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 in the Company's Missouri Service Area.	)))))	Case No. ER-2014-0351

REPLY POSTHEARING BRIEF

OF

MIDWEST ENERGY CONSUMERS GROUP

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ENERGY CONSUMERS GROUP

May 29, 2015

COMES NOW the Midwest Energy Consumers' Group ("MECG") pursuant to the Commission's October 28, 2014 *Order Setting Procedural Schedule*, and provides its Reply Brief in this matter. In this brief, MECG will respond to arguments raised in the reply briefs filed by Staff and Empire.[1]

[1] The City of Joplin and the Office of the Public Counsel also filed Initial Briefs. Those briefs did not advance any substantive argument, but instead simply asked that the Commission approve the Non-Unanimous Stipulation and Agreement in this case. The Midwest Energy Users' Association and Division of Energy, while parties to this case and a signatories to the Non-Unanimous Stipulation, did not file an Initial Brief.

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I. CLASS COST OF SERVICE / REVENUE ALLOCATION

At pages 4 through 12 of its Initial Brief, MECG discussed the critical issue of Class Cost of Service / Revenue Allocation. There, MECG pointed out that there is a significant problem underlying Empire's rates. Specifically, Empire's industrial rate is well above the national average industrial rate, while Empire's residential rate lingers below the national average residential rate.[2] Such a discrepancy evidences a problem with cost allocation and makes it difficult for Joplin area industrial customers to compete in the national / global market.

MECG went on to point out that the cost allocation concerns with Empire's rates were verified by each of the class cost of service studies presented in this case. Specifically, studies performed by Empire, MECG, Staff and OPC all reveal that the Large Power (industrial) class is paying rates that are above cost of service while the Residential class pays rates that are below cost of service.[3] Thus, there is a definite residential subsidy in Empire's rates. More disturbing, OPC's consultant readily admits that this residential subsidy has grown significantly since the last case.[4]

Despite this growing problem, the Signatories to the Non-Unanimous Stipulation only take a minimal step towards addressing the residential subsidy. Specifically, while admitting the residential rates are at least 8.06% below cost of service,[5] the Signatories to the Non-Unanimous Stipulation only want to make a revenue neutral shift to the residential class of 0.75%.[6] As MECG details, such a step would ensure that the residential subsidy would stay in existence for at least 10 more rate cases, or

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[2] Exhibit 700, Maini Direct, pages 14-15.
[3] See, MECG Initial Brief at page 9 and footnotes 11-15.
[4] Exhibit 300, Dismukes Direct, Schedule DED-7.
[5] Exhibit 210, Kliethermes Rebuttal, page 5.
[6] See, Non-Unanimous Stipulation and Agreement on Certain Issues, filed April 8, 2015, at page 3.

approximately 17 years.[7] MECG pointed out that the 0.75% adjustment to residential rates is entirely arbitrary. When faced with a similar residential subsidy in the Ameren case, Staff sought to eliminate the subsidy almost twice as quickly.[8]

In contrast to the glacial approach recommended by the Signatories to the Non-Unanimous Stipulation, MECG recommends that the Commission address the obvious problem with the affordability of industrial rates by eliminating 25% of the residential subsidy. As detailed, such a movement would prevent residential rate shock and show that the Commission recognizes a problem with the affordability of Empire industrial rates.

In its Initial Brief, Empire spends a single page (page 8) addressing revenue allocation. There, Empire continues to ignore the unaffordability of its industrial rates and the results of its own class cost of service study and simply states that the 0.75% movement represents "a step in the right direction." Given its lackadaisical approach to this subsidy problem, one must necessarily wonder whether Empire, faced with the need for an 8% rate increase, would accept a 0.75% rate increase as a "step in the right direction". Certainly, Empire should demonstrate a greater degree of concern for its industrial customers that are fighting to compete given the unaffordable Empire rates.

In its Initial Brief, Staff spends very little time addressing class cost of service or its recommended revenue allocation.[9] Without providing any substance, Staff raises three concerns designed to convince the Commission not to take additional steps towards alleviating the residential subsidy. ***First***, Staff makes the outrageous claim that "each

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[7] MECG Initial Brief, at page 11.
[8] MECG Initial Brief, at page 11 (In the Empire case, Staff only proposes to eliminate 9.3% of the residential subsidy. In the Ameren case, Staff proposed and the Commission accepted a movement to eliminate 17.0% of the residential subsidy).
[9] Staff Initial Brief, pages 14-17.

class is covering their expenses."[10] Amazingly, Staff makes this claim by ignoring the largest single cost to Empire. . . return on equity. Specifically, Staff theorizes that, since each class is contributing <u>some</u> return on equity, each class is "covering their expenses."

