

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

In the Matter of the Empire District Electric )  
Company of Joplin, Missouri, for authority to file )  
tariffs increasing rates for electric service provided )  
to customers in the Missouri service area of the )  
company. )

Case No. ER-2008-0093

**PRE-HEARING BRIEF/POSITION STATEMENT**  
**OF THE OFFICE OF THE PUBLIC COUNSEL**

This position statement/brief will address the issues as listed in the List of Issues and Witnesses and Order of Cross-Examination filed by Staff on May 5, 2008. On many issues for which Public Counsel did not provide prefiled testimony, Public Counsel takes no position at this time. Public Counsel reserves the right to take positions on these issues after the record becomes more fully developed at hearing.

**REVENUE REQUIREMENT**

**Rate of Return Issues**

1. Return on Common Equity: What return on common equity should be used for determining Empire's rate of return?

Public Counsel supports the testimony and conclusion of Michael Gorman<sup>1</sup> that Empire should be allowed a return on equity of 10.0%.

- a. In the event the Commission grants Empire a fuel adjustment clause, what, if any, is the appropriate adjustment to the authorized return on equity?

If a Fuel Adjustment Clause is approved that reduces Empire's fuel cost recovery risk, Empire's authorized return on equity should be reduced. The amount of

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<sup>1</sup> Mr. Gorman testified on behalf of intervenors Enbridge Energy, LP, Explorer Pipeline Company, General Mills, Praxair, Inc., and Wal-Mart Stores, Inc.

reduction in return on equity will depend on the particulars of the Fuel Adjustment Clause approved by the Commission.

### **Rate Base Issues**

1. Asbury SCR: Should Empire's Asbury SCR equipment plant addition be included in Empire's rate base in this case? If yes, should it be included through an adjustment to Empire's revenue requirement or through a true-up procedure? If the Asbury SCR equipment is not included in Empire's rate base in this case, should any future emission revenue associated with that equipment flow through the FAC?

Public Counsel takes no position on this issue.

### **Expense Issues**

1. Off-System Sales Margins: What amount of off-system sales margins, if any, should be included as an offset to Empire's cost of service?

Rates should be set in this case using the level of off-system sales margins that Empire received during calendar year 2007 (\$5,955,336). Calendar year 2007 best reflects the amount of margins that Empire will be making on its off-system sales in the near future.

2. Incentive Compensation: Are all costs of Empire's incentive compensation plan an expense Empire should recover from Empire's ratepayers? If not, what costs should be recovered?

Public Counsel takes no position on this issue.

3. Bad Debt Expense: Should Staff's bad debt factor be applied to any revenue increase authorized by the Commission to determine the level of bad debt expense to be included in cost of service?

Public Counsel takes no position on this issue.

4. Asbury SCR O&M Expenses: Should Empire's projected operating and maintenance expenses associated with the Asbury SCR equipment be included in Empire's cost of service?

Public Counsel takes no position on this issue.

5. Asbury SCR Property Taxes: Should property taxes associated with the Asbury SCR equipment be included in Empire's cost of service?

Public Counsel takes no position on this issue.

6. Asbury SCR Depreciation Expense: Should Empire's depreciation expense associated with the Asbury SCR equipment be included in Empire's cost of service?

Public Counsel takes no position on this issue.

7. Commission Rules/Tracker: Should Empire's projected costs of compliance with the Commission's rules concerning vegetation management and infrastructure inspections be included in Empire's cost of service? If yes, should such costs be recovered using a "tracker mechanism" similar to that currently in place for AmerenUE? Should Empire be allowed deferral treatment of any incremental expenses it incurs above the amount reflected in its rates to comply with these rules?

No. These costs have not been incurred and are not known and measurable. The amounts that Empire proposes to include in rates are based only on Empire's guesses as to what these costs may be in the future.

