BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Request of The Empire District Electric Company d/b/a Liberty for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in its Missouri Service Area	)))))	Case No. ER-2021-0312

INITIAL POSTHEARING BRIEF

OF

MIDWEST ENERGY CONSUMERS GROUP

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A. OVERVIEW

In this case there were two class cost of service studies (performed by Empire and MECG), both of which shows the existence of a significant residential subsidy. Buoyed by their recent ability to convince the Commission to simply reject the undeniable existence of a residential subsidy for reasons like estimated bills, questionable data, inflation and Covid;[1] the Staff and Public Counsel decided against even conducting class cost of service studies. After all, why conduct a study that may confirm the existence of a residential subsidy when you can distract the Commission with other ancillary concerns?

In this case, Staff and OPC again point to such ancillary concerns as the basis for their recommendations to ignore both the significant residential subsidy and the uncompetitive nature of industrial rates and, instead, apply the increase on an equal percentage basis to all classes. For instance, OPC conveniently concludes that "inflation is at a 30-year high and there is a still a large degree of uncertainty surrounding the ongoing COVID pandemic"[2], while failing to point out that neither of these factors are unique to the residential class.[3]

As Commissioner Rupp perceptively recognizing in the recent Ameren deliberations, when observing that Staff and OPC had again failed to address the residential subsidy: "[t]he argument is

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[1] See, Case No. ER-2019-0374, Report and Order, issued July 1, 2020 at page 42 ("The large number of estimated bills and the lack of confidence in any CCOS study make it difficult to determine the appropriate rate design revenue requirement allocations. Therefore, the Commission finds that it is not appropriate to make any changes to the revenue requirement allocations at this time."). See also, Case No. ER-2021-0240, Report and Order, issued February 2, 2022, at page 23 ("Rather the Commission is exercising its discretion to look beyond the numbers contained in those cost studies to reach a deeper conclusion that the people who are members of the residential rate class have already faced enough challenges in recent years, including an 8.81 percent electric rate increase that will result from this case, and should not, at this time, have to endure an even larger rate increase to address the imbalance described in Ameren Missouri's class cost of service study.").

[2] Exhibit 201, Marke Rebuttal, page 42.

[3] Exhibit 354, Maini Surrebuttal, page 21 ("The effect of the health pandemic, inflation and winter storm Uri are equally applicable to the commercial and industrial rate classes as well. They are not unique to the residential class").

made that this is not the right time to do it [address the residential subsidy] because it's never the right time to do it."[4] In this case, MECG urges the Commission to not buy into Staff / OPC's myriad misplaced reasons why this is "not the right time" to address the residential subsidy. As reflected in this brief, the Commission's inaction in the last Empire case undid the positive steps that the Commission had taken over the previous 6 years to eliminate subsidies and address uncompetitive industrial rates. As a result, industrial rates are further from cost of service and even more uncompetitive with state, regional and national average industrial rates. It is vital that the Commission return to the path of cost-based rates in this case.

[4] Ameren deliberations, January 19, 2022.

B. COMPETITIVENESS OF INDUSTRIAL RATES

In its decision in the 2014 Empire rate case, the Commission expressed its concern for the competitiveness of Empire's industrial rates. As the Commission correctly concluded, competitive industrial rates are important to all rate classes. While a residential subsidy may be temporarily expedient for residential customers, it may actually lead to a situation where, in the long-run, residential rates will increase. Specifically, if industrial customers leave the Empire service area, then all other customers will pay more due to the reduced number of billing determinants over which to spread Empire's fixed costs.[5]

> Competitive industrial rates are important for the retention and expansion of industries within Empire's service area. If businesses leave Empire's service area, Empire's remaining customers bear the burden of covering the utility's fixed costs with a smaller amount of billing determinants. This may result in increased rates for all of Empire's remaining customers.[6]

Given the uncompetitive nature of Empire's industrial rates, the Commission took definitive steps in both 2014 and 2016 to eliminate one-fourth of the residential subsidy and move towards more competitive industrial rates.

