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 AND OPC JOINT COMMENTS

The Missouri Industrial Energy Consumers ("MIEC")[1] and the Office of Public Counsel ("OPC") appreciate the opportunity to file these comments on decoupling, pursuant to the Commission's August 5, 2015 Notice Scheduling Workshop and Requesting Responses.

Both the MIEC and OPC intend to be active participants in this docket, and will attend the September 17, 2015 workshop that the Commission has scheduled.

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

Decoupling is illegal in Missouri. The bible for ratemaking law in Missouri is the Missouri Supreme Court decision in *State ex rel. Util. Consumers' Council of Mo., Inc. v. Pub. Serv. Comm'n,* 585 S.W.2d 41, (Mo. banc 1979). There, the Missouri Supreme Court noted that the Commission is to

[1]MIEC consists of large consumers of electricity in the state. MIEC member companies include Anheuser-Busch, Inc., Ardagh Glass, Inc., Bayer CropScience LP, BioKyowa, Inc., Enbridge Energy Partners, L.P., Ford Motor Company, General Motors, LLC, Hussmann Corporation, Monsanto Company, Nestle Purina PetCare Company, Noranda Aluminum, Inc., SunEdison Semiconductor, LLC, The Boeing Company, and The Doe Run Company.

set the "rate to be charged." If that rate is too high or too low, the Commission cannot legally change it to compensate for over- or under-recovery of costs or revenues:

> However, to direct the commission to determine what a reasonable rate *would have been* and to require a credit or refund of any amount collected in excess of this amount would be retroactive ratemaking. The commission has the authority to determine the rate *to be* charged, § 393.270. In so determining it may consider past excess recovery insofar as this is relevant to its determination of what rate is necessary to provide a just and reasonable return in the future, and so avoid further excess recovery, *See State ex rel. General Telephone Co. of the Midwest v. Public Service Comm'n*, 537 S.W.2d 655 (Mo. App. 1976). It may not, however, redetermine rates already established and paid without depriving the utility (or the consumer if the rates were originally too low) of his property without due process.
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> The utilities take the risk that rates filed by them will be inadequate, or excessive, each time they seek rate approval. To permit them to collect additional amounts simply because they had additional past expenses not covered by either clause is retroactive rate making, i.e., the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established, *Board of Public Utility Commissioners v. New York Telephone Co.*, 271 U.S. at 31, 46 S. Ct. 363; *Lightfoot v. Springfield*, 236 S.W.2d at 353. Past expenses are used as a basis for determining what rate is reasonable to be charged in the future in order to avoid further excess profits or future losses, but under the prospective language of the statutes, §§ 393.270(3) and 393.140(5), they cannot be used to set future rates to recover for past losses due to imperfect matching of rates with expenses.[2]

The retroactive adjustment for lower (or higher) revenues than planned is just as objectionable as the retroactive adjustment for higher (or lower) expenses than planned. 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

[2] *Id.*, 585 S.W.2d at 58-59 (emphasis added).

utility will charge (or credit) tomorrow's ratepayers to the extent that the utility's past rate was too low (or too high).

DECOUPLING IS POOR REGULATORY POLICY

Decoupling represents bad public policy even if decoupling were legal. Decoupling violates the fundamental foundation for setting rates. Even advocates of decoupling agree that a rate case is the place to set rates to be charged to customers. It is also agreed that the rates should be set to collect the test year revenue requirement. The Commission has reiterated this point in almost all of its recent rate case orders:

> [R]evenue requirement is calculated by adding the company's operating expenses, its depreciation on plant in rate base, taxes, and its rate of return multiplied by its rate base. The revenue requirement can be expressed as the following formula:
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> - Revenue Requirement =E+D+T+R(V-AD+A)
> - Where:
>   - E= Operating expense requirement
>   - D= Depreciation on plant in rate base
>   - T= Taxes including income tax related to return
>   - R= Return Requirement
>   - (V-AD+A)= Rate Base
>
> ▪ For the rate base calculation
>
> - V=Gross Plant
> - AD= Accumulated Depreciation
> - A= Other rate base items

