BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Sixth Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of The Empire District Electric Company	)))	Case No. EO-2017-0065

EMPIRE'S POST-HEARING REPLY BRIEF

COMES NOW The Empire District Electric Company ("Empire" or "Company"), by and through counsel, and respectfully submits its Post-Hearing Reply Brief for consideration by the Missouri Public Service Commission ("Commission"):

I. Introduction
Empire's Prudence and OPC's Limited Review

In this case, Empire's sixth Fuel Adjustment Clause ("FAC") prudence review, the costs flowed through Empire's FAC from March 1, 2015 through August 31, 2016 (the 14th, 15th, and 16th six-month FAC accumulation periods) are subject to review. The overwhelming weight of the evidence demonstrates that Empire's hedging policy, and all costs flowed through Empire's FAC for the audit period, were prudent. There is no credible evidence to support the allegation of the Office of the Public Counsel ("OPC") that Empire's customers paid increased costs resulting from negligent or wrongful acts or omissions – or otherwise imprudent acts or omissions – by Empire.

Empire hedges, because Empire, upon considering and evaluating all pertinent information, including the guidance of this Commission, believes hedging is prudent and in the best interests of its customers. It has never been, nor should it be, the goal of Empire's hedging policy, as defined in Empire's Risk Management Policy ("RMP"), to ensure the lowest possible price for fuel, a price no one can predict. Instead, the RMP is designed to identify and mitigate risks, including the impact of price volatility over time. Both OPC and Empire have described hedging as a form of insurance against upward price movement and price volatility. Tr. Vol 2, p. 93, lines 15-24; *Id.*, p. 207, lines 1-2. In the event an adverse occurrence does not transpire, the value of insurance does not decrease, as the exposure to the identified risk was mitigated. OPC has failed to demonstrate, or even address, the overall impact of Empire's hedging program.

Total net fuel and purchased costs for the review period were $217,448,739, with total energy costs of $193,631,266 flowed through the FAC. Starting with the FAC period immediately prior to the audit period for this case, and continuing through the audit period, Empire's fuel costs for customers, as flowed through Empire's FAC, decreased with each FAC adjustment. Exs. 112-116; Tr. Vol 2, pp. 127-129. OPC witness Chuck Hyneman testified that OPC "performed a prudence review and cost audit of Empire's hedging policy and hedging losses for the audit period." Tr. Vol 2, p. 70, lines 4-6. OPC "did not perform a prudence review or cost audit of any other part of Empire's fuel and purchase power costs." *Id.* at lines 6-8. Mr. Hyneman continued by explaining that "OPC's focus and scope in this case was primarily on Empire's natural gas fuel hedging policy." *Id.* at lines 14-16. OPC has failed to demonstrate, or even address, the prudence of the overall fuel costs flowed through to Empire's customers through the FAC.

