

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Sixth Prudence Review of Costs)	
Subject to the Commission-Approved Fuel Adjustment)	Case No. EO-2017-0065
Clause of The Empire District Electric Company)	

EMPIRE’S SUGGESTIONS IN OPPOSITION TO OPC’S MOTION TO STRIKE

COMES NOW The Empire District Electric Company (“Empire” or “Company”), by and through counsel, and respectfully submits its Suggestions in Opposition to the Objection and Motion to Strike filed by the Office of the Public Counsel (“OPC”) with regard to Empire’s Post-Hearing Reply Brief. In this regard, Empire respectfully states as follows to the Missouri Public Service Commission (“Commission”):

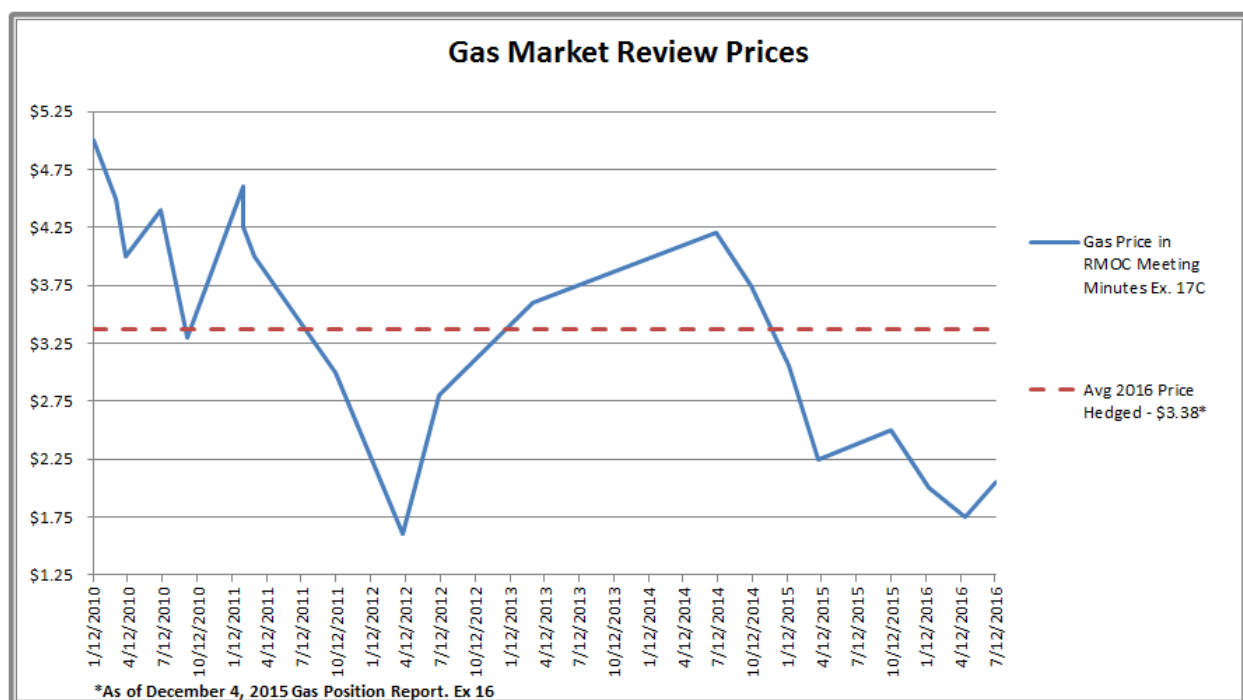
1. In this case, Empire’s sixth Fuel Adjustment Clause (“FAC”) prudence review, the costs flowed through Empire’s FAC from March 1, 2015 through August 31, 2016 (the 14th, 15th, and 16th six-month FAC accumulation periods) are subject to review. Total net fuel and purchased costs for the review period were \$217,448,739, with total energy costs of \$193,631,266 flowed through the FAC. OPC limited its review to Empire’s hedging costs for the period.

2. Empire presented evidence regarding the purposes and goals of Empire’s hedging policy, as defined in Empire’s Risk Management Policy (“RMP”), and explained that Empire hedges because, upon considering and evaluating all pertinent information, including the guidance of this Commission, Empire believes hedging is prudent and in the best interests of its customers. These matters were addressed in Empire’s Initial Post-Hearing Brief filed herein.

3. In Empire’s Post-Hearing Reply Brief, Empire addressed issues raised by OPC in OPC’s initial post-hearing brief, with section IV(H) of Empire’s Reply Brief addressing OPC’s misinterpretation of Empire’s RMOC meeting minutes. These meeting minutes for the dates of January 12, 2010 through April 18, 2017, were introduced by OPC at the hearing and admitted

into evidence as Exhibit 17C.¹ OPC also introduced Empire's Gas Position Reports for January of 2002 through May of 2017, and these documents were admitted into the record as Exhibit 16. It appears OPC now regrets asking for this information to be included in the record in this case.

