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 Service Provided to Customers in its Missouri Service Area	)))))	Case No. ER-2019-0374

RESPONSIVE POSTHEARING BRIEF

OF

THE MIDWEST ENERGY CONSUMERS GROUP

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COMES NOW the Midwest Energy Consumers' Group ("MECG"), pursuant to the Commission's April 28, 2020 *Order Further Modifying the Procedural Schedule*, and provides its Responsive Brief in this matter. In this Brief, MECG responds to the arguments raised by Staff and Public Counsel on the issues of class cost of service / revenue allocation / rate design. In addition, MECG responds to arguments raised by Empire on the issue of return on equity. Finally, MECG addresses certain arguments raised by Public Counsel in opposition to the implementation of a WNR / SRLE mechanism. While MECG has not addressed the issues of cost of debt; capital structure, Tax Cut and Jobs Act Impact; and Asset Retirement Obligation, MECG maintains the positions set forth in its Initial Brief.

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I. INTRODUCTION

In its Initial Brief, Staff supported the non-unanimous stipulation as it pertains to the proposed $0 change to the revenue requirement. "MECG is a signatory to the Non-Unanimous Stipulation and Agreement. Pursuant to that agreement, the signatories all agree that no change to Empire's revenue requirement provides for safe and adequate service at just and reasonable rates."[1] It is important to recognize that the non-unanimous stipulation reaches the proposed $0 change in revenue requirement through several specific provisions that are recommended and supported by competent and substantial evidence. For instance, pursuant to Section 393.155.1, the stipulation recommends a phase in of all growth in rate base that occurred between the test year and the true-up in this case. Similarly, the balances of protected and unprotected accumulated deferred income taxes are frozen and will be treated in the next rate case. Additionally, while complying with Section 393.137, the stipulation provides for an amortization of the stub period tax benefits while preserving the majority of those benefits for treatment in the next rate case. MECG asserts that these provisions, in conjunction with all of the other provisions in the stipulation, make the zero revenue requirement change possible as well as a just and reasonable resolution to this case.

Nevertheless, given Public Counsel's opposition to the stipulation, the resolutions contained in that document simply become the joint positions of the parties. Therefore, the Commission is forced to make decisions on each and every one of the disputed issues in this case. For this reason, MECG has briefed several revenue requirement issues. MECG believes, however, that following its individual decisions on each of these issues,

[1] MECG Initial Brief, page 7.

the Commission will ultimately reach the same conclusion that a zero revenue requirement change is just and reasonable.

That all said, while the stipulation provides a joint party resolution of the revenue requirement in this case, the stipulation does not address the disputed issues surrounding class cost of service, revenue allocation and rate design. MECG continues to assert that the Commission should avail itself of the opportunity to address the universally recognized residential subsidy as well as Empire's uncompetitive industrial rates. For this reason, MECG recommends that the Commission once again eliminate 25% of the currently existing residential subsidy. Furthermore, MECG urges the Commission to address the intra-class subsidy in GP, LP and SC-P rates by implementing any rate reductions for these classes through a reduction in the class energy charges.

II. CLASS COST OF SERVICE / REVENUE ALLOCATION

In the Joint List of Issues the parties identified 29 subparts that concern class cost of service / revenue allocation / rate design. While those 29 subparts were identified as issues requiring Commission decision, the other parties to this case provided very little substantive discussion on those issues. For instance, Empire simply suggested that the Commission "should be guided by three principles: (1) rates should recover the overall cost of providing service; (2) rates should be fair, minimizing inter- and intra-class inequities to the extent possible; and (3) rate changes should be tempered by rate continuity concerns."[2]

A. RESPONSE TO STAFF

Staff's Initial Brief is noticeable for the fact that it didn't address any of the class cost of service issues in this case. Specifically, after identifying them as issues, Staff failed to provide any discussion as to: (1) how production-related costs should be allocated; (2) how Account 364, 366, and 368 distribution costs should be classified; (3) how primary and secondary distribution plant costs should be allocated; and (4) how general plant costs should be allocated.[3] Staff's silence on these issues is noticeable since it received significant criticism from Empire and MECG's in their rebuttal testimony on these flaws in Staff's class cost of service study.

Instead, Staff devotes three short pages (pages 24-26) to the issue of revenue allocation. There, Staff simply suggests that, since "[n]o CCOS Study submitted in this case is reliable for ratemaking purposes", the Commission should not make any revenue neutral shifts. Nevertheless, despite its misplaced concerns regarding data, Staff proposes

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[2] Empire Initial Brief, page 10.
[3] See, issues 2z, 2aa, 2bb, and 2cc.

that, in order to address the residential subsidy, revenue neutral shifts be made to the benefit of the commercial (CB); small heating (SH); general power (GP); total electric building (TEB); and large power (LP) rate classes.[4]

In its testimony, Empire addressed Staff's concern that some billing data was "flawed" because of estimated bills. As Empire points out, however, a class cost of service study relies upon "aggregate data" and not the "individual customer data" that would be affected by estimated bills.

