

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

In the Matter of The Empire District Electric Company)
of Joplin, Missouri, for Authority to File Tariff Increasing) Case No. ER-2010-0130
Rates for Electric Service Provided to Customers in the)
Missouri Service Area of the Company)

**EMPIRE’S REQUEST FOR CLARIFICATION, OR,
IN THE ALTERNATIVE, MOTION FOR RECONSIDERATION**

COMES NOW The Empire District Electric Company (“Empire” or “Company”), by and through the undersigned counsel, and hereby requests clarification or reconsideration with respect to the *Order Granting Applications to Intervene* issued herein by the Missouri Public Service Commission (the “Commission”), on December 16, 2009, effective December 16, 2009.¹ In support of its request for clarification, or, in the alternative, motion for reconsideration, Empire respectfully states as follow:

1. An Application to Intervene was filed herein on November 19, 2009, by the Midwest Energy Users’ Association (“MEUA”). In the Application to Intervene, MEUA is described as an “unincorporated ad-hoc association of large commercial and industrial users of electricity who group together using the MEUA vehicle to combine resources and gain economies in representation and activity in these rate cases.” It is also stated that Praxair, Inc. (“Praxair”) and Explorer Pipeline Company (“Explorer”) are members of MEUA. The Application to Intervene requests that both MEUA and its individual members be permitted to intervene and be made parties to this case. Empire objected to the Application to Intervene of

¹ The Commission issued its order on December 16, 2009, with a stated effective date of December 16, 2009. As such, Empire was prevented from seeking rehearing or reconsideration prior to the effective date of the order. In lieu of a “fuse” on a Commission order, it is Empire’s understanding that parties shall have thirty days to seek rehearing or reconsideration pursuant to RSMo. §386.490(3). Further, the primary purpose of this pleading is to seek clarification. To the extent the ten-day time period provided for in 4 CSR 240-2.160(2) applies, Empire seeks leave to file this pleading out of time.

MEUA, and Empire incorporates by reference its previous pleadings filed herein regarding the same.

2. Praxair, Explorer, and the Missouri Department of Natural Resources (“MDNR”), signatories to Empire’s regulatory plan stipulation entered into and approved in Commission Case No. EO-2005-0263, are parties to this Empire rate case by way of the regulatory plan stipulation. In this regard, and as noted by MEUA in its Application to Intervene, the regulatory plan stipulation provides as follows:

Each of the Signatory Parties shall be considered as having sought intervenor status in any rate case or rate filings without the necessity of filing an application to intervene and Empire consents in advance to such interventions. The Signatory Parties expect that the Commission’s standard procedures and rules will be applicable to any rate case or rate filing including public notice, local public hearings and evidentiary hearings at appropriate times and places, and an opportunity for interested parties other than the Signatory Parties to seek to intervene.

Accordingly, without the filing of any request, notice, or motion, and without the need of any Commission order, Praxair, Explorer, and MDNR were parties to this case.

3. The Commission’s *Order Granting Applications to Intervene* states, in relevant part, that the “Missouri Energy Users’ Association, which includes: Praxair, Inc.; Explorer Pipeline Company; and, Enbridge Pipeline Company, is granted intervention.” The *Order Granting Applications to Intervene* goes on to order MEUA to “immediately notify the Commission of the identity of any additional members as they join the Association.”²

4. MEUA is not a legal entity capable of suing or being sued in its own name. It is an unincorporated association with no legal status apart from its members. In fact, the records of

² The Commission’s *Order Granting Applications to Intervene* refers to and appears to grant the intervention request of the *Missouri* Energy Users’ Association, as opposed to the *Midwest* Energy Users’ Association. Empire assumes this is just an oversight, but seeks clarification in this regard as well.

the Missouri Secretary of State's Office do not reveal so much as a fictitious name registration in the name of MEUA or the Midwest Energy Users' Association.

5. Pursuant to Missouri law, an unincorporated association such as MEUA possesses no status apart from the persons or entities comprising it and is, in fact, not a legal entity. An association such as MEUA exists under the common law right of contract and has no existence apart from the contract of association. An association such as MEUA cannot sue or be sued in its common or association name for the reason that such an association has no legal entity distinct from its membership. *See State ex rel. Automobile Club Inter-Insurance Exchange v. Gaertner*, 636 S.W.2d 68 (Mo. banc 1982); *see also The Executive Board of the Missouri Baptist Convention v. Carnahan*, 170 S.W.3d 437 (Mo.App. W.D. 2005) (unincorporated associations have no entity status beyond the status of those persons who comprise the association; an unincorporated association ordinarily lacks the legal capacity to sue or be sued in the name of the association).

6. On its face, the *Order Granting Applications to Intervene* conflicts with Missouri law with regard to MEUA, as opposed to its three individual members, being granted intervention as a party to this case. As such, Empire seeks clarification regarding whether or not it was the Commission's intent to simply acknowledge the party status of Praxair and Explorer and grant the intervention request of Enbridge Pipeline Company ("Enbridge"). In the event the Commission intended to grant party status to MEUA in its own right, Empire moves for rehearing or reconsideration of the Commission's *Order Granting Applications to Intervene*. The Midwest Energy Users' Association, or MEUA, in its own name, lacks capacity and standing to proceed as a party herein and may only act by and through its three individual members.

WHEREFORE, for all of the reasons stated above and in Empire's previously filed objections regarding the intervention of MEUA, Empire seeks clarification or reconsideration with regard to the Commission's *Order Granting Applications to Intervene*. Empire seeks such other and further relief as the Commission deems just and proper under the circumstances.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

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ATTORNEYS FOR THE EMPIRE DISTRICT
ELECTRIC COMPANY

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record on this 14th day of January, 2010.

/s/ Diana C. Carter