

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

In the Matter of The Empire District Electric)
Company for Authority to File Tariffs Increasing)
Rates for Electric Service Provided to)
Customers in the Company's Missouri Service)
Area)

Case No. ER-2014-0351

MECG STATEMENT OF POSITIONS

COMES NOW, the Midwest Energy Consumers' Group ("MECG") and for its Statement of Positions states as follows:

NON-UNANIMOUS GLOBAL SETTLEMENT

As indicated in the Empire Statement of Positions, the remaining parties, with the exception of MECG, have reached a global settlement to resolve all of the issues in this case. MECG has not yet been provided with a final copy of that settlement. That said, the settlement was presented to MECG in a "take it or leave it" fashion. Specifically, the other parties were unwilling to carve out certain issues for the consideration of the Commission. As such, while there are aspects of the settlement which MECG does not object to, the fact that it was provided as a unified single document necessitated that MECG object to that document in order that it be allowed to present its issues to the Commission. For instance, MECG does not disagree with the resolution of the majority of the revenue requirement issues contemplated in the settlement. That said, the other parties were unwilling to allow MECG to agree to the resolution on those specific issues and still present evidence to the Commission on the proper resolution of the revenue allocation issue and LP rate design issues. Instead, as an example, these parties attempted to force MECG to agree to the minimal amount of movement made towards fixing the inter-class subsidies under the settlement. Given MECG's unwillingness to agree to that minimal amount of movement, MECG was instead

forced to object to the entirety of the settlement.

In 1980, the Commission was faced with a similar situation.¹ There, over the objection of Public Counsel, the Commission simply approved a non-unanimous stipulation with the finding that the settlement was just and reasonable. As found by the Commission:

The purpose of the instant case is the determination of the proper distribution of the Company's cost of service within the various classes of customers. The Commission, after considering the evidence offered on October 9 and 10, 1980, and the arguments of counsel on October 14, 1980, is of the opinion that the proposed Stipulation, although not joined in by all of the parties, represents the fairest and most equitable distribution of the rates authorized in Case No. GR-80-210.²

On appeal by Public Counsel, the Commission was overturned. In its decision, the Court noted that the Commission could not simply approve a non-unanimous stipulation. Rather, the Commission must make findings of facts on the issues presented in that case.

One such section which sets forth minimal procedural requirements for Commission hearings is Section 386.420 RSMo 1978. This section guarantees that Public Counsel and all other parties to a Commission proceeding have a right to be heard and to introduce evidence. This section also states that whenever the Commission makes an investigation, "it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the commission together with its decision, order or requirement in the premises." In *State ex rel. Rice v. Public Service Commission*, the court states that this statute required the Commission to include findings of fact in all of its written reports.

The order entered by the Commission in this case does not meet the statutory findings of facts requirement. The findings in this case, as quoted above, are completely conclusory, and provide no insights into if and how controlling issues were resolved.³

Rather than performing its statutory duty to fix a rate design for Laclede based on findings of fact supported by competent and substantial evidence, the Commission appears to have simply adopted the stipulation agreement. This procedure is completely contrary to law, and cannot form the basis for a valid order by the

¹ See, *State ex rel. Fischer v. Public Service Commission*, 645 S.W.2d 39 (Mo.App. 1982).

² *Id.* at page 41.

³ *Id.* at page 42.

Commission.⁴

Therefore, contrary to the position statements of the other parties to this case, the Commission cannot simply approve the Non-Unanimous Stipulation and Agreement. Rather, the Commission must make findings of fact supported by competent and substantial evidence on the issues presented in this case.

MECG apologizes for causing the Commission to have to consider and decide all of the issues presented in the Issues List. As previously indicated, MECG does not object to various aspects of the Non-Unanimous Stipulation. MECG simply seeks to present to the Commission certain issues for its consideration. Had the Signatory Parties presented the settlement in separate packages, MECG could have agreed to a settlement which encompasses all of the non-objectionable issues and limited the Commission's decision to only those truly objectionable issues and resolutions. That said, however, the settlement was presented as a single, unified package. Therefore, MECG was bound to object to the entirety of the stipulation in order to allow the Commission to consider the issues for which it seeks a Commission decision.