> We appreciate Staff's concerns regarding the data quality issues; however, the Company believes that the data quality issues do not result in a material impact on the results of the CCOS nor render them unreliable. The CCOS relies on aggregate customer data rather than individual customer data, and any concerns with individual customer data do not appear to impact the results of the CCOS.[5]

Staff appears to recognize this distinction between individual customer data that is used for billing and aggregate data that is used for class cost of service studies. "[T]he total level of billing determinants for Staff's test period ***<u>will not change based on the number of estimated bills</u>***."[6]

Demonstrating the fact that the class cost of service studies were not affected by estimated bills, Empire showed that the results of its class cost of service study in this case delivers comparable results to the study conducted in 2014.

> This is substantiated by the results of the Company's CCOS in its prior rate case proceeding in 2014, as shown in Figure 1 (below). The Figure shows the unit rate of return for each rate class in this proceeding is generally consistent with the unit rate of return in the prior rate case proceeding in 2014.[7]

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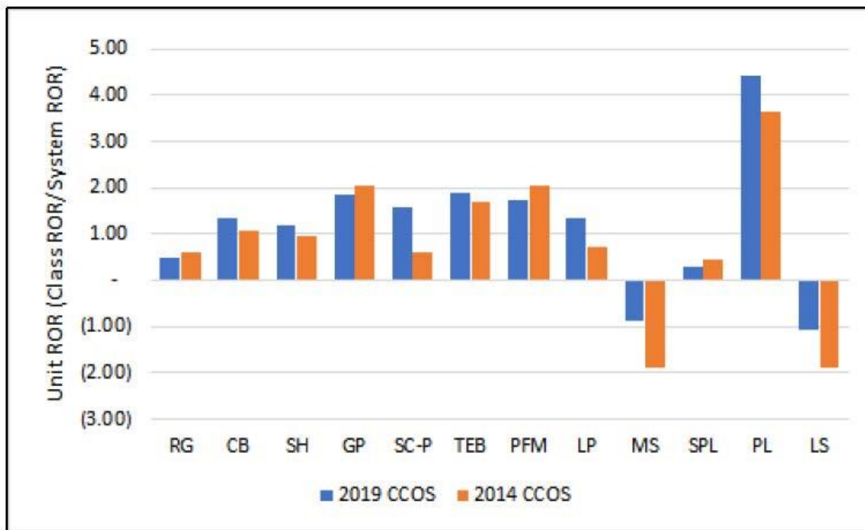
[4] Staff Initial Brief, page 25. In its rebuttal testimony, Staff corrected errors in its study and included the SC-P class in the classes to receive the benefit of a revenue neutral shift. See, Exhibit 121, Lange Rebuttal, page 18

[5] Exhibit 29, Lyons Surrebuttal, page 10.

[6] Exhibit 165, Kliethermes Supplemental Rebuttal, page 3.

[7] *Id.* at pages 10-11.

Figure 1: Comparison of Unit Rate of Return



Source: Exhibit 29, Lyons Surrebuttal, page 11.

As can be seen, the earned return from virtually every class increased from 2014 to 2019 <u>except</u> for the residential class. In fact, the earned return for the residential class has actually declined from 2014 when the Commission found the residential subsidy to be significant and ordered revenue neutral shifts.[8] Thus, given the comparability between the class cost of service study in this case and that conducted in the 2014 case, there should not be any concerns with the reliability of data.

Next, Staff suggests that, in the event that the Commission makes revenue neutral changes to account for inter-class subsidies, that shifts be made to the benefit of the commercial (CB); small heating (SH); general power (GP); total electric building (TEB); and large power (LP) rate classes.[9] In general, MECG agrees with Staff's suggestion that these particular classes be the beneficiary of revenue neutral shifts. Staff's suggestion is problematic, however, in that Staff suggests that revenue neutral changes occur only "in

[8] See, *Report and Order*, Case No. ER-2014-0351, issued June 24, 2015.

[9] Staff Initial Brief, page 25. In its rebuttal testimony, Staff corrected errors in its study and included the SC-P class in the classes to receive the benefit of a revenue neutral shift. See, Exhibit 121, Lange Rebuttal, page 18

the event that the Commission orders a reduction in Empire's revenue requirement."[10] Staff's suggestion, to limit revenue neutral shifts to a situation in which there is a revenue requirement reduction appears to be designed to ensure that all classes, even those that pay rates below cost of service, continue to receive the benefit of the "current temporary tax reduction rider."[11] Staff's suggestion is nonsensical.

