

Exhibit No.:
*Issues: Rate Case Expense, Dues and
Donations, Edison Electric
Institute Dues*
Witness: Casey Westhues
Sponsoring Party: MoPSC Staff
Type of Exhibit: Surrebuttal Testimony
Case No.: ER-2010-0130
Date Testimony Prepared: April 23, 2010

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

SURREBUTTAL TESTIMONY

OF

CASEY WESTHUES

THE EMPIRE DISTRICT ELECTRIC COMPANY

CASE NO. ER-2010-0130

**Jefferson City, Missouri
April, 2010**

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CASEY WESTHUES
THE EMPIRE DISTRICT ELECTRIC COMPANY
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1 **SURREBUTTAL TESTIMONY**

2 **OF**

3 **CASEY WESTHUES**

4 **THE EMPIRE DISTRICT ELECTRIC COMPANY**

5 **CASE NO. ER-2010-0130**

6 Q. Please state your name and business address.

7 A. Casey Westhues, P.O. Box 360, Jefferson City, Missouri 65102.

8 Q. Are you the same Casey Westhues who has previously filed rebuttal testimony
9 and contributed to the Staff’s Cost of Service Report in this proceeding?

10 A. Yes, I am.

11 **EXECUTIVE SUMMARY**

12 Q. What is the purpose of your surrebuttal testimony?

13 A. The purpose of my surrebuttal testimony is to address the rebuttal testimony of
14 The Empire District Electric Company (“Empire” or “Company”) witness Jayna R. Long
15 regarding rate case expense, dues and donations, and Edison Electric Institute (EEI) dues.

16 **RATE CASE EXPENSE**

17 Q. Do you agree with Empire witness Long that Empire should be allowed to
18 recover the costs associated with rate case appeals, as discussed at page 4 of her
19 rebuttal testimony?

20 A. Yes. The Staff and Empire have reached an agreement to include a normalized
21 level of the costs associated with rate case appeals in Empire’s cost of service. This amount is
22 reflected as a part of the Staff’s adjustment to outside services expenses.

Surrebuttal Testimony of
Casey Westhues

1 Q. On page 4 of her rebuttal testimony, Ms. Long discusses what she
2 characterizes as unrecovered rate case expenses from past rate cases. Empire requests to
3 specifically recover these past costs in the current case by increasing its rate case expense
4 recovery by \$369,773. Does the Staff agree with Empire's request?

5 A. No. The Staff disagrees that current rate case expenses should be increased by
6 the specific costs associated with past rate case expenses. The Staff recommends recovery in
7 rates of normalized rate case expense on a prospective basis. The Staff believes it is
8 inappropriate to allow specific recovery in rates of amounts related to past rate proceedings.
9 Absent extraordinary circumstances, ratemaking should be prospective in nature and not focus
10 on retroactive treatment of alleged under-recoveries or over-recoveries of costs included in
11 prior Company rates.

12 Q. Has the Commission supported the Staff's position regarding past rate
13 case expenses?

14 A. Yes. In the Report and Order in Case No. WR-83-13 (Missouri Cities Water
15 Company), the Commission stated:

16 Rate case expenses are not extraordinary expenses which should be
17 amortized, but are ordinary expenses which should be included in a
18 Company's cost of service at a reasonable level calculated upon
19 historic data, adjusted if necessary for known and measurable changes.
20

21 It also stated:

22
23 To provide for the recovery of past rate case expenses, as proposed by
24 the company, could constitute retroactive ratemaking, which is
25 prohibited by State ex rel. Utilities Consumer Council of Missouri v.
26 Public Service Commission of Missouri, 585 S.W.2d 41, 59
27 (Mo. En banc 1979). See also Martigney Creek Sewer Company, Mo.
28 PSC Case No SR-83-166 (Report and Order issued March 4, 1983).
29

Surrebuttal Testimony of
Casey Westhues

1 Q. Does the Staff agree with the Commission's characterization of the issue
2 described above?

3 A. Yes. The articulation of the ordinary nature of these expenses is an accurate
4 characterization of Staff's position in this case, premised on its expert judgment.

