BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
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In the Matter of an Examination of the Class Cost of Service and Rate Design in the Missouri Jurisdictional Electric Service Operations of Aquila, Inc	))))	**Case No. EO-2002-384**

PREHEARING BRIEF OF THE FEDERAL EXECUTIVE AGENCIES

I. BACKGROUND

The major Federal installation served by Aquila is Whiteman Air Force. Whiteman AFB is an LPS customer on the Aquila MPS system. The Federal Executive Agencies' (FEA) cost of service study presented by Maurice Brubaker shows that the MPS LPS class is paying above its cost of service based on current rates. The LPS class is overpaying by 7.46% (Maurice Brubaker, Direct, Schedule 6 pg 2). Pre-filed testimony by the Federal Executive Agencies and the Company indicate that the LPS class is overpaying. The Federal Executive Agencies recommend that the increase to any customer class be capped at between 4 and 6%.

II. FEA STATEMENT OF POSITION

A. What is the appropriate method for allocating generation-related costs to customer classes?

FEA Position: Fixed generation costs should be allocated to customer classes on the basis of the average and excess summer non-coincident peak (A&E - summer NCP) method. Variable costs should be allocated on the basis of class energy adjusted for losses.

B. What is the appropriate method for allocating transmission-related costs to customer classes?

FEA Position: Transmission costs should be allocated to classes using the A&E - summer NCP method.

C. What is the appropriate method for allocating distribution-related costs to customer classes?

FEA POSITION: Distribution substations and feeder lines should be allocated based on class peaks at the primary voltage level, where each rate schedule is a separate class.

For Accounts 364 through 368:

1. The customer component of the primary distribution system should be allocated to all customers on weighted customers (primary plus secondary customers).

2. The demand component of the primary distribution system should be allocated to all customers using class demands at the primary voltage level, with classes defined as rate schedules.

3. The customer component of the secondary distribution system should be allocated on weighted secondary customers.

4. The demand component of the secondary distribution system should be allocated using individual customer peaks at the secondary voltage level.

D. What is the appropriate classification of distribution plant into the categories of primary demand, secondary demand, primary customer-related and secondary customer-related?

FEA POSITION: The methodology employed by Aquila and explained in the direct testimony of David Stowe should be used.

E. What is the appropriate method for allocating administrative and general expenses to customer classes?

FEA POSITION: Account Nos. 920 (A&G Salaries), 921 (Office Suppliers), 922 (Administrative Expenses Transferred), 925 (Injuries & Damages), 926 (Employee Pensions and Benefits), and 931 (Rents) should be allocated on the labor component of the O&M expense in other functional categories allocated to customer classes. Account Nos. 924 (Property Insurance) and 935 (Maintenance of General Plant) should be allocated on gross plant from other functions as allocated to customer classes. Account Nos. 923 (Outside Services), 928 (Regulatory Commission Expenses), 929 (Duplicate Charges Credited), and 930 (Miscellaneous) should be allocated on total revenue.

F. Should inter-class revenue adjustments be determined in this case and should inter-class revenue adjustments be implemented in this case?

FEA POSITION: Inter-class revenue adjustments should be determined in this case, but implemented in conjunction with the rate increase in Case No. ER-2005-0436.

G. 1. What are the appropriate inter-class revenue adjustments? Or

2. What is the appropriate method to determine them?

a. As explained in the direct testimony of Maurice Brubaker (pages 29 through 33), the appropriate inter-class revenue adjustments would follow the results of the cost of service study with mitigation to the extent that no class would receive an increase of more than 4%-6% on a revenue neutral basis. See Schedule 6 attached to Mr. Brubaker's direct testimony.

b. N/A

H. What rate schedules should be combined, eliminated or added?

FEA POSITION: The large power tariffs of MPS and L&P should remains separate tariffs.

I. What changes to the rate structure on each rate schedule are appropriate?

FEA POSITION: The existing rate relationships within the large power tariffs of MPS and L&P are appropriate and should not be modified.

J. How should the appropriate rate values for each rate schedule be determined?

FEA POSITION: Within the large power tariff, any change in revenue level should be incorporated as an equal percentage to each block.

K. NEW ISSUE: How should income taxes be allocated?

FEA POSITION: The reason for the additional issue is that Aquila did not change its allocation of income taxes from its initial approach, which is based on an allocation using operating expenses, rather than rate base as all other parties have used. Income taxes should be allocated to classes based on their allocated rate base.

