

**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 in the Company's Missouri Service)
Area)

Case No. ER-2014-0351

STAFF REPLY BRIEF

COMES NOW, the Staff of the Missouri Public Service Commission, by and through counsel, and for its Reply Brief states as follows:

All issues of this case are resolved in the *Revised Stipulation and Agreement and List of Issues (Revised Agreement)* which became a unanimous agreement¹ and the *Non-Unanimous Stipulation and Agreement on Certain Issues (Non-unanimous Agreement)* – both filed with the Commission on April 8, 2015.

The contested issues of this case result from Midwest Energy Consumer Group's ("MECG") objection to the *Non-Unanimous Agreement* that was signed by six of the seven parties² in this case. By Commission rule³ the *Non-Unanimous Agreement* became a statement of joint positions in a joint recommendation of the signatory parties to the Commission with the exception of the objecting party MECG.

Staff points out that all parties including MECG agreed to the remaining contested issues as those issues were set forth in the *Joint List of Issues, Request for Additional Witnesses to be Excused, and Proposed Hearing Schedule ("Joint List of Issues")* filed on April 13, 2015. All parties signed the *Joint Issues List* including MECG – even though

¹ 4 CSR 240-2.115(2)(C)

² The parties in this case are: The Empire District Electric Company ("Empire"), the Staff, the Office of the Public Counsel ("OPC"), City of Joplin ("Joplin"), Missouri Department of Economic Development – Division of Energy ("DE"), Midwest Energy Users' Association ("MEUA") and MECG.

³ 4 CSR 240-2.115(2)(D)

MECG introduced an issue at hearing that was not listed on the *Joint Issues List* and is to be viewed by the Commission “...as uncontested and not requiring resolution by the Commission.”⁴

This Reply Brief responds to the positions of MECG, including its position on the non-listed issue, and explains why the Commission should not be swayed by the arguments raised by MECG in its initial post hearing brief. Any specific point raised in the initial brief of MECG that is not addressed in this Reply Brief should not be considered as agreement in any way therewith.

Fuel Adjustment Clause (FAC): Should SPP transmission costs and revenues be included? If so, what transmission costs and revenues should be included?⁵

It should first be noted that throughout this portion of its initial brief MECG refers to the FAC tariff proposed by Empire in Empire’s direct testimony in this case rather than to the FAC tariff which has been agreed to by all parties in this case except MECG, which is reflected in the exemplar tariff sheets attached to the *Non-Unanimous Agreement* as Exhibit 2, and which is before the Commission for consideration. As stated in Staff’s *Initial Brief*, reaching the unanimous *Revised Agreement* and the *Non-Unanimous Agreement* (which together fully resolve all FAC issues in this case) involved many hours of negotiation involving a give and take process. During this negotiation process involving a

⁴ See *Staff Initial Brief*, pp. 9-10, discussion of MECG’s issue introduced at hearing and not on the *Joint Issues List* on whether FAC transmission costs should be collected through a demand component on a per KW basis. The Commission’s *Order Setting Procedural Schedule* issued on October 28, 2014, states in paragraph 3, “...The list of issues should be detailed enough to inform the Commission of each issue that must be resolved. The Commission will view any issue not contained in this list of issues as uncontested and not requiring resolution by the Commission.” (emphasis added)

⁵ This is the statement of the issue as set forth in the unanimous *Joint List of Issues, Request for Additional Witnesses to be Excused, and Proposed Hearing Schedule* filed on April 13, which was signed by the Midwest Energy Consumers Group (“MECG”). In its Initial Posthearing Brief, MECG restated the issue in violation of the Commission’s *Order Setting Procedural Schedule* issued in this case on October 28, 2014, which provides in paragraph 3(d) that “Briefs shall follow the same list of issues as filed in the case.”

myriad of issues, including but not limited to FAC issues, Empire “came over” to Staff’s position on many if not all of the FAC issues. The criticisms of the proposed FAC tariff contained in MEGC’s initial brief, therefore, do not even apply to the FAC tariff which is before the Commission for consideration. Such criticisms are simply misleading and incorrect.

