

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

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)	

**MECG REPLY TO OPC’S RESPONSE
TO MECG MOTION TO STRIKE**

COMES NOW the Midwest Energy Consumers Group (“MECG”) and, for its Reply to the OPC’s Response to MECG’s Motion to Strike Portions of the Surrebuttal Testimony of OPC Witness Geoff Marke, respectfully states as follows:

1. Importantly, in its Response, OPC never disagrees with MECG’s assertion that, contrary to Commission rule, OPC changed its position in its surrebuttal testimony. Instead, OPC seeks to excuse its rule violation for 2 reasons.

2. First, OPC suggests that changing its position in surrebuttal was acceptable since its initial position was only a “tentative” agreement with Staff’s position. As MECG suggested in its Motion, such a position is a dangerous precedent. If accepted, all parties will toss out positions in direct and rebuttal with the caveat that it is simply a “tentative” position. Then, without allowing other parties an opportunity to respond, the actual position will suddenly appear in surrebuttal testimony. Such a strategy certainly violates Commission rule as well as the purpose underlying prefiled testimony.

3. Second, OPC suggests that its change in position is acceptable because of the current Covid-19 pandemic. Given its belief that the current pandemic will disproportionately affect residential customers, OPC believes that it is appropriate to

change its position and violate Commission rule.¹ In fact, in an effort to give its position some degree of credibility and support that was sorely lacking from Mr. Marke's surrebuttal testimony, OPC then asks the Commission to take "official notice" of various health organization reports.²

4. No one doubts that the current pandemic will have an effect on residential customers. What is lacking from OPC's testimony and its current offer of proof is any support for the notion that the pandemic will disproportionately affect residential customers over commercial / industrial customers. The Commission can easily peruse the Wall Street Journal as well as the stock price for any number of companies to reach the conclusion that businesses are feeling an inordinate strain from the current pandemic. Given the current lockout orders, businesses have closed their doors, ceased production and halted all operations. Unlike residential customers, which can avoid electric bills simply by reducing electric usage, business customers must still pay large electric bills because of the action of the demand ratchet built into Empire's commercial / industrial rate schedules.³ In any event, contrary to OPC's implication, the pandemic is affecting all customers. OPC, however, seems content with temporarily lowering residential customers, despite all studies showing that there is already a large residential subsidy.

¹ Proving the adage that "it's easier to ask for forgiveness than it is to get permission", OPC didn't even file a motion for a variance from the Commission's rules on the prefiling of testimony. Rather, OPC simply flaunted the Commission's rules and moved forward in a fashion that best suited it.

² In the event that the Commission rejects MECG's motion to strike, MECG will then address the inappropriateness of OPC's request for official notice in a separate pleading.

³ Residential rate responsibility is collected solely through a very low customer charge and an energy charge. Therefore, a large portion of the fixed costs to serve residential customers is collected through energy charges. Given this, residential customers can avoid their responsibility to pay these fixed costs simply by reducing usage. This ability to avoid responsibility for fixed cost recovery explains Empire's need for a weather normalization mechanism. Through this mechanism, residential customers will pay their share of fixed costs despite reduced usage. In contrast, commercial / industrial customers pay fixed costs through a demand charge. That demand charge is ratcheted such that the industrial customer pays based upon the highest demand for the previous 12 months. Therefore, despite being closed down because of the current lockdown, industrial customers are still paying high electric bills because of the use of the demand ratchet.

Apparently, OPC is satisfied with short-term rate reduction even though it may lead to long term job losses. Undoubtedly, OPC will then seek further residential rate reductions because of the increase unemployment resulting from companies permanently closing their operations.⁴

5. In the final analysis, OPC has already admitted that the appropriate response to its inappropriate testimony is to strike the testimony. On the same day that MECG filed its Motion to Strike, Renew Missouri filed a similar motion alleging that Mr. Marke had suddenly changed its position in his surrebuttal testimony. Specifically, OPC suddenly asserted that, because of the current pandemic, it should be allowed to change its position in surrebuttal and argue that all energy efficiency funding should be terminated. Ultimately, OPC implicitly acknowledged its transgression and, in the context of the withdrawal of the motion to strike, agreed to a resolution in which it agreed to maintain current energy efficiency funding levels. Here, the same thing should occur. That is, OPC should be required to abide by its previous position, as expressed in its rebuttal testimony, and should not be allowed to so blatantly violate Commission rule.

WHEREFORE, MECG respectfully renews its motion that the Commission strike page 12 (line 13) through page 13 (line 3) of Mr. Marke's surrebuttal testimony.

⁴ The Commission has already recognized their very real possibility at page 18 of its Report and Order in Case No. ER-2014-0351.

Respectfully submitted,

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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.



David L. Woodsmall

Dated: April 15, 2020