8. Depreciation Rates: Should Empire's depreciation rates be subject to change during the duration of its Regulatory Plan? If yes, should Empire's proposed changes to its depreciation rates be adopted in this proceeding? Are Empire's record keeping practices regarding its plant assets and depreciation accounting adequate?

Public Counsel does not necessarily agree with Staff that Empire's depreciation rates should never be subject to change during the Regulatory Plan, but does agree that the changes suggested by Empire in this case should not be made. Empire's depreciation study is badly flawed and should not be adopted.

9. Other Project Costs: How should other project costs identified by OPC be accounted for in Empire's cost of service?

Public Counsel does not oppose capitalization of the costs to Company's Iatan 2 project.

## **REGULATORY PLAN AMORTIZATION**

1. Ice Storm Costs: Should the expense amortization of the January 2007 and December 2007 ice storm costs be reflected in the regulatory plan amortization calculation? Has Empire raised this issue out of time?

Public Counsel takes no position on this issue.

2. Purchased Power Agreement: Using a spreadsheet format agreed to by the Company, Staff and OPC, should the regulatory plan amortization be calculated using 2007 purchased power agreement (PPA) debt equivalent or 2008 PPA debt equivalent? Should the depreciation factor on purchased power agreements be reflected in the regulatory plan amortization calculation?

Public Counsel supports the Staff position on this issue.

## **FUEL COST RECOVERY**

1. Fuel Adjustment Clause: Should the Commission authorize Empire to use a fuel and purchased power recovery mechanism as authorized by law?

No. Regardless of whether Empire's interim energy charge is ultimately found to bar Empire's request for a Fuel Adjustment Clause in this case (see 1.A., below), Empire should not be authorized to use a Fuel Adjustment Clause.

A. Is Empire barred by the terms of the Stipulation and Agreement in Case No. ER-2004-0570 from requesting a fuel adjustment clause while an interim energy charge is pending?

Yes. As the Commission found in Case No. ER-2006-0315, Empire cannot request a Fuel Adjustment Clause while it still has an interim energy charge in effect. Although the Commission stated that it would allow Empire to cancel the interim energy charge in Case No. ER-2006-0315, it was not until December 4, 2007 that the

Commission validly<sup>2</sup> approved tariffs that did not contain an interim energy charge. As a result, Empire's tariffs that were in effect when this case was filed still contained an interim energy charge, and Empire was therefore precluded from requesting a Fuel Adjustment Clause when it filed this case.

B. If the Commission authorizes Empire to use a fuel adjustment clause (FAC), how should it be structured?

- a. What proportion of future increases and decreases in fuel and purchased power costs (increases and decreases) from base rates should be assigned to Empire and what proportion to its customers?

Empire should not be permitted to use periodic adjustments under the FAC to recover any more than 60% of any increase in fuel cost. If fuel costs decline, Empire should not be forced to pass through more than 60% of the decreased fuel costs to customers through FAC periodic adjustments.

- b. What components of fixed and variable fuel and purchased power costs should be recovered through a FAC?

Public Counsel takes no position on this issue.

- c. What heat rate testing of generation plants should be conducted?

Public Counsel takes no position on this issue.

- d. What rate design should be applied to FAC charges?
  1. Should the base cost of fuel be determined by season?
  2. How should the actual \$/kWh cost of fuel and purchased power energy be determined?
  3. How should the Cost Adjustment Factor be determined?

Public Counsel takes no position on this issue.

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<sup>2</sup> Like most of Case No. ER-2006-0315, the question of whether the December 4, 2007 order is lawful will ultimately be decided in court. Unlike the December 29, 2006 order, however, the December 4, 2007 order has not yet been invalidated.

- e. What incentive mechanisms, if any, should be included in the FAC?

If the Commission approves a FAC, Public Counsel would support the types of incentives discussed in the direct testimony of Staff (using the 60% point discussed above) or in the direct testimony of Maurice Brubaker.<sup>3</sup>

- f. Should off-system sales be included in the FAC?

