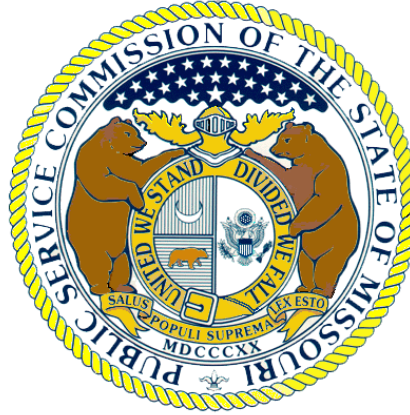


Exhibit No. 109

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of The Empire District)
Electric Company's Request for Authority)
to File Tariffs Increasing Rates for Electric)
Service Provided to Customers in its)
Missouri Service Area)

File No. ER-2019-0374
Tariff No. YE-2020-0029

AMENDED REPORT AND ORDER

Issue Date: July 23, 2020

Effective Date: August 2, 2020

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of The Empire District)
Electric Company’s Request for Authority) **File No. ER-2019-0374**
to File Tariffs Increasing Rates for Electric) **Tariff No. YE-2020-0029**
Service Provided to Customers in its)
Missouri Service Area)

REPORT AND ORDER

TABLE OF CONTENTS

COUNSEL 4

I. PROCEDURAL HISTORY 6

TARIFF FILINGS, NOTICE, AND INTERVENTION 6

LOCAL PUBLIC HEARINGS..... 7

GLOBAL STIPULATION AND AGREEMENT 7

EVIDENTIARY HEARING 7

CASE SUBMISSION..... 8

II. GENERAL MATTERS 9

MECG MOTION TO STRIKE, AND EMPIRE’S OBJECTIONS TO EVIDENCE 9

GENERAL FINDINGS OF FACT..... 9

GENERAL CONCLUSIONS OF LAW 13

III. UNDISPUTED ISSUES..... 17

RATE DESIGN, OTHER TARIFF AND DATA ISSUES 19

FUEL ADJUSTMENT CLAUSE..... 21

ENERGY EFFICIENCY 21

RELIABLE SERVICE 22

ESTIMATED BILLS 22

RETIREMENT 23

IV. DISPUTED ISSUES..... 24

1. RATE OF RETURN—RETURN ON EQUITY, CAPITAL STRUCTURE, AND COST OF DEBT 24

2. RATE DESIGN, OTHER TARIFF AND DATA ISSUES 39

3. JURISDICTIONAL ALLOCATION FACTORS 51

4. WNR AND SRLE ADJUSTMENT MECHANISMS..... 53

5. FAC..... 59

6. CREDIT CARD FEES 73

7. RATE CASE EXPENSE 76

8. MANAGEMENT EXPENSE 84

9.	ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION	86
10.	CASH WORKING CAPITAL	95
11.	ACCUMULATED DEFERRED INCOME TAX.....	199
12.	TAX CUT AND JOBS ACT OF 2017 FEDERAL INCOME TAX RATE REDUCTION.....	101
13.	ASBURY AND AAO.....	107
14.	FUEL INVENTORIES.....	121
15.	OPERATION AND MAINTENANCE NORMALIZATION.....	122
16.	PENSION AND POST-EMPLOYMENT BENEFITS (OPEB) (FAS 87 AND FAS 106)	124
17.	AFFILIATE TRANSACTIONS.....	128
18.	RIVERTON 12 O&M TRACKER.....	136
19.	SOFTWARE MAINTENANCE EXPENSE	138
20.	ADVERTISING EXPENSE	139
21.	CUSTOMER SERVICE.....	141
22.	MATERIAL AND SUPPLIES	146
23.	ASSET RETIREMENT OBLIGATIONS	147
24.	LED REPLACEMENT TRACKER	150
25.	MAY 2011 TORNADO UNAMORTIZED AAO BALANCE	154
26.	DEPRECIATION AND AMORTIZATION EXPENSE	155
27.	IATAN/PLUM POINT CARRYING COSTS	157
28.	INCENTIVE COMPENSATION.....	160
29.	CUSTOMER DEMAND PROGRAM (DSM)	164
30.	BAD DEBT EXPENSE	165
31.	RETAIL REVENUE.....	166
32.	OTHER REVENUE.....	170
33.	TAX CUT AND JOB ACTS REVENUE.....	173
34.	PROPERTY INSURANCE.....	174
35.	INJURIES AND DAMAGES.....	175
36.	PAYROLL AND OVERTIME	177
37.	RETENTION BONUSES.....	178
38.	EMPLOYEE BENEFITS.....	180
39.	PROPERTY TAXES	181
40.	DUES AND DONATIONS	183
41.	OUTSIDE SERVICES.....	184
42.	COMMON PROPERTY REMOVED FROM PLANT AND ACCUMULATED DEPRECIATION.....	185
43.	FILE No. EM-2016-0213 COMMISSION-ORDERED CONDITIONS.....	186
	ORDERED PARAGRAPHS.....	189