5 Q. Does the Staff agree with the Commission's resolution of the issue
6 described above?

7 A. Yes. The Staff does not support the recovery of specific costs incurred in a
8 prior time period, absent an appropriate Accounting Authority Order that allows an amortized
9 portion of the cost to be reflected in test year expenses.

10 Q. Ms. Long cites two cases on page 4 of her testimony that allegedly support
11 Empire's position to recover past rate case expenses. What is your response?

12 A. The first case that Ms. Long refers to is Case No. GR-2004-0209,
13 Missouri Gas Energy ("MGE"). In its review of the Report and Order for that case, the Staff
14 found no reference to the Commission authorizing the specific recovery of costs associated
15 with MGE's previous rate cases prior to the 2004 case.

16 As referenced by Ms. Long, in Case No. GR-2006-0422 (MGE), the Commission did
17 authorize MGE to recover past rate case expenses. However, for the reasons explained above
18 and in the Staff's Cost of Service Report, the Staff continues to maintain that the best
19 ratemaking practice is to include only a normalized level of rate case expenses in rates, based
20 on historically incurred levels, as opposed to providing for the specific recovery of
21 past expenses.

22 Q. Does Staff support the Company's requested Rate Case Expense
23 Recovery Rider?

Surrebuttal Testimony of
Casey Westhues

1 A. No. As previously explained in my rebuttal testimony, the Staff does not
2 consider a Rate Case Expense Recovery Rider to be necessary, or to constitute best
3 ratemaking practice.

4 **DUES AND DONATIONS**

5 Q. Why were the costs of certain dues and donations eliminated from the Staff's
6 recommended cost of service?

7 A. Certain dues and donations expenses were eliminated because they were
8 unnecessary to provide safe and adequate electric service. Others were eliminated because
9 the benefits associated with the dues and donations were duplicative of that of other costs
10 incurred by Empire.

11 Q. Which costs were eliminated as unnecessary for safe and adequate
12 electric service?

13 A. Dues and donations to the Institute of Electrical and Electronic Engineers
14 (IEEE), the Homebuilder's Association (HBA), and the Tri State Contractors (Tri-State) were
15 initially eliminated from the Staff's case as unnecessary for safe and adequate electric service.
16 After additional review, the Staff now recommends recovery of the IEEE costs.

17 Q. Has Empire provided any information, or has Staff independently acquired any
18 information, indicating why the Homebuilder's Association costs are necessary for safe and
19 adequate electric service?

20 A. No. The HBA is an organization that is concerned with promoting
21 the housing industry. They are affiliated with the National Homebuilders Association
22 whose main goal is to "analyze policy issues, work toward improving the housing
23 finance system, and analyze and forecast economic and consumer trends"

Surrebuttal Testimony of
Casey Westhues

1 (National Association of Home Builders website) The Staff has not found anything to indicate
2 that the HBA deals specifically with electric utility issues or issues involving installation of
3 electrical equipment or extension of services, as was stated in Ms. Long's rebuttal testimony
4 on page 6, lines 12-13.

5 Q. Has Empire provided any information, or has Staff independently acquired any
6 information, indicating why the Tri-State Contractors costs are necessary for safe and
7 adequate electric service?

8 A. No. Tri-State's mission is to promote "better working conditions for the
9 Commercial Construction industry...to become a viable power to address City, County, and
10 State issues which directly impact the Commercial Construction Industry" (Tri-State website).
11 According to its website, a major focus of Tri-State's efforts in furtherance of these goals is
12 its legal and legislative committees, where Tri-States seeks to "work with local and State
13 Officials to negotiate legal and legislative changes." The Staff does not recommend recovery
14 of costs indirectly associated with lobbying efforts, such as these, in rates.

