BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Working Case to Consider Proposals to Create a Revenue Decoupling Mechanism for Utilities	)))	Case No. AW-2015-0282

MIEC SUPPLEMENTAL COMMENTS

The Missouri Industrial Energy Consumers ("MIEC") files these Supplemental Comments on decoupling pursuant to the Commission's August 5, 2015 Notice Scheduling Workshop and Requesting Responses.

As indicated in the MIEC's comments of September 1, decoupling is not needed for the proper regulation of Missouri utilities, nor is it an option that is legally available for use by the Commission. Decoupling violates fundamental regulatory principles that the Commission has relied on for decades in determining just and reasonable rates. Decoupling will create customer confusion, will cause customer rate volatility, and may have unintended consequences. Moreover, decoupling is not the solution to the concerns raised by the electric utilities regarding the throughput disincentive related to MEEIA.

DECOUPLING IS ILLEGAL IN MISSOURI

As indicated in the MIEC's earlier comments, decoupling is illegal in Missouri because it contemplates a rider that adjusts rates between rates cases. The rate adjustment that decoupling proposes to guarantee a utility's revenue is illegal retroactive ratemaking because "the commission [would be] determin[ing] what a reasonable rate would have been and … requir[ing] a credit or refund of any amount collected in excess of this amount [or collecting any revenue shortfall from tomorrow's ratepayers]." Rather than fixing "the rate to be charged," under decoupling the utility will charge (or credit) tomorrow's ratepayers to the extent that the utility's past rate was too low (or too high).

Some utilities, Ameren Missouri for instance, argue that tracking revenue for later recovery or refund in rates to be set, would be lawful while surcharging through a rider is unlawful absent a statutory change. But decoupling, as MIEC understands it, involves a guarantee of revenue, which a tracker would not provide. Tracked amounts cannot be recovered, or refunded, in the next rate case without a consideration of "all relevant factors." *State ex. rel. Utility Consumers' Council of Mo., Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 56 (Mo. banc 1979). The MIEC, for one, will continue to argue that tracked amounts should not be recovered in future rates where the utility has earned more than its authorized ROE during the period of tracking. So, a decoupling tracker is not a solution adequately addressing the throughput disincentive.

Renew Missouri argues that decoupling is already legal. It contends that the MEEIA statute, Section 393.1075, authorizes decoupling to encourage energy efficiency and demand-side management. Renew Missouri's arguments are misplaced. Section 393.1075 does authorize the Commission to address the "throughput disincentive," which is the disincentive to spend money on any program that results in lost sales, which both energy efficiency and demand-side management cause. But nothing in Section 393.1075 expressly or impliedly offers decoupling as the solution to this problem. Indeed, language of Section 393.1075 suggests avoiding any ratemaking design that encourages consumption and discourages conservation of power:

> 2. (3) "Demand-side program", any program conducted by the utility to modify the net consumption of electricity on the retail customer's side of the electric meter, including but not limited to energy efficiency measures, load management, demand response, and interruptible or curtailable load
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> 4. The commission shall permit electric corporations to implement commission-approved demand-side programs proposed pursuant to this section with a goal of achieving all cost-effective demand-side savings. Recovery for such programs shall not be permitted unless the programs are approved by the commission, result in energy or demand savings and are beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers.

Emphasis added.

As discussed below, decoupling encourages consumption and discourages conservation. That fact is recognized in much of the literature on decoupling and was confirmed by the workshop moderator during the September 17 workshop. That is an unremarkable proposition given that decoupling guarantees a level of revenue regardless of how little or how much product is sold. The less consumers collectively use, the more they pay per unit. *See* Report to the Legislature on Utility Revenue Decoupling, Florida Public Service Commission, December 2008, pp. 18, 21 and authorities cited therein. Adopting a ratemaking design that discourages conservation is hardly consistent with the clear policy embodied in Section 393.1075.

While Section 393.1075 clearly directs the Commission to address the throughput disincentive, and decoupling is a way to do that, there are other options for the Commission to consider, and those options are not inconsistent with the goal of lower energy consumption.