In assessing the competitiveness of a utility's rates, the Commission has relied upon testimony that utilized the EEI Typical Bills and Average Rates Report. There is no question about the wide-spread acceptance of the EEI Typical Bills and Average Rates Report. As mentioned, the Missouri Commission has previously relied upon the comparisons contained with the EEI Report.[7] In addition, utilities use the same report in order to benchmark the competitiveness of their own rates relative to other utilities. Finally, customers also use the EEI report "to evaluate and benchmark

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[5] This is exactly the situation that happened with Ameren rates when Noranda left the system. Once Noranda left, the remaining Ameren customers were forced to pay the fixed costs that were previously paid by Noranda.
[6] Report and Order, Case No. ER-2014-0351, issued June 24, 2015, page 18.
[7] *Id.*

utility costs within the state, regionally and nationally."[8]

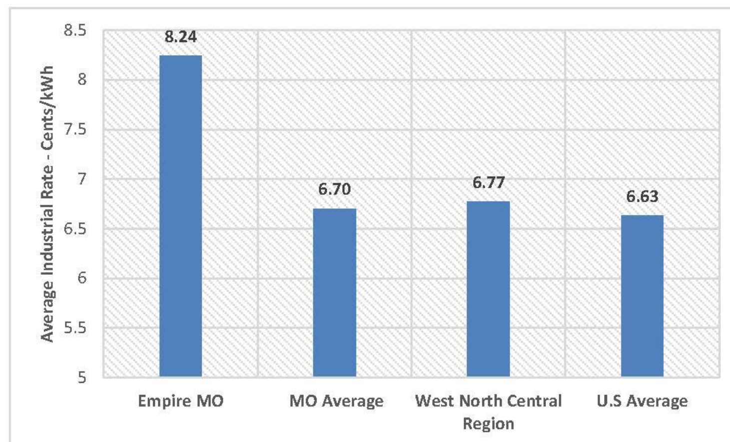
For instance, in recent testimony, Walmart pointed out:

> Walmart operates in all 50 states and the District of Columbia, so we are able to easily benchmark our utility cost in one market against other utilities in the market as well as regional and national benchmarks. . . Our experience mirrors the results of the EEI Report and reinforces large customer concerns about the competitiveness of EDE's rates.[9]

Praxair provided similar testimony:

> Praxair has comparison data from twenty-six states and provinces in the United States and Canada in which Praxair operates production plants. Of those twenty-six places, just one – California – has higher rates than Empire for electric power supplied by regulated utilities. . . The uncompetitive nature of Empire's industrial rate, as depicted in the EEI data, is consistent with the real life costs that Praxair pays, day in, day out. Specifically, when compared to other regional utilities, Empire's industrial rate is not competitive with other service areas.[10]

The most recent EEI Report demonstrates that Empire's industrial rates are **NOT** competitive. Specifically, Empire's industrial rates are now more than 22% above the state, regional and national average industrial rates.



Source: Exhibit 352, Maini Direct, page 9.

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[8] Exhibit 354, Maini Surrebuttal, page 19.
[9] *Id.* at page 20.
[10] *Id.*

As mentioned, because the Commission refused to address the residential subsidy in the last rate case, the competitiveness of Empire's industrial rates has worsened. "In 2015, the average industrial rate was approximately 17% above the national average, in 2019 Empire's industrial rate was 21% above the national average and in 2020 it is 24% above the national average."[11]

In its rebuttal testimony, OPC attempted to undermine this fact and questioned whether all of Empire's rate classes showed a similar discrepancy relative to the national average. The evidence indicates, however, that no other Empire rate class "has a rate differential comparable to that experienced by the industrial classes."[12]

	Cents / kWh	Percent higher than national average
Average rate Empire MO	11.51	7.9%
National Average	10.67	
Average Residential Rate – Empire	13.50	3.6%
National Average	13.03	
Average Commercial Rate – Empire	11.27	5.4%
National Average	10.69	
Average Industrial Rate – Empire	8.24	24.3%
National Average	6.63	

Source: Exhibit 354, Maini Surrebuttal, page 22.