I1I. DISCUSSION

A. PRODUCTION AND TRANSMISSION ALLOCATOR - ISSUES II A AND II B.

The main reason that each party has reached a different result is the production/generation and transmission allocator used by the parties, see David L. Stowe, Rebuttal, pg 16 ln 5-10. The FEA uses the Average and Excess (A&E) methodology with 3 noncoincident peaks, and Aquila uses the A&E methodology with 3 coincident peaks. Staff and OPC assert that they used Time of Use (TOU) allocators; OPC deviated from staff's method and used an unidentified method which overly emphasized energy in its allocator.

The FEA A&E method of allocating production/generation and transmission costs is recognized as valid by NARUC, see the NARUC Electric Utility Cost Allocation Manual January 1992 pg 49. The average and excess method is an appropriate method for the analyst to use, id pg 49. The A&E method, according to NARUC, is used to incorporate energy weighing into the cost allocator. The A&E method allocates production plant costs to rate classes using factors that combine the classes' average demands and their excess demands where the excess demands are a function of their non-coincident peak (NCP) demands.

According to Mr. Brubaker the method which staff witness Mr. Busch used is not described in the NARUC cost allocation manual, nor has Mr Brubaker seen this particular method used in any other jurisdiction, Maurice Brubaker (MEB) Rebuttal, pg 10 line 12 -14. In addition the OPC allocation method for generation and transmission plant is not in the NARUC cost allocation manual or any other reference, MEB Rebuttal pg 5 ln 10. The lack of widespread acceptance of the staff's and OPC's methods means that they have not been tested or verified, Maurice Brubaker, Rebuttal pg 5 ln 15. The evidentiary value of expert testimony based on untested and unverified methods is questionable.

In *State ex rel. GS Technologies Operating Co., Inc. d/b/a GST Steel Company v. The Public Service Commission*, 116 S.W.3d 680 (Mo.App. 2003), the court held that Mo Rule of Evidence 490.065, Revised Statues of Missouri 490.065 R.S.Mo, was applicable to Commission proceedings. Section 3 of 490.065 states in part: "The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing and must be of a type **reasonably relied** upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reasonably reliable." Federal Rule of

Evidence Rule 702, Testimony by Experts states that if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the **product of reliable principles and methods**, and (3) the witness has applied the principles and methods reliably to the facts of the case. The Notes of Advisory Committee on the 2000 amendments to rule 702 states that Rule 702 was amended in response to *Daubert v. Merrell Dow Pharmaceuticals, Inc*., 509 U.S. 579 [125 L. Ed. 2d 469] (1993), and to the many cases applying Daubert, including *Kumho Tire Co. v. Carmichael*, [143 L. Ed. 2d 238,] 119 S.Ct. 1167 (1999).

The majority in Daubert set forth a five-factor, nondispositive, nonexclusive, "flexible" test to be employed by the Trial Court under Rule 702 in determining the "validity" of scientific evidence. These factors are:

(1) whether the technique or theory can be or has been tested;

(2) whether the theory or technique has been subject to peer review and publication;

(3) the known or potential rate of error;

(4) the existence and maintenance of standards and controls; and

(5) the degree to which the theory or technique has been generally accepted in the scientific community.

The staff and OPC methods suffers from a lack of acceptance as well as seeming lack of peer review. Data Requests from Staff and OPC so indicate, for example see David L. Stowe, Surrebuttal pg 3 ln 3 -5 and DR 12 from SIEUA attached to his testimony. Staff is unaware of any

other Commission that utilized the generation allocation method except for MoPSC. However the Missouri cases relied on by staff are dated, all are over 20 years old. The staff response to SIUEA and AGP DR 12 confirmed that other Commissions do not use the allocation methodology used by staff, MEB Surrebuttal Pg 6 line 1- 19. In SIEUA and AGP DR 13, OPC confirmed that the OPC method proposed for allocation of generation capacity is not used in other jurisdictions, MEB Surrebuttal pg 7 ln 4 – 5.

Mr. Brubaker has identified a number of flaws that also draw into question the value of the staff method of allocating production/generation and transmission costs.

1. The Staff method allocates generation and transmission capacity costs across all hours of the year even off-peak and even though use at times is so low that it would not cause the need for addition of generation or transmission capacity, MEB Rebuttal pg 10 ln 19-20. This is because once the break even point between two different technologies has been reached, additional hours of operation does not change the decision of what type of technology to install, MEB Rebuttal pg. 13 line 16 -17.
2. Staff's allocation principles for generation plant would require an analysis to determine which technologies would be installed if the utility served each customer class independently, MEB Rebuttal pg 12 ln 5 - 7. The results would need to be analyzed to determine the actual costs for each customer class of the technologies that were selected MEB Rebuttal Pg 12 ln 14 – 17. Staff has not done the proper analysis, MEB Rebuttal pg 12 ln 20 -21.
3. Staff's TOU allocator is not supported by the required base level of load and generation mix studies David L. Stowe (DLS), Rebuttal Pg 11 ln 20- 22 and pg 13 ln 4 – 17.

