

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

In the Matter of a Proceeding Under)
Section 393.137 (SB 564) to Adjust the) Case No. ER-2018-0366
Electric Rates of The Empire District)
Electric Company)

STATEMENT OF POSITIONS

COMES NOW the Midwest Energy Consumers Group (“MECG”) and for its Statement of Positions respectfully states as follows:

Issue: Should Empire District’s rates be adjusted prospectively to reflect the reduction in the federal corporate income tax rate from 35% to 21% due to the Tax Cuts and Jobs Act (“TCJA”)? If yes, what should be the amount and the timing of such rate reduction?

Position: Yes. Senate Bill 564 provides that the Commission shall “adjust . . . rates prospectively so that the income tax component of the revenue requirement used to set such an electrical corporation's rates is based upon the provisions of such federal act without considering any other factor as otherwise required by section 393.270.” Recognizing that the reduction of the federal corporate income tax rate is part of such federal act, the Commission should adjust Empire’s rates prospectively to reflect the new federal corporate income tax rate. The parties agree that the value of this change is roughly \$17.5 million annually (OPC quantifies at \$17,469,270 (Riley Direct, page 2); Staff and Empire quantify at \$17,837,022 (Oligschlaeger Direct, page 5; North Direct, page 4)).

Issue: Should Empire District’s rates be adjusted prospectively to reflect a flow-back of “protected” excess accumulated deferred income taxes (“ADIT”) to customers due to the TCJA? If yes, what is the correct balance of protected excess ADIT as of 12/31/2017 to be

subject to amortization? If yes, what is the appropriate amortization period for protected excess ADIT?

Position: Yes, the prospective flow back of protected ADIT is another aspect of the federal Tax Cuts and Jobs Act that should be returned to ratepayers under the provisions of SB 564. Unlike Empire and Staff, who never attempt to quantify the magnitude of Empire's protected ADIT, OPC Witness Riley has quantified the protected ADIT balance at \$175,044,036 (Riley Direct, page 3). As required by federal tax rules, this balance is required to be returned to customers over the remaining life of the underlying assets, this is known as Average Rate Assumption Method ("ARAM"). Absent sufficient information to quantify the remaining life of the relevant assets, a utility is allowed to use a procedure known as the Reverse South Georgia Method to determine the appropriate amortization period.

The IRS requires that the Average Rate Assumption Method (ARAM) be used to flow back the excess ADIT, however, emails obtained from the Company indicate that it cannot sufficiently identify the asset lives to follow the ARAM method. The IRS will allow utilities to amortize the excess using what is known as the Reverse South Georgia Method. In short, the method uses an average composite depreciation rate to calculate the amortization amount. Preliminary calculations indicate that the composite rate is about 2.96% however, I have not seen any information from the Company regarding this method either. Until the Company can identify the proper amortization rate, the OPC recommends what the Commission established in the Spire Inc. rate case. Using a 20 year amortization to apply to the \$175,044,036 balance allows a reduction in Empire's revenue requirement by **\$8,752,202**. (Riley Direct, page 6).

Issue: Should Empire District's rates be adjusted prospectively to reflect a flow-back of "unprotected" excess ADIT to customers due to the TCJA? If yes, what is the correct balance of unprotected excess ADIT as of 12/31/2017 to be subject to amortization? If yes, what is the appropriate amortization period for unprotected excess ADIT?

Position: As with “protected” ADIT balances, “unprotected” balances should also be returned to ratepayers. Once again, neither Staff nor Empire has attempted to quantify or propose an amortization to return these “unprotected” balances to ratepayers. On the other hand, OPC witness has quantified the “unprotected” ADIT balance at \$22,884,547 (Riley Direct, page 6). Unlike protected balances, that have limitations placed on the length of amortization period, unprotected ADIT can be returned over any period deemed appropriate by the Commission (*Id.*). In this case, as the only witness to address the return of “unprotected” ADIT balances, OPC Witness Riley recommends that the Commission amortize these “unprotected” ADIT balances over a 10 year period. (*Id.* at page 7).

Issue: Should the financial impact of the TCJA corporate income tax rate reduction from 35% to 21% be deferred by Empire District from January 1, 2018 forward to the date customer rates are adjusted to reflect this impact?

