

**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)	Case No. EO-2017-0065
Clause of The Empire District Electric Company)	

EMPIRE’S RESPONSE TO OPC’S APPLICATION FOR REHEARING

COMES NOW The Empire District Electric Company (“Empire” or “Company”), by and through counsel, and respectfully submits this response to the Application for Rehearing filed herein by the Office of the Public Counsel (“OPC”). In this regard, Empire states as follows to the Missouri Public Service Commission (“Commission”):

I. Introduction

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) were subject to review. The overwhelming weight of the evidence presented to the Commission demonstrated that Empire’s hedging policy, and all costs flowed through Empire’s FAC for the audit period, were prudent. No credible evidence was presented to support the allegation of OPC that Empire’s customers paid increased costs resulting from negligent or wrongful acts or omissions – or otherwise imprudent acts or omissions – by Empire.

On January 3, 2018, the Commission issued its Report and Order herein, effective February 2, 2018, stating that the Commission found Empire’s natural gas hedging policy that caused costs to be incurred for the period of March 1, 2015 through August 31, 2016 to be prudent.

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). The courts have set forth the follows standard to be used by the Commission in evaluating prudence: 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 Application for Rehearing

OPC filed its Application for Rehearing on February 1, 2018, alleging that the Commission’s Report and Order is both unlawful and unreasonable. RSMo. §386.500.1 provides that the Commission shall grant rehearing if, in the Commission’s judgment, there is “sufficient reason” presented. The Commission’s Report and Order is lawful and reasonable, in that it is amply supported by applicable law and competent evidence and was reached by following proper procedure and affording OPC full and fair due process. OPC’s Application for Rehearing fails to demonstrate sufficient reason for the Commission to rehear this matter, and, as such, the Application for Rehearing should be denied.

The crux of OPC’s Application for Rehearing appears to be that OPC regrets how it presented its case and framed the issues for decision by the Commission. 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 failed to

demonstrate, or even address, the prudence of the overall fuel costs flowed through to Empire's customers through the FAC.

OPC agreed that the first issue to be decided by the Commission in this matter was whether "Empire's natural gas hedging policy that caused costs to be incurred for the period of March 1, 2015 through August 31, 2016" was imprudent.¹ Additionally, OPC agreed that the Commission should reach the issue of refunds only if the Commission first found that Empire's hedging policy was imprudent.² It is disingenuous for OPC to argue that the Commission's Report and Order is unlawful and unreasonable for focusing on Empire's hedging policy (instead of assessing only the "prudence of the investments made within the eighteen-month interval at issue"),³ when the parties jointly agreed upon and presented the issues to be decided by the Commission.

The overwhelming weight of the evidence presented to the Commission warranted 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.

WHEREFORE, Empire respectfully submits this response to OPC's Application for Rehearing and requests such relief as is prudent under the circumstances.

BRYDON, SWEARENGEN & ENGLAND P.C.

By: /s/ Diana C. Carter

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¹ Joint List of Issues and Order of Witnesses, Cross-Examination and Opening Statements; August 10, 2017 (EFIS Doc. No. 45).

² *Id.*

³ OPC's Application for Rehearing, p. 4.

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was filed in EFIS on this 13th day of February, 2018, with notice of the same being sent to all counsel of record.

/s/ Diana C. Carter