

**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) Case No. ER-2011-0004
Service Provided to Customers in the)
Missouri Service Area of the Company.)

**SUGGESTIONS IN OPPOSITION
TO MEUA’S APPLICATION TO INTERVENE**

COMES NOW The Empire District Electric Company (“Empire” or “Company”), by and through the undersigned counsel, and hereby submits these Suggestions in Opposition to the Application to Intervene of the Midwest Energy Users’ Association (“MEUA”). Empire requests that the Commission issue an order denying the application of MEUA. In support of this request, Empire respectfully states to the Missouri Public Service Commission (“Commission”) as follow:

1. MEUA filed its Application to Intervene herein on October 20, 2010. MEUA describes itself as an “unincorporated ad-hoc association of large commercial and industrial users of electricity who group together using the MEUA vehicle to combine resources and gain economies in representation and activity in these rate cases.”

2. It is also stated in the Application to Intervene that, at this time, and for purposes of this case, Praxair, Inc. (“Praxair”), Explorer Pipeline Company (“Explorer”), and Enbridge Energy, LLP (“Enbridge”) are members of MEUA. The Application to Intervene goes on to state that other customers are considering participating in this case through MEUA and that counsel for MEUA will promptly advise the Commission of additional participants in the group.

3. It is unclear from the Application to Intervene whether intervention is being requested on behalf of only MEUA, or if the three individual members are also requesting intervention in the case.

4. Praxair, Explorer, and the Missouri Department of Natural Resources (“MDNR”), signatories to Empire’s regulatory plan stipulation entered into and approved in Commission Case No. EO-2005-0263, are parties to this Empire rate case by way of the regulatory plan stipulation. In this regard, and as noted by MEUA in its Application to Intervene, the regulatory plan stipulation provides as follows:

Each of the Signatory Parties shall be considered as having sought intervenor status in any rate case or rate filings without the necessity of filing an application to intervene and Empire consents in advance to such interventions. The Signatory Parties expect that the Commission’s standard procedures and rules will be applicable to any rate case or rate filing including public notice, local public hearings and evidentiary hearings at appropriate times and places, and an opportunity for interested parties other than the Signatory Parties to seek to intervene.

Accordingly, without the filing of any request, notice, or motion, and without the need of any Commission order, Praxair, Explorer, and MDNR were parties to this case.

5. Because of the terms of Empire’s regulatory plan stipulation, if the three members of MEUA are seeking individual party participation, only Enbridge would need to file an application with the Commission in this case, and Empire would have no objection to intervention in this case by Enbridge. If granted individual intervention, the three identified members of MEUA will still be able to “combine resources and gain economies in representation and activity” in this case. MEUA, on the other hand, is not entitled to intervene as a party to this proceeding, and if MEUA’s Application to Intervene is granted, Missouri law will be violated, and Empire and the other parties to this proceeding will be unduly prejudiced.

6. MEUA is not a legal entity capable of suing or being sued in its own name. It is an unincorporated association with no legal status apart from its members. In fact, the records of the Missouri Secretary of State's Office do not reveal so much as a fictitious name registration in the name of MEUA or the Midwest Energy Users' Association.

7. Pursuant to Missouri law, an unincorporated association such as MEUA possesses no status apart from the persons or entities comprising it and is, in fact, not a legal entity. An association such as MEUA exists under the common law right of contract and has no existence apart from the contract of association. An association such as MEUA cannot sue or be sued in its common or association name for the reason that such an association has no legal entity distinct from its membership. *See State ex rel. Automobile Club Inter-Insurance Exchange v. Gaertner*, 636 S.W.2d 68 (Mo. banc 1982); *see also The Executive Board of the Missouri Baptist Convention v. Carnahan*, 170 S.W.3d 437 (Mo.App. W.D. 2005) (unincorporated associations have no entity status beyond the status of those persons who comprise the association; an unincorporated association ordinarily lacks the legal capacity to sue or be sued in the name of the association).

8. Pursuant to Missouri law, MEUA, as opposed to its three individual members, may not be granted intervention as a party to this case. MEUA, in its own name, lacks capacity and standing to proceed as a party herein and may only act by and through its three individual members.

9. Furthermore, if MEUA is allowed to intervene herein, without a set and definite member list, the Commission's rules governing intervention will be circumvented. Commission Rule 4 CSR 240-2.075 requires an application to intervene to be filed "within thirty (30) days after the commission issues its order giving notice of the case, unless otherwise ordered by the commission." MEUA should not be permitted to intervene herein and then expand its membership list well after the

intervention deadline. In fact, if MEUA is granted intervention, with only the directive that it promptly notify the Commission of new members, then participants in this case could be added at any point – be it after the filing of direct testimony by the other parties, after the filing of rebuttal or surrebuttal testimony, or even during or after the evidentiary hearing. The Commission’s rule requires a prospective intervenor that purports to represent a group or association to identify all of its members and to show that each and all of those members “has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case.” MEUA’s proposal strips the Commission of its authority – and responsibility – to affirmatively determine whether an association, and each of its members, meets the standards governing who should be authorized to participate in a case as an intervenor and who should not.

WHEREFORE, for the reasons stated above, Empire seeks an order of this Commission denying the Application to Intervene of MEUA, and, instead, acknowledging the party status of two of its members, Praxair and Explorer, and granting intervention to its third identified member, Enbridge. Empire seeks such other and further relief as the Commission deems just and proper under the circumstances.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

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ATTORNEYS FOR THE EMPIRE DISTRICT
ELECTRIC COMPANY

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record on this 25th day of October, 2010.

/s/ Diana C. Carter