STATE OF MISSOURI PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 3rd day of November, 2010.

In the Matter of The Empire District Electric Company)	
of Joplin, Missouri for Authority to File Tariffs Increasing)	File No. ER-2011-0004
Rates for Electric Service Provided to Customers in the)	Tariff No. YE-2011-015
Missouri Service Area of the Company)	

ORDER REGARDING THE MISSOURI ENERGY USERS' ASSOCIATION'S APPLICATION TO INTERVENE

Issue Date: November 3, 2010 Effective Date: November 3, 2010

Background

On September 28, 2010,¹ The Empire District Electric Company ("Empire") submitted a tariff designed to implement a general rate increase for electric service. An intervention deadline was set, and on October 20, the Midwest Energy Users' Association ("MEUA") filed a timely application for intervention. MEUA defines itself as follows:

MEUA is an unincorporated ad-hoc association of large commercial and industrial users of electricity who group together using the MEUA vehicle to combine resources and gain economies in representation and activity in these rate cases. At present, and for purposes of this case, MEUA participants are Praxair, Inc. ("Praxair"), Explorer Pipeline Company ("Explorer"), and Enbridge Energy, LLP ("Enbridge"), each of which is an Empire District customer and has previously intervened (individually or through MEUA) and been active in earlier Empire proceedings. Other similarly situated customers are also considering participation in this case through MEUA, but have not yet reached decisions on participation.

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¹ All dates throughout this order refer to the year 2010 unless otherwise noted.

Praxair and Explorer, according to MEUA, should be automatically granted intervention because these entities are signatories to a Stipulation Agreement filed in Case No. EO-2005-0263, a provision of which states:

Each of the Signatory Parties shall be considered as having sought intervenor status in any rate case or rate filing without the necessity of filing an application to intervene and Empire consents in advance to such interventions.

The Commission, however, is not a party to this Stipulation and is not contractually bound to its terms.

Empire's Objection

On October 25, Empire filed suggestions in opposition to the intervention request. Empire first observes that, pursuant to the Stipulation in EO-2005-0263, it has waived any objection to Praxair's or Explorer's intervention. Empire adds that it would have no objection to intervention by Enbridge. What Empire objects to is the intervention of MEUA as an association.

Empire argues that MEUA is an unincorporated association lacking legal status apart from its members, and as such, it is not a legal entity capable of suing or being sued in its own name.² Empire further argues that if MEUA is allowed to intervene without a set and definite member list, the Commission's intervention rule requiring that list will have been circumvented.³

MEUA's Response

MEUA argues that the Commission's rules permit intervention of informal associations and such associations need not be a legally recognized entity. MEUA further

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² Empire cites to: State ex rel. Automobile Club Inter-Insurance Exchange v. Gaertner, 636 S.W.2d 68 (Mobanc 1982) and The Executive Board of the Missouri Baptist Convention v. Carnahan, 170 S.W.3d 437 (Mo. App. 2005).

³ Commission Rule 4 CSR 240-2.075.

claims that is has identified the entities that currently form its association at the time of its intervention request and that any subsequently added member would be bound by the actions of the association in this case.

Analysis and Decision

The Commission's intervention rule does contemplate applications from associations. "Association" is not defined in the Commission's rules, but Black's Law Dictionary defines "association" as:

The act of a number of persons in uniting together for some special purpose or business. It is a term of vague meaning used to indicate a collection or organization of persons who have joined together for a certain or common object.⁴

Similarly, the American Heritage College Dictionary defines "association" as:

The act of associating or the state of being associated. An organized body of people who have an interest in common; a society.⁵

MEUA identifies itself as an "ad hoc" association, and consistent with the apparent impromptu nature of such an organization, MEUA expects it will be identifying additional members in the future. MEUA, currently composed of Praxair, Explorer and Enbridge, is not incorporated or otherwise legally organized and it lacks formal legal status.

MEUA affirmatively pleads that it will identify any new members as they join and that all of its members will be bound by the actions of MEUA in this case. The interest identified by MEUA as its uniting purpose for intervening is the affect any electric rate increase will have upon its industrial members. Any new members to the association will presumably have its interests aligned with that of the other members of MEUA or it would not be joining the association.

⁵ American Heritage College Dictionary (3rd Ed.), Houghton Mifflin Company, 1997, p. 83.

⁴ Black's Law Dictionary (6th Ed.), West Publishing Company, 1990, p. 121.

Commission Rule 4 CSR 240-2.075(3) requires an association filing an application to intervene to list all of its members, and MEUA has listed all of its current members. Empire has waived objection to the intervention of Praxair and Explorer pursuant to the terms of a Stipulation and Agreement entered into in File No. EO-2005-0263. And Empire states that it has no objection to the intervention of Enbridge. What Empire appears to really be objecting to is the uncertain future members to MEUA – members whose identity and interests are unknown.

Empire has a valid concern because the addition of new members may bring in new issues or disputes to the case without the Commission's formal approval, thereby circumventing the application process designed specifically to indentify all of the potential parties and their interests and positions.⁶ Indeed, granting intervention to an unincorporated association is a grant of intervention to the association's individual members – its current members.⁷

The Commission believes in transparency and full disclosure. Indeed these principles are built into the intervention rules for obvious reasons. While the Commission will grant intervention to MEUA's current members, it will also require MEUA to timely file a motion to add any new members when they join the association. That motion shall include an explanation for the new member seeking intervention beyond the intervention deadline. Additionally, each time a new member is identified and seeks intervention the new member must affirmatively plead that its interests are aligned with the association's and that the new member will be bound by the actions of the collective organization. If another industrial

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⁶ See Commission Rule 4 CSR 240-2.075(2) & (4).

⁷ An unincorporated association has no legal entity distinct from its membership. *State ex rel. Auto. Club Inter-Insurance Exchange v. Gaertner*, 636 S.W.2d 68, 70 (Mo. banc 1982).

It is also paramount for the Commission to identify all of the parties to ensure proper compliance with the Commission's standard of conduct rules.

entity has interests diverging from that of MEUA, it must seek intervention as a separate entity.

THE COMMISSION ORDERS THAT:

- 1. Praxair, Inc., Explorer Pipeline Company, and Enbridge Energy, L.L.P. are granted intervention appearing as The Midwest Energy Users' Association, an unincorporated association.
- 2. The Midwest Energy Users' Association, and its members, shall comply with the directions in the body of this order for adding any new members to its association.
 - 3. This order shall become effective immediately upon issuance.

BY THE COMMISSION

Steven C. Reed Secretary

(SEAL)

Davis, Jarrett, Gunn, and Kenney, CC., concur. Clayton, Chm., absent.

Stearley, Senior Regulatory Law Judge