

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

In the Matter of the Application of)
The Empire District Electric Company for) Case No. EO-2018-0092
Approval of Its Customer Savings Plan.)

**REPLY POST-HEARING BRIEF OF
MIDWEST ENERGY CONSUMERS' GROUP**

COME NOW the Midwest Energy Consumers' Group ("MECG") by and through the undersigned counsel, pursuant to the Commission's April 20, 2018 *Order Amending Procedural Schedule*, and provides its reply post-hearing brief. In this brief, MECG responds to portions of the initial briefs filed by the Office of the Public Counsel ("OPC") and the City of Joplin ("Joplin").

I. THE NON-UNANIMOUS STIPULATION DOES NOT SEEK "PRE-APPROVAL" OR "PRE-DETERMINATION" OF COSTS.

In their initial briefs, Joplin and OPC attack the Non-Unanimous Stipulation on the basis that it constitutes "pre-approval" or "pre-determination" of costs.¹ Joplin and OPC's assertion misinterprets the scope of the requests contained in the Non-Unanimous Stipulation.

As an initial matter, MECG understands the mistaken notion that this docket seeks pre-approval. Upon filing, Empire clearly sought pre-approval of its Customer Savings Plan. Specifically, Empire sought the following Commission authorization and finding:

¹ Joplin Brief, pages 8-12 ("The Commission should dismiss Empire's application because Empire is seeking pre-approval."); page 23 ("The Commission should dismiss Empire's current Application on the basis that it seeks . . . pre-approval."). OPC Brief, page 10 ("The terms of the Stipulation and Agreement provide for pre-approval for the treatment of costs not yet incurred.").

“Authorization to record its investment in, and the costs to operate, the Wind Projects as described in Empire Witness Mooney’s Direct Testimony, including a finding that Empire’s investment related to the Customer Savings Plan (“CSP”) should not be excluded from Empire’s rate base on the ground that the decision to proceed with the Plan was not prudent.”²

While the Application sought pre-approval, the Non-Unanimous Stipulation no longer seeks a finding that the decision is “prudent”. Instead, the Stipulation simply seeks a finding that the acquisition of 600 MWs of wind and the continued operation of Asbury are “reasonable”.

In its brief, Joplin criticizes the Signatories attempts to “bifurcate” the concepts of “reasonableness and prudence.”³ The difference, however, is significant. In fact, the cases relied upon by Joplin and OPC indicate that pre-approval amounts to a finding of prudence. Since the Stipulation does not seek a finding of “prudent”, it does not seek pre-approval.

For instance, as the Middle Fork case referenced by Joplin recognizes, pre-approval effectively decides certain issues now and precludes future inquiry into a certain cost or decision.

Middle Fork needs to make additional investments in its plant and facilities, but requires some assurance that these future investments, as well as investments made in the past, will be properly valued and categorized for ratemaking purposes.

In order to move forward with these investments and to effectively participate in MDNR’s planning process, Middle Fork must have some certainty that additional investments that it makes in its water system will be appropriately valued and properly treated for ratemaking purposes.

Thus, pre-approval provides “certainty” and “assurance” that the Commission will treat future investments in a particular manner. In contrast, the Non-Unanimous

² Application, pages 2 and 9.

³ Joplin Brief, page 11.

Stipulation provides neither “certainty” nor “assurance” from the Commission. In fact, consistent with the Commission’s stated position that prudence be determined in the rate case in which costs are considered, the Non-Unanimous Stipulation allows for prudency challenges at some point in the future.⁴

Clearly then, there is a definite distinction between “reasonable” and “prudent”. Recognizing that the Stipulation does not seek a finding of “prudent”, the Stipulation does not amount to a request for “pre-approval” or “pre-determination”.

II. THE RATE IMPACT OF THE NON-UNANIMOUS STIPULATION

In their briefs, both Joplin and OPC bemoan the estimated 17% rate increase associated with the Non-Unanimous Stipulation.⁵ “By Empire’s own numbers, the “Customer Savings Plan” would result in a 17% rate increase.” The reference to the 17% rate increase is misleading.

