BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company for the Issuance Of an Accounting Authority Order Relating to Their Electrical Operations and for a Contingent Waiver of the Notice Requirement of 4 CSR 240-4.020(2)	)))))))	File No. EU-2014-0077

EMPIRE'S INITIAL BRIEF

COMES NOW The Empire District Electric Company (Empire), and, as its Initial Brief, states as follows to the Missouri Public Service Commission (Commission):

Empire's Initial Brief contains the following sections:

<u>STANDARD</u>

Section 393.140(4), RSMo states as follows:

> Have power, in its *<u>discretion</u>*, to prescribe uniform methods of keeping accounts, records and books, to be observed by gas corporations, electrical corporations, water corporations and sewer corporations engaged in the manufacture, sale or distribution of gas and electricity for light, heat or power, or in the distribution and sale of water for any purpose whatsoever, or in the collection, carriage, treatment and disposal of sewage for municipal, domestic or other necessary beneficial purpose. It may also, in its *<u>discretion</u>*, prescribe, by order, forms of accounts, records and memoranda to be kept by such persons and corporations. Notice of alterations by the commission in the required method or form of keeping a system of accounts shall be given to such persons or corporations by the commission at least six months before the same shall take effect. Any other and additional forms of accounts, records and memoranda kept by such corporation shall be subject to examination by the commission.

(Emphasis added)

Using the discretion provided by Section 393.140, RSMo, the Commission has promulgated Rule 4 CSR 240-40.040, which prescribes the use of the Uniform System of Accounts (USOA) adopted by the Federal Energy Regulatory Commission (FERC). The USOA provides for the deferred treatment of "extraordinary" costs.

The promulgation of Commission Rule 4 CSR 240-40.040, however, has not extinguished the discretion provided by Section 393.140. The Western District Court of Appeals made this point in a 2009 case concerning the Commission's use of accounting authority orders in connection with the emergency cold weather rule.[1] The Court stated as follows:

> The Public Counsel acknowledges that a utility company does not have to keep its accounts in accordance with the Uniform System of Accounts if the company seeks and receives a waiver from the Commission. *See* 4 CSR 240-40.040(5). Given that the Commission can grant a utility company a waiver from following the Uniform System of Accounts, we see no reason why the Commission, through a regulation, cannot allow a utility company to recover costs under the cold weather rule which may be inconsistent with the Uniform System of Accounts.

(*Id.*)

Similarly, the Commission may use its discretion to grant Kansas City Power & Light Company (KCPL) and KCPL Greater Missouri Operations (GMO) the accounting authority orders (AAO) requested in this case, without regard to the USOA requirements.

If the Commission does decide to apply the extraordinary standard found in the USOA, the transmission cost obligations incurred by KCPL/GMO, and others, related to the FERC-approved (and driven) regional transmission organizations, are not unlike other situations the Commission has deemed to be extraordinary.

---

[1] *State ex rel. Office of the Pub. Counsel v. Mo. PSC*, 301 S.W.3d 556, 566 (Mo. App. 2009).

The Commission has issued AAO's for costs "caused by unpredictable events, *acts of government* and other matters outside the control of the utility or the Commission." *In the matter of St. Louis County Water Company's Tariff Designed to Increase Rates*, MoPSC Case No. WR-96-263, p. 13 (December 31, 1996) (emphasis added). The Commission further stated in that case that it "has periodically granted AAOs and subsequent ratemaking treatment for various unusual occurrences such as flood-related costs, changes in accounting standards, and other matters which are unpredictable and cannot adequately or appropriately be addressed within normal budgeting parameters." *Id.* at p. 14.

