

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

**THE EMPIRE DISTRICT ELECTRIC COMPANY'S
INITIAL POST-HEARING BRIEF**

COMES NOW The Empire District Electric Company (“Empire” or “Company”), by and through counsel, and submits its Initial Post-Hearing Brief. In this regard, Empire respectfully states as follows to the Missouri Public Service Commission (“Commission”):

Stipulations

All parties to this proceeding, with the exception of the Midwest Energy Consumers Group (“MECG”),¹ executed the Revised Stipulation and Agreement and List of Issues filed herein on April 8, 2015 (the “Revised Stipulation”). The Revised Stipulation – which may be treated as unanimous by the Commission pursuant to 4 CSR 240-2.115(2)(C) – contains an agreed-to revenue requirement number and addresses the majority of issues in this case, including all true-up issues. The pre-filed testimony of the parties, which has been admitted into evidence herein, provides competent and substantial evidentiary support for the Revised Stipulation.

All parties to this proceeding, with the exception of MECG, also executed the Non-Unanimous Stipulation and Agreement on Certain Issues filed herein on April 8, 2015 (the “Non-Unanimous Agreement”). MECG objected to the Non-Unanimous Agreement and requested a hearing on certain issues. As such, the Non-Unanimous Agreement became the joint

¹ The Revised Stipulation was signed by Empire, the Staff of the Commission (“Staff”), the Office of the Public Counsel (“OPC”), the City of Joplin (“Joplin”), the Missouri Department of Resources – Division of Energy (“DE”), and the Midwest Energy Users’ Association (“MEUA”).

position statement of the signatories on the issues addressed therein (the “Joint Recommendation”). The Commission must make specific findings of fact as to the issues addressed in the Non-Unanimous Agreement, but may then, based on the record evidence, make the additional finding that acceptance of the Joint Recommendation is a fair and reasonable resolution of those issues.²

List of Issues

On April 13, 2015, all parties to this proceeding submitted their Joint List of Issues, Request for Additional Witnesses to be Excused, and Proposed Hearing Schedule (“Final List of Issues”). In this Final List of Issues, the parties stated that if the Revised Stipulation is accepted and approved by the Commission, the following would remain as issues to be decided by the Commission:

- a. **FAC:** Should SPP transmission costs and revenues be included? If so, what transmission costs and revenues should be included?
- b. **Misc. Tariffs:** Should Empire be required to submit a Large Power rate schedule in its next case that recognizes a time differentiated facilities demand charge?
- c. **Class Cost of Service and Rate Design:**
 - i. How do Empire’s residential and industrial rates compare with national averages?
 - ii. What, if any, revenue neutral interclass shifts are supported by Class Cost of Service studies?
 - iii. What, if any, revenue neutral interclass shifts should be made in designing the rates resulting from this case?
 - iv. What, if any, changes to the Commercial and Industrial customer charges are supported by Class Cost of service studies?
 - v. What, if any, changes to the Commercial and Industrial customer charges should be made in designing the rates resulting from this case?
 - vi. What, if any, changes to the LP tail block rate are supported by Class Cost of Service studies?
 - vii. What, if any, changes to the LP tail block rate should be made in designing the rates resulting from this case?

² This is similar to the procedural setting in Missouri-American Water Company’s rate case proceeding, Commission Case No. WR-2007-0216, et al.

Discussion and Argument Regarding Contested Issues

The Joint Recommendation is a fair and reasonable resolution of the contested issues in this proceeding. The pre-filed testimony of the parties, which has been admitted into evidence, provides competent and substantial evidentiary support for this Joint Recommendation.

FAC: Should SPP transmission costs and revenues be included? If so, what transmission costs and revenues should be included?

Southwest Power Pool (“SPP”) transmission costs and off-setting revenues should be included in Empire’s fuel adjustment clause (“FAC”), as detailed in Exhibit 3 to the Non-Unanimous Agreement.³ As set forth in the Non-Unanimous Agreement, it is the Joint Recommendation of all parties to this proceeding, with the exception of MECG, that total fuel and purchased power for Empire’s FAC base shall include net transmission (costs minus revenues) of \$4,894,040. Pursuant to the Joint Recommendation, the FAC should exclude SPP Schedule 1A and 12 charges and should exclude Empire’s labor, administrative, and convention costs from Account 501.

The Commission recently determined that “the Missouri statute that allows the Commission to establish a fuel adjustment clause limits the application of the fuel adjustment clause to increases and decreases in fuel and purchased-power costs, including transportation.”⁴ The Commission then concluded that only the following costs should be included in Ameren’s FAC: “1) costs to transmit electric power it did not generate to its own load (true purchased

³ Non-Unanimous Agreement Exhibit 3, showing the subaccounts to be included in Empire’s FAC at this time, is attached hereto for reference.

