and of the remaining net plant balances. As Company witness  
10 Swain explains, without adopting the Customer Savings Plan in its entirety,  
11 Empire would not be able to bring these savings to its customers.  
12

13 In this passage, Mr. Krygier states that the \$325 million in savings from the Customer  
14 Savings Plan cannot occur unless Empire recovers a return on and a return of its  
15 undepreciated balance of Asbury through a regulatory asset.

16 **Q. Why does Empire insist on retiring the Asbury plant as part of its Customer Savings**  
17 **Plan?**

18 **A.** That is not clear from the testimony. It is clear from the two passages noted above that  
19 Empire believes it is critical to recover a full return on and of its Asbury investment *if*  
20 *Asbury is retired* as a result of the Customer Savings Plan. What is less clear is *why* the  
21 retirement of Asbury is a necessary component of the Customer Savings Plan in the first  
22 place. While Empire believes the Customer Savings Plan can produce up to \$325 million  
23 in customer savings over 20 years, as stated in the Direct Testimony of James McMahon  
24 on page 37, the retirement of Asbury was originally expected to save \$75 million over 20  
25 years. However, as discussed in response to Staff Data Request No. 68, this original  
26 analysis was in error, and the corrected analysis estimates just \$20 million in savings over  
27 20 years from retiring Asbury.

**C. Staff's Response to Empire's Request**

**Q. Does Staff Support Empire's request to retire Asbury and to continue to earn a return on and a return of the undepreciated balance through a regulatory asset?**

**A.** No. As discussed in Staff witness Cain's Direct Testimony, Staff does not support the early retirement of Asbury as part of the Customer Savings Plan. If the Commission disagrees with Staff and rules in Empire's favor that Asbury should be retired, Staff does not recommend the full return on and return of the undepreciated balance of the Asbury investment over 30 years. Instead, Staff recommends that the Commission allow Empire to recover its original investment in Asbury by creating a regulatory asset that can be amortized over 17 years, without recovery in rate base. This time period would be consistent with the remaining life of the Asbury plant and which Staff contends would properly balance the recovery of this stranded asset between Empire's ratepayers and its shareholders.

Alternatively, the Commission could follow the practice of its previous decision in Docket No. 15-KCPE-116-RTS in which KCP&L was allowed to recover stranded meter costs over an accelerated period of ten years without a return on rate base. In that case, the remaining lives of the meters was estimated at 23.8 years. While I believe there are several circumstances that differentiate this case from that decision, nonetheless, the Commission should be reminded of that earlier decision

**D. Support for Staff's Position on Regulatory Asset Request**

**Q. Why Does Staff recommend that Empire be allowed to earn a return of, but not a return on, the undepreciated value of Asbury?**

**A.** Staff's contends that this solution properly balances the interests of Empire's customers and investors, especially given the magnitude of new capital investment contemplated in the Customer Savings Plan. Staff's recommendation is based on the following considerations:

1. Despite Mr. Swain's assertions to the contrary, Empire investors are not entitled to a full recovery of investment capital that is no longer used and useful in providing electric service to Empire's ratepayers. In Kansas, only utility property which is "used and required to be used" is required to be included in rate base pursuant to K.S.A 66-128. Likewise, it's understood that the constitutional requirements of public utility ratemaking that entitle a utility to an opportunity to earn a fair return only apply to property which is currently being used to provide service to the public.<sup>2</sup>

2. Ratemaking treatment of extraordinary retirements and abandoned utility property by public utility commissions in this country ranges from complete return on and of the original investment to an absolute exclusion of non-productive assets from the revenue requirement and several points in between. Sometimes when these non-productive assets are allowed to be amortized over time, a partial or discounted return is allowed on the asset; other commissions allow no return at all.

---

<sup>2</sup> See *Bluefield Water Works & Improvement Co. v PSC of W. Va.*, 262 U.S. 679 (1923)

1 Ultimately, Staff's proposed treatment is well within the mainstream of regulatory  
2 treatment for early retirements and abandoned utility property.

