

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 16th day of
June, 2010.

In the Matter of The Empire District Electric)
Company's Application for Variance and Request)
for Clarification Concerning Selected Provisions)
of Commission Rules Related to Electric Utility)
Resource Planning.)
File No. EE-2010-0246

ORDER GRANTING APPLICATION FOR VARIANCE

Issue Date: June 16, 2010

Effective Date: June 26, 2010

On February 26, 2010¹, The Empire District Electric Company asked the Commission to grant it variances from certain requirements of the Commission's Integrated Resource Planning Rule, 4 CSR 240-22. Empire also seeks clarification of other requirements.

The Commission issued notice of this application on March 1, and gave interested parties until March 21 to request intervention. The Commission received a timely intervention request from the Missouri Department of Natural Resources ("MDNR").

The Staff of the Commission ("Staff") filed its Recommendation on March 31. Staff noted that Empire has applied for variances from Commission IRP Rules (Resource Planning Rules) on load analysis and forecasting², and variances from Commission IRP

¹ All calendar references are to 2010 unless otherwise noted.

² The load analysis and forecasting resource planning rules in Empire's request "A" are: 4 CSR 240-22.030(3); 4 CSR 240-22.030(3)(A); 4 CSR 240-22.030(3)(A)1; 4 CSR 240-22.030(3)(A)3; 4 CSR 240-22.030(3)(A)4; 4 CSR 240-22.030(3)(B); 4 CSR 240-22.030(3)(B)1; 4 CSR 240-22.030(3)(B)2; 4 CSR 240-22.030(4)(A); 4 CSR 240-22.030(4)(B); 4 CSR 240-22.030(5)(B)2; 4 CSR 240-22.030(5)(B)2B; 4 CSR 240-22.030(5)(B)2C; 4 CSR 240-22.030(8)(A)2B; 4 CSR 240-22.030(8)(B)2; and 4 CSR 240-22.030(8)(E)1.

Rules concerning the starting points for data retention for use in the forecast of net system loads and system peak demand.³ Staff further noted that Empire's interpretation of the Chapter 22 rules for which Empire seeks clarification; namely, the rules for forecasting with subclasses, forecasting with major rate classes, and transmission and distribution planning, is consistent with Staff's interpretation.

On March 31, MDNR responded to Empire's application. MDNR asked the Commission to require Empire to provide details of its regression analysis as soon as practicable, require Empire to use economic variables in conjunction with trend variables in load forecasting/regression analysis, grant Empire's variance to starting points of the data base used to forecast net system loads and system peak demand, and clarify the rule to require Empire to provide subclass level data for residential forecasting.

Empire replied on April 9, reaffirming its request, and accepting Staff's condition from its Recommendation, which will be discussed further below. After an MDNR response filed on April 19, Empire and MDNR filed a Joint Statement of Position and Agreed Language Regarding Economic Variables on May 4.

Commission Rule 4 CSR 240-2.080(15) permits parties ten days to