COUNSEL

THE EMPIRE DISTRICT ELECTRIC COMPANY:

Diana C. Carter, 428 E. Capitol Ave, Suite 303, Jefferson City, Missouri 65101.

STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

Nicole Mers, Deputy Staff Counsel, **Jeff Keevil**, Deputy Staff Counsel, **Whitney Payne**, Senior Staff Counsel, Post Office Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

OFFICE OF THE PUBLIC COUNSEL:

Nathan Williams, Chief Deputy Public Counsel, **Caleb Hall**, Senior Counsel, PO Box 2230, Jefferson City, Missouri 65102.

MISSOURI DEPARTMENT OF NATURAL RESOURCES – DIVISION OF ENERGY:

Jacob Westen, Deputy General Counsel, PO Box 176, Jefferson City, Missouri 65102.

MIDWEST ENERGY CONSUMERS GROUP:

David L. Woodsmall, Woodsmall Law Office, 308 E. High St., Suite 204, Jefferson City, Missouri 65101.

THE EMPIRE DISTRICT ELECTRIC SERP RETIREES, LLC:

David L. Woodsmall, Woodsmall Law Office, 308 E. High St., Suite 204, Jefferson City, Missouri 65101.

RENEW MISSOURI ADVOCATES:

Tim Opitz, 409 Vandiver Dr., Building 5, Ste. 205, Columbia, Missouri 65202

NATIONAL HOUSING TRUST:

Andrew Linhares, 3115 Grand Ave., Suite 600, St. Louis, Missouri 63118

SIERRA CLUB:

Henry B. Robertson, Great Rivers Environmental Law Center, 319 N. Fourth St., Suite 800, St. Louis, Missouri 63102

NATURAL RESOURCES DEFENSE COUNCIL:

Henry B. Robertson, Great Rivers Environmental Law Center, 319 N. Fourth St., Suite 800, St. Louis, Missouri 63102

THE EMPIRE DISTRICT RETIRED MEMBERS & SPOUSES ASSOCIATION:

Terry M. Jarrett, 514 E. High St., Suite 22, Jefferson City, Missouri 65101

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNIONS NOS. 1464 AND 1474:

Michael E. Amash, 753 State Ave., Suite 475, Kansas City, Kansas 66101

SENIOR REGULATORY LAW JUDGE: John T. Clark

REPORT AND ORDER

I. Procedural History

Tariff Filings, Notice, and Intervention

On August 14, 2019, The Empire District Electric Company (Empire) filed tariff sheets designed to implement a general rate increase for utility service. The submitted tariff (Tracking No. YE-2020-0029) would have increased Empire's annual electric revenues by approximately \$26.5 million dollars (approximately 4.93 percent)¹. The tariff had an effective date of September 13, 2019. In order to allow sufficient time to study the effect of the tariff sheets and to determine if the rates established by those sheets are just, reasonable, and in the public interest, the tariff sheets were suspended until July 11, 2020. The Commission directed notice of the filings and set an intervention deadline. The Commission granted intervention requests from the following entities: the Missouri Department of Natural Resources - Division of Energy (DE), Midwest Energy Consumers Group (MECG), Natural Resources Defense Council (NRDC), Sierra Club, Renew Missouri Advocates (Renew Missouri), National Housing Trust (NHT), The Empire District Electric SERP Retirees (EDES), The Empire District Retired Members & Spouses Association (EDRA), and the International Brotherhood of Electrical Workers Local Unions No. 1464, and 1474 (IBEW).

The Commission adopted a test year encompassing the twelve months ending on March 31, 2019, updated through September 30, 2019, with a true-up period to include known and measurable information through January 31, 2020. On December 9, 2019, The Office of the Public Counsel (OPC) filed *Public Counsel's Motion to Modify Test Year*

¹ Ex. 4P, Richard Corrected Direct, Schedule SDR-9.

to Include Isolated Adjustments Related to Retirement of Asbury. OPC requested the Commission modify the ordered test year to include isolated adjustments for the retirement of the Asbury coal-fired power plant. OPC asked to include isolated adjustments to account for Empire moving Asbury's retirement from no later than June 2020, to no later than March 2020. The Commission denied OPC's request. March is outside the true-up cutoff period and the Commission determined that Asbury's retirement is best addressed in Empire's next rate case. Instead, the Commission ordered the parties to submit items for potential inclusion in an Accounting Authority Order (AAO) to capture the financial impacts of that retirement for consideration in Empire's next rate case.

Local Public Hearings

The Commission conducted local public hearings in Bolivar, Joplin, and Branson, Missouri.²

Global Stipulation and Agreement

On April 15, 2020, Empire, the Commission's Staff (Staff), MECG, EDESR, EDRA, NRDC, NHT, and Renew Missouri submitted their *Global Stipulation and Agreement* (Agreement). On April 16, 2020, OPC objected to the Agreement. Pursuant to Commission rule, the Agreement became the joint position statement of the signatory parties. However, no party is bound by the Agreement and all the issues addressed in the Agreement remain for determination after hearing.³

Evidentiary Hearing

On October 17, 2019, the Commission scheduled an evidentiary hearing for April 14-17, and 20-22, 2020. On March 13, 2020, Missouri Governor, Mike Parson, declared

² Transcript, Vols 3, 4, 6-8.

³ Commission Rule 20 CSR 4240-2.115(2)(D).

a state of emergency because of the -COVID-19 viral pandemic. On March 23, 2020, the Governor closed Missouri state buildings to all but essential employees. The Commission responded to the closure by preparing to conduct the evidentiary hearing electronically by videoconference.

On April 3, 2020, Staff submitted on behalf of the parties a *Progress Report and Request for Extension of Filing Dates*. In that pleading the parties agreed to waive cross examination of all witnesses and asked the Commission to cancel the evidentiary hearing and decide all issues on the record. The Commission suspended the hearing to allow for submission of the case on the record, and altered the procedural schedule to accommodate new filing dates and the Commission's questions for the parties.

Case Submission

The Commission admitted the testimony of 58 witnesses, received 321 exhibits into evidence, and took administrative notice of certain matters. Briefs were filed according to the modified procedural schedule. The final reply briefs were filed on May 18, 2020, and the case was deemed submitted for the Commission's decision on that date.⁴

The Commission issued a Report and Order on July 1, 2020. On July 8, 2020, Staff filed an application for clarification. On July 10, 2020, EDESR, EDRA, and Empire also filed motions for clarification. Staff's motion noted that the Commission's Report and Order determined that the Fuel Adjustment Clause (FAC) transmission percentages of 34% for the Southwest Power Pool (SPP) and 50% for the Midcontinent Independent System Operator (MISO), which Staff supported, were inconsistent with Staff's trued-up

⁴ "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 20 CSR 4240-2.150(1).

base factor, which the Commission adopted. Therefore, the Commission is amending this Report and Order to resolve this inconsistency, clarify some other issues, and to address concerns about the enforceability of the parties' resolution of undisputed issues.