II. The Prudence Standard

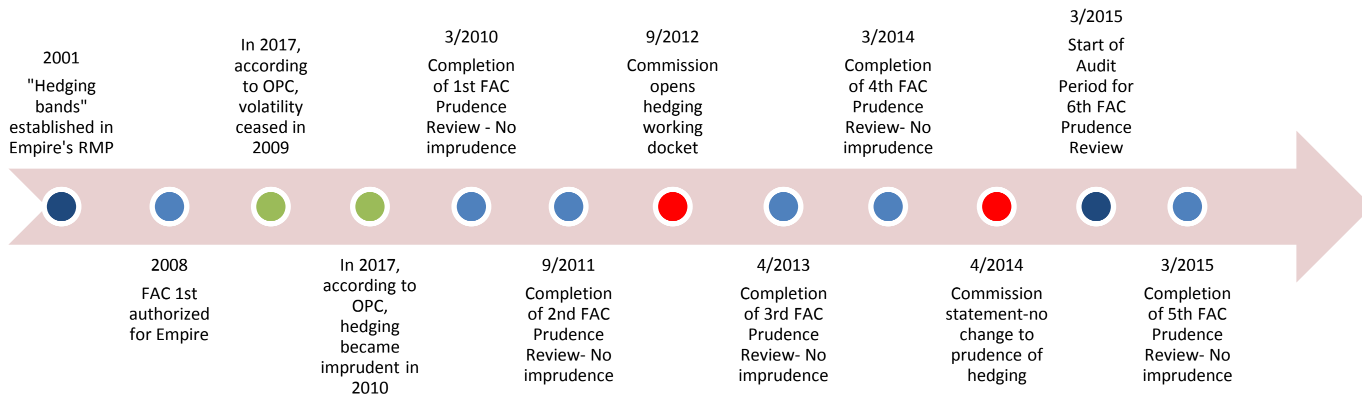
The Commission's FAC rule defines fuel and purchased power costs as "prudently incurred and used fuel and purchased power costs, including transportation" and states that "(p)rudently incurred costs do not include any increased costs resulting from negligent or wrongful acts or omissions by the utility." Rule 4 CSR 240-20.090(1)(B). To evaluate prudence, Staff reviews "whether a reasonable person would find both the information the decision-maker relied on and the process the decision-maker employed when making the decision under review was reasonable based on the circumstances at the time the decision was made, i.e. without the benefit of hindsight." *See* Ex. 200, Staff's Sixth Prudence Audit Report, February 28, 2017, Staff Report, p. 1. "If either the information relied upon or the decision-making process employed was imprudent, then Staff examines whether the imprudent decision caused any harm to ratepayers. Only if an imprudent decision resulted in harm to ratepayers will Staff recommend a refund." *Id.*

Staff's prudence audit procedure is in line with the prudence standard advanced by the courts. A utility's conduct "should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company." *State ex rel. Associated Natural Gas Co. v. Public Service Commission*, 954 S.W.2d 520, 529 (Mo.App. W.D. 1997) (internal citations omitted).

III. OPC's Position in this Case is an Impermissible Collateral Attack (RSMo. 386.550)

On page two of OPC's Initial Brief in this matter, OPC stresses that "(t)he Commission's authority to approve Fuel Adjustment Clauses (FACs) allows recovery of only prudently incurred fuel costs from ratepayers through an FAC. The law specifically limits '*the commission to approve periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in [the electric company's] prudently incurred fuel and purchase-power costs*.' § 386.266.1 RSMo [emphasis added]." Empire is in complete agreement with these statements. In fact, it is these statements that explain why OPC's attempt to remove all hedging losses from Empire's FAC calculations is a prohibited collateral attack on Empire's FAC tariffs and the Commission's rate case orders and prior FAC prudence review determinations.

OPC takes issue, in this sixth FAC prudence review for Empire, with (1) "Empire's financial hedging decisions which appear to utilize inflexible natural gas hedge purchasing policies" and (2) "Empire's natural gas physical hedging activities as reflected by the above-market prices of its long-term natural gas supply purchases." Motion for Evidentiary Hearing, p. 2. A depiction of the timing of some of the events relevant to this proceeding is set forth below.



The Commission first authorized a FAC for Empire in Case No. ER-2008-0093. The Commission approved continuation of Empire's FAC in Case Numbers ER-2010-0130, ER-2011-0004, ER-2012-0345, ER-2014-0351, and ER-2016-0023. In each of these six rate cases, it was determined exactly which costs and revenues Empire would be obligated to flow through its FAC. As a result of each rate case, Empire was authorized to flow hedging gains and losses through its FAC. Tr. Vol 2, pp. 80-84.

In addition to rate cases, prudence reviews of costs flowed through the FAC are required every 18 months. Five prior prudence reviews have occurred, all with no findings of imprudence on the part of Empire, and all with no disallowance of Empire's hedging losses incurred pursuant to Empire's hedging policy as defined in its RMP. Tr. Vol 2, pp. 84-90. "(T)he FAC rule does not allow recovery of imprudently-incurred costs." Tr. Vol 2, p. 148, lines 5-6 (Hyneman).

