BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of The Empire	)	
District Electric Company's Request	)	Case No. ER-2016-0023
For Authority to Implement a General	)	Tracking No.: YE-2016-0104
Rate Increase for Electric Service	)	

POSITION STATEMENT OF OFFICE OF THE PUBLIC COUNSEL

COMES NOW the Office of the Public Counsel ("OPC"), by and through counsel, and provides its *Statement of Position* with respect to the *Joint List of Issues* filed on behalf of the parties by the Staff of the Missouri Public Service Commission ("Commission"):

1. **Regulatory Policy**

RESPONSE: The primary purpose of the Commission is to serve and protect ratepayers. State ex rel. Capital City Water Co. v. Public Service Commission, 850 S.W.2d 903, 911 (Mo. Ct. App. W.D. 1993). OPC asks the Commission to be mindful of the Commission's purpose in these matters—to ensure regulated, natural monopoly providers of an essential utility service safely and efficiently provide their customers with adequate and reliable services at just and reasonable rates.

2. **Prepayments**

Should the prepayments related to the working funds for Iatan, Plum Point and KCP&L land lease be included in rate base?

RESPONSE: No. Until recently, Empire has provided no support why its contractual arrangements with other utilities should be treated as a prepayment of an expense typically included in rate base. While Empire has allowed the Public Service Commission Staff ("Staff") to review documents purportedly in compliance with this issue, OPC will hopefully get an opportunity to review these documents to determine if these documents provide sufficient evidence to classify these expenses as a rate base prepayment.

3. **Property Tax Expense:**

What is the appropriate amount of property tax expense to include in rates?

RESPONSE: OPC does not take a position on this at this time but reserves the right to address this issue at hearing and in its brief.

4. **Fuel Adjustment Clause**

A. Should Empire's FAC be continued?

RESPONSE: No. The Commission cannot determine which costs and revenues should be included in Empire's FAC because Empire did not provide information on the magnitude and volatility of the costs and revenues it is requesting be included in its FAC

B. If the Commission approves a FAC, should it contain costs that Empire does not currently incur?

RESPONSE: If the Commission approves an FAC, the only costs and revenues Empire does not incur or receive that should be included in the FAC are insurance recoveries, subrogation recoveries and settlement proceeds related to costs and revenues.

C. If the Commission approves a FAC, what additional reporting requirements should it include?

RESPONSE: If the Commission approves an FAC, it should require Empire to continue providing the additional information as part of its monthly reports Empire as agreed upon in the Revised Stipulation and Agreement filed April 8, 2015, in Case No. ER-2014-0351. In addition, the Commission should require Empire to provide in its monthly submissions, by general ledger account, the FAC costs in each of the general ledger accounts shown in Schedule TWT-5 of the direct testimony of Empire witness Todd W. Tarter.

D. If the Commission approves a FAC, should the incentive mechanism be changed to 90%/10%?

RESPONSE: Yes. An FAC is unfair to the customer of the electric utility because it moves the risk of changes in FAC costs from the electric utility, which makes decisions regarding fuel purchasing decisions, to its customers who have no control of fuel purchasing decisions. Changing the incentive mechanism would be a step towards moving more of the risk in the decision making to the decision maker – Empire. In addition, Empire has increased the risk to its customers by not providing complete explanations of the costs and revenues that it is requesting be included in its FAC and it has not demonstrated that each cost and revenue is of great magnitude and volatility. For these reasons, the incentive mechanism should be changed to better balance risk.

5. SERP Expense:

What is the appropriate amount of SERP expense to include in rates?

RESPONSE: Empire's current SERP payments are excessive and charging them to ratepayers is imprudent. OPC's position on Empire's SERP is consistent with the longstanding Staff policy on the ratemaking treatment of SERP payments. The appropriate total level of SERP expense for Empire's seven retired former executives should be no greater than $140,000 ($20,000 per retiree) on a total company basis.

6. Bad Debt Expense

What level of Bad Debt Expense should be included in rates?

RESPONSE: OPC recommends including a three-year average of bad debt expense totaling $2,329,647.