15 Q. Which costs were eliminated because they were seen as duplicative?

16 A. The U.S Chamber of Commerce and Missouri Chamber of Commerce dues
17 were eliminated as duplicative costs.

18 Q. Why does the Staff regard these costs as duplicative?

19 A. As was stated in the Staff's Cost of Service Report, Chamber of Commerce
20 dues for cities and towns around the Joplin area were recommended for recovery in rates. The
21 U.S and Missouri Chambers of Commerce serve the same general function as the local
22 chambers of commerce and so are seen as duplicative costs for which recovery in rates is
23 not recommended.

Surrebuttal Testimony of
Casey Westhues

1 Q. Ms. Long alleges in her rebuttal testimony on pages 5-6 that the Staff was
2 inconsistent in their disallowances of certain dues. What is your response?

3 A. The problems referenced by Ms. Long were due to the Staff's reliance on
4 information that was initially informally provided by Empire that was inconsistent with the
5 information later formally provided by Empire. In response to Empire's concerns, the Staff
6 has re-adopted its direct filed position concerning these particular dues,
7 Kansas Economic Development Association and Arkansas One Call System.

8 **EDISON ELECTRIC INSTITUTE DUES**

9 Q. Ms. Long alleges in her rebuttal testimony on page 7, that Staff appears
10 to rely solely on the Commission Order in Case No. ER-83-49,
11 Kansas City Power & Light Company, as support for eliminating EEI dues. Is this accurate?

12 A. No the Staff has a general practice of disallowing costs associated with
13 lobbying efforts. As regards EEI in particular, in its Report and Order in Case No. ER-83-49,
14 the Commission stated that EEI dues:

15 ...would be excluded as an expense until the company could better
16 quantify the benefit accruing to both the company's ratepayers and
17 shareholders.
18

19 The Staff interprets this Order as requiring a Company to accurately quantify the costs
20 associated with EEI lobbying and shareholder advocacy efforts before obtaining recovery in
21 rates of any portion of EEI dues. As will be explained below, Empire has not done so in this
22 case and should not be allowed recovery of any portion of EEI dues.

23 Q. Has Empire quantified the benefit associated with EEI membership accruing to
24 the company's ratepayers?

Surrebuttal Testimony of
Casey Westhues

1 A. No. While Empire has obtained from EEI a percentage of the dues that are
2 allegedly associated with lobbying costs, and that were booked by Empire “below-the-line,”
3 Empire has provided no support or explanation for how this percentage was derived, nor have
4 they demonstrated that this percentage of dues is an accurate quantification of the direct costs
5 incurred by EEI in the lobbying and legislative advocacy area. Please refer to Empire’s
6 response to Staff Data Request No. 0347, which is attached to this testimony as Schedule 1.

7 Q. Does Empire gain any benefit from its membership in EEI in areas not related
8 to lobbying and governmental affairs?

9 A. Based upon Ms. Long’s rebuttal testimony, that is possible. However, absent
10 reliable evidence of the allocation of EEI dues to activities that benefit shareholders versus
11 activities that benefit ratepayers, the Staff cannot recommend recovery of any portion of EEI
12 dues through rates.

13 Q. Ms. Long attached a schedule to her rebuttal testimony that purports to
14 illustrate the non-lobbying benefits received by Empire from its membership in EEI. What is
15 your response?

16 A. This information was apparently received from EEI by Empire, and it is not
17 always clear what the information in this report relates to, and how it demonstrates the
18 existence of non-lobbying benefits. The Staff notes, however, that Ms. Long’s
19 Schedule JRL-1 does indicate that Empire pays certain fees associated with Empire employee
20 attendance at EEI technical committee meetings that are separate and apart from EEI’s annual
21 membership dues. Staff recommended recovery of such meeting fees incurred within the
22 test year.

Surrebuttal Testimony of
Casey Westhues

1 Q. Are the EEI information sharing and training activities discussed by Ms. Long
2 in her rebuttal testimony a primary focus of EEI's efforts?

