

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held by telephone and internet audio conference on the 7th day of October, 2020.

In the Matter of The Empire District)	
Electric Company's Filing for Authority to)	
Implement Rate Adjustments Related to)	<u>File No. ER-2020-0311</u>
the Company's Fuel and Purchased Power)	
Adjustment Required in 20 CSR 4240-)	
20.090)	

ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT

Issue Date: October 7, 2020

Effective Date: October 17, 2020

On April 1, 2020, The Empire District Electric Company, a Liberty Utilities company (Liberty-Empire) filed a tariff sheet proposing to adjust the company's fuel adjustment rates, as provided by Commission Rule 20 CSR 4240-20.090(8). On May 1, 2020, Staff recommended the Commission issue an interim rate adjustment order to approve Liberty-Empire's substitute tariff sheet,¹ subject to true-up and prudence review. On May 11, 2020, the Office of the Public Counsel (OPC) filed a pleading opposing Staff's recommendation. OPC contended the proposed tariff sheet impermissibly included coal inventory adjustments related to retirement of the Asbury generating facility.

After Staff and Liberty-Empire responded to OPC's objection, the Commission on May 21, 2020, determined the objection raised an issue about whether the proposed fuel adjustment rates complied with Liberty-Empire's fuel adjustment clause (FAC) tariff. As required by Commission Rule 20 CSR 4240-20.090(8)(H), the Commission rejected the

¹ Liberty-Empire's tariff filing was assigned to Tariff No. JE-2020-0171. On April 6, 2020, Liberty-Empire filed a substitute tariff sheet, under the same tariff number, to correct an error.

substitute tariff and ordered Liberty-Empire to file a tariff sheet to implement interim adjusted fuel adjustment rates reflecting the elements of the proposed adjustment not in question. On June 18, 2020, the Commission approved such an interim tariff sheet,² effective July 10, 2020.

Hearing was set for September 10, 2020, and the parties filed written testimony according to the procedural schedule. After the parties informed the Commission they had reached an agreement in principle,³ the Commission on August 18, 2020, suspended the procedural schedule and continued the hearing.

On October 2, 2020, Liberty-Empire filed, on behalf of Staff, Liberty-Empire, and OPC, a *Global, Unanimous Stipulation and Agreement* (“Agreement”) to resolve all the issues in this matter. As the title of the Agreement indicates, it is a unanimous agreement that includes all of the parties and purports to resolve all issues. No additional tariff filing would be required under the Agreement.

As a term of the Agreement, Liberty-Empire will not seek recovery in this case of a \$1,925,886 coal inventory adjustment (“Asbury adjustment”). The parties agree Liberty-Empire will “reverse its initial entry of the inventory adjustment” and will defer the adjustment to FERC Account 182.3 – Other Regulatory Assets for consideration in Liberty-Empire’s next general rate case. This treatment is consistent with the Commission’s decision to authorize an accounting authority order (AAO) related to Asbury in Liberty-Empire’s most recent rate case.⁴ The parties also agree that this case

² Tariff No. YE-2020-0214.

³ *Motion to Suspend Procedural Schedule*, File No. ER-2020-0311 (August 17, 2020).

⁴ The Commission authorized the use of an AAO to establish a regulatory asset/liability, beginning January 1, 2020, to reflect the impact of the closure of the Asbury plant. *Amended Report and Order*, pp. 107-121, File No. ER-2019-0374 (July 23, 2020).

shall not constitute a prudence determination regarding the Asbury adjustment.

In addition, the Agreement provides the fuel adjustment rate to be charged customers under the current tariff sheet, approved by the Commission effective July 10, 2020, will remain effective until modified by a subsequent order. The parties also agree that \$177,885 of “costs attributable to undistributed coal expenses” are eligible costs to include under Liberty-Empire’s FAC. Such costs are to be included for recovery in Liberty-Empire’s October 1, 2020, FAC filing,⁵ subject to future prudence review. The Agreement provides that a “prior-period adjustment” will be allowed for “each respective month and associated cost.”⁶

The parties in this case filed written testimony pursuant to the procedural schedule. The Agreement provides that such pre-filed testimony will be admitted into the record in this case if the Commission approves the Agreement.

Commission rule provides for hearings in contested fuel adjustment rate filings.⁷ A hearing requirement is met when the opportunity for hearing has been provided.⁸ The Agreement expressly disposes of all of the issues among the parties, and no party has requested a hearing.

After reviewing the Agreement, the Commission independently finds and concludes that the Agreement is a reasonable resolution of the issues in this case and should be approved. To avoid any unnecessary delay in Staff’s review of Liberty-Empire’s

⁵ On October 1, 2020, Liberty-Empire submitted a FAC filing and revised tariff sheet with an effective date of December 1, 2020. The matter was assigned to File No. ER-2021-0097.

⁶ *Global, Unanimous Stipulation and Agreement*, ¶4 (Oct. 2, 2020).

⁷ 20 CSR 4240-20.090(8)(H).

⁸ *State ex rel. Rex Deffenderfer Enters., Inc. v. Pub. Serv. Comm’n*, 776 S.W.2d 494, 496 (Mo. App. 1989).

currently pending FAC filing, this order will be effective fewer than 30 days from the date of issuance.

THE COMMISSION ORDERS THAT:

1. The *Global, Unanimous Stipulation and Agreement*, filed on October 2, 2020, is approved. A copy of the Agreement is attached to this order and incorporated by reference.

2. Liberty-Empire, Staff, and the Office of the Public Counsel shall comply with the terms of the Agreement.

3. Testimony filed by the parties in this matter shall be admitted to the record in this case.

4. The procedural schedule is vacated.

5. This order shall be effective on October 17, 2020.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and
Holsman CC., concur.

Jacobs, Regulatory Law Judge