4. Traditional studies unlike Staff's approach, are less complex and less speculative that Staff's approach, MEB Rebuttal pg. 13 Ln 8 – 11.

5. Contrary to theory and expectation Staff's method allocates above average energy costs to above average load factor customers whose loads are less seasonal and more off-peak that average, MEB Rebuttal pg 17 ln 3 – 5 and pg 15 ln 15 – 18.

6. The staff method of allocating capacity costs is not based on causation because it assigns costs based on the hours of the year regardless of whether loads in that hour had anything at all to do with the decision to install capacity MEB Surrebuttal, pg 2 line 1. Capacity cost is allocated to each and every one of 8,760 hours per year, even though 7,760 of those hours had absolutely nothing to do with the decision to install the combined cycle unit as contrasted to a peaking unit, MEB Surrebuttal Pg 6 ln 7 – 9.

Aquila also has valid criticisms of staff's method.

1. As stated by David L. Stowe (DLS), in staff's method capacity utilization trumps cost causation, DLS Surrebuttal pg 5 line 4 - 5. Staff's TOU allocators distribute all fixed costs as base load capacity costs whereas the capacity utilization method (allegedly used by staff) assigns the costs of base load, intermediate, and peaking units separately to the classes that caused them to operate, DLS Surrebuttal pg 6 ln 1 – 4.

2. Staff does not have the supporting data necessary to develop its TOU allocator for fixed production costs. Contrary to its espoused theory Staff did not identify the costs associated with the base load and other types of units. It used the total fixed costs, which included the costs of all of Aquila's generation units when distributing fixed production costs, DLS Surrebuttal Pg 7 ln 13-14.

3. It is unprecedented to allocate transmission costs based on base load, intermediate and peaking as staff has done, DLS Surrebuttal pg 11 ln 5 – 9. Staff's approach to allocating transmission costs is invalid, because there is no parameter or characteristic that suggests a base load, intermediate or peaking function of the transmission system as staff has done, DLS Surrebuttal pg 11 line 21 to pg 12 line 1.

B. ADDITIONAL COMMENTS ON THE OPC ALLOCATION METHOD

All parties have offered criticism of the OPC method. As stated by Mr Stowe, Rebuttal Pg 19 ln 7-8, OPC has modified Staff's TOU allocators to achieve a "demand " allocator which is shifted to the extreme side of energy allocator values (citing OPC Meisenheimer Direct pg 5 ln 20 -21). The OPC witness relies on an Article 30 years old written about rural electric systems of questionable application to Aquila because it is questionable whether the characteristics of a rural electric system are applicable to Aquila. A large part of Aquila's system can not be defined as rural, MEB Surrebuttal pg 9 ln 4 -8. The study relied on by OPC found that investment per customer decreased as customers were added. This provides no basis for the conclusion that OPC witness Ms. Meisenheimer has drawn, namely that investment in certain aspects of the distribution system are not related to the number of customers. The article simply confirms the existence of economies of scale, MEB Surrebuttal pg 10 ln 4 – 9.

C. POLICY CONSIDERATIONS

Aquila presented testimony that discusses the important policy considerations for selecting a valid cost of service methodology. Customers who do not pay the actual cost for their electricity overuse

electricity and are less likely to implement conservation measures, J. Matt Tracy Rebuttal pg 6 ln 19 -20. MPS serves predominantly residential customers, J. Matt Tracy Rebuttal Pg 10 ln 11. Mr Tracy's graphs illustrate how staff and OPC demand allocators will impact load shapes, J. Matt Tracy Rebuttal Pg 12 ln 15-17 and Rebuttal schedule JMT -2. Staff and OPC increase the cost responsibility for customers with the highest load factor and decrease costs for customers with the lowest load factors, J. Matt Tracy Rebuttal Pg 12 ln 17 – 19, this will increase use by customers with low load factors, and decrease use for customers with high load factors. A result that is not good policy in these times of rising energy costs.

Respectfully submitted,

Craig Paulson

CRAIG PAULSON, Major, USAF
Utility Litigation and Negotiation Attorney
For Federal Executive Agencies
Telephone: (850) 283-6350
FAX: (850) 283-6219
e-mail: craig.paulson@tyndall.af.mil
TX Atty #24030340
MN Atty# 0164823

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