For example, by citing⁶ to the direct testimony of Empire witness Mr. Tarter, MEGC accuses Empire of seeking to include in the FAC “all transmission costs recorded in Account 565.”⁷ (emphasis in original) This may have been true of the FAC contained in Empire’s direct testimony filing, but it is *not* true of the FAC contained in the *Non-Unanimous Agreement* which is before the Commission. Exhibit 3 attached to the *Non-Unanimous Agreement* contains a list of sub-accounts which are either included in or excluded from the FAC contained in the *Non-Unanimous Agreement*. As clearly shown on Exhibit 3, a portion of sub-account 565414 (SPP Schedule 1A charges) and all of sub-account 565415 are *excluded* from the FAC before the Commission. These sub-accounts contain SPP Schedule 1A and SPP Schedule 12 charges, as shown on Exhibit 3. SPP Schedule 1A and 12 charges are also specifically excluded from the FAC by the terms of both the *Non-Unanimous Agreement* (paragraph 4) *and* the unanimous *Revised Agreement* (paragraph 13) *to which MEGC indicated it did not object*. Therefore, MEGC should know that not all transmission costs recorded in Account 565 are included in the FAC currently before the Commission.

⁶ See footnotes 45-47 and 53 in MEGC initial brief.

⁷ MEGC initial brief page 21; see also page 19.

Likewise, by citing⁸ to Mr. Tarter's direct testimony, MEGC claims Empire is seeking to include "insurance premiums for replacement power recorded in FERC account 924" and "transmission expense allocation charges recorded in FERC account 575."⁹ However, a review of Exhibit 3 to the *Non-Unanimous Agreement*, which lists the accounts included in the FAC under consideration, shows no account 924 or account 575 charges included in the FAC. A review of the exemplar FAC tariff (Exhibit 2) also attached to the *Non-Unanimous Agreement* also shows no account 924 or account 575 charges included in the FAC. By failing to address the FAC tariff which is actually contained in the *Non-Unanimous Agreement* and which is before the Commission for consideration, MEGC's initial brief is misleading *at best*, and should be disregarded by the Commission.

It should also be recognized that, as anticipated in Staff's initial brief, in its initial brief MEGC changed its argument from the argument it was previously making. Throughout this case, including at the hearing which concluded on April 17, MEGC's argument has been that *all* SPP related transmission costs should be excluded from the FAC simply because the SPP integrated marketplace ("IM") started in March 2014;¹⁰ according to MEGC, because the SPP IM was new at the time this case was filed, MEGC needed more data to quantify the benefits of the SPP IM.¹¹ However, in its initial brief, MEGC has changed its argument to mimic the argument made by Missouri Industrial Energy Consumers ("MIEC") in the recent Ameren case. MEGC even admits that it has

⁸ See footnotes 45-47 in MEGC initial brief.

⁹ MEGC initial brief page 19.

¹⁰ Tr. Vol. 7, pp. 167-168.

¹¹ Tr. Vol. 7, p. 167.

changed its argument.¹² As stated in Staff's initial brief,¹³ MCEG's new argument conflicts with the MCEG responses given to Chairman Kenney and Commissioner Hall which were set forth at length in Staff's initial brief. For all of the reasons set forth in Staff's initial brief, MCEG should not now be allowed to change its argument.

If you allow transmission costs in the FAC, should they be collected through a demand component (collected on a per kW basis)?

