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

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| In the Matter of a Workshop Case to Explore the Ratemaking Process | ) ) | **File No. AW-2019-0127** |

## COMMENTS OF THE
## MIDWEST ENERGY CONSUMERS GROUP

1. On November 27, 2018, the Missouri Public Service Commission Staff ("Staff") provided a draft rule "intended to implement an optional, shortened ratemaking procedure for electric, gas, steam, and certain water and sewer utilities." The key features of that draft rule, from the viewpoint of the Midwest Energy Consumers Group ("MECG") is that it would allow utilities to elect to reduce its rate case from 11 months to 8 months, without any consideration of: (1) the complexity of the case; (2) the view of customers and other stakeholders; (3) the number of other cases pending before the Commission; or (4) the availability of Commission, Staff, OPC and intervenor resources. In the alternative, the draft rule would allow utilities to elect to receive, as an interim rate increase, the entirety of their requested rate amount in only 30 days.

2. The next day, after providing parties mere hours to consider the proposed rule, Staff commenced a workshop to hear the views of stakeholders. At that workshop, Staff alleged that the purpose of its draft rule was to increase the efficiency of the rate case process. While Staff alleges that its goal is "efficiency", it is apparent that the Staff's draft rule was written with little if any focus on how to increase the efficiency of the ratemaking process. Rather, Staff mistakenly concluded that a shorter rate case necessarily equates to a more "efficient" rate case. MECG strongly disagrees. Rate case procedures that simply provide utilities with the ability to get larger increases in a quicker fashion without any consideration of the concerns of customers

represent an abdication of the Commission's mission to balance the interest of shareholders **AND** ratepayers.

3. Noticeably, the Staff's rule was drafted without any consideration of the need for its proposed radical changes. For instance, the Staff failed to look at the rapid increase in rates in Missouri or the impact of those rate increases on customers or the economic development of the state. Furthermore, Staff failed to look at the financial condition of Missouri utilities including the credit rating of the utility or the appreciation in utility stock prices. In contrast, when it promulgated the small rate case rule, the Commission analyzed such considerations and determined that small water and sewer companies, because of a lack of resources and understanding of the ratemaking process, were not seeking timely rate relief. This created a situation in which these water and sewer utilities were not maintaining the desired level of financial integrity and / or providing safe and adequate service. Given this, the Commission created a small rate case rule, but limited it to certain size utilities. Certainly, any consideration of radical changes, such as those now contemplated by the Staff, if done with an eye towards balancing the interests of ratepayers and shareholders would properly analyze such considerations.

4. Given this, MECG urges the Staff to scrap its draft rule and commence a workshop that is entirely focused on rate case efficiency while always considering the interests of both utility shareholders AND ratepayers. Only after balanced efficiency improvements are made, should the Staff look at the necessary amount of time to conduct the new, efficient rate case and adjust accordingly.

5. Recognizing that the current draft rule is completely unworkable, given its focus on simply providing utilities with the ability to implement rate increases in a more rapid fashion

without any consideration of efficiency improvements, MECG will not provide significant comments on how to fix that rule. Instead, MECG provides these brief overarching concerns.

6. **ABDICATION OF AUTHORITY**: The General Assembly, as part of the Public Service Commission Law, gave the Commission the authority to determine, on a case by case basis, the appropriate suspension period. Specifically, Section 393.150 provides that the Commission may suspend for the purposes of conducting an evidentiary hearing if it determines that it cannot conduct the hearing in the case within the time provided by law. Nothing in the Public Service Commission law allows the Commission to abdicate this suspension authority to the utility or to make a general pronouncement in a rule of the appropriate suspension period. Through the draft rule, Staff would have the Commission abdicate the appropriate length of time to complete a hearing in a rate case to the utility. As such, the draft rule represents an unlawful abdication of Commission authority.

Similarly, Missouri Courts have held that the Commission has the inherent authority to allow for interim rate relief. To date, the Commission and Courts have limited such authority to an emergency situation. Again, nothing provides the Commission with the authority to abdicate this responsibility to the utility. The draft rule, however, would allow the utility to elect interim rate relief. As such, much like the suspension period provision, this represents an unlawful abdication of the Commission's authority to grant interim rate relief.

