

**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 Tariff Increasing)
Rates for Electric Service Provided to Customers in the)
Missouri Service Area of the Company) Case No. ER-2010-0130

**OBJECTION OF THE EMPIRE DISTRICT ELECTRIC COMPANY
TO THE APPLICATION TO INTERVENE OF
MIDWEST ENERGY USERS' ASSOCIATION**

The Empire District Electric Company (“Empire” or “Company”), by and through its undersigned attorneys, hereby objects to the Application to Intervene, which was filed by Midwest Energy Users’ Association (“MEUA”) on November 19, 2009. The Missouri Public Service Commission (“Commission”) should issue an order denying MEUA’s application for the following reasons:

1. MEUA’s Application Does Not Comply with the Commission’s Rules

The Application to Intervene filed by MEUA does not comply with the Commission’s rule governing applications, 4 CSR 240-2.060. Subsection (1)(M) of that rule requires all applications to be subscribed and verified by affidavit under oath. The rule further states that if counsel for an applicant intends to provide the required verification, the application must include or be accompanied by an affidavit that the attorney is authorized to verify the application. MEUA’s application is not verified. In addition, although the application is signed by counsel, it does not include an affidavit stating that the organization’s counsel is authorized to provide the required verification.

2. MEUA Is Not a Separate Entity – MEUA Is Praxair and Explorer

The description of MEUA that appears in Paragraph 1 of the Application to Intervene – which portrays MEUA as an “unincorporated ad-hoc association of large commercial and industrial users of electricity who group together using the MEUA vehicle to combine resources

and gain economies in representation and activity in these rate cases” – is at best misleading and at worst demonstrably false. The true nature and identify of MEUA is stated elsewhere in that same paragraph: “[a]t present, and for purposes of this case, MEUA consists of Praxair, Inc. (“Praxair”) and Explorer Pipeline Company (“Explorer”) . . .” In reality, therefore, MEUA is Praxair and Explorer – nothing more and nothing less – and the Application to Intervene should be judged on that basis.

3. Praxair and Explorer Already Are Intervenors in this Case

Neither Praxair nor Explorer need to file an application to intervene because each already is a party to this proceeding. As noted in Paragraphs 2.b. and 3.c. of MEUA’s Application to Intervene, the “Stipulation and Agreement” (“Stipulation”) approved by the Commission in Case No. EO-2005-0263 makes both Praxair and Explorer parties to this case without the necessity of filing an application to intervene. As stated in the Stipulation, each of its signatory parties – which include both Praxair and Explorer – “shall be considered to have sought intervenor status in any rate case or rate filing without the necessity of filing an application to intervene . . .” In light of the Stipulation, it is unclear why Praxair and Explorer: i) filed an application to intervene in a proceeding to which they already are parties, and ii) filed an application in the name of an association in which they are the only members. One thing is clear, however: because Praxair and Explorer already are parties to this case, it is neither necessary nor proper for the Commission to give those parties additional intervenor status under their alter ego MEUA.

4. Granting MEUA’s Application to Intervene Would Subvert the Commission’s Rules Governing Intervention

Granting MEUA’s Application to Intervene also would serve to subvert the Commission’s rules governing intervention. 4 CSR 240-2.075(1) requires an application to intervene to be filed “within thirty (30) days after the commission issues its order giving notice of the case, unless otherwise ordered by the commission.” In its “Suspension Order and Notice” in this case, which was issued on November 4, 2009, the Commission stated that “[a]pplications

requesting intervention shall be filed not later than November 20, 2009.” The Application to Intervene filed by MEUA on November 19, 2009, complies with that requirement – at least on its face. The real nature of that application, however, is quite different.

As noted earlier in these objections, MEUA’s application to Intervene states that MEUA currently consists of only two members: Praxair and Explorer. The application further states that “[o]ther similarly situated customers are also considering participation in this case through MEUA, but have not yet reached decisions on participation.” The import of this statement is clear: MEUA is merely a placeholder for one or more purported large commercial and industrial customers – who are not identified anywhere in the application – that may choose to become intervenors at some unspecified date in the future, and thereby acquire the right to fully participate in this case through the simple expedient of becoming a “member” of MEUA. Such a result flies in the face of the Commission’s rules, which require a prospective intervenor that purports to represent a group or association to identify all of its members and to show that each and all of those members “has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case . . .” 4 CSR 240-2.075(4)(A). MEUA’s proposal also strips the Commission of its authority – and responsibility – to affirmatively determine whether an association, and each of its members, meets the standards governing who should be authorized to participate in a case as an intervenor and who should not.

The open-ended nature of MEUA’s request is reminiscent of the attempt that Praxair and Explorer made in Empire’s last general rate case to add intervenors long after the date for intervention had passed. The Company has attached to these objections, as Exhibit A, a copy of the “Notice to Commission and Parties of Involvement and Interest of Additional Entities,” which Praxair and Explorer filed in Case No. ER-2008-0093 on February 21, 2008 -- four months after the deadline prescribed by the Commission for the filing of applications to intervene. In that notice, Praxair and Explorer stated that two additional companies – Enbridge Energy Company, d/b/a Enbridge Pipeline, and Wal-Mart Stores, Inc. – “have indicated their interest in the subject

matter of the proceeding and support for the effort of” Praxair and Explorer. And, although that notice further stated that “[b]ecause of the status of the proceeding, no formal intervention is sought at this time for these additional industrial customers,” Praxair and Explorer apparently treated the notice as license to vest those additional interested companies – and later General Mills, as well – with the right or participate in the case as full parties. This is clear from Exhibits 503 and 505 in that case, which show that the rebuttal and surrebuttal testimonies of Morris Brubaker were filed on behalf of not only Praxair and Explorer but also Enbridge Energy, Wal-Mart, and General Mills.

WHEREFORE, for all of the reasons stated above, Empire asks the Commission to issue an order denying the Application to Intervene filed by MEUA.

Respectfully submitted,



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ATTORNEYS FOR THE EMPIRE DISTRICT
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Certificate of Service

I hereby certify that the foregoing has been sent by United States mail, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record on the 27th day of November, 2009.

/s/ L. Russell Mitten