The "hedging bands," with which OPC takes issue in this proceeding, have been in Empire's RMP since 2001. According to OPC's testimony in this case, Empire's hedging policy became imprudent in 2010. Tr. Vol 2, p. 92, lines 1-6. In the seven years since 2010, OPC participated in all referenced rate cases in which Empire was authorized to flow hedging costs through its FAC, and OPC was authorized and permitted to participate in all referenced FAC prudence reviews in which no imprudence was found. This, however, is the first FAC prudence review in which OPC has chosen to be involved, according to OPC witness Hyneman. Tr. Vol 2, p. 86, lines 18-19.

IV. Reply to OPC's Initial Post-Hearing Brief

A. OPC's Hindsight Review. OPC uses the term "loss" or "losses" nearly 70 times in its Initial Brief, not including text in quotations and footnotes. This indicates a reliance on hindsight in OPC's evaluation and a narrow view of considering only monetary comparisons to a settled market price rather than considering the risks mitigated as a result of Empire's hedging program. OPC goes as far as arguing that "(t)he purpose of hedging is to protect ratepayers from higher rates. By not producing the intended result, Empire's gas hedging has clearly been inefficient." OPC's Initial Brief, p. 6. Obtaining the lowest rates possible is not the purpose of hedging, and a failure to obtain the lowest rate possible most certainly cannot be the method of judging the prudence of a hedging program.

When faced with a similar situation regarding allegations of imprudent hedging, the Commission found that "(y)ou cannot determine the success or failure of a hedging program by looking only at the futures market transaction" and that "(h)edging losses cannot be known until "after the fact," or in hindsight." File No. EO-2011-0390, Report and Order issued September 4, 2012, effective September 14, 2012, pp. 23, 28. The Commission concluded as follows: "Because all of Staff's studies were totally in hindsight, or else a mixed hindsight and prospective study, none are relevant to the Commission's determination."

* * *

> The Commission's Staff has failed to provide substantial controverting evidence to rebut the presumption of the prudence of GMO's hedging practices. The Commission's Staff has failed to meet its burden, by a preponderance of the evidence, of proving that GMO was imprudent with its hedging practices during the prudence review period . . .

Id., pp. 47, 65. The same is true here for OPC and Empire, and Empire encourages the Commission to issue similar findings in this case.

Empire witness Doll explained that one cannot review the prudence of a hedging policy by simply comparing "mark to market," as is being done by OPC in this case.

> We certainly consider what the portfolio is showing as far as prices, but the reality is Empire is trying to hedge from adverse price movement, and to take what the current forward curves show and try to forecast yourself exactly what the price is going to be does not provide you that adverse price protection. At that point you'd be only trying to guess the market.

Tr. Vol 2, p. 206, lines 12-24. Mr. Doll continued by explaining that Empire evaluates the value of hedging "by providing that what I've heard termed as insurance." *Id.*, p. 207, lines 1-2. OPC witness Hyneman also testified in this proceeding that hedging is akin to insurance. *Id.*, p. 93, lines 15-24.

B. Empire's Balanced Approach. On page 7 of OPC's Initial Brief, OPC argues that "(s)ince Empire hedges for volumes only, and not for price, it is addressing only one aspect of its future gas needs and ignoring another important aspect of its future gas needs." This statement is patently false, as the testimony before the Commission is that Empire employs a balanced approach to managing the risks associated with supplying fuel to its natural gas generators, a task requiring consideration of many factors. It is OPC that has limited its focus and disregards risks associated with attempts to purchase large volumes on the spot market, such as volume availability, credit limits, adverse price movement, and credit exposure. As stated on page 10 Mr. Doll's Rebuttal Testimony, Ex. 101, "the majority of our [EDE] gas hedged positions are fixed price futures in nature. If we were hedging purely for volume certainty and 'not price risk' as Mr. Riley alleges, we would simply purchase physical forwards at an index, thus preserving our ability to procure the volume of gas needed while floating the price."