Although all parties agree with this concept, those that support decoupling are willing to abandon this fundamental ratemaking principle and adjust revenues outside of a rate case to maintain collection of the previously established level of revenues, regardless of the level of sales, expenses or investment. Decoupling would guarantee the recovery of that level of revenue without consideration of any changes to the components of the revenue requirement formula listed above. It violates the "all relevant factors" ratemaking construct, which describes a ratemaking concept where all of the factors that affect a utility's revenue requirement should be considered during the same period of time before changing rates. With decoupling, the utility would be guaranteed collection of test year revenues without regard to actual sales or the actual costs (expenses and investments) incurred to provide utility service, and could earn a rate of return that is much higher than found appropriate in the previous rate case.

Decoupling creates rate volatility for customers. Decoupling will result in periodic rate changes for customers. It is very unlikely that a utility will actually collect the exact level of revenue determined in the rate case, so decoupling will result in periodic adjustments to bring the actual level of revenues either up or down, to the revenue requirement set in the preceding rate case. Therefore, under decoupling, a customer will face regular rate changes. It would not matter whether deviations in revenues were the result of the loss of customers, cooler than normal or warmer than normal weather, an economic downturn, sub-par utility earnings or anything else. The revenue requirement and rates currently are based on normal weather, so if actual weather conditions are cooler than normal, the electric utility will not collect as much revenue because customers will not be using as much electricity for air conditioning. With decoupling, the utility would be allowed to recover otherwise ungenerated revenues resulting from the cooler than normal weather conditions.

Likewise, if economic conditions are unfavorable, utility commercial customers will use less electricity or go out of business due to a lower demand for their products. If decoupling were in

effect, those lost revenues from lower electricity usage would be collected from existing customers to make up the shortfall. Depending on the magnitude of the economic downturn, this could cause very drastic rate increases. Requiring a business that is struggling to keep its doors open to pay more to assure the electric utility is guaranteed a level of revenues during such harsh economic times would be inequitable and counterproductive, as well as a public relations challenge for the utility and Commission.

As an example of a failed decoupling experiment, Maine adopted decoupling for Central Maine Power shortly before the Great Recession in 2008. Because of the recession, many businesses either ceased operating or significantly reduced their output and consumption of electricity. As a result, sales were drastically reduced and the decoupling mechanism generated significant rate increases. Accordingly, the Maine Regulatory Commission decided to discontinue the decoupling mechanism.

In the State of Washington, decoupling was initiated at the same time as a power cost recovery mechanism. The power cost mechanism produced large rate increases for customers. That state's regulatory Commission investigated the reasons for the large increases in the power cost mechanism and, based on that investigation, determined that the utility had acted imprudently in increasing its power supply costs. In response, that Commission ruled that the combined power cost and decoupling should be discontinued. Subsequent to that decision, the utility was involved in a merger and the two recovery mechanisms were not reinstituted for the merged utility company. Instead, a multi-year rate plan was adopted. This highlights that decoupling can have unintended consequences beyond its original intent, which can create large rate increases to captive utility customers. It is also possible that the regulatory framework may be such that decoupling is not needed. Before adopting decoupling, a careful analysis should be conducted, examining all of the regulatory tools available to the utility to determine if decoupling is needed.

Decoupling can affect the incentive to restore service expeditiously after a major storm. Under current regulatory practices, a utility has a strong incentive to restore service quickly, not only to meet its reliability metrics, but also because it is in its best financial interest to restore service and resume the collection of revenues. Storm restoration can involve overtime work, and additional compensation for employees and compensation to other utilities for "mutual assistance" in restoring, repairing and replacing damaged infrastructure. If utility revenues are insulated from such events, meaning it will collect the same amount of revenues regardless of how quickly service is restored, there is an economic disincentive to spend extra money for overtime and mutual assistance, because doing so would not affect the level of revenues collected and would decrease profit. If storm costs are determined to be extraordinary and deferred accounting treatment is permitted, storm affected customers will be subject to paying higher revenues with decoupling.

Respectfully submitted,

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