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August 3, 1992

Mr. Brent Stewart, Executive Secretary
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102

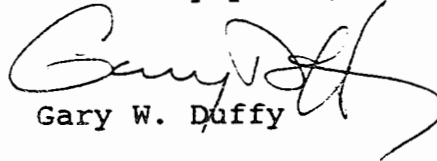
Re: Case Nos. ~~EX-92-299~~ and EX-92-300
Electric Utility Resource Planning and Promotional Practices
Rules

Dear Mr. Stewart:

Enclosed for filing with your office please find an original
and fourteen copies of the initial comments of The Empire District
Electric Company in both of the above dockets.

If there are any questions about this, just let me know.

Sincerely yours,


Gary W. Duffy

Enclosures
cc w/encl:
Office of the Public Counsel

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

In the matter of proposed Commission)
rules 4 CSR 240-22.010 through) Case No. EX-92-299
4 CSR 240-22.080; Electric Utility)
Resource Planning.)

**INITIAL COMMENTS OF
THE EMPIRE DISTRICT ELECTRIC COMPANY**

Comes now The Empire District Electric Company ("Empire") in response to the notice appearing in the Missouri Register on July 1, 1992 with regard to the above-captioned proceeding, and respectfully submits the following initial comments.

1. These comments are in response to the notice printed at 17 MoReg 902 ("the notice"). Empire intends to have Mr. Robert B. Fancher, Vice President - Corporate Services, in attendance at the public hearing on September 10, 1992 to answer questions from the commissioners and the hearing examiner, as indicated in the notice.

Overview

2. Empire is committed to responsibly planning for the future, and has been doing that since its inception. Empire prides itself on taking care of its customers' needs in a manner that provides excellent service at low rates. Empire has accomplished this by being progressive in its approach to planning. Empire has made changes in its planning process in almost every planning cycle; changes that were warranted by circumstances and by available technology. Over the years, those changes have led to a

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much more integrated process. At the same time, Empire has remained flexible in its planning process so as to be able to adapt to the constantly changing business environment. Empire also prides itself on having made these changes without undue expenditures.

3. Empire believes that you must judge a planning process by the decisions it produces. The judgment of the decision-makers is the key ingredient in the planning process -- not the data and mechanisms used in the process. No mechanical process, even with huge amounts of data, has yet been produced to match experienced judgment in this industry. Empire's decision-makers have made effective planning decisions. This is borne out in Empire's low rates, low embedded costs, and excellent customer relations. Although the planning process will continue to evolve as it has in the past, Empire expects to continue to bring the same qualities of judgment to the process it has demonstrated in the past.

4. While the goal of prudent planning is universally recognized as beneficial, Empire has been performing effective planning for many years without the full process mandated by the rules proposed in this docket. Empire participated in the informal meetings preceding this rulemaking and wishes to compliment the Commission on these meetings. The sheer magnitude of the provisions originally distributed could not have been adequately handled in a process which only allows written comment. The rulemaking process depends heavily upon communicating intentions,

so it is essential for there to be "give and take" between the parties to reach an understanding of those intentions.

5. Instead of an extensive point by point analysis on all aspects of the rules, Empire chose to briefly present its opinion on certain primary concepts. Empire considers the proposed rules to be a very significant subject -- one that can have a significant impact upon Empire and all of its customers. Empire has chosen to keep its comments brief in order to emphasize its position on the overall approach of the rules. The brevity of these comments should not be interpreted as placing little importance on the proposed rules. The contrary is true. Empire hopes that the brevity of its comments on the major topics will convey the importance it places on the subject.

6. On balance, Empire believes the rules are not needed to ensure the continued reliability of its operations and the provision of safe and adequate service at reasonable rates. If the Commission nevertheless decides to implement the rules as proposed, Empire requests that it be exempted from complying with them.

Need for the Proposed Rules

7. The Commission should demand a benefit from the implementation of these rules which exceeds the increased costs they will cause. Empire has seen no quantification of the alleged benefits. If implemented, these proposed rules will increase Empire's cost of providing service in Missouri at an estimated

level of about \$2.8 million annually, which is the equivalent of a 2.5 percent rate increase to its customers. Empire is concerned that while the costs have been presented to the Commission, there has been no presentation or quantification of the claimed benefits. Members of the Staff were asked during the workshops if they had performed a cost/benefit analysis on their proposal and they answered "no." Empire submits these proposed rules are being advocated upon the base assumption they will produce a benefit in excess of the costs. They also assume that a relatively rigid planning process can effectively be imposed upon all of the electric utilities with uniform beneficial results. Empire respectfully submits that these assumptions are unproven. The rules will provide a benefit only if a better and more economical decision can be shown to have been made with them than without them. Based upon the historical record of Empire's decision-making, and the lack of cost/benefit analysis for these rules, Empire believes this cannot be demonstrated on this record.¹

Proposed Rules Are Too Prescriptive

8. Rules of this nature should focus more on general policies, general objectives of the process, and minimal filing

¹ The rulemaking process ordered by the Commission in this proceeding will not be an effective means of determining the validity of any claimed benefits if they appear for the first time in written comments since other parties will not have an opportunity for meaningful discovery or cross-examination.

requirements. The proposed rules are too prescriptive. They specify in detail how the planning process should be conducted. The management of the utility has the responsibility for determining the processes to be used, which may vary from utility to utility. Utility management is the province of the utility's managers, not the Commission. State ex rel. Laclede Gas Company v. Public Service Commission, 600 S.W.2d 222 (Mo. App. 1980). There is no one planning process that is absolutely correct for all time, but the proposed rules have that fallacious philosophical underpinning. As stated above, the key is informed decision-making or judgment, not the mechanical process to be followed. The Commission should strip the rules of the prescribed detail of base data compilation and calculations and instead prescribe general guidelines which would give the utilities the freedom to use other methods to achieve the same purpose.