With regard to the audit period, and all other times, Empire has employed, and maintained compliance with, a prudent Risk Management Policy. Ex. 105, Mertens Surrebuttal, p. 1. Empire's RMP allows the Company to address various areas of risk including, but not limited to, price volatility, credit exposure, and volume. Empire's RMP was designed to (1) provide structure and guidance, (2) allow flexibility and offer a variety of approved tools and strategies to accommodate various market conditions, and (3) effectively managing all risks, rather than singularly focus on price risks. *Id.*, p. 2. As noted by Empire witness Aaron Doll at the evidentiary hearing in this matter:

> Empire has continued to hedge from 2001 to current day. We have made adjustments within our strategy that is allotted for within the risk management policy, but at this time the only way we see to protect our customers from upward price risk is to hedge.

Tr. Vol 2, p. 186, lines 3-8.

C. This is Not a Blame Game. On page 8 of OPC's Initial Brief (emphasis in original), OPC argues "(t)here should be no question the wealth of evidence before the Commission presents *adequate contrary evidence* and establishes *serious doubt* about the prudence of Empire's hedging costs. This abolishes the prudence presumption." OPC also asserts that Empire is attempting "to pass blame onto the Commission for Empire's own policy." OPC's Initial Brief, p. 9. These statements are far from true. OPC has decided, in 2017, to argue that Empire has been acting imprudently since at least 2010. OPC uses this significant passage of time as "proof" that Empire just kept hedging despite year after year of evidence that hedging was imprudent. In reality, however, during all those years, Empire's allegedly imprudent policies and actions were repeatedly before the Commission, with no imprudence found and no disallowances ordered. This is not about blame – there is no fault or liability to be placed on the Commission or its Staff or Empire.

D. The Flexibility of Empire's Hedging Program. Throughout the hearing, OPC argued that Empire, by its own policy, was required to hedge fixed percentages of gas. Similarly, on page one of its Initial Brief, OPC states that Empire "followed a strict self-imposed policy of purchasing set volumetric percentages of natural gas hedges regardless of price." On page ten of its Initial Brief, however, OPC acknowledges that Empire's hedging policy, as set forth in its RMP, only contains hedging minimums. A minimum is just that, a minimum value. The flexibility of the written policy is between the minimum and maximum values. The hedging bands were established by Empire in 2001 to make sure that strategic input could be considered in an agile manner and some minimum level of adverse price exposure would be maintained. Empire did respond to changing risks by decreasing its hedging values and hedging at the minimum.

Further, if a change to the minimums was believed to be warranted in response to the market, and it was believed that such a change would not create undue additional exposure in other categories of risk, Empire's Supply Management Group ("SMG") or any RMOC member could have suggested a change to the written policy. OPC's statement that "Empire's hedging policy is imprudent because it fails to provide Empire's SMG with the flexibility to suspend hedging or hedge less than the minimums in light of a change from a volatile gas market to a non-volatile gas market" is false. Empire witness Aaron Doll explained that the hedging minimums are not set in stone.

> I have a voting seat on RMOC, as well as a common presenter to the committee, as well as some of my analysts and managers as well. So, we could advocate to the risk management oversight committee for changes to the risk management policy if we felt it were prudent.

Tr. Vol 2, p. 204, lines 20-25. Empire witness Rob Sager explained that Empire is "constantly" looking at its hedging policies "to see if we feel it fits our current needs." Tr. Vol 2, p. 219, lines 22-24. The gas position reports for the time period, a portion of which are included in Exhibit 16, demonstrate the breadth of the materials being reviewed by Empire; and the meeting minutes for Empire's Risk Management Oversight Committee, contained in Exhibit 110C, demonstrate that Empire understands and respects its obligation to its customers to be informed and act prudently.

