

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

In the Matter of The Empire District Electric)
Company for Authority to File Tariffs Increasing)
Rates for Electric Service Provided to Customers) Case No. ER-2016-0023
in the Company's Missouri Service Area)

EMPIRE'S RESPONSE TO PUBLIC COUNSEL'S SURREPLY

COMES NOW The Empire District Electric Company ("Empire" or the "Company"), by and through counsel, and respectfully submits this Response to the Surreply filed herein on January 20, 2017, by the Office of the Public Counsel ("Public Counsel"), with regard to the *Order Suspending Tariff Sheets* issued herein on December 30, 2017, by the Missouri Public Service Commission ("Commission"):

1. With regard to Empire's proposed Demand Side Management ("DSM") tariff sheets, the Stipulation and Agreement of the parties to Empire's rate case (the "Rate Case Stipulation") provides as follows:

13. Planned DSM / Energy Efficiency: The Signatories agree that between the effective date of this Stipulation and January 1, 2017, or as soon as possible after January 1, 2017, they will work together through the existing DSMAG to develop four (4) new DSM programs, namely, a Residential HVAC, a C&I custom rebate, a low-income multi-family, and either a non-low-income multi-family, single family low-income or an on-bill financing program targeted at low-income families.

a. The DSMAG will model these programs to the extent possible on existing programs in the state of Missouri and/or other best practices identified by the DSMAG.

b. Each program developed will include a proposed annual budget, energy and demand savings target(s), and marketing strategy.

c. All programs will have impact and process evaluation, measurement and verification ("EM&V") performed by a third party independent contractor for the first two (2) full program years at a budget of 5% of the actual expenditures for the two (2) full program years.

d. The DSMAG will investigate Pay As You Save ("PAYS") Financing and similar programs, the feasibility of administering PAYS Financing and similar programs in Empire's service territory, and Empire will arrange for a presentation on PAYS Financing or a similar program at a Commission Agenda meeting.

e. Signatories agree that the Company will implement these or similar programs on January 1, 2017, or as soon as possible after January 1, 2017.

f. Signatories agree that the programs implemented on January 1, 2017, or as soon as possible after January 1, 2017, will have a term of not less than two (2) years.

g. Current regulatory asset treatment and rate base inclusion for costs will be continued as specified in Paragraph 15.

h. If the Commission orders a low-income rate pilot program in this case, the cost of the program will also receive regulatory asset/rate base treatment as specified in Paragraph 15.

Empire has fully complied with the Rate Case Stipulation, and Public Counsel's objection to the DSM tariff sheets is without merit.¹

2. The dispute appears to be about the timing of the PAYS investigation and study. Empire worked with the DSM group to investigate PAYS financing and similar programs and the feasibility of administering such programs in Empire's service territory – exactly as required by the Rate Case Stipulation. It was determined that Empire is resource constrained and that it would be imprudent for a PAYS program to be included as one of Empire's four new DSM programs to be implemented by January 1, 2017, or as soon thereafter as possible.

3. Following the group's study and investigation of available programs, and pursuant to the Rate Case Stipulation, the DSM group agreed to implement four DSM programs and began to work on the DSM tariff sheets. Public Counsel was involved every step of the way, and Public Counsel appeared to be in complete agreement with the decisions of the DSM group. There were multiple calls and emails to accomplish the tasks required of Empire and the other members of the DSM group by the Rate Case Stipulation. On December 2, 2016, Empire submitted tariffs to implement the agreed-upon DSM programs, with a proposed effective date of January 1, 2017.

¹ Empire notes that the Staff of the Commission submitted its Response to Commission Order Suspending Tariff Sheets on January 5, 2017, stating its opinion that Empire's DSM tariff sheets are in compliance. No other party to the rate case has made a filing regarding Empire's proposed DSM tariff sheets.

4. It was not until Friday, December 2, 2016, the day the DSM tariff sheets were being submitted, that Public Counsel suggested there should be further study of PAYS – after the DSM group had studied the possible options and decided upon the four DSM programs to be implemented – and that the DSM budget should be modified in order to pay for a formal study (instead of the investigation being done by the DSM group, as required by paragraph 13(g) of the Rate Case Stipulation). On December 2, 2016, Public Counsel stated that the idea of a formal study of PAYS by a third party “came out of the Agenda discussion with the Commissioners on Wednesday.”² It appears to be disingenuous on the part of Public Counsel to now claim further study of PAYS, at a cost to Empire’s ratepayers, is required by the Rate Case Stipulation.

5. The DSM group considered PAYS and many other possible programs and reached agreement on the four new DSM programs to be implemented by Empire. There is nothing in the Rate Case Stipulation which requires further study of PAYS at this time. There is also nothing in the Rate Case Stipulation which requires that part of Empire’s DSM budget be diverted from the four, agreed-upon DSM programs and used, instead, for further study of PAYS. To the contrary, the Rate Case stipulation required that the DSM group investigate PAYS as part of the process of selecting the four DSM programs to be implemented. There is absolutely no requirement that Empire’s tariff sheets implementing the four, agreed-upon DSM programs contain language obligating Empire to hire a third party to further study PAYS.

WHEREFORE, Empire respectfully submits this Response and renews its request that its DSM tariff sheets be approved by the Commission.

² The written communication from Public Counsel is attached as Exhibit A to Empire’s earlier reply.

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

/s/ Diana C. Carter

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was filed in EFIS and that a copy of the same was sent via electronic mail on this 24th day of January, 2017, to all counsel of record.

/s/ Diana C. Carter