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Witness: John A. Rogers
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MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

REBUTTAL TESTIMONY

OF

JOHN A. ROGERS

THE EMPIRE DISTRICT ELECTRIC COMPANY

FILE NO. ER-2011-0004

*Jefferson City, Missouri
April 2011*

**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 Tariffs Increasing Rates)
for Electric Service Provided to)
Customers in the Missouri Service Area of)
the Company)

File No. ER-2011-0004

AFFIDAVIT OF JOHN A. ROGERS

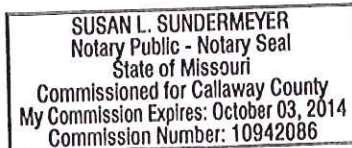
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

John A. Rogers, of lawful age, on his oath states: that he has participated in the preparation of the following Rebuttal Testimony in question and answer form, consisting of 8 pages of Rebuttal Testimony to be presented in the above case, that the answers in the following Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.



John A. Rogers

Subscribed and sworn to before me this 18th day of April, 2011.



Notary Public

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REBUTTAL TESTIMONY

OF

JOHN A. ROGERS

THE EMPIRE DISTRICT ELECTRIC COMPANY

FILE NO. ER-2011-0004

13 Q. Please state your name and business address.

14 A. My name is John A. Rogers, and my business address is Missouri Public
15 Service Commission, P. O. Box 360, Jefferson City, Missouri 65102.

16 Q. What is your present position at the Missouri Public Service Commission?

17 A. I am a Utility Regulatory Manager in the Energy Department of the Utility
18 Operations Division.

19 Q. Are you the same John A. Rogers that contributed to Staff's Revenue
20 Requirement Cost of Service Report ("COS Report") filed on February 23, 2011?

21 A. Yes, I am.

22 Q. Would you please summarize the purpose of your rebuttal testimony?

23 A. I address certain direct testimony of The Empire District Electric Company
24 ("Empire" or "Company") witness, Sherril L. McCormack, related to: a) Empire's request to
25 change its Customer Programs Collaborative ("CPC") from an advisory group with explicit
26 voting rights to an advisory group without voting rights, b) Empire's request to change the
27 program year of all of its current demand-side management ("DSM") programs to a calendar
28 year, c) Empire's request for approval of continuation of its current DSM programs and for
29 approval of annual budget levels for its current DSM programs for the next three years, and d)
Empire's request to change the amortization period for its DSM cost recovery mechanism

1 from ten years to three years. I provide a summary of the stipulation and agreement (“S&A”)
2 to remedy all deficiencies and concerns related to Empire’s 2010 Chapter 22 compliance
3 filing¹. Finally, I provide an update on Staff’s recommendation concerning Empire’s
4 compliance with the Missouri Energy Efficiency Investment Act of 2009 (“MEEIA”),
5 393.1075, RSMo, Supp. 2009. On these issues Staff makes the following recommendations
6 in this case:

7 1. That the Commission change the current CPC with explicit voting
8 rights to a DSM advisory group without voting rights;

9 2. That the Commission allow Empire, with input from the CPC or the
10 DSM advisory group, to determine the program years and the annual program budgets
11 for all of Empire’s current DSM programs prior to Empire filing applications for and
12 receiving Commission approvals of its DSM programs and a demand-side programs
13 investment mechanism (“DSIM”) under the soon-to-be-effective MEEIA rules or,
14 should MEEIA rules not be effective, under Section 393.1075, RSMo, Supp. 2009;

15 3. That the Commission not change Empire’s current DSM cost recovery
16 mechanism from its current ten-year amortization to a three-year amortization,
17 because of Empire’s historic and currently planned low levels of energy savings from
18 its DSM programs, and because approval of Empire’s request will not create the
19 necessary financial incentives for Empire to comply with MEEIA; and

20 4. That the Commission encourage Empire to pursue a comprehensive
21 strategy to align its financial incentives with helping its customers use energy more
22 efficiently by focusing its attention on working with its stakeholders to develop and to

¹ Nonunanimous Stipulation and Agreement filed on April 1, 2011 in File No. EO-2011-0066

1 take steps necessary to file applications for approval of DSM programs and for
2 approval of a DSIM under the soon-to-be-effective MEEIA rules or, should MEEIA
3 rules not be effective, under 393.1075, RSMo, Supp. 2009.

4 **Response to Empire's Testimony**

5 **DSM Advisory Group**

6 Q. Does Staff support Ms. McCormack's request to change the CPC from an
7 advisory group with explicit voting rights to an advisory group without voting rights?

8 A. Yes. Empire has worked cooperatively with the CPC in the past, and Staff
9 expects that Empire will continue to work cooperatively with a DSM advisory group in the
10 future to achieve a statutory goal of achieving all cost-effective demand-side savings.