3 3. Staff maintains that allowing a utility to earn a return of the original investment  
4 but no return on is the appropriate ratemaking treatment of an extraordinary  
5 retirement that is being considered alongside significant new capital investment  
6 upon which the utility's shareholders will be allowed an opportunity to earn a  
7 return. This helps balance shareholders' desire to grow rate base and earnings with  
8 the customer impact of requiring ratepayers to pay for both new productive assets  
9 and the old retired assets.

10 4. Staff contends that there are less intergenerational inequities associated with  
11 allowing a retired asset to be recovered over its remaining life versus significantly  
12 lengthening or shortening the recovery period for the asset.

13 **E. Used and Useful Standard in Public Utility Ratemaking**  
14

15 **Q. Please discuss the "Used and Useful" concept in public utility ratemaking.**

16 A. "Used and Useful" is a concept in public utility ratemaking that attempts to ensure that  
17 customers are only paying for the assets which are actually being used and are necessary  
18 to provide them service.<sup>3</sup> In Kansas this concept is embodied in K.S.A. 66-128.

19 **66-128. Valuation of property for rate-making purposes by commission;**  
20 **construction work in progress.** (a) The state corporation commission shall  
21 determine the reasonable value of all or whatever fraction or percentage of the  
22 property of any common carrier or public utility governed by the provisions of this  
23 act which property is used and required to be used in its services to the public within  
24 the state of Kansas, whenever the commission deems the ascertainment of such  
25 value necessary in order to enable the commission to fix fair and reasonable rates,  
26 joint rates, tolls and charges. In making such valuations the commission may avail

---

<sup>3</sup> See *The Process of Ratemaking*, Public Utilities Reports, Inc. by Leonard Saul Goodman. Pages 799-800.

1           itself of any reports, records or other things available to the commission in the office  
2           of any national, state or municipal officer or board.

3  
4           (b) (1) For the purposes of this act, except as provided by subsection (b)(2),  
5           property of any public utility which has not been completed and dedicated to  
6           commercial service shall not be deemed to be used and required to be used in the  
7           public utility's service to the public.

8  
9           (2) Any public utility property described in subsection (b)(1) shall be deemed to  
10          be completed and dedicated to commercial service if: (A) Construction of the  
11          property will be commenced and completed in one year or less; (B) the property is  
12          an electric generation facility that converts wind, solar, biomass, landfill gas or any  
13          other renewable source of energy; (C) the property is an electric generation facility  
14          or addition to an electric generation facility; or (D) the property is an electric  
15          transmission line, including all towers, poles and other necessary appurtenances to  
16          such lines, which will be connected to an electric generation facility.

17  
18          (3) Nothing in this subsection (b) shall be construed to preclude the state  
19          corporation commission, either on the commission's initiation of a docket or in a  
20          utility rate proceeding, from reviewing whether expenditures for public utility  
21          property were efficient and prudent.

22  
23          (c) As used in this section, "electric transmission line" means any line or  
24          extension of a line with an operating voltage of 34.5 kilovolts or more which is at  
25          least five miles in length and which is used or to be used for the bulk transfer of  
26          electricity.

27  
28          Staff relies on the plain reading of this statute to determine when to include the value of  
29          property in rate base when recommending a revenue requirement for major investor-owned  
30          utilities in Kansas. Note that the statute says the Commission "***shall determine*** the  
31          reasonable value of all or whatever fraction or percentage of the property of any common  
32          carrier or public utility governed by the provisions of this act ***which property is used and***  
33          ***required to be used*** in its services to the public within the state of Kansas, whenever the  
34          commission deems the ascertainment of such value necessary in order to enable the  
35          commission to fix fair and reasonable rates" (emphasis added).

1           This Commission uses a rate base rate of return methodology to set rates for major  
2 investor-owned utilities in Kansas. In order to use this rate setting methodology, the  
3 Commission is required by K.S.A. 66-128 to identify the value of any property that is used  
4 and required to be used in order to include that amount in rate base. It follows then that  
5 the Commission is not required to include in rate base the value of property that is no longer  
6 used and required to be used—but rather, the Commission may exercise its own discretion  
7 and judgement in determining how such property should be treated for ratemaking  
8 purposes.