3 A. The Staff believes not. I have included as Schedule 2 to this testimony a copy
4 of an EEI letter from Mr. David Radcliffe, EEI's Chairman, to Mr. William Gipson,
5 Empire's President and Chief Executive Officer, as well as an attachment to this letter entitled
6 "2008 Industry Issues and Accomplishments." Schedule 2 was sent to Empire as a cover
7 letter to EEI's 2009 annual dues. Review of the content of Schedule 2 shows that EEI and its
8 Chairman focus almost completely on governmental and regulatory affairs/lobbying activities
9 as constituting its "accomplishments" in 2008. There is no reference in this information to
10 any efforts by EEI to sponsor technical training or information-sharing activities as discussed
11 by Ms. Long in her effort to justify inclusion of these dues in Empire's rates.

12 Q. Does this conclude your surrebuttal testimony?

13 A. Yes.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE 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 Missouri Service Area of the Company)

Case No. ER-2010-0130

AFFIDAVIT OF CASEY WESTHUES

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Casey Westhues, of lawful age, on her oath states: that she has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, consisting of 8 pages to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by her; that she has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of her knowledge and belief.

Casey Westhues
Casey Westhues

Subscribed and sworn to before me this 22nd day of April, 2010.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: December 08, 2012
Commission Number: 08412071

Suzie Mankin
Notary Public

Missouri Public Service Commission

Data Request

Data Request No. 0347
Company Name Empire District Electric Company, The-Investor(Electric)
Case/Tracking No. ER-2010-0130
Date Requested 4/8/2010
Issue Expense - A&G - Dues and Donations
Requested From Angela Cloven
Requested By Casey Westhues
Brief Description EEI

Description 1)In its response to Staff Data Request No. 0035.1 Empire states that the percentage of EEI dues related to lobbying during 2008 were 14.37% and during 2009 were 16%. What is the basis for determining the percentage related to lobbying and how was it determined for each of these years? Who determines these percentages? 2)Does Empire believe the percentages cited above reflect all of EEI's costs related to governmental affairs/governmental relations or are some EEI costs related to governmental affairs/governmental relations reflected in the above the line portion of EEI dues? If so, please identify the governmental affairs/governmental relations costs treated above-the-line by Empire. Please provide any documentation Empire relies on for its position regarding the percentagel of EEI's costs related to governmental affairs/governmental relations.

Due Date 4/18/2010

Response **(1) The percentages were provided by EEI to Empire for each year. The different amounts per year reflect EEI's expenditures costs related to governmental affairs activity. (2) Empire believes EEI cited percentages are accurate and inclusive. David Martin, Director of Government Affairs.**

The attached information provided to Missouri Public Service Commission Staff in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission Staff if, during the pendency of Case No. ER-2010-0130 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

If these data are voluminous, please (1) identify the relevant documents and their location (2) make arrangements with requestor to have documents available for inspection in the Empire District Electric Company, The-Investor(Electric) office, or

other location mutually agreeable. Where identification of a document is requested, briefly describe the document (e.g. book, letter, memorandum, report) and state the following information as applicable for the particular document: name, title number, author, date of publication and publisher, addresses, date written, and the name and address of the person(s) having possession of the document. As used in this data request the term "document(s)" includes publication of any format, workpapers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies or data, recordings, transcriptions and printed, typed or written materials of every kind in your possession, custody or control or within your knowledge. The pronoun "you" or "your" refers to Empire District Electric Company, The-Investor(Electric) and its employees, contractors, agents or others employed by or acting in its behalf.

Security	Public
Rationale	NA

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2696
Telephone 202-508-5000



**EDISON ELECTRIC
INSTITUTE**

Knapp
DeKoroo
Mansour H.

DAVID M. RATCLIFFE
EEI Chairman

November 14, 2008

Mr. William L. Gipson
President and CEO
Empire District Electric Co
PO Box 127
Joplin, MO 64802-0127

Dear Bill:

Enclosed please find the invoice for your company's 2009 Edison Electric Institute dues.