7. Demand Side Management (DSM) Programs:

What DSM programs should Empire offer after the effective dates of rates from this case?

RESPONSE: OPC recommends Empire's current DSM programs be discontinued. If the Commission elects to move forward with some form of DSM programs, OPC suggests any future programs be scaled down, redesigned, and administered on a pilot basis within input from Empire's DSM advisory group.

8. Low-Income Weatherization:

A. Should there be an increase to the amount of weatherization funds Empire collects in base rates?

RESPONSE: Yes. OPC supports the Company's request to increase the weatherization amount by $25,000.

B. Should there be an evaluation of Empire's weatherization program, and if so what should be the scope of the evaluation?

RESPONSE: No. If the Commission elects to move forward with some form of evaluation, OPC believes this should be conducted in-house and not necessitate additional ratepayer expenditures.

9. **Incentive Compensation Expense:**

A. What level of cash incentives based on performance goals should be included in the cost of service?

B. Should executive stock awards be included?

C. Should "Lightning Bolts" be included?

RESPONSE: OPC recommends inclusion of a significant portion of Empire's incentive compensation and this is based on the Commission's longstanding policy on incentive compensation, which is that income-based compensation and equity-based long-term executive compensation not be included regulated cost of service. OPC and the Staff agree on this issue.

10. **Merger/Payroll Adjustment**

Should there be a disallowance of payroll expense related to the pending merger with Algonquin utilities?

RESPONSE: OPC does not take a position on this at this time but reserves the right to address this issue at hearing and in its brief.

11. **Depreciation:**

A. What depreciation rates should be approved in this case?

RESPONSE: OPC does not take a position on this at this time but reserves the right to address this issue at hearing and in its brief.

B. Are Staff's adjustments with respect to Empire's "stopped depreciation" accounts appropriate?

RESPONSE: No. Staff's proposed adjustments fails to reimburse ratepayers for the revenue requirement impact of what Staff asserts is Empire's accounting irregularities related to depreciation. Staff only seeks a portion of the dollars be returned to ratepayers. OPC calls for an audit of any long-term accounting irregularities on the part of Empire related to depreciation on plant assets. The audit will determine the revenue requirement impact of past asserted irregularities, methodology to reimburse Empire's ratepayers for the revenue requirement impact of the irregularities, and the potential for Commission-imposed penalties. For the purpose of this rate case, OPC supports the proposed increase in depreciation reserve proposed by Staff but does not agree that these dollars are representative of what's due to be refunded to Empire's Missouri electric jurisdictional ratepayers.

C. Are Staff's adjustments with respect to Empire's Riverton Reserve Deficiency appropriate?

RESPONSE: No. See Part D below.

D. Should the Commission allow rate recovery of Empire's Loss on Retirement of Riverton Plant Assets (reserve deficiency)?

RESPONSE: The Commission has a longstanding policy going back to the 1970s of allowing utility shareholders to keep the gains on the disposition of utility assets. Consistently, the Commission does not charge utility ratepayers for the loss on disposition of utility assets. In recent years as an example, both Empire and Laclede Gas Company have removed utility plant assets from service, recorded a gain on that transaction, and flowed through the profit on the transaction to shareholders. OPC does not take issue with this treatment as it is consistent with Commission policy. However, when losses are incurred instead of gains, Empire management imprudently attempts to charge its ratepayers for the loss. Empire's position is difficult to understand as just a few years ago it was defending its actions of flowing through gains on the sale of a unit train to its shareholders. While OPC does not criticize the appropriateness of Staff's depreciation witness proposal on how to treat Empire's loss on the disposition of its Riverton assets, this is inconsistent with the Commission's position and with how other utilities are treating gains on the disposition of utility plant assets. OPC is only asking for one consistent and fair policy on the treatment of utility asset gains and losses. As long as the Commission has its current policy of allocating both gains and loss on plant disposition to shareholders, OPC will support that position. That is our position with this case as well. Empire's loss on the retirement of Riverton plant assets, characterized incorrectly as a reserve deficiency, should not be included in Empire's cost of service.

12. Riverton 12:

A. What is the appropriate Riverton 12 O&M Tracker base level?

RESPONSE: The appropriate Riverton 12 O&M Tracker base level should remain at $2.7 million.

