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Weatherization/Energy Efficiency, Rate
Design and Interruptible Credit, Large Power
Rate Design
Witness: W. Scott Keith
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Sponsoring Party: Empire District Electric
Case No. ER-2014-0351
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Before the Public Service Commission

of the State of Missouri

Surrebuttal Testimony

of

W. Scott Keith

March 2015



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OF
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BEFORE THE
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SURREBUTTAL TESTIMONY
OF
W. SCOTT KEITH
THE EMPIRE DISTRICT ELECTRIC COMPANY
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MISSOURI PUBLIC SERVICE COMMISSION
CASE NO. ER-2014-0351

1 **INTRODUCTION**

2 **Q. STATE YOUR NAME AND ADDRESS PLEASE.**

3 A. My name is W. Scott Keith, and my business address is 602 S. Joplin Avenue,
4 Joplin, Missouri.

5 **POSITION**

6 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

7 A. I am presently employed by The Empire District Electric Co. (“Empire” or “the
8 Company”) as the Director of Planning and Regulatory. I have held this position
9 since August 1, 2005.

10 **Q. ARE YOU THE SAME W. SCOTT KEITH THAT FILED DIRECT AND**
11 **REBUTTAL TESTIMONY IN THIS RATE CASE BEFORE THE**
12 **MISSOURI PUBLIC SERVICE COMMISSION (“COMMISSION”) ON**
13 **BEHALF OF EMPIRE?**

14 A. Yes.

15 **PURPOSE**

16 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

17 A. I will respond generally to issues related to Empire’s proposed termination of its
18 existing Energy Efficiency programs, including the Low Income Weatherization

1 program that have been raised by the Commission Staff (“Staff”), the Office of the
2 Public Counsel (“OPC”), and the Department of Economic Development –
3 Division of Energy (“DE”) in their respective rebuttal testimonies in this rate case.
4 My surrebuttal testimony will also respond to comments made by the OPC in
5 connection with rate case expense. Also, my surrebuttal testimony will address
6 Large Power (“LP”) rate design recommendations by Midwest Energy Consumers
7 Group (“MECG”). In addition, I will respond to Staff’s elimination of the Praxair
8 interruptible credit from Empire’s overall revenue requirement.

9 Specifically, I will address the following:

- 10 • The OPC’s recommendations concerning rate case expenses in this case;
- 11 • The Staff and OPC recommendation to have the Commission order Empire to
12 continue its existing EE programs until new EE programs are authorized by the
13 Commission pursuant to the Missouri Energy Efficiency Investment Act rules;
- 14 • The Staff, OPC, and DE recommendations to have the Commission order Empire to
15 continue its existing Low Income Weatherization program in its present form;
- 16 • The Staff recommendation to eliminate the cost associated with the interruptible
17 (“IR”) payment made to Praxair; and,
- 18 • The MECG recommendations concerning the determination of billing demand and
19 time differentiated billing in Empire’s next rate case.

20 **RATE CASE EXPENSE**

21 **Q. HAVE YOU REVIEWED THE OPC REBUTTAL TESTIMONY FILED BY**
22 **KERI ROTH CONCERNING RATE CASE EXPENSE?**

23 **A.** Yes. I have reviewed the Rebuttal Testimony filed by Ms. Roth.

1 **Q. DOES “RATE CASE EXPENSE” REFER TO “ATTORNEYS FEES”?**

2 A. In part. However, there are a variety of items included in the cost of a rate case or
3 rate case expense.

4 **Q. WHAT ITEMS IN ADDITION TO ATTORNEYS FEES ARE INCLUDED?**

5 A. There are also professional fees associated with the preparation of a class cost of
6 service and a determination of cost of capital, as well as miscellaneous costs such
7 as travel expense recorded as part of Empire’s overall rate case expense.

8 **Q. DO YOU AGREE WITH THE OPC POSTION THAT EMPIRE’S RATE**
9 **CASE EXPENSE SHOULD BE SPLIT EQUALLY BETWEEN EMPIRE**
10 **AND ITS CUSTOMERS?**

11 A. No. The OPC’s proposal is counter to the regulatory model that has been put in
12 place for the benefit of Missouri ratepayers and that has been used in Missouri for
13 many years.