⁴ This determination was made in the Union Electric Company d/b/a Ameren Missouri (“Ameren”) rate case, Commission Case No. ER-2014-0258; Report and Order issued April 29, 2015, effective May 12, 2015.

power) and 2) costs to transmit excess electric power it is selling to third parties to locations outside of MISO (off-system sales).”⁵

There are significant differences between the Ameren case and the instant Empire proceeding. First, Ameren is a member of the Midwest Independent System Operator (“MISO”), while Empire is a member of SPP. Second, and quite significantly, different legal and factual issues were raised and presented in Empire’s case. In the Ameren proceeding, a party asserted that, as a legal matter, transmission costs for “purchased power” should not include transmission costs related to self-generated power, and evidence was introduced by the parties in the Ameren case to allow the Commission to make findings of fact in this regard. For example, the Commission made the finding that 3.5 percent of the MISO transmission charges incurred by Ameren to serve its load are related to “true purchased power.”⁶

In stark contrast, in this Empire proceeding, no party raised the legal issue of whether transmission costs for purchased power should or should not include transmission costs related to self-generated power, and no evidence was introduced by the parties to allow the Commission to make findings of fact in this regard. Instead, MECG argued that *no* SPP transmission costs should flow through the FAC. Although David Woodsmall, counsel for MECG, stated in his opening statement on April 14, 2015, that “whatever decision you make in the Ameren case, we want it applied to Empire as well,”⁷ there was no support for this statement offered by MECG.

Mr. Woodsmall was asked the following: “(I)t’s not your client’s position that . . . there’s anything illegal about collecting transmission charges through the FAC?” His response: “I haven’t reviewed that. . . . I’m not making that argument that they’re illegal yet.”⁸ Mr.

⁵ Ameren Report and Order, pp. 111-115.

⁶ Ameren Report and Order, p. 114.

⁷ Hearing Volume 6, pp. 88-89.

⁸ Hearing Volume 6, pp. 92-93.

Woodsmall was also asked if he was “speaking about all transmission costs or just the transmission costs related to serving the utility’s native load.”⁹ Mr. Woodsmall confirmed that MECG’s position in this Empire proceeding is to “eliminate all transmission costs.” This was confirmed by MECG’s witness, Kavita Maini:

(O)ur primary position in this case was that transmission costs, SPP related costs really should not flow through the FAC right now because the IM market, the SPP IM market is less than a – was less than a year old. It started in March 1 of 2014. And it would be relevant and important to have a more quantifiable benefit of using actual data to identify the benefits accrued from participating in the SPP.

* * *

(I)f the Commission does approve those, then our rate design, as you know, was to have the dollar per kw on a demand – for the demand metered customers.¹⁰

MECG’s only position on this issue is that *all* SPP transmission costs should be included in base rates – and should not flow through the FAC – because the SPP IM began on March 1, 2014, and MECG believes the benefits of this market should be “more quantifiable” before the costs flow through the FAC. Ms. Maini, however, agreed that “Empire’s generating or operating revenues [from] the SPP integrated marketplace are used to offset fuel and purchased power costs paid by Empire’s customers through the FAC.”¹¹ Ms. Maini further stated, “I do not disagree that the customers are benefiting.”¹²

Empire’s customers are served from energy purchased from the SPP Integrated Marketplace, which began March 1, 2014. Net revenue produced from the sale of Empire’s generating or operating reserves to the SPP IM are used to offset fuel and purchased power costs paid by the customers through the FAC. In fact, a significant item offsetting Empire’s rate

⁹ Hearing Volume 6, p. 96.

¹⁰ Hearing Volume 7, pp. 167-168.

¹¹ Hearing Volume 7, p. 168.

¹² Hearing Volume 7, p. 172.

increase in this case is savings experienced through the SPP Integrated Marketplace. *See* Direct Testimony of Empire witness Kelly Walters, Exhibit No. 132, p. 3.

Empire's customers are receiving the benefits from Empire's participation in the SPP IM, and Empire would like to match those benefits with the costs. If benefits from the SPP IM are passed on to the customers through the FAC, then so too must the costs associated with the development of the network that makes the SPP IM reliable, efficient, and possible. The alternative to flowing these costs through the FAC is base rate recovery. Base rate recovery of SPP transmission costs is not fair or reasonable. *See* Direct Testimony of Empire witness Aaron Doll, Exhibit No. 103, p. 6. These transmission charges are directly related to the delivery of electric power to Empire's customers, and they meet the Commission's past standards of significant, volatile, and beyond Empire's control.