B. What accounts should be included in the tracker?

RESPONSE: The maintenance contract with Siemens should be the only item in the tracker. OPC is opposed to including all other non-labor O&M accounts.

C. What level of O&M expense should be included in the cost of service for Riverton 12?

RESPONSE: Staff's calculation of historical O&M expense for Riverton be included in the cost of service. Staff has included $1,204,722 for Riverton 12 O&M expense.

13. Cost of Removal and State Flow-Through

A. Should an adjustment be made for cost of removal issues related to prior years?

RESPONSE: OPC does not take a position on this at this time but reserves the right to address this issue at hearing and in its brief.

B. Should an adjustment be made related to state income tax flow through for prior years?

RESPONSE: OPC does not take a position on this at this time but reserves the right to address this issue at hearing and in its brief.

14. Cost of Capital

A. What is the appropriate value for Return on Equity ("ROE") that the Commission should use in setting Empire's Rate of Return?

B. What capital structure should the Commission use to determine the rate of return?

C. What is the appropriate value for embedded cost of debt?

RESPONSE: OPC does not take a position on this at this time but reserves the right to address this issue at hearing and in its brief.

15. Production Cost Model:

What is the appropriate base amount of fuel expense to include in rates?

RESPONSE: OPC does not take a position on this at this time but reserves the right to address this issue at hearing and in its brief.

16. Special Contract Revenues

Should Empire's other Missouri retail customers be held harmless of the revenue impact of the interruptible bill credits Empire offers to its Special Contract customer?

RESPONSE: Yes. Empire has offered no evidence supporting the level of credit offered, the comparableness of the credit to those offered to other customers, or whether the valuation of the credit is based on principles of cost-causation.

17. Class Cost of Service and Rate Design:

A. What, if any, revenue neutral interclass shifts are supported by Class Cost of Service studies?

RESPONSE: OPC does not take a position on this at this time but reserves the right to address this issue at hearing and in its brief.

B. What, if any, revenue neutral interclass shifts should be made in designing the rates resulting from this case?

RESPONSE: None. OPC recommends no interclass shift in revenue responsibilities.

C. What, if any, changes to the residential customer charge are supported by Class Cost of Service studies?

RESPONSE: OPC does not take a position on this at this time but reserves the right to address this issue at hearing and in its brief.

D. What, if any, changes to the residential customer charge should be made in designing the rates resulting from this case?

RESPONSE: None. OPC recommends no increase to the residential customer charge and proposes the Commission adopt the consumer disclaimer language for ratepayers considering future rooftop solar purchases.

E. How should revenue requirement related to energy efficiency programs be allocated to the customer classes?

RESPONSE: OPC supports energy efficiency program cost be allocated to the customer classes that have utilized the rebates.

F. How should any revenue requirement increase be implemented in this case?

RESPONSE: OPC supports an equal increase to each customer class at the system average increase.

G. Should the Commission open a working docket so the parties to this case can discuss the implementation of revised block rate designs for Empire's residential customers?

RESPONSE: Yes. OPC supports the Commission opening a working docket so parties can discuss the appropriateness revising block rate designs for Empire's residential customers.

H. What, if any, changes to the General Power, SC-P and Large Power customer, demand and energy rate elements should be made in designing the rates resulting from this case?

RESPONSE: OPC opposes MECG's recommended 10% reduction in the LP tailblock charge and supports Staff's recommendation to defer consideration for any changes until Empire has completed its study regarding time-differentiate billing demand charges.

18. Trackers

A. *Should the Vegetation Management Tracker balance be included in rate base?*

B. *Should the May 2011 Tornado Deferrals Tracker balance be included in rate base?*

C. *Should the Carrying Costs Tracker balance for Iatan 1, Iatan 2 and Plum Point be included in rate base?*

D. *Should the O&M Tracker balance for Iatan 1, Iatan 2 and Plum Point Tracker balance be included in rate base?*

E. *Should the Pension Tracker balance be included in rate base?*

F. *Should the OPEBs Tracker balance be included in rate base?*

G. *Should the SWPA Capacity Loss Reimbursement Tracker balance be included in rate base?*

H. *Should the PeopleSoft software deferred balance be included in rate base?*

RESPONSE: Consistent with the Commission's definition of rate base assets, OPC has not included the balance of normal O&M expense trackers in Empire's rate base. Trackers are not rate base investments and should not be included with other shareholder investments in the utility.

