

**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. )

**MECG REVISED STATEMENT OF POSITIONS**

COMES NOW the Midwest Energy Consumers Group (“MECG”), in reference to the *Joint List Of Issues, List And Order Of Witnesses, Order Of Parties For Cross-Examination, And Order Of Opening Statements* (“List of Issues”) filed by the Commission Staff on March 21, 2018, and respectfully provides this revised Statement of Positions.

On April 24, 2018, MECG executed, along with The Empire District Electric Company; Staff of the Public Service Commission, Renew Missouri Advocates; and, Missouri Department of Economic Development – Division of Energy, a Non-Unanimous Stipulation and Agreement. On April 26, 2018, the Office of the Public Counsel objected to that Non-Unanimous Stipulation.

Commission Rule 4 CSR 240-2.115(2)(D) provides that “A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.” Given that MECG’s execution of the stipulation constitutes a change from its previous Statement of Positions to the “stipulation position”, MECG files this updated Statement of Positions.

**1. Does the Commission have authority to grant Empire’s requests?**

Position: In its Application, Empire sought Commission approval of five specific requests:

- (a) 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;

- (b) Authorization to create a regulatory asset for the undepreciated balance of the Asbury facility, as described in Empire Witness Sager's Direct Testimony so that it may be considered for rate base treatment in subsequent rate cases;
- (c) Approval of depreciation rates as described in Empire Witness Watson's testimony, so that depreciation can begin as soon as the assets are placed in service;
- (d) Approval of the arrangements between Empire and affiliates necessary to implement the Customer Savings Plan, to the extent necessary;
- (e) Issuance of an order that is effective by June 30, 2018, so that Empire can take advantage of a limited window of opportunity to bring these savings to customers

In its initial Statement of Positions, MCEG pointed out that, "[w]hile the Commission has the authority to grant the requests sought in (b) – (e), the Commission lacks the authority to grant the authorization contained in (a)."

Through the Non-Unanimous Stipulation, the Signatories are no longer seeking a Commission 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." Rather, the Signatories have simply agreed and ask the Commission to find that "given the information presented in Case No. EO-2018-0092, and considering that EDE must make decisions prospectively, rather than in reliance on hindsight, the decision to acquire up to 600 MWs of Wind Projects under the terms of the Stipulation is reasonable."<sup>1</sup>

Recognizing that the "Stipulation does not constitute a contract with the Commission",<sup>2</sup> the Commission is still available to decide any prudency challenges that may be brought by a non-Signatory party. As such, the Non-Unanimous Stipulation does not seek the prudency pre-approval initially sought in this docket.

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<sup>1</sup> Non-Unanimous Stipulation, paragraph 14(e).

<sup>2</sup> *Id.* at paragraph 9.

**2. Which of Empire’s requests, if any, should the Commission grant?**

Position: Consistent with the provisions of the Non-Unanimous Stipulation, the Commission should make the following findings and grant the following requests:

- a) Without any finding of prudence, the Commission should find that the terms of the Stipulation are reasonable and binding upon the Signatory parties.
- b) Pursuant to Section 393.240.2, and paragraph 14(f) of the Non-Unanimous Stipulation, the Commission should approve the depreciation rate of 3.33% for FERC accounts 341 through 346.
- c) Pursuant to 4 CSR 240-20.015, the Commission should approve the specific affiliate transactions contained in paragraph 22 of the Non-Unanimous Stipulation,

**3. What requirements should be applied to the Asbury regulatory asset?**

Position: As part of the Non-Unanimous Stipulation, Empire has agreed that Asbury shall not be retired at this time, but may be made at some point in the future within the Empire management discretion.<sup>3</sup> Given that Asbury is not being retired at this time, the need for and the quantification of an Asbury regulatory asset is no longer necessary.

**4. Should Empire be required to make any additional filings in relation to the CSP? If so, what filings?**

Position: The Commission should require future filings as contemplated by the Non-Unanimous Stipulation Agreement. Specifically, the Stipulation provides for certain future filings in Case No. EO-2018-0092 including: (a) notice of the execution of any purchase agreements for certain Wind Projects;<sup>4</sup>

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<sup>3</sup> *Id.* at paragraph 19(a).

<sup>4</sup> *Id.* at paragraph 14(c).

(b) notice of the execution of any future agreement with tax equity partners;<sup>5</sup> and (c) copies of orders from the Oklahoma, Kansas and Arkansas commissions approving the Empire acquisition of Wind Projects.<sup>6</sup>

In addition, the Signatories have agreed that Empire should file for a Commission certificate of convenience and necessity with respect to its interest in the Wind Projects<sup>7</sup> and, to the extent necessary, Commission approval, under Section 393.190, to encumber its franchise, works or system necessary or useful in the performance of its duties to the public.<sup>8</sup>

**5. Should the Commission impose any requirements in regard to tax equity financing? If so, what requirements?**

Position: Empire should execute certain tax equity financing agreements so long as falling within the parameters of paragraph 18(a) of the Non-Unanimous Stipulation and Agreement. Specifically, those parameters are:

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<sup>5</sup> *Id.* at paragraph 18(d).

<sup>6</sup> *Id.* at paragraph 23.

