

In the Matter of:

**THE EMPIRE DIST. ELECTRIC COMPANY'S REQUEST FOR AUTHORITY, etc.**

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**ER-2019-0374, VOL. II**

*January 08, 2020*

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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS  
Discovery Conference  
January 8, 2020  
Jefferson City, Missouri  
Volume 2

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In The Matter Of The Empire )  
District Electric Company's )  
Request For Authority To File )  
Tariffs Increasing Rates For ) File No. ER-2019-0374  
Electric Service Provided To )  
Customers In Its Missouri )  
Service Area )

JOHN T. CLARK, Presiding  
REGULATORY LAW JUDGE

REPORTED BY:  
Beverly Jean Bentch, CCR No. 640  
TIGER COURT REPORTING, LLC

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A P P E A R A N C E S

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P R O C E E D I N G S

1  
2 JUDGE CLARK: It's one o'clock. Let's go on  
3 the record. The Commission has set aside this time for  
4 a Discovery Conference in the case captioned as In The  
5 Matter Of The Empire District Electric Company's Request  
6 For Authority To File Tariffs Increasing Rates For  
7 Electric Service Provided To Customers In Its Missouri  
8 Service Areas, File No. ER-2019-0374 assigned Tariff No.  
9 YE-2020-0029, which has been suspended through July 11  
10 of 2020.

11 The current date is January 8. The current  
12 time is 1:02 p.m. My name is John Clark. I'm the  
13 Regulatory Law Judge assigned to this matter. I'm going  
14 to begin by asking the attorneys to make their entry of  
15 appearance at this discovery conference. For The Empire  
16 District Electric Company?

17 MS. CARTER: Diana Carter, 428 East Capitol  
18 Avenue, Suite 303, Jefferson City, Missouri 65101.

19 JUDGE CLARK: Thank you. For the Staff of the  
20 Commission?

21 MS. PAYNE: Whitney Payne on behalf of the  
22 Staff of the Missouri Public Service Commission, 200  
23 Madison Street, Jefferson City, Missouri 65102.

24 JUDGE CLARK: Thank you. For the Office of  
25 the Public Counsel?

1 MR. WILLIAMS: Nathan Williams, Chief Deputy  
2 Public Counsel for the Office of the Public Counsel.

3 JUDGE CLARK: Thank you. Is there anybody  
4 here from the Missouri Division of Energy? I hear no  
5 one.

6 Anyone here from Midwest Energy Consumers  
7 Group? I hear no one.

8 Anyone here from Missouri Industrial Energy  
9 Consumers? I hear no one.

10 Anyone here from IBEW Local 1464? I hear no  
11 one.

12 Anybody here from IBEW 1474? I hear nobody.

13 Anybody here from The Empire District Retired  
14 Members & Spouses Association? I hear no one.

15 Anyone from the National Housing Trust? I  
16 hear no one.

17 Anyone from the Natural Resources Defense  
18 Council? I hear no one.

19 Anyone from the Sierra Club? I hear no one.

20 Anyone from Renew Missouri? I hear no one.

21 And anyone here from The Empire District  
22 Electric Company SERP Retirees? I hear no one.

23 So it appears we have three parties here  
24 today. Have I missed anyone? I hear no responses.

25 Okay. I have two issues that were brought up

1 for discovery issues today. I also had an email from  
2 Staff that I believe went to all the parties regarding  
3 what went on at discussion at agenda this morning. I  
4 may address that. I may send out an email to all the  
5 parties later concerning that. Would you like me to  
6 start with that?

7 MR. WILLIAMS: However you'd like to start.

8 JUDGE CLARK: Why don't I just do that. The  
9 Commission indicated that they wanted to go with a  
10 proposal that I believe was put forth by The Empire  
11 District and do an AAO for both known and unknown,  
12 measurable and immeasurable, kind of moving forward.  
13 It's my anticipation that because there would need to be  
14 supporting testimony and because operation and  
15 maintenance costs are a regular vague term that that was  
16 meant to encompass all impactual changes. So my  
17 anticipation is that an AAO will be ordered in the  
18 report and order.

19 MS. PAYNE: Okay.

20 JUDGE CLARK: And that I will order the  
21 parties to file suggestions as to categories that be  
22 covered in that AAO, and if need be during the  
23 evidentiary hearing I will ask questions about that to  
24 establish the necessary testimony for an AAO.

25 So in answer to your question, no, you will

1 not see an order before next Wednesday at agenda.