The Tax Cut and Jobs Act went into effect on January 1, 2018. Based upon Section 393.137, Empire's rates were reduced, through a separate line item, to account for the reduction in the federal corporate tax rate. Despite the undisputed existence of a residential subsidy,[12] the Commission did not use the federal corporate tax benefits to further reduce the residential subsidy. Rather, despite paying rates that were already below cost of service, the residential class actually received a portion of the federal tax cut benefits. Thus, despite the residential subsidy, the residential class has received the benefit of the 2018 tax cut for two years.

Now, by asserting that there should not be any revenue neutral shifts absent a rate reduction, Staff apparently believes that the residential class should continue to receive, apparently in perpetuity, a portion of this two year old cost reduction in rates. Ultimately, the Non-Unanimous Stipulation agreed that the tax addendum "will remain in place."[13] Thus, the residential class will continue to receive these benefits. That said, however, there is no reason for the Commission not to address the residential subsidy for the base rates that are collected independent of the tax addendum. As mentioned throughout MECG's Initial Brief, all class cost of service studies show the existence of a significant

[10] Staff Initial Brief, page 25.
[11] *Id.*
[12] The Commission had found the existence of a residential subsidy in both the 2014 and 2017 Empire rate cases. In both cases, the Commission took steps to only eliminate a portion of that residential subsidy.
[13] *Global Stipulation and Agreement*, page 2, provision 3.

residential subsidy.[14] Furthermore, over the past 5 years, Empire's industrial rates have become even more uncompetitive.[15]

Interestingly, Staff has always been hesitant to address the residential subsidy in any definitive way. For instance, in 2014, Staff found that the residential class was paying rates that were 8.1% below cost of service.[16] Nevertheless, Staff and Public Counsel only recommended eliminating 0.75% of the subsidy.[17] Thus, Staff and Public Counsel's position would have meant that it would take 11 rate cases to eliminate the residential subsidy. On an average of 3 years between rate cases, Staff and Public Counsel's suggestion would have ensured that the residential subsidy would persist for 33 years. Despite Staff's suggestion in that case, the Commission rejected Staff's token attempt to address the residential subsidy and, instead, took a more decisive corrective action.

> Attempting to completely eradicate the 8.1% residential rate class discrepancy in this rate case would be too punitive to the customers in that class. A revenue neutral adjustment of 25% of the 8.1% needed adjustment would increase the residential rates by approximately 2%. This 2% increase, in additional to the 3.9% revenue requirement increase, agreed to by the parties in the Revised Agreement, would raise the average residential customer's monthly bill by approximately 5.9%. . . . A 2% revenue neutral adjustment for the residential class is not punitive to the residential class and helps to eliminate any residential subsidy in a shorter timeframe.[18]

This case is an opportune time for the Commission to address both the persistent residential subsidy as well as the uncompetitiveness of industrial rates. Thus, regardless

[14] MECG Initial Brief, pages 33-34.
[15] *Id.* at pages 36-38.
[16] See, Report and Order, Case No. ER-2014-0351, page 15.
[17] *Id.* at page 16.
[18] *Report and Order*, Case No. ER-2014-0351, issued June 24, 2015, pages 18-19.

of whether there is a rate increase, rate reduction or no change in revenue requirement, MECG urges the Commission to take decisive steps to reduce the residential subsidy.[19]

B. RESPONSE TO PUBLIC COUNSEL

At pages 24-25, Public Counsel addresses one single issue among the 29 various subparts – How should any revenue requirement increase or decrease be allocated to each rate class? In its brief, and without a single specific citation to evidence, Public Counsel reiterates Staff's misplaced suggestion that Empire's billing data is "flawed" due to a result of a high number of estimated bills. As a result, Public Counsel suggests that it cannot "recommend" any shifts between the classes.[20] Despite this claim, Public Counsel then does a complete 180º turn and actually suggests a shift. Specifically, Public Counsel recommends that, if a rate reduction is ordered, "only the residential customer class' rates" should be reduced.[21] Public Counsel makes this suggestion on the erroneous premise that the Covid-19 pandemic "is most directly impacting Empire's residential customers."[22] Both of Public Counsel's assertions (flawed billing data and impact of Covid-19) are misplaced.