9           **F. Recent Kansas Decision Regarding Used and Useful Principle**

10  
11   **Q. Has the Commission ruled recently on a utility’s request to recover property that was**  
12 **no longer used and useful in a rate case?**

13   **A.** Yes. In Docket No. 15-KCPE-116-RTS (15-116 Docket), KCP&L requested permission  
14 to recover the undepreciated value of its traditional utility meters that were being retired in  
15 a compressed time period due to an accelerated deployment of automated meter reading  
16 technology. KCP&L requested the establishment of a regulatory asset for \$11,153,383 to  
17 be amortized over ten years with full return at its weighted average cost of capital.

18           In that case, Staff recommended that this regulatory asset be recovered over 20  
19 years which approximated the remaining life of the meters. Ultimately, the Commission  
20 decided to allow KCP&L to recover the unrecovered cost of its traditional meters through  
21 a regulatory asset over ten years but with no return. In making this decision, the  
22 Commission reasoned as follows:

23           47. K.S.A. 66-128 requires the Commission determine the reasonable value of  
24 property that is “used and required to be used” in setting reasonable rates. While  
25 the Commission accepts the decision to retire the AMR meters as prudent, it does

1 not follow that KCP&L is entitled to a return *on* its investment when the investment  
2 is no longer used in the provision of public utility service. Since the AMR meters  
3 are no longer “used and required to be used”, KCP&L is not entitled to a return *on*  
4 its investment. As a prudent business decision, KCP&L will receive a return *of* its  
5 investment, but not a return *on* its investment.  
6

7 48. Allowing KCP&L to amortize the retirement of its AMR meters over ten years  
8 is consistent with the unrecovered meter reserve approved in the 10-415 Docket.  
9 By allowing a ten-year amortization, the Commission is effectively giving some  
10 return on investment because the approved lives of the AMR meters are longer than  
11 the amortization period. In other words, shortening the time period in which  
12 KCP&L gets the return of investment serves as a return on investment.  
13 Accordingly, the Commission believes allowing KCP&L to amortize the retirement  
14 of its AMR meters over a ten-year period strikes a fair and reasonable balance  
15 between the investment expectations of KCP&L’s shareholders and the cost  
16 concerns of KCP&L’s customers. The Commission approves a ten-year  
17 amortization period for the retirement of KCP&L’s AMR meters.  
18

19 **G. Other States’ Regulatory Treatment of Retired Plant Investment**

20  
21 **Q. How does Staff’s proposed treatment of the remaining book value of Asbury compare**  
22 **to other public utility regulatory decisions involving this issue?**

23 A. Staff’s research suggests that our proposed treatment (return of but not on the investment)  
24 is well within the mainstream of how other utility regulators handle this issue. The  
25 following excerpt from *Accounting for Public Utilities* summarizes regulatory treatment of  
26 this issue as follows<sup>4</sup>:

27 As would be expected, regulatory treatment of deferred extraordinary losses  
28 varies among regulatory bodies and is greatly influenced by the specific  
29 facts and circumstances involved. On the one hand, the utility has not been  
30 allowed to recover its investment through the depreciation process. On the  
31 other hand, the property is no longer used and useful in rendering utility  
32 service. Regulatory Commissions have often excluded these loss deferrals

---

<sup>4</sup> See *Accounting for Public Utilities*, Matthew Bender and Co., Inc., by Robert L. Hahne, and Gregory E Aliff.  
Section 4.04 [12c].

1 from the rate base under the premise that the utility is not entitled to a return  
2 on property no longer in service. Exceptions have been found, however,  
3 especially in the situation where gas utilities have converted from  
4 manufactured gas to natural gas facilities.  
5

6 The authors then describe two different examples where a return was granted on  
7 extraordinary retirements; one with full rate base treatment and one with a 6% carrying  
8 charge. This section concludes by stating:

9 While rate base treatment many times is not allowed, recovery of  
10 extraordinary retirements through a cost of service amortization is more  
11 commonplace. Amortization of these balances to utility operations is often  
12 allowed where the utility can demonstrate that, through no fault of its own,  
13 prior depreciation provisions were inadequate, and the retirement is clearly  
14 for the public's benefit. This is often the case where retired plant is replaced  
15 with more effective equipment.  
16

17 Another publication that provides insight into other states' regulatory treatment for retired  
18 and abandoned utility property is *The Process of Ratemaking*<sup>5</sup>:

19 **Amelioration of the risk of removal from rate base.** Depreciation on  
20 abandoned property may or may not be allowed. By allowing depreciation  
21 to continue and at the same time removing the offending property from rate  
22 base, some commissions effectively divide the responsibility between  
23 investors and ratepayers for unforeseen events. In such cases, the utility  
24 investors continue to benefit from the inclusion of depreciation and other  
25 related operating expenses in the rates, and the ratepayer benefit from the  
26 omission from the rates charged the users of the service of any rate of return  
27 (or other "profit" allowance) and taxes on the non-used and useful property.  
28 A caveat must be attached to the above statement. An agency may divide  
29 responsibility, or otherwise balance the interests of ratepayers and  
30 shareholders, only for prudently incurred costs. If the agency finds that  
31 costs were imprudent, it may not lawfully require ratepayers to share in the  
32 financial burden of those costs.  
33

---

<sup>5</sup> See *The Process of Ratemaking*, Public Utilities Reports, Inc., by Leonard Saul Goodman. Pages 815-823.

1 While a review of other states' ratemaking treatment of retired and abandoned utility  
2 property reveals a wide range of possible solutions, this also confirms that Staff's proposed  
3 treatment of unrecovered costs from the Asbury facility is not outside of the realm of  
4 reasonableness.

5 **H. Effect of Empire's Capital Investment Plan on Staff's Position**

6  
7 **Q. Please elaborate further on Staff's rationale for recommending recovery of Asbury**  
8 **over its remaining life with no return?**

9 A. Empire's Customer Savings Plan involves retiring Asbury and building an additional 800  
10 MW of wind at an expected cost of \$700 million to Empire after tax-equity financing. If  
11 Empire's plan is approved, its investors will have the opportunity to earn a return on and  
12 of \$700 million of new capital investment. While Empire claims that this capital  
13 investment will result in savings for Empire's customers, as discussed in the Direct  
14 Testimony of Staff witnesses Puga and Cain, there are several risks and inherent  
15 uncertainties in Empire's "savings" projections. If Empire's long-term projections end up  
16 being inaccurate, customers will not end up saving, but Empire's shareholders will still  
17 earn their authorized return on \$700 million in new investment. Staff's view is that it is  
18 inequitable to require Empire's customers to pay for a rate of return for \$700 million in  
19 new wind investment while also requiring them to continue to pay the full return on a power  
20 plant that is no longer being used to serve them.

**I. Rationale for Deviation from 15-116 Docket Order**

**Q. Given the Commission's decision in the 15-116 Docket to allow the unamortized value of retired meters to be recovered over 10 years, why is Staff recommending that Asbury be recovered over 17 years?**

**A.** Staff is recommending that Asbury's remaining book value be recovered over 17 years because of the significance of the size of the regulatory asset. The remaining net book value of Asbury is estimated to be \$204 million at April 2019. This equates to an annual amortization of \$12 million per year, or approximately \$667,200 after allocation to Kansas, assuming an allocation rate of 5.6%<sup>6</sup>. This \$667,200 would be recovered by approximately 10,000 Empire customers annually. As a comparison, the regulatory asset in question in the KCP&L case was \$11,153,383, and KCP&L has more than twenty times as many Kansas customers. This math makes the customer impact of recovering Asbury over ten years much more costly to customers than the KCP&L retired meters asset. Additionally, in the KCP&L case, its replacement meter program was projected at \$53 million. In comparison, in this case, Empire is planning to invest \$700 million to replace Asbury.

**J. Customer Impact of Different Recovery Options for Asbury**

**Q. How would the different recovery options for Asbury affect Empire's customers?**

**A.** Using the billing determinants from the 17-EPDE-280-TAR Docket and assuming 1000 kWh per year, the recovery of Asbury over 17 years without return would cost a Kansas residential customer \$2.78/month.<sup>7</sup> If the amortization period was shortened to ten years, the rate impact on that same customer would be \$4.73/month.<sup>8</sup> If the Commission were to

---

<sup>6</sup> This is the allocation rate used to allocate the costs of Asbury to Kansas in Docket No. 17-EPDE-280-TAR.

<sup>7</sup> See Staff Exhibit JTG-1.

<sup>8</sup> See Staff Exhibit JTG-2.

