

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of an Investigation of )  
The Empire District Electric Company's ) Case No. EO-2008-0215  
Storm Preparation and Restoration Efforts )

## CONCURRING OPINION OF COMMISSIONER ROBERT M. CLAYTON III

This Commissioner concurs in the Order opening an investigation into the performance of Empire District Electric (the utility) in recent storm-related electrical outages. The public deserves an accounting of the utility's performance before, during and after the ice storm that crippled its ability to supply safe and reliable service to its customers for ten days or more in late 2007. This Commissioner supports opening a docket to collect and analyze information that leads to recommendations for improved electric service. It is important that the Commission receive from its staff a full description of events throughout Missouri during the ice storms and further identify whether each electric utility acted appropriately. It is imperative that the Commission critically review those recommendations, critically assess the utility's performance, and, if appropriate, take steps to implement new rule makings, issue Commission Orders or impose penalties.

### 1. Case Designation

This Commissioner supports opening a formal investigative docket, classified as an "uncontested case," as was done in the AmerenUE investigation, docketed as Case Number EO-2007-0037. This docket is designed to receive the staff report and recommendations. Upon the receipt of that information, including any allegations of rule

violations or failure to provide safe and reliable service, the Commission can convert the case to a contested matter seeking penalties or rule makings. In particular, the utility cannot be charged with wrong-doing until the investigation is complete and a single news article in which a single customer expresses frustration in the delays in getting the lights turned back on is not sufficient probable cause to warrant a "contested case." This Commissioner suggests that an "uncontested" investigative docket or case be established to take testimony and provide a vehicle for a report with recommendations.

Several colleagues suggest that judicial economy encourages combining the investigation and the prosecution into one docket, yet the Commission will not be able to act substantively against the utility, regardless of how the case is opened, until the utility has notice of specific examples of rule, Order, or statute violations so that it can respond. Until the Commission receives its staff report, any such case is premature. In addition, an "uncontested" docket can be converted to "contested" status at any time with full notice to all the parties.

Opening a "prosecutorial" contested case with no specific evidence of rule, Order, or statute violation sets a problematic precedent for future action and investigations by the Commission. It suggests in the future that if one customer expresses unhappiness about a certain level of service, that a full blown "contested case" docket be opened, intervenors solicited and Orders be issued, regardless of the facts. Today, any customer is free to file a formal complaint and open such a case with a defined request for relief. It diminishes the seriousness of past investigations that were opened as "uncontested" investigations, such as the cases respecting Taum Sauk, the AmerenUE storm outages of 2004, 2005 and 2006, and numerous natural gas explosions that have injured citizens and

destroyed property, just to name a few. The time to act substantively is during the evaluation of staff recommendations which may or may not go far enough to address the issues outlined in the opening of the investigation. Clearly, written Orders and rules stemming from staff investigations and recommendations set the best policies for improved utility performance.

## **2. Need for an Investigation**

This is the second major outage suffered by the utility's customers in the recent year which raises many questions. This Commissioner does not dispute that the ice storms that affected the region were serious and devastating in many respects, but it is unclear whether the utility is doing enough with regard to its tree trimming and infrastructure inspection programs. Despite state-wide reliability problems highlighted in recent years, this Commission still has no rules in place to affect any improvement in electric service as it relates to storms and every day reliability.

This investigation should identify the strengths and weaknesses of the utility's programs for tree trimming and infrastructure inspection and replacement programs. Staff should specifically identify what is working in the unique character of the utility's foot print and what is not working. Further, staff should be fully evaluating the utility's efforts at offering reliable service, outside of periods of bad weather, and calculating whether the utility's reliability measurement indices are at levels of excellent performance. This staff report will be useless without such timely information.

There are three rule makings pending at the present time including rules relating to tree trimming, infrastructure inspection and reporting as well as reliability standards and reporting. Information obtained through this docket should be used to reevaluate

how those rules should be drafted. A critical review needs to be made in light of recent outages throughout the state to ensure that our rules are addressing the problems that are identified. This Commissioner has attached his version of the draft rules for consideration in this docket.

