
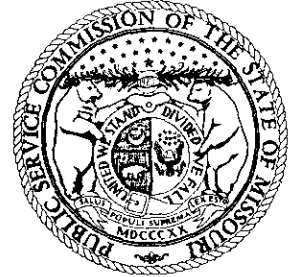


NOTICE

TO: Data Center
All Parties in Case No. **ER-2008-0093**

FROM: Chairman Jeff Davis 

DATE: December 26, 2007



On Sunday, December 23, 2007, I read the attached article and comments from the Joplin Globe newspaper on the Joplin Globe website. Since the article references various utility issues related to Empire District Electric's service and this case, **ER-2008-0093**, is a contested case, I am making notice to the parties this communication has been received.

Although communications from members of the public and members of the legislature are always welcome, those communications must be made known to all parties to a contested case so that those parties have the opportunity to respond. According to the Commission's rules (4 CSR 240-4.020(8)), when a communication (either oral or written) occurs outside the hearing process, any member of the Commission or Regulatory Law Judge who received the communication shall prepare a written report concerning the communication and submit it to each member of the Commission and the parties to the case. The report shall identify the person(s) who participated in the *ex parte* communication, the circumstances which resulted in the communication, the substance of the communication, and the relationship of the communication to a particular matter at issue before the Commission.

Therefore, we submit this report pursuant to the rules cited above. This will ensure that any party to this case will have notice of the attached information and a full and fair opportunity to respond to the comments contained therein.

cc: Commissioners
Executive Director
Secretary/Chief Regulatory Law Judge
General Counsel



Opinions vary on Empire's storm response

— By Derek Spellman

dspellman@joplinglobe.com

Since July, Gail Miller said, she has called Empire each month to warn the company that a tree near the power lines on her street in Duquesne was reaching too close and needed to be trimmed.

After freezing rain descended and coated the limbs with ice, that tree came apart and fell on the line, severing power to the whole block.

Miller said she was without power for more than a week, and whenever she called for an estimate on when electricity would return, she could never get an answer.

"I called every day and I got the big blow-off," she said. "I thought that the way (Empire) handled it was poor."

Gary Garvin also went without power for a stretch this month, but he lauds Empire's efforts during the power outage.

He saw weary linemen working despite cold and ice. Garvin was without electricity for six days at his home near Webb City and for several days at his business, Fat & Happy, in Airport Drive.

He defends Empire, particularly its linemen, and points out that the storm was massive in scale and severe enough to warrant both state and federal disaster declarations in areas across several states, including Jasper County. Although some in Oklahoma will not see their power restored until after the new year, Empire was able to restore power to tens of thousands in less than a week, he said.

"They did a hell of a job," he said. "I think they have done a marvelous job. They can't control an act of God."

Was Empire caught unprepared, or was it the victim of two unusually severe winter storms in less than a year?

The answer: It's hard to say, according to state officials and consumer advocates, because there are no independent standards to measure the performance of utility companies.

Robert M. Clayton III, a member of the Missouri Public Service Commission, said if a consumer were to ask the PSC if it thinks a utility company has done a good job or bad job, the panel would be "in no position to assess or evaluate" the company's performance objectively because the state still has no benchmarks despite a flurry of widespread power outages in the past few years.

The PSC is the state's regulatory body for utility companies.

"I think we are left at the mercy of the self-reporting and self-regulating of the (utility) companies," Clayton said.

Empire's assessment

Michael Palmer, vice president of commercial operations for Empire, said that the power outages in Jasper County stemmed from a combination of factors.

Tree limbs falling onto power lines was one factor, but accumulated ice on lines and on poles also contributed to the damage and attendant outages. Even newer equipment, Palmer said, sustained damage because of the weight of accumulated ice.

The company's infrastructure follows the design standards established by the Institute of Electrical and Electronics Engineers, which sets industry standards, he said.

