

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

In the Matter of The Empire District Electric)
Company for Authority to File Tariffs Increasing)
Rates for Electric Service Provided to Customers) Case No. ER-2016-0023
in the Company’s Missouri Service Area)

**MOTION TO STRIKE CAM TESTIMONY
AND MOTION FOR EXPEDITED TREATMENT**

COMES NOW The Empire District Electric Company (“Empire”), by and through counsel, and moves for an order striking certain direct testimony filed herein by the Office of the Public Counsel (“OPC”). Empire requests a ruling on its Motion to Strike CAM Testimony by April 28, 2016. In support of these requests, Empire respectfully states as follows to the Missouri Public Service Commission (“Commission”):

Motion to Strike CAM Testimony

1. On April 1, 2016, OPC witness Charles R. Hyneman submitted his direct testimony on a variety of topics. Beginning on line 12 of page 10, and continuing through line 2 on page 13 of his direct testimony, OPC witness Hyneman discusses a Cost Allocation Manual (“CAM”). Attached to his testimony as Exhibit CRH-1 is a document which Mr. Hyneman is requesting that the Commission, in this rate case proceeding, “order Empire to adopt” as its CAM. Empire moves for this testimony and the attachment (the “Hyneman CAM testimony”) to be stricken from the record and not admitted into evidence in this matter.

2. Empire makes this request at this time, so that Empire and the other parties to this rate case are not required to direct time and resources away from rate case matters in order to rebut Mr. Hyneman’s allegations regarding Empire’s CAM and otherwise discuss Empire’s CAM in this rate case proceeding.

3. With the Hyneman CAM testimony, OPC asserts that Empire’s CAM is “significantly insufficiently designed to provide criteria, guidelines, and procedures to be in compliance with the Affiliate Transaction Rule.” The Hyneman CAM testimony, however, does not address any cost allocation methodology or any specific cost allocation issues, nor does it address any specific conduct on the part of Empire with regard to compliance with the Commission’s affiliate transactions rules. This is in contrast to the direct testimony of the Staff of the Commission (“Staff”) filed herein on April 1, 2016. Staff’s direct testimony addresses two specific cost allocation issues. These matters are proper for this rate case, and, as such, Empire does not seek to strike this Staff testimony. Staff, unlike OPC, does not seek to force a CAM on Empire in the context of this rate case proceeding.

4. In lieu of addressing Empire’s CAM in this rate case proceeding, Empire requests that any further discussion regarding Empire’s CAM take place in File No. AO-2012-0062, the docket specifically devoted to Empire’s CAM.

5. Prior to 2011, it was common practice for Missouri’s investor-owned utilities to submit their CAMs to Staff, but not seek Commission approval of said CAMs.

a. In May of 2001, Empire began submitting its CAM to Staff.

b. The CAM provided to Staff in 2001 is substantially similar to the CAM attached to Empire’s application in File No. AO-2012-0062. Although Empire has added new business units and also closed business units, these actions did not affect the way Empire calculated its allocation rates. When Empire Gas was acquired, Empire’s CAM was revised to add the gas business unit, but Empire continued to use the same methodology and calculations.

c. Empire submitted its CAM to Staff by email in June of 2002, and then in November or December of 2003, 2004, 2005, 2006, 2007, 2008, and 2009. Empire’s CAM

was also submitted to Staff by email in January of 2010. Empire then began submitting its CAM through the EFIS system: July 14, 2011 (BAFT-2012-0019), March 12, 2012 (BAFT-2012-0645), March 14, 2013 (BAFT-2013-0750), March 7, 2014 (BAFT-2014-0692), March 3, 2015 (BAFT-2015-0635), and March 14, 2016 (BAFT-2016-0775).