14 **Q. HOW SO?**

15 A. The investor-owned utility industry in Missouri is heavily regulated by the
16 Commission. This system of regulation was put in place in 1913 for the protection
17 of utility customers, not the utility. Prior to the creation of this system of
18 regulation, an investor-owned utility, like Empire, could charge whatever rate it
19 wanted, whenever it wanted.

20 **Q. AT PAGES 16-17 OF HER REBUTTAL TESTIMONY, OPC WITNESS**
21 **ROTH SUGGESTS THAT RATE CASE EXPENSE SHOULD BE SHARED**
22 **BECAUSE BOTH SHAREHOLDERS AND CUSTOMERS BENEFIT FROM**
23 **RATE CASES. DO YOU THINK THAT IS THE APPROPRIATE**

1 **QUESTION FOR THE COMMISSION?**

2 A. No. Focusing on a rate case expense is an example of failing to see the forest for the
3 trees – in this case, one tree. Empire is not regulated because it has chosen to
4 participate in this process. Empire is regulated because the State of Missouri has
5 determined that it should apply a complex level of regulation to what is a privately-
6 owned enterprise. All of Empire’s tariffs and rules and regulations governing the
7 services that it offers the public are subject to Commission approval, and cannot be
8 changed without the approval of the Commission. Many of these tariff changes can
9 only be proposed during the course of a general rate case. In addition to the rate
10 case rules, the Commission has numerous rules that govern how utilities operate.
11 For example, the Commission requires that utilities file such things as depreciation
12 studies, integrated resource plans, vegetation management reports, service and
13 infrastructure management reports, and reliability reports. There are regulatory
14 compliance costs associated with all of the Commission’s rules and regulations.
15 Utilities have historically been allowed to recover prudent and reasonable
16 regulatory compliance costs, such as rate case costs, as part of the utility’s overall
17 revenue requirement.

18 **Q. WHY?**

19 A. The benefits associated with regulation in Missouri rest with the customer, not the
20 utility. This is certainly the case with the laws governing rate changes, which
21 provide a long suspension period before any changes in rates or rules and
22 regulations can occur. In these types of Commission proceedings, there is also an
23 extensive audit and review of Empire’s operations by the OPC, Staff, and other

1 parties, so that all factors affecting the Company's operations can be taken into
2 consideration by the Commission when it renders its decision on the proposed rate
3 changes.

4 **Q. HOW LONG IS THE PROCESSING PERIOD IN A MISSOURI RATE**
5 **CASE?**

6 A. The rate case procedure used in Missouri allows a 10-month suspension period after
7 the requested tariff effective date (which is usually 30 days after a tariff filing)
8 during which the audit, discovery, and formal hearing process take place. This rate
9 case process can be very costly depending upon the issues that are developed. For
10 example, Empire's current rate case includes issues surrounding the overall design
11 of Empire's rates. In order to meet its burden of proof on this issue, Empire will
12 incur additional rate case costs and expenses that would not be the case if class cost
13 of service and a change in rate design were not at issue. The support for the cost of
14 service and rate design is provided by an individual who is not an Empire employee
15 and whose cost is a part of rate case expense.

16 **Q. IS THE COMMISSION REQUIRED TO SUSPEND TARIFFS SEEKING TO**
17 **INCREASE RATES AND TO HOLD HEARINGS ON THOSE TARIFFS?**

18 A. No. The Commission is not required to suspend a utility's tariff filing. That
19 decision is wholly within the Commission's discretion. And, if the Commission
20 did not suspend the tariff, a large portion of the Company's rate case expense would
21 be unnecessary. However, even if the Commission elected not to suspend a tariff
22 filing, the Company would still incur some rate case expense in order to comply
23 with the provisions of the Commission's rules that require a utility seeking an

1 increase in rates to include with its tariff filing testimony fully supporting the
2 proposed increase.