Based on the guidance provided by the EEI Board in June, the total dues budget remains unchanged for 2009, as it has now for several years. It is important to note that your individual company's billed dues will vary based on your relative growth in statistics. Companies with statistical increases greater than average will see higher dues, while companies with lower growth, mergers, or other changes may see reductions.

Working together, we achieved many of our priorities and delivered real benefits in 2008, including major tax savings that alone significantly exceed each of our dues to EEI. Enclosed is an excellent summary of our accomplishments. In the coming year, as we work with a new Obama Administration and a new Congress, I think we can anticipate that energy policy, climate and other environmental issues, the ongoing financial crisis, and tax policy – including the critically important dividend tax rate – will remain front-burner issues. Likewise, we anticipate a challenging regulatory agenda at both the federal and state level.

I would note that the flat dues guideline was set by the Board before the unanticipated market collapse, and the adverse impact this is having on EEI's investment income and pension liability under the new FASB #158 pension funding requirements. This creates a particularly demanding situation for EEI, and underscores the importance of your full support.

I want to thank you for your participation in EEI, your commitment to finding common ground, and your active involvement in advancing the public policy issues that are so critical to our companies and our customers. It is a true privilege to work with you. If you have questions, or would like to talk about EEI or the industry issues and positions, please give me or Tom Kuhn a call.

Sincerely,

A handwritten signature in cursive script that reads "David".

David M. Ratcliffe
DMR:era

Enclosures



2008 Industry Issues and Accomplishments

HIGHLIGHTS

- **Bonus Depreciation**—Enacted
- **Extension of Renewable Tax Credits**—Enacted
- **Accelerated Depreciation for Smart Meters and Smart Grid**—Enacted
- **Incentives for Electric Vehicles**—Enacted
- **Clean Coal and Carbon Capture and Storage Incentives**—Enacted
- **LIHEAP**—Fully Funded for First Time in Program's History
- **Climate Change**—Demonstrable Progress on Principles Endorsed by EEI CEOs
- **Federal Renewable Portfolio Standard**—Dropped from Energy Bill
- **Amendment to Exempt DoD and Other Federal Agencies from State Electricity Laws**—Dropped Prior to Action
- **FERC Final Rule on Standards of Conduct**—Eliminated Unworkable Prior Standards; New Rule Reflects EEI Positions
- **FERC Order on Market-Based Rates**—Rehearing Orders Providing Helpful Clarifications
- **FERC Order on Mergers and Acquisitions**—Rehearing Order Providing Helpful Clarification
- **FERC Final Rule on Critical Infrastructure Protection**—Issued; Reflects Key Issues Raised by EEI
- **Investing in America's Electric Future Campaign**—Significant Outreach Ongoing
- **"Defend My Dividend"** Campaign to Extend 15% Maximum Tax Rate on Dividend Income—Underway

FINANCE/TAX ISSUES

- Congress passed a bipartisan **economic rescue package** in October designed to help stabilize financial markets and restore liquidity to credit markets. The legislation included important **energy tax-related provisions** that:
 - Extend the Sec. 45 PTC (at full value) through 2009, expand facilities qualifying, and extend the refined coal credit;
 - Extend the 30% solar ITC for 8 years, and provide a new 10% ITC for combined heat and power systems. Remove the utility exclusion. Also add geothermal heat pumps;
 - Reduce depreciable lives for smart meters from 20 to 10 years; 10-year depreciable life also applies to smart grid property;
 - Extend tax incentives for energy-efficient homes, buildings, appliances, and new plug-in electric drive vehicles ;
 - Provide \$1.5 billion in new credits for advanced clean coal facilities;
 - Provide a new tax credit for capture and storage of CO₂;
 - Extend the Transco provision for sales before January 1, 2010.
- Congress passed an **economic stimulus package** that contained a bonus depreciation provision worth billions to the electric utility industry for new capital equipment placed in service in 2008, except for certain long-lived property—including most traditional electric generation, transmission, and distribution property—that takes more than a year to construct (extends through 2009).
- EEI led extensive industry interaction with Treasury on proposed changes to tax accounting rules proposing that regulated utility assets that are sold or transferred to non-utilities would no longer qualify for **normalization** protection. The March 2008 final rule was consistent with EEI's position by both retaining normalization and in not making any retroactive changes.
- EEI is engaged in a multi-year effort to secure an extension of the current 15-percent maximum tax rate on **dividend income**. In April, EEI joined with AGA to release a new study that shows that the dividend tax rate reduction benefits the middle-class and seniors. EEI and AGA also launched a broad-based Defend My Dividend campaign.