E. OPC's Contradictory Arguments. On page 8 of OPC's Initial Brief, OPC asserts that evidence of imprudence is that Empire's FAC tariff "limits hedging purpose to mitigating price volatility." OPC explains this point as follows: "The only permissible purpose of hedging is to mitigate volatility in gas costs. This was established when the Commission approved Empire's FAC tariff and included hedging costs as a permissible cost to flow through the FAC." OPC's Initial Brief, p. 11. OPC then argues that there is "no volatility in the cost of fuel," it is therefore imprudent to hedge, and therefore unlawful for Empire to recover hedging costs through its FAC. *Id.*, p. 12. OPC even asserts that "Empire would need to seek a tariff change in its rate case if it seeks to hedge for any other purpose." *Id.*[1] Contrary to these statements, on page 10 of its Initial Brief, OPC states: "Clearly, the purpose of Empire's hedge strategy is to mitigate price volatility."

OPC also argues that "(w)hile Empire and the Commission's Staff have implied that the Commission approved Empire's hedging policy, neither party cite to any order where the Commission ever approved or even acknowledged an awareness of Empire's RMP." Again, OPC's statement is patently false. Empire and Staff cited to the six rate cases where the Commission specifically authorized Empire to flow hedging gains and losses through its FAC. Empire and Staff also cited the five prior prudence reviews where no imprudence was found and no disallowances were ordered. As noted by OPC on page two of its Initial Brief, "only prudently incurred fuel costs" may flow through an FAC. OPC makes no effort to reconcile its arguments with the fact that Empire's hedging bands were in place through the six rate cases and the five prior FAC prudence reviews and the fact that OPC asserts that gas volatility ceased to exist in 2008 or 2009.

[1] It should be noted that OPC's argument is regarding the limitation of the FAC tariff and does not apply to base rate recovery. If prudently incurred hedging losses were retroactively removed from Empire's FAC calculations, due to a belief regarding the purpose of Empire's hedges, an unlawful taking would occur. Empire would have no other avenue to recover those prudently incurred costs, and the Commission may not retroactively determine rates.

It is OPC that would need to seek a change in Empire's FAC tariff, if OPC does not want hedging gains and losses to be flowed through Empire's FAC going forward.

F. OPC's Misunderstandings Regarding Empire's Fuel Cost Review and Hedge Recording and the Percentage of Hedging Costs Assigned to Missouri Customers. On page 17 of its Initial Brief, OPC asserts that "(n)ot only did Empire see these impacts year to year, but Empire saw these impacts month to month as Empire entered into hedging contracts that it recorded as a loss *the very next month.*" On page 18, OPC references Empire's gas position report for January 6, 2012, and asserts that Empire "was *already* reporting the hedge as a . . . loss." OPC has misrepresented a mark-to-market comparison, reported on the forward-looking Empire Position Reports, as a recorded loss. Mr. Doll testified as follows:

> . . . to be clear, this doesn't show losses. This shows the percentage of what your mark to market is. So, the point of the position report is to show what our open positions would be valued at if we liquidated at the particular time the report was created. So, these actually do not show losses, just to make that clear. . . So, based on current NYMEX prices at the instant this report is produced, ***if you were to liquidate every position based on what the current NYMEX price was, this is what the net result would be. So, none of these have been incurred***. This is a forward looking report.

Tr. Vol 2, p. 182 (emphasis added).