II. General Matters

MECG Motion to Strike, and Empire's Objections to Evidence

MECG filed its *Motion to Strike Portions of OPC Surrebuttal Testimony* on April 12, 2020, asking the Commission to strike portions of OPC surrebuttal testimony on the basis that the testimony was not responsive to matters raised in rebuttal testimony. The Commission denies MECG's motion to strike testimony.

On May 6, 2020, Empire filed its *Objections to Offers of Evidence*, objecting to specific testimony offered by OPC witnesses relating to the retirement of the Asbury power plant. The Commission has previously determined that the test year in this case would not be modified to include isolated adjustments related to the retirement of Asbury, and that isolated true-up adjustments for Asbury's retirement would not be included in this general rate proceeding.⁵ However, that determination does not make all testimony related to Asbury's retirement irrelevant to every issue before the Commission in this case. Because the testimony in question contains evidence relevant to pending issues, Empire's objections to specific OPC testimony are overruled and that testimony is admitted into the record.

General Findings of Fact

The Commission finds that any given witness's qualifications and overall credibility are not dispositive as to each portion of that witness's testimony. The Commission gives

⁵ File No. ER-2019-0374, Order Denying Motion for Reconsideration, issued February 19, 2020.

requirements for establishing a tracker have not been met with the facts presented in this case. The Commission denies Empire's requests for LED replacement trackers.

25) May 2011 Tornado Unamortized AAO Balance

Findings of Fact

422. An AAO is an accounting mechanism that permits deferral of costs from one period to another. The items deferred are booked as an asset rather than an expense, thus improving the financial picture of the utility in question during the deferral period. During a subsequent rate case, the Commission determines what portion, if any, of the deferred amounts will be recovered in rates.⁵⁸³

423. In File No. EU-2011-0387, the Commission authorized Empire to defer incremental O&M expenses incurred for the repair, restoration and rebuild activities associated with the May 22, 2011 tornado in Joplin. Empire was also allowed to defer depreciation expense and carrying costs associated with the tornado-related capital expenditures.⁵⁸⁴

424. The Commission ordered the Company to begin amortizing the deferral over a ten-year period to start at the earlier of (1) the effective date of new rates implemented in its next general rate case (File No. ER-2012-0345) or next rate complaint case; or (2) June 1, 2013.⁵⁸⁵

425. The AAO permits Empire to accrue a carrying charge equal to its AFUDC rate on its tornado capital additions during the deferral period to offset the lack of a current return on its tornado-related capital additions.⁵⁸⁶

⁵⁸³ Ex. 129, Bolin Surrebuttal True-Up, page 2.

⁵⁸⁴ Ex. 129, Bolin Surrebuttal True-Up, pages 2-3; and Ex. 101, Staff Direct Report, page 53.

⁵⁸⁵ Ex. 129, Bolin Surrebuttal True-Up, page 3, and Ex. 101, Staff Direct Report, page 53.

⁵⁸⁶ Ex. 129, Bolin Surrebuttal True-Up, page 3.

426. The unamortized AAO balance as of January 31, 2020 is \$1,274,630.⁵⁸⁷

427. In File No. WR-95-145, the Commission noted that including the unamortized balance of a flooding disaster in rate base would shield the shareholders from the risk of a natural disaster while imposing the risk entirely on the ratepayers.⁵⁸⁸

428. Excluding the unamortized balance from Empire's rate base denies it a return on the investment it made to restore electric service, results in an immediate understatement of Empire's cost of service to Missouri retail customers and is at odds with the Commission's order authorizing the deferral.⁵⁸⁹

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The magnitude of the destruction from the Joplin Tornado was something Empire could neither have prevented nor predicted. After the tornado, Empire made significant investments to restore electric systems to its Missouri retail customers quickly and efficiently. The Commission at that time authorized the deferral of expenses to restore, repair, and rebuild. The Commission finds that it is appropriate that the unamortized AAO Balance for the May 2011 Joplin Tornado be included in rate base.

