

**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-2010-0130

**PUBLIC COUNSEL’S STATEMENT OF POSITIONS
AND MOTION FOR LEAVE TO LATE FILE**

COMES NOW the Office of the Public Counsel and for its Statement of Position and Motion for Leave to Late File states as follows:

STATEMENT OF POSITIONS

I. REVENUE REQUIREMENT

A. Cost of Capital

1. Capital Structure: What capital structure should be used for determining Empire’s cost of capital?

Public Counsel supports the Staff position on this issue.

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

Public Counsel supports the Staff position on this issue.

B. Rate Base Issues

1. Employee Compensation (capitalized management incentive): Should Empire recover payroll costs for its management incentives by including same in rate base?

Public Counsel supports the Staff position on this issue.

2. Fuel Inventory: (a) Should the level of fuel inventory in rate base include the basemat inventory and, if so, what is the appropriate value to include? (b) Should generating unit outage days be included in the calculation for determining daily burn in the fuel inventory calculation?

Public Counsel supports the Staff position on this issue.

C. Income Statement – Revenue Issues

1. Weather Normalization and Unbilled Revenue: What model assumptions are appropriate for calculating the normal weather and unbilled revenue adjustment for the test year rate revenue?

Public Counsel supports the Staff position on this issue.

D. Income Statement – Expense Issues

1. Fuel/Purchased Power Expense: What is the appropriate level of fuel and purchased power expense to be included in cost of service?

Public Counsel supports the Staff position on this issue.

2. Bad Debt Expense: Should an allowance for additional bad debt expense be made to recognize the additional revenue authorized as a result of this rate case?

Public Counsel supports the Staff position on this issue.

3. EEI Dues: Should the costs associated with EEI dues be included in cost of service?

Public Counsel supports the Staff position on this issue.

4. Remediation Costs: What is the appropriate level of maintenance and repair costs associated with infrastructure inspections to include in cost of service?

Public Counsel supports the Staff position on this issue.

5. Incentive Compensation: (a) What level of Empire’s payroll costs for its management incentives should be included in cost of service? (b) Should Empire’s payroll costs for its long-term equity incentives be included in cost of service? (c) Should Empire’s payroll costs for its “Lightning Bolts” payouts be included in cost of service?

Public Counsel supports the Staff position on this issue.

6. Dues and Donations: What level of dues and donations should included in cost of service?

Public Counsel supports the Staff position on this issue.

7. State Tax Flow Through: Should Empire be authorized to include in cost of service an amortization of its State Tax Flow Through regulatory asset?

Public Counsel supports the Staff position on this issue.

8. Rate Case Expense/Rate Case Expense Rider: (a) Should Empire be allowed to recover in this proceeding costs associated with prior rate cases? (b) Should the Commission authorize Empire to recover rate case costs and rate case appeal costs through a rate case expense rider mechanism?

Empire should not be allowed to create an exception to the prohibitions on single-issue ratemaking and retroactive ratemaking to recover certain past expenses that it contends it has failed to fully recover, nor should it be authorized to create a tracker mechanism to ensure exact recovery of future costs.

II. ENERGY EFFICIENCY AND LOW-INCOME PROGRAMS

- A. Should Empire's Demand Side Management portfolio, consisting of both energy efficiency programs and a demand response program, remain the same in this rate case in accordance with Empire's Regulatory Plan?

Yes.

- B. Should any changes be made to Empire's Experimental Low Income Program?

No.

- C. Should Empire's Residential Conservation Service Rider be eliminated?

Yes.

- D. Should Empire be required to model two demand-side management program portfolios, with a goal of achieving annual electric energy (sales) and demand savings (peak) equivalent to 1% and 2% in its next integrated resource plan?

Yes.

III. RATE DESIGN

- A. Low-Income Residential Customers: Should a "very low income" residential class be established?

No.

- B. What rate levels should be established for the residential and small commercial customer charges?

All rate components for all rate classes should be increased by the same percentage, except that the customer charges for the residential and small commercial customer classes should not be increased and any increase to those classes should be entirely to the volumetric portion of the rates.