As mentioned, *supra*, any suggestion that billing data is flawed is misplaced. Specifically, at pages 7 to 8 herein, MECG points to Empire testimony that shows that, while estimated bills may affect individual customer data, it does not affect the aggregate

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[19] As pointed out at page 39 of its Initial Brief, the residential subsidy has increased to 16.8%. Thus elimination of 25% of the subsidy would amount to a shift of 4.2%. Consistent with the Commission's finding from previous cases, the recommended 4.2% shift is not punitive to the residential class. Through the non-unanimous stipulation Empire has agreed to no revenue increase. Therefore, MECG's proposed revenue neutral shift would only increase residential rates by 4.2%. In its original filing Empire sought an increase for the residential class of 5.8%. Therefore, even after the proposed revenue neutral shift, residential customers would still see a smaller rate increase than was initially expected from this case.
[20] Public Counsel Initial Brief, page 24.
[21] *Id.*
[22] *Id.* at page 25.

data used to prepare a class cost of service study. In fact, Empire also shows that the comparability of the studies between 2014 and 2019 demonstrates that the data is reliable.

Next, Public Counsel's suggestion that the pandemic "is most directly impacting Empire's residential customers in terms of their utility bills" is misplaced and simply represents an opportunistic excuse to actually increase the residential subsidy to the detriment of all commercial / industrial customers.[23] The nationwide evidence indicates that large commercial / industrial customers are suffering greatly from the pandemic. Furthermore, as will be demonstrated, Public Counsel's suggestion demonstrates a shocking lack of understanding as to how rates for the large commercial and industrial classes are designed and collected.

Contrary to Public Counsel's speculative assertions that the residential class is "most directly impacted", the evidence shows that the pandemic is affecting all aspects of Empire's customer base.

> It is unquestioned that the current pandemic is having an effect on all aspects of the Empire customer base. As a result of various state and local lockdown orders, many commercial and industrial customers have had to close their doors. Still others are suffering from an inability to obtain necessary raw materials required in their manufacturing process. Others, like petroleum pipelines, are suffering from a tremendous decline in customer demand. Clearly then, commercial and industrial customers are suffering from the effects of the Covid-19 pandemic.[24]

Unlike Public Counsel's speculative assertions, the fact that the pandemic is greatly affecting commercial and industrial customers is best demonstrated by the steep decline in the Dow Jones Industrial Average. As of April 17, 2020 "[t]he Dow Jones

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[23] The evidence in this case indicates that the residential subsidy is $36.1 million. (See, Exhibit 350, Maini Direct, page 33). Public Counsel's suggestion that, any rate reduction be assigned entirely to the residential class would inflate the residential subsidy. Therefore, rather than using a hypothetical $10 million rate reduction to mitigate the residential subsidy, Public Counsel's position would inflate the $36.1 million residential subsidy by an additional $10 million.

[24] Exhibit 354, Meyer Supplemental Surrebuttal, page 5.

average closed approximately 11,000 points down from its 52 week high on March 23, 2020."[25] Given this, because of forced closures or reduced production, many large customers have seen their stock prices decline to the point of speculated bankruptcies.

Still again, trade publications and quarterly financial reports for electric utilities conclusively demonstrate that the pandemic is not having a disproportionate impact on residential customers. Rather, because of closed facilities or reduced production at industrial facilities, utilities have seen a decline in industrial electric usage. For instance:

DTE Energy:

> "The spread of COVID-19 and efforts to contain the virus have ***resulted in closures and reduced operations of businesses***, governmental agencies, and other institutions. . . . Other impacts from the COVID-19 pandemic have included decreased demand within the Electric segment, which contributed to lower base sales for the quarter, and lower production within the Power and Industrial Projects segment, due to certain customers reducing their operations."[26]

WE Energies:

> "Wisconsin's largest utility says electricity use by ***large industrial customers is down 18%*** since Gov. Tony Evers issued his "safer at home" order, and the company expects total retail sales to fall 5% over the next nine months as the economy begins to recover from the COVID-19 health crisis."[27]

American Electric Power:

> In March 2020, COVID-19 was declared a pandemic by the World Health Organization and the Centers for Disease Control and Prevention. Its rapid

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[25] *Id.*
[26] DTE Form 10Q, filed April 28, 2020. https://www.sec.gov/ix?doc=/Archives/edgar/data/28385/000093634020000171/dteenergy2020033110q.htm
[27] https://madison.com/wsj/business/we-energies-projects-5-drop-in-electricity-sales-industrial-sector-down-18/article_c23566a1-13f7-543d-a6c6-487761a150e9.html

> spread around the world and throughout the United States prompted many countries, including the United States, to institute restrictions on travel, public gatherings and certain business operations. These restrictions significantly disrupted economic activity in AEP's service territory and could reduce future demand for energy, ***particularly from commercial and industrial customers***. . . .AEP expects industrial class sales volumes to decrease by 8% in 2020.[28]

Clearly then, Public Counsel's suggestion is misplaced.