2 MS. PAYNE: Thank you. We were trying to  
3 determine how that could affect direct testimony be  
4 filed and subsequent testimony.

5 JUDGE CLARK: I understood that. That's kind  
6 of why I wanted to address that here; and like I said, I  
7 will send an email to that effect to all the parties --

8 MS. PAYNE: Thank you.

9 JUDGE CLARK: -- so that everybody --

10 MR. WILLIAMS: Judge --

11 JUDGE CLARK: Yes.

12 MR. WILLIAMS: -- for Public Counsel, we have  
13 in filings provided a listing and will claim that it's  
14 exhaustive.

15 JUDGE CLARK: No, you have provided in your  
16 filing, I believe, a list based upon FERC accounts; is  
17 that correct?

18 MR. WILLIAMS: I don't believe it was based on  
19 FERC accounts, but it's broader than operation and  
20 maintenance --

21 JUDGE CLARK: I did see that.

22 MR. WILLIAMS: -- which is not as broad as it  
23 sounds like you may think it is. I'm not sure what --  
24 Diana can speak to what Empire intended by that.

25 JUDGE CLARK: I can only infer what I think

1 the Commission intended --

2 MR. WILLIAMS: I understand.

3 JUDGE CLARK: -- and it was my understanding  
4 from the way they talked about, especially in relation  
5 to Evergy and three years -- or more than three years  
6 passing that they intend to encompass as much as  
7 possible all of the impacts in the AAO. If OPC, if in  
8 the order as it goes out parties are to file categories  
9 and OPC wants to resubmit that, they're certainly  
10 welcome to do so.

11 MR. WILLIAMS: Sure.

12 JUDGE CLARK: Thank you. I do remember a list  
13 in your -- I can't remember whether it's your first or  
14 second pleading.

15 MR. WILLIAMS: I don't recall offhand.

16 JUDGE CLARK: Now let's get on to the  
17 discovery issues, because that's really kind of the meat  
18 of why we're here today. OPC, why don't you briefly  
19 summarize. You had an (a), (b) and (c) point, if I  
20 remember.

21 MR. WILLIAMS: I believe the vagueness issue  
22 is no longer at issue; is that correct, Diana?

23 MS. CARTER: Right. Your filing that you made  
24 for the discovery conference was the detail we needed.  
25 So we no longer have the objection on vagueness.



1 JUDGE CLARK: Okay. And that was the  
2 objection on --

3 MR. WILLIAMS: (c).

4 JUDGE CLARK: As regard to each and every  
5 provision that is being made to ensure that those costs  
6 and revenues do not flow through to Empire's FAC?

7 MR. WILLIAMS: Well, it doesn't resolve all of  
8 (c), but it resolves the vagueness issue. We don't have  
9 any dispute on that.

10 JUDGE CLARK: So Diana, at this point you  
11 don't -- I'm sorry. Ms. Carter, at this point you don't  
12 believe that they've sufficiently clarified it that  
13 you're no longer objecting on the ground of vagueness?

14 MS. CARTER: Correct, yes. What was in OPC's  
15 pleading takes care of our questions on that.

16 JUDGE CLARK: Okay. So what I've got right  
17 now is a copy of the hedge agreement. What's your  
18 objection to giving over a copy of the hedge agreement?

19 MS. CARTER: No objection to subpart (a), just  
20 subparts (b) and (c).

21 MR. WILLIAMS: She's still objecting based on  
22 relevancy and overbreadth. I don't know. You had a  
23 long list. Vagueness is no longer.

24 JUDGE CLARK: You're not objecting to a copy  
25 of the hedge agreement?

1 MS. CARTER: Correct.

2 JUDGE CLARK: Okay. I'll knock that out. Has  
3 a copy of the hedging agreement been supplied?

4 MR. WILLIAMS: I don't believe we have it yet,  
5 do we, Diana?

6 MS. CARTER: I wouldn't think so. We're not  
7 at our 20 days yet --

8 MR. WILLIAMS: Correct.

9 MS. CARTER: -- for the response time. At  
10 least two of them wouldn't exist yet, but we didn't make  
11 any objection to subpart (a). We will provide those  
12 when they are created.

13 JUDGE CLARK: Now, my memory on subpart (b) is  
14 that the objection is mainly that it's irrelevant and  
15 immaterial to this proceeding; is that correct?

16 MS. CARTER: Yes, and that would go to part  
17 (c) as well if it's not about changes that Empire has  
18 requested in this case.

