

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of The Empire District	)	
Electric Company’s Request for Authority	)	
to File Tariffs Increasing Rates for Electric	)	Case No. ER-2019-0374
Service Provided to Customers in its	)	
Missouri Service Area	)	

**MECG MOTION TO STRIKE PORTIONS  
OF OPC SURREBUTTAL TESTIMONY**

COMES NOW the Midwest Energy Consumers Group (“MECG”) and, for its Motion to Strike Portions of the Surrebuttal Testimony of OPC Witness Geoff Marke, respectfully states as follows:

1. On March 27, 2020, the Office of the Public Counsel (“OPC”) filed the surrebuttal testimony of Geoff Marke. Contrary to Commission Rule 20 CSR 4240-2.130, that testimony provides, for the first time, OPC’s position that the entirety of any rate reduction should be allocated to the residential class.

2. Commission Rule 20 CSR 4240-2.130(7) provides that “[d]irect testimony shall include all testimony and exhibits asserting and explaining that party’s entire case-in-chief.” That same rule provides that “[s]urrebuttal testimony shall be limited to material which is responsive to matters raised in another party’s rebuttal testimony.”

3. While OPC filed direct testimony on revenue requirement issues, it did not file any testimony on class cost of service / revenue allocation / rate design. Given the strict requirements of 20 CSR 4240-2.130(7) then, it is right for the Commission to assume that OPC did not have a position regarding class cost of service / revenue allocation / rate design.

4. On March 9, 2020, OPC filed its rebuttal testimony. In that testimony, OPC witness Marke indicated that he was “tentatively aligned with Staff’s initial recommendations.”

As such, I am tentatively aligned with Staff’s initial recommendations, but I reserve the right to amend my recommendation as more information is presented.<sup>1</sup>

5. Given his tentative alignment with Staff’s recommendations, it is informative to review Staff’s recommendations. In its direct testimony, to which Mr. Marke “tentatively aligned” himself, Staff indicated that the residential class, since it was paying rates that were significantly below cost of service should receive less of a rate decrease / more of a rate increase than other classes. In fact, given the undercollection from the residential class, Staff recommended that the entirety of any rate reduction be allocated to the “CB/SH, GP/TEB, and LPS rate classes.”<sup>2</sup> Thus, at the time that it indicated that it was tentatively aligned” with Staff, OPC was agreeing that the residential class should not get any of a rate reduction.

6. Suddenly, in its surrebuttal testimony, Public Counsel dramatically changed its position. Specifically, without any study or analysis, OPC suddenly argued that the entirety of any rate reduction be allocated to the residential class.

Given the uncertainty surrounding the economy I recommend that any rate reduction be applied solely to the residential customer class. Then the rest of the rate classes would not experience a reduction or increase to their rates. Alternatively, I recommend that 75% of the decrease be applied to the residential customer class and the remaining 25% applied to the commercial service/small heating service customer rate class.<sup>3</sup>

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<sup>1</sup> Marke Rebuttal Testimony, filed March 9, 2020, at page 5. Noticeably, OPC fails to provide any legal citations that allows it to “reserve” its right to violate Commission rules and withhold its position until surrebuttal testimony.

<sup>2</sup> Staff Class Cost of Service Report, filed January 29, 2020, page 32. In its rebuttal testimony, Staff modified its results to indicate that the SC-P class was also producing revenues in excess of cost of service and should also receive a portion of the rate reduction. (See Lange Rebuttal, pages 17-18).

<sup>3</sup> Marke Surrebuttal, page 12.

7. OPC's sudden change in its position is in direct contravention of Commission Rule 20 CSR 4240-2.130(7). By withholding its position until surrebuttal testimony, OPC has effectively denied all other parties an opportunity to address the problems inherent in its position.

8. OPC obviously knew about the importance of the class cost of service / revenue allocation issue and, as a result, should have been expected to abide by the Commission's rules and present its position in direct testimony instead of holding it back until surrebuttal when no one would have an opportunity to respond. In the last two cases, the Commission pointed out, much as Empire, MECG and Staff do here, that the residential class was paying rates below cost of service.

9. In Case No. ER-2014-0351, the Commission expressly found that industrial rates were above cost of service and residential rates were below cost of service. Given the uncompetitive nature of Empire's industrial rates, the Commission found that such a situation threatened the economic health of the Joplin area and could result in a loss of jobs and ultimately higher rates for all classes.

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.<sup>4</sup>

Given this, the Commission took steps to eliminate a portion of the residential subsidy. Specifically, while the Commission ordered an overall increase of 3.9%, the Commission ordered that Empire's residential rates be increased by 5.9%.<sup>5</sup>

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<sup>4</sup> *Report and Order*, Case No. ER-2014-0351, issued June 24, 2015, page 18.

<sup>5</sup> *Id.*

10. Still again, in Empire’s last rate case (ER-2016-0023), the Commission took steps to eliminate another portion of the residential subsidy. Specifically, the Commission approved a settlement that shifted \$3 million of costs to the residential class over and above that imposed by that overall system increase.<sup>6</sup>

11. Despite the steps to address portions of the residential subsidy in the last two cases, the residential subsidy continues to exist. In fact, according to class cost of service studies filed by Empire, Staff and MECG, the residential class continues to pay rates that are significantly below cost of service. In fact, by “tentatively align[ing]” itself with the results of Staff’s study, OPC expressly acknowledged that residential rates are below cost of service and that the residential class should not receive the benefit of any rate reduction. Rather, in its rebuttal testimony, OPC agreed with Staff’s recommendation to take steps to further eliminate the residential subsidy.

12. OPC’s surrebuttal testimony is in direct contravention of Commission rule and sets a horrible precedent for future rate cases as more and more parties will follow OPC’s lead and simply withhold their positions until surrebuttal testimony.

WHEREFORE, MECG respectfully requests that the Commission strike page 12 (line 13) through page 13 (line 3).

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<sup>6</sup> *Order Approving Stipulation and Agreement*, Case No. ER-2016-0023, issued August 10, 2016, at Attachment A, page 9.

Respectfully submitted,

/s/ David L. Woodsmall

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ATTORNEY FOR THE MIDWEST  
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**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

Dated: April 10, 2020