

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

In the Matter of The Empire District Electric Company     )  
of Joplin, Missouri, for Authority to File Tariff Increasing    )  
Rates for Electric Service Provided to Customers in the     )  
Missouri Service Area of the Company                            )     Case No. ER-2010-0130

**APPLICATION FOR VARIANCE OR WAIVER  
OF COMMISSION RULE**

The Empire District Electric Company (hereinafter “Empire” or “Company”), by and through its undersigned counsel and pursuant to 4 CSR 240-2.020 and 4 CSR 240-2.060, hereby makes this application to the Missouri Public Service Commission (“Commission”) for a variance from or a waiver of the following Commission’s rules: 4 CSR 240-3.161(2)(D) and 4 CSR 240-3.161(3)(A). In support of its application, Empire states as follows:

1. Empire is a Kansas corporation with its principal office and place of business at 602 Joplin Street, Joplin, Missouri 64801. Empire is engaged in the business of providing electrical, gas, and water utility services to customers in its Missouri service areas. Empire is an “electrical corporation,” a “gas corporation,” a “water corporation,” and a “public utility” as those terms are defined in § 386.020, RSMo, and, consequently, the Company is subject to the jurisdiction and supervision of the Commission as provided by law.

2. The Commission’s records will show all cases, including the present case, (i) to which Empire is or was a party; (ii) that are pending or in which a decision has been issued within the past three (3) years; and (iii) that involve customer service or rates. The

Company also is involved in several utility-related appeals that are pending in various Missouri state courts. Otherwise, Empire is not involved in any pending legal matters and has had no final unsatisfied judgments or decisions entered against it from any state or federal agency or court that involve customer service or rates and that have occurred within the three years immediately preceding the filing of this application. In addition, the Company has no overdue Commission Annual Reports or assessment fees.

3. Empire's documents of incorporation previously were filed with the Commission in Case No. EF-94-39 and, pursuant to 4 CSR 240-2.060(1)(G), those documents are incorporated herein by reference. A Certificate of Authority from the Missouri Secretary of State to the effect that the Company is duly authorized to do business in the State of Missouri as a foreign corporation is attached to this application as Appendix 1 and is incorporated herein by reference.

4. Correspondence, communications, and orders regarding this application should be directed to:

Kelly S. Walters  
Vice President – Regulatory and Services  
The Empire District Electric Company  
602 Joplin Street  
Joplin, Missouri 64801

James C. Swearngen  
L. Russell Mitten  
Brydon, Swearngen & England, P.C.  
312 E. Capitol Ave.  
P.O. Box 456  
Jefferson City, Missouri 65102

5. By its application, Empire seeks a variance from or a waiver of 4 CSR 240-3.161(2)(D) and 4 CSR 240-3.161(3)(A). These rules require an electric utility that intends to continue or modify an existing fuel adjustment clause to include with its

general rate case filing an example of a notice to be provided to customers that generally describes the design and intended operation of the fuel adjustment clause. In turn, pursuant to 4 CSR 240-20.090(2)(D), that notice, when approved by the Commission, is to be included in the initial notice provided to customers regarding the general rate case.

6. Empire did not include an example of the required notice with its initial filing on October 29, 2009. However, in a press release issued at the time of the filing, the Company stated that it “is also asking to continue the fuel adjustment clause that was approved in its last rate case.” A copy of that press release, which accompanied Empire’s October 29, 2009, filing, is attached to this application as Appendix 2, and is incorporated herein by reference. The customer notice proposed by the Office of Public Counsel on December 11, 2009, which subsequently was approved by the Commission in its order dated January 13, 2010, also did not include any statement that Empire is asking to continue its current fuel adjustment clause. The Company sent the Commission-approved notice to its customers in billing envelopes mailed during January and February of this year.

7. The Company first became aware of concerns that it may not have fully complied with the Commission’s rules through statements included in the “Staff Report – Cost of Service,” which was filed on February 26, 2010, as well as through correspondence from the Commission Staff sent shortly before that date. This application seeks to remedy the concerns expressed by Staff in its report.

8. As noted previously in this application, Empire announced its intent to continue its existing fuel adjustment clause in a press release that was issued at the time it filed with the Commission the tariff sheets that commenced the present case. Therefore,

consistent with the spirit of the Commission's rules, information regarding the Company's intentions with respect to its fuel adjustment clause has been available to most, if not all, of Empire's customers for more than four months. Because local public hearings in this case are scheduled for later this month, there is not enough time for the Company to include a supplemental notice in customer bills before the dates of those hearings. And a separate mailing to customers for the sole purpose of advising them that the Company proposes to continue its current fuel adjustment clause would, in Empire's opinion, not be cost-effective. Therefore, if the Commission believes some additional notice to customers is required to inform them that Empire is requesting authority to continue its current fuel adjustment clause, the Company proposes to provide that notice through either a supplemental press release or a public notice to be published in newspapers of general circulation within its service area. The verbiage regarding Empire's proposal to continue its fuel adjustment clause to be included in such supplemental press release or public notice would, subject to the Commission's approval, state as follows:

Empire's rate filing also includes a request to continue its fuel adjustment clause with modifications, which would continue to allow 95% of increases or decreases in net fuel costs to be passed through to customers as a separate line item on customer bills. The fuel adjustment clause allows Empire to adjust charges for fuel and purchase power twice each year.

9. Empire regrets the circumstances that make this application for a variance or waiver necessary, but believes: (i) good cause exists to grant the Company's application, (ii) granting this application will not adversely affect customers, and (iii) granting this application will be in the public interest. If, as a condition for granting the variance or waiver requested herein, the Commission believes additional notice should be

provided to customers regarding Empire's request to continue its fuel adjustment clause, then either of the alternatives proposed by the Company should be sufficient to satisfy the spirit, if not the letter, of the Commission's rules. In addition, the Company believes that either of these alternatives will be as effective in getting meaningful information to customers regarding the proposed continuation of the fuel adjustment clause as would including the same or similar information in the general notice of the rate filing that previously was mailed to customers.

WHEREFORE, for the reasons stated herein, Empire prays the Commission for an order granting the Company a variance from or waiver of the notice requirements prescribed in 4 CSR 240-3.161(2)(D) and 4 CSR 240-3.161(3)(A).

Respectfully submitted,



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**BRYDON, SWEARENGEN & ENGLAND, P.C.**

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ATTORNEYS FOR THE EMPIRE DISTRICT  
ELECTRIC COMPANY

VERIFICATION

STATE OF MISSOURI )  
 ) ss  
COUNTY OF JASPER )

Kelly S. Walters, being duly sworn on oath, deposes and says that she is the Vice President – Regulatory and Services of The Empire District Electric Company, Inc.; that she has read the foregoing application and knows the contents thereof; and that the information contained in that application is true and correct to the best of her knowledge and belief.

THE EMPIRE DISTRICT ELECTRIC COMPANY, INC.

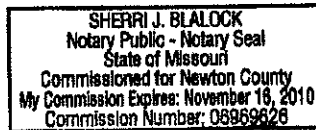
BY: *Kelly S. Walters*  
Kelly S. Walters

Subscribed and sworn to before me, the undersigned Notary Public in and for the county and state aforesaid, on the 3<sup>rd</sup> day of March, 2010.

*Sherril Blalock*  
Notary Public

My Commission expires:

Nov. 16, 2010



**Certificate of Service**

I hereby certify that the foregoing has been sent by United States mail, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record on the 3<sup>rd</sup> day of March, 2010.

/s/ L. Russell Mitten