IV. FUEL ADJUSTMENT CLAUSE

- A. Should the off-system sales margin, emission allowances, renewable energy

credits, and AQCS consumables be flowed through the fuel adjustment clause?

Public Counsel supports the Staff position on this issue.

B. What are the appropriate reporting requirements for Empire's fuel adjustment clause?

Public Counsel supports the Staff position on this issue.

C. What formula should be used to calculate the fuel adjustment mechanism?

Public Counsel supports the Staff position on this issue.

V. TARIFF CHANGES

Should the Meter Treater Tariff be eliminated?

Public Counsel takes no position on this issue.

VI. FAS 87 AND FAS 106 TRACKER LANGUAGE

What changes, if any, should be made to the existing FAS 87 and FAS 106 language?

Public Counsel supports the Staff position on this issue.

VII. VEGETATION MANAGEMENT AND INFRASTRUCTURE TRACKER

What changes, if any, should be made regarding the vegetation management/infrastructure tracker?

The trackers should be eliminated since the costs to comply with the vegetation management and infrastructure inspection rules are no longer speculative.

VIII. REGULATORY PLAN ADDITIONAL AMORTIZATIONS

(a) Should Empire's revenue requirement in this case reflect the addition of regulatory plan additional amortizations? (b) If yes, how should the regulatory plan additional amortizations be calculated, and what amount is appropriate?

Public Counsel supports the Staff position on this issue.

MOTION FOR LEAVE TO LATE FILE

This statement of positions is being filed one day out of time because the press of other business (including the required attendance of Public Counsel at a local public hearing in

Cottlesville, Missouri in the evening of the due date) prevented its timely filing. Neither any party nor the Commission will be prejudiced or inconvenienced by this slight delay.

WHEREFORE, Public Counsel respectfully submits this Statement of Position and respectfully requests that the Commission grant leave to late file.

Respectfully submitted,

OFFICE OF THE Public Counsel

/s/ Lewis R. Mills, Jr.

By: _____

Lewis R. Mills, Jr. (#35275)
Public Counsel
P O Box 2230
Jefferson City, MO 65102
(573) 751-1304
(573) 751-5562 FAX
lewis.mills@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 29th day of April 2010.

General Counsel Office
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
GenCounsel@psc.mo.gov

Kliethermes Sarah
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
sarah.kliethermes@psc.mo.gov

Ellinger H Marc
City of Joplin, Missouri
308 E. High Street, Ste. 301
Jefferson City, MO 65101
mellinger@blitzbardgett.com

Schwarz R Thomas
City of Joplin, Missouri
308 E High Street, Ste. 301
Jefferson City, MO 65101
tschwarz@blitzbardgett.com

Carter C Diana
The Empire District Electric Company
312 E. Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
DCarter@brydonlaw.com

Swearengen C James
The Empire District Electric Company
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
LRackers@brydonlaw.com

Mitten L. Russell
The Empire District Electric Company
312 E. Capitol Ave
P.O. Box 456
Jefferson City, MO 65102
rmitten@brydonlaw.com

Fischer M James
Kansas City Power & Light Company
101 Madison Street, Suite 400
Jefferson City, MO 65101
jfischerpc@aol.com

Steiner W Roger
Kansas City Power & Light Company
4520 Main Street, Suite 1100
Kansas City, MO 64111
rsteiner@sonnenschein.com

Woodsmall David
Midwest Energy Users' Association
428 E. Capitol Ave., Suite 300
Jefferson City, MO 65101
dwoodsmall@fcplaw.com

Conrad Stuart
Midwest Energy Users' Association
3100 Broadway, Suite 1209
Kansas City, MO 64111
stucon@fcplaw.com

Mangelsdorf B Sarah
Missouri Department of Natural Resources
207 West High St.
P.O. Box 899
Jefferson City, MO 65102
sarah.mangelsdorf@ago.mo.gov

Young Mary Ann
Missouri Department of Natural
Resources
1101 Riverside Drive, 4th Floor East, Rm.
456
P.O. Box 176
Jefferson City, MO 65102-0176
maryann.young@dnr.mo.gov

/s/ Lewis R. Mills, Jr.