The evidence also indicates that unlike residential customers that can control virtually the entirety of their electric bills, industrial customers lack any such ability. Specifically, as Empire witness Lyons points out, 90.9% of the residential revenue requirement is collected through energy charges.[29] Similarly, 89.0% of the Commercial and 92.0% of the Small Heating revenue requirements are collected through energy charges.[30] Thus, by reducing electric usage, the residential (RG class); commercial (CB class) and small heating (SH) customers can avoid virtually the entirety of their electric bill.

In contrast, demand metered customers, like those served under the general power (GP); large power (LP); total electric building (TEB); and special transmission service (SC-P) rate schedules, lack this ability. For instance, distribution costs associated with serving a customer are collected through a ratcheted facilities demand charge.[31]

> The monthly Facilities Demand will be determined by a comparison of the current month's metered demand and the metered demand recorded in each of the previous 11 months. If there are less than 11 previous months of data, all available data from previous months will be used. The

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[28] https://www.sec.gov/ix?doc=/Archives/edgar/data/4904/000000490420000046/aep20201q10q.htm
[29] Exhibit 26, Lyons Direct, page 53.
[30] *Id.*
[31] Exhibit 355.

> monthly Facilities Demand will be the maximum demand as determined by this comparison or 40 kW, whichever is greater.[32]

This means that demand-metered customers are assessed a facilities demand charge based upon their highest demand for the previous 12 months. So while a customer may close during the pandemic, and not impose any further demand, these customers must still pay the facilities demand charge based upon the highest demand in the previous 12 months.

Similarly, the fixed costs associated with generation and transmission service are largely collected through a demand charge which is based upon the highest 15 minutes of demand in a month.

> The monthly Metered Demand will be determined from the highest fifteen minute integrated kilowatt demand registered during the month by a suitable demand meter. The monthly Billing Demand will be the monthly Metered Demand or 40 kW, whichever is greater.[33]

This means that demand-metered customers are assessed a demand charge based upon their highest 15 minutes of demand in a month. So, even if a customer ceased all usage on March 15, that customer was charged a demand charge on its March bill based upon the highest demand that it imposed prior to closing. Similarly, while a customer may remain closed through May 15, it will be assessed a billing demand charge on its May bill based upon the highest 15 minutes of demand at the end of May. Effectively then, unless the customer remains closed for months, the billing demand charge is unavoidable.

Therefore, contrary to Public Counsel's assertion that the Covid-19 pandemic is "most directly impacting Empire's residential customers in terms of their utility bills", it is important to recognize that large commercial and industrial customers lack the ability to avoid their electric bills like residential and small commercial customers.

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[32] See, for example, Exhibit 355, General Power Service Rate Schedule, *Determination of Monthly Facilities Demand*.

[33] See, for example, Exhibit 355, General Power Service Rate Schedule, *Determination of Billing Demand*.

III. LARGE POWER / GENERAL POWER / SC-P RATE DESIGN

In their Initial Briefs, Empire and Public Counsel did not take any positions relative to the industrial class rate design. At pages 26-33 of its Initial Brief, Staff provided certain rate design proposals. Only a small portion of that rate design discussion, however, concerns the industrial classes.

At page 29, Staff recommends that, in the event that a reduction is ordered for the GP and / or LP rate classes, that reduction be implemented by leaving energy charges at current levels and, instead, reducing all other charges. At page 30, Staff appears to make a similar suggestion for the Special Contract – Praxair rate class. Noticeably, while making this recommendation, Staff provides zero justification in its brief for leaving energy charges at the currently inflated levels. Frankly, Staff's brief consists of nothing more than a regurgitation of a position that received significant opposition from both Empire and MECG.

As explained in its Initial Brief, Staff concern about the energy charges in these rate classes is misplaced.[34] In fact, while the SPP market energy price is approximately 3.0 cents / kWh, the energy charges for the GP class are all above 6.4 cents / kWh. Similarly, the energy charges for the LP class are all above 3.6 cents / kWh. Finally, the energy charges for the SC-P rate class are all above 3.2 cents / kWh.[35] Therefore, it is undisputed that, relative to the SPP market energy prices, the energy charges for these rate classes are recovering some level of fixed costs.

Supporting this conclusion, Empire readily acknowledges, that while demand costs [fixed costs] represent 53% of the LP class cost of service, only 32% of the LP class

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[34] See, MECG Initial Brief, pages 42-43.
[35] Exhibit 355.

revenue requirement is collected through demand charges.[36] Similarly, while energy costs represent only 45% of the LP class' cost of service, Empire collects 68% of its LP revenues through energy charges.[37] Therefore, Empire collects a significant level of industrial fixed costs through the energy charge.