And he pointed out that some of the damage was caused not by tree limbs falling off but by entire trees or large parts of trees toppling onto power lines, something that limited trimming could not have prevented.

Empire officials declined to release information about the company budget — including the total amount

of money allocated for tree trimming this year versus total operating budget, and how that distribution has changed in recent years — citing Empire's status as a publicly traded company.

Company officials did say that the utility's budget for vegetation management had increased since 2003, that the figure was in the "millions of dollars" and constituted one of its highest maintenance costs.

Over the past four years, Empire has employed directional pruning, a practice in which branches that could pose future problems to power lines are removed. The practice differs from topping a tree, which spurs the growth of weakly attached and closely spaced new shoots.

Tree-trimming activities are carried out year-round, Palmer said.

Directional pruning is a component of the company's larger vegetation management plan, which also includes herbicide applications.

Empire has devised a tree-trimming plan, but Palmer said the company has to rework that plan each time a major ice storm hits. The plan is revised to target those circuits that experienced outages because of the storm.

Since the January storm, the company targeted areas south of Joplin and on the city's southern edge, Palmer said. Those also were areas that reported limited outages, if any, during the storm.

It also will review its tree-management plan to determine what areas it should target for vegetation management, he said, but it is too early to say what areas will be targeted for trimming next year because of this month's storm.

Empire officials said the company will perform its own analysis of this month's storm and its response early next year, and will seek to recover costs generated by the storm in future rate cases, according to a release.

Measuring performance

Miller, of Duquesne, remains critical of Empire partly because she has lived in Michigan, where cold-weather storms were regular but power outages were not.

"We had regular snowstorms, but we never had anything like this," she said of the recent outage.

A number of states did begin looking at their own standards for utility companies in the wake of an August 2003 blackout that affected a swath of the country and cut power to more than 50 million people at its peak.

Miller's former home state of Michigan instituted several measures because an postmortem of the blackout found sagging power lines that came into contact with trees helped trigger the outage, said Judy Palnau, a spokeswoman for the Michigan Public Service Commission.

Michigan's PSC required investor-owned utilities to file reports detailing their tree- and vegetation-trimming practices for the last year, including the frequency of practices; efforts to focus on particular problem areas; plans for future trimming; and finances devoted to those activities in 2003 and for the preceding five years.

The commission also established statewide standards for elements that include service outages, facility upgrades, repairs and maintenance, telephone service, billing service, operational reliability and public and worker safety.

But the commission also established performance standards that contained deadlines for restoring service under normal and catastrophic conditions, response to customer calls and response to complaints. A system of financial incentives and penalties also was effected for utility companies based on how quickly they could restore service and on how frequently customers experienced interruptions, or outages, of that service.

But Palnau cautioned that the provisions did provide waivers for utilities in the event of a catastrophe, and that the storm that battered Missouri, Oklahoma and Kansas in the past two weeks could likely qualify as a catastrophe.

Missouri benchmarks?

There are no performance standards in Missouri despite several widespread outages in the few years, said Clayton, of the Missouri Public Service Commission.

"We don't have any standards," he said. "We have no objective standard to see whether (a utility) is doing a good job or a bad job with day-to-day reliability."

Clayton said some proposals that would establish such standards are now pending before the commission.

Those benchmarks, if effected, would address elements such as how often utility companies inspect their infrastructure and how often customers have their service interrupted.

A proposal that also would fix statewide requirements for tree trimming is also before the commission again.

This proposal mirrors one that the commission approved in September by a margin of 4 votes in favor and 1 against. The commissioners thought they had given final approval to the rules then, but a clerical error has caused the panel to restart the process.

Clayton was the lone dissenting vote in the proposal's final draft because he said it was not stringent enough. Clayton and former commissioner Steve Gaw authored the original draft.

Clayton said this month's outages in Jasper and Barton counties and in St. Joseph, Mo., signal that the state would reconsider those more stringent rules.

"I absolutely think this is another example of why we need to revisit tree trimming," he said.

