BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of The Empire District Electric Company of Joplin, Missouri for authority to file tariffs increasing rates for electric service provided to customers in the Missouri service area of the Company	)))))))	**ER-2008-0093**

RESPONSE OF INDUSTRIAL INTERVENORS
TO EMPIRE DISTRICT OBJECTION TO LATE-FILED EXHIBIT 32

On June 2, 2008, Industrial Intervenors, submitted a late-filed exhibit, designated No. 32, that number having been reserved by Empire District. Empire replied with an objection, asserting that the submission is "not the information that Empire's counsel requested."

There is an old maxim applicable in trials or hearings that counsel takes the risk of asking a question to which they don't know the answer. Given that, Empire's objection is amusingly akin to cross-examining counsel objecting to a witness' answer that "they didn't give me the answer I wanted."

Empire did not object to the affidavit or the response or that there was insufficient foundation for the exhibit and those objections are now waived.[1/] Empire's apparent objection is that it was "not the information that Empire's counsel requested." Unfortunately for Empire, it was.

[1/] Section 536.070(12) RSMo. 2000.

So that the Commission can see the entire exchange in the context of questions from the bench, and because it is not lengthy, here is the entire exchange with Mr. Brubaker:

RECROSS-EXAMINATION BY MR. MITTEN:
Q. Mr. Brubaker, in response to questions from both Commissioner Clayton and Commissioner Jarrett, you referenced a sharing proposal that's in place for Rocky Mountain Power in Wyoming. Do you recall that?
A. Yes.
Q. Now, you also mentioned that you were a witness in the Aquila case. Is that the same fuel adjustment clause for Rocky Mountain Power that was discussed in that case, in the Aquila case?

00786

A. I'm not sure if there was a recent Rocky Mountain Power fuel adjustment clause discussed in that case. And there was in the companion or the nearby Ameren case. I suspect it was the same thing.
Q. As I recall, and maybe you can tell me if this -- this is the fuel adjustment clause that you were referring to. The sharing mechanism in that case was agreed to in the stipulation. Is that your recollection?
A. It was initially implemented in a stipulation. It was subsequently readopted in a follow-up electric power rate proceeding.
Q. Was that a contested case or was it again stipulated by the parties as to the structure of the fuel adjustment clause?
A. The case -- the case was a contested case. I -- you know, I don't know that there were contentions about the fuel adjustment clause. I wasn't that closely involved with it.
Q. Okay. You also indicated that you were aware of several commissions that had imposed a requirement that companies collect less than 100 percent of their fuel and purchased power costs through their fuel adjustment clause?
A. That there was a sharing, yes.

00787

Q. Would you be willing to provide a list of those utilities that you're aware of?
A. Sure.
Q. And could you give me case numbers where the fuel adjustment clause was adopted for those companies?
A. If we have that, yes.[2/]

First of all, Empire engages in some limited sophistry regarding the word "imposed"[3/] apparently as distinguished from

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[2/] Transcript, pp. 785-87.

[3/] Tr. p. 786, l. 21.

"in place" which was specifically asked by Empire counsel.[4/] In dealing with different jurisdictions, the word "imposed" likely means different things in different contexts. For example, in Missouri, and even in this case as recently as May 3, 2008 in its Order Approving Stipulation and Agreement As to Certain Issues, in Ordered Paragraph 2, the Commission said:

> 2. The signatory parties ***are ordered to comply*** with the terms of the Stipulation and Agreement as to Certain Issues. Slip Opinion, at p. 2 (emphasis added).

Questions may legitimately arise from jurisdiction to jurisdiction as to what "imposed" means within the context of the specific case there in issue. Rather than engage in sophistry about what "is is," providing a complete response so the Commission may evaluate the material seems more appropriate, particularly given that the context was a followup to legitimate bench questions. For that reason Mr. Brubaker's covering statement said:

> Attached is a summary sheet for the provisions of the fuel adjustment clauses and tariffs, orders and/or stipulations implementing such clauses.
>
> Tariff language is included where the provisions are set forth in the tariff itself.
>
> In the case of several of the Northwestern utilities, the tariff language does not specify the sharing mechanism, but rather only the resulting factor. In these cases, attached are the relevant documents (testimony, stipulations) which explain the operation of the sharing mechanisms.[5/]

[4/] Tr. p. 785, ll. 18-19.

[5/] Late Filed Exhibit 32, page 1.

Providing full and complete data about these mechanisms permits the Commission (and others who so desire) to delve into the particulars of a specific sharing mechanism. Our sense is that the Commission is seeking to learn what other regulators have done so as to avoid stepping out of the "regulatory mainstream." Full information is the best way to facilitate that inquiry.