3 **Q. IS THE TOTALITY OF RATE CASE COST CONTROLLED BY EMPIRE?**

4 A. No. During the eleven-month processing period in a rate case in Missouri, there are
5 a number of issues and disputes that can arise. The resolution of these
6 disputes/issues can involve additional costs and the use of consultants and attorneys
7 that were not anticipated when a rate case was initially filed. Many of these issues
8 can involve positions taken by the other parties to the rate case, such as Staff, OPC,
9 an industrial customer, or even the State of Missouri itself (for example, Division
10 of Energy). Empire's management has no direct control over the number of issues
11 or disputes that can arise and has limited ability to control the cost associated with
12 the resolution of these issues.

13 **Q. IS IT UNUSUAL OR IMPRUDENT FOR A UTILITY TO RETAIN AN
14 OUTSIDE EXPERT TO PERFORM AN INDEPENDENT APPRAISAL OF
15 THE COST OF EQUITY IN CONNECTION WITH A RATE CASE?**

16 A. No. In fact, it has been my experience over the last 40+ years in the utility business
17 that the use of outside expert financial consultants to provide an independent
18 opinion on the cost of equity is the norm, not the exception. An outside appraisal
19 of the cost of equity for a utility provides the Commission with an independent
20 analysis of the cost of equity. Also, it would be very expensive for a utility to hire a
21 full-time employee that would have the skill set and experience necessary to
22 perform this analysis.

23 **Q. DOES EMPIRE PERFORM CLASS COST OF SERVICE STUDIES ON A**

1 **ROUTINE BASIS?**

2 A. No. In fact, Empire does not even develop a class cost of service study for every
3 rate case it files. Several rate cases and several rate adjustments may occur before a
4 new cost of service study becomes necessary or required. Thus, in Empire's case, it
5 is more cost effective to retain an outside consultant to help guide the analysis when
6 a class cost of service study is required rather than retain a full time employee to
7 perform all aspects of such an analysis.

8 **Q. WERE EMPIRE EMPLOYEES INVOLVED WHEN THE CLASS COST OF**
9 **SERVICE STUDY FOR THIS CASE WAS PREPARED?**

10 A. Yes, they were. This enables Empire to hold down the costs associated with the
11 study and take advantage of the employee training that occurs while doing some of
12 the lower level analysis work that is required to perform a class cost of service
13 study. In this particular case, much of the detailed analysis work was performed by
14 Empire employees under the guidance of the outside consultant. The consultant
15 performed the final class cost of service allocations using a proprietary cost of
16 service model, provided an expert opinion regarding the results of the study, made
17 recommendations on rate design, and provided expert direct testimony supporting
18 the results of the class cost of service study in the rate case.

19 **Q. HOW WOULD YOU CHARACTERIZE THE CHARGES BILLED BY**
20 **THESE OUTSIDE CONSULTANTS IN THIS RATE CASE?**

21 A. They are reasonable, prudent, and necessary.

22 **Q. PLEASE EXPLAIN.**

23 A. As I mentioned earlier, the use of an outside, independent consultant to determine

1 the cost of equity in a rate case is reasonable and necessary given the obligation the
2 Company has to fully support its rate case. Based on my many years of regulatory
3 experience and my knowledge of the market for these types of services, I believe
4 the fees that have been charged by Financial Strategy Associates in connection with
5 this study are reasonable and prudent. Using the same experience and knowledge, I
6 also believe the Black & Veatch fee for work performed in connection with the
7 class cost of service study and rate design is also reasonable, prudent, and
8 necessary. Moreover, this work was unavoidable as the class cost of service study
9 submitted by Empire in this proceeding was required by Commission order
10 accepting the stipulation and agreement reached in Empire's last rate case.

11 **Q. AT PAGE 22 OF HER REBUTTAL TESTIMONY, OPC WITNESS ROTH**
12 **SEEMS TO IMPLY THAT THE LEGAL REPRESENTATION, EQUITY**
13 **ANALYSIS, AND THE COST OF SERVICE STUDIES COULD BE**
14 **PERFORMED BY EMPIRE EMPLOYEES. DOES EMPIRE HAVE ANY**
15 **EMPLOYEES WHO CAN PROVIDE THE KIND OF ANALYSES,**
16 **TESTIMONY, AND LEGAL SERVICES PROVIDED BY THE EXPERTS**
17 **EMPIRE HAS RETAINED IN THIS CASE?**

18 A. No. At the present time, Empire has no employees with the necessary time,
19 experience, or expertise to provide these types of analyses or advice. In addition, as
20 I mentioned earlier, it is important to present an independent, outside opinion on
21 these matters in a rate case. This type of independent objectivity and presentation
22 would be difficult for an Empire employee to duplicate.