<sup>7</sup> *Id.* at paragraph 16(a).

<sup>8</sup> *Id.* at paragraph 16(b).

	<b>Sponsor (Empire)</b>	<b>Tax Equity Partner(s)</b>
<b>Approximate Initial Capital Contribution</b>	** _____ **	** _____ **
<b>Approximate Expected Return</b>	As determined in future rate cases	** _____ **
<b>Partnership taxable income allocations</b> Years 1 to 10 (flip date <sup>4</sup> ) Thereafter	1% 90%-95%	99% 5%-10%
<b>PTC Allocation</b> Years 1 to 10	1%	99%
<b>Partnership cash distributions</b> Years 1 to 5 Years 6 to 10 (flip date) Thereafter	100% 75%-50% 90%-95%	0% 25%-50% 5%-10%
<b>Contingent contributions</b> Years 1 to 10	None	0% to 2% of Wind Project capital cost per year. Based on actual production in excess of a threshold
<b>Purchase Option</b>	After the flip date, the Class B Members will have an option to purchase all of the Class A Interests, for 100% of their fair market value	None
<b>Creditworthiness</b>	N/A	A-/A3 or better

**6. What conditions, if any, should be applied to the Asbury Employees?**

Position: As reflected in the response to issue 3, the Non-Unanimous Stipulation contemplates that Asbury shall not be retired as part of this proceeding. As such, to the extent that the Stipulation is approved, issues concerning Asbury employees are not relevant.

**7. Should the Commission require conditions related to any impacts on local property taxes? If so, what conditions?**

Position: As reflected in the response to issue 3, the Non-Unanimous Stipulation contemplates that Asbury shall not be retired as part of this proceeding. As such, to the extent that the Stipulation is approved, issues concerning local property taxes are no longer relevant.

**8. Should there be any requirements associated with the Tax Cuts and Jobs Act of 2017? If so, what requirements?**

Position: Yes. The Stipulation<sup>9</sup> contemplates that Empire shall file revised retail tariffs, to be effective on October 1, 2018, designed to reduce retail rates by \$17,837,022. That rate reduction is allocated to the retail classes as follows:

Schedule	Tariff ID	Agreed Upon Rate Increase Allocation By Signatories	Annual Revenue Requirement Tax Reform Reduction	Annual Reduction Per Tariff ID
(a)	(b)	(c)	(d)	(e)
Residential	RG	48.08%	(17,837,022)	(8,576,040)
Commercial	CB	8.87%	(17,837,022)	(1,582,144)
Small Heating	SH	2.38%	(17,837,022)	(424,521)
General Power	GP	18.29%	(17,837,022)	(3,262,391)
Special Transmission Service Contract Praxair	SC-P	0.92%	(17,837,022)	(164,101)
Total Electric Bldg	TEB	8.46%	(17,837,022)	(1,509,012)
Feed Mill and Grain Elevator	PFM	0.02%	(17,837,022)	(3,567)
Large Power	LP	11.54%	(17,837,022)	(2,058,392)
Power Transmission	MS	0.002%	(17,837,022)	(357)
Municipal Street Lighting	SPL	0.61%	(17,837,022)	(109,656)
Private Lighting	PL	0.80%	(17,837,022)	(143,033)
Special Lighting	LS	0.02%	(17,837,022)	(3,807)
Total:		100%		(17,837,022)

Issues concerning the rate design to implement each class rate reduction shall be decided in the context of ER-2018-0228.

In addition, the Stipulation contemplates that Empire will establish a regulatory liability to account for the tax savings associated with Accumulated Deferred Income Taxes.<sup>10</sup>

<sup>9</sup> *Id.* at paragraph 24 and Appendix B.

<sup>10</sup> *Id.* at paragraph 25.

**9. Should there be any requirements associated with potential impacts of the Wind Projects on wildlife? If so, what requirements?**

Position: No, there should not be any requirements associated with the potential impact of the Wind Projects on wildlife.

**10. Should the Commission grant waivers of its affiliate transaction rules for the affiliate agreements associated with the CSP?**

Position: The Commission should grant waivers from its affiliate transaction rules for the agreements detailed at paragraph 22 of the Non-Unanimous Stipulation. Specifically, the Commission should waive its affiliate transaction rules for: (1) the Asset Management Agreement whereby employees of the Liberty Utilities Service Corp. (“Service Corp.”), that provide services to Empire, shall also provide asset management services to the Wind Project Co.; (2) the Balance of Plant Operations and Maintenance Agreement whereby employees of the Service Corp, that provide services to Empire, shall also provide balance of plant O&M services to the Wind Project Co.; and (3) the Energy Services Agreement whereby whereby employees of the Service Corp, that provide services to Empire, shall also provide energy management services to the Wind Project Co.

In addition, to the extent necessary, and as further described in paragraph 18(c) of the Non-Unanimous Stipulation, the Commission should also grant a variance from its affiliate transaction rule for the execution of a fixed price hedging agreement(s) between Empire and the Wind Project Co.

Respectfully submitted,



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ATTORNEY FOR THE MIDWEST ENERGY  
CONSUMERS GROUP

**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 7, 2018