

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

In the Matter of a Working Case to)	
Consider Policies to Improve Electric)	File No. EW-2016-0313
Utility Regulation)	

Reply Comments of the Missouri Industrial Energy Consumers

The Missouri Industrial Energy Consumers (“MIEC”)¹ have reviewed the comments filed by other parties and appreciates this opportunity to respond to those comments and to provide additional suggestions for streamlining the regulatory process, and to address some of the major issues raised by the other parties who filed comments.

Introduction and Overview

Responding to and building upon the initial comments of other parties, our response will begin with an expanded discussion of regulatory actions which the Commission can take that would reduce regulatory lag by making the rate case process more efficient and enabling faster resolution of rate cases.

The second section of our comments addresses the issue raised by several parties concerning the lag which occurs between the time that new investment is made by the utility and the time that investment is reflected in rates. In this regard, we address the fact that further information is needed before parties can understand whether current regulatory practices are impeding utility investment. Only if that is shown to be the case should parties look to solutions for that issue.

The third section of our comments addresses reduced sales growth and proposes the adoption of meaningful economic development type tariffs that would encourage investment by

¹Missouri Industrial Energy Consumers is a not for profit corporation that represents the interests of industrial customers in Missouri utility matters.

existing customers as well as by new customers and that would provide positive economic benefits to the utility and its customers. Positive economic benefits for all customers result when the incremental revenue from additional sales exceeds the incremental cost of serving those sales.

In the fourth section we respond to the anti-growth (actually negative growth) proposal of the National Resources Defense Council (“NRDC”) and by Renew Missouri (“RM”).

Finally, we reference some of the proposals that are discussed by other parties which, while perhaps having merit and deserving additional study, have little or nothing to do with improving the regulatory process.

Actions Which Would Improve The Efficiency Of The Regulatory Process

To make the process more efficient, and allow for the potential shortening of time to process a rate case, the Commission should increase the amount of information required to be filed along with the testimony and exhibits when a utility asks for a change in rates. The added filing requirements could include specific data requests for each utility, consistent with the kind of information requests that the Commission Staff typically makes soon after the filing takes place. Including this information with the initial filing would make it available earlier in the process and reduce the time required to develop issues and process the case.

From the point of view of customers who participate in rate cases, allowing access to confidential information and workpapers earlier in the process also would help to speed up the process. Our experience has been that while sometimes it has been possible to obtain workpapers and the Highly Confidential (“HC”) testimony prior to the time that the Commission formally grants intervention; at other times, that has not occurred, resulting in weeks before such information is available. MIEC suggests that the Commission either process the intervention requests on a shorter timeframe (no longer than seven days after the request is

filed), or establish a policy that parties who have participated in prior cases automatically are granted all rights for access to HC testimony and workpapers, and to file data requests.

A second step which also would streamline the process is to reduce the current 20 day discovery response time to a more reasonable time, perhaps 12-14 calendar days. While we have not conducted a formal survey, utilities in other states routinely provide responses to data requests in less than 20 days. As one example, the standard time for responses in Iowa is seven days; however, if a case is on an expedited schedule responses are due within five days. Of course, there are always opportunities to negotiate longer response times in the event that there is a cascade of data requests that overwhelms the utility, or that providing some of the information requested will take longer than for others. In no event should blanket extensions be allowed. Rather, any information that can be provided in the allowed time should be provided as soon as possible, without waiting until the “last minute.” The Commission could indicate that it expects full cooperation among the parties in order to expedite the process and encourage the parties to act accordingly.

Regulatory lag also could be reduced by shortening the time between when the utility provides its true-up data and when other parties must respond to that data. Under current practice, these time periods are negotiated in each rate case. We note that in a recent Ameren Missouri case the interval was approximately 40 days. MIEC believes that this interval generally could be shortened to 30 days, gaining some additional time.

We also favor a suggestion offered by Office of the Public Counsel (“OPC”) at page 7 of its comments. The current process is that non-utility parties file both direct testimony and then testimony in response to the direct testimony of the utility. As we understand OPC’s suggestion, non-utility parties would respond to the initial filing of the utility in their direct testimony, thereby including both their affirmative case and their response to the utility case at the same time. Thereafter, the process would be the same as it is presently; namely that all parties then file rebuttal and surrebuttal as necessary.

Regulatory Lag and Recovery of Capital Investment

Both Ameren Missouri and Missouri Energy Development Association (“MEDA”) discuss the issue of regulatory lag and claim inadequate cost recovery prominently in their comments. They argue that when new investments are made after the cut-off date in a rate case, there is a failure to fully recover return on all of this investment, and also a failure to recover depreciation expense on this new investment, until the next rate case. They make particular note of the fact that with little or no revenue growth to support investments (except those that directly produce revenues) this has become a problem. They further suggest that this discourages new investment and discourages necessary replacement and modernization of existing grid infrastructure.

The argument and concerns do not properly take into account the large offsets which occur and create “headroom” to make additional investments and cover depreciation and other costs. How much, to what extent and when is a matter of the individual circumstances of a utility and cannot be generalized. OPC is correct when it observes at page 8 of its comments that utilities benefit from certain offsets to this claimed loss of return on capital additions. These offsets include the effects of additional depreciation taken since rates were set, which reduces rate base, and additional deferred income taxes, which operate as a deduction from new investments with the result that \$100 of additional capital spending does not produce a \$100 increase in rate base.