1 agree with Empire's proposal for the recovery of Asbury over 30 years with inclusion in  
2 rate base, the first year revenue requirement of this option would cost that same Empire  
3 Customer \$4.84/month at the beginning of the amortization period.<sup>9</sup> While the revenue  
4 requirement associated with this proposal would decline over the life of the asset, even ten-  
5 years into the amortization the revenue requirement will still be \$3.81/month, with another  
6 20 years left to recover this asset from customers.<sup>10</sup>

#### 7 **IV. Request for Application of K.S.A. 66-1245.**

##### 8 **A. Description of Empire's Request**

9  
10 **Q. Please describe Empire's request in this Application relating to the incentives**  
11 **required under K.S.A. 66-1245?**

12 **A.** On page 13 of Mr. Krygier's Direct Testimony, he describes that Empire is seeking a  
13 determination from the Commission that, to the extent any of the wind projects that it builds  
14 in Kansas meet the criteria established under K.S.A. 66-1245, it will be entitled to the  
15 adjustment in its rates (incentives) called for in that statute.

16 **Q. What does K.S.A. 66-1245 say?**

17 **A.** K.S.A. 66-1245 reads as follows:

18 **66-1245. Same; determination of utility's revenue requirements.** (a) if an  
19 electric public utility constructs new or expanded electric generation capacity on or  
20 after January 1, 2004, in a county where the population has not increased more than  
21 5% between the dates of the two most recent decennial censuses taken and  
22 published by the United States bureau of the census, the state corporation  
23 commission, in determining the utility's revenue requirements, shall make  
24 adjustments that allow the utility to retain benefits equivalent to 10% of the net  
25 revenues from sales of electricity generated by such new or expanded capacity to  
26 customers outside the state.

---

<sup>9</sup> See Staff Exhibit JTG-3.

<sup>10</sup> See Staff Exhibit JTG-4.

(b) the provisions of this section shall not apply to net revenues which are subject to the provisions of K.S.A. 66-1,184a, and amendments thereto.

**B. Staff's response to Empire's Request**

**Q. Does Staff support Empire's Request?**

A. No. The Commission should deny Empire's request in this Docket. If Empire builds generation that qualifies under K.S.A. 66-1245, then the Commission will be required to allow Empire to retain 10% of the net revenues from the sale of electricity from that generating unit to customers outside the state of Kansas, as long as the net revenues from that wind farm are not subject to the provisions of K.S.A. 66-1,184a. Because Empire has not yet chosen a wind farm location, this request is premature. Additionally, Empire has not met its burden of proof with regard to this request in this Docket.

**Q. Why do you believe Empire has not met its burden of proof with regard to this request?**

A. As discussed above, Empire has not yet chosen a wind farm location for its proposed wind farms. Therefore, it is impossible to determine whether these wind farms will be built in a Kansas county that has grown by less than 5% between the dates of the last two decennial censuses. Additionally, in response to Staff Data Request No. 65, Empire was not able to define or quantify the meaning of net revenues as called for in K.S.A. 66-1245. Lastly, Empire did not model the effects of this incentive in its Generation Fleet Savings Analysis or any of the purported customer savings figures presented in this Docket. There are simply too many unanswered questions, both legal and technical, for the Commission to rule on the applicability of K.S.A. 66-1245 in this Docket.

**V. Request for Initial Depreciation Rate if Wind is Built**

**A. Description of Empire's Request**

**Q. Please describe Empire's request for a depreciation rate related to new wind investments.**

A. Empire witnesses Chris Krygier and Dane Watson describe this request. Empire states that it needs a Commission-approved depreciation rate for any wind farm that it constructs so that it can begin to depreciate the wind investments when they go into service. This initial depreciation rate will be used until Empire's next rate case, at which time a full depreciation study will be performed on the wind assets. Mr. Watson recommends that this initial depreciation rate be set at 30 years, with an annual rate of 3.33%.

**B. Staff response to Empire's Request**

**Q. Does Staff support Empire's Request?**

A. Yes. While Staff does not support Empire's request to build 800 MW of wind at this time, in the event that Empire constructs new wind generation assets, Staff agrees that this investment will need to begin accumulating depreciation as soon as it goes into service. Staff discussed this issue with its depreciation consultant, Roxie McCullar, and Ms. McCullar responded that Empire's requested depreciation rate was a reasonable starting place to depreciate any new wind farm investment until a full depreciation study can take place at the time of Empire's next rate case.