Data Requirements are a Burden

9. A successful, effective plan for the purposes generally envisioned by these proposed rules can be produced without the details mandated on load research data, historical data, and end use data. The detail prescribed by the rules will be expensive and time-consuming to produce with little, if any, additional benefit. The plan requirements should not specify in detail the base data because the data requirements need to fit the process being used.

Load Building Programs

10. It will be extremely difficult, if not impossible, to quantify the effects of "load building programs." Based upon opinions voiced in the informal meetings, conflicts of opinion will undoubtedly arise over what constitutes a load building program. Those contentions may overshadow the relevant costs. Empire's low rates and excellent customer relations have tended (along with other factors) to build Empire's load over time because Empire is recognized as providing reliable service at a low price. Empire is a summer-peaking utility and has a summer/winter differential in its rates. How much of the increase in the winter load is due to the low rates and excellent service and how much is due to advice on using electric heat? How do you quantify those differences? Empire believes that it is futile to attempt to quantify such nuances as the proposed rules would require.

Cost Recovery

11. The proposed rules are essentially silent on the recovery of the costs of implementing the rules, the cost of implementing demand-side programs, or the revenues lost to conservation. If these rules produce the benefits assumed, they should clearly provide how the costs (both direct and indirect) will be paid, who will pay them, and when they will be paid. Many states choosing to impose rules on similar topics have addressed cost recovery in the rules.

Lack of Commission Approval

12. The proposed rules call only for Staff review of the process. There is no mention of an order of the Commission approving the plan resulting from the process. Empire believes this is inconsistent with the implicit assumption that the Commission is mandating the best planning process there is. If it is the best process there is, why would the Commission be reluctant to approve the result of the process? If the prescriptiveness of the process were to be removed and replaced with general guidelines which allowed utilities to meet the goals as their management deemed appropriate, there would be no need for Commission approval of the process.

No Rules for Competitors

13. Empire competes effectively with alternate fuel suppliers, municipal electric utilities, and rural electric cooperatives, many of which already have an advantage by being non-taxable entities. Imposition of these costly rules on Empire will have a negative effect on that competition since the competitors will not have the same cost imposed on their business. The rules thus have the potential to be anti-competitive and to alter the competitive balance with no demonstrated benefit. If Empire were operating in a true monopoly situation, there might be a better argument for mandating a particular planning process. Historically, regulation was designed to be a surrogate for

competition since competition did not exist. In southwest Missouri, energy competition does exist and it asserts a powerful force to keep prices competitive and strategic planning sharply focused. Empire has already proven that it can operate in a cost-effective manner in that business environment without these planning rules.

Competitor Given Advantage Through Information

14. Empire also would be harmed by the disclosure requirements in the proposed rules since it would be required by the Commission to give its plans and all underlying assumptions to its competitors. This can only serve to give them an advantage at the expense of Empire.

Competitors' Advantage Through Externalities Consideration

15. Empire would be required to consider much higher levels of pollutant mitigation under the proposed rules. These considerations might alter the supply decisions significantly for external costs that might never become reality. These decisions could increase the customers' cost greatly while yielding a decided advantage to municipal utilities and rural electric cooperatives that are under no obligation to consider these "probable" costs.

Disproportionate Burden on Smaller Utilities

16. The cost impact to meet the requirements of these rules will be disproportionately greater on the smaller electric utilities. Empire will require about the same number of personnel, computer hardware and software, and associated costs as a much larger electric utility, even though Empire's revenues are substantially less. The estimated costs for Empire are \$4,300,000 "one-time" costs and \$2,200,000 in annual costs. Those figures do not include any demand-side implementation costs. The \$4.3 million and \$2.2 million figures equate to approximately \$2.8 million in increased annual costs. On a per-customer basis, that is \$24 annually, or \$2 per month. Empire does not see, and has not seen, any quantification of benefits in that magnitude in these rules. Empire notes that the rules exempt those utilities selling less than one million retail megawatt hours per year. In the early drafts, the exempted utilities were identified as Sho-Me Power, Citizens Electric, and Cuivre River Electric Service Company. Therefore, there is an existing perception that not all electric utilities need to utilize this process and that benefits are lost when applied to a smaller scale. For the reasons stated above, Empire believes the criteria for exemptions should be raised to cover Empire, and thus requests exemption if the rules as proposed are allowed to go into effect. The Commission has the proven mechanism of the rate case to insulate the ratepayers from management decisions deemed to be imprudent. The Commission has

not hesitated in the past to make such decisions without these rules.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gary W. Duffy", is written over a horizontal line.

Gary W. Duffy
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Attorneys for
The Empire District Electric Company