Clearly then, there is no question that Empire's industrial rates are not competitive with those of other utilities in the state, region or nationally. Furthermore, there is no question that, because of the Commission's failure to address the residential subsidy in 2019, the competitiveness of Empire's industrial rates has worsened. It is important then that the Commission refocus on this critical issue.

[11] Exhibit 352, Maini Direct, page 10.
[12] Exhibit 354, Maini Surrebuttal, page 22.

C. CLASS COST OF SERVICE STUDIES

During the 2021 legislative session, the General Assembly enacted Section 393.1620. That statute mandates that the Commission only consider studies that "allocate the electrical corporation's production plant costs from nuclear and fossil generating units using the average and excess method ["A&E"] or one of the methods of assignment or allocation contained within the National Association of Regulatory Commissioners 1992 manual or subsequent manual."[13]

There were two class cost of service studies conducted in this case – by MECG and Empire. Both of those studies comply with Section 393.1620. Specifically, MECG and Empire both present studies that rely on the A&E methodology not only for the allocation of the "fossil generating units", as required by the statute, but also for the allocation of renewable resources.

While there initially existed <u>three</u> areas of dispute between the MECG and Empire studies, those disputes have been resolved through the course of the filing of testimony. ***<u>First</u>***, MECG and Empire both now agree that the 8 NCP version of the A&E methodology is reasonable for purposes of allocating fixed production costs.[14] ***<u>Second</u>***, Empire now agrees that a single annual peak should be used for purposes of calculating the load factor input utilized in the A&E methodology.[15] ***<u>Third</u>***, Empire agrees "to remove interruptible load from the A&E allocator used to allocate interruptible credits."[16]

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[13] Section 393.1620.2.

[14] Exhibit 354, Maini Surrebuttal, page 8; Lyons Rebuttal, page 20. Originally, MECG utilized the A&E 5 NCP method and Empire utilized the A&E 12 NCP method. In his rebuttal testimony, however, Mr. Lyons suggested a compromise position. "The Company would support a change to allocate production costs based on class demands in December through March and June through September (i.e., 8NCP)." Lyons Rebuttal, page 20. As reflected in MECG's testimony, while MECG believes that "the 5 NCP methodology better captures the SPP requirements because [it] uses all months where the demands are within 10% of the system peak, . . . the results using the A&E 8 NCP allocator are . . . similar to MECG's A&E 5 NCP allocator." (Exhibit 354, Maini Surrebuttal, pages 8-9).

[15] Exhibit 37, Lyons Rebuttal, page 21.

[16] *Id.* at page 18.

Thus, the results of the MECG and Empire studies are now perfectly aligned.[17] Specifically, both studies agree that a significant residential subsidy exists. That is, as reflected below, while the residential class would need a revenue neutral increase of 18.99% in order to reach cost of service, all other non-lighting class should receive a revenue neutral decrease.[18] Therefore, the residential subsidy not only harms the industrial classes (Large Power and Transmission Service), it also is detrimental to the commercial, small heating, and general power classes. In some cases, the discrepancy between a class's rates and its actual cost of service is staggering. For example, the Transmission Service class,[19] is currently paying rates that are 31.84% above cost of service and the Large Power class is paying rates that are 19.58% above cost of service.

Rate Class	A&E 8 NCP
Residential	18.99%
Commercial	-4.19%
Small Heating	-2.20%
General Power	-19.80%
Transmission Service	-31.84%
Total Electric Building	-23.36%
Feed Mill	-9.58%
Large Power	-19.58%
Miscellaneous	37.42%
Municipal Street Lighting	39.94%
Private Lighting	-30.43%
Special Lighting	428.09%

Source: Exhibit 354, Schedule KM-4s (page 2 of 2)

While it did not conduct a class cost of service study in this case, the Staff nevertheless continued its long-standing assault on the use of the A&E methodology. After the Commission has

[17] In its testimony, MECG demonstrated the reasonableness of the A&E approach by comparing to several other fixed production cost allocators recognized by the NARUC Allocation Manual. (Exhibit 352, Maini Direct, Schedule KM-2).
[18] Revenue neutral refers to the changes necessary to bring each class to cost of service assuming no overall change in the utility's revenues.
[19] Empire has proposed to change the name of the SC-P class to Transmission Service ("TS").

repeatedly adopted the -A&E methodology, these Staff criticisms should now be summarily rejected. For instance, in 2010, the Commission expressly adopted A&E approach as the "most reliable" methodology for allocating fixed production costs.

