

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 19th day of
June, 2008.

In the Matter of The Empire District Electric
Company's Tariffs to Increase Rates for Electric
Service Provided to Customers in the Missouri
Service Area of the Company

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Case No. ER-2008-0093
Tariff No. YE-2008-0205

ORDER ADMITTING LATE-FILED EXHIBIT 32 INTO EVIDENCE

Issue Date June 19, 2008

Effective Date: June 19, 2008

On June 2, 2008, the Industrial Intervenors filed late-filed Exhibit 32 in response to a request for information made by counsel for The Empire District Electric Company during the course of the recent hearing. On June 4, the Commission ordered that any party wishing to object to the admission of Exhibit 32 do so no later than June 10, and that any response to an objection be made by June 16. On June 10, Empire objected to the admission of Exhibit 32. The Industrial Intervenors responded to Empire's objection on June 16.

Exhibit 32 was prepared by the Industrial Intervenors' witness, Maurice Brubaker. Brubaker testified at the hearing about Empire's proposed fuel adjustment clause and advocated the implementation of a sharing mechanism as part of such a fuel adjustment clause. Two Commissioners questioned Brubaker about the proposed sharing mechanism and specifically asked whether Missouri or any other state had ever implemented such a mechanism. In response to the Commissioners' questions, Brubaker replied that such

sharing mechanisms had been put in place in various jurisdictions, but he was unable to provide specific details.¹

On re-cross examination in response to questions from the bench, counsel for Empire asked Brubaker the following question:

Okay. You also indicated that you were aware of several commissions that had imposed a requirement that companies collect less than 100 percent of their fuel and purchased power costs through their fuel adjustment clause?

Brubaker replied:

That there was a sharing, yes.

Counsel for Empire then asked:

Would you be willing to provide a list of those utilities that you're aware of?

To which Brubaker replied:

Sure.

Counsel for Empire followed with:

And could you give me case numbers where the fuel adjustment clause was adopted for those companies?

Brubaker answered:

If we have that, yes.

The presiding officer then reserved exhibit number 32 for Brubaker's promised response.²

Exhibit 32, as filed by the Industrial Intervenors, includes a chart listing six utilities around the country that have sharing provisions in FAC mechanisms. It also includes 38 pages of tariffs, stipulations and testimony from those jurisdictions around the country that have enacted some form of fuel adjustment clause sharing mechanism.

¹ Transcript, Pages 777-783.

² Transcript, Pages 785-787.

Empire objects to admission of Exhibit 32, contending that the submitted information does not comply with its counsel's request. According to Empire, it was only seeking information about cases in which a state utility commission had "imposed" a sharing mechanism on an unwilling utility. Exhibit 32 does not indicate the means by which sharing mechanisms were established for the six listed utilities and, in fact, the supporting documentation indicates that for some of the utilities the sharing mechanism was implemented as part of a stipulation and agreement. On that basis, Empire argues Exhibit 32 is non-responsive to its request and asks the Commission to deny its admission into evidence. Furthermore, Empire asks the Commission to order the Industrial Intervenors to submit a revised exhibit that complies with Empire's request.

An examination of the transcript reveals that Empire is not correct. The previously quoted question from Empire's counsel asserts that Brubaker had previously indicated that several commissions had imposed a sharing mechanism on companies with fuel adjustment clauses. Brubaker's answer, however, deflects that assertion by simply agreeing that there was a sharing, while not agreeing that he had previously indicated that such a mechanism had been imposed by any Commission. In fact, the transcript reveals that Brubaker did not make any claim about how those sharing mechanisms came into existence while answering questions from the Commissioners. Thereafter, in response to further questions asking for information in which a fuel adjustment mechanism was "adopted" not "imposed", Brubaker agrees to provide a list of utilities that have sharing mechanisms, along with any case numbers, of which he was aware, in which those mechanisms were adopted.

Exhibit 32 reasonably complies with what Brubaker agreed to provide, although it may not be what counsel for Empire thought he was requesting. Furthermore, the information included in Exhibit 32 is relevant to the issues before the Commission. Empire's objection is denied and the Commission will admit the exhibit into evidence.

IT IS ORDERED THAT:

1. Exhibit 32 is admitted into evidence.
2. This order shall become effective on June 19, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

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

Woodruff, Deputy Chief Regulatory Law Judge,