Specifically, by referencing a 17% rate increase, the desired connotation is that ratepayers will be paying 17% more in rates as a result of the Stipulation than they otherwise would be paying. Effectively, the referenced 17% rate increase assumes that current rates, including the reduction for savings associated with the Tax Cuts and Jobs Act, would remain in effect for the indefinite future. That assumption is erroneous. Instead, recognizing that the portfolio contemplated by the Stipulation effectively replaces the preferred from the 2016 IRP, the more accurate comparison would be to the rates produced by the 2016 Preferred Plan.⁶ That comparison clearly reveals that the

⁴ Importantly, while the Stipulation does not seek a finding of pre-approval from the Commission, the Stipulation does bind the Signatory Parties (Staff, MEEG, Renew Missouri, and the Department of Economic Development) to not challenge the prudency of Empire’s decision to add 600 MWs of wind or to keep Asbury operational. (See, Non-Unanimous Stipulation, pages 5 and 12).

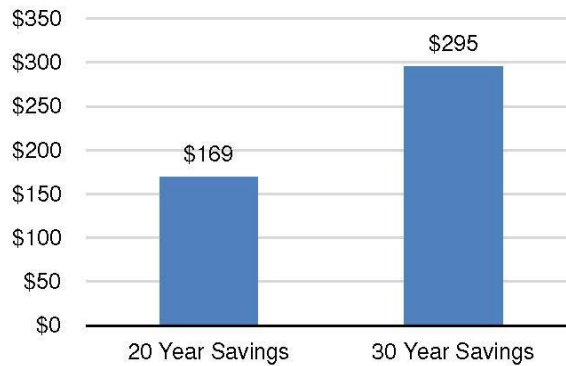
⁵ Joplin Brief, pages 4 and 15. OPC Brief, page 13.

⁶ Q. But absent the stipulation, the 2016 preferred plan would be in effect, and there would be rate increases resulting from that; is that correct?

Non-Unanimous Stipulation will lead to lower rates than the Preferred Plan. This is demonstrated in at least two places through the record.

First, in his affidavit in support, Empire witness McMahon shows that, when comparing the Stipulation to the 2016 Preferred Plan, the Stipulation is expected to result in \$169 million of savings over 20 years.

Figure 1: Stipulation Customer Savings Relative to the 2016 IRP Preferred Plan (\$ millions)



Source: Exhibit 8, McMahon Affidavit in Support, page 4.

Second, MECG witness Meyer demonstrates that, while the Stipulation produces an initial rate increase in 2021, as the investment in wind is first included in rates, it will then begin to produce savings for customers. In fact, the Stipulation will cost customers \$64 million less than the Preferred Plan over just the first 10 years.

A. Correct. And, again, in Mr. Meyers' affidavit on -- on page 8 in the table, he shows the modeling shows a revenue requirement of 618 million on the current preferred plan, which is an 8.4 percent increase in this status quo option. (Tr. 575-576).

Annual Revenue Requirements		
<u>Current IRP/600 MW Wind/Asbury</u>		
<u>Year</u>	<u>Current IRP</u>	<u>600 MW Wind/Asbury</u>
2021	\$618	\$637
2022	\$643	\$644
2023	\$659	\$663
2024	\$677	\$676
2025	\$694	\$693
2026	\$709	\$707
2027	\$721	\$714
2028	\$738	\$725
2029	\$744	\$737
2030	\$800	\$743

Source: Exhibit 351, Meyer Affidavit in Support, page 8.

Empire addressed this issue very clearly in its Initial Brief. Consistent with the chart above, Empire notes that

The rate increase in the absence of the Stipulation Plan is projected to be 8.42%. The difference associated with the Stipulation Plan is approximately 3.33%. Moreover, this situation turns around very quickly. By 2024, there is no projected difference in rates when comparing the status quo and the Stipulation Plan and by 2030, the revenue requirement from the Stipulation Plan is \$57 million less than under the status quo.⁷

Clearly then, the Stipulation is not expected to increase rates, as insinuated by Joplin and OPC, but instead, it is expected to reduce rates as compared to the currently effective 2016 Preferred Plan.

⁷ Empire Brief, page 29 (citing to Tr. 522-523 and 575-576).

III. THE STIPULATION IS SUPPORTED BY COMPETENT AND SUBSTANTIAL EVIDENCE

In its initial brief, Joplin asserts that the Non-Unanimous Stipulation is not supported by “competent and substantial evidence.”⁸ While Joplin may not like or want to accept the evidence that exists, there is clearly “competent and substantial evidence” to support the requested action under the Stipulation.