26) Depreciation and Amortization Expense

Findings of Fact

429. Empire is not requesting to change currently ordered depreciation rates in this case.⁵⁹⁰

⁵⁸⁷ Ex. 129, Bolin Surrebuttal True-Up, page 3; and Ex. 70, Tornado Regulatory Asset Workpaper.

⁵⁸⁸ Ex. 129, Bolin Surrebuttal True-Up, page 4.

⁵⁸⁹ Ex. 5, Richard, Rebuttal, page 7.

⁵⁹⁰ Ex. 101, Staff Direct Report, page 89.

547. No party in this case sought to compel discovery.

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

Condition G.3 of the Merger Stipulation, Access to Records Conditions, states that Empire shall provide Staff and OPC access to the complete LUCo and Empire Directors' meeting minutes. It also states that Empire may object for relevancy. OPC's witness Murray testified regarding the information Empire objected to for relevancy. Empire is within its right to object under condition G.3 for relevancy. If OPC believed that the requested information was relevant it should have asked the Commission to compel Empire to produce that information. It did not. The Commission received no motions to compel discovery in this case. The Commission finds that Empire complied with condition G.3, because it provided board of director information to Staff in response to Staff's request, and timely objected to OPC's requests based upon relevancy.

Decision Summary

In making this decision as described above, the Commission has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the material was not dispositive of this decision.

Additionally, Empire provides safe and adequate service, and the Commission concludes, based upon its review of the whole record, that the rates approved as a result of this order support the provision of safe and adequate service. The revenue

requirement authorized by the Commission is no more than what is sufficient to keep Empire's utility plants in proper repair for effective public service and provide to Empire's investors an opportunity to earn a reasonable return upon funds invested.

By statute, orders of the Commission become effective in thirty days, unless the Commission establishes a different effective date.⁷²⁹ In order that this case can proceed expeditiously, the Commission will make this order effective on August 2, 2020, to prevent unnecessary delay in the filing of compliance tariffs. This is a new order and consequentially all applications for rehearing of the July 1, 2020, Report and Order are now moot. Anyone seeking rehearing of this Amended Report and Order must file a new application for rehearing before the effective date of this order.

THE COMMISSION ORDERS THAT:

1. The Motion to Strike Portions of OPC Surrebuttal Testimony filed by Missouri Industrial Energy Consumers on April 10, 2020, is denied.
2. The Objections to Offers of Evidence filed by The Empire District Electric Company on May 6, 2020, are denied.
3. The tariff sheets submitted on August 14, 2019, by The Empire District Electric Company, assigned Tariff No. YE-2020-0029 are rejected.
4. The Empire District Electric Company is authorized to file tariff sheets sufficient to recover revenues approved in compliance with this order.
5. The Empire District Electric Company shall file any information required by Section 393.275.1, RSMo, and Commission Rule 20 CSR 4240-10.060 no later than September 1, 2020.

⁷²⁹ Section 386.490.3, RSMo.

6. The Empire District Electric Company shall record as a regulatory asset/liability the costs and revenues identified in the body of this order as of January 1, 2020, related to the closure of the Asbury Power Plant. The regulatory asset/liability should quantify separately dollars related to the categories of costs and revenues.

7. The Empire District Electric Company shall comply with all directives, conditions and reporting requirements as more fully described in the body of this order.

8. This Report and Order shall become effective on August 2, 2020.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

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

Clark, Senior Regulatory Law Judge