> To evaluate how best to allocate costs among these customer classes, four parties prepared and presented class cost of service studies. The studies presented by AmerenUE and MIEC used versions of the Average and Excess Demand Allocation method (A&E). Since the class cost of service studies offered by Staff and Public Counsel are unreliable, the Commission must choose between the Average and Excess method studies submitted by AmerenUE and MIEC. . . After carefully considering all the studies, the Commission finds that AmerenUE's class cost of service study, modified to allocate revenues from off-system sales on the basis of class energy requirements, is the ***most reliable*** of the submitted studies.[20]

More recently, when comparing the A&E approach to the methodologies advanced by the Staff, the Commission again found that the A&E approach, as presented by Ameren, provides a more "reasonable estimation of class cost of service."

> Generation (production) plant comprises more than half of Ameren Missouri's total plant investment. For allocation of that investment, Ameren Missouri used the 4 NCP (non-coincident peak) version of the A (average) & E (excess) demand methodology. . . [T]he Commission finds that Ameren Missouri's class cost of service study offers a reasonable estimation of class cost of service.[21]

Given that it is the "most reliable" and provides a "reasonable estimation of class cost of service", the Commission should disregard Staff's unending criticisms and feel comfortable with the estimation of the residential subsidy provided by the A&E approach.

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[20] Case No. ER-2010-0036, Report and Order, issued May 28, 2010 at pages 82, 86-87 (emphasis added).
[21] Case No. ER-2021-0240, Report and Order, issued February 2, 2022, at pages 16 and 23.

D. REVENUE ALLOCATION

In its past decisions, the Commission has repeatedly recognized the need for cost-based rates. For instance, in the 2011 Ameren case, the Commission stated:

> In general, it is important that each customer class carry its own weight by paying rates sufficient to cover the cost to serve that class. That is a matter of simple fairness in that one customer class should not be required to subsidize another. Requiring each customer class to cover its actual cost of service also encourages cost effective utilization of electricity by customers by sending correct price signals to those customers.[22]

Given the importance of cost-based rates, as well as the currently uncompetitive nature of Empire's industrial rates, MECG made recommendations to alleviate the significant residential subsidy. Specifically, MECG initially recommended that the Commission take steps to eliminate 25% of the subsidies inherent in Empire's rates. While consistent with Commission decisions in the 2014 and 2016 Empire rate cases,[23] MECG subsequently recognized that this position would have imposed a 4.75% increase on the residential class in addition to the 7.64% reflected in the revenue requirement in this case – an overall residential increase of 12.39%.

For this reason, MECG modified its position during the evidentiary hearing to reflect the 9.9% residential increase initially recommended by Empire. Specifically, based upon the consideration of "equity, bill continuity and gradualism",[24] Empire recommended a residential increase of only 9.9%.[25]

Recognizing that Empire initially considered a 9.9% residential increase to be reasonable when it was recommending an overall increase of 10.8%, MECG believes that the same 9.9%

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[22] *Report and Order*, Case No. ER-2011-0028, issued July 13, 2011, at pages 115-116. See also, *Report and Order*, Case No. ER-2010-0036, issued May 28, 2010, at page 87.
[23] Exhibit 352, Maini Direct, pages 31-32.
[24] Exhibit 36, Lyons Direct, page 33.
[25] *Id.* at Schedule TSL-9, page 2 of 2.

residential increase should also be reasonable when Empire is only receiving an increase of 7.64%.

Such a position would also be consistent with Empire's position in its pending gas case where, against an overall recommended system increase of 6.7%, Empire also recommended a residential increase of 9.9%. There, Empire's witness Lyons stated that "[t]he Company would need to increase Residential rates by $2.7 million, or 22.4 percent, to achieve the system ROR."[26] While he did not recommend a complete movement to cost of service, Mr. Lyons recommended a significant movement towards eliminating the residential subsidy.