Apparently, however, Empire is unhappy to discover that any utility anywhere has such an approved sharing mechanism. And thus, Empire is distressed to learn that at least[6/] six American utilities have various sharing mechanisms in place. Empire apparently would ***not*** have the Commission be aware that, for example, Rocky Mountain Power, Portland General Electric, Avista Corporation in Washington State, and Puget Sound Energy all have variations of sharing "bands" as suggested by Mr. Brubaker. Additionally, Empire would apparently prefer that the Commission ***not*** know that Montana-Dakota Utilities (North Dakota) and Idaho Power Company have sharing wherein the utility absorbs 10% of these costs. Moreover, Empire would apparently prefer that the Commission ***not*** know that Portland General Electric in Oregon uses a combination of a "deadband," and boundaries of -75 basis points and +150 basis points. These are, of course, different boundaries than those proposed by Mr. Brubaker, but the concept is not significantly different.

[6/] Exhibit 32 is not represented as a complete list; only those of which Mr. Brubaker is aware.

Rocky Mountain Power, Avista and Puget Sound Energy use "banded" mechanisms but do not tie their mechanisms to basis point differentials, rather to dollar differentials symmetrically above and below the fuel cost level set in the most recent case; all information that Empire prefers that the Commission ***not*** know. For example, Puget Sound Energy, whose mechanism is laid out beginning on page 12 of Exhibit 32 provides for a "deadband" in which all the costs and benefits flow to the utility, followed by a second sharing band in which 50% of the costs and benefits go to the utility while 50% go to customers, third sharing band in which 10% of costs and benefits go to the utility while 90% of the costs and benefits go to customers, and a final fourth band in which 5% of costs/benefits are flowed to the utility and 95% are assigned to customers. Puget Sound's mechanism even contains a cap of $40 million and a different sharing percentage at that point.

Similarly Empire would apparently prefer that the Commission ***not*** be aware that Rocky Mountain Power's approved mechanism (as shown by the tariffs beginning at page 18 of Exhibit 32) has a deadband of $40 million above the base fuel amount in which the utility absorbs 100% of the differential, followed by sequential bands of $40-$100 million in which the utility absorbs 30% and the rest is passed through to customers, another band of $100 million to $200 million in which the utility recovers a still larger amount and a final band applicable to differentials greater than $200 million above the base amount

where the utility recovers 90% from customers while absorbing only 10%. Obviously, these "bands" are designed with the size of the particular utility in mind, but the concept of a "banded" differential has been utilized numerous times. But, of course, Empire would prefer that the Commission ***not*** be informed regarding this issue. If the regulatory "mainstream" is perceived beneficial for the utility on some issues, then it should be appropriate to use it for other issues.

The apparent ground of Empire's second objection appears to be that "docket" numbers were not provided. However, examination of even the transcript portion quoted by Empire in its objection reveals that Mr. Brubaker only responded, "[I]f we have that, yes." Empire is mistaken in asserting that some commitment was made to provide "docket" numbers that were not know to Mr. Brubaker.

That said, Empire needs to look carefully at Exhibit 32. In most if not all the examples, "docket" numbers are provided, at least to the extent they are known. Given the dates and names of the utilities and the other information provided, Empire can readily locate the decisions using research tools.

Finally, Mr. Brubaker will be filing testimony in the true-up phase of the case, presently scheduled for hearing on Thursday, June 19, 2008. It is expected that he will be present for that part of the case, so if Empire counsel -- or members of the Commission for that matter -- would like to make further inquiry about this matter, Mr. Brubaker will be available for

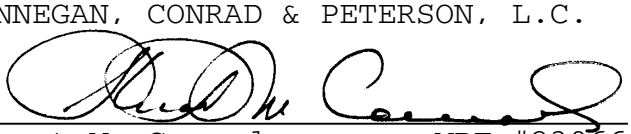
that purpose in addition to any questions on the true-up issues themselves.

In sum, Empire's objection is based on having requested, reserved an exhibit for, and then received information that it would have preferred remain hidden from the Commission. Certainly counsel can argue about what "imposed" means, but we think that a more complete response that allows the Commission to evaluate the background of the mechanisms is of greater value to the Commissioners than a list of "docket" numbers, particularly given the context of the request as a followup to questions from the bench about the structure of sharing mechanisms employed in other jurisdictions of which the witness was aware.

Empire's objection should be overruled.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.



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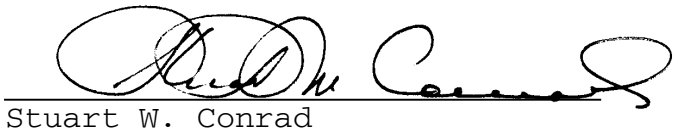
ATTORNEYS FOR INDUSTRIAL INTERVENORS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by e-mail, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.



Stuart W. Conrad

Dated: June 16, 2008