This Commissioner requests that staff include in its analysis the following items in its final investigative report. These items were not specifically listed in the majority Order and warrant specific consideration and attention. This Commissioner requests the staff include responses addressing each issue in no particular order of importance. This Commissioner also requests that staff include in its report information relating to both ice storm outages that have occurred in the past 15 months. Staff is requested to include the following in its report:

- 1) Analysis of the age, siting, durability and quality of the utility's infrastructure, including the placement of distribution lines in light of the ice storm outages of 2007;
- 2) A comprehensive compliance review of Commission Orders stemming from prior storms and outages applicable to the utility;
- 3) An analysis of all assistance requested or offered and whether the utility accepted or denied the offers of assistance by other entities;
- 4) An analysis of the Call Center Operations during the storm and any observations about customer service issues;
- 5) An analysis of the utility's current tree trimming schedule and input on whether there is the need to amend the current program or consider alternative programs suggested through other Commission cases;
- 6) An evaluation of the communication, cooperation and assistance between the affected utilities, citizens and city, county and state officials;
- 7) An analysis of why certain areas lost electrical service for such a prolonged amount of time;

- 8) An assessment of the coordination of the efforts to ensure that critical operations facilities such as hospitals, residential care facilities, police and fire department buildings had temporary electric needs satisfied until service from the grid could be restored;
- 9) An assessment of the interdependence among all PSC certificated utilities as well as with utilities not certificated by the PSC in the affected area;
- 10) An analysis that includes a comparison of utility performance with other utilities that had significant outages during the same time period;
- 11) If damage was caused by vegetation, a detailed overview of the type and extent of damage caused by various scenarios including whether the vegetation was located in the easement or right of way, whether the vegetation fell from outside the right of way, whether the vegetation was diseased or particularly weak, whether the vegetation fell vertically from above the electrical conductors and whether the vegetation had been appropriately addressed prior to the storm in accordance with the utility's vegetation management plan. Further, what percentage of the damage would have been prevented by the utility strictly adhering to its vegetation plan? What percentage of the damage would have been prevented by the utility if strictly adhering to the vegetation management plan proposal attached to this Opinion?
- 12) If the damage was caused by infrastructure failure aside from vegetation contact, identify more detailed reasons how and why the infrastructure failed, i.e., age, design, etc., and what can be done to strengthen the infrastructure.
- 13) An analysis of the economic impact on customers who experienced a disruption of power during the ice storms; and
- 14) Any and all recommendations to improve utility response to weather related and day to day electric outages in the future.

This investigation should be promptly but thoroughly conducted to ensure an accurate, timely response for improving utility performance. The information obtained should remain public so all customers and rate payers affected by the outages can monitor the response.

### **3. State-wide Investigation**

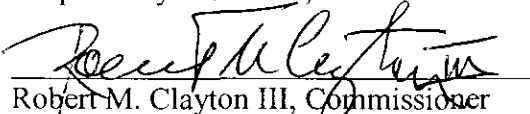
This Commissioner believes that this investigation should not be limited to this particular utility. Significant power outages occurred in the service territories of Aquila, KCP&L, Empire and AmerenUE, and the customers in each service area deserve an "accounting" with analysis and study to determine what can be done to prevent or reduce the frequency, duration or extent of future power outages. Because of the state-wide reach of the ice storms, the Commission will have data to compare and contrast the performance of utilities in how their individual infrastructures withstood the storms, how the utility responded and how service was affected by the storms. Dockets relating to each of those utilities have been opened to address those concerns.

### **4. Request for Local Public Hearings**

In conclusion, this Commissioner applauds the majority Order which solicits public input through comments to be filed in the case. This Commissioner would further recommend that local public hearings be held in the service area of the utility to ensure that customers have the ability to make any concerns or complaints known. This option was afforded to customers in the St. Louis region and should be afforded to the customers in the utility's area of service affected by power outages. Those customers should be encouraged to provide testimony regarding storm-related power outages as well as general day-to-day reliability.

For the foregoing reasons, this Commissioner concurs.

Respectfully submitted,

  
Robert M. Clayton III, Commissioner  
Dated this 14<sup>th</sup> day of January 2008.