Specifically, the Stipulation asks for four important actions on the part of the Commission. Each of those requested actions are supported by competent and substantial evidence. First, the Stipulation asks, pursuant to Section 393.240, that the Commission establish a 3.33% depreciation rate for the plant accounts in which the wind investment will be booked.⁹ This is supported by the direct testimony of Empire witness Watson.¹⁰ Second, the Stipulation requests, pursuant to 4 CSR 240-20.015, that the Commission grant a waiver of certain affiliate transactions.¹¹ Again, this request and its scope are supported by the direct testimony of Empire witness Krygier.¹² Third, the Stipulation asks that the Commission find that the addition of 600 MWs of wind generation and the continued operation of Asbury are reasonable.¹³ The reasonableness of such a finding is supported by extensive testimony.¹⁴

A further reading of the its brief indicates that Joplin is not actually challenging that there is no evidence to support the Stipulation, but rather that Joplin seeks to

⁸ Joplin Brief, page 4 (“There is no competent and substantial evidence to support the Non-Unanimous Stipulation). See also, page 13 (“it should reject the Non-Unanimous Stipulation and Agreement because there is no competent and substantial evidence to support it.”).

⁹ Stipulation, pages 5-6.

¹⁰ Exhibit 18, Watson Direct, pages 6-10 and Attachment DAW-1.

¹¹ Stipulation, pages 13-14.

¹² Exhibit 2, Krygier Direct, pages 8-9.

¹³ Stipulation, pages 5 and 12.

¹⁴ Exhibit 8, McMahon Affidavit in Support, all; Exhibit 1, Holmes Affidavit in Support, all; Exhibit 103; Staff Affidavit in Support; all; and Exhibit 351, Meyer Affidavit in Support, all.

challenge the credibility of that evidence. For instance, Joplin challenges the efficacy of the model used to calculate the customer savings under the Stipulation or the magnitude of Empire’s exposure under the market price protection mechanism.

Empire’s “Customer Savings Plan” is entirely predicated on “the model.” That model, in turn, is highly dependent upon and sensitive to various inputs. Not only are many of the inputs uncertain, the competent and substantial evidence shows that the inputs Empire did use are unreasonable and unsupported by any evidence.¹⁵

In total, Joplin challenges four specific aspects of the Empire model as unreasonable: (1) wind generation capacity factors;¹⁶ (2) Empire capital contribution;¹⁷ (3) SPP market prices;¹⁸ and (4) the exclusion of other inputs from the model.¹⁹ The evidence indicates that Joplin’s criticism is misplaced.

► In its Initial Brief, Joplin criticizes the use of a 47% capacity factor in Empire’s modeling. Among other things, Joplin argues that the Elk River wind farm, from which Empire receives energy through a purchase power agreement, only has a capacity factor of 43%.²⁰ Relying upon historical capacity factors for Kansas wind farms, Joplin questions the 47% capacity factor projected for the wind generation added under the Stipulation. “Of the 19 Wind Farms in Kansas on Exhibit 512, only six have achieved a capacity factor in excess of 47%, and only two have done it consistently (for three or more years).”²¹

Interestingly, Joplin acknowledges the problem with its reliance upon the historical capacity factors when it notes that “[b]oth Mertens and McMahon suggested

¹⁵ See, Joplin Brief, page 14.

¹⁶ Joplin Brief, pages 16-18.

¹⁷ *Id.* at pages 18-19.

¹⁸ *Id.* at pages 20-21.

¹⁹ *Id.* at pages 21-23.

²⁰ Joplin Brief, page 16.

²¹ *Id.* at pages 16-17.

‘capacity factors have risen over time.’”²² This fact is very important in that Joplin is attempting to undermine the assumed capacity factor for the wind constructed pursuant to the Stipulation by comparing it to capacity factors for wind farms that will be almost two decades old by the time Empire wind commences service.²³ In this regard, the three wind farms that became fully operational in 2016²⁴ (Waverly Wind; Cedar Bluff Wind; and Slate Creek Wind) had an average capacity factor of 46.1%.²⁵ Recognizing that recent vintages of wind turbines have demonstrated capacity factors of over 46%, and increasing technology and efficiency can be expected to further increase capacity factors,²⁶ it is reasonable for Empire to expect a capacity factor of 47%.