On page 22 of its initial brief MCEG criticizes "the Company's proposal" to include "fixed natural gas transportation costs and transmission costs in the FAC" and similarly on page 8 refers to including "fixed costs in the fuel adjustment clause," without defining exactly what it means by "fixed." However, it should be recognized that this portion of MCEG's initial brief contains the same misleading error that the other FAC portion contains; namely, MCEG's criticism is directed to Empire's proposal in direct testimony rather than to the FAC submitted for the Commission's approval in the Non-Unanimous Agreement. In fact, Empire abandoned its proposal to include fixed costs for natural gas transportation in the FAC as early as its rebuttal testimony.¹⁴ Simply put, the FAC in the *Non-Unanimous Agreement* does *not* contain fixed costs for natural gas transportation. As for the transmission costs included in the FAC being "fixed," the surrebuttal testimony of MCEG witness Maini contains a chart¹⁵ on page 3 which purports to show "a five year projection of SPP related transmission expansion costs to which Empire will be

¹² See footnote 10 in MCEG initial brief.

¹³ See footnote 14 in Staff's initial brief.

¹⁴ "Empire can agree with the Staff's position of not allowing the flow-through of changes in natural gas storage costs or the fixed portion of natural gas transportation costs through the FAC." Ex. 126, Tarter Rebuttal, page 3, lines 6-8.

¹⁵ Ex. 702, Maini Surrebuttal, page 3, lines 19-20.

subjected.”¹⁶ Ms. Maini’s chart shows a projected yearly increase, by different amounts each year, in these costs. If the costs are increasing, by a different amount each year, they are not “fixed.”

In its initial brief on page 23 MECG also makes brief reference, without providing any context, to Minnesota and Florida, apparently under the theory that whatever is done in Minnesota and Florida should be done in Missouri. However, according to Ms. Maini’s surrebuttal testimony, the proceedings in other jurisdictions which she mentions are not even FAC proceedings, but some other sort of unexplained proceedings.¹⁷ Without providing any evidence regarding the treatment of specific costs or the type and structure of the cost recovery mechanisms or a detailed description of the proceedings themselves, MECG’s reference to what is done in Minnesota and Florida is irrelevant to this case.

In Staff’s initial brief, Staff addressed why this “issue” is not a proper issue for consideration in this case.¹⁸ Staff also addressed numerous reasons why MECG’s proposal is impractical, unworkable, and inadequate. If the Commission determines that it must decide this “issue,” MECG’s proposal should be rejected for any (or all) of those reasons, as MECG’s initial brief failed to address – let alone counter – those reasons.

– Jeffrey A. Keevil

¹⁶ Ex. 702, Maini Surrebuttal, page 3, lines 16-17.

¹⁷ Ex. 702, Maini Surrebuttal, page 6, lines 10-15.

¹⁸ The issue was not included in the *Joint List of Issues* which was signed by MECG, and Ms. Maini’s recommendation was introduced for the first time in surrebuttal testimony. Even MECG’s initial brief subtly admits that the recommendation appeared for the first time in surrebuttal; see footnote 56 of MECG initial brief.

Class Cost of Service (CCOS) and Rate Design:¹⁹

- i.** *How do Empire's residential and industrial rates compare with national averages?*
- ii.** *What, if any, revenue neutral interclass shifts are supported by Class Cost of Service (CCOS) studies?*
- iii.** *What, if any, revenue neutral interclass shifts should be made in designing the rates resulting from this case?*
- iv.** *What, if any, changes to the Commercial and Industrial ("C & I") customer charges are supported by Class Cost of service studies?*
- v.** *What, if any, change to the Commercial and Industrial customer charges should be made in designing the rates resulting from this case?*
- vi.** *What, if any, changes to the Large Power (LP) tail block rate are supported by Class Cost of Service studies?*
- vii.** *What, if any, changes to the LP tail block rate should be made in designing the rates resulting from this case?*

The joint recommendation for a revenue-neutral shift of a .75% adjustment to Residential and a .85% adjustment from the General Power ("GP"), Total Electric Building ("TEB"), and Large Power ("LP") classes is a step in the right direction toward true cost of service. Even MCEG witness Kavita Maini agreed so at hearing.²⁰

Settlement and compromise are inherently a "give and take" process in a rate case. Six of seven parties²¹ adopted as a reasonable settlement position the Staff's recommendation that the Commission adopt a revenue neutral shift to the Residential class of .75%, with a .85% decrease for LP, TEB, and GP rate classes. Only MCEG objected because according to MCEG it is not enough of a move.