A majority of commissioners voted in favor of the less extensive requirements because of fears that the new regulations would mean higher costs for both companies and consumers.

Commission Chairman Jeff Davis cited a private analysis performed for Empire that claimed many of the requirements in Clayton's draft would not have been feasible. Empire claimed that it would have cost \$45 million a year to implement, compared with the company's \$41 million in net income during the past state fiscal year.

Accountability

But part of the problem, said Alberta Slavin, executive director of the Consumer Council of Missouri, is that the commission relies on the utility companies to say what is feasible and fair. The only performance benchmarks, she contended, are both set and enforced by the utilities themselves.

"I think they pretty much set their own standards," said Slavin, who is also a former member of the Missouri Public Service Commission.

Slavin cites the commission's approval of a rate increase requested by AmerenUE after storm damage and widespread outages in 2006.

In that case, she argued, foes of the hike produced "tons of public testimony" that cast doubt on Ameren's justification for the increase. Outside crews enlisted to help with Ameren personnel said the company was behind on its maintenance schedule, she said, while customers testified that their requests for trees to be trimmed were never answered.

"Our position was that they should not have gotten an increase," Slavin said of Ameren.

The commission ultimately approved a rate increase.

"You have a commission that tends to vote with the utility companies," Slavin said. "You don't have a pro-consumer Public Service Commission."

Consumers can sometimes send conflicting signals to utilities about tree-trimming policies, said Mark Rakes, manager of marketing and consumer services for New Mac Electric Cooperative. New Mac has pursued a "very, very aggressive trimming program" over the past 10 years.

When the power goes out in the wintertime, people are quick to call for aggressive vegetation management, he said. But when the temperature warms up, memories of the blackouts fade and property owners can be reluctant to let their trees be trimmed or cut.

"As soon as spring comes, they forget all about the ice," Rakes said.

"Customers don't like their yard trees cut down, and I don't blame them, but it is a necessity," he said.

Regardless, power companies should prepare for the worst in the wintertime, and this area has more than likely not seen the last of severe winter storms, Rakes said.

"It is not a matter of if we are going to have another ice storm, but when," he said.

Underground vs. overhead

Michael Palmer, vice president of commercial operations for Empire District Electric Co., said that underground lines cost three times as much as overhead lines. Installing about one mile of overhead

lines would cost about \$50,000, while one mile of underground would cost \$150,000.

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Photos



Globe/T. Rob Brown Fat & Happy owners Gary Garvin (center) and Karen Garvin (second from right) show their appreciation to Empire crews during the power outage.

Tree Trimmed Diva writes:

The morality police ask this question.... "Can anyone explain why the people "downtown" never lost power? Well Duh! There isn't trees in downtown to fall and knock the lines down. So many people are complaining, but I have to agree with DN, what have YOU done? Complain about your yard being rutted, not wanting that beautiful old tree chopped up? Waiting for a free lunch from Empire to trim the trees? If you cannot personally trim your trees, then there are a number of reputable tree services that can be hired to take care of your trees. Of course, that means personal responsibility on your part. After last year, we assessed our tree situation and decided that much could be done on our part to have limbs trimmed away from the lines. We did not lose our electricity. Consider too, storms are not 'Acts of God' like some would like to call them. They are acts of NATURE. Use a bit of common sense, God doesn't sit up in heaven and look down and say, "Well, I think I'll make it hard on those people and send them an ice storm so they can suffer a bit." or "I think I'll have a tornado today and destroy a bunch of property and kill a few people today". Doesn't even sound logical.

writes:

When living out side Neosho on New-Mac power I was told they were removing 4 trees that lined the front of my house. They removed them and planted 4 new ones out of the way of the power line. Seems like alot of people are having trouble getting limbs removed when my trees were forcefully removed, for the publics best intrest of course, but that is what we should be about. Everyones best intrest not the intrest empire makes on its profits. Wrong definition of intrest being used, theres the problem

wake up call writes:

Its time we sent a signal to Empire about what is, and what is not acceptable. This is not the first year Joplin ever had Ice Storms. It is the first year that we are expected to accept NO HEAT, NO way to prepare Food and NO survivable shelter for 60,000 people. If things do not change it will hapen again and again. I live in central Joplin and was without power for over 4 weeks this calendar year. Empire needs to Publicly set forth a plan to weather proof ALL of their service area within the next few years. They won't. It is about MONEY. The Fix? Lets ALL 60,000+ effected customers collectively sue Empire for all the added cost to us, Hotel fees, generators, loss of electronic devices due to spikes in the on/off/on/off restore process, loss of frozen foods, loss of wages for not being able to take a warm shower and clean clothes to go to work, loss of wages for needing to take time out to find shelter for familys and small children. Show me a lawyer willing to file the Class Action and We will sign on. For Those of you who think its not about Money remember that Empire will Say "due to workers tied up with the storm damages, we had to Estimate your bill so you pay for the full month of service that you did not use." They still get paid. They pay no interest on Deposit money held in most cases for over a year. We live in Tornado Alley, and have Winter EVERY YEAR. Having above ground power lines is simply not acceptable, It is 100% negligent, shows a total lack of foresight in things the common man can predict. How many of the 60,000 customers who will be without power from a January 2008 storm will need to die from the extreme cold before it becomes cheaper for Empire to fix the problems. Empire provides nothing but excuses, ask yourself (or Empire) how many of their Executives were in the 60,000 people without power..... Answer: NONE!!!! The Choice: Call your Congressman and Senators, Make them make a change that hurts,,, OR Live in the dark, freezing cold for 10% of year like a caveman.

Cherokee Citizen writes:

Kudos to the linemen, but the management needs lessons in crisis management. They had no comprehensive plan and their customer service was sub-par. The management should have had a command center highlighting areas that were down and advising customers as to where they were and what they were doing. Information allows people the chance to see there is hope. Instead, Empire management literally kept their customers in the dark. No calls or door-to-door checks, no explanations, no contact. This kind of inept management is not the proper way to manage a situation. It is unfortunate that Empire has a virtual monopoly for the area. Perhaps there needs to be a change. At the very least Empire needs to cut out the "Fuel Fee" that pays for the State Line Plant. There is plenty of coal, so we do not need that plant. That fee alone accounts for 1/3 or more of my electric bill. Perhaps shareholders can do with less?? Empire management has forgotten their roots.

hobo writes:

i do believe that they did a heck of a job getting the electric restored although the empires office did answer the phone calls this time they didnt follow up on the outages and didnt pass this information to the line crews i can say cable one did do this and made sure the service was repaired and restored

fenrow writes:

If it costs three times as much to bury lines, but we have to replace the lines every time one of these storms hits us wouldn't we have broken even about now. I moved here from a suburb in Colorado where every line was buried. We NEVER lost power. If the lines were underground, this would not be an issue every time one of these storms came. If Empire's annual improvement budget is in the millions, they should earmark around one million dollars a year to bury the lines. Why not invest in something that has an outside chance at lasting. Pretend that you're a buisness or something. One million bucks would bury close to seven miles of line. Yeah, it would take about 50 or 60 years to bury it all but I guarantee we'd feel the effects much sooner than that. So would Empire in their pocketbook. Maybe it should be considered as a tax initiative. The ridiculous number of power lines in this city, and the haphazard way they are strung up are a eyesore anyway.