► Next, Joplin criticizes Empire’s assumption regarding the capital investment to be made by the tax equity partner.²⁷ Specifically, for purposes of modeling, Empire assumed that it would provide 44.7% (\$429 million) of the capital investment, with the tax equity partner assuming the remainder. Recognizing that the Non-Unanimous Stipulation provides ** _____ **, Joplin concludes that ** _____ **

²² *Id.* (citing to Tr. 257 and 333).

²³ For instance, Elk River became operational in 2005; Spearville in 2006; Gray County in 2001; and Smoky Hills in 2008.

²⁴ Cedar Bluff showed a capacity factor of 4.0% in 2015. This load factor reflects the fact that Cedar Bluff was being constructed in 2015 and became operational late in 2015. Cedar Bluff was fully operational in 2016 and showed a capacity factor of 46.7%. Similarly, Slate Creek had a capacity factor of 2.9% in 2015 when it was under construction, but a capacity factor of 47.6% when it was fully operational. (Exhibit 512).

²⁵ Exhibit 512.

²⁶ Exhibit 9, Mertens Direct, page 7 (“The turbine manufacturers have designed equipment with longer blades to harness more energy. The larger diameter increases production, especially in areas with moderate winds and minimal turbulence. The improved technology has made it possible to develop areas that were formerly considered as inadequate for wind energy. As the high wind areas were the first to be developed, the remaining sites will inherently have lower wind speeds. The turbines OEMs are focusing on these mid-range wind speeds with their design efforts. New models have come out as well as extensions on existing platforms. **All of the technological improvements will result in mid-range wind facilities capable of capacity factors similar to or higher than original turbines in the high-range wind areas.** These improved capacity factors lower the levelized cost of electricity.” (emphasis added).

²⁷ Joplin Brief, page 18.

_____ ** Joplin then incorrectly concludes that the ** _____
_____ ** “could cause a shortfall of revenues of more than ** _____
_____ ”**²⁸

Joplin relies upon Exhibit 511 (a corrected version of a schedule attached to Exhibit 205) for its assertion that increased capital investment by Empire could result in a
** _____ **. The evidence indicates, however, that Exhibit 511 is severely flawed. First, the Schedule reflects an expected capitalization for Empire which includes 60% equity. Not only is this equity capitalization much higher than any equity ratio ordered by the Commission in the last two decades, it is also outside the equity ratio allowed by Stipulation.²⁹ More importantly, Schedule 511 fails to reflect that reducing the tax equity partner’s capital investment would also result in an earlier departure from the Wind Project for the tax equity partner. While the tax equity partner is currently expected to stay in the project for 10 years, that is based upon achieving a certain expected level of return. If the tax equity partner’s investment is decreased, then the time necessary to achieve the expected return is reduced. At this point in time, “the ownership structure ‘flips’ and the majority of the ongoing financial benefits of the wind project transfers over to [Empire].”³⁰ Therefore, the financial benefits of PTCs as well as accelerated depreciation that would have otherwise gone to the equity partner would now go to Empire for the benefit of its ratepayers. As Empire witness Holmes explained, “[w]hen the tax equity percentages changed, it will impact at least three other line items on this document. One, the amount of Empire PTCs is likely

²⁸ *Id.* at pages 18-19.

²⁹ Stipulation, provision 15 expressly limits Empire “equity percentage for purposes of establishing its capital structure [to] a range of 47%-53%.”

³⁰ Exhibit 11, Mooney Direct, page 9.

to change. Two, the less contributions from TE is likely to change. Three, the add back distributions to the TE is likely to change.”³¹

Clearly then, Joplin’s claims regarding the impact associated with a change in the Empire investment relative to the tax equity partner’s investment, and its reliance on Exhibit 511, is misplaced.

► Next, Joplin criticizes the “market prices” utilized in the Empire modeling. More specifically, Joplin points to the increase in negative prices in the Southwest Power Pool (“SPP”) that have resulted from the increased penetration of wind generation in SPP. “The SPP State of the Market 2017 Report explains, “The incidence of negative prices doubled in 2017 to around seven percent of all real-time intervals, up from about 3.5 percent of intervals in 2016.”³²

As Joplin recognizes, but fails to properly understand, the proliferation of negative prices has been seen with regards to “real time” prices. This was explained well in the Empire brief.