**Q. Does that conclude your testimony?**

A. Yes.

**The Empire District Electric Company  
Kansas Corporation Commission  
Docket No. 18-EPDE-184-PRE  
Response to Staff's Fifth Set of Data Requests**

Response provided by: Christopher D. Krygier  
Title: Director, Rates and Regulatory Affairs  
Company Response Number: STAFF 5-65  
Date of Response: February 20, 2018

---

**Question:**

Page 13 of Mr. Chris Krygier's Direct Testimony states that Empire is requesting determination under K.S.A. 66-1245, which allows the company to retain 10% of the net revenues from the sale of electricity to customers outside of the state and that was generated by the wind farm. Please provide the following with regard to this request:

1. Please identify the customers, and the revenues to which this request applies.
2. Are these wholesale customers, retail customers or both?
3. Please estimate the dollar amount of these revenues to customers outside of the state for the life of the wind farms and the 10% amount that Empire is requesting to retain.
4. Please reflect the results of these retained revenues in the NPVRR calculations provided in support of the GFSA and this Application.

**Response:**

1. The Company would plan to allocate the revenues from the sale of electricity from the wind farms, if any, that would qualify for the ratemaking treatment under K.S.A. 66-1245, between those revenues received from Kansas customers and those revenues received from customers outside of the state of Kansas. Then, pursuant to the statute, the Company would retain 10% of the net revenues from the sale of electricity to customers outside of the state of Kansas from the qualifying wind farms so the 10% of net revenues would be excluded from either its Kansas allocated cost of service if revenues are recovered through base rates, or its Kansas allocated energy cost adjustment if revenues and expenses relating to the wind farms are recovered through the ECA in Kansas. For example, if the annual total net revenues from the sale of electricity from the qualifying wind farms is \$1 million and the net revenues from that total received from customers outside of the state of Kansas is \$900,000, then \$100,000 in revenue would go into the total Company cost of service or ECA and then reflected in the portion of the total Company cost of service or ECA allocated to Kansas. Assuming the Kansas allocation is 5%, then in the above example \$45,000 of

the revenues would be retained by the Company and not reflected in either the Kansas allocated cost of service or ECA. Finally, please note that this provision would apply only if the projects were constructed in certain Kansas counties meeting the population parameters referenced in the statute.

2. The statute refers to customers outside the state of Kansas so the Company interprets that to mean net revenues received from all customers located outside the state of Kansas, which would include both retail and wholesale customers.
3. The annual revenue depends upon each year of the analysis, please see the workpaper labeled "Generator Fleet Savings Analysis – DH 2017 1103," and the "Unit Info" tab. Once at this tab, under the "Endpoint" label, select "2" (which refers to Plan 2) and then "19KSA Year 1-3 MP" and "19KSB Year 4-40 MP" in the "Generating unit" label. The total Company gross revenues are \$23 million in 2019, \$106 million in 2020, \$116 million in 2021 and \$123 million in 2022. As an example, the 2022 gross revenue is \$123 million, of which \$113 million in gross revenue is attributed to revenues received from customers outside of Kansas. For purposes of calculating the Kansas cost of service, the \$113 million would be included in the Company's cost of service and assuming Kansas' allocation of those revenues is 8%, the Company would be allowed to retain \$900,000 of the \$113 million. Note that these numbers are based upon gross revenue, and the statute refers to net revenue, so the numbers would have to be further adjusted downward to reflect net revenues instead of gross revenues to determine the amount retained by the Company.
4. The Company did not include any of these results in the GFSA or Application.

**The Empire District Electric Company  
Kansas Commission Corporation  
Docket No. 18-EPDE-184-PRE  
Response to Staff's Fifth Set of Data Requests**

VERIFICATION OF RESPONSE

I, Christopher D. Krygier, have read Information Requests 5-59, 5-64, 5-65, and 5-66 and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to these Information Requests.