19 JUDGE CLARK: Now, the FAC is being addressed  
20 in this case; is that correct?

21 MR. WILLIAMS: Most certainly.

22 JUDGE CLARK: Okay. Mr. Williams, what's your  
23 response to their objections?

24 MR. WILLIAMS: There's nothing vague about it.  
25 In fact, they've said that they want to make some

1 changes to the Fuel Adjustment Clause in particular  
2 because of these agreements. They're wanting to assure  
3 that revenues don't flow through the Fuel Adjustment  
4 Clause before their costs from these agreements are  
5 included in the permanent rates, base rates. The terms  
6 of the Fuel Adjustment Clause are being set in this case  
7 and how -- potentially how revenues through these  
8 hedging agreements and costs of them flow through the  
9 FAC will be set by the terms of the FAC that are  
10 established in this case. So I think it's clearly  
11 relevant.

12 JUDGE CLARK: Is there -- you said -- I'm  
13 going to ask you to clarify that last part for me again.  
14 I think I heard it but I'm not sure I did. You said  
15 that portions, these are the hedging contracts related  
16 to the three wind farms?

17 MR. WILLIAMS: Yes.

18 JUDGE CLARK: And that's also the three wind  
19 farms, Ms. Carter, that you said are going to be  
20 immediately -- in a rate case filed immediately after  
21 this one?

22 MS. CARTER: Correct.

23 JUDGE CLARK: And that relates to those three  
24 wind farms, the investments?

25 MS. CARTER: Yes. Judge, that was the basis

1 of our objection. We don't have any objection to  
2 providing the hedge agreements when they're created. I  
3 believe one is created but not two. But the intended  
4 effective date of the hedges is July 1 of 2021. They're  
5 just costs and revenues from those hedge agreements  
6 can't possibly be at issue in this case. The effective  
7 date of the hedge agreement will be roughly the  
8 operation of law date of the next case.

9 MR. WILLIAMS: We're not asking for the  
10 information for purposes of the general rates that are  
11 coming out of this case. We're asking for the  
12 information because -- well, for one thing Empire has  
13 indicated that it intends to have the costs -- or the  
14 revenues from those agreements not flow through its fuel  
15 clause and it's asserted that under the way its fuel  
16 clause is currently worded they would. So it's trying  
17 to assure that they don't. Actually our question is  
18 directed towards what steps are you -- have you taken  
19 and are you taking to assure that neither costs nor  
20 revenues from those hedge agreements flow through your  
21 fuel clause in the future. That's the query.

22 JUDGE CLARK: When you say "in the future,"  
23 are we talking in the future before the next rate case?

24 MR. WILLIAMS: Yes.

25 JUDGE CLARK: How far immediately in the

1 future are you thinking?

2 MR. WILLIAMS: It depends on when these things  
3 come online and start generating revenues I expect.

4 JUDGE CLARK: All of these things seem  
5 relevant to me when you put them in the light of  
6 relevance, but the real question is, is it reasonably  
7 calculated to lead to admissible evidence. That's kind  
8 of where I'm running into a stumbling block right now if  
9 it's an undefined point in the future not quite  
10 definable.

11 MR. WILLIAMS: They're saying right now Empire  
12 believes how its fuel clause currently is worded that  
13 revenues from these hedge agreements would --

14 JUDGE CLARK: Would go through, yeah.

15 MR. WILLIAMS: -- would go through the fuel  
16 clause. They're already making changes to it to address  
17 that. We're just asking exactly what are you doing to  
18 assure that those revenues don't come through the fuel  
19 clause.

20 JUDGE CLARK: And that's probably the better  
21 phrasing of the bottom question.

22 MR. WILLIAMS: As well as what steps you're  
23 taking to make sure you're not collecting any of your  
24 costs through the fuel clause, because they're not in  
25 the base rates. They won't be in this case.

1 JUDGE CLARK: All right.

2 MS. CARTER: Judge, if I can respond to that.  
3 We're talking about agreements that won't take effect  
4 until July 1 of 2021, Nathan's request. OPC's DR asks  
5 not about the wind project as a whole but about the  
6 hedge agreements that are to take effect July 1 of 2021  
7 and the request asks for major and minor accounts how  
8 Empire intends to account for the costs that are  
9 incurred and the revenues that are received through the  
10 hedge agreements, including where they will be recorded  
11 by major and minor accounts. I don't know how that can  
12 be related.

13 JUDGE CLARK: What you're saying is that can't  
14 be answered at this point?

15 MR. WILLIAMS: I don't have a problem with a  
16 response that says that.

17 MS. CARTER: It also can't be related to this  
18 case, because it's something that's going to happen more  
19 than a year after the operation of law date of this  
20 case.