6. On August 23, 2011, Empire submitted an application seeking the Commission's approval of its CAM (File No. AO-2012-0062). Empire submitted its CAM application in compliance with a settlement term agreed to and approved by the Commission in a prior Empire rate case, File No. ER-2011-0004. Empire, Staff, and OPC are the only parties to Empire's CAM docket.

a. Empire, Staff, and OPC submitted a proposed procedural schedule in File No. AO-2012-0062. This proposal was accepted by the Commission on September 19, 2011.

b. On November 10, 2011, however, Staff submitted its Recommendation to Defer Approval Pending Appropriate Revisions. Staff asked for the Commission to defer approval of Empire's CAM "until such time as Empire files an appropriately revised CAM consistent with the revisions described in Staff's Memorandum," and Staff stated that it intended to work with Empire on these revisions.

c. On February 10, 2012, Empire, Staff, and OPC filed their Joint Request Regarding Continuing Discussions, asking the Commission to suspend the procedural schedule in File No. AO-2012-0062, to allow the parties to "continue to engage in productive discussions concerning the contents of Empire's CAM."

d. On February 10, 2012, the Commission granted the parties' Joint Request Regarding Continuing Discussions and directed Staff to file monthly status reports in File No. AO-2012-0062 until such time as Empire filed a CAM acceptable to all parties, until

the parties notified the Commission that items remained in dispute, or until the Commission ordered otherwise.

7. Since the filing of the Joint Request Regarding Continuing Discussions by Empire, Staff, and OPC, OPC has not made a filing or submitted a data request in File No. AO-2012-0062. Further, the Commission has not ordered Staff to cease filing its monthly status reports in the CAM docket, nor has any party to the CAM docket notified the Commission that items remain in dispute or asked for any action to be taken by the Commission. Instead, the parties continued to discuss Empire's CAM and Staff submitted monthly status reports pursuant to the Commission's order.

a. Staff filed its first status report in the CAM docket on February 29, 2012, stating that the parties continued to engage in "productive discussions." Substantially similar status reports were submitted by Staff, with the approval and consent of Empire and OPC, each month through and including August of 2013.

b. On September 26, 2013, Staff submitted its status report stating that it intended to circulate proposed language for Empire's CAM the following month.

c. On October 30, 2013, Staff submitted its status report noting that it had circulated proposed language "taking into account some of the content of Laclede Gas Company's Cost Allocation Manual that was recently approved by the Commission in Case No. GC-2011-0098."

d. With its November, 2013 status report, Staff noted that Empire was reviewing Staff's proposed language. In December, Empire provided Staff with its comments on Staff's proposed language. With its status reports for December of 2013 and January,

February, March , April, and May of 2014, Staff stated that it was reviewing proposed changes for Empire’s CAM.

e. With its status report in June of 2014, Staff stated that it would like to consider the possible impact of the CAM application of KCP&L Greater Missouri Operations Company (“GMO”) in File No. EO-2014-0189.

f. Staff continued to submit monthly status reports in Empire’s CAM docket. On September 30, 2014, Staff’s status report stated that Staff would like to consider the possible impact of GMO’s CAM and also the CAM being developed for Kansas City Power & Light Company (“KCP&L”) in File No. EO-2014-0189. Similar status reports were submitted by Staff in October and November, 2014.

g. With its Empire CAM status report in December, 2014, Staff stated that Staff, KCP&L, and GMO continued to be involved in CAM discussions and that OPC was involved and following the activity. The status report also stated that Staff intended to provide Empire with a new CAM document based on the CAMs being developed for KCP&L and GMO.

h. Staff continued to submit monthly status reports in Empire’s CAM docket. On April 23, 2015, Empire and Staff representatives met to discuss Empire’s CAM. OPC participated in the meeting by telephone. Thereafter, Staff submitted data requests to Empire in the CAM docket, and Empire responded to these data requests.

i. On August 31, 2015, four years after Empire submitted its application seeking approval of its CAM, Staff submitted its monthly status report in Empire’s CAM docket, stating that Staff was working on a revised CAM to submit to Empire. Staff submitted

similar status reports in September, October, November, and December of 2015 and January of 2016.

j. On February 8, 2016, Staff e-mailed a revised CAM to counsel for Empire and OPC. With its February status report, Staff stated that it would seek to schedule a meeting to discuss Staff's proposal.

k. The parties continued to discuss possible meeting times to discuss Staff's new proposal. With its March, 2016, status report (filed March 31, 2016), Staff noted that Empire would need time to review Staff's new proposal.