This said, MECG presents the following statement of positions on the outstanding issues in this case.

⁴ *Id.* at page 43.

A. Revenue Requirement Issues

1. SPP Transmission Expense

What is the appropriate level of SPP Transmission Expense to include in Empire's revenue requirement?

MECG Position: The appropriate level of SPP Transmission Expense is \$16,717,485 as calculated by Staff. As Staff indicates, this annualized level was determined by using the most current data for the six months ending August 31, 2014.

2. SPP Integrated Market (IM) Expense

What is the appropriate level of SPP IM Expense to include in Empire's revenue requirement?

MECG Position: The appropriate level of SPP IM Expense is \$2,377,766. As Staff indicates, this annualized level of SPP IM Expense was determined by using the most current data for the six months ending August 31, 2014.

3. Revenues

- a. Should Empire's other Missouri retail customers be held harmless of the revenue impact of the bill credits Empire offers to its Special Contract customer?*
- b. What amount of off-system sales revenue (including SPP IM revenue) should be included in the revenue requirement?*
- c. What amount of REC revenue should be included in the revenue requirement?*
- d. What amount of SPP Transmission Revenue should be included in the revenue requirement?*

MECG Position: No. As indicated in the testimony of MECG witness Maini, the SC-P credits are provided as compensation for the unique interruptible benefits that Praxair provides. Specifically, Praxair provides interruptible service on much shorter notice than other interruptible customers. As a result of this interruptible nature, Empire is able to postpone or possibly forego future capacity additions. As such, Empire's customers benefit from the interruptibility service that Praxair is willing to take. Given the beneficial nature to all Empire customers, Empire should be allowed to recover these interruptible credits.

4. Joplin Tornado O&M Asset

Should the Joplin Tornado O&M asset be included in rate base?

MECG Position: No.

5. Depreciation Expense

Should Empire continue to recover depreciation expense for the retired Riverton 7 and Asbury 2?

MECG Position: No. Empire should stop collecting depreciation expense for these retired power plants at the time that rates go into effect for this case.

6. Incentive Compensation

a. What level of cash incentives based on performance goals should be included in the cost of service?

MECG Position: The amount of cash incentive based on performance goals that should be included in the revenue requirement is \$1,946,144.

b. Should executive stock awards be included in the cost of service?

MECG Position: No. The executive stock awards should not be included in the cost of service because these awards are based on measures that primarily benefit shareholders, such as shareholder return (maximizing the dividends paid to shareholders) and stock price goals (the value of the stock increasing over time). There is no direct benefit to the ratepayer. Therefore, these stock awards should be disallowed from the case.

c. Should lightning bolts be included in the cost of service?

MECG Position: No. The lightning bolts award should not be included in the cost of service because they did not relate to the provision of electric service and there were no performance criteria for receipt of these awards.

7. Rate Case Expense

What is the appropriate amount to include in Empire's revenue requirement for Rate Case Expense?

MECG Position: In order to recognize that much of the rate case expense was incurred for the benefit of shareholders (i.e., inflated return on equity recommendation), MECG recommends that the Commission equally share rate case expense between ratepayers and shareholders.

8. Accumulated Deferred Income Taxes (Rate Base)

What is the appropriate level to be used to be included in rate base?

MECG Position: The appropriate level of accumulated deferred income taxes to include in rate base is \$234,740,655.

9. Income Tax

a. Should an adjustment be made to state income tax flow through for prior years?

MECG Position: No.

b. Should an adjustment be made for cost of removal tax issues related to prior years?

MECG Position: No.

10. Vegetation Management Trackers

a. What amount should be included in the revenue requirement for Vegetation Management?

MECG Position: MECG takes no position on this issue at this time.

b. Should the vegetation management tracker be continued?

MECG Position: The Commission is expressly limited to defer costs only in instances where the costs are extraordinary. The Commission initially established the vegetation management tracker to recognize the "extraordinary" nature of these costs as a result of the 2008 promulgation of the vegetation management rule. Since that time, however, utilities have completed a full round of

urban and rural tree trimming. As such, these costs are no longer extraordinary and adequate data exists for the Commission to establish ongoing rates. Given that these costs are no longer extraordinary, the vegetation management tracker should be discontinued.

c. What is the proper base level to use in the tracker?