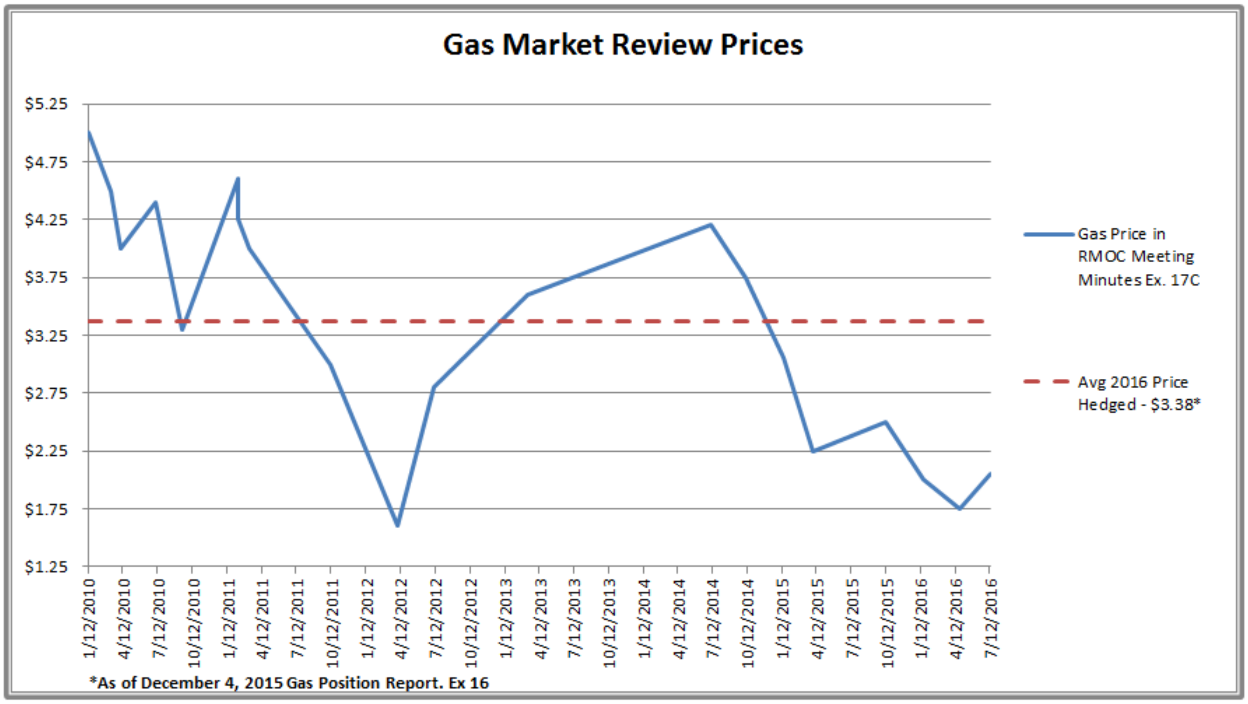
As previously stated, the Commission has ruled that "(y)ou cannot determine the success or failure of a hedging program by looking only at the futures market transaction" and that "(h)edging losses cannot be known until "after the fact," or in hindsight." File No. EO-2011-0390, Report and Order issued September 4, 2012, effective September 14, 2012, pp. 23, 28.

On page 21 of its Initial Brief, OPC misstates that Missouri customers pay 95 percent of Empire's hedging losses. Conversely, OPC attributes $13,104,811.18 of $16,785,521.65, which computes to 78%, to Missouri customers. OPC's Initial Brief, p. 19. In actuality, Missouri customers are assigned 95% of the Missouri jurisdictional allocation, approximately 82%, which would represent roughly 78% of Empire's total hedging gains or losses, as Empire was authorized by the Commission to flow hedging gains and losses through its FAC since 2008. Tr. Vol 2, pp. 80-84.

G. OPC's Misplaced Reliance on a KCC Decision. On page 19 of its Initial Brief, OPC states that "(i)n Kansas, Empire's ratepayers were protected from the Kansas portion of the $95 million in hedging losses Empire incurred since 2008 because Empire is prohibited from passing hedging costs onto its Kansas ratepayers." In prefiled testimony and at the hearing in this matter, OPC pointed to the decision from the Kansas Corporation Commission ("KCC") which directed that Empire not pass hedging gains or losses on to Kansas customers as a "should have known" argument.

First, the KCC decision was regarding Empire's "tool belt" not being consistent with other Kansas utilities at the time, and it was agreed by all parties that hedging activities would not pass through fuel in Kansas. Tr. Vol 2, p. 195. Second, as explained in Empire's Initial Brief, the KCC order was issued in 2008. OPC witness Hyneman testified that volatility in the gas market stopped in 2009. Tr. Vol. 2, pp. 90-91. In 2008, when the KCC decision was issued, the gas market displayed extreme volatility. Tr. Vol. 2, p. 208, lines 4-7. Also, Empire experienced substantial hedging gains in 2006, 2007, and 2008. *Id.*, p. 209, lines 1-7. The KCC hedging decision relied on by OPC appears to have no relevance to this proceeding, and it certainly cannot be used as evidence that Empire should have known to stop hedging in 2010.