¹⁹ Staff did not take a position on i. noting that "national averages" do not determine cost of service in Empire's service area. The joint recommendation on CCOS and Rate Design is for a modest revenue neutral shift that gradually moves toward cost of service and for the revenue requirement to be spread in an equal percentage across all rate elements with the exception of the Residential class customer charge. Staff's Reply Brief addresses MCEG's lack of support in favoring the LP rate class at the expense of the Residential class.

²⁰ Maini, Tr. Vol. 7, p. 166.

²¹ Six parties signed the *Non-Unanimous Stipulation and Agreement on Certain Issues* and filed it on April 8, 2015: The Empire District Electric Company, Staff, Office of the Public Counsel, City of Joplin, Missouri Department of Economic Development-Division of Energy, and Midwest Energy Users' Association.

Revenue neutral adjustments to rate structure must be applied gradually to avoid rate shock and outright public rejection. The purpose of a CCOS study is to determine whether each customer class is providing sufficient revenue to cover the utility's expenses to serve the class and to provide a return on the utility's investment required or allocated to the class.

That said, a CCOS study is not precise. It is used only as a guide for designing rates. It is accomplished over time with the understanding that the adjustments get us closer to true cost of service.

CCOS studies and class allocations change over time based on class loads, energy efficiency, and the overall total costs to be allocated to each rate class. Staff witness Robin Kliethermes testified that it is common to observe changes in class cost of service from rate case to rate case due to changes in the relationships between the classes, class energy usage, number of customers in a class, class coincident peak and demand allocation changes.²²

For example, facing the next rate case is the question of how costs from the new Riverton combined cycle unit will be allocated to rate classes. Staff witness Mike Scheperle testified that the effect on class cost of service from including the revenue requirement for a new combined cycle unit will depend on how those costs are allocated to the classes.²³

Because class cost of service often changes between electric rate cases, Staff performs a CCOS study to quantify cost causation principles and to recommend

²² Robin Kliethermes, Tr. Vol. 6, pp.111-112.

²³ Scheperle, Tr. Vol. 6, p. 138.

movement towards class cost of service. Staff did so in this case and in Empire's last rate case, ER-2012-0345.

MECG's argument for a larger rate class shift lacks historical support

In its initial brief, MECG resorts to hyperbole when it claims²⁴:

...Given that the Staff's quantification of the residential subsidy is 8.06%, it would take 10 more rate cases, after this case, for the residential subsidy to be eliminated. [FN20} Recognizing that Empire's files [sic] a rate case approximately every 20 months, [FN21] **it would take almost 17 years to eliminate the residential subsidy.** (Emphasis given by MECG)

At hearing, Commissioner Stoll asked MECG counsel:

Commissioner Stoll: ...Are you aware of the subsidy issue arising in a past Empire case by either the group that you represent or someone else?

Mr. Woodsmall: The evidence in this case indicates that the subsidy has existed in the past. Public Counsel's witness shows that the subsidy did exist in the past case and has grown.

Commissioner Stoll: Okay. So MECG, not that you had to, but didn't raise this question in the previous case that you're aware of?

Mr. Woodsmall: I honestly don't recall how the previous case was resolved. I don't know. I'm sorry.

Mr. Woodsmall fails in his argument that his self-termed "subsidy" in this case is supported by evidence of a "subsidy" problem in Empire's last general rate case, ER-2012-0345. Had such a "subsidy" issue been a problem in the last rate case, as Mr. Woodsmall contends, then why didn't MECG recommend a revenue-neutral shift in that case? By point of fact, MECG did not recommend a revenue-neutral rate class shift among the rate classes in ER-2012-0345. MECG rejected the Staff's recommendation for a revenue neutral shift in the last case. Instead MECG proposed that the per-class rate

²⁴ See *Initial Posthearing Brief of Midwest Energy Consumers Group*, p. 11.

increase be spread across the classes based on an equal percentage of base rate revenue:

What is the appropriate per-class rate increase for this [ER-2012-0345] case?