23 **Q. WOULD IT BE COST-EFFECTIVE TO HIRE SUCH PERSONNEL?**

1 A. No. As I indicated earlier, it is much more cost-effective and efficient to hire such
2 personnel only when needed – during the rate case. Having said this, Empire does
3 use its own personnel where possible. Certain aspects of the analysis work required
4 under the cost of service and depreciation studies are already performed by Empire
5 employees, but in order to use Empire personnel in the most efficient and cost
6 effective manner possible, Empire has elected to leave the more specialized aspects
7 of each of these projects to an outside professional.

8 **Q. WOULD EMPIRE INCUR ADDITIONAL COSTS IF IT WERE TO**
9 **PERFORM THESE STUDIES IN HOUSE?**

10 A. Yes. For example, the preparation of the studies and the continuing professional
11 education requirements associated with the performance and presentation of the
12 analyses would cause an increase in staffing levels, which would in turn cause an
13 increase in Empire’s payroll expense. This increase in payroll would presumably
14 be reflected in Empire’s revenue requirement. In addition, Empire would have to
15 develop or purchase software to perform the required analyses, which would also
16 increase operating expenses, and, ultimately, rates.

17 **Q. DID THE OPC INCLUDE ANY OF THE ADDITIONAL COSTS THAT**
18 **WOULD BE ASSOCIATED WITH SUCH A CHANGE IN PROCEDURE IN**
19 **EMPIRE’S REVENUE REQUIREMENT IN THIS RATE CASE?**

20 A. No. The OPC proposed to reduce the actual rate case expense by 50 percent, but
21 did not include any of the additional costs Empire would incur to implement such a
22 policy, such as an increase in overall staffing levels, training costs, or software
23 costs.

1 **LOW INCOME WEATHERIZATION/ENERGY EFFICIENCY PROGRAMS**

2 **Q. HAVE YOU REVIEWED THE REBUTTAL TESTIMONY FILED BY**
3 **STAFF WITNESSES JASON HUFFMAN AND MICHAEL STAHLMAN?**

4 A. Yes. Both Staff witnesses essentially recommend that Empire be ordered to
5 continue its existing portfolio of energy efficiency programs using the existing cost
6 recovery mechanism and are opposed to termination of the existing energy
7 efficiency program portfolio as requested by Empire.

8 **Q. DOES EMPIRE AGREE WITH THIS STAFF RECOMMENDATION?**

9 A. No. As I mentioned in my rebuttal testimony, the current cost recovery mechanism
10 does not enable Empire to recover all of the costs associated with the current
11 portfolio of energy efficiency programs. It is unfair and unreasonable for Empire to
12 be required to continue these programs, which are not mandatory, without a
13 recovery mechanism similar to that authorized by the Commission for Ameren
14 Missouri, Kansas City Power & Light, and KCPL Greater Missouri Operations.
15 Without an acceptable cost recovery mechanism, Empire requests the termination
16 of all of the programs, including Low Income Weatherization.

17 **Q. DOES THE DIVISION OF ENERGY ALSO RECOMMEND THAT**
18 **EMPIRE BE ORDERED TO CONTINUE THE LOW INCOME**
19 **WEATHERIZATION PROGRAM?**

20 A. Yes, through the Rebuttal Testimony of John Buchanan.

21 **Q. DOES EMPIRE AGREE WITH MR. BUCHANAN'S**
22 **RECOMMENDATION?**

23 A. No. Absent the implementation of a fair and reasonable cost recovery mechanism,

1 the Commission should not order Empire to continue this program. This program
2 is not essential or mandatory for Empire to provide safe, adequate, and reliable
3 electric service. Failure to provide Empire with full cost recovery of this optional
4 program's cost represents a taking.