Two-settlement power markets like SPP have both day-ahead and real time markets, and the pricing behavior in these two markets can be significantly different. The day-ahead market financially binds resources to provide a certain amount of energy the next day at a settled price. Empire testified that it will optimize their participation of wind resources in the day-ahead market based on wind forecast predictions for the next day. During real time, however, market conditions can differ from the day-ahead forecast as a result of load changes, plant outages, and weather conditions that impact wind output. Because of this, real time prices are generally more volatile. In fact, negative prices have been much more frequent in the real time market than in the day-ahead settlement. Therefore, the impacts to a resource that is likely to sell most of its energy in the day-ahead will be mitigated. This includes Empire, as the majority of its sales and revenues are associated with day-ahead prices.³³

³¹ Tr. 891.

³² Joplin Brief, page 20 (emphasis added).

³³ Empire Brief, page 25 (citing to Exhibit 7, McMahon Surrebuttal, pages 32-34; Tr. 289; Tr. 413-414).

► Finally, Joplin erroneously questions the thoroughness of the Empire’s analysis of savings. Joplin suggests that in response to a question from the Chairman, an Empire witness asserted that there were only four factors which could affect customer savings. “Empire identified four and only four factors that affect savings when questioned by the Chairman.”³⁴ Recognizing that Empire had identified several other factors in its testimony, Joplin posits that Empire’s modeling is “not credible.”³⁵

Joplin mistakes the nature of the evidence. In response to questioning from the Chairman, Empire did not assert that there were “four and only four factors that affect savings.” Rather, the Chairman asked if savings was driven by “essentially those four” factors.

Q. Are there any other factors other than essentially those four that we identified that affect the savings?

A. Not when comparing these two plans.³⁶

In this context, the use of the word “essentially” was meant to identify the major factors, not an exhaustive list of all factors that affect savings.

Merriam Webster Dictionary defines essentially as “in essence” or “fundamentally”. It is “used to identify . . . that a description is basically true or accurate.”³⁷ Given the use of the word “essentially”, the witness identified the four major factors. The response was not intended, as Joplin now suggests, to have been an exhaustive list of all factors that may affect the customer savings of the Non-Unanimous Stipulation relative to the 2016 Preferred Plan.

³⁴ Joplin Brief, page 21.

³⁵ *Id.*

³⁶ Tr. 272.

³⁷

IV. NEED FOR THE ADDITION OF WIND GENERATION

In its brief, Joplin asserts that the Commission should reject the Non-Unanimous Stipulation on the basis that there is “no present need for the additional generation.”³⁸ As is clear from this quote, Joplin believes that there must be a “present” or “immediate” need prior to considering the addition of generation.

As an initial matter, it should be pointed out that Joplin seeks to conflate the standard applicable to the consideration of a certificate of convenience and necessity with the public interest standard to be applied to the immediate matter.³⁹ As the Non-Unanimous Stipulation recognizes, at some point in the future, Empire will likely be required to seek a certificate of convenience and necessity.⁴⁰ As the Stipulation further provides, such a request must come prior to Empire “authorizing construction of the facilities.”⁴¹ Certainly, at that point, the standard for the grant of a certificate of convenience and necessity will be applied.

That said, however, Joplin’s attempt to apply a “present” or “immediate” test to a consideration of need is not the appropriate legal standard. In a 2016 decision, the Western District Court of Appeals established that there is no strict criteria to be applied in determining what is “necessary and convenient” under Section 393.170. Instead, that determination is left to the “discretion” of the Commission. In fact, contrary to Joplin’s current assertion, “future” need is an appropriate consideration.⁴²

³⁸ Joplin Brief, page 4. See also, page 12 (“The competent and substantial evidence shows no present need for additional generation.”).

³⁹ See, MECG Initial Brief, pages 2-4, for a discussion of the public interest standard.

⁴⁰ Non-Unanimous Stipulation, pages 6-7.

⁴¹ *Id.*

⁴² *Office of the Public Counsel v. Missouri Public Service Commission*, 515 S.W.3d 754 (Mo.App. 2016).