MECG Position: Recognizing that the Commission should not continue the vegetation management tracker, this issue is moot.

11. Iatan 2/Iatan Common/Plum Point O&M Trackers

a. What amount should be included in the revenue requirement for Iatan 2/Iatan Common/Plum Point O&M?

MECG Position: MECG takes no position on this issue at this time.

b. Should the Iatan 2/Iatan Common/Plum Point O&M trackers be continued?

MECG Position: The Commission is expressly limited to defer costs only in instances where the costs are extraordinary. The O&M trackers were initially established, at the time that these units become operational, to recognize that there was no operating history on which to base a going forward amount of O&M costs. Since that time, however, an adequate amount of data has been collected upon which to determine these O&M costs. As such, these trackers should be discontinued.

12. Riverton 12 O&M Tracker

a. Should a tracker for Riverton 12 O&M be established?

MECG Position: MECG takes no position on this issue at this time.

b. If so, what amount, if any, should be included in the revenue requirement for Riverton 12 O&M?

MECG Position: MECG takes no position on this issue at this time.

13. Operation and Maintenance (O&M) Expense

What is the appropriate level of O&M expense to include in the cost of service?

MECG Position: The appropriate amount of O&M expenses to be included in the cost of service is

\$19,182,825. This amount represents the normalized level of O&M for all of Empire’s generating plant, transmission and distribution. This normalized level is not adjusted for the PPI or CPI as these indices are not specific to the Company’s O&M costs.

14. Prepayments

Should the working funds for Iatan 2, Iatan Common, and Plum Point be treated as prepayments?

MECG Position: No. MECG believes that the working funds for Iatan 2, Iatan Common and Plum Point are cash accounts, not investment in utility assets. As such, they should not be treated as a rate base item.

15. Advertising

Should the cost of the “Value of Electricity” advertising be included in the revenue requirement?

MECG Position: No. The advertising costs of \$155,394 from two campaigns ads and one radio ad related to the “Value of Electricity” should not be included in the revenue requirement. These ads should be categorized as promotional and institutional in nature.

16. EEI Dues

What amount, if any, of the dues paid by Empire to EEI should be included in revenue requirement?

MECG Position: The total amount of \$147,299 in EEI dues should be disallowed and should not be included in revenue requirement. The Company has failed to adequately justify EEI’s benefit to the ratepayers for inclusion in rates.

17. Net Base Fuel and Purchased Power

What level of fuel expense should be included in Empire’s FAC and revenue requirement?

MECG Position: MECG’s agrees with Staff’s quantification of the net base fuel and purchased power expense so long as that amount does not include any transmission costs. Transmission costs should be recovered in base rates. As such, changes in these costs should not be tracked in the fuel adjustment clause.

18. Energy Efficiency

- a. *Should Empire continue its current level of Pre-MEEIA energy efficiency programs?*

MECG Position: MECG takes no position on this issue at this time.

- b. *What should the cost recovery mechanism be to recover Pre-MEEIA program costs?*

MECG Position: MECG takes no position on this issue at this time.

19. Low-Income Weatherization

- a. *Should an evaluation be performed on the Low-Income Weatherization program?*

MECG Position: MECG takes no position on this issue at this time.

- b. *Should Low-Income Weatherization program expenses be recovered in the base rates?*

MECG Position: MECG takes no position on this issue at this time.

20. Rate of Return

- a. *What is the appropriate value for Return on Equity ("ROE") that the Commission should use in setting Empire's Rate of Return?*

MECG Position: MECG believes that the Commission should authorize Empire a return on equity of 9.50%, at the midpoint of Staff's range. Such a return recognizes the continuing decline in the cost of capital realized by all utilities. This same return on equity should be utilized for purposes of calculating the equity component of AFUDC.

