

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

In the Matter of a Proceeding Under Section                        )  
393.137 (SB 564) to Adjust the Electric Rates of            ) Case No. ER-2018-0366  
The Empire District Electric Company                         )

**MOTION FOR EXPEDITED PROCEDURAL SCHEDULE,  
AND MOTION FOR EXPEDITED TREATMENT**

**COMES NOW** the Office of the Public Counsel and moves the Commission to expeditiously set an expedited procedural schedule in this case as follows:

1. After the Office of the Public Counsel filed in Case No. ER-2018-0365 a motion to open an expedited electric rate case to prospectively adjust the electric rates of The Empire District Electric Company in Missouri to reflect the effects of the federal 2017 Tax Cut and Jobs Act, the Commission opened this Case No. ER-2018-0366.

2. Under § 393,137, RSMo., which became effective on June 1, 2018, the Commission has “one time authority that *shall* be exercised within ninety days of [June 1, 2018,] to adjust [The Empire District Electric Company’s] rates prospectively so that the income tax component of the revenue requirement used to set [Empire’s] rates is based upon the provisions of [the federal 2017 Tax Cut and Jobs Act, Pub. L. No. 115-97, 94 Stat. 2390,] without considering any other factor as otherwise required by section 393.270,” and “[t]he Commission *shall* also require [Empire] to defer to a regulatory asset the financial impact of such federal act on [it] for the period of January 1, 2018, through the date [Empire]’s rates are adjusted on a one-time basis as provided for in the immediately preceding sentence.” (Emphases added).

3. On February 21, 2018, before the legislature passed SB564 and the Governor signed it on June 1, 2018, in response to a motion by its Staff, the Commission opened Case No.

ER-2018-0228 to quantify the rate impacts of the federal 2017 Tax Cut and Jobs Act. On April 18, 2018, the Commission, jointly with other similar pending cases, scheduled oral argument for May 24, 2018, but on April 24, 2018, parties to Case No. EO-2018-0092 filed a non-unanimous stipulation and agreement in that case that they also filed in this case, which the Office of the Public Counsel opposed. After the legislature passed SB564 but before the Governor signed it into law, Staff, on May 24, 2018, dismissed Case No. ER-2018-0228, and the Commission acknowledged the dismissal and closed the case. Despite the Commission's dismissal of Case No. ER-2018-0228, Empire argued in that case on May 24, 2018, how it viewed the Commission should address the federal tax impact on its electric rates.

4. At least twice Empire has prepared the impact of the change in its federal tax rate on its revenue requirement over periods of time—during the Commission's working case, Case No. AW-2018-0174, and in support of the non-unanimous stipulation and agreement it joined in Case No. EO-2018-0092. Empire's calculations in the latter case indicate the impact is about \$17,837,022 annually.

5. Because the legislature has indicated that the Commission has ninety days within which to reflect the impact of the federal 2017 Tax Cut and Jobs Act—until Thursday, August 30, 2018—and the issues are limited to the impacts of the federal 2017 Tax Cut and Jobs Act, The Office of the Public Counsel suggests and requests that the Commission adopt the following expeditious procedural schedule and discovery procedures:

#### **Procedural Schedule**

Friday, June 15 – Empire Direct

Friday, June 29 – Non-Empire Rebuttal

Monday, July 2, 2018 – List of Issues

Tuesday, July 3, 2018 - Order of Witnesses, Position Statements

Tuesday, July 10, 2018 – Hearing

Tuesday, July 17, 2018 - Briefs

Wednesday, August 30, 2018 – Latest Effective Date of New Rates

### **Discovery Procedures**

- a. All parties shall provide copies of testimony (including schedules), exhibits, and pleadings to other counsel of record by electronic means and in electronic form essentially concurrently with the filing of such testimony, exhibits or pleadings where the information is available in electronic format. Parties are not required to put information that does not exist in electronic format into electronic format for purposes of exchanging it.
- b. Parties shall make all reasonable efforts to not include confidential information in data requests. If confidential information is included in data requests, the confidential information will be appropriately designated as such pursuant to rule 4 CSR 240-2.135.
- c. Data requests issued to or by Staff shall be submitted and responded to in the Commission’s Electronic Filing and Information System (“EFIS”), if feasible, or in electronic format on compact disc or by other means agreed to by counsel, if infeasible. Counsel for each party shall receive electronically from each other party serving a data request, an electronic copy of the text of the “description” of that data request contemporaneously with service of the data request. Regarding Staff-issued data requests, if the description contains confidential information, or is voluminous, a hyperlink to the EFIS record of

that data request shall be considered a sufficient copy. Except that the Office of the Public Counsel has the right to access all information possessed by the Commission's Staff (§ 386.480, RSMo.), if a party desires the response to a data request that has been served on another party, the party desiring a copy of the response must request a copy of the response from the party answering the data request. Data requests shall be sent by e-mail to counsel for the other parties. Counsel may designate other personnel to be added to the service list for data requests, but shall assume responsibility for compliance with any restrictions on confidentiality. Data request responses shall be served on counsel for the requesting party, unless waived by counsel, and on the requesting party's employee or representative who submitted the data request, and shall be served electronically, if feasible and not voluminous as defined by Commission rule. Empire's responses to Staff data requests will be available to other parties on EFIS.

- d. The response time for all data requests shall be 7 calendar days, and 3 calendar days to object or notify that more than 7 calendar days will be needed to provide the requested information. Data requests sent after 5:00 pm will be considered served on the next business day. The Commission may rule on discovery motions without holding the conference required by 4 CSR 240-2.090(8)(B).
- e. Workpapers prepared in the course of developing a witness' testimony (including schedules) and exhibits shall not be filed with the Commission, but shall be submitted to each party within one business day following the filing of the particular testimony, unless a party has indicated that it does not want to receive some or all of the workpapers. Workpapers containing confidential information shall be appropriately marked. Counsel shall undertake to advise other counsel if the sponsored witness has no workpapers related to the round of testimony.

- f. Where workpapers or data request responses include models or spreadsheets or similar information originally in a commonly available format where inputs or parameters may be changed to observe changes in inputs or outputs, if available in that original format, the party providing the workpaper or response shall provide this type of information in that original format with formulas intact. Workpapers shall be provided in electronic format by e-mailing or by delivery of a compact disc or other electronic storage media.
  - g. Documents filed in EFIS shall be considered properly served by serving the same on counsel of record for all other parties via e-mail.
6. If the Commission does not adopt the foregoing suggested and requested procedural schedule, The Office of the Public Counsel alternatively moves the Commission to set a prehearing conference as soon as practicable for purposes of establishing a procedural schedule for this case.

#### MOTION FOR EXPEDITED TREATMENT

7. Pursuant to 4 CSR 240-2.080(14), The Office of the Public Counsel moves the Commission to rule on its requests by Friday, June 8, 2018, to assure sufficient time to process this case since Senate Bill 564 became effective when the Governor signed it on June 1, 2018, and Senate Bill 564 requires the Commission to order new rates effective within 90 days thereafter to reflect the impacts of the federal 2017 Tax Cut and Jobs Act, which will reduce Empire's general electric rates to collect annually approximately \$17,837,022 less from its retail customers. This pleading is being filed as quickly as practicable after Senate Bill 564 became law and the Commission opened this case.

WHEREFORE, OPC respectfully requests that the Commission expeditiously order the expedited procedural schedule, or alternatively schedule a scheduling conference, order the

discovery procedures set forth above, and order such further relief that the Commission deems appropriate.

Respectfully,

/s/ Nathan Williams

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 5<sup>th</sup> day of June 2018.

/s/ Nathan Williams