Yes, if the Commission approves a FAC, the approved FAC should reflect variations in off-system sales margins from a reasonable baseline amount (\$5,955,336) included in base rates.

- g. Should the net cost of emissions (Account 509) costs be recovered through the FAC?

Public Counsel takes no position on this issue.

- 2. Fuel and Purchased Power Expense: Should Empire's recovery of fuel and purchased power expense be based upon its current adjusted expense levels, or on the rate allowance for this item ordered by the Commission in Case No. ER-2004-0570?

It should be based on the rate allowance for this item ordered by the Commission in Case No ER-2004-0570. The tariff sheets that established base rates and the IEC in Case No. ER-2004-0570 were the lawfully effective tariffs for Empire at the time this case was filed and the terms of the Stipulation and Agreement in Case No. ER-2004-0570 with respect to Fuel and Purchased Power expenses applied. With the IEC tariff still in effect, Empire was prohibited from requesting an increase in Fuel and Purchased Power expense above the fixed level approved in Case No. ER-2004-0570 and

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<sup>3</sup>Mr. Brubaker testified on behalf of intervenors Enbridge Energy, LP, Explorer Pipeline Company, General Mills, Praxair, Inc., and Wal-Mart Stores, Inc.

is prohibited from requesting a Fuel Adjustment Clause. In its Report and Order in Case No. ER-204-0570, effective March 27, 2005, the Commission approved a Stipulation and Agreement including the provision for a three year IEC and specifically directed the parties to comply with its terms.

## **NON-REVENUE REQUIREMENT**

1. Pensions/OPEBs Special Events: Should Empire's prior stipulations concerning its pension and OPEB expenses be modified to reflect Empire's proposed language regarding the possible occurrence of certain "special events" in the future?

Public Counsel is opposed to the Company's request that the Commission provide authorization in the instant case for ratemaking of future costs that may or may not ever occur. There is no legitimate regulatory or statutory reason that the Commission should allow itself to be "cornered" now into providing an authorized ratemaking of costs which are not, at this time, known and measurable.

2. Energy Efficiency Programs: Should the Missouri Department of Natural Resources' recommendations concerning Empire's interaction and involvement with the Customer Program Collaborative be adopted?

Public Counsel takes no position on this issue.

3. Low Income Assistance Program: Should Empire's Experimental Low-Income Program (ELIP) be continued with changes? If so, what should those changes be? What should be done with unspent ELIP funds? Should interest be paid to customers on the unspent funds? If yes, how should the interest be calculated?

Yes, the ELIP program should be continued. Public Counsel supports the suggestions of Staff witness Lena Mantle in her Rebuttal Testimony, as those suggestions are modified by the Surrebuttal Testimony of Public Counsel witness

Meisenheimer. Interest should be paid as discussed in the Surrebuttal Testimony of Public Counsel witness Meisenheimer.

4. Distribution Facilities Demand Charge: How should the facilities demand charge be calculated during the initial period of its implementation?

Public Counsel takes no position on this issue.

5. Should the employee purchase plan be terminated?

Public Counsel takes no position on this issue.

6. Should the changes to wording of the GP tariff be allowed to reference the rider XC verbiage?

Public Counsel takes no position on this issue.

7. Should a change in the rules and regulations be amended to remove liability associated with loss of phase on Empire's transmission and distribution facilities that is related to factors beyond the Company's control?

Public Counsel takes no position on this issue.

8. Should a late payment fee be added to tariff SC-P?

Public Counsel takes no position on this issue.

9. Should the method used to calculate late fees for LP, GP & TEB be changed?

Public Counsel takes no position on this issue.

WHEREFORE, the Office of the Public Counsel respectfully submits this Pre-hearing Brief/Position Statement.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Lewis R. Mills, Jr.

By:\_\_\_\_\_



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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed to all parties this 6th day of May 2008.

/s/ Lewis R. Mills, Jr.

By:\_\_\_\_\_