- b. *What capital structure should the Commission use to determine the rate of return?*

MECG Position: The appropriate capital structure for determining the allowed rate of return is Empire's consolidated capital structure, exclusive of short-term debt and the remaining unamortized balance of debt expenses as of August 31, 2014, which were incurred to amend Empire's mortgage bond indenture in order to maintain the dividend. The resulting capital structure recommendation consists of 51.71% common equity and 48.29% long-term debt.

c. What is the appropriate value for embedded cost of debt?

MECG Position: MECG agrees with Staff's proposal to disallow the remaining unamortized balance of debt expenses as of August 31, 2014, which were incurred to amend Empire's mortgage bond indenture in order to maintain the Empire dividend. This amount should be subtracted from Empire's cost of debt calculation. The remaining embedded cost of long-term debt is 5.56%.

21. Total Revenue Requirement

What revenue requirement should the Commission establish in this proceeding?

MECG Position: The appropriate revenue requirement as calculated at Staff's midpoint is \$15,041,158.

B. Non-Revenue Requirement Issues

1. FAC Tariff

a. Should Empire be allowed to continue, with modifications, its FAC?

- i. Did Empire provide a complete explanation of the costs and revenues that it is proposing be included in its FAC?
- ii. Did Empire show the magnitude of each cost and revenue type that it has requested be included in its FAC?
- iii. Did Empire show that each cost and revenue type that it has requested be included in its FAC is volatile?
- iv. Did Empire show that each cost and revenue type that it has requested be included in its FAC is uncertain?
- v. Did Empire show that it is unable to manage each cost and revenue type that it has requested be included in its FAC?

MECG Position: MECG has not undertaken an analysis to determine the volatility of the various costs and revenues to be included in the fuel adjustment clause. Therefore, MECG does not object to the continuation of the FAC. Similarly, MECG has no opinion of the sufficiency of the explanation provided by Empire regarding the costs and revenues to be included in the FAC.

b. If Empire is allowed to continue its FAC, what modifications, if any should be made to its FAC?

- i. Should the incentive mechanism be changed from Empire absorbing/retaining 5% of the change in cost to 10%?
- ii. Should SPP transmission costs and revenues be included? If so, what transmission costs and revenues should be included?
- iii. Should the costs and revenues included in Empire's FAC reflect its current operations only?
- iv. Should cost types incurred and revenue types received of less than \$60,000 during the test year be included in the FAC?
- v. Should Empire be allowed to add SPP charges and revenues to its FAC between rate cases?
- vi. If so, should Empire be required to file the change with the Commission or provide notification in its FAC monthly reports?
- vii. Should Empire's FAC be modified to charge certain elements on the basis of how the cost or revenue was allocated in this rate case?

MECG Position: Empire fuel adjustment clause should not be expanded to include SPP transmission costs. As demonstrated in the testimony of Kavita Maini, the benefits to be provided by the SPP IM are still speculative. Until a more thorough analysis of benefits is undertaken, these costs should not be included in the FAC. Furthermore, given that these costs are incurred on a demand (per kW) basis, it is problematic to recover these costs on an energy (per kWh) basis.

- c. If Empire is allowed to continue its FAC, what if any changes should be made to FAC reporting requirements?

MECG Position: MECG takes no position on the recommended changes to be made to the FAC reporting requirements.

2. Miscellaneous Tariffs

- a. *Should Empire's Economic Development Rider be modified to condition participation in applicable energy efficiency programs, as proposed by the Division of Energy?*

MECG Position: No.

b. Should Empire be required to submit a Large Power rate schedule in its next case that recognizes a time differentiated facilities demand charge?

MECG Position: Yes. As reflected in the testimony of Kavita Maini, Empire has a time differentiated facilities demand charge for other rate classes. The use of such a charge provides the price incentives for LP customers to move their demand off-peak. This results in a more efficient utilization of the Empire system and is beneficial to all customers.

c. Should Empire modify its tariffs to include language on how a CHP customer requiring standby service is to be charged for such service, as proposed on page 3 of Division of Energy witness Alex Schroeder's surrebuttal testimony?

MECG Position: MECG takes no position on this issue at this time.

d. Should a standby service cost study (referenced on page 3 of Schroeder's surrebuttal testimony and page 19 of Schroeder's February 11th direct testimony) be completed before Empire's next rate case in order to develop a sound standby rate framework?

