

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

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| 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 |) | |

**RENEW MISSOURI’S MOTION TO STRIKE PORTIONS
OF OPC SURREBUTTAL TESTIMONY**

COMES NOW Renew Missouri, and for its *Motion to Strike*, respectfully states:

1. On March 27, 2020, the Office of the Public Counsel (“OPC”) filed the Surrebuttal testimony of Dr. Geoff Marke, the agency’s chief economist. Contrary to Commission Rule 20 CSR 4240-2.130, that testimony provides OPC’s new position that “costs related to energy efficiency rebates and activities be removed from the revenue requirement[.]”¹ His testimony identifies that he is now taking the *opposite* position he took in his rebuttal testimony. In his rebuttal testimony filed on March 3rd, Dr. Marke acknowledged that Empire proposed to maintain its energy efficiency program: “I do not object to this request in this case.”²

2. Importantly, he admits that neither his positions or conclusions are offered in response to any party’s rebuttal testimony – as the Commission’s rules require – but to address external events.³ Applied to the rule, this admission alone should be dispositive.

3. 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-

¹ Marke Surrebuttal, p. 13.

² Marke Revenue Requirement Rebuttal, p. 14 (Doc. No. 110).

³ Had this witness changed his mind in response to the testimony of another party, this shift would likely not have been problematic. Parties should consider the arguments offered by parties and if they are persuasive that can be a good outcome.

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.”

4. The procedural problems with OPC’s testimony are compounded by the testimony itself. After failing to follow Commission’s rules, Dr. Marke discusses general unemployment projections, the stock market, and COVID-19 before opining that “DSM expenditures are an example of an expense that we do not have the luxury for in time of crisis, but there are no doubt others.”⁴ OPC fails to identify any financial figures in testimony and gives no rationale to support their assertions that energy efficiency programs must be eliminated. In fact, his new conclusion contradicts his positive statements about energy efficiency saving customers money employed to argue against raising the customer charge.⁵ Thus OPC’s approach leaves parties surprised and without substantive testimony to counter. Experts can and should offer conclusions in testimony, but these conclusions must rely on facts, data, or the application of reliable principles and methods. All of that is absent from OPC’s recommendation to eliminate Empire’s energy efficiency programs. Without this substance, the probative value of this new testimony does not support permitting the specified portions to be introduced into the record or requiring parties to respond.

5. This procedurally improper position based on matters outside of the record also directly goes against policy established by the Legislature in Section 393.1040 RSMo that states in pertinent portion that “the policy of this state [is] to encourage electrical corporations to develop and administer energy efficiency initiatives that reduce

⁴ *Id* at 17.

⁵ Marke Rate Design Rebuttal, p. 7 (Doc. No. 143) (stating: “Increasing the customer charge distorts these pricing estimates and would cancel out the energy saved by Empire’s energy efficiency programs to date.”)

the annual growth in energy consumption and the need to build additional electric generation capacity.”

6. For the foregoing reasons, Renew Missouri moves to strike the Surrebuttal testimony of Dr. Geoff Marke beginning at page 13, line 13 though page 17, line 19 as said portions violate Commission Rule 20 CSR 4240-2.130(7).

WHEREFORE, Renew Missouri submits this *Motion to Strike*, and respectfully requests that the Commission strike the aforementioned testimony identified above.

Respectfully,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 10th day of April 2020:

/s/ Tim Opitz