DECOUPLING IS POOR REGULATORY POLICY

As the moderator at the September 17 workshop observed, decoupling is a benefit to utilities with declining demand and a detriment to utilities with an increasing demand. That may explain why so few utilities have requested decoupling at this time in Missouri. This Commission should not adopt a ratemaking design that picks winners (utilities in declining demand environments and consumers in increasing demand environments) and losers (utilities in increasing demand environments and consumers in decreasing demand environments).

Decoupling represents bad public policy. All regulatory experts agree that a rate case is the initial place to set rates to be charged to customers. Those rates and the corresponding revenues are based on the collection of all expenses and other costs (revenue requirement) necessary to operate the utility. This Commission and almost all others across the United States recognize this premise. However, advocates for decoupling want to abandon this basic premise in favor of decoupling. No

longer would it be necessary to measure the cost of service to change rates. This fundamental departure from ratemaking is a drastic measure that upsets the current balance that exists in protecting ratepayers, on the one hand, and providing a reasonable return to the utility, on the other hand.

Decoupling creates rate volatility for customers. During the workshop we learned that in jurisdictions that have decoupling, the majority of adjustments for revenue result in increases to customer rates. Moreover, rate volatility creates customer confusion and frustration. Advocates for decoupling argue that this problem can be solved with better customer education. But it will be difficult to explain to customers who have purposely conserved energy during a year that their rates will increase next year because of that conservation. We question whether customer education will satisfy that problem. Also, fluctuations in revenues can be attributed to many circumstances, including variations from normal weather, changing economic conditions, outages due to storms and, actual customer conservation. With decoupling, a utility would be allowed to collect otherwise ungenerated revenue because of any of these circumstances. This Commission has previously ruled against collection of ungenerated revenue. Decoupling is simply another name for trying to circumvent this Commission decision.

Although decoupling is touted as a remedy for addressing the disincentive for a utility to promote energy efficiency, decoupling in itself does not incent a utility to promote energy efficiency. It merely provides for the recovery of a predetermined level of revenues.

Decoupling can result in certain unintended consequences. For example, if economic conditions are unfavorable, utility customers will use less electricity or go out of business due to lower sales of their products. However, if decoupling is in effect, the monopoly utility is guaranteed recovery of a level of revenues. It is unfair to those businesses that barely survive to make them pay higher rates to guarantee utility revenues. Furthermore, what happens to the business that must

close its doors because of the increase in rates resulting from decoupling? Decoupling failed in Maine because of this exact problem.

Decoupling is really a mechanism to protect the utility from the exposure to variations in weather. At the workshop it became apparent that the main benefit of decoupling to utilities was the elimination of variations in revenue due to variations in weather, and that the solution to the throughput disincentive was secondary. The literature included in this docket bears this out. *See* Report to the Legislature on Utility Revenue Decoupling, Florida Public Service Commission, December 2008, p. 24 and authorities cited therein. That literature shows that the fluctuation in customer rates from decoupling were more impacted by variations in weather than other factors. The nature of the utility business, and the regulatory compact itself, is that utilities bear the risk of fluctuating revenues from weather. Under the guise of decoupling, this Commission should not shift that risk to consumers.

Decoupling can also affect the incentive for a utility to restore service after a major storm. In today's environment, a utility is driven to restore service as quickly as possible in order to minimize the loss of revenues. If the level of revenues are guaranteed through decoupling, the motivation to restore service would be diminished. In certain literature, the disincentive to restore service was discussed and a possible solution was penalties for the utility if service is not timely restored. The process for assessing a penalty on a utility would be difficult to enforce. Does this Commission really need a completely new set of issues for the parties to litigate and this Commission to resolve? In the past, this Commission explored the issue of rewarding a utility through an adjustment to its return on equity for exceptional management performance. After several cases where this issue was intensely debated, the Commission abandoned this practice.

Finally, if the Commission determines that a utility should receive the benefit of decoupling, there must be recognition of the reduced risk that the utility faces. Guaranteeing a certain level of

revenue despite the units of product sold has to be considered a shift of risk from the utility to the customers. This reduction in risk must be reflected expressly in the return on equity granted to the utility. Anything less does not provide the customer with any measurable benefit from decoupling.

Respectfully submitted,

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