7. **APPROPRIATE SUSPENSION PERIOD**: As indicated, Section 393.150 provides the Commission with the authority, after determining its inability to conduct an evidentiary hearing in the allotted period of time, to suspend a utility's rate tariffs. The Commission's determination of the time necessary to conduct an evidentiary hearing is necessarily a case specific determination. For instances, certain cases may raise issues that

require a longer suspension period. For instance, in recent cases, rate design issues such as Inclining Block Rates and Time-of-Use Rates would have precluded a shorter suspension period. Still again, the affiliate nature of certain utilities render a shorter suspension period less workable. For instance, a KCPL rate case routinely involves both a KCPL case and a GMO rate case. Worse still, as in 2009, it can also involve a GMO steam heat case. As a further example, a Spire rate case will likely involve both a Laclede and a MGE rate case. Finally, in recent years, the Commission has not only seen multiple rate cases pending at the same time, but also seen major utilities file their rate cases on the exact same date. All of these fact patterns result in situations in which a utility-elected 8 month rate case time period would not be appropriate. Instead, these situations all justify the statutory focus on the Commission making an objective case by case determination of the length of time needed to conduct the required evidentiary hearing. The draft rule replaces the objective Commission determination with a subjective utility election of the suspension period.

8. **INTERIM RATE RELIEF PROVISION IS A RADICAL SHIFT FROM COMMISSION PRECEDENT**: In 1975, the Commission considered a Missouri Public Service Company request for interim rate relief. There, the Commission noted the problems with interim rate relief.

> Under the present circumstances, the mechanism of interim rate relief exists to fill a void in the regulatory process. It is recognized that the machinery of permanent rate relief does at times grind exceedingly slow and that the companies under the jurisdiction of the Commission may, from time to time, find themselves facing emergencies which require timely action by the Commission. However, the fact that time is of the essence in an interim case creates certain constraints which would otherwise not be present in a normal proceeding. The Commission must accept at face value the evidence presented to it by the Company, because time does not permit extensive verification of this evidence by the Commission and its Staff.[1]

[1] *Missouri Public Service Company*, 20 Mo.P.S.C. (N.S.) 244 (1975).

Given the fundamental problems with interim rate relief, the Commission set forth its emergency standard for such relief.

> [I]t is incumbent upon the Company to demonstrate conclusively that an emergency does exist. The Company must show that (1) it needs additional funds immediately, (2) that the need cannot be postponed, and (3) that no other alternatives exist to meet the need but rate relief.[2]

For 45 years, the Commission has steadfastly maintained this standard. Repeatedly, the Commission has rejected utility requests that failed to meet this standard.[3] For instance in 2001, the Commission rejected Empire's request for interim rate relief:

> As Empire notes in its pleadings, the Commission did partially develop a "good cause" standard for interim relief in In re The Empire District Electric Company, 6 Mo.PSC 3rd 17 (Case No. ER-97-82). However, in that case the Commission based its denial of Empire's request on the conclusion that: "There is no showing by the Company that its financial integrity will be threatened or that its ability to render safe and adequate service will be jeopardized if this request is not granted." The differences, if any, between this good cause standard and the historically applied emergency or near emergency standard were not clearly annunciated, and the Commission now returns to its historic emergency or near emergency standard.[4]

Still again, in a 2010 Ameren case, the Commission, based largely on Staff's recommendation, rejected Ameren's request for interim rate relief:

> A utility does not need to be facing a dire emergency to justify an interim rate increase. The Commission would want to act to remedy the problem long before such a situation would arise. However, the Commission will not act to short circuit the rate case review process by granting an interim rate increase unless the utility is facing extraordinary circumstances and there is a compelling reason to implement an interim rate increase.
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> However, an interim rate increase should be used only in situations requiring a quick infusion of cash into a utility. An interim rate increase is not merely

[2] *Missouri Public Service Company*, 20 Mo.P.S.C. (N.S.) 244 (1975).
[3] *Missouri Public Service Company*, 22 Mo.P.S.C. (N.S.) 427 (1978); *Kansas City Power & Light Company*, 23 Mo.P.S.C. (N.S.) 413 (1980); *Missouri Public Service Company*, 24 Mo.P.S.C. (N.S.) 245 (1981); *Martigney Creek Sewer Company*, 25 Mo.P.S.C. (N.S.) 641 (1983); *Arkansas Power & Light Company*, 28 Mo.P.S.C. (N.S.) 143 (1986); and *Raytown Water Company*, 1 Mo.P.S.C. 3d 184 (1991).
[4] *Empire District Electric Company*, Case No. ER-2001-452 (issued March 8, 2001).