5 **Q. HAVE YOU READ THE REBUTTAL TESTIMONY OF OPC WITNESS**
6 **GEOFF MARKE?**

7 A. Yes.

8 **Q. WHAT DID MR. MARKE RECOMMEND REGARDING EMPIRE'S**
9 **ENERGY EFFICIENCY PROGRAMS?**

10 A. Like the witnesses for Staff and DE, Mr. Marke simply recommends that Empire be
11 required to continue the programs.

12 **Q. DO YOU AGREE WITH MR. MARKE'S POSITION ON THE**
13 **CONTINUANCE OF THE EXISTING ENERGY EFFICIENCY**
14 **PROGRAMS?**

15 A. No. Absent a major change in the cost recovery mechanism, Empire requests that
16 all of the programs be terminated. In addition, Mr. Marke recommends no increase
17 in Empire's monthly customer charge. This would insure that there would be no
18 mitigation of the cost of the energy efficiency programs to Empire. Empire would
19 continue to have a substantial part of its fixed costs dependant upon its variable rate
20 and a purposely decreasing volume of sales.

21 **SPECIAL CONTRACT INTERRUPTIBLE CREDIT**

22 **Q. HAVE YOU REVIEWED THE REBUTTAL TESTIMONY OF STAFF**
23 **WITNESS SARAH KLEITHERMES CONCERNING THE PRAXAIR**

1 **SPECIAL CONTRACT?**

2 A. Yes.

3 **Q. DOES EMPIRE AGREE WITH MS. KLIETHERMES' STATEMENT AT**
4 **PAGE 6, LINES 7 THROUGH 9 OF HER REBUTTAL TESTIMONY, THAT**
5 **EMPIRE HAS EXCLUDED THE COST OF THE INTERRUPTIBLE**
6 **CREDIT PAID TO PRAXAIR IN PRIOR RATE CASES BEFORE THIS**
7 **COMMISSION?**

8 A. No. This statement is incorrect. Empire has consistently included the cost of the
9 interruptible credit in its overall revenue requirement. Ms. Kliethermes is mistaken
10 in her understanding of how this issue was handled in prior Empire rate cases.

11 **Q. DO YOU AGREE WITH MS. KLIETHERMES' POSITION THAT EVEN IF**
12 **EMPIRE HAS NOT HELD ITS CUSTOMERS HARMLESS REGARDING**
13 **THE PRAXAIR IR CREDIT THAT THE COMMISSION SHOULD DO SO**
14 **IN THIS CASE?**

15 A. No. The payment made to Praxair is a tariff charge authorized by the Commission.
16 It is the cost associated with the right to interrupt service to Praxair and use the
17 capacity gained by this interruption for service to Empire's other customers. It is
18 also important to note that this is a payment associated with a demand-side
19 management ("DSM") program. Just like the above discussion of cost recovery
20 relating to the existing energy efficiency programs, the Staff position on this DSM
21 program also denies legitimate cost recovery to Empire. If this cost is excluded
22 from Empire's revenue requirement, Empire requests that the Commission
23 eliminate this payment from the tariff used to serve Praxair.

1 **LARGE POWER (“LP”) RATE DESIGN**

2 **Q. WHAT ARE THE CONCERNS REGARDING THE LP RATE DESIGN AS**
3 **RECOMMENDED BY MECG WITNESS MS. MAINI?**

4 A. First, MECG Witness Maini recommended that, for purposes of calculating the
5 demand charge, if a customer peak is set within 12 hours after an individual
6 customer outage, this peak should not be included in the calculation of the facilities
7 demand charge. The other MECG recommendation of concern is the
8 recommendation that, in its next rate case, Empire submit a LP rate that time
9 differentiates the billing demand charge.

10 **Q. WHY ARE THESE CONCERNS FOR THE COMPANY?**

11 A. Empire’s current billing system is not designed to differentiate between a peak that
12 occurs within 12 hours of a customer outage and a peak that occurs outside this
13 particular time period. Additionally, a clearer definition of what constitutes a
14 customer outage would have to be determined. In addition, Empire’s existing
15 billing system does not readily accommodate the use of a time-of-use rate. An
16 expansion from the severely limited use of this type of billing regime that exists
17 currently would necessitate an unacceptable level of manual intervention in the
18 billing process.

19 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

20 A. Yes.

