

**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 ) Case No. ER-2011-0004  
Service Provided to Customers in the )  
Missouri Service Area of the Company. )

**RESPONSE TO EMPIRE’S SUGGESTIONS IN OPPOSITION  
TO MEUA’S APPLICATION TO INTERVENE**

COMES NOW, the Midwest Energy Users’ Association (“MEUA”), pursuant to the Commission’s October 26, 2010 Order Establishing Response Date, and for its Response to Empire’s Suggestions in Opposition to MEUA’s Application to Intervene respectfully states:

1. Of foremost importance, the Commission should recognize Empire’s unique stance in its effort to stifle the voices of its industrial customers. MEUA has been granted intervention in numerous recent Commission cases. Specifically, the Commission has granted intervention to MEUA in recent KCP&L and AmerenUE rate cases.<sup>1</sup> In each instance, MEUA was granted intervention **without any objection** by those utilities.

When it comes to this utility, however, Empire repeatedly seeks to silence the voices of its largest customers. In the last case, Empire raised virtually identical objections to those contained in its immediate pleading.<sup>2</sup> As MEUA noted in its response, “[a]t its most basic level, Empire’s objection is merely an attempt to silence the voices of customers that will be charged an additional 19.6% under Empire’s proposed rates.”<sup>3</sup> Ultimately, the Commission agreed and granted MEUA’s intervention.<sup>4</sup>

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<sup>1</sup> KCPL Case Nos. ER-2009-0090 and ER-2010-0355; AmerenUE Case Nos. ER-2010-0036 and ER-2011-0028.  
<sup>2</sup> See, Objection of the Empire District Electric Company to the Application to Intervene of Midwest Energy Users’ Association, Case No. ER-2010-0130, filed November 27, 2009.  
<sup>3</sup> See, Response to Order Directing MEUA to Respond, Case No. ER-2010-0130, filed December 8, 2009.  
<sup>4</sup> See, Order Granting Applications to Intervene, Case No. ER-2010-0130, issued December 16, 2009.

In this case, while it seeks an overall increase of 9.2%, Empire filed a class cost of service study which would increase industrial rates by 13.8%. Despite the fact that industrial customers will be significantly harmed by its proposals, Empire nevertheless seeks to silence those very customers from participating in this docket. Given that its objections have previously been reviewed and dismissed in the last docket, Empire's actions border on unconscionable.

2. In its pleading, Empire objects to the MEUA entities decision to intervene through an association rather than as individual members. This identical objection was raised in the last case. As MEUA responded at that time, “[t]he Commission’s rules, however, are directly contrary to Empire’s objection. The Commission’s rules expressly envision intervention by associations so long as the association provides a ‘list of all of its members.’ 4 CSR 240-2.075(3).” Ultimately, the Commission rejected Empire’s objection. “Empire fails to show the legal relevance or practical implications of a party having ‘additional intervenor status’” through an association.<sup>5</sup>

3. Interestingly, Empire’s objection recognizes that both Praxair and Explorer Pipeline are already intervenors, and were automatically so. Despite this recognition, however, Empire failed to provide recognized counsel for those entities with access to the Highly Confidential portions of the testimony and exhibits. The result of this, of course, is simply to delay these parties analysis of these materials which, often enough, are key parts of the rate increase proposal.

4. Additionally, Empire objects in that MEUA specifically stated that other entities may join its association in the future and that MEUA would notify the Commission of such additional entities. Again, this is an identical objection to that raised by Empire in its last case and which was rejected by the Commission.

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<sup>5</sup> *Id.* at page 2.

However, because MEUA listed all of its members at the time the application to intervene was filed, MEUA was in compliance with the Commission's rule. On the other hand, the Commission notes that whether a company joins MEUA or not, because such company's interests are similar to those already members to MEUA, then the interest is represented by MEUA. Because the interests are similar, then positions and arguments will not vary as to cause unfairness to Empire. . . . If additional members attempt to join MEUA, the Commission invites Empire to file a pleading setting out how it would be prejudiced or how fairness or due process would be thwarted.<sup>6</sup>

5. Empire's opposition really seems to be founded upon Empire's apparent dissatisfaction with the Commission's current rule regarding interventions. Specifically, Empire's opposes MEUA's intervention because MEUA "is not a legal entity capable of suing or being sued in its own name." Noticeably, however, Empire fails to provide any citation to Commission rule for its assertion that an association must be a legal entity. In fact, Commission rules do not require associations to be legally recognized. As such, the Commission has permitted intervention by informal associations in previous cases. Given this, Empire's objection should not be with the pending Application, but rather with the Commission's rules.

6. As Empire recognizes, since MEUA lacks any distinct existence, it "may only act by and through its [three] individual members." MEUA does not question or dispute this conclusion. In fact, in its response in the last case, MEUA specifically accepted this notion. "For purposes of this case, MEUA envisions that any stipulation would only bind the participating entities. . . . Therefore, recognizing that it is required to identify all participants in

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<sup>6</sup> *Id.* at page 3.

the intervening association, MEUA envisions that only identified participants would be bound by a particular stipulation.”

Just as in the last case, MEUA has identified entities which currently form its association for this case. MEUA believes that those identified members, as well as any subsequently identified members, will be bound by the actions of MEUA in this case.

7. Finally, Empire makes vague claims that “Empire and the other parties to this proceeding will be unduly prejudiced” by the MEUA intervention. That said, Empire fails to provide any specific instance in which it will be harmed. In fact, given that MEUA also intervened in its last case, Empire should be able to readily document the undue prejudice that it suffered. Such documentation has not been forthcoming.

8. MEUA asks that the Commission reject Empire’s objection. As was recognized by the Commission in the last case, Empire’s objections are baseless. In this light, MEUA also asks the Commission to remember such frivolous arguments when Empire seeks to recover its rate case expense and the associated legal fees. In the past, rate case expense has been largely looked upon as an open wallet of ratepayer money from which the utility could sponsor limitless numbers of attorneys and experts. Empire’s action in this case is consistent with this perception. Given the economic conditions and the inequity inherent in this utility belief, it is appropriate that the Commission assess and critique every utility action. Clearly then, when time for consideration arises, MEUA asks that the Empire ratepayers not be required to pay legal fees associated with Empire’s attempts to deny the ratepayers most affected by this case the ability to participate in this docket.

WHEREFORE, MEUA respectfully requests that the Commission deny Empire’s objection and grant it intervention in this case.

Respectfully submitted,



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ATTORNEYS FOR THE MIDWEST  
ENERGY USERS' ASSOCIATION

**CERTIFICATE OF SERVICE**

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



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David L. Woodsmall