> another regulatory tool in the Commission's tool box. ***It is an extraordinary tool that should only be used in extraordinary circumstances***.[5]

Most recently, in 2012, the Commission considered and rejected another Empire request for interim rate relief:

> Based on its findings of fact and conclusions of law, the Commission concludes that Empire has failed to meet its burden of proof to demonstrate that an interim rate increase is just and reasonable at this point in time. The evidence presented at the hearing clearly shows that Empire is not now experiencing a financial emergency, or near emergency, and is able to provide safe and adequate service to its customers, regardless of whether or not it receives an interim rate increase.[6]

Now, in its draft rule, Staff proposes to disregard 45 years of Commission adherence to the emergency standard, and without any enunciation of an appropriate standard or any ability for customers to respond, the Staff now proposes to allow the utilities to elect to receive interim rate relief. Again, as pointed out previously, Staff failed to reference any conditions including utility stock prices or credit ratings that would justify such a radical disregard of 45 years of Commission's policy.

9. **INTERIM RATE RELIEF PROVISION DOES NOT ALLOW FOR CONSIDERATION OF ALL RELEVANT FACTORS**: Interestingly, as part of Staff's proposed rule to provide interim rate relief, Staff does not provide any ability for the Commission to conduct an evidentiary hearing for the purpose of accepting evidence to allow it to consider "all relevant factors" underlying the interim increase. In the referenced Empire case, the Commission pointed out that, while it may grant interim rate relief, it must still consider all relevant factors.

> The Commission is required by law to consider all relevant factors in determining a just and reasonable rate to be charged, and it is within the Commission's discretion to decide which facts are relevant to that determination. At this point in the case, Staff has not had time to conduct an audit to investigate and report on

[5] *Union Electric Company*, Case No. ER-2010-0036 (issued January 13, 2010) (emphasis added).
[6] *Report and Order Regarding Interim Rates*, Case No. ER-2012-0345, issued October 31, 2012, at page 15.

> some factors that may affect the rate-making process. While it would be preferable to have the results of an audit in making any rate decision, the Commission determines that the most important facts to consider in relation to the granting of an interim rate increase are those describing the utility's present financial condition.[7]

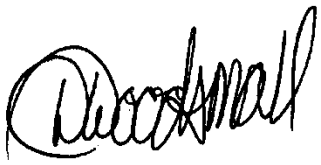
In its draft rule, the Staff proposes to allow the utility to simply elect interim rate without any evidentiary hearing, any opportunity for stakeholders to conduct discovery on the justification for interim rate relief, or the opportunity for those stakeholders to provide the Commission with evidence on relevant factors. While the Commission has the authority to grant interim rate relief, it must still comply with other legal requirements including the need to consider all relevant factors. The Courts have repeated held that, while it may be inconvenient to abide by statutory mandates like the "all relevant factors" requirement, "neither convenience, expediency or necessity" justify the Commission in taking procedural shortcuts.[8]

10. **INTERIM RATE RELIEF PROVISION DOES NOT CONSIDER NUMEROUS DEFERRAL MECHANISMS ALREADY IN PLACE**: Just as the Staff's draft rule does not consider the utility's financial condition, including the utility's stock performance or credit rating, the Staff's draft rule also fails to consider the rapid implementation of numerous deferral mechanisms and other ratemaking devices designed to shield the utility from risk. For instance, in 2003, the General Assembly passed legislation that provides for infrastructure system replacement surcharges for gas and water utilities.[9] Still again, in 2005, the General Assembly enacted legislation that provides for the fuel adjustment clause.[10] Since that time, the Commission has implemented a fuel adjustment clause for all of the Missouri regulated electric utilities. Moreover, in 2009, the General Assembly passed the MEEIA legislation which

[7] *Id.* at page 14.
[8] State ex rel. Utility Consumers Council, Inc. v. Public Service Commission, 585 S.W.2d 41, 49 (Mo. Banc 1979) (citing to State ex rel. Kansas City v. Public Service Commission, 301 Mo. 179, 257 S.W. 462 (Mo. Banc 1923).
[9] See, Section 393.1000 et seq.
[10] See, Section 386.266.

provides for the utility to earn a return on its investment in energy efficiency as well as to recover lost revenues and lost opportunities associated with delayed or foregone investment in supply side investment.[11] Most recently, the General Assembly passed SB564 which allows for electric utilities to either: (1) defer and recover depreciation and carrying costs on capital investments made between rate cases or (2) to implement a mechanism that guarantees recovery of all residential electric revenues.[12] Each of these regulatory mechanisms represents a dramatic shift in risk from shareholders to ratepayers and make the need for interim rate relief less necessary. Nevertheless, Staff either ignores or forgets to consider the relevance of each of these mechanisms that have been implemented over the past 10 years. Again, such a failure represents a departure from the Staff's mandate to balance the interests of ratepayers and shareholders.

Respectfully submitted,



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[11] See, Section 393.1075.
[12] See, Section 393.1400.