> Contrary to his recommendation in this case, Mr. Lyons did not suggest that the residential class receive a below average rate increase. Instead, Mr. Lyons recommended that the Commission increase revenues for the Residential rate class by '$1.2 million, or 9.9 percent. The increase reflects a 44.0 percent movement to achieving the system ROR.'"[27]

Furthermore, MECG's modified recommendation of a 9.9% residential rate increase is also consistent with other Missouri utilities that recognize the problematic nature of a residential subsidy and, as a result, have taken definitive steps towards eliminating the subsidy. For instance, on January 7, Evergy filed rate cases for its Evergy Metro and Evergy West subsidiaries. There, Evergy conducted class cost of service studies for each subsidiary that showed the existence of a significant residential subsidy. Evergy proposed to take steps to eliminate the residential subsidy. For Evergy Metro, Evergy proposed that the residential class receive an increase that is 36% above the system average. Therefore, while seeking an overall increase of 5.65%, Evergy proposed that the residential class receive an increase of 7.73% and the Large Power class receive an increase of 4.24%. Evergy proposed similar revenue neutral shifts for its Evergy West subsidiary. Specifically, while seeking an overall increase of 8.31%, Evergy proposed that the residential class receive an increase of 10.84%

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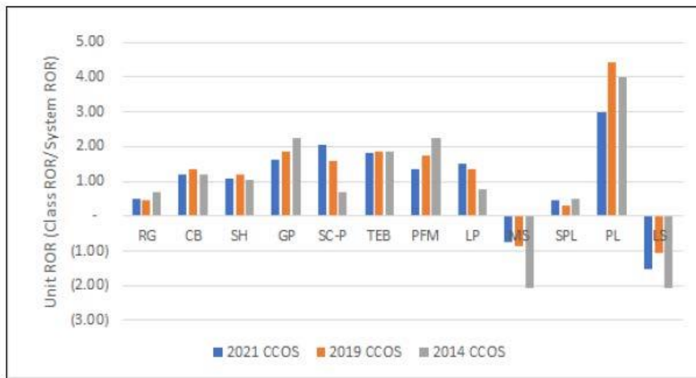
[26] Exhibit 352, Maini Direct, page 34.
[27] *Id.*

and the Large Power class receive an increase of 7.05%. Clearly then, unlike Staff and Public Counsel that seek to preserve the residential subsidy at all costs, other utilities recognize the importance of eliminating the residential subsidy and are taking steps to bring all classes rates closer to cost of service.[28]

The need to address the residential subsidy has been exacerbated by the Commission's decision, after addressing the residential subsidy in two straight cases, to take no action in the 2019 rate case. Pointing to "the large number of estimated bills", the 2019 Commission decision found that "none of the CCOS studies are reliable".[29] Therefore, the rate increase in that case was applied to the classes on an equal percentage basis. Not surprising, therefore, the residential subsidy has grown in the two years since. As Empire witness Lyons shows, the rate of return produced by residential (RG) rates has decreased over the past several years.[30] In contrast, the rate of return earned by both the Large Power (LP) and SC-P classes has increased dramatically.



[28] Exhibit 354, Maini Surrebuttal, page 16.
[29] *Amended Report and Order*, Case No. ER-2019-0374, issued July 23, 2020, page 41.
[30] Exhibit 38, Lyons Surrebuttal, page 6.

E. CONCLUSION

Recognizing that both class cost of service studies in this case show the existence of a significant residential subsidy, as well as the uncompetitive nature of Empire's industrial rates, the Commission should return to its effort, as demonstrated in both the 2014 and 2016 Empire rate case, to mitigate the residential subsidy. Given this, MECG recommends that the Commission increase residential rates by 9.9% with the other class's rates increased proportional to class revenues. Such a position promotes equity and fairness and prevents larger deviations from cost caused by over-moderation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email to all parties by their attorneys of record as provided by the Secretary of the Commission.

____/s/ David Woodsmall____________
David L. Woodsmall

Dated: February 25, 2022