H. OPC's Misinterpretation of Empire's RMOC Meeting Minutes. OPC consistently misinterprets information to further OPC's narrative of Empire's alleged imprudence. At pages 26-28 of its Initial Brief, OPC lists several selective descriptions of the current gas market contained in the RMOC meeting minutes and states Empire "repeatedly referred to the gas market as low-priced and steady." It is important to note that the descriptions cited by OPC primarily refer to the current day-to-day spot market, not NYMEX futures or physical forward pricing. In addition, OPC cherry picked certain passages, failed to include descriptions of upward price movement in the RMOC meeting minutes, and failed to show the range of prices included in the RMOC meeting minutes – a range of $1.60 to $5.00. These additional passages from the RMOC meeting minutes (Ex. 17C) are set forth in the table below, and the range of prices is illustrated in the following chart.



Meeting Minutes	Empire's Current Gas Market Description of Upward Price Movement	Ex. 17 page no.
1/12/2010	"…gas prices remain volatile. Cash prices are moderate in the $5 range."	1
2/9/2010	"gas prices are bouncing up and down following the overall stock market"	3
3/10/2010	"near term gas prices are in the $4.25 to $4.50 range"	5
5/11/2010	"near term gas prices are moving up and down in the $4.00 range; out year prices are trending up"	9
6/8/2010	"near term gas prices are moving up due to hot weather and official hurricane season"	11
10/12/2010	"Out year prices are trending up slightly"	19
11/10/2010	"gas prices are up slightly due to the dollar dropping."	21
1/11/2011	"Out prices for winter months are up"	25
2/9/2011	"cash gas prices spiked briefly"	27
5/11/2011	"gas prices spiked due to weaker injections"	33
7/13/2011	"gas prices for the near term dropped, but are back up."	37

7/10/2012	"gas prices jumped"	51
9/13/2012	"gas prices increased in the last few days due to political and economic news"	53
10/10/2012	"gas prices increased in the last few days"	55
12/3/2012	"gas prices are currently higher than expected"	57
1/14/2013	"gas prices bounced up slightly"	59
3/14/2013	"gas prices bounced up slightly to $3.60 for the near term due to colder temperatures in the Northeast and above average draws in storage"	61
8/27/2013	"gas prices bounced up slightly"	66
7/9/2014	"market had dropped significantly in the past week, and it is currently in the $4.20 range for the near month" (This indicates it has been much higher than $4.20)	80
4/25/2016	"gas prices have come up some in the last week"	98

Contrary to OPC's assertions that Empire is indifferent to customer impacts and "admittedly made decisions based upon the company's ability to recover hedging costs from ratepayers," Empire hedges because Empire, upon considering and evaluating all pertinent information, believes hedging is prudent and in the best interests of its customers. Staff witness Dana Eaves testified that there is no incentive for a utility to utilize a hedging practice that might be judged to be imprudent. Tr. Vol 2, pp. 297-298. Empire witness Doll also explained that Empire's merit incentives for employees are tied to low fuel and purchase power costs. Tr. Vol 2, p. 198, lines 10-18.

The hedging policy set forth in Empire's RMP was used to protect Empire from price volatility and other natural gas risks prior to the implementation of its FAC and has been kept in place to protect Empire's customers from the potential of large unpredicted price swings. As acknowledged by OPC, gas prices change every hour, every day, every week, and every month. Gas prices and the availability of gas are constantly changing. Tr. Vol 2, p. 121, line 18 – p. 122, line 2. "The future gas prices cannot be predicted with certainty." *Id.*, p. 126, lines 23-24.