4. At pages 26-28 of its Initial Brief, OPC lists several selective descriptions of the gas market contained in the RMOC meeting minutes (Ex. 17C). With its Reply Brief, Empire explained that the descriptions cited by OPC primarily refer to the current day-to-day spot market, not NYMEX futures or physical forward pricing, and that OPC had cherry picked certain passages, failed to include descriptions of upward price movement contained in the RMOC meeting minutes, and failed to show the range of prices included in the RMOC meeting minutes. To illustrate the evidence in the record and OPC's misinterpretation of this evidence, Empire included two demonstrative graphics in its Reply Brief. OPC takes issue only with the graph labeled "Gas Market Review Prices."



¹ The RMOC meeting minutes were also introduced by Empire and admitted into evidence as Exhibit 110C.

5. With its Motion to Strike, OPC asserts that the illustrative graph is improper for not having been sponsored by a witness and admitted into evidence. Also, and quite ironically, OPC's Motion to Strike contains a demonstrative graphic in a purported attempt to demonstrate OPC's argument that Empire's graph is misleading.

Empire's Graph Consists Entirely of Evidence in the Record

6. Every single piece of information included in the graph contained in Empire's Reply Brief and set forth above was obtained from Exhibits 16 and 17C, exhibits which were introduced by OPC and admitted into the record. Any other party – or the Judge or the Commission – could prepare the same or a similar illustration by utilizing Exhibits 16 and 17C. There was absolutely no need for the illustrative graph to be separately introduced by a witness and included in the record. In fact, the need for the illustration of the evidence was not known until OPC presented a misrepresentation of the evidence in its initial post-hearing brief.

7. OPC discusses Empire's hedging volume ladders (10%, 20%, 40%, and 60%) as set forth in Empire's RMP. OPC Initial Brief, p. 10. OPC, however, does not represent the real results of this practice. Instead, OPC uses only comparisons to market settled prices. OPC argues that Empire should have known to stop hedging based on market conditions. OPC Initial Brief, p. 24. When one looks at the December 4, 2015 Gas Position Report (included in Exhibit 16) and compares it to the market prices discussed in the RMOC Meeting Minutes (Exhibit 17C), the results of Empire's hedging practices and policy can be seen for the 2016 time period. This is important, due to OPC's allegations that Empire's entire hedging policy has been imprudent since at least 2010. Tr. Vol 2, p. 92, lines 1-6.

Empire's Graph is Clear and Accurate

8. The hedge price shown on the graph included in Empire's Reply Brief is not inaccurate, as alleged by OPC. Empire does not hedge by the prudency review period – Empire

hedges by calendar year. Ex. 19 p. 12 (Risk Management Policy). As was clearly stated on the “Gas Market Review Prices” graph in Empire’s Reply Brief, the dotted red line demonstrates the average price per Dth for all the hedge contracts entered into for 2016 as of December 4, 2015. As shown on the Gas Position Report dated December 4, 2015 (included in Exhibit 16), 61% of Empire’s 2016 expected burn had been hedged. Based on the RMOC policy, this indicates the hedging policy objectives had been fulfilled for the previous four years and allowed the calculation of the average price per Dth of hedged gas. Ex. 19, p. 12. OPC argues one must look at the information leading up to the audit period to determine if hedging was prudent at the time hedges were executed. OPC Initial Brief, pp. 14, 16. By the same token, to measure the effectiveness of the hedging policy and a true relation to market pricing, one should look at the time periods for which the hedging policy is designed and reported upon, which is by calendar year.

9. OPC selectively compared individual transaction prices which occurred at various times throughout the four-year time span leading up to 2016. To see the resulting price and overall impact of Empire’s hedging, however, the average price per Dth should be used for the time period hedges were placed. As described in Empire’s Risk Management Policy (Ex. 19, p. 12), and Empire witness Blake Mertens’ Surrebuttal Testimony (Ex 105, p. 3, lines 14-21), the purpose of the ladder approach is to purchase quantities at various times in order to reduce price risk associated with price volatility by reducing the exposure to a single price point.

Conclusion

10. There is nothing “extra-record” about the graph presented in Empire’s Reply Brief. It simply illustrates the market prices discussed at RMOC meetings over the time period leading up to 2016, since the hedging policy is implemented by calendar year and not prudency review periods, and then compares the market prices observed throughout the period to the average price per Dth of the hedging transactions entered into as a result of the hedging policy and decisions

made throughout the time period. All information included in the graph was introduced by OPC at the hearing and admitted into the record as Exhibits 16 and 17C. As acknowledged by OPC in its Motion to Strike, charts which accurately reflect evidentiary data, like the one presented by Empire in its Reply Brief, are appropriate for briefing and should even be encouraged. *Berlin v. Pickett*, 221 S.W.3rd 406, FN 4 (Mo. App. 2006).

WHEREFORE, Empire respectfully submits these Suggestions in Opposition to OPC's Motion to Strike and requests that OPC's motion be denied. Empire requests such additional relief as is prudent under the circumstances.

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was filed in EFIS on this 6th day of November, 2017, with notice of the same being sent to all counsel of record.

/s/ Diana C. Carter