21 JUDGE CLARK: Well, if it's going to affect  
22 the Fuel Adjustment Clause, it's going to affect rates.  
23 Let's take this apart and before we go over what my  
24 authority is in this let's take this apart.

25 MR. WILLIAMS: If I may, a lot of times, and I

1 think it's the case in this situation, the fuel clause  
2 specifies even accounts there where information is  
3 obtained to determine costs and revenues that flow  
4 through.

5 JUDGE CLARK: I guess what I'm going to ask at  
6 this point is it seems like some of Empire's objections  
7 are to the fact that some of this stuff doesn't exist  
8 yet or they don't know where it's going to be accounted  
9 for at least right now. Is there a pared down version  
10 of any of this information that would be acceptable to  
11 you?

12 MR. WILLIAMS: I don't have a problem with an  
13 answer that says we don't know or we don't have the  
14 information. That's different than the objection saying  
15 it's not relevant and it's overburdensome, and so forth.

16 JUDGE CLARK: I agree.

17 MR. WILLIAMS: So I mean, if that's the  
18 answer, that's the answer.

19 JUDGE CLARK: Is that the answer, Diana?

20 MS. CARTER: That would be the answer, though,  
21 but the reason we object here based on relevance because  
22 of the timing, I can give that answer subject to the  
23 objection and that's what we planned on answering  
24 subject to the objections, but we still have to have the  
25 objections there from my perspective. Otherwise, we're

1 under the obligation to update the responses and it  
2 doesn't make sense to me to be updating that response in  
3 this case when that will be an issue in the next case.  
4 We'll be working on the FAC language related to the  
5 hedge agreements in the next case, but it doesn't make  
6 sense that we'd be coming back to a data request  
7 response in this case for that. Say around hearing time  
8 we start figuring out what's going to happen with the  
9 hedge, it doesn't seem to make sense to me that I would  
10 then be obligated to update this DR response for the  
11 next case.

12 JUDGE CLARK: All right. Now is an  
13 appropriate opportunity to talk about what my authority  
14 is in this case, because it's somewhat more limited than  
15 I usually have the Commission grant me. Normally I  
16 would ask the Commission to grant me the authority to  
17 rule on all of the discovery disputes, but the parties  
18 in particular in this instance requested that they all  
19 be resolved; that they be resolved through -- discovery  
20 disputes should be handled in accordance with 20 CSR  
21 4240-2.090(8) when the parties commit to resolve  
22 discovery disputes without Commission intervention to  
23 the extent possible.

24 Now, if you look at the points in regards to  
25 if there's a discovery dispute, usually it says



1 something about a needed phone conference. I don't read  
2 the rules as literal as that. This is that conference.  
3 So I'm not going to read it that this is dead serious.  
4 So at this point, Mr. Williams, you're authorized to  
5 file a motion to compel, if you want to, and that will  
6 be put before the Commission for the Commission to rule  
7 on.

8 MR. WILLIAMS: Okay.

9 JUDGE CLARK: How long do you believe you  
10 would need to do such a motion?

11 MR. WILLIAMS: I'll try to get it out today.

12 JUDGE CLARK: Okay. And I'll give Empire  
13 until Friday to respond to it.

14 MS. CARTER: Judge, if I could ask for time  
15 beyond the due date of the response to the data request.  
16 I would at least like my 20 days to respond.

17 JUDGE CLARK: When does the 20 days run?

18 MS. CARTER: I don't know. January 3 was 10  
19 days. So January 13 would be when the response is  
20 actually first required.

21 JUDGE CLARK: My only problem with that, and  
22 I'd appreciate it I can give you that because  
23 technically you've got 20 days to object although you've  
24 already objected. So I don't really -- Given the number  
25 of times that I'm going to be out of town next week,

1 including I believe most of the day on the 13th, it's  
2 going to be difficult for me to do this. So if it's not  
3 too long of a response, I'll be happy to give you until  
4 then.

5 MR. WILLIAMS: If this is going to be what  
6 Empire often does, which is make an objection and then  
7 go ahead and provide a response, if we're getting a  
8 response I don't need a motion. I don't need an order  
9 to compel.

10 JUDGE CLARK: Well, if that's the case, the  
11 phone bridge I believe I asked to stay open until two  
12 o'clock. You guys are welcome to try and work it out  
13 after I leave the room.