Position: Yes. SB564 clearly provides that the Commission “shall also. . . defer to a regulatory asset the financial impact of such federal act on the electrical corporation for the period of January 1, 2018, through the date the electrical corporation's rates are adjusted on a one-time basis as provided for in the immediately preceding sentence.” Contrary to the express dictates of this statute, neither Staff nor Empire has attempted to quantify the “financial impact” of the federal Tax Cuts and Jobs Act for the period starting on January 1, 2018.

On the other hand, OPC Witness Riley has quantified this financial impact. Mr. Riley recognized that this provision of SB564 went into effect on June 1, 2018. Recognizing that the Commission is required to exercise this authority within 90 days, new rates to account for the Tax Cuts and Jobs Act must go into effect by August 30, 2018. Since this is 66.3% of the entire annual impact, Mr. Riley simply quantified the financial impact for the period of January 1,

2018 through August 30, 2018 as 66.3% of the entire annual amount of \$17,469,290, or \$11,582,365. (Riley Direct, page 7). Consistent with SB564, Mr. Riley recommends that this amount be deferred and be returned to customers in Empire's next general rate case.

Issue: Should the financial impact of the amortization of protected excess ADIT be deferred by Empire District from January 1, 2018 forward to the date customer rates are adjusted to reflect this impact?

Position: It is unnecessary to separate account for the return of protected and unprotected ADIT for the period of January 1, 2018 through August 30, 2018. Instead, the protected ADIT balances are computed as of December 31, 2018, the day before the new federal tax law went into effect. Therefore, these balances became fixed as of that date. It is anticipated that the fixed amount of the protected balances will be amortized over either the ARAM period or, in the absence of necessary plant information, consistent with the Reverse South Georgia Method. It is unnecessary to account for protected balances associated with the period after January 1, 2018 because these amounts became fixed as of December 31, 2017 and did not change. With the amortization of these amounts, ratepayers have been protected the entirety of the benefits to which they are entitled.

Issue: Should the financial impact of the amortization of unprotected excess ADIT be deferred by Empire District from January 1, 2018 forward to the date customer rates are adjusted to reflect this impact?

Position: It is unnecessary to separate account for the return of protected and unprotected ADIT for the period of January 1, 2018 through August 30, 2018. Instead, the protected ADIT balances are computed as of December 31, 2018, the day before the new federal tax law went

into effect. Therefore, these balances became fixed as of that date. It is anticipated that the fixed amount of the unprotected balances will be amortized over an appropriate amortization period. It is unnecessary to account for protected balances associated with the period after January 1, 2018 because these amounts became fixed as of December 31, 2017 and did not change. With the amortization of these amounts, ratepayers have been protected the entirety of the benefits to which they are entitled.

Issue: What modifications should be made to Empire's tariff to implement the revenue requirement reduction?

Position: The entirety of the benefits associated with the Tax Cuts and Jobs Act (the prospective piece; the amortization of protected ADIT; and the amortization of unprotected ADIT) should be returned to the ratepayers in a manner consistent with the testimony of Staff witness Lange. Specifically, the total benefits should be allocated between customer classes using the percentages agreed to in the context of the Stipulation in EO-2018-0092. Within each customer class, benefits should be returned on a per kWh basis as a separate line item. As Ms. Lange notes, this position is consistent with the methodology agreed to in the recent Ameren tax docket. There, the parties agreed as follows:

The revenue requirement reduction applicable to each rate class as a result of the prior step... will be divided by the total kilowatt-hour ("kWh") billing units stated for that class.... The result of this calculation will be a cents-per kilowatt-hour rate for each service classification that will be applied to all billed usage of customers taking service under those classifications (stated as a separate line item on the customers' bills) to yield separate line item bill credits....

The tariff sheets for each of the above service classifications will be updated to include reference to the cents per kilowatt-hour rates and resulting credits derived in the prior step.... No other charges or other terms or conditions of service that are currently stated on those sheets will be modified.

As a party to the Ameren stipulation, MECG agrees with Staff that this methodology is appropriate for the return of tax benefits to the customers in the Empire case.

Respectfully submitted,



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ATTORNEY FOR THE MIDWEST ENERGY
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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.



David L. Woodsmall

Dated: July 17, 2018