London Calling... writes:

Noah and rain for 40 days and nights? Is all weather conditions blamed on God? God likes sunshine. God likes war. God likes famine. God likes chain stores?

doe writes:

MY GOSH, don't you ever get tired of griping!! It was an ice storm! Could you have stopped it? Did you trim your trees I'll bet not, you want Empire to trim them and if they leave a rut in your precious yard you gripe about that. Dammed if they do dammed if they don't. Get over it and stop griping. I sure hope when you want a little favor from Empire you remember all your complaints. That will never happen because your all wrapped up in your world. And IF any of the other crews that were in the area made comments about Empire they have no more sense then any of you. AND IF YOU THINK THAT EMPIRE IS THE ONLY GAME IN TOWN IT'S PROBABLY BECAUSE THEY ARE A GOOD COMPANY THAT'S WHY THEY HAVE SUCH A LARGE AREA. DON'T LIKE EMPIRE GET OUTTA TOWN, THERE ARE OTHER COMPANIES YOU JUST HAVE TO GET OFF YOU LAZY BUTT AND MOVE.

writes:

We called empire the Monday after the storm to let them know that a pole was about to fall. They told us "It will likely fall before any one gets out there". The pole fell that night causing damage to the property, it was 9 days later before they came to replace the pole and an additional 2 days after that before power was restored. No answer as to why it took 2 extra days to restore our power while EVERYONE around us had their power restored. Aggravating!

The Sunflower Kid writes:

Those "act of God" sorts willing to cut Empire a break are the same types who probably view the price-hikes by energy monopolies also as "acts of God." With some folks, the natural tendency is just to bend over willingly while the oligarchy continues its dominance--in spite of our nation's constitutional promises.

Lessons to be learned writes:

In other words, there is no evaluation process to ensure Empire is performing at an acceptable level. Therefore, comments, either pro or con, are just uninformed opinions. Some folks that didn't suffer as much are confident Empire held their best interest at hand while those that lost precious food and spent money they didn't have trying not to freeze to death will certainly say Empire didn't act accordingly. However, I am certainly of the opinion that several steps could have been taken to avoid the severity of the outage as in preventive maintenance. Trim or remove trees that are suspect to future outages and maintain electrical equipment (poles, lines and transformers, to name a few) in a manner to minimize the effects of bad weather. I spoke to a couple of line crews from out of state that restored my power 8 days after the fact and they commented several times on the poor quality of the equipment they were working with. One of the crew members I spoke with jokingly added that he believed Ben Franklin and Thomas Edison must have been alive when the our equipment was put in place and helped install some of our poles and lines due to their poor conditions and outdated situations, as compared to the equipment they maintain in their home state. The bottom line is Empire has only practiced "break-down maintenance" and not "preventive maintenance" in order to keep costs down and profits up. Unfortunately, when this is the practiced maintenance policy, a relatively severe storm will inflict MAJOR damage as we experienced. If a preventive policy was in place it goes without saying that damages would have been minimized and isolated. Also, why weren't crews running in shifts around the clock? Instead they worked only daylight hours which resulted in approximately 70 hours per man, per week in lost productivity and downtime. 3 shifts working 24 hours would have, in fact, allowed each man to work an 8 hour day while allowing for plenty of rest and kept crews on the job the entire day. Instead, Empire adopted the concept of working EVERYONE 12-14 hours per day which results in tired crews and lost productivity. Please don't tell me SAFETY was the concern because first of all you guys have lights to work with (you're the power company for chrissakes) and rested crews are safer than tired crews. Besides, the night shifts may have moved slower working in the dark, but they would have made SOME progress and not at the expense of safety, if managers are doing their job. Poor management decision, in my opinion. Last issue; customer service was useless. A system needs to be implemented to inform customers of crew status and how long they can expect to be without power. An informed individual can then make plans and take charge of their situation to a certain degree. Instead, we were forced to call customer service only to be told that we were "on the lists" and NO they couldn't tell us, even an approximation, of when power might be restored to our areas. Obviously the front lines and the Headquarters were not in communication at all which rendered customer service useless as far as communication with the public was concerned. Perhaps we can learn a great many lessons here and implement better ways to defend against mother nature. I'm sure we'll be told efforts are being made, but at the cost of another HUGE rate increase, only to find out the next time that nothing has been done!