11 **DSM Program Years and DSM Program Budgets**

12 Q. Does Staff agree with Empire's request that "it be allowed to work with the
13 CPC to move all program years to a calendar year basis effective January 1, 2011" (Ms.
14 McCormack's direct testimony on page 14, line 2 through 4)?

15 A. Yes. Although the January 1, 2011 date has passed, Staff supports the
16 consistent use of calendar year to define each program year for Empire's DSM programs and
17 will work with the CPC or the DSM advisory group to accomplish this change.

18 Q. Does Staff agree with Empire's request that Empire's current portfolio of
19 [DSM] programs be approved for the next three years at the annual budget levels described in
20 Ms. McCormack's direct testimony on page 13, lines 11 through 15?

21 A. Staff supports continuation of Empire's current DSM programs at the current
22 annual spending levels until the issues of changes to Empire's DSM programs and/or changes
23 to the budget levels of Empire's DSM programs are addressed by the CPC or the DSM

1 advisory group. Staff does not believe Commission approvals of Empire's current DSM
2 programs or Empire's budgets for its DSM programs are necessary for continuation of
3 Empire's current DSM programs.

4 **DSM Cost Recovery**

5 Q. Do you agree with the following direct testimony of Ms. McCormack on page
6 14, lines 7 through 13?

7 Empire recommends that the amortization period for deferred DSM
8 cost be reduced from the 10-years agreed to for purposes of the
9 Regulatory Plan to a 3-year amortization period. As part of this case,
10 Empire has amortized the DSM regulatory asset at June 30, 2010 over 3
11 years. Empire proposes that future DSM expenditures continue to be
12 deferred in a regulatory asset account until such time as the
13 Commission's new DSM rule becomes effective and Empire files for
14 program approval and recovery under the new rule.

15
16 A. No.

17 Q. Why not?

18 A. Taking such an interim step towards a comprehensive DSM cost recovery
19 mechanism (three-year amortization of all DSM costs) will not create the necessary financial
20 incentives for Empire to comply with MEEIA and result in Empire placing a high priority on
21 pursuing a statutory goal of achieving all cost-effective demand-side savings². This
22 conclusion is supported by Staff's COS Report in which Staff summarizes Empire's historic
23 and planned energy savings from its DSM programs as being "relatively low"³. Staff believes
24 that Empire cannot possibly achieve a statutory goal of achieving all cost-effective demand-
25 side savings with its current adopted preferred resource plan. Staff believes that Empire must
26 remove any management-imposed budget constraint on the Company's DSM spending levels

² 393.1075, Section 4, RSMo: "The commission shall permit electric corporations to implement commission-approved demand-side programs proposed pursuant to this section with a goal of achieving all cost-effective demand-side saving."

³ Staff COS Report at page 78, line 11 through page 79, line 10

1 when performing its next DSM market potential study and then include the resulting more
2 aggressive demand-side resources in its analyses and decision making for its next Chapter 22
3 compliance filing. In this way and working closely with its stakeholder group Empire is
4 expected to develop a more appropriate plan for its demand-side resources to comply with the
5 statutory goal of achieving all cost-effective demand-side savings.

6 Staff recommends that the Commission not change Empire's current DSM cost
7 recovery mechanism from its current ten-year amortization to a three-year amortization,
8 because of Empire's historic and currently planned low levels of energy savings from its
9 DSM programs, and because approval of Empire's request will not create the necessary
10 financial incentives for Empire's to comply with MEEIA.

11 Later in this rebuttal testimony, I include Staff's recommendation for Empire to pursue
12 a comprehensive strategy to align its financial incentives with helping its customers use
13 energy more efficiently and to file applications for approval of DSM programs and for
14 approval of a DSIM under the soon-to-be-effective MEEIA rules or, should MEEIA rules not
15 be effective, under 393.1075, RSMo, Supp. 2009.

16 **Summary of S&A Concerning Empire's Chapter 22 Compliance Filings**

17 Q. Please summarize the S&A.

18 A. The S&A was filed on April 1, 2011, in File No. EO-2011-0066. S&A
19 signatories include: Empire, Staff, the Office of the Public Counsel, the Missouri Department
20 of Natural Resources, and Dogwood Energy, LLC. The signatories anticipate that the filing
21 schedule in the Commission's revised Chapter 22 subsection 4 CSR 240-22.080(1)⁴ will
22 require Empire to file its next Chapter 22 triennial compliance filing by April 1, 2013. The

⁴ Revised Chapter 22 File No. EX-2010-0254.