The recovery of a significant level of fixed costs through the energy charges for these classes results in the subsidization of low load factor customers by high load factor customers. [38] For this reason, MECG recommends, contrary to Staff's misplaced recommendation, that any rate reduction for the GP, LP and SC-P rate classes be collected through a reduction in the energy charge.[39] Empire agrees. "The Company supports MECG's recommendation to apply approved increase for the LP class to the billing demand and facility charges and ***apply any approved decreases to the energy charge***. This approach better aligns recovery of demand-related costs through demand charges and energy related costs through energy-related charges."[40]

Given that the energy charges are well above the market energy charges and collect a significant level of fixed costs, the Commission should reject Staff's misplaced position and implement any rate reduction for the GP, LP and SC-P classes by reducing the energy charges as it has done in recent Ameren and KCPL / GMO rate cases.

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[36] Exhibit 26, Lyons Direct, pages 35-36.
[37] *Id.*
[38] Exhibit 353, Chriss Surrebuttal, pages 15-16 (emphasis added). In his testimony, Mr. Chriss provides an example with associated rates that shows the problem of collected fixed costs through energy charges. (See, Exhibit 353, pages 16-18).
[39] MECG's recommendation has been adopted by the Commission in several recent cases. For instance, in the recent Ameren case, the rate reduction for the industrial classes was implemented by reducing the energy charges. See, *Order Approving Stipulation and Agreements*, Case No. ER-2019-0335, issued March 18, 2020, Attachment Corrected Non-Unanimous Stipulation and Agreement Exhibit J. For KCPL and GMO, the recent rate reduction for the industrial classes was also implemented by reducing the energy charges. See, *Order Approving Stipulations and Agreement*, Case Nos. ER-2018-0145 / 0146, issued October 31, 2018, Attachment Stipulation 4, page 4 ("The LPS and LGS rate design will be an equal percentage decrease applied only to the energy blocks.").
[40] Exhibit 28, Lyons CCOS Rebuttal, pages 34-35 (emphasis added).

IV. RETURN ON EQUITY

In its Initial Briefs, Staff, Public Counsel and MECG all recommended a return on equity of 9.25%.[41] In contrast, Empire's witness Hevert, whose recommendations the Commission has previously found to be "too high",[42] again proposes a return on equity that is well above the national average return on equity of 9.39%. As Staff points out:

> Mr. Chari criticized Mr. Hevert's ROE recommendation as "too high" and "implausible," noting that, at 9.95%, Mr. Hevert's recommendation [is] 56 basis points higher than the 2019 national average of authorized ROEs, 9.39%.[43]

Demonstrating the ridiculous nature of his recommendation, Mr. Hevert actually asserts that a return on equity of 10.60%, 121 basis points above the national average, is justified. "On balance, it remains my opinion that the Company's Cost of Equity falls in the range of 9.80 percent to 10.60 percent. Current conditions indicate, however, that the investor-required ROE ***now falls toward the top of that range***."[44]

As mentioned in MECG's initial brief, however, Mr. Hevert's recommendations have historically been viewed with great skepticism by the Commission because of his willingness to utilize inflated "growth rate estimates in his DCF model that are higher than the growth outlook of the economy as a whole."

> However, Hevert's estimation of an appropriate ROE is ***too high***. MIEC's witness, Michael Gorman explains that Mr. Hevert relied on long-term sustainable growth rate estimates in his DCF models that are higher than the growth outlook of the economy as a whole. As he explained, it is not rational to expect that utilities can grow faster than the demand of the economies they serve.[45]

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[41] Staff Initial Brief, page 13; OPC Initial Brief, page 8; MECG Initial Brief, page 52.
[42] See, Case No. ER-2012-0166, *Report and Order*, issued December 12, 2012, at pages 69-70; Case No. ER-2011-0028, *Report and Order*, issued July 13, 2011, at page 23.
[43] Staff Initial Brief, pages 16-17.
[44] Empire Initial Brief, page 8 (emphasis added).
[45] Case No. ER-2012-0166, *Report and Order*, issued December 12, 2012, at pages 69-70. (emphasis added).

Still again,

> Hevert's recommended return on equity is higher than the other recommendations in large part because he over-estimates future long-term growth in his various DCF analyses, making them ***too high*** to be reasonable estimates of long-term sustainable growth.[46]

Despite the clarity of the Commission's criticism, Mr. Hevert again utilized growth rate estimates that are significantly higher than growth outlook of the economy as a whole. Specifically, Staff points out that, while Mr. Hevert utilized a growth rate of 5.8%, the expected long-term GDP growth rate is only 4.1%.