Staff's argument seeks to upend over 120 years of legal jurisprudence providing the underpinnings of utility regulation. In 1898, the United States Supreme Court held that the utility is "entitled" to "fair return" on the property it employs for the public convenience.[11] Thus, return on equity is a cost to the utility. In 1923, the Supreme Court held, contrary to Staff's current understanding that, "this [that return on equity is a cost to the utility] is so well settled by numerous decisions of this Court that citation of the cases is scarcely necessary."[12] The Court continued on to note that "rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory." Clearly then, return on equity is a cost to the utility. And, just as overall rates that fail to provide a reasonable return are "unjust and unreasonable", individual class rates that fail to provide a reasonable return must also be found to be "unjust and unreasonable."

Staff's argument, that certain classes should be allowed to avoid certain costs of the utility, appears to be rooted in the Commission's recent decision that Ameren rates for Noranda should be based upon incremental cost. In doing so, Noranda avoided paying many of Ameren's embedded costs (i.e., fixed production costs). As there, Staff appears to adopt the belief that a certain class (i.e., the Empire residential class) should be allowed to avoid paying certain costs of Empire. Staff's theory lacks any legal basis.

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[10] Staff Initial Brief, pages 15-16.
[11] *Smyth v. Ames,* (1898) 169 U.S. 466, 547.
[12] *Bluefield Water Works v. Public Service Commission of West Virginia*, 262 U.S. 679, 690 (1923).

Second, without a shred of evidentiary citation, Staff raises the specter that any additional shift of costs to the residential class may cause "rate shock."[13] Again, Staff fails to provide any evidentiary support for this alleged concern. Further, Staff fails to provide any definition as to what it deems to be rate shock. Simply, Staff raises the fiction of this regulatory boogeyman in the hopes that it can scare the Commission away from taking any further steps to address the obvious discrepancy in Empire rates.

In its Initial Brief, MECG addressed any concern that further rate shifts could cause rate shock. As MECG noted, MECG's recommended 25% rate shift would result in an increase to the residential class of only 2.0%. Recognizing that the revenue requirement settlement in this case provided for an overall increase of 3.88%,[14] MECG's recommended rate shift would only result in a total residential increase of 5.88%. This virtually mirrors the 5.5% increase initially requested by Empire. Noticeably, Staff did not express any concerns that Empire's initial request would cause residential rate shock. Similarly, it should not be heard to raise the concerns of such rate shock now simply in an effort to dissuade the Commission from rejecting its recommended revenue allocation.

Third, Staff raised an unsubstantiated concern that additional rate adjustments could cause rate switching. Specifically, Staff claims that "rate adjustment changes" could cause customers to switch rates "within the commercial and industrial customer classes."[15] Again, Staff failed to provide any evidentiary support for these unsubstantiated rate switching concerns. It is apparent that Staff's concern of rate switching is a red herring. As Staff recommends, any additional increase to the residential class would be equally offset by reductions to the Total Electric Building, the

[13] Staff Initial Brief at page 16.
[14] Tr. 132.
[15] Staff Initial Brief at pages 16-17.

General Power and the Large Power rate classes.[16] As such, each of the commercial and industrial classes would experience the same benefit associated with any additional revenue neutral shifts to the residential class. Given that each class would experience the same impact, there would be no monetary basis for commercial and industrial customers to seek to shift between commercial and industrial rate classes. Every rate schedule that a commercial / industrial customer could access would all be receiving the same rate increases. Again, Staff's concerns are misplaced and simply designed to scare the Commission from addressing the disparity that exists in Empire's rates.

MECG's position to address the residential subsidy is not novel. Recently, the Nevada Commission ordered Nevada Power to eliminate 100% of its residential subsidy.[17] More recently, the West Virginia Commission took a more measured approach to the elimination of the residential subsidy. Specifically, West Virginia ordered the elimination of one-third of the residential subsidy.