PLUG-IN HYBRID ELECTRIC VEHICLES

- The economic rescue bill provides a **consumer tax credit** for new plug-in electric drive vehicles. Separately, Congress passed a **continuing resolution** that included \$7.5 billion for a \$25 billion **federal loan program** to help automakers, battery suppliers, and parts makers retool or build new factories to manufacture advanced vehicles.

OTHER LEGISLATIVE ISSUES

- The continuing appropriations resolution passed by Congress in September included \$5.1 billion for LIHEAP for FY 2009. This marks the first time in LIHEAP's 27-year history that the program will be fully funded.
- EEI led a coalition effort to turn back an amendment sought by the Department of Defense to exempt DoD and other federal agencies from **state electricity laws governing electricity purchases**. The proposed language was dropped.
- The Senate refused to act on a House energy bill, in part because it contained a **15-percent renewable electricity standard**.
- **Rail antitrust legislation** was reported out of the House Judiciary Committee in April, coupled with committee approval last fall in the Senate. This is the most progress made on rail legislation in years.

CLIMATE CHANGE

- Throughout the year, EEI has worked to promote its **climate change principles** and to expand industry consensus on climate legislation. The climate change principles continue to evolve, as expressed in EEI testimony before the House Energy & Commerce Committee in June. CEO discussions also continue, which, among other things, are addressing cost-containment mechanisms and distribution of allowances under cap-and-trade legislation.
- The Senate failed to invoke cloture on the **Boxer substitute to the Lieberman-Warner bill**. EEI emphasized: aligning CO₂ reduction targets with technology availability; effective cost-containment mechanisms; an economy-wide approach; and harmonization with other federal and state laws. Ten Senate Democrats then sent a letter to Senate Democratic leadership indicating they could not support the Boxer substitute and raised concerns over the need to contain costs, to invest aggressively in clean technologies, and to prevent harm to the economy. Senate Energy Committee Chairman Jeff Bingaman stressed setting realistic targets, an effective cost-control mechanism, and establishing a single, national cap-and-trade program, among other priorities.
- EEI hosted a **Wall Street-Utility Leadership Forum** in New York that focused on climate-related issues and highlighted the need to strengthen ties with the financial community and firms with large energy commodities groups. Another forum is set for December.
- EEI held a workshop on **environmental disclosure** and has conducted outreach to the Securities and Exchange Commission, stressing financial disclosure should not set environmental policy. EEI's efforts have resulted in industry-wide coordination.
- EEI and industry allies are working to educate congressional and Administration officials regarding the potential implications of **regulating CO₂ emissions under the Clean Air Act** in response to the Supreme Court's decision in *Massachusetts v. EPA*.
- EEI submitted comments in May on EPA's Safe Drinking Water Act underground injection control pre-rulemaking focused principally on the process for establishing regulations for the **injection of CO₂ into underground geologic formations**.
- EEI filed comments in July in support of the U.S. Department of the Interior's interim final 4(d) "Special Rule for the Polar Bear," providing that the **listing of the polar bear as a threatened species under the Endangered Species Act** due to climate impacts would not affect permitting of power plants outside of Alaska.
- Under the auspices of the **Asia-Pacific Partnership on Clean Development and Climate**, EEI and several member companies participated in a Power Generation Task Force meeting in India. Numerous member companies also have hosted site visits in the past year for international delegations. EEI also participated in the U.N. Framework Convention and Western Climate Initiative.

