

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

In the Matter of the Application of The Empire)
District Electric Company for Approval of Its) Case No. EO-2018-0092
Customer Savings Plan)

**THE OFFICE OF THE PUBLIC COUNSEL’S
SECOND MOTION TO SUSPEND PROCEDURAL SCHEDULE**

COMES NOW the Office of the Public Counsel and again moves the Commission to suspend the procedural schedule in this case, including the hearing scheduled for May 9-11, 2018, on a separate ground from that of its motion to suspend procedural schedule filed May 2, 2018—the ground following:

1. The Commission modified its procedural schedule in this case on April 20, 2018, by its *Order Amending Procedural Schedule* whereby the Commission, at the parties’ request, moved the main evidentiary hearing from April 16-20, 2018, to May 9-11, 2018; established April 24, 2018, as the last day for parties to file a stipulation and agreement and affidavits in support thereof; established April 27, 2018, as the last day for discovery related to the stipulation and agreement with a 5 calendar day response time; established May 4, 2018, as the last day to file affidavits opposing the stipulation and agreement or in response to affidavits filed in support of the stipulation and agreement; established May 7, 2018, for filing; and established a briefing schedule.

2. On April 24, 2018, The Empire District Electric Company, Midwest Energy Consumers Group, Staff of the Missouri Public Service Commission, Renew Missouri Advocates, and Missouri Department of Economic Development – Division of Energy filed a

non-unanimous stipulation and agreement which the Office of the Public Counsel opposed on April 26, 2018.

3. On April 26, 2018, at 8:58 a.m. the Office of the Public Counsel presented the following data request (No. 5) to the signatories to the non-unanimous stipulation and agreement:

In his affidavit supporting the settlement agreement Midwest Energy Consumers Group witness Greg R. Meyer estimates the rate impact of the settlement to current rates, if implemented, to be 12%, and attributes the benefit of the federal corporate tax rate change from 35% to 21% to be about 5%. Assuming the only changes to Empire's revenue requirement used for setting rates in its last general rate case are due to the closure of the ash impoundment (According to Empire's response to Sierra Club data request 1-03, \$17,912,000) and the settlement agreement (which includes the new ash landfill, the new ash conveyance system, the up to 600 MW of wind farms, transmission associated with the new wind farms, and the impact of changing the federal corporate income tax rate from 35% to 21%), provide the percentage changes to Empire's revenue requirement attributable to (1) closure of the ash impoundment, (2) the new ash landfill, (3) the new ash conveyance system, (4) the up to 600 MW of wind farms, (5) transmission associated with the new wind farms, (6) the impact of changing the federal corporate income tax rate from 35% to 21%, and (7) each other rate-impacting provision of the settlement agreement, together with your workpapers showing your calculations.

4. With the exception of The Empire District Electric Company, each signatory provided its response:

DE Response: DE did not perform the requested calculations and has no workpapers to provide in response to this data request. It is DE's understanding that other Signatories will provide responsive information.

[MECG] Response: The affidavit was limited solely to the overall revenue requirement impact and did not attempt to break down the revenue requirement impact by separate components. MECG and / or Greg Meyer have not conducted the requested analysis and does not know if it has the information necessary to conduct such an analysis.

Renew Missouri Response: Renew Missouri does not possess or control the requested calculations. Mr. Greg Meyer offered his testimony on behalf of Midwest Energy Consumers Group. Renew Missouri cannot direct Mr. Meyer to respond to OPC's request or produce the additional workproduct.

[Commission Staff Response:] Staff did not perform the calculations that would be responsive to this data request. Staff defers to MECG’s response to OPC DR 5.

The Empire District Electric Company has neither objected nor responded to this request.

5. On April 27, 2018, at 3:43 p.m. the Office of the Public Counsel, among other requests, presented the following data request numbers 8055 and 8056 to the signatories to the non-unanimous stipulation and agreement:

8055. Reference S&A, para. 17 – Does the Market Protection Mechanism take into account the “hedge” Empire will be paying the tax equity partner? If so, please describe how this amount is included in the calculation.

8056. Reference S&A, para. 16a – Can construction of the wind farms begin before a CCN is granted by the Commission? This is a material change to the non-unanimous stipulation and agreement.

6. With the exception of The Empire District Electric Company and the Commission’s Staff, each signatory provided its responses to both (Staff has neither objected nor responded to data request number 8055):

Data Request 8055 (EFIS No. 72)

DE Response: DE does not possess the information requested by this data request. It is DE’s understanding that other Signatories will provide responsive information.

[MECG] Response: It is MECG’s understanding that Empire will not be paying a hedge to the tax equity partner.

Renew Missouri Response: Renew Missouri has no specific information to offer, and directs the parties to the response Empire has provided to this Data Request.

Data Request 8056 (EFIS No. 73)

DE Response: According to the language of the Agreement, “EDE shall file a request for a CCN with respect to its interest in the Wind Projects, consistent with Commission Rule 4 CSR 240-3.105, before authorizing construction of the facilities.” The agreement is silent on whether construction can begin while the CCN application is pending.

[MECG] Objection: MECG objects to this data request on the basis that it calls for a legal interpretation of Section 393.170. Subject to this objection, MECG provides the following response.

[MECG] Response: The stipulation states that “EDE agrees that for any of the Wind Projects physically located in the state of Missouri, and for any Wind Projects which are located outside of the state of Missouri for which a Certificate of Convenience and Necessity (“CCN”) is required by Commission regulations, EDE shall file a request for a CCN with respect to its interest in the Wind Projects, consistent with Commission Rule 4 CSR 240-3.105,2 ***before authorizing construction of the facilities.***” (emphasis added).

Renew Missouri Response: Not if the site is in Missouri. If the site is outside Missouri, the company will comply with applicable Commission regulations. The stipulation provides: “EDE agrees that for any of the Wind Projects physically located in the state of Missouri, and for any Wind Projects which are located outside of the state of Missouri for which a Certificate of Convenience and Necessity (“CCN”) is required by Commission regulations, EDE shall file a request for a CCN with respect to its interest in the Wind Projects, consistent with Commission Rule 4 CSR 240-3.105, before authorizing construction of the facilities.”

[Commission Staff Response:] Staff’s intention in including this provision was that EDE would obtain the CCN prior to construction of the wind farms.

7. The Office of the Public Counsel only agreed to the expedited amended procedural schedule on the understanding that discovery would be complete by May 2, 2018, so that it would have at least two days to review and analyze the last of the responses to its discovery in preparing and finalizing its position and affidavits in response to the non-unanimous stipulation and agreement and supporting affidavits. The parties have deprived the Office of the Public Counsel of even that slim margin of time.

8. Unless the Commission suspends the procedural schedule in this case to give the Office of the Public Counsel a sufficient opportunity to obtain the discovery responses that are overdue regarding the non-unanimous stipulation and agreement, and to allow its experts to

review those responses then prepare and provide their testimony regarding the non-unanimous stipulation and agreement and supporting affidavits, the Office of the Public Counsel will be denied due process in this case.

Wherefore, the Office of the Public Counsel moves the Commission to suspend the procedural schedule in this case including the hearing scheduled for May 9-11, 2018, on the ground that The Empire District Electric Company and the Commission's Staff have failed to comply with the Commission's ordered procedural schedule as amended by failing to timely answer outstanding discovery propounded by the Office of the Public Counsel and, thereby, depriving the Office of the Public Counsel of a meaningful opportunity to prepare and present its response to the non-unanimous stipulation and agreement and supporting affidavits.

Respectfully,

/s/ Nathan Williams

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 3rd day of May 2018.

/s/ Nathan Williams