

**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) **Case No. ER-2010-0130**
provided to customers in the Missouri service)
area of the Company)

RESPONSE TO ORDER DIRECTING MEUA TO RESPOND

COMES NOW the Midwest Energy Users' Association ("MEUA"), pursuant to the Commission's December 3, 2009 Order, and respectfully states as follows:

1. In its December 3, 2009 Order, the Commission asked MEUA "to file a response, addressing each point noted in Empire's objection." At its most basic level, Empire's objection is merely an attempt to silence the voices of customers that will be charged an additional 19.6% under Empire's proposed rates. For instance, Empire objects to the fact that the entities participating through MEUA have chosen to participate through an association rather than through individual representation. While Empire finds fault with the decision for these companies to participate as an association, Empire noticeably fails to provide any legal basis to support its belief that an association (i.e., MEUA) should not be permitted to intervene. Indeed, Empire acknowledges that two of these participating entities should already be recognized as intervenors.

The Commission's rules, however, are directly contrary to Empire's objection. The Commission's rules expressly envision intervention by associations so long as the association provides a "list of all of its members." 4 CSR 240-2.075(3). In its Application for Intervention, MEUA has provided a list of all participating members. At that time, the participating entities were denominated as Praxair, Inc. and Explorer

Pipeline Company. Since that time, an additional entity (Enbridge Pipeline) has sought to participate through MEUA. Consistent with 4 CSR 240-2.075(3), MEUA proposes to keep the Commission fully informed as other, similarly situated large industrial and commercial Empire customers seek to participate through MEUA's activity in this case. Consistent with this commitment, MEUA notes that, in its consideration of MEUA's Application to Intervene in the pending AmerenUE rate proceeding, one commissioner specifically recognized that MEUA has historically done a good job of keeping the Commission informed of the addition of new members. Counsel reiterates their commitment to keep the Commission apprised as new members join in the association.

2. Empire also objects to MEUA's intervention on the basis that it would "subvert the Commission's rules governing intervention." Empire's objection is based upon the belief that, by us of an ad-hoc association, MEUA could continue to add additional participating entities to the association. Again, Empire's objection appears to be best targeted at the substance of the Commission's intervention rule permitting intervention by associations. MEUA's intervention complies with the Commission's rule and Empire's dislike for that rule is not basis for the Commission to deny MEUA's intervention. In effect, Empire seems to object to Praxair and Explorer choosing to associate and to permit other customers with similar interests and concerns to join them.

3. Finally, Empire asserts that the intervention should be denied on the basis that it does not conform to the rule governing applications (4 CSR 240-2.060). Specifically, Empire asserts that the intervention should be denied because MEUA failed to attach an affidavit as required by 4 CSR 240-2.060(1)(M).

This issue has been the subject of much debate in recent deliberations at the Commission. Historically, interventions have not included an affidavit because they were looked upon as akin to a motion, not an application. This was based primarily on the notion that applications initiate a case; while motions occur within the context of a case. For instance, Sections 393.106.2; 393.175.2; 393.190; and 393.200 all envision an application as an initiating pleading.

In fact, the Commission's rule on applications appears to be targeted at utility applications which initiate a case. Consistent with this notion, the application rule requests statements regarding timeliness of annual reports and assessment fees. Recognizing that the requirement to file annual reports and pay assessments is not relevant to intervening entities, the application rule does not appear to have relevance to intervenors. For this reason, practicing lawyers have historically filed interventions which are patterned after a motion rather than an application. In fact, while finding fault with MEUA's current intervention, Empire filed an application for intervention in Case No. EO-2009-0115 that did not include the affidavit that it now suggests is mandatory.

All of this discussion is not designed to lend support for one view versus another, but, instead, to provide the basis underlying the recent confusion by attorneys in failing to provide an affidavit. Indeed, only in the last several months did the Commission's Electronic Filing and Information System get changed so as to denote an intervention as an application instead of a motion. Attorneys will inevitably adjust their practice to whichever procedure the Commission desires. That said, it is inherently inequitable for the Commission to deny an intervention, as requested by Empire, when there is such widespread confusion.

In an effort to avoid the remedies sought by Empire, and to the extent that the Commission believes that its intervention is deficient for failure to comply with 4 CSR 240-2.060, MEUA hereby asks that the Commission grant a waiver as provided in 4 CSR 240-2.015.

4. In its Order, the Commission also raises the issue of confusion that may be caused by MEUA's participation, albeit with different members, in the pending AmerenUE rate proceeding. The Commission asks MEUA to address any possible "legal or practical complications" in the event a stipulation is executed in either case. It is important to recognize that the Commission's inquiry raises issues that will have implications beyond the limited scope of the immediate intervention. Rather, these same issues would be present anytime an association intervenes in a Commission case. For this reason, the Commission may receive several different opinions depending upon the practitioner and the interests involved.

For purposes of this case, MEUA envisions that any stipulation would only bind the participating entities. For instance, while Alliant Lake City has been a member of MEUA in recent KCPL cases, Alliant Lake City is not a customer of Empire and would not take a position on issues related to Empire or wish to be bound by stipulations reached in an Empire case. Therefore, recognizing that it is required to identify all participants in the intervening association, MEUA envisions that only identified participants would be bound by a particular stipulation.

WHEREFORE, MEUA respectfully requests that the Commission receive this further information and grant its intervention to participate in the above captioned proceeding.

Respectfully submitted,



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ATTORNEYS FOR THE MIDWEST
ENERGY USERS' ASSOCIATION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.



David L. Woodsmall

Dated: December 8, 2009