19. Allocations

A. Should there be an adjustment to allocate corporate costs to Empire's affiliate EDI?

B. Should there be an adjustment to allocate corporate costs to Empire's water department?

C. What is the appropriate way to calculate A&G expenses for Empire's water department?

D. Should the Commission approve the Cost Allocation Manual ("CAM") submitted by Empire for Commission approval on August 23, 2011, *or otherwise take action on Empire's CAM in* Case No. AO-2012-0062*, or should the Commission direct Empire to adopt the CAM proposed by Office of Public Counsel in this case?*

RESPONSE: No. This Commission should approve the CAM proposed by OPC. Empire has been operating without a Commission-approved CAM for several years. Empire's current CAM is not sufficient to protect its customers from Empire's subsidization of nonregulated and affiliate transactions as well as improper corporate allocations. Since Empire does not have a Commission-approved CAM it is in violation of the Commission's Affiliate Transaction Rule. Staff opened a docket to address this issue in 2011. Five years later, no substantive progress has been made. OPC believes

Empire's ratepayers deserve the protection inherent in Empire's compliance with a well-developed, robust, and comprehensive CAM. OPC recommends the Commission not allow a continued delay in the correction of the current Affiliate Transaction Rule violation.

20. Accumulated Deferred Income Tax

A. Should the FAS123 deferred tax asset for stock based compensation be included in rate base?

RESPONSE: OPC supports the position that, since the Commission has never allowed stock-based compensation Empire's cost of service expense, there is no stock compensation expense in Empire's rates on which to calculate any deferred tax asset or deferred tax liability. Consistent with OPC's position on stock-based compensation, Empire's cost of service should not be impacted in any manner by Empire's decision to pay its executives in stock-based compensation.

B. Should the deferred tax asset for alternative minimum tax be included in rate base?

RESPONSE: No. Deferred tax asset or liability for alternative minimum tax should be included in rate base unless Empire can show that on a stand-alone electric utility income tax basis for its regulated electric operations, it was required to pay alternative minimum income taxes.

21. Natural Gas Hedging Policy

Should Empire continue hedging for natural gas?

RESPONSE: Empire's natural gas hedging policy does not consider the cost of natural gas purchases; a position inconsistent with other Missouri utilities. Empire imprudently considers only price volatility mitigation, or price certainty, as a reduction in its fuel price risk. The Commission should order Empire to revise its hedging policies to include strategies seeking to reduce the cost of natural gas flowed through to Empire's ratepayers in it base fuel cost in this rate case and in its FAC.

22. Vegetation Management Tracker Amortization

What is the updated balance of the vegetation management tracker amortization that should be included in Empire's cost of service?

RESPONSE: First, this was not included on the filed list of issues. Regardless, it is OPC's position the updated balance of the vegetation management tracker amortization to be included in Empire's cost of service is $405,322.

23. Iatan 2, Iatan Common, and Plum Point O&M Tracker Amortization

What is the updated balance of the Iatan 2, Iatan Common, and Plum Point O&M tracker amortization that should be included in Empire's cost of service?

RESPONSE: First, this is issue was not included on the filed list of issues. Regardless, it is OPC's position the updated balance of the O&M tracker amortization to be included in Empire's cost of service is $65,286.

WHEREFORE, Public Counsel submits its *Statement of Positions*.

Respectfully Submitted,
OFFICE OF THE PUBLIC COUNSEL

By: **/s/ Cydney D. Mayfield**

Cydney Mayfield
Deputy Counsel
Missouri Bar No. 57569
P. O. Box 2230
Jefferson City MO 65102
(573) 522-6189
(573) 751-5562 FAX
Cydney.mayfield@ded.mo.gov

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **20th day of May, 2016,** on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

s/ Cydney D. Mayfield