I. OPC's Misplaced Reliance on a Staff "Recommendation." OPC's asserts that the Commission's Staff "warned Empire to reconsider its hedging policy in response to the changes in the gas market." OPC's Initial Brief, p. 34. If one investigates the timing of this Staff recommendation (November, 2012), it becomes clear that Staff's recommendation was considered and that it was prudent for Empire to continue with its hedging program.

On September 5, 2012, the Commission opened an investigatory docket, File No. EW-2013-0101, "to review policies or procedures with regard to electric companies' hedging programs that will hopefully assist the utilities with developing effective hedging programs that serve the public interest by mitigating the rising costs of fuel." With the conclusion of the hedging working docket, the Commission, addressing a concern that "the words Staff used in the recommendation section of its report might signal a change in the Commission's views about hedging practices and the prudence of hedging decisions," assured the utilities that it was not changing its policy on the prudence of hedging. This statement by the Commission was issued on April 16, 2014 – approximately five years after volatility in the gas market ceased to exist, according to OPC's current statements, and only one year prior to the start of the audit period in this case.

J. OPC's Misplaced Reliance on Hedging Decisions of Other Utilities. In its prefiled testimony and at the hearing in this matter, OPC pointed to settlements with other companies that resulted in those companies suspending hedging activities. In its Initial Brief, at pages 34-36, OPC points to additional hedging decisions by other companies. The decisions made by these other companies are not relevant to the case at hand. As explained by Staff witness Dana Eaves, there is no cookie-cutter approach to hedging, and Empire's particular generation mix makes hedging more important. Tr. Vol. 2, p. 296, lines 12-19.

In recent years, Empire moved to a dual season peaking system, further increasing the necessity to hedge natural gas in winter months, when natural gas supplies are in higher demand due to heating loads or natural gas retail customers. Ex. 100, Doll Direct, p. 6. Mr. Eaves also explained, "(s)ince we don't know what the fuel prices are going to be in the future and fuel is a critical component to produce energy that they sell to their customers, it's important to have a stable supply of gas." Tr. Vol. 2, p. 297, lines 11-15. "(T)hat's goal number one in my mind as a regulator, you got to keep the lights on." *Id.*, p. 308, lines 14-16.

V. Empire's Requested Relief

The overwhelming weight of the evidence warrants rejection of OPC's allegations of imprudence and acceptance of Staff's prudence review report. Empire's hedging policy, and all costs flowed through Empire's FAC for the period of March 1, 2015 through August 31, 2006, were prudent.

In the event the Commission determines that Empire's hedging policy was imprudent, a refund to customers would still not be warranted. OPC has failed to offer testimony which would demonstrate the proper amount for any refund. No specific instances of imprudence on the part of Empire regarding its FAC costs have been identified or quantified by OPC in this proceeding. Rather, OPC has deemed Empire's entire RMP to be imprudent due to an allegedly inflexible hedging policy. This is despite general support of Empire's hedging policy from Staff and the Commission, and the lack of objection from OPC, in previous proceedings, as discussed in detail in Empire's Initial Post-Hearing Brief. Additionally, OPC has looked only at hedging "losses" and has failed to account for, or even address, the overall impact of Empire's hedging program and/or the overall fuel costs flowed through to Empire's customers through the FAC.

Empire stands behind its hedging program, as defined in the RMP, and would have grave concerns regarding the cessation of its hedging program, as suggested by OPC, and the exposure Empire's customers would then face. Empire, though, is always willing to listen to alternative policy suggestions, including those regarding hedging and the mitigation of various risks. Empire would welcome direction or guidance from the Commission with regard to the Commission's current policy on the prudence of hedging, as was provided by the Commission in the past (*see* File Nos. EO-2011-0390 and EW-2013-0101).

WHEREFORE, Empire respectfully submits this Post-Hearing Reply Brief and requests that the Commission reject OPC's allegations and accept Staff's prudence review report. Empire requests such additional relief as is prudent under the circumstances.

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was filed in EFIS on this 26th day of October, 2017, with notice of the same being sent to all counsel of record.

/s/ Diana C. Carter