CYBERSECURITY

- FERC issued a final rule approving a set of mandatory NERC standards on **critical infrastructure protection**. The final rule is positive and responsive to a broad range of issues raised by EEI in its NOPR comments.
- EEI worked as part of a broad coalition of industry stakeholders, FERC, and key congressional staff to develop a narrowly focused legislative proposal to address **electric industry cyber security** issues identified by FERC Chairman Joe Kelliher in the spring.

ENERGY EFFICIENCY

- The economic rescue bill passed by Congress extends **efficiency tax incentives** for homes, buildings and appliances.
- EEI helped to secure a substantial increase in **residential energy efficiency** for the International Energy Conservation Code in February. The last significant energy-efficiency increase in the IECC was in 1992.
- EEI worked with ASHRAE committees to help make **ASHRAE's latest commercial building standard ASHARE 90.1-2007** more efficient, as well as market- and fuel-neutral, and worked with **NARUC** to conduct a public E-forum, which explained the nature of **more efficient retail electric rates**, the urgent need to introduce such rates, and practical strategies for overcoming associated barriers.
- EEI published ***Building Sustainable Efficiency Businesses***, which advocates for aggressive efficiency development and explains the use of tools to simulate the impact of alternative business/regulatory models on a utility's rates and financial performance.
- EEI helped to develop and participate in DOE's **smart grid workshop**, and worked with DOE to conduct a public E-forum on the smart grid and how it will support increased energy efficiency. More than 35 public utility commissions participated.
- The Edison Foundation's **Institute for Electric Efficiency** hired its first Executive Director, Lisa Wood, and continues its efforts to advance energy-efficiency practices among the nation's electric utilities. IEE also is reaching out to EEI members and advisory committee members, including NARUC, NASUCA, EPRI, CEE, ASE, and others.

CLEAN AIR INTERSTATE RULE (CAIR) AND OTHER MAJOR ENVIRONMENTAL ISSUES

- In July, a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit issued a unanimous decision vacating the entire **Clean Air Interstate Rule**. In the wake of this decision, EEI is working closely with member companies to understand the impacts on individual company operations and state programs. Legislation and regulation addressing utility air emissions are likely next year.
- The U.S. Court of Appeals for the D.C. Circuit denied petitions for rehearing *en banc* filed by industry and EPA in response to the Court's opinion vacating both EPA's cap-and-trade **Clean Air Mercury Rule** and its decision to "delist" mercury as a hazardous air pollutant. While EPA is appealing to the U.S. Supreme Court, prospects that the Court will consider the case are remote. A new EPA rulemaking could take several years to finalize and might not require mercury emission reductions for about five years. In the interim, EEI continues to assist individual member companies in state-specific proceedings.
- In April, the U.S. Supreme Court granted *certiorari* to PSE&G, Entergy, and the Utility Water Act Group on the question of whether **Section 316(b) of the Clean Water Act** authorizes EPA to compare costs with benefits in determining the best technology available for minimizing "adverse environmental impact" at cooling water intake structures. Oral arguments are scheduled for December, and a decision could be issued next spring. In July, 18 states filed a § 316(b) *amicus* brief in support of industry petitioners.
- EEI is a member of the **Waters Advocacy Coalition**, a broad-based coalition of both public and private organizations that has joined in opposition to legislation (H.R. 2421 and S. 1840) that would dramatically expand the jurisdiction of the **Clean Water Act**.
- EPA issued a final **"water transfers" rulemaking** in June that governs the movement of water from one body to another for a wide range of purposes, including power generation, does not require federal permits under the CWA (EEI's position). This exclusion is particularly important to hydropower operators that otherwise would face an unnecessary and burdensome permitting process.
- EEI is helping to shape the draft **ASTM Standard Practice** for Assessing Environmental Performance Improvements of Electric Power Generation Facilities and Infrastructure. The ASTM Power Task Group, which EEI chairs, is considering a proposed change to the Life Cycle Impact Assessment methodology. Such a change will require further testing and peer review.
- EEI's **Vegetation Management Task Force** is actively engaged in compliance standards-setting for NERC reliability standards.
- EEI and the Utility Solid Waste Activities Group helped to facilitate and build support for an Environmental Council of the States letter to EPA regarding appropriate regulation of **coal combustion products**.