8. The day after Staff submitted its most recent status report in Empire's CAM docket, the Hyneman CAM testimony was submitted in Empire's rate case, with the request that the Commission order Empire to adopt OPC's proposed CAM. The Hyneman CAM testimony was filed in Empire's rate case, a proceeding which must be processed within 11 months, with OPC having never proposed a single change to Empire's CAM in the CAM docket, without OPC asking for a new procedural schedule in the CAM docket, and without OPC questioning Staff's monthly status reports in the CAM docket.

9. In May of 2001, Empire began submitting its CAM to Staff. Empire continued to submit its CAM to Staff on an annual basis, continuing to this date, and Empire formally filed its CAM, seeking Commission approval, on August 23, 2011. Additionally, any cost allocation or affiliate transaction issues related to Empire's CAM were addressed in Empire's various rate cases during this time.

10. OPC seeks to force its CAM on Empire, in this rate case proceeding which must be processed within 11 months, even though Staff, without any objection or questioning from OPC, had years to review Empire's CAM.

11. On February 8, 2016, in the context of Empire's CAM docket, Staff e-mailed a revised CAM to counsel for Empire and OPC. Less than two months later, and without making any filing in Empire's CAM docket regarding Staff's recent proposal or Empire's current CAM, OPC made its request in Empire's rate case that the Commission order Empire to adopt OPC's proposed CAM.

12. Empire should be allowed sufficient time to consider Staff's proposed CAM, and Empire should be allowed sufficient time to consider OPC's proposed CAM. In order to make an informed decision, Empire needs to determine how the Staff and OPC CAMs differ from each other and how the Staff and OPC CAMs differ from the CAM Empire has been using since 2001. Empire must have sufficient time to assess the differing cost allocation methodologies and the impact of the various proposals on Empire's operations and its ratepayers.

13. Mr. Hyneman, on page 12 of his direct testimony in this rate case, states that Staff was waiting to use the KCP&L and GMO CAMs as the basis for Empire's CAM. Empire is not a party to the KCP&L and GMO CAM docket, File No. EO-2014-0189, and is not privy to the parties' discussions in that case, but the public record indicates that there are no Commission-approved CAMs for KCP&L and GMO, the procedural schedule having been indefinitely suspended in File No. EO-2014-0189.

14. Mr. Hyneman, on page 12 of his direct testimony in this rate case, also states that a CAM for an electric utility is a "complex document" and that the development of CAMs for other utilities has "involved a significant amount of discussions and negotiations over a long period of time." It would be unjust and unreasonable to force Empire – and the other parties to this rate case and this Commission – to evaluate OPC's proposed CAM and arrive at a proper and reasonable CAM for Empire in the context of this rate case.

Motion for Expedited Treatment Pursuant to Rule 4 CSR 240-2.080(14)

1. Empire requests a ruling on its Motion to Strike CAM Testimony by April 28, 2016, to allow the parties to direct their time and resources to proper rate case rebuttal issues, instead of focusing on Mr. Hyneman's allegations regarding Empire's CAM.

2. There will be no negative effect on Empire's customers or the general public, if the Commission grants Empire's Motion to Strike CAM Testimony by April 28, 2016. To the contrary, Empire's ratepayers will benefit from the parties being able to focus on proper rate case issues and from the parties having sufficient time to formulate a proper CAM for Empire.

3. Technical/settlement conferences were held in this rate case on April 19 and 20, and the parties filed their Motion to Extend Filing Deadlines herein on April 21. Pursuant to the Commission's order issued today, the deadline for filing rate case rebuttal testimony was extended from April 27 to May 2. If the parties' Motion to Extend Filing Deadlines had not been granted, no purpose would have been served by an expedited ruling on Empire's Motion to Strike CAM Testimony. As such, this request for expedited treatment was filed as soon as possible.

WHEREFORE, Empire requests that the Commission, by April 28, 2016, issue an order striking the Hyneman CAM testimony and directing that any further discussion regarding Empire's CAM take place in File No. AO-2012-0062.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

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ATTORNEYS FOR THE EMPIRE
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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was filed in EFIS, notifying all counsel of record of the filing, and that a copy of the same was sent via electronic mail on this 25th day of April, 2016, to all counsel of record.

/s/ Diana C. Carter