Tired of the excuses writes:

I many times asked empire to come remove trees in lines and was always given an excuse, I damn near did it myself, (if I could have reached them)Empire new the storm was coming for several days, pull your head outa your butts, once again we have been ignored ,as long as they get paid they dont care.

Joplin Morality Police writes:

Can anyone explain why the people "downtown" never lost power? What kinds of special treatment did they receive while the rest of us were left freezing and forced to go to shelters? Why must everything in this town be about those few people? And when will the rest of you out there get fed up with this and demand a stop to it?

David writes:

Yes the ice storm was an act of GOD, but trees not being trimmed up that hang out over power lines are the power companies responsibility. I worked for a large power company and they had their own tree department, and also contracted others if the trees were not trimmed like they should be. Every electric bill payer deserves the right to electricity! As for the linemen doing their jobs, yes that is what they are paid to do. Their jobs would be a lot easier if the companies took care of the electrical system, the way it should be!!

tim writes:

empire needs to be more proactive in their line maintenance. insist with homeowners and businesses that trees encroaching on right of ways need to be removed. this helps tremendously in preventing outages. i have had two recent experiences this year (not storm related) where the response was quick and professional. the only problem was that minimal work was done to resolve the issue. tree limbs were cut away from lines JUST enough to prevent contact rather than creating a respectable buffer zone between the two.

writes:

I think we should be prepared for some huge rate hikes. They're going to make up there losses and get some profit to boot.

Mike writes:

We went 8 days here without electricity, as did many people in our area. We have a large tree in our back yard. Three of the largest limbs dropped during the ice storm. They all three have wedged themselves in a way that they are still connected to the tree. One lays on top of a storage building and is also wedged against our house where it has severed a vent pipe from our furnace. It also lays across, and presses down on, our service entrance line. Two others lay across our neighbors fence and rest in their yard, one of these also touches our service entrance line. I cannot cut these for obvious reasons. I'm sure they are live from laying against the line, and if any were cut, they would fall, dropping the line and more likely than not, ripping our service entrance from the back of our house. I've made two reports to Empire, one the Monday during the storm, and one the following Monday. It's now almost a full week from the last report and still nobody from the electric company has contacted us. We have electricity and I'm extremely happy about that, but very concerned about the situation in my back yard. I haven't complained to Empire simply because I have no idea how busy they are. I'm sure there is other people in worse shape than we are.

writes:

I am reminded of Lily Tomlin's old routine about the phone company. Don't tell us cause we don't give a rat's behind. Thanks a lot to the PSC!

A. Johnson writes:

Our house was without power in Carl Junction for exactly 12 days. We have 3 trees that need to be cut down in Empire's easement, and contacted Empire over 3 years ago take them out. We are still waiting. A falling limb took out the power line to our house at the pole. Our house was the only house in the neighborhood without power for so long. Most were out 3 or 4 days. I was recovering from heart surgery and 12 days without heat and power was torture. My husband kept our fireplace and generator going 24 hours a day for 12 days. The outage cost us \$1000 for a generator, \$300+ for gasoline, \$150 for 3 ricks of wood, a refrigerator full of food, 8 days work for my husband and 12 days of anguish. I called Empire daily for help. None came until finally had to resort to chasing down a power line truck on the morning of the 12th day and leading them to the house to make the repairs. The guys were nice and apologized. It took them less than 30 minutes to fix the line. The linemen are not the ones who need to be criticized-they worked hard, but I think Empire District was rather indifferent to its individual customers.

DN writes:

Everyone wants to point fingers but some need to point them back at themself. Did YOU trim the tree's on your property? I dont really care for Empire because they are the only power provider in Joplin. Its not like you can take your buisness elsewhere. They are a little behind on trimming trees but an ice storm like this one would have outted power for days anyway. It made trees bend and fall all kinds of directions. I dont blame Empire any more than I blame myself. The difference is, I trimmed my trees this year after the January ice storm.