In that 2016 case, the Western District considered a Commission decision granting KCPL Greater Missouri Operations a certificate of convenience and necessity to construct a 3 MW solar generation pilot. As the Court readily acknowledged, “[t]he plant is not needed to serve GMO’s current customers but will provide an additional three megawatts of electrical power.”⁴³ Nevertheless, the Court held that the Commission’s grant of a certificate was lawful and reasonable.

“The determination of what is necessary and convenient has long been, and continues to be, a matter of debate.” Specific criteria have not been set out by statute as to when a certificate is “necessary or convenient for the public service” and thus should be issued. Instead, whether “the evidence indicates the public interest would be served in the award of the certificate” is within the discretion of the Commission.

Although specific criteria for the Commission’s consideration have not been set out by statute, guidance can be found in past court opinions. For example, Missouri courts have stated that “‘necessity’ does not mean ‘essential’ or ‘absolutely indispensable’, but that an additional service would be an improvement justifying its cost.” In other words, “[a]ny improvement which is highly important to the public convenience and desirable for the public welfare may be regarded as necessary. If it is of sufficient importance to warrant the expense of making it, it is a public necessity.”⁴⁴

Despite the lack of “specific criteria”, the Western District did hold that the consideration of “future” need is not only appropriate, but “must” be considered.

"However, in matters of public convenience and necessity **there must be consideration of the future.**" Consideration of the future should be "part of a *comprehensive* evaluation of whether the public convenience and necessity would be served[.]" . . . Because the future must be part of a comprehensive evaluation in matters of public convenience and necessity, we will not disregard this evidence in our review of the whole record to determine whether the Commission’s order was reasonable.⁴⁵

⁴³ *Id.* at page 756.

⁴⁴ *Id.* at page 759 (citations omitted).

⁴⁵ *Id.* at page 760 (citations omitted)(emphasis added).

Ultimately, the Commission reached several conclusions in granting the requested certificate of convenience “including that the solar plant is (1) an improvement justifying its cost; (2) in the public interest; and (3) necessary and convenient for the public service.”⁴⁶ Based upon the criteria applied, the Court held that the Commission’s order was lawful and reasonable.

Similarly, while a “present” need, based upon a strict comparison of current customer demand and available capacity, may not be established, MECG asserts that the Stipulation is in the public interest and constitutes “an improvement justifying its cost.” That standard is met by the fact that the Stipulation is expected to provide customer savings and is supported by a wide spectrum of interests.

V. THE STIPULATION DOES NOT CALL ON THE COMMISSION TO MAKE A “MANAGEMENT DECISION”.

At pages 15-16 of its Initial Brief, OPC asserts that the Non-Unanimous Stipulation seeks to have the Commission make “management decisions” on behalf of Empire. At pages 28-29, OPC asserts that the Commission may not approve Empire’s decision to continue to operate Asbury and incur the costs to comply with the Coal Combustion Rule. OPC’s assertion misinterprets what is sought under the Stipulation.

Effectively, through the Stipulation and the agreement of the other Signatory Parties, Empire has made a management decision to add 600 MWs of wind and continue to operate Asbury. The fact that this management decision has been made was reflected in Empire’s execution of the Stipulation as well as the testimony of the President of Liberty Utilities Central Region which includes Empire District Electric.⁴⁷ Simply, Empire seeks an indication from the Commission, without abdicating its responsibility to

⁴⁶ *Id.* at page 764.

⁴⁷ See, Exhibit 14, Swain Direct, page 3 and Tr. 599-610.

determine prudence at a later point in time, that the management decisions encompassed by the Stipulation are “reasonable.” Certainly, this does not rise to the level of the Commission exercising the “general power of management.”