There are many examples of AAO's based upon government action (i.e. new statutes, regulations and the like). These include AAO's for costs associated with: Kansas property taxes on gas in storage (GU-2005-0095); new gas safety rules (GO-97-301, GO-2002-0048); the implementation of FAS 87 for pension expense (*In the matter of Missouri Cities Water Company*, 2 Mo.P.S.C.3d 60 January 8, 1993); the implementation of FAS 106 (*In Re Union Electric*, 1 Mo.P.S.C.3d 328, 330 (EO-92-179) (June 12, 1992); *In Re St. Joseph Light and Power Company*, 2 Mo.P.S.C.3d 248, 270 (ER-93-41, EC-93-252) (June 25, 1993) (In referring to the Western Resources proceeding, "[t]he Commission also found that expenses related to the adoption of FAS 106 are extraordinary or unusual items which qualify for deferral and later amortization."); *In Re Missouri Gas Energy*, 3 Mo.P.S.C.3d 203 (GO-94-255) (September 28, 1994); *In re Empire District Electric Company* (EO-93-35) (February 2, 1993)); compliance with the Clean Air Act (*In the matter of the application of Missouri Public Service*, 1 Mo.P.S.C.3d 200, 203-204 (1991)); and the emergency cold weather rule (GA-2002-285, GA-2002-377).

FACTORS TO BE CONSIDERED

The subject of this Application – increasing transmission costs related to infrastructure upgrade projects – is a very real concern for electric utilities. Transmission costs are currently being impacted by an unprecedented build out in order to expand and enhance the Southwest Power Pool (SPP) transmission network (as well as other networks). (KCPL Exh. 5, Ives Sur., p. 4)

SPP has approved a number of very large projects needed to facilitate economic power transactions for the region. Most of those projects are coming on line in the 2013-2017 timeframe, so we are now in a period of historically unprecedented escalation in transmission infrastructure cost. (*Id*. at p. 9) These are not typical transmission costs. (*Id*. at p. 4) The increase in these costs is significant and beyond the control of the individual utilities. This is especially harmful in an environment of flat or decreasing load. (*Id*. at p. 5)

A significant and increasing cost is difficult, if not impossible, to capture in a traditional, historic test year rate case.[2] If the Commission does not address regional transmission costs in some fashion outside the traditional rate case, companies will have no reasonable opportunity to recover their reasonable and substantial transmission costs.

Regardless of whether the Commission grants an accounting authority order (AAO) (which Empire supports), a tracker or takes some other approach, Empire believes that this is a situation that requires a solution outside the historic rate case process.

---

[2] *See State ex rel. Missouri Power & Light Co. v. Public Service Com.*, 669 S.W.2d 941, 944 (Mo.App. 1984) ("This approach amounts to a repudiation of the normalization by average concept, applied in the prior rate case to the disadvantage of the utility when costs were rising."); and *see also In the Matter of Union Electric Company*, 2009 Mo.PSC LEXIS 71, 93-94 (2009) ("That mainstream of regulation recognizes a utility must be able to recover its prudently incurred fuel costs and that it is impossible for a utility to earn its allowed return on equity in a rising cost environment without a fuel adjustment clause.").

AN AAO SHOULD BE GRANTED

One way to address this transmission cost issue is to grant KCPL and GMO an AAO to defer and record incremental transmission costs charged to them by the SPP and other providers of transmission service above the level included in current base rates. Empire believes that the impact is the same, whether this is called an "AAO or a "tracker." No matter what the nomenclature, the ability to defer and record increases and decreases in transmission cost is necessary in the current environment.

Ameren Missouri recovers these costs through its fuel adjustment clause. (KCPL Exh. 4, Ives Dir., p. 13; Tr. 151-152) The Missouri Court of Appeals has indicated recently that the Commission was within its authority provided by Section 386.266, RSMo, to allow Ameren to recover its transmission costs in this fashion. *Union Elec. Co. v. PSC*, 2013 Mo. App. LEXIS 1206 (Mo.App. 2013).

The Court of Appeals summarized its decision and that of the Commission as follows:

> In this appeal, Missouri Industrial Energy Consumers ("MIEC"), Consumers Council of Missouri ("CCM"), AARP, and the Office of Public Counsel ("OPC"), collectively "Consumers," challenge the Public Service Commission's ("PSC") Report and Order issued December 12, 2012 ("2012 Report and Order"), that approved a rate increase for Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri"). Specifically, Consumers appeal the decision of the PSC allowing Ameren Missouri to use a Fuel and Purchased Power Adjustment Clause ("FAC") to automatically recover from customers certain MISO Schedule 26 and 26A transmission charges. We find that the PSC was within its authority in permitting Ameren Missouri to use an FAC to pass on the charges at issue, that it acted reasonably in permitting those costs to be passed on to its customers, and that the record supported the determinations of the PSC. Accordingly, the PSC's 2012 Report and Order was lawful and reasonable, and we affirm.
>
> * * * * *
>
> Through its membership in MISO, Ameren Missouri has access to a transparent, wholesale energy market where it can acquire power to serve its load and sell power off-system. Network service enables Ameren Missouri to transmit energy acquired from the MISO market, including that injected by Ameren Missouri's

