BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Sixth Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of The Empire District Electric Company	)))))	Case No. EO-2017-0065

OPC STATEMENT OF POSITIONS

COMES NOW the Office of the Public Counsel ("OPC") and for its Statement of Positions, states:

1. *Was Empire's natural gas hedging policy that caused costs to be incurred for the period of March 1, 2015 through August 31, 2016 imprudent?*

Yes, Empire District Electric Company's ("Empire") natural gas hedging policy and strict adherence to that policy was imprudent. The shale gas revolution significantly changed the natural gas market beginning in 2009 when gas became abundant in the United States, thereby reducing prices and market volatility. Empire's hedging strategy, however, created during a time of rising natural gas prices, remained unchanged from 2001 and through the audit period.

Empire's hedging strategy requires Empire to hedge minimum percentages of gas beginning four years in advance, without the flexibility to hedge less than the self-imposed minimum benchmarks. While analysts, utility companies, media and commissions across the nation have recognized the changed market and the need to suspend hedging practices because they were no longer cost effective, Empire placed its hedging policy on auto-pilot and continued to require its customers to pay a significant premium of 39 cents for every dollar spent on natural gas. As a result, Empire's Missouri customers paid $13.1 million for Empire's hedging losses during the prudence review period – costs that should have been avoided had Empire acted prudently and reacted to the significant gas market changes by suspending their hedging practices. This imprudence is not based upon hindsight, and is instead based upon market changes and forecasts that a reasonable person would have concluded warranted changes to Empire's fixed hedging strategy.

Because Empire's fuel adjustment clause ("FAC") allows Empire to pass along 95% of its fuel costs to customers, Empire has had little financial incentive to change its practices. Empire hedged to provide it with budget certainty, which Empire treated as a higher priority over lower gas prices for Empire's customers. The Commission entrusted Empire with effectively managing its fuel costs, and Empire committed to the Commission to constantly reevaluate its hedging practices. Unfortunately, Empire failed to live up to its commitments, and as a result, Empire has incurred over $95 million in hedging losses since granted an FAC in 2008. Of that $95 million in hedging losses, $16 million in hedging losses were incurred during the review period of which $13.1 million was recovered from Empire's Missouri customers. Empire's adherence to its strict and rigid hedging policy month after month and year after year while continuously stacking up hedging losses is the epitome of imprudence.

2a. *If the Commission finds that Empire's hedging policy was imprudent, should the Commission order a refund to Empire's customers?*

Yes, the Commission should order a refund to customers following Empire's next FAC rate adjustment filing. The FAC is one of the few statutory grants of authority to the Commission to issue refunds. This authority was granted to address situations such as this where the company imprudently incurs costs that it passes on to customers. Refunds are appropriate because Empire failed its customers when it should have avoided paying a hedging premium in light of the universally-known low prices and low volatility in the natural gas markets.

2b. *If so, what should be the amount of the refund?*

The amount of the refund should be $13.1 million plus interest. The $13.1 million represents the harm inflicted on ratepayers by Empire from losses that were imprudently incurred and charged to customers for the 18-month review period. Interest on the $13.1 million at Empire's short-term borrowing rate should also be ordered to be refunded per Section 386.266.4(4) RSMo.

Empire has approximately 150,000 Missouri customers. The $13.1 million in imprudent hedging costs amount to approximately $87 per customer during the eighteen-month review period. A just and reasonable resolution of this case is to return the $87 back to Empire's customers with interest.

3. *Should Empire change its hedging policy (as set forth in its Risk Management Policy)?*

   a. *If so, what changes should be made? Should Empire cease all hedging activities at this time?*
   b. *If Empire is directed to cease hedging at this time, under what circumstances should Empire resume hedging activities?*

4. *Should a mechanism be put in place to allow stakeholders and/or the Commission to review and approve a utility's hedging plan prior to implementation?*

As stated in the Joint Issues List, these additional questions are beyond the scope of this proceeding and should not be addressed by the Commission at this time. An FAC prudence review serves the purpose of determining whether previous costs were prudently incurred. Determining how Empire manages its gas purchases in the future is beyond the scope of this case.

OPC is willing to engage in future discussions with Empire, the Staff and the Commission regarding Empire's hedging, but such discussions should be held outside the context of this case.

WHEREFORE, the Office of the Public Counsel respectfully offers the above statements of its positions on the issues.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: **/s/ Marc D. Poston**

Marc Poston (#45722)
Chief Deputy Counsel
Office of the Public Counsel
PO Box 2230
Jefferson City MO 65102
(573) 751-5558
(573) 751-5562 FAX
marc.poston@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 17th day of August 2017.

/s/ Marc Poston