> Mr. Hevert assumes, in his constant growth DCF model, that his electric proxy group's dividends will grow perpetually, at an average of 5.80%, a growth rate that is about 170 bps higher than the estimated long-term growth rate for the general economy. ***Assuming that utilities will grow at a higher rate than the overall economy is unrealistic, because it runs counter to basic economic principles: in the long run, companies will grow at a rate consistent with the long-term growth rate of the overall economy***. Dr. Roger A. Morin ("Dr. Morin"), in his book New Regulatory Finance posits, "It is useful to remember that eventually all company growth rates, especially utility service growth rates, converge to a level consistent with the growth rate of the aggregate economy [GDP growth rate]." (Roger A. Morin, New Regulatory Finance, page 302).[47]

Mr. Hevert's methodology suffers from other fatal defects. For instance, Mr. Hevert utilizes his growth inputs in an inappropriate fashion.[48] Still again, Mr. Hevert relied upon several methodologies that have been expressly rejected by FERC for the simple reason that they are unreliable.[49] Additionally, Mr. Hevert utilizes 84 non-dividend paying companies in his flawed CAPM approach even though FERC has explicitly stated that only dividend paying companies should be included in that

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[46] Case No. ER-2011-0028, *Report and Order*, issued July 13, 2011, at page 23. (emphasis added).
[47] Exhibit 108, Chari Rebuttal, page 7 (emphasis added). In his testimony, Mr. Chari points out that, while Mr. Hevert uses a growth rate of 5.8%, the long-term GDP growth rate is only 4.1%. See, Exhibit 108, Chari Rebuttal, page 7, footnote 7.
[48] See MECG Initial Brief, page 55 (citing to Exhibit 108, Chari Rebuttal, page 4).
[49] See MECG Initial Brief, pages 55-56 (citing to Exhibit 108, Chari Rebuttal, page 2 and FERC Opinion 569, page 117, line 200).

methodology.[50] Finally, Mr. Hevert inappropriately inflated his recommended return on equity as a result of Empire's claimed "small size" despite the fact, as Staff points out, that Empire is now part of Algonquin and relies upon Algonquin for all of its financing needs.[51]

In its Initial Brief, Empire does not provide any substantive response to the numerous flaws in Mr. Hevert's analysis. Instead, Empire simply dismissed these concerns by claiming that "none of the arguments raised by Staff witness Chari's or OPC witness Murray's rebuttal testimonies caused Mr. Hevert to revise his recommendation."[52]

Rather than address the substance of the criticisms, Empire instead now argues that external factors justify Mr. Hevert's inflated return on equity recommendation. Specifically, pointing to the Covid-19 pandemic, Empire claims that capital markets have demonstrated extraordinary volatility for the 5 week period of mid-February through March 20.[53]

Empire's assertions are misplaced. As indicated, while Empire's brief was filed on May 6, it pointed to volatility that occurred during a short 5 week period of volatility which occurred from mid-February to March 20. Return on equity analyses, however, are conducted in a manner to dampen short-term volatility concerns. Specifically, the stock market price data utilized for inclusion in the DCF methodology are based upon 30, 90 and 180 day periods to avoid any short-term volatility.[54] Given that the parties

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[50] See MECG Initial Brief, pages 56-57 (citing to Exhibit 108, Chari Rebuttal, pages 9-10 and FERC Opinion 569).
[51] See MECG Initial Brief, page 57 (citing to Exhibit 108, Chari Rebuttal, page 12).
[52] Empire Initial Brief, page 6.
[53] *Id.* at pages 6-7.
[54] See, Exhibit 36, Hevert Direct, page 48. Similarly, Staff averaged the high and low stock prices over a 90 day period to dampen any volatility concerns. See, Exhibit 101, Staff Direct Report, page 14.

intentionally take steps to eliminate any short-term volatility concerns from the return on equity analysis, it is inappropriate for Empire to then point to such short-term volatility concerns as justification for its inflated return on equity recommendation.

Furthermore, Empire's concern with short-term market volatility experienced in February / March occurred well after the January 31, 2020 true-up date.[55] It is inequitable for Empire to oppose any extension of the true-up date to address the retirement of Sibley,[56] but then attempt to look for factors occurring after the true-up date to justify its inflated return on equity recommendation.

Ultimately, the Commission should realize that Empire will immediately file a rate case upon the conclusion of this case. In that case, so long as market volatility becomes a long-term, rather than simply a short-term phenomenon, the effects will clearly fall within the test year and can be properly analyzed.

In the final analysis, MECG asserts that Staff's methodology and approach is consistent with sound cost of capital techniques while avoiding any of the concerns that the Commission has previously leveled against Mr. Hevert. Given this, MECG urges the Commission to authorize a 9.25% return on equity.

