

Exhibit No.:
Issue: *Rate Case Expense Recovery Rider*
Witness: *Casey Westhues*
Sponsoring Party: *MoPSC Staff*
Type of Exhibit: *Rebuttal Testimony*
Case No.: *ER-2010-0130*
Date Testimony Prepared: *April 2, 2010*

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

REBUTTAL TESTIMONY

OF

CASEY WESTHUES

The EMPIRE DISTRICT ELECTRIC COMPANY

CASE NO. ER-2010-0130

Jefferson City, Missouri
April 2010

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1 **REBUTTAL 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 participated in the preparation of the
9 Staff's Cost of Service Report, filed February 26, 2010, for this case involving
10 The Empire District Electric Company ("Empire" or "Company")?

11 A. Yes, I am.

12 **EXECUTIVE SUMMARY**

13 Q. What is the purpose of your Rebuttal testimony?

14 A. The purpose of this Rebuttal testimony is to address Company witness
15 Jayna R. Long's Direct testimony regarding the issue of the proposed rate case expense rider.
16 I will explain the Staff's position opposing this proposal by Empire.

17 **RATE CASE EXPENSE RECOVERY RIDER**

18 Q. What is the Company's proposed rate case expense recovery rider mechanism?

19 A. According to Company witness Long's Direct testimony at page 13, lines 2-6,
20 a rate case expense recovery rider would "allow Empire to accumulate the cost of the rate
21 case and related actions in a regulatory asset and then recover those costs beyond what is

1 included in base rates based on kWh usage over the next three years. The surcharge will
2 appear as a separate line item on the customer statements.”

3 The Staff’s understanding from Ms. Long’s testimony is that the intent of the rate case
4 expense recovery rider is to allow Empire a vehicle to recover in rates costs associated with
5 appeals of the Missouri Public Service Commission (Commission) rate orders prior to
6 Empire’s next general rate proceeding.

7 Q. Does Staff support Empire’s proposed rate case expense recovery rider?

8 A. No. The Staff does not believe that it is appropriate to allow special rate
9 recovery of costs outside of rate cases without consideration of all relevant factors;
10 i.e., changes in rate base, revenues or to other expenses. Costs related to court appeals of
11 Commission rate proceedings can be handled adequately through normal
12 ratemaking procedures

13 Additionally, Staff has been advised by General Counsel that such a rider could
14 possibly be considered prohibited single issue rate-making.

15 Q. Is it the Staff’s intent to include a normalized amount of appeal costs in its
16 revenue requirement calculation in this case?

17 A. Yes. The Staff has submitted Data Request No. 0339 to obtain additional
18 information concerning the total dollar amount of appeals costs included in test year expense,
19 the accounts these costs were booked to, and the amount of the prior years’ appeal costs
20 related to Empire’s 2006 and 2008 Missouri rate cases incurred by Empire. Empire’s
21 response to this data request could result in the Staff revising its recommendation in this case
22 for recovery of rate case appeals costs based on historically incurred costs.

1 Q. Is it certain that any Commission Order issued in this case will be appealed by
2 any party to this proceeding?

3 A. No.

4 Q. Is it certain that any appeal of any Commission Order issued in this case will
5 result in a greater level of legal expense than the amount that will be included in Empire's
6 revenue requirement for rate case expenses in this case?

7 A. No.

8 Q. If Empire's rate case expense recovery rider proposal is not adopted by the
9 Commission, does this mean that Empire will not be able to recover in rates any future costs
10 associated with appeal of a Commission rate order in this case if they are in excess of the
11 amount of rate case expense included in its revenue requirement calculation in this case?

12 A. No. If Empire incurs rate case appeal costs in the future, and such costs are
13 properly included in its test year expense in a subsequent rate case, Empire can seek recovery
14 of such costs in that case.

15 Q. Is it anticipated that Empire will file a rate case within the next year?

16 A. Yes.

17 Q. Do you have any concerns with the alleged precedent for a rate case expense
18 recovery rider in other jurisdictions referenced in Ms. Long's Direct testimony?

19 A. On page 13, lines 8 and 9 of Company Witness Long's testimony, she
20 discusses previous Texas Public Utility Commission (PUC) rate decisions concerning Entergy
21 Texas, Inc. ("Entergy") and CenterPoint Energy ("CenterPoint") as a precedent for allowing
22 rate case rider mechanisms.

1 Q. Did the Staff ask for documentation from Empire to support its assertions
2 regarding these companies' rate treatment in Texas?

3 A. Yes. In Case No. GR-2009-0434, Empire District Gas, the Staff asked for
4 documentation regarding identical assertions made regarding Entergy and CenterPoint by
5 Ms. Long in support of a rate case rider proposal in that proceeding. In response to
6 Staff Data Request No. 0101.3 in Case No. GR-2009-0434, Empire responded that it was
7 unable to locate specific dockets on the Texas PUC website, but that it had retrieved tariffs
8 regarding rate case rider recovery from both of the companies' websites. Based upon this
9 response, the Staff performed its own research into Texas PUC actions regarding rate case
10 rider matters in both Case No. GR-2009-0434 and the instant Empire electric rate case.

11 Q. What does the research conducted by the Staff indicate on this matter?

12 A. Research conducted by the Staff revealed that Entergy's rate case expenses rate
13 rider recovery was not approved by the Texas PUC as a specific means to recover money that
14 the utility had spent on rate case appeal proceedings. Approval of Entergy's rate case
15 expenses rider was agreed to by the parties as part of a settlement of Entergy's rate case filing
16 Control 34800, item number 2034, "Stipulation and Settlement Agreement." There is no
17 reference within the stipulation document that the rate case expense rider was specifically
18 intended to allow recovery of rate case appeal costs.

19 The material examined by the Staff in regard to CenterPoint indicates that CenterPoint
20 did receive authorization to include a "competition transition charge" (CTC) on its customers'
21 bills that was intended to collect, among other items, certain incurred rate case expense costs.
22 However, Ms. Long's inference that CenterPoint's authorized CTC surcharge would have
23 allowed recovery of projected rate case appeal costs does not seem to be applicable, based

1 upon the material reviewed by the Staff. The Staff's research indicates that the Texas PUC
2 rejected the application for recovery of costs through the CTC "connected to possible future
3 court action following the Commission's order:"

4 The Commission finds that CenterPoint should not be able to recover
5 its estimated legal and non-legal consultants fees and expenses and
6 non-legal other expenses in this proceeding. Because these expenses
7 have not yet been incurred, they are neither known nor measurable, and
8 the Commission has no way of evaluating whether the estimated
9 expenses are reasonable.

10 This information was found in the CenterPoint filing Control 30706, item
11 number 327, pp. 27-29, "Order."

12 Q. Are the costs potentially sought to be recovered by Empire through its
13 proposed rate case expense recovery rider known and measurable at this time?
14

15 A. No.

16 Q. Does this conclude your Rebuttal testimony?

17 A. Yes, it does.

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) Case No. ER-2010-0130
Rates for Electric Service Provided to Customers in)
the Missouri Service Area of the Company)

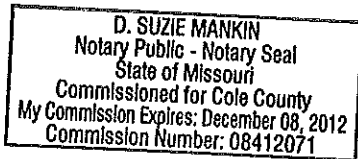
AFFIDAVIT OF CASEY WESTHUES

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 Rebuttal Testimony in question and answer form, consisting of 5 pages to be presented in the above case; that the answers in the foregoing Rebuttal 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 1st day of April, 2010.



D. Suzie Mankin
Notary Public