FERC

- FERC issued a **NOPR for Wholesale Competition in Regions with Organized Electric Markets** in February. The proposed rule incorporated the majority of comments EEI made on FERC's earlier Advanced Notice of Proposed Rulemaking. In April, EEI filed comments in response to the NOPR, largely supporting FERC's proposals while asking for some helpful clarifications.
- In a major about-face, FERC issued a **final rule on Standards of Conduct** on October 16. The new rule reflects EEI's key advocacy position that the prior Standards of Conduct framework under Order No. 2004 was unworkable.
- FERC issued rehearing orders in April and July that provided helpful clarifications in response to requests on **market-based rates**.
- FERC issued a rehearing order to its February 21 final rule granting additional blanket authorizations for **merger and acquisition activities** subject to Federal Power Act Section 203. EEI had sought, and FERC granted, clarification that the existing blanket authorization for internal reorganizations applies even if assets are transferred in the process and that the existing blanket authorization for MBR contracts applies if neither party is affiliated with a traditional public utility with captive customers.

INVESTING IN AMERICA'S ELECTRIC FUTURE

- EEI continues to lead a **national campaign** to help electric companies address the challenges of rising electricity costs and the need to invest in the nation's electricity infrastructure, and is reaching out to state and local officials—including legislators, governors, and regulators—around the country through participation in various forums and conferences.
- EEI facilitated **State Capital Road Shows** in Kansas, New York, North Dakota, and South Dakota to bring together legislators, state officials, electric utilities, the financial community, and regulators.
- EEI conducted another in a series of **Wall Street-Regulator dialogues** in New York. These dialogues—among state commissioners and rating agencies, investment bankers, equity and fixed-income analysts, and private equity investors—underscore the impact of regulatory decisions on the cost of capital and remind commissioners of the importance of regulation to a company's financial health.

OTHER ACTIVITIES

- **EEI's Annual Convention/Expo** in Toronto in June featured a robust program of government and industry leaders, a sold-out Expo, and Critical Issue Forums covering a wide range of industry issues; the International Financial Conference in London in March drew record attendance; and the quarterly CEO meetings featured speakers from Congress, the administration, and the states.
- EEI conducted high-value, certified **Corporate Directors'** training programs on industry- and audit-related issues.
- In June, EEI and IBEW launched the **National Labor Management Public Affairs Committee**, which is designed to bring together company executives and leaders from IBEW to advance the common objectives of the electric power industry and IBEW members.
- **The Edison Foundation** hosted two major conferences featuring key policymakers; academic, industrial, financial, labor, and environmental stakeholders; and senior executives from EEI's member companies. A March workshop in Washington, D.C., focused on the technical and non-technical challenges facing the commercialization and widespread deployment of carbon capture and storage. The "Keeping the Lights On: Our National Challenge" conference in April in New York was designed to accelerate the national dialogue on the issues of energy efficiency, generation and transmission adequacy, and looming carbon constraints.

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Edison Electric Institute (EEI) is the association of U.S. shareholder-owned electric companies. Our members serve 95% of the ultimate customers in the shareholder-owned segment of the industry, and represent approximately 70% of the U.S. electric power industry. We also have as Affiliate members more than 65 international electric companies, and as Associate members more than 170 industry suppliers and related organizations.