MECG Position: MECG Position: MECG takes no position on this issue at this time.

3. CCoS and Rate Design

a. What, if any, revenue neutral interclass shifts are supported by Class Cost of Service studies?

MECG Position: The evidence in this case indicates that Empire's industrial rates are above the national average industrial rate. On the other hand, Empire's residential rates are below the national average residential rate. This fact provides concerns that Empire's rates do not reflect a proper allocation of costs.

The Commission should utilize the 4 NCP version of the Average & Excess methodology for allocation fixed production plant. Consistent with the rate comparisons noted above, each of the class cost of service studies in this case indicate that residential rates are significantly below cost of service. In contrast, the Large Power, General Power and Total Electric Building rates are above cost of service. After settling on a particular A&E methodology, the Commission should take steps to eliminate this interclass subsidy by moving each class 25% towards cost of service as reflected in the testimony of Kavita Maini.

b. What, if any, revenue neutral interclass shifts should be made in designing the rates resulting from this case?

MECG Position: The Commission should make a concerted effort in this case and the following cases to eliminate the subsidies included in Empire's rates. That said, this Commission can not bind a future Commission's decision in the next Empire case.

c. What, if any, changes to the residential customer charge are supported by Class Cost of Service studies?

MECG Position: MECG takes no position on this issue at this time.

d. What, if any, changes to the residential customer charge should be made in designing the rates resulting from this case?

MECG Position: MECG takes no position on this issue at this time.

e. What, if any, changes to the Commercial and Industrial customer charges are supported by Class Cost of service studies?

MECG Position: See the position to (f) below.

f. What, if any, changes to the Commercial and Industrial customer charges should be made in designing the rates resulting from this case?

MECG Position: Recognizing that energy charges, as reflected in the fuel adjustment clause, have declined since the last case, and that the entirety of the increase in this case is caused by capital investment in a generation plant, any increase authorized in this case should be placed entirely on the LP and SC-P billing demand charge.

g. What, if any, changes to the LP tail block rate are supported by Class Cost of Service studies?

MECG Position: See the position to (h) below.

h. What, if any, changes to the LP tail block rate should be made in designing the rates resulting from this case?

MECG Position: Consistent with the testimony of Empire witness Overcast and MECG witness Kavita Maini, the Commission should take steps to eliminate the collection of fixed costs through the energy charge. The collection of these fixed costs should be entirely through the demand charge. The collection of these costs on a variable basis (energy charge) causes an intra-class subsidy. Specifically, Empire overcollects these fixed costs from high load factor customers that utilize the Empire system in an efficient manner. Similarly, Empire undercollects these fixed costs from low load factor customers that are more inefficient.

- i. Should the LP tariff be modified to reduce demand charges following an outage? If so (1) how is “outage” to be defined, and (2) is Empire’s current billing and customer information system capable of accomplishing the modified billing proposed by MECG?

MECG Position: The LP rate schedule provides for a billing demand ratchet. Specifically, this provides that the demand charge is based upon the highest peak incurred by the customer in the previous 12 months. It is inequitable for a customer to have a billing demand peak established when that peak follows closely on the heels of an Empire outage. Instead, given that this peak was caused either by Empire or by other forces, these customers should be provided a reasonable period of time (12 hours) to return to service following an outage without suffering the punitive effects of setting a billing demand peak. See testimony of Kavita Maini.

- j. What, if any, changes to the Special Contract interruptible credit and allowable hours of interruption are supported by Class Cost of Service studies?

MECG Position: MECG has withdrawn this issue from consideration in this case.

- k. What, if any, changes to the Special Contract interruptible credit and hours of interruption should be made in designing the rates resulting from this case?

MECG Position: MECG has withdrawn this issue from consideration in this case.

- l. What, if any, changes to the general interruptible credit are supported by Class Cost of Service studies?

MECG Position: MECG has withdrawn this issue from consideration in this case.

- m. What, if any, changes to the general interruptible credit should be made in designing the rates resulting from this case?

MECG Position: MECG has withdrawn this issue from consideration in this case.

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.



David L. Woodsmall

Dated: March 31, 2015