Position: MECG supports the position of OPC on this issue. Class revenue increase should be allocated in a two-step process. The first step should [be] assigned the revenue requirement associated with energy efficiency programs to rate schedules in proposition to “non-opt out” KWh’s. The second step should spread any additional revenue increase to classes based on an equal percentage of current base rate revenue.²⁵ (emphasis added by Staff)

In ER-2012-0345, the Staff was the only party to perform a CCOS study, recommending a revenue neutral shift similar to the joint recommendation in this case:

...adjustments be made first on a company-wide revenue neutral basis to the residential class, commercial building class and general power class. The Empire residential class should receive a positive 0.5% adjustment. The Empire commercial building class and general power class should receive a negative adjustment of approximately 0.82%. All other classes should receive the system average increase (commercial space heating, special transmission: Praxair, total electric building, feed mill and grain elevator, large power, lighting and miscellaneous).²⁶

Ultimately, in ER-2012-0345, the parties, including MECG, settled the matter of rate design by Stipulation and Agreement that there would be no revenue neutral rate adjustments between rate classes and that the revenue increase would be applied to current revenue on an equal percentage basis by customer class.²⁷

²⁵ See Case ER-2012-0345, *MECG Statement Of Positions*, p. 7, (EFIS Item No. 208).

²⁶ See Case ER-2012-0345, *Staff’s Statement Of Positions*, p. 10, (EFIS Item No. 206).

²⁷ See Case ER-2012-0345, *Stipulation and Agreement*, Attachment B, p. 46 of 49, item 9, (EFIS Item No.217).

Mr. Woodsmall's argument that a rate class "subsidy" is some part of a historical problem has no factual foundation and is unsupported by MEGC's position in the last rate case, ER-2012-0345.

Rate Class "Subsidy" as that term is used by MEGC is a Misnomer

Staff witness Robin Kliethermes explained to Chairman Robert Kenney at hearing that the word "subsidy" as used by MEGC was not accurate "...because each class is covering their expenses. They [the rate classes] just have different levels of rate of return."²⁸ Ms. Kliethermes also testified that even though the Residential rate class is covering its fixed costs, the rate classes are not contributing the same level of return. The "subsidy" alleged by MEGC is really all about the contribution of each rate class to the profit component.²⁹ This is yet another reason why the Staff performs a CCOS study for electric rate cases and has prepared CCOS studies in Empire's current and past rate cases. Staff's CCOS study and other rate design factors³⁰ form the basis of Staff's jointly recommended revenue neutral rate class adjustments – which are made before the revenue requirement is applied on an equal percentage basis to all rate classes.

Conclusion

MEGC's recommendation should be rejected by the Commission because of its harmful effect on residential customers. In this case MEGC recommends a shift against the Residential class that is well over double that of the joint recommendation.³¹ Because

²⁸ Robin Kliethermes, Tr. Vol. 6, pp. 108-109.

²⁹ Kliethermes, Tr. Vol. 6, pp. 109-110.

³⁰ See *Staff Initial Brief*, p. 14, for a discussion of the rate design factors used by Staff as a guide for designing rates.

³¹ See *Initial Post Hearing Brief of Midwest Energy Consumers Group*. MEGC recommends the Commission eliminate 25% of the residential subsidy currently existing in Empire's rates on pp. 7 and 24. By Mr. Woodsmall's calculation "...in this case, Staff only recommends that the Commission eliminate 9.3% of the residential subsidy. [FN 24]" p. 11.

MECG's proposed shift would cause an abrupt and severe rate shock to the Residential class - all to the benefit of the LP class – MECG's proposal is poorly taken, is not just and reasonable, and should not be adopted.

-Robert S. Berlin

WHEREFORE, the Staff tenders its Reply Brief as directed by the Commission.

Respectfully submitted,

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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, to all counsel of record on this 29th day of May, 2015.

/s/ Robert S. Berlin