Signed: Christopher D. Krygier 2/19/18

Name: Christopher D. Krygier

Title: Director, Rates and Regulatory Affairs

Dated: 2/19/18

**The Empire District Electric Company**  
**Revenue Requirement Calculations for Asbury Regulatory Asset**

Line No.	Description	Amount (\$)
1	I. Asbury Costs	
2	Rate Base	
3	Asbury Regulatory Asset (\$204 million)	\$ 204,000,000
4	Accumulated Depreciation	
5	Total Rate Base (Line 3 - Line 4)	\$ 204,000,000
6		
7	Kansas Jurisdiction Allocation Percentage	5.06%
8		
9	Kansas Jurisdictional Rate Base (Line 5 x Line 7)	\$ -
10	Rate of Return on Rate Base (From GFSA Assumptions)	0.00%
11	Return on Rate Base (Line 9 x Line 10)	\$ -
12		
13	Expenses	
14	Amortization Expense (\$204 million/17 years)	\$ 607,200.00
15	Income Taxes @26.53%	-
16	Total Expenses (Sum Lines 14 - 15)	\$ 607,200
17		
18		
19		
20	III. Total Revenue Requirement (Line 11 + Line 16)	\$ 607,200
21		
22	IV. Kansas Retail Revenue Sales - kWh (for the Twelve Months Ending June 30, 2016)	218,064,176
23		
24	V. Rate per kWh	\$ 0.00278

Monthly Bill Impact @1000 kWh \$ 2.78

**The Empire District Electric Company  
Revenue Requirement Calculations for Asbury Regulatory Asset**

Line No.	Description	Amount (\$)
1	I. Asbury Costs	
2	Rate Base	
3	Asbury Regulatory Asset (\$204 million)	\$ 204,000,000
4	Accumulated Depreciation	
5	Total Rate Base (Line 3 - Line 4)	\$ 204,000,000
6		
7	Kansas Jurisdiction Allocation Percentage	5.06%
8		
9	Kansas Jurisdictional Rate Base (Line 5 x Line 7)	\$ -
10	Rate of Return on Rate Base (From GFSA Assumptions)	0.00%
11	Return on Rate Base (Line 9 x Line 10)	\$ -
12		
13	Expenses	
14	Amortization Expense (\$204 million/10 years)	\$ 1,032,240.00
15	Income Taxes @26.53%	-
16	Total Expenses (Sum Lines 14 - 15)	\$ 1,032,240
17		
18		
19		
20	III. Total Revenue Requirement (Line 11 + Line 16)	\$ 1,032,240
21		
22	IV. Kansas Retail Revenue Sales - kWh (for the Twelve Months Ending June 30, 2016)	218,064,176
23		
24	V. Kansas Rate per kWh	\$ 0.00473

Monthly Bill Impact @1000 kWh \$ 4.73

**The Empire District Electric Company  
Revenue Requirement Calculations for Asbury Regulatory Asset**

Line No.	Description	Amount (\$)
1	I. Asbury Costs	
2	Rate Base	
3	Asbury Regulatory Asset (\$204 million less Deferred Tax @26.53%)	\$ 149,878,800
4	Accumulated Depreciation	
5	Total Rate Base (Line 3 - Line 4)	\$ 149,878,800
6		
7	Kansas Jurisdiction Allocation Percentage	5.06%
8		
9	Kansas Jurisdictional Rate Base (Line 5 x Line 7)	\$ 7,583,867
10	Rate of Return on Rate Base (From GFSA Assumptions)	7.06%
11	Return on Rate Base (Line 9 x Line 10)	\$ 535,421
12		
13	Expenses	
14	Amortization Expense (\$204 million/30 years)	\$ 380,800.00
15	Income Taxes @26.53%	139,665
16	Total Expenses (Sum Lines 14 - 15)	\$ 520,465
17		
18		
19		
20	III. Total Revenue Requirement (Line 11 + Line 16)	\$ 1,055,886
21		
22	IV. Kansas Retail Revenue Sales - kWh (for the Twelve Months Ending June 30, 2016)	218,064,176
23		
24	V. Kansas Rate per kWh	\$ 0.00484

