

**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)	Case No. ER-2010-0130
provided to customers in the Missouri service)	
area of the Company)	

**RECOMMENDATION OF MIDWEST ENERGY USERS' ASSOCIATION
REGARDING TRUE-UP AUDIT AND HEARING**

COMES NOW the Midwest Energy Users' Association ("MEUA"), pursuant to the Commission's November 4, 2009 Suspension Order and Notice and for its Recommendation Regarding True-Up respectfully states as follows:

1. On November 20, 2009, The Empire District Electric Company ("Empire") filed its Recommendation Regarding True-Up. In its pleading, Empire suggests "that the Commission adopt, for purposes of this case, a true-up audit and hearing, if necessary, that will allow the rate recovery of the capital expenditures associated with the Company's participation in the construction and ownership of the Iatan 2 and Plum Point coal-fired generating facilities." Despite this recommendation, Empire did not provide any definitive recommendation as to a true-up date that will allow the parties a reasonable opportunity to audit such expenditures while still allowing sufficient time for the Commission's deliberations.

2. In general, MEUA is not opposed to Empire's request for a true-up audit in this case. That said, however, any true-up must allow for an adequate amount of time for the parties to audit those items to be reflected in the true-up. In addition, the true-up

audit must be completed sufficiently in advance of the operation of law date for the Commission to conduct a true-up hearing and complete its deliberations.

3. Despite its previous statement of non-opposition, MEUA is opposed to any attempt by Empire to reflect the capital costs of Iatan 2 in rates prior to the completion of the customer class cost of service study plainly required by the Empire Regulatory Plan Stipulation.¹ Section 7 of that Regulatory Plan Stipulation provides:

Empire agrees that its 2009 Rate Case [the Iatan 2 rate case] initial filing will include a Missouri jurisdictional customer class cost of service study, covering at least the requirements shown in Appendix E, with all underlying workpapers.

To date, despite being aware of this commitment for over four years, Empire has not provided any rationale for its failure to meet this commitment. Instead, Empire merely notes that the results of the customer class cost of service study will be completed in January 2010 and will be filed in a separate docket.

Empire will file a separate class cost of service study in January 2010. This cost of service study will serve as a guide in the development of new rates and the allocation of the requested rate increase. The cost of service study will take place as a separate case. Until new rates are developed using the cost of service study, any additional revenue authorized by the Commission should be spread to the various rates as an across-the-board increase using an equal percentage to increase each of the revenue components.²

Unfortunately, Empire's delinquent filing of the class cost of service study makes it impossible for the parties, and the Commission, to utilize the results of that study in this case as contemplated by the Regulatory Plan Stipulation.

4. Empire's commitment to conduct and submit a compliant customer class cost of service study concurrent with the 2009 Rate Case initial filing was certainly part

¹ Case No. EO-2005-0263.

² Direct Testimony of W. Scott Keith, at page 17.

of the supporting consideration for the Regulatory Plan Stipulation. The requirement to file the customer class cost of service is not a trivial matter. As Empire recognizes in its testimony, this case is designed to consider the addition of approximately \$425 million of capital projects to Empire's rate base.³ These capital additions serve to increase Empire's rate base by over 34%. It is critical when making such large additions to rate base that those costs are properly allocated to customers. Such an allocation may only be done through the development of customer class cost of service study. The parties to the Regulatory Plan Stipulation understood that these capital projects would represent a significant increase in Empire's rate base, and recognizing that Empire had not conducted a customer class cost of service study since 2004, negotiated it as a mandatory provision of the Regulatory Plan Stipulation. Absent such a study, the Commission will be blindly assigning costs with the very real possibility that such an assignment will be incorrect. Furthermore, the Commission is powerless to retroactively correct any overcharges caused by a faulty assignment.

5. Therefore, while not opposed to the notion of a true-up audit in this case, MEUA is opposed to Empire's recommendation to blindly assign the huge amount of capital costs between the various customer classes. Consistent with the Regulatory Plan Stipulation, MEUA suggests that the Commission limit the scope of these proceedings to exclude consideration of the Iatan 2 capital costs until a future case which can include consideration of the customer class cost of service study. Recognizing that such costs continue to receive construction accounting under the Regulatory Plan Stipulation,

³ Direct Testimony of W.L. Gipson, at page 5. The capital costs associated with Iatan 2 represent approximately 61% of the total capital expenditures.

Empire will not suffer financial harm as a result of the exclusion of Iatan 2 from this proceeding.

WHEREFORE, MEUA respectfully requests that the Commission schedule a true-up which would allow consideration of Iatan 1 and Plum Point capital costs and limit the scope of these proceedings to exclude consideration of Iatan 2 until Empire has completed its customer class cost of service study.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David L. Woodsmall". The signature is written in a cursive style with a large, circular initial "D".

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ATTORNEYS FOR THE MIDWEST
ENERGY USERS' ASSOCIATION

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.

A handwritten signature in black ink, appearing to read "David L. Woodsmall". The signature is written in a cursive style with a large initial "D".

David L. Woodsmall

Dated: December 1, 2009