> The Commission has reviewed the record in this proceeding about the existence of inter-class subsidies and the recommendations of the parties about how best to address movement to eliminate those subsidies. Rate subsidization sends inappropriate cost signals, and can unfairly burden a customer class. ***The Commission plans over time to eliminate those subsidies and will authorize tariffs that remove approximately one-third of the inter-class subsidies in this case.***[18]

Like the Nevada and West Virginia Commissions, the Commission should show its concern with the affordability of industrial rates and the burdens caused by rate subsidies. With such goals in mind, the Commission should reject the miniscule adjustment sought

[16] Staff Initial Brief, page 16.
[17] *Order*, Docket No. 14-05004, issued October 9, 2014, at pages 15-16.
[18] See, Commission Order on the Tariff Filing of Appalachian Power Company and Wheeling Power Company to Increase Rates and Petition to Change Depreciation Rates, Case No. 14-1152-E-42T, issued May 26, 2015, at page 101 (emphasis added).

under the Non-Unanimous Stipulation and, instead, eliminate 25% of the current residential subsidy.

II. LARGE POWER RATE DESIGN

A. THE COMMISSION SHOULD TAKE STEPS TO ELIMINATE THE INTRACLASS SUBSIDIES IN THE LARGE POWER RATES BY MOVING FIXED COSTS OUT OF THE LARGE POWER ENERGY CHARGES.

In its Initial Brief (pages 13-16), MECG argued that the Commission should take steps to eliminate the current subsidy that exists within the Large Power rate schedule by seeking to collect more fixed costs through the billing demand charge instead of the energy charges. Specifically, MECG asserted that Empire's second energy block (the "tailblock") rate should be reduced by 0.5 ¢ / kWh. Given that the second energy block is currently 3.5 ¢ / kWh (3.63 ¢ / kWh in the summer), this would reduce the energy charge to 3.0 ¢ / kWh (3.13 ¢ / kWh in the summer).[19] Recognizing that the current base cost of fuel in the fuel adjustment clause is 2.747 ¢ / kWh, these energy blocks will still be above the variable cost of fuel.[20]

MECG further pointed out that such a recommendation is consistent with Empire's argument that Empire's rates are too heavily dependent on energy charges for the collection of fixed costs.

> Volumetric recovery of fixed costs directly contributes to other problems with rate design. Essentially, when fixed costs are recovered volumetrically, the utility is at much greater risk for revenue recovery. . . Volumetric rates provide no revenue stability for the utility, since the bulk of costs do not change with volume, and any change in kWh from the weather normalized volume of sales will inevitably produce either too much or too little revenue. . . Changing rate design to recover fixed costs in fixed charges improves the opportunity to earn the allowed return.[21]

Noticeably, the other parties fail to provide any real basis not to adopt MECG's recommendation. Undoubtedly, because MECG's recommendation is consistent with its

[19] Exhibit 702, Maini Surrebuttal, page 17.
[20] Tr. 134.
[21] *Id.* at pages 22-24.

own testimony, Empire refrained from even briefing this issue. On the other hand, Staff continues to support the Non-Unanimous Stipulation and argues that the Large Power rate increase should be applied equally to all rate components (customer charge, billing demand, facilities demand and energy charges) within the Large Power rate schedule.[22] In order to justify this recommendation, Staff engages in mathematical machinations that mislead the Commission.[23] Pointing out that Empire's average cost of energy is 3.506 cents / kWh,[24] Staff incorrectly concludes that the Empire <u>tailblock</u> energy rate should be "some amount greater than $0.03506 / kWh."

Staff fails to recognize that Empire's Large Power rate schedule collects <u>two</u> energy charges: (1) an energy charge for the first 350 hours of use per month of 6.71 cents / kWh in the summer and 5.96 cents / kWh in the winter; and (2) a tailblock energy charge for all remaining energy usage of 3.63 cents / kWh in the summer and 3.50 cents / kWh in the winter.[25] It is the average of these energy charges, not simply the tailblock rate, which should equal the 3.506 cents / kWh annual energy cost. Therefore, for a customer that uses energy equally throughout a 720 hour month,[26] the average energy rate is currently 5.17 cents / kWh in the summer[27] and 4.73 cents / kWh in the winter.[28] Clearly, given that both the summer average energy charge and winter average energy charge are well above Empire's average cost of energy of 3.506 cents / kWh, it is apparent that Empire collects a significant amount of fixed costs through these energy