Monthly Bill Impact @1000 kWh \$ 4.84

**The Empire District Electric Company**  
**Revenue Requirement Calculations for Asbury Regulatory Asset**

Line No.	Description	Amount (\$)
1	I. Asbury Costs	
2	Rate Base	
3	Asbury Regulatory Asset (\$136 million less Deferred Tax @26.53%)	\$ 99,919,200
4	Accumulated Depreciation	
5	Total Rate Base (Line 3 - Line 4)	\$ 99,919,200
6		
7	Kansas Jurisdiction Allocation Percentage	5.06%
8		
9	Kansas Jurisdictional Rate Base (Line 5 x Line 7)	\$ 5,055,912
10	Rate of Return on Rate Base (From GFSA Assumptions)	7.06%
11	Return on Rate Base (Line 9 x Line 10)	\$ 356,947
12		
13	Expenses	
14	Amortization Expense (\$204 million/30 years)	\$ 380,800.00
15	Income Taxes @26.53%	93,110
16	Total Expenses (Sum Lines 14 - 15)	\$ 473,910
17		
18		
19		
20	III. Total Revenue Requirement (Line 11 + Line 16)	\$ 830,858
21		
22	IV. Kansas Retail Revenue Sales - kWh (for the Twelve Months Ending June 30, 2016)	218,064,176
23		
24	V. Kansas Rate per kWh	\$ 0.00381

Monthly Bill Impact @1000 kWh \$ 3.81

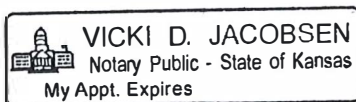
STATE OF KANSAS                    )  
  ) ss.  
COUNTY OF SHAWNEE            )


**VERIFICATION**

Justin Grady, being duly sworn upon his oath deposes and states that he is a Chief Auditor for the Kansas Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Direct Testimony*, and attests that the statements contained therein are true and correct to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
Justin Grady  
Chief Auditor  
State Corporation Commission of the  
State of Kansas

Subscribed and sworn to before me this 1st day of March, 2018.



  
\_\_\_\_\_  
Notary Public

My Appointment Expires: June 30, 2018

## CERTIFICATE OF SERVICE

18-EPDE-184-PRE

I, the undersigned, certify that a true and correct copy of the above and foregoing Direct Testimony of Justin T. Grady on Behalf of the Kansas Corporation Commission was served via electronic service this 1st day of March, 2018, to the following:

JAMES G. FLAHERTY, ATTORNEY  
ANDERSON & BYRD, L.L.P.  
216 S HICKORY  
PO BOX 17  
OTTAWA, KS 66067  
Fax: 785-242-1279  
[jflaherty@andersonbyrd.com](mailto:jflaherty@andersonbyrd.com)

TODD E. LOVE, ATTORNEY  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
[t.love@curb.kansas.gov](mailto:t.love@curb.kansas.gov)

SHONDA RABB  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
[s.rabb@curb.kansas.gov](mailto:s.rabb@curb.kansas.gov)  
STEPHAN SKEPNEK, LITIGATION COUNSEL

KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604-4027  
Fax: 785-271-3354  
[s.skepnek@kcc.ks.gov](mailto:s.skepnek@kcc.ks.gov)

CHRISTOPHER D. KRYGIER, DIRECTOR, REGULATORY &  
GOVERNMENT AFFAIRS  
LIBERTY UTILITIES CO.  
PO BOX 127  
JOPLIN, MO 64802-0127  
[chris.krygier@libertyutilities.com](mailto:chris.krygier@libertyutilities.com)

THOMAS J. CONNORS, ATTORNEY AT LAW  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
[tj.connors@curb.kansas.gov](mailto:tj.connors@curb.kansas.gov)

DAVID W. NICKEL, CONSUMER COUNSEL  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
[d.nickel@curb.kansas.gov](mailto:d.nickel@curb.kansas.gov)

DELLA SMITH  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
[d.smith@curb.kansas.gov](mailto:d.smith@curb.kansas.gov)  
SARAH B. KNOWLTON, SENIOR DIRECTOR,  
REGULATORY COUNSEL

LIBERTY UTILITIES CO.  
15 BUTTRICK ROAD  
LONDONDERRY, NH 03053  
[sarah.knowlton@libertyutilities.com](mailto:sarah.knowlton@libertyutilities.com)

  
Vicki Jacobsen