

**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 Customer Savings Plan) **Case No. EO-2018-0092**

REPLY TO STAFF’S RESPONSE

COMES NOW the Missouri Office of the Public Counsel, in reply to *Staff’s Response to OPC’s Application for Rehearing*, and states:

1. Staff Counsel’s statement on page three of Staff’s response that OPC participated in many settlement discussions that led to the settlement agreement is misleading. While OPC personnel attended and participated in settlement discussions before April 16, 2018, on that date Empire excluded OPC from participation in future settlement discussions, unless and until it advised otherwise. The terms of the settlement agreement filed April 24, 2018, are more definitive than the state of the negotiations on April 16, 2018.

2. Staff’s argument that it was not obligated to file workpapers supporting the settlement agreement misses OPC’s point. Public Counsel’s complaints about workpapers are two-fold:

- (1) It violated the Commission’s order not to provide workpapers for affidavits filed in support of the stipulation and agreement; and
- (2) An agreement not to disclose the existence of workpapers contemplated in preparation of a stipulation and agreement is offensive to the discovery process.

3. The affidavits MECG witness Greg R. Meyer and Empire witness James McMahon in support of the settlement include references to modeling assumptions and results. No one provided to OPC the workpapers with that modeling or other workpapers that led to those results

despite the Commission's December 13, 2017, *Order Setting Procedural Schedule and Other Procedural Requirements*. Staff's argument that it need not provide workpapers to support a stipulation and agreement misses the mark. Further, an affidavit is nothing other than written testimony, which is what the Commission contemplated in its rules, which require prefiled testimony to be verified. Empire, and others, should have provided the workpapers within two business days of Tuesday, April 24 2018, *i.e.*, by Thursday, April 26, 2018. OPC did not receive the most material workpaper until May 1, 2018.

4. In their settlement agreement the Signatories agree to nondisclosure terms that far exceed the Commission's rule 4 CSR 240-2.090(9), which embodies the common-law privilege against the disclosure of settlement discussions. They assert privilege over documents that contain facts to which the Signatories *agree*.

5. Public Counsel reasserts its position from its previous filing that a rehearing is appropriate given its restricted access to necessary materials. OPC received the operative spreadsheet on May 1: seven days after the filing of affidavits, five days after workpapers supporting the affidavits were due, and four days after the close of discovery, and only *three days before testimony in opposition was due*. OPC was excluded from negotiations, and the offending term seeks to determine the admissibility of documents and agrees to not describe or discuss the existence of documents. The totality of the circumstances does not suggest transparency. If Staff's intent is to assert its rights under the rule, it can do so without such an overbroad term.

WHEREFORE, Public Counsel submits its reply to Staff's Response to Public Counsel's Application for Rehearing.

Respectfully submitted,

/s/ Hampton Williams

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CERTIFICATE OF SERVICE

On this 17th day of August 2018, I hereby certify that a true and correct copy of the foregoing motion was submitted to all relevant parties by depositing this motion into the Commission's Electronic Filing Information System ("EFIS").

/s/Hampton Williams