As an example of the offsets that exist, consider the circumstance of Ameren Missouri as recently revealed in its rate case filing in Docket No. ER-2016-0179. From the last day of the true-up period in its previous rate case (Docket No. ER-2014-0258) to the proposed last day of the true-up period in the current case, Ameren Missouri’s capital additions totaled \$1.4 billion. However, the reduction in rate base that occurred from an increase in the accumulated reserve for depreciation (because of depreciation expense) and the benefit of accelerated tax

depreciation, caused the actual increase in rate base to be only \$220 million. Thus, approximately 85% of the rate base impact (return on rate base) was offset.

A similar analysis for Kansas City Power & Light Company ("KCPL") between its previous rate case (Docket No. ER-2012-0174) and its current rate case (Docket No. ER-2016-0285) indicates an increase in gross plant in service of \$200 million, but a decrease in rate base of \$4 million. Despite the increase in plant in service, the rate base went down, which means that KCPL did not require as much income to maintain the allowed rate of return on its rate base, producing regulatory lag that benefitted it.

We endorse, and repeat herein for continuity, the important OPC suggestion at page 8 of its comments that the Commission should pose a series of questions or requests to the utilities.

The six questions/requests which OPC asks the Commission to pose are:

1. Provide a listing of all capital projects that have been abandoned due to regulatory lag.
2. Provide the source of information upon which you rely to show that regulatory lag impacts your ROE.
3. Please explain why regulatory lag cannot be reduced within the current statutory framework that governs the Commission.
4. Would you support changes in the Commission rules requiring mandated data requests be provided at the time a rate change application is filed?
5. Would you support changes in the Commission rules requiring shortened discovery response periods to expedite the review process?
6. Would you support changes to the Commission's rules on requiring travel to view highly confidential and proprietary information?

To this we suggest adding:

7. Provide your comprehensive long-range investment plan detailing the categories of investments that should be made. Provide economic and reliability-based justifications for the plan and project annual investment amounts by category.

If the answers to these questions establish a need for change, MIEC is prepared to work on developing a targeted approach that the Commission could implement under current statutory authority.

Weak Sales Growth

The utilities make note of reduced, or even negative, sales growth that has occurred because of a variety of factors. Regardless of what other techniques may be employed to address this issue, one that should be employed in any event is more robust economic development rates. Utilities should be encouraging new load to locate in their service territories and also should be encouraging existing customers to expand their operations, either by adding new facilities or processes, or by converting existing non-electricity consuming loads to electricity consuming ones.

The criteria for qualification should be that the incremental revenues generated from the new load exceeds the incremental cost to serve that load. Customers also should make a reasonable demonstration that the availability of the economic development rate influenced their decision to locate or expand. Customers should not be required to produce affidavits of alternative offers for several reasons. First, to the extent that the load provides revenues in excess of incremental cost, it is beneficial to all other ratepayers. Second, some of the expansions may be on existing facilities which obviously do not have alternative offers because Missouri does not have retail customer choice, or because the facility or process (for example mining) cannot just be moved to another location.

Reply To Comments of NRDC and RM

NRDC and RM advocate for mandatory sales reduction targets. They specifically mention 1.5% per year from existing sales levels. They even acknowledge that this would exacerbate the rate increase issue because the fixed cost would be spread over a smaller volume of sales. Their suggested solution for this self-created problem is revenue decoupling. MIEC opposes both suggestions. First, mandatory load reduction targets impose requirements on customers collectively, and mandate the utilities to create sales reductions, when in fact they

may not even be able to do so. This is why voluntary targets are much more practical and realistic. Furthermore, customers should be allowed to use whatever quantities of electricity they are willing to pay for, and not have to face mandatory reductions.

They also promote the use of more renewable energy, apparently without regard to economics. MIEC opposes this suggestion as well. Proposition C set forth the targets for use of renewable energy in Missouri, and further increases in those targets are not warranted. It also should be noted that utilities (notably Ameren and KCPL) have found that a certain amount of renewable resources beyond the mandatory targets makes sense from an economic point of view and they are proceeding to invest in those resources. This is how it should be. Those which are economically viable and provide useful resource diversity should be pursued; those that do not should not be forced into existence by mandatory targets.

MIEC also opposes decoupling mechanisms. They are single issue ratemaking and have not been shown to be necessary or appropriate. They are a particularly inappropriate solution in light of the forced reduction in sales growth that NRDC and RM are suggesting.

Other Issues

In its comments, the Department of Economic Development-Division of Energy (“DE”) raised a number of energy policy issues. Only some of these are directly germane to the subject matter of this case, which is to examine ways to improve electric utility regulation. For example, issues such as expanded energy efficiency spending and changes in the renewable energy standard (both of which also are addressed by NRDC and RM and discussed above) are clearly issues that should be addressed in other forums. The same is true of the general issue of security and diversity of supply, potential changes to the Missouri Energy Efficiency Investment Act (“MEEIA”), changes to net metering protocols, alternative financing for customers and the development of micro grids. While all of these subjects are important, this

case should remain focused on the key issue, namely, policies and procedures to improve electric utility regulation.

Conclusion

MIEC applauds the Commission for taking this important step to explore ways to improve regulation. The focus should be on evidence-based discussions and the goal of solving problems (rather than tilting the playing field). Overly ambitious approaches that effectively rewrite the entire statutory scheme applicable to utility regulation (such as was proposed earlier this year) are not necessary, and in fact are self-defeating because they are so broad and create more new problems than they solve existing ones. MIEC believes this case can make important advances in regulation in a collaborative way without the distractions and additional issues that inevitably complicate even well-intentioned legislative solutions. MIEC looks forward to participating in the workshops that will be held in this docket.

Respectfully submitted

Missouri Industrial Energy Consumers