VI. THE EMPIRE MODELING

At pages 35-52, OPC raises several allegations regarding the adequacy of Empire’s modeling underlying the Stipulation. Based upon OPC’s allegation that the modeling “cannot reasonably be relied upon”, OPC asserts that there is “an insufficient basis” for the Commission to find that the decision to add 600 MWs of wind, through the use of tax equity financing, is reasonable.⁴⁸ In fact, instead based upon its own modeling, OPC claims that ratepayers would be “exposed to \$319 million of additional costs.”⁴⁹ The record reflects that there are significant problems with the OPC modeling.⁵⁰

Both the Empire and the OPC modeling are based upon a comparison of the revenue requirement of the wind assets and the revenues to be derived from the sale of energy from those wind assets. As it pertains to OPC’s quantification of the revenue requirement, there are numerous flaws. For instance, the evidence indicates that the OPC modeling is flawed in that it fails to properly quantify the number of PTCs received by Empire or the value of those PTCs.⁵¹ Next, the income tax rate utilized in the OPC modeling is incorrect.⁵² Additionally, the interest expense line reflects an inflated cost of debt. Specifically, instead of a 4.00% cost of debt that is consistent with Empire’s last debt issuance, OPC relied upon a 5.33% cost of debt.⁵³ Finally, while the property tax

⁴⁸ OPC Brief, page 35.

⁴⁹ *Id.* at page 36 (referring to Exhibit 218).

⁵⁰ References to the OPC modeling refers to Exhibit 210, Riley Affidavit in Opposition, Attachment JSR-1 as corrected by Exhibit 218.

⁵¹ Tr. 566-567.

⁵² Tr. 567.

⁵³ *Id.*

line indicates a 0.86% property tax rate, the actual rate reflected in the spreadsheet is twice as high (1.73%).⁵⁴ Each of these flaws inflates the wind asset revenue requirement.

On the other hand, the OPC modeling tends to deflate the revenues associated with selling the energy from the wind assets into the SPP Integrated Marketplace. For instance, the OPC modeling reflects SPP revenues that are based upon wind production at a P75 level and low market prices. In other words, instead of using the expected level of wind production (P50), OPC utilized an exceedingly low level of wind production that is exceeded 75% of the time. Used in conjunction with the low market prices, the OPC modeling of revenues is only expected to occur in 2.5% of the actual scenarios.⁵⁵ Next, the operating costs relied upon by OPC are dated and have been updated through the course of this proceeding.⁵⁶ Additionally, since the price hedge is an internal corporate transaction, there should be no costs associated with the price hedge. Therefore, OPC should not have included these costs.⁵⁷ Finally, the line entitled “less contributions from TE” is a netting of contributions to the Tax Equity Partner as well as distributions to the Tax Equity Partner. Therefore, since the OPC modeling includes the “distribution to the TE” as a separate line item, it effectively double counts these costs.⁵⁸

Ultimately, it has been shown that the OPC modeling significantly inflates the revenue requirement associated with the wind projects while it simultaneously deflates the revenues generated from the wind projects. Given this, the OPC modeling should be disregarded and the OPC concerns with the Empire modeling should be ignored.

⁵⁴ Tr. 568.

⁵⁵ Tr. 569-570.

⁵⁶ Tr. 570.

⁵⁷ Tr. 571.

⁵⁸ *Id.*

VII. RETURN OF TAX REFORM BENEFITS

At pages 62-63, OPC minimizes the value of the Non-Unanimous Stipulation in that it fails to recognize the value associated with the provision that returns savings associated with the Tax Cuts and Jobs Act as of October 1, 2018. OPC speculates that since the tax provision in the Stipulation does not “comport with the requirements of SB 564”, it would “deprive ratepayers of the benefits” of that legislation.

OPC fails to recognize that SB 564 may not be available as a mechanism to return tax savings to Empire ratepayers. SB 564 (Section 393.137) provides the Commission with one-time authority to adjust rates for the effects of the Tax Cuts and Jobs Act for electric utilities that “do not have a general rate proceeding pending before the Commission as of the later of February 1, 2018, or the effective date of this section.” Since it carried an emergency clause, the effective date of Section 393.137 was June 1, 2018. As the Commission is aware, Case No. ER-2018-0228 was pending before the Commission on June 1, 2018. Recognizing that some may suggest that ER-2018-0228 is a “general rate proceeding” within the scope of Section 393.137, there is the possibility that Section 393.137 will not provide a mechanism for the reduction in Empire rates to flow back these tax savings. In such a situation, the approval of the Non-Unanimous Stipulation, including the tax reduction, may be the only mechanism to ensure that the Empire ratepayers receive the benefits of the federal corporate income tax reduction.

WHEREFORE, MECG respectfully requests that the Commission approve the Non-Unanimous Stipulation.

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: June 12, 2018