1 signatories agree that there is not adequate time prior to the anticipated April 1, 2013 filing
2 date to resolve all of the alleged deficiencies and concerns through a revised filing in File No.
3 EO-2011-0066 and to allow the signatories adequate time to focus their attention and efforts
4 on Empire's next Chapter 22 triennial compliance filing. The signatories agree to focus their
5 time and resources on Empire's next Chapter 22 triennial compliance filing, provided Empire
6 agrees to the following:

- 7 1. To follow and actively support a prescribed stakeholder advisory group
8 process intended to resolve allegations of deficiencies and concerns that the
9 non-Empire signatories identified in Empire's September 2010 Chapter 22
10 compliance filing and prevent those types of alleged deficiencies in Empire's
11 April 2013 Chapter 22 compliance filing; and
- 12 2. To work with the stakeholder advisory group to implement specific new
13 demand-side programs (included in Empire's adopted preferred resource plan
14 in File No. EO-2011-0066) as a result of Empire's applications for approval of
15 its existing and specific new demand-side programs and for approval of a
16 DSIM under the soon-to-be-effective MEEIA rules or, should MEEIA rules
17 not be effective, under 393.1075, RSMo, Supp. 2009.

18 **Strategy to Align Empire's Financial Incentives with Helping Its Customers Use Energy**
19 **More Efficiently Through Its Compliance with MEEIA**

20 Q. Does Ms. McCormack propose a comprehensive strategy to align Empire's
21 financial incentives with helping its customers use energy more efficiently?

22 A. No.

23 Q. Does Empire have a strategy to align its financial incentives with helping
24 customers use energy more efficiently?

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1 A. Staff believes that Empire does have a strategy to align its financial incentives
2 with helping customers use energy more efficiently, and this strategy is outlined in detail in
3 the S&A.

4 Q. Does Staff recommend that the Commission approve the S&A?

5 A. Yes. The Commission should encourage Empire through its approval of the
6 S&A to pursue a comprehensive strategy to align its financial incentives with helping its
7 customers use energy more efficiently by working with its stakeholders as outlined in the
8 S&A and by filing for approval of its DSM programs and for approval of a DSIM under the
9 soon-to-be-effective MEEIA rules or, should MEEIA rules not be effective, under Section
10 393.1075, RSMo, Supp. 2009.

11 Q. What is the status of the MEEIA rules?

12 A. The Commission's final orders of rulemaking in File No. EX-2010-0368 are
13 dated February 9, 2011. The final MEEIA rules consisting of 4 CSR 240-3.163, 4 CSR 240-
14 3.164, 4 CSR 240-20.093 and 4 CSR 240-20.094 were recently filed with the Office of
15 Secretary of State and are expected to be effective in June 2011.

16 Q. Are effective MEEIA rules necessary for the Company to comply with MEEIA
17 and to achieve a statutory goal of achieving all cost-effective demand-side savings?

18 A. No.

19 Q. Please explain your last answer.

20 A. The MEEIA was established in Senate Bill 376 and became law in 393.1075,
21 RSMo, Supp. 2009 on August 28, 2009. With the enactment of MEEIA, the State of Missouri
22 has declared and directed the following:

23 3. It shall be the policy of the state to value demand-side investments
24 equal to traditional investments in supply and delivery infrastructure

1 and allow recovery of all reasonable and prudent cost of delivering
2 cost-effective demand-side programs. ...

3 4. The Commission shall permit electric corporations to implement
4 Commission-approved demand-side programs proposed pursuant to
5 MEEIA with a goal of achieving all cost-effective demand-side
6 savings. ...

7 11. The commission shall provide oversight and *may adopt rules and*
8 *procedures* and approve corporation-specific settlements and tariff
9 provisions, independent evaluation of demand-side programs, as
10 necessary to ensure that electric corporations can achieve the goals of
11 this section. [emphasis added]

12 Section 11 of MEEIA is clear that the Commission *may* adopt rules and procedures,
13 but that it is not required to do so, and may approve corporation-specific settlements and tariff
14 provisions, independent evaluation of demand-side programs, as necessary to ensure that
15 electric corporations can achieve the goals of this section.

16 Q. Does the Commission believe that utilities must comply with MEEIA and that
17 MEEIA is the appropriate framework for utility regulation of demand-side investments?

18 A. Yes. The Commission expressed its view on this issue when it stated the
19 following on page 88 in its April 12, 2011 Report and Order in File No. ER-2010-0355
20 regarding its Conclusions of Law – Demand-Side Management:

21 Utilities within the Commission’s jurisdiction must comply with The
22 Missouri Energy Efficiency Investment Act (MEEIA) regardless of
23 whether or not proposed rules under the law are effective. The
24 language of MEEIA allows KCP&L and GMO to propose a different
25 method of recovery regardless of whether specific Commission rules
26 are in place or not⁵.

27 Q. Does this conclude your testimony at this time?

28 A. Yes.

⁵ Case No. ER-2010-0355, *Report and Order*, p. 88, para. 26 (April 12, 2011).