

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 24th day of
January, 2008.

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| In the Matter of The Empire District Electric |) | |
| Company's Application for Expedited Treatment |) | <u>Case No. ET-2008-0223</u> |
| Concerning Net Metering Tariff Sheets |) | Tariff No. YE-2008-0408 |

ORDER APPROVING TARIFF

Issue Date: January 24, 2008

Effective Date: February 2, 2008

On January 3, 2008, The Empire District Electric Company filed a revised tariff that would implement a new Missouri statute, the "Net Metering and Easy Connection Act",¹ which took effect on January 1, 2008. That tariff carries an effective date of February 2, but Empire filed a motion along with its tariff asking the Commission to expedite its approval of the tariff to allow it to go into effect on January 17. Empire also asked the Commission to waive application of the Commission's current net metering regulation, 4 CSR 240-20.065, which is inconsistent with the new statute.

The Commission's Staff filed an expedited recommendation regarding the proposed tariff on January 4. Staff recommended that the Commission grant Empire's request for expedited treatment and approve the tariff, with an effective date of January 17. Staff also recommended that the Commission grant Empire a variance from the Commission's current

¹ Section 386.890, RSMo (Supp. 2007)

net metering rule until the Commission rescinds that rule and replaces it with a new rule consistent with the revised statute.²

On January 9, the Office of the Public Counsel filed a Motion to Suspend. OPC argued that Empire's proposed tariff sheets are not numbered properly due to the Missouri Supreme Court's finding that the Commission's December 29, 2006 approval of Empire's tariffs was unlawful.³

In Case No. ER-2006-0315, the Commission issued an Order of Clarification on January 15. Then on January 18, in this case, the Commission ordered OPC to state what objections, if any, it still had in this case in light of the Order of Clarification in Case No. ER-2006-0315.

OPC responded on January 23. OPC stated that if the effect of the Commission's January 15, 2008 order in Case No. ER-2006-0315 was to vacate the section of Ordered Paragraph 2 of the December 4, 2007 order in Case No. ER-2006-0315 that approved P.S.C. Mo. No. 5, Section 4, 3rd Revised Sheet No. 13, Canceling 2nd Revised Sheet No. 13, and to allow P.S.C. Mo. No. 5, Section 4, 4th Revised Sheet No. 13, Canceling 3rd Revised Sheet No. 13 to remain in effect, then OPC no longer has a numbering issue with respect to Tariff No. YE-2008-0408.

OPC's January 23, 2008 response states that its concern about the tariff sheets in this case is limited to Sheet 13. Indeed, Empire filed P.S.C. Mo. No. 5, Section 4, 4th Revised Sheet No. 13, Canceling 3rd Revised Sheet No. 13, on July 23, 2007, effective August 22, 2007. The Commission approved that sheet on August 13, 2007, effective

² Section 386.890.9 allows the Commission nine months from January 1, 2008, to promulgate implementing regulations.

³ *State ex. rel. Office of Public Counsel v. Public Service Com'n. of State*, 236 S.W.3d 632 (Mo. banc. 2007).

August 22, 2007 in Case No. EO-2006-0497. That 4th Revised Sheet No. 13 is what has been effective since August 22, 2007, and will remain in effect through February 1, 2008. This order will approve P.S.C Mo. No. 5, Section 4, 5th Revised Sheet No. 13, Canceling 4th Revised Sheet No. 13, effective February 2, 2008.

Based on the recommendation of its Staff, the responses of OPC, and the Commission's Order of Clarification in Case No. ER-2006-0315, the Commission will approve the submitted tariff. In addition, the Commission will waive application of Commission Rule 4 CSR 240-20.065.

IT IS ORDERED THAT:

1. The following tariff sheets filed by The Empire District Electric Company on January 3, 2008, and assigned Tariff No. YE-2008-0408, are approved to become effective on February 2, 2008:

PSC Mo. No. 5

4th Revised Section 4, Sheet No. 12, Canceling 3rd Revised Section 4, Sheet No. 12
5th Revised Section 4, Sheet No. 13, Canceling 4th Revised Section 4, Sheet No. 13
4th Revised Section 4, Sheet No. 14, Canceling 3rd Revised Section 4, Sheet No. 14
5th Revised Section 4, Sheet No. 15, Canceling 4th Revised Section 4, Sheet No. 15
6th Revised Section 4, Sheet No. 16, Canceling 5th Revised Section 4, Sheet No. 16
Original Section 4, Sheet No. 16a
Original Section 4, Sheet No. 16b
Original Section 4, Sheet No. 16c

2. The Motion for Expedited Treatment is denied.

3. The Empire District Electric Company is granted a waiver from compliance with Commission Rule 4 CSR 240-20.065 until such time as the Commission rescinds that rule and adopts a new rule consistent with the Net Metering and Easy Connection Act.

4. This order shall become effective on February 2, 2008.
5. This case shall be closed on February 3, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a faint rectangular stamp.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton,
Appling, and Jarrett, CC., concur.

Pridgin, Senior Regulatory Law Judge