14 MR. WILLIAMS: I thought I heard Diana say  
15 that was her intention. She's just not wanting to have  
16 to update things later.

17 MS. CARTER: Correct. Yeah, we'll give you  
18 the answer that we don't know what we're doing on (b)  
19 yet and then on (c) we'll answer as to the changes that  
20 are being requested in this case and beyond that we  
21 don't know.

22 JUDGE CLARK: Why don't we come back to that  
23 in a minute. We'll go on to Staff's issue.

24 MS. PAYNE: Staff actually is happy to report  
25 things are relatively resolved. As to our first issue

1 regarding incentive compensation, the parties met  
2 yesterday and said that -- my understanding is that half  
3 the information was provided and the other half has been  
4 committed to being provided. Diana, is that your  
5 understanding as well?

6 MS. CARTER: That is my understanding as well.

7 MS. PAYNE: So we are here only in the  
8 capacity that the company has committed to providing the  
9 rest of the information forthcoming.

10 JUDGE CLARK: I believe one of the other  
11 arguments was that the format it was provided in is the  
12 incorrect format.

13 MS. PAYNE: And that is our second concern  
14 regarding the weatherization data, and we issued a  
15 follow up data request that hopefully clarifies that,  
16 and I just wanted to ensure that the company is okay  
17 with that and understands what Staff needs.

18 MS. CARTER: Yes, I think that one just came  
19 through yesterday.

20 MS. PAYNE: Monday, yesterday? I don't know.  
21 I can't figure out what day it is this week.

22 MS. CARTER: Whenever you and I last talked  
23 about it.

24 MS. PAYNE: Correct.

25 MS. CARTER: Whenever that DR came in, we sent

1 it on to those folks. That should be clear that you  
2 were wanting that specific format.

3 MS. PAYNE: That would be great. If we could  
4 get that before the 20 days has run, that would be  
5 wonderful, because we are trying to -- We know it's too  
6 late to incorporate it into our direct testimony at this  
7 point, but the sooner we get it we can ensure that we've  
8 had it updated for rebuttal.

9 MS. CARTER: Yes, I'll put a rush on it to the  
10 extent anyone will follow my urging. I'll do my best.

11 MS. PAYNE: I will look to my witness and make  
12 sure that that is sufficient for him. All right. We  
13 are good.

14 JUDGE CLARK: Mr. Williams, what's the latest  
15 you need a ruling on this?

16 MR. WILLIAMS: If we're getting the  
17 information, I don't know that I care about the  
18 objection. That was my concern because we got an  
19 objection saying we don't have to provide this. I hear  
20 Diana saying we are going to get a substantive response.

21 JUDGE CLARK: Why don't we do this.

22 MR. WILLIAMS: Am I not correct, Diana?

23 MS. CARTER: Yes, depending on what you mean  
24 by substantive. The answer is we haven't made any of  
25 those determinations yet on (b), but I plan on providing

1 an answer to you within our 20 days subject to the  
2 objections to the best we could answer them.

3 JUDGE CLARK: Why don't we do this. I think  
4 mine will encompass this as well. You've had your  
5 conference with me. At this point, while they've said  
6 information is forthcoming, it still hasn't happened.  
7 So in my mind there still is at this moment a discovery  
8 dispute. So you are authorized, as I see it under the  
9 rule at this time, to file a motion to compel. You can  
10 do it today. You can do it tomorrow. You can do it  
11 next week. And then I'll make a determination on when  
12 Empire has to reply by.

13 I think it would be difficult at this point if  
14 they still have time left to respond and I give them  
15 until the 13th, I think it would be difficult to put it  
16 on and sufficiently have time to brief the Commission as  
17 to what it's about before the 15th. So if you file a  
18 motion to compel, I would expect to see it not the 15th  
19 but the following week.

20 MR. WILLIAMS: Okay.

21 JUDGE CLARK: Okay. Is that acceptable?

22 MR. WILLIAMS: Sure.

23 JUDGE CLARK: Ms. Carter, is that acceptable  
24 to you?

25 MS. CARTER: Yeah, that sounds good.

1 JUDGE CLARK: Okay. Are there any other  
2 issues that need to be addressed by the Commission at  
3 this discovery conference?

4 MR. WILLIAMS: I'm not aware of any.

5 MS. PAYNE: Staff does not have any.

6 JUDGE CLARK: Thank you. Hearing none, this  
7 hearing is adjourned and we'll go off the record.

8 (Off the record.)  
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*Beverly Jean Bentch*

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Beverly Jean Bentch, CCR No. 640

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