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[55] See, *Order Setting Procedural Schedule and Procedural Requirements*, issued October 17, 2019, page 3.
[56] See, *Empire's Suggestions in Opposition to Public Counsel's Motion to Modify Test Year*, filed January 3, 2020.

V. WNR / SRLE ADJUSTMENT MECHANISMS

In the section on revenue allocation, MECG documented how, according to all three class cost of service studies in this case, the residential class is paying rates that are heavily subsidized by the commercial and industrial classes. This conclusion is supported not only by the class cost of service studies, but also by the Commission's findings in each of the last two Empire rate cases. Despite this undeniable conclusion, Public Counsel suggests that the Commission should not only continue the residential subsidy, but should actually increase the residential subsidy.

Not only does Public Counsel believe that residential rates should be heavily subsidized, it is also apparent from its position on this issue that Public Counsel believes that the residential class should not even have to fully pay its subsidized cost of service. Specifically, in addition to the significant subsidy provided by the commercial and industrial classes, Public Counsel also now wants Empire to subsidize residential rates.

Recognizing that Empire's residential rates are heavily dependent on energy charges for the collection of fixed costs, Empire's collection of these costs is very susceptible to usage variations. Therefore, usage variations caused by weather and conservation will inevitably result in Empire failing to collect even the subsidized cost of serving the residential class. In order to prevent this situation, the General Assembly authorized a mechanism that would allow Empire to exactly collect its costs from the residential class and avoid the continued under-collection of fixed costs caused by residential class usage variations. Even here, Public Counsel suggests that such a mechanism should not be authorized and that the residential class should be permitted to not even collect its subsidized cost of service.

In support of its argument that the Commission should not authorize a WNR / SRLE mechanism OPC raises three points. First, OPC suggests that the high number of estimated bills results in flawed billing data.[57] Second, OPC asserts that the Commission is precluded from authorizing the WNR / SRLE mechanism because it has not previously promulgated rules to address a utility application for WNR / SRLE.[58] Third, OPC claims that the Covid-19 pandemic will make it impossible to segregate usage variations caused by weather and conservation from that caused by the pandemic.[59] Public Counsel's concerns are misplaced.

First, the increase in estimated bills is a red herring and should not affect the Commission's decision as to the appropriateness of a WNR / SRLE mechanism. As Empire witness Lyons explained, while estimated bills may affect an individual customer's bill it would not affect a class cost of service study or WNR / SRLE which rely on aggregate customer data.

> [T]he Company believes that the data quality issues do not result in a material impact on the results of the CCOS nor render them unreliable. The CCOS relies on aggregate customer data rather than individual customer data, and any concerns with individual customer data do not appear to impact the results of the CCOS.[60]

Second, the Commission can point to the existence of its rate case application rule as satisfaction of the statutory requirement in Section 386.266.13. As Staff points out, "the Commission can authorize the SRLE mechanism, as the Commission has previously promulgated rules governing applications for rate cases. As a general rate case is the

[57] Public Counsel Initial Brief, pages 26-27.
[58] *Id.* at page 28.
[59] *Id.* at page 29.
[60] Exhibit 28, Lyons Surrebuttal, page 10.

only avenue for a utility to request a SRLE mechanism, these application requirements also govern the SRLE request."[61]

Third, as MECG mentioned previously, Public Counsel is being opportunistic by using the Covid-19 pandemic as justification for opposing not only any action on the residential subsidy, but also the WNR / SRLE mechanism. The evidence indicates that Empire is earning a lower return from the residential class than it earned just five years ago. Given this, it is apparent that the residential subsidy is increasing and that the residential class is not even paying even its subsidized costs. Even in cases prior to the Covid-19 pandemic, however, Public Counsel has always been hesitant to take steps to address the residential subsidy.[62] Clearly then, the Covid-19 pandemic is just its latest excuse. Undoubtedly, in the next case, Public Counsel will point to high unemployment rates caused by lack of jobs resulting from the Joplin areas inability to attract / retain industrial because of high industrial electric rates.

Ultimately the Commission should reject Public Counsel's continued excuses for not paying its full cost of service and, in addition to revenue neutral shifts to address the residential subsidy, the Commission should also implement the SRLE mechanism described in the non-unanimous stipulation.

[61] Staff Initial Brief, page 37 (citing to 20 CSR 4240-3.030).
[62] As mentioned, in the 2014 rate case, where the residential subsidy was 8.1%, Public Counsel would only agree to a 0.75% revenue neutral shift to the residential class. Ultimately, the Commission rejected Public Counsel's position and imposed a 2.0% revenue neutral shift. Today, the residential subsidy is $36.1 million (16.83%). See pages Exhibit 350, Maini Direct, page 33.

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.

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David L. Woodsmall

Dated: May 12, 2020