With regard to the FAC and the inclusion of transmission costs, Empire's current proceeding is more akin to Ameren's prior rate case, Commission Case No. ER-2012-0166. In that case, the Commission authorized Ameren to include all MISO transmission expense in its FAC. That decision was affirmed on appeal. *In the Matter of Union Electric Company*, 422 S.W.3d 358 (Mo.App. W.D. 2013). The appellate court determined that the "purchased power" issues were not preserved for appeal and concluded as follows:

The PSC's order allowing Ameren Missouri to surcharge the MISO electricity transmission charges under an FAC was lawful. We further find that the PSC's order was reasonable. The PSC had before it the testimony of Jaime Haro, Ameren Missouri's director of asset management and trading, that Ameren Missouri purchases and settles with the MISO for 100% of its load and sells 100% of its generation into the MISO. Network service enables Ameren Missouri to transmit energy acquired from the MISO market, including that injected by Ameren Missouri's own generators, to Ameren Missouri's customers. That service is governed by the MISO tariff. Ameren Missouri is required to pay the MISO transmission charges in order to participate in the MISO market. Accordingly, we find that the PSC's order is supported by substantial, competent evidence on the

whole record, is not arbitrary or capricious, and is not an abuse of the PSC's discretion.

422 S.W.3d at 364-367.

Similar evidence was presented in this Empire proceeding. A complete explanation of Empire's participation in the SPP IM may be found in the Direct Testimony of Empire witness Aaron Doll, Exhibit No. 103, pp. 3-5. Even MCEG's witness confirmed that "Empire bids all its load into the SPP market and offers up all of its generation into the SPP market."¹³

Although not listed in the Final List of Issues, and over the objection of Staff, OPC, Joplin, MIEC, and Empire, MCEG also argued that if Empire is authorized to include SPP transmission costs in its FAC, Empire should be required to establish a \$/KW demand charge for recovery of fixed costs for demand metered customer classes. There is simply no evidence to support this request which was made, for the first time, in Ms. Maini's Surrebuttal Testimony, Exhibit No. 702. The opening statement made by Staff counsel, Bob Berlin, on April 17, 2015, lists many of the unanswered questions and discusses many of the problems with this MCEG proposal. *See* Hearing Volume 7, pp. 159-162.

Misc. Tariffs: Should Empire be required to submit a Large Power rate schedule in its next case that recognizes a time differentiated facilities demand charge?

Empire should not be required to submit, in its next rate case, a LP rate schedule that recognizes a time differentiated facilities demand charge. As explained in the Surrebuttal Testimony of Empire witness Scott Keith, Exhibit No. 108, at page 13, Empire's billing system does not accommodate the requested use of a time-of-use rate. This type of billing would necessitate an unreasonable level of manual intervention in the billing process. MCEG failed to present any evidence of why the lack of a time-of-use rate is unjust or unreasonable.

¹³ Hearing Volume 7, p. 170.

Class Cost of Service and Rate Design:

- i. How do Empire's residential and industrial rates compare with national averages?
- ii. What, if any, revenue neutral interclass shifts are supported by Class Cost of Service studies?
- iii. What, if any, revenue neutral interclass shifts should be made in designing the rates resulting from this case?
- iv. What, if any, changes to the Commercial and Industrial customer charges are supported by Class Cost of service studies?
- v. What, if any, changes to the Commercial and Industrial customer charges should be made in designing the rates resulting from this case?
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Pursuant to the Joint Recommendation, Staff's proposed rate design and revenue allocation methodology should be used in this case, with one modification: there shall be no increase in the residential customer charge at this time.¹⁴ Staff's testimony supports a revenue neutral shift – or increase – to the residential class of .75% and a .85% *decrease* for Large Power, Total Electric Billing Service, and General Power Service rate classes. MECCG, on the other hand, would like larger shifts, favoring those particular Large Power customers. The pre-filed testimony of Staff, which has been admitted into evidence herein, provides competent and substantial evidentiary support for the Joint Recommendation on these issues.

The Joint Recommendation is a step toward the goals set forth in the testimony of Empire witnesses Ed Overcast and Scott Keith. It does not move the various classes to true cost of service, but it is a step in the right direction. MECCG's own witness on this topic admits that the Joint Recommendation on rate design and revenue allocation methodology is a step toward

¹⁴ Pursuant to the Revised Stipulation, which may be treated as unanimous pursuant to 4 CSR 240-2.115(2)(C), it was agreed that there shall be no increase in the residential customer charge in this case.

moving the residential class to true cost of service and is a step toward moving the Large Power, Total Electric Billing Service, and General Power Service rate classes to true cost of service.¹⁵

WHEREFORE, Empire respectfully submits its Initial Post-Hearing Brief and requests such relief as is just and proper under the circumstances.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

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ATTORNEYS FOR THE EMPIRE
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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was filed in EFIS and that a copy of the same was sent via electronic mail on this 15th day of May, 2015, to all counsel of record.

/s/ Diana C. Carter

¹⁵ Hearing Volume 7, pp. 165-166.