> own generators, to its customers. MISO charges Ameren Missouri for the use of its service pursuant to a FERC-approved tariff. Although the charges exist as distinct schedules, they must be paid by Ameren Missouri to use the system to serve load.
>
> * * * * *
>
> Consumers agree that MISO transmission charges associated with the short-term transmission service necessary to support power purchases or off-system sales are incremental costs directly related to Ameren Missouri's fuel and purchased power cost and are properly recoverable through the FAC. However, Consumers contend that MISO transmission charges associated with the long-term transmission service taken for Ameren Missouri's network load are not incremental costs incurred to enable power purchases or off-system sales and, therefore, should not be recoverable through the FAC but only recoverable in base rates.
>
> In the 2012 Report and Order, the PSC concluded that there was no legal or public policy impediment to allowing Ameren Missouri to recover MISO transmission charges by passing them through the FAC. *The PSC noted that under the filed-rate doctrine, Ameren Missouri must be able to recover the MISO transmission charges in some manner.* The PSC found that the continuation of the current practice of passing those costs through the FAC was the most logical manner of doing so, in that those costs meet the PSC's past standards for inclusion in the FAC: *they are significant in amount; they are volatile—rising rapidly and uncertain in amount; and they are largely beyond Ameren Missouri's control*. The PSC thus concluded that Ameren Missouri may continue to pass its MISO transmission charges through its FAC.

(Footnotes omitted) (Emphasis added)

The MISO costs discussed in *Union Elec. Co. v. PSC* are the same types of costs that are the subject of the KCPL/GMO request in this case. As stated by the Court of Appeals above, the Commission has found that it must provide an opportunity to recover the transmission charges in some manner. The Commission has also found that these charges are "significant," "volatile," and "largely beyond" the companies' "control."

The most appropriate place for the recovery of these transmission costs is in a fuel adjustment clause. However, there was the implication at the hearing (and elsewhere in this case) that there would be no need for an AAO, if KCPL had a fuel adjustment clause in place.

The facts suggest otherwise. Empire has a fuel adjustment clause and is not currently permitted to flow its SPP transmission through that clause. There will be no opportunity for this situation to change until after a formal rate case. Thus, it is erroneous to believe that KCPL is requesting an AAO only because it does not have a fuel adjustment clause. Empire's experience indicates otherwise.

CONCLUSION

Rising regional transmission costs are here to stay. The historic rate case process is not a solution to a rising expense. This especially where the cost comes to the utility by way of Federal Energy Regulatory Commission tariff, is "significant in amount," is "volatile—rising rapidly and uncertain in amount," and is "largely beyond" the company's "control." Whether it is called an AAO or a tracker, the Commission's discretion is broad enough to support an order granting the requested relief. This is the best (and only) option available under the circumstances. KCPL and GMO's request should be granted.

WHEREFORE, Empire respectfully requests that the Commission consider this Initial Brief and, thereafter, issue such orders as it shall find to be just and reasonable.

Respectfully submitted,

Dean L. Cooper MBE #36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
(573) 635-7166 voice
(573) 635-3847 facsimile
Email: dcooper@brydonlaw.com

ATTORNEYS FOR THE EMPIRE DISTRICT ELECTRIC COMPANY

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on February 25, 2014, to the following:

Steve Dottheim
Office of the General Counsel
steve.dottheim@psc.mo.gov
staffcounselservice@psc.mo.gov

Lewis Mills
Office of the Public Counsel
lewis.mills@ded.mo.gov
opcservice@ded.mo.gov

Roger W. Steiner
Kansas City Power & Light Company
Email: Roger.Steiner@KCPL.com

James M. Fischer
Fischer & Dority, P.C.
Email: jfischerpc@aol.com

James Lowery
Smith Lewis, LLP
jlowery@smithlewis.com

Edward Downey
Bryan Cave LLP
efdowney@bryancave.com

David Woodsmall
David.woodsmall@woodsmalllaw.com