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[22] Staff Initial Brief, page 17.
[23] Staff Initial Brief, pages 18-19.
[24] Staff Initial Brief, page 18.
[25] See Large Power Service, Rate Schedule LP (Attachment A) (official notice taken at Tr. 210).
[26] 30 days a month x 24 hours a day = 720 hours per month.
[27] (6.71 cents + 3.63 cents) ÷ 2 = 5.17 cents / kWh.
[28] (5.96 cents + 3.50 cents) ÷ 2 = 4.73 cents / kWh.

charges. Given this, a 0.5 cents / kWh reduction is warranted and would still keep the average energy charge well above Empire's actual cost of energy.[29]

Staff's position, to apply the rate increase to all Large Power rate components is largely nonsensical and completely ignores the factors that caused this rate increase. Specifically, the evidence shows that Empire's energy costs have decreased since the last case.[30] The entirety of Empire's rate increase therefore is driven by changes in fixed costs, most notably the completion of the Asbury environmental upgrade.[31] Given that variable costs have decreased and fixed costs have increased, proper ratemaking dictates that energy charges should decrease and billing demand should increase. Inexplicably, Staff, and the Signatories to the Non-Unanimous Stipulation, seek to exacerbate the current LP intraclass rate subsidy by ignoring these cost drivers and increasing energy charges. Such a recommendation is contrary to the evidence in this case, represents poor ratemaking and sends poor price signals regarding the cost of energy vis-a-vis the cost of capacity.

[29] Staff engaged in similar types of calculations at the conclusion of the recent Ameren rate proceeding. There, the Commission rejected Staff's argument to reject Ameren's compliance tariff and found that, due to seasonality, a charge for the new IAS rate schedule could be below the effective rate in one season and above the effective rate in another season. It is the average rate that is relevant. (See, *Order Regarding Staff's Recommendation to Reject Compliance Tariff*, Case No. ER-2014-0258, issued May 13, 2015). As the Commission found there, the Staff should not look at a single rate, but the overall "effective" rate.

[30] The actual base cost of fuel resulting from this case will change depending on whether the Commission decides to include transmission costs in the fuel adjustment clause. Either way, the base cost of fuel in the fuel adjustment clause will decrease. If the Commission excludes transmission costs from the fuel adjustment clause, the base cost of fuel will decrease from 2.747 ¢ / kWh to 2.588 ¢ / kWh. (Exhibit 704).

[31] See, Exhibit 132, Walters Direct, page 3, quantifying the impact of the Asbury environmental upgrade at $19.8 million.

B. <u>THE COMMISSION SHOULD SEND PROPER PRICE SIGNALS BY REQUIRING EMPIRE TO SUBMIT, IN ITS NEXT RATE CASE, LARGE POWER RATES THAT HAVE A TIME-DIFFERENTIATED DEMAND CHARGE.</u>

In its Initial Brief (pages 17-18), MECG argued that Empire should be required, as part of its next rate filing, to provide a Large Power tariff that includes a time-differentiated demand charge. As MECG pointed out, the current Empire Large Power rate schedule discriminates against those customers that take "service in off-peak hours."

> It was previously pointed out that the size of a utility plant and, hence, the total investment in the business is determined by the quantity of service it must render during periods of peak demand. Just as in the case of appointing total demand costs among classes, customers within each class who use the service during peak demand periods should contribute a larger percentage toward the class's share of the capital costs than should off-peak users. <u>***As there is no attempt to separate these two groups of customers, the rate schedule discriminates against those who use the service in off-peak hours***</u>.[32]

By providing a time-differentiated billing demand charge, the Commission can send proper price signals regarding the cost of capacity

> Time differentiation of the billing demand sends pricing signals that encourage industrial customers to shift operations to move any peaks to an off-peak period. In this way, future utility capacity additions can either be postponed or cancelled.[33]

In its Initial Brief, Staff did not oppose such a recommendation.[34] Similarly, Empire does not dispute the obvious merits of such a time-differentiated billing demand charge. Rather, Empire points out that such a change would require some level of manual intervention for the 38 customers served on the Large Power rate schedule.[35]

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[32] *The Economics of Regulation*, Charles F. Phillips, Jr., (1969, revised edition) at pages 355-356 (emphasis added).
[33] Exhibit 700, Maini Direct, page 29.
[34] Staff Initial Brief at page 14 ("Staff does not oppose consideration of such a schedule, but does not recommend the Commission order its consideration. Staff did not file testimony on this issue.").
[35] Empire Initial Brief at page 7.

Empire fails to point out that it already engages in this manual intervention for the customers served on Empire's SC-P and SC-T rate schedules.[36] As such, Empire has demonstrated its ability to tariff and bill customers using a time-differentiated billing demand charge. Certainly, Empire's desire to avoid a small amount of work should not hinder the Commission in its ability to send proper price signals that could either postpone or prevent future capacity additions.

[36] Exhibit 700, Maini Direcct, page 29.

III. TRANSMISSION COSTS IN THE FUEL ADJUSTMENT CLAUSE

A. THE COMMISSION SHOULD ONLY INCLUDE TRANSMISSION COSTS IN THE FUEL ADJUSTMENT CLAUSE TO THE EXTENT THAT THE ARE INCURRED TO TRANSPORT PURCHASED POWER.

In its Initial Brief, MECG scaled back its request in this case regarding the inclusion of transmission costs in the fuel adjustment clause. Initially, MECG sought to disallow all transmission costs from the fuel adjustment clause. Recognizing the fluid nature of the legal profession, MECG was aware of a pending issue in the Ameren case and reduced its request to comply with the Commission's recent order in that case. Specifically, consistent with the Commission's recent interpretation of Section 386.266, MECG now seeks to disallow SPP transmission costs from the fuel adjustment clause only to the extent that those costs are not associated with "purchased power." Specifically, as the Commission interpreted Section 386.266, transmission costs should only be allowed in the FAC to the extent that they are: (1) costs to transmit electric power it did not generate to its own load and (2) costs to transmit excess electric power it is selling to third parties to locations outside of MISO.[37]

In their Initial Briefs, Staff and Empire cry foul that MECG has scaled back its request to comply with the Commission's most recent legal interpretation. Staff and Empire's claims of foul should be rejected for three reasons. ***First***, as was apparent in the questioning during the hearing, the parties were well aware of the pendency of a similar issue in the Ameren case and that the Commission's interpretation in the Ameren case would affect the outcome of the issue in this case. Indeed, recognizing the obvious nexus between the issues raised in the Ameren and Empire cases, the Commission questioned

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[37] MECG Initial Brief, page 21 (citing to *Report and Order*, Case No. ER-2014-0258, issued April 29, 2014, at pages 115-116.

MECG counsel on this issue. At the time, counsel candidly admitted that MECG's position went further than simply the elimination of transmission costs that were not related to purchased power.

> Our position in this case was to eliminate all transmission costs, and that is largely based upon the belief that the transmission benefits to be derived from SPP, the SPP Integrated Marketplace is still rather new. So any benefits associated with that are largely tenuous still at this point.[38]

That said, counsel was also clear about MECG's intention that the Commission's decision in Ameren could and should affect its decision in this case.

> Whatever decision you make in the Ameren case, we want it applied to Empire as well. There's an issue in Ameren to disallow transmission costs within the fuel adjustment clause, and we agree with that. When and if you make that decision, we want the same thing applied to Empire.[39]

Second, the Commission was always bound by the limits of its statutory authority. The fact that MECG originally sought a greater disallowance has no effect on the extent of the Commission's statutory authority. As it pertains to fuel adjustment clauses, that authority was, and always has been, set within the bounds of Section 386.266. As mentioned, the state of the law is always fluid. Had the Court of Appeals or Supreme Court issued a ruling during the pendency of this case, which placed limits on the Commission's authority, the parties and the Commission would be required to comply with that court pronouncement. Similarly, the parties should be prepared to comply with the Commission's most recent pronouncement on the extent of its legal authority under Section 386.266. The state of the law did not freeze at the time that the parties tried this case. MECG is simply adhering to the Commission's most recent legal pronouncement.

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[38] Tr. 96.
[39] Tr. 88-89.

Third, parties are not statutorily barred from raising legal issues at any point of the Commission's rate proceeding. Indeed, Section 386.500.2 allows a party to raise legal problems with the Commission's adopted position in an application for rehearing after the Commission has issued its Report and Order. "Such application shall set forth specifically the ground or grounds on which the applicant considers said order or decision to be unlawful, unjust or unreasonable."

Finally, Empire attempts to avoid the crippling nature of the Commission's recent interpretation of its legal authority by claiming that there are factual differences between these two cases. For instance, Empire argues that Empire is part of SPP, while Ameren is part of MISO. Empire fails to recognize, however, that the decision on this issue is not factually generated. Rather, as the Commission clearly recognized in its Ameren decision, the extent of its authority, as it pertains to fuel adjustment clauses, is limited by statute. Specifically, Section 386.266 limits the inclusion of transportation [transmission] costs to the extent that they are incurred with purchased power. That statute does not provide for factual distinctions between utilities and the operating regional transmission operator. It would represent the epitome of arbitrary decision-making for the Commission to apply one legal interpretation to Empire and another interpretation to Ameren.

Given the Commission's recent legal interpretation, the Commission should reject the stipulated fuel adjustment clause and order Empire to submit a fuel adjustment clause that only includes Account 565 transmission costs to the extent that they are: (1) costs to transmit electric power it did not generate to its own load and (2) costs to transmit excess electric power it is selling to third parties to locations outside of MISO. With this in

mind, the Commission should order the elimination of charges booked to Account 565 associated with SPP Schedule 11 for the Network Integration Transmission Service[40] that Empire takes from SPP for its load, as well as nearly all of the point-to-point transmission service related charges it incurs for its load. Furthermore, the Commission should order the elimination of any MISO charges associated with the transmission of energy from Empire's Plum Point facility, located in MISO, to its load located in SPP.

B. TO THE EXTENT THAT THE COMMISSION ALLOWS FOR THE INCLUSION OF TRANSMISSION COSTS IN THE FUEL ADJUSTMENT CLAUSE, THESE COSTS SHOULD BE COLLECTED THROUGH A DEMAND CHARGE.

In its Initial Brief (pages 22-23), MECG argued that, if the Commission were to allow certain fixed transmission costs to be included in Empire's fuel adjustment clause, then the costs should be collected through a fuel adjustment clause demand charge (collected on a per kW basis) and not through the FAC energy charge (collected on a per kWh basis).

Seeking to avoid the substance of this issue, Staff attempts to divert the Commission's attention by arguing that this issue was not preserved in the list of issues[41] and was raised for the first time in MECG's surrebuttal testimony.[42] Each of these arguments has been previously rejected by the Presiding Officer in this case. First, the Presiding Officer rejected the idea that this issue was not preserved in the List of Issues and allowed parties to cross-examine on the issue.[43] Second, after allowing briefing on

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[40] See, http://www.spp.org/publications/spp_tariff.pdf, (Southwest Power Pool Open Access Transmission Tariff), accepted into evidence by official notice at Tr. 202.
[41] Staff Initial Brief, page 10.
[42] *Id.*
[43] Tr. 158.

the issue, the Presiding Officer rejected Empire's assertion that this issue was raised for the first time in surrebuttal testimony and, therefore, stricken from the record.[44]

Recognizing the lack of merit to its procedural objections, Staff seeks to raise a misplaced substantive problem with MECG's recommendation. Specifically, Staff argues that it is impractical to take an SPP transmission charge that is billed to Empire based upon Empire's monthly demand and charge it to specific customers based upon that customer's monthly demand that may not coincide with the hour of the Empire peak demand. "Since SPP bills Empire based on Empire's usage coincident with the applicable SPP system monthly peak, there is no true relationship to the basis on which Empire's bills its demand customers – i.e., the individual customer's peak on the Empire system."[45] Staff falsely claims that MECG's argument, to charge customers for fixed costs on the basis of a demand charge, is "tenuous-at-best."[46]

Staff's argument is ludicrous. Given the lack of a perfect billing answer, Staff seeks to have the Commission avoid what amounts to a better billing answer. Specifically, Staff asks that the Commission simply ignore MECG's better cost allocation method (customer demand) in favor of a cost allocation method that has no rational basis to the manner in which the cost was actually incurred (customer energy). Staff's continued reliance on customer energy as the basis for the allocation of costs, even when the incurrence of the cost has no rational basis to energy usage, is undoubtedly one of the reasons underlying the overarching problems with Empire's rates and the subsidies inherent in those rates. Clearly, using customer demand is a better methodology for

[44] See, *Order Overruling Empire's Objection*, issued May 5, 2015.
[45] Staff Initial Brief, pages 11-12.
[46] *Id.* at page 13.

allocating these fixed costs. Staff's argument that it is not a perfect methodology should not be a basis to reject its use and instead continue to rely on energy allocation.

The fact remains that charging customers for fixed cost recovery on the basis of demand (per kW) represents much better ratemaking than charging on the basis of energy (per kWh). Empire repeatedly recognized this fact throughout its testimony.[47] Furthermore, other jurisdictions recognize the superiority of using demand charges as the basis for the recovery of fixed costs within the fuel adjustment clause.[48] The Commission should not continue to exacerbate the ongoing subsidy problem in Empire's rates by recovering such costs through the FAC energy charge while Staff's continues its never ending search for the perfect rate recovery methodology.

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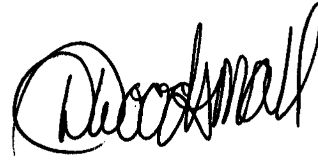
[47] See, Exhibit 115, Overcast Direct, pages 21-28.

[48] See, See, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor,* Florida Public Service Commission 140001-EI, issued December 19, 2014, at pages 22-24. See also, Minnesota recovery of such fixed transmission costs. Exhibit 702, Maini Surrebuttal, page 6 (footnote 1).

Respectfully submitted,



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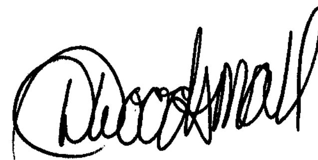
ATTORNEY FOR MIDWEST ENERGY
CONSUMERS GROUP

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: May 29, 2015

LARGE POWER SERVICE
SCHEDULE LP

AVAILABILITY:

This schedule is available for electric service to any general service Customer except those who are conveying electric service received to others whose utilization of same is for residential purposes other than transient or seasonal. Motels, hotels, inns, resorts, etc., and others who provide transient room and board service or room service and/or provide service to dwellings on a transient or seasonal basis are not excluded from the use of this rate. The Company reserves the right to determine the applicability or the availability of this rate to any specific applicant for electric service.

MONTHLY RATE:	Summer Season	Winter Season
CUSTOMER ACCESS CHARGE	$ 247.73	$ 247.73
DEMAND CHARGE:		
Per kW of Billing Demand	13.70	7.57
FACILITIES CHARGE		
per kW of Facilities Demand	1.649	1.649
ENERGY CHARGE:		
First 350 hours use of Metered Demand, per kWh	0.0671	0.0596
All additional kWh, per kWh	0.0363	0.0350

The Summer Season will be the first four monthly billing periods billed on and after June 16, and the Winter Season will be the remaining eight monthly billing periods of the calendar year.

To be eligible for this schedule, the customer agrees to provide, at the Customer's expense, an analog telephone line to the metering location(s), for use by the Company to retrieve interval metering data for billing and load research purposes. This telephone line must be available to the Company between the hours of midnight and 6:00am each day.

FUEL ADJUSTMENT CLAUSE:

The above charges will be adjusted in an amount provided by the terms and provisions of the Fuel Adjustment Clause, Rider FAC.

ENERGY EFFICIENCY COST RECOVERY:

The above charges will be adjusted to include a charge of $0.00027 per kWh on all customers who have not declined to participate in Company's energy efficiency programs under P.S.C. Rule 4 CSR 240-20.094(6).

DETERMINATION OF BILLING DEMAND:

The monthly Metered Demand will be determined from the highest fifteen minute integrated kilowatt demand registered during the month by a suitable demand meter. The monthly Billing Demand will be the monthly Metered Demand, or 1000 kW, whichever is greater.

DETERMNATION OF MONTHLY FACILITIES DEMAND:

The monthly Facilities Demand will be determined by a comparison of the current month's metered demand and the metered demand recorded in each of the previous 11 months. If there are less than 11 previous months of data, all available data from previous months will be used. The monthly Facilities Demand will be the maximum demand as determined by this comparison or 1000 kW, whichever is greater.

TRANSFORMER OWNERSHIP:

If the Company supplies a standard transformer and secondary facilities, a secondary facility charge of $0.342 per kW of facilities demand will apply, otherwise, Rider XC will apply, unless Customer supplies their own secondary facilities.

SUBSTATION FACILITIES CREDIT:

The above facilities charge does not apply if the stepdown-substation and transformer are owned by the Customer.

METERING ADJUSTMENT:

The above rate applies for service metered at primary voltage. Where service is metered at secondary voltage, metered kilowatts and kilowatt-hours will be increased prior to billing by multiplying metered kilowatts and kilowatt-hours by 1.0237.

Where service is metered at transmission voltage, metered kilowatts and kilowatt-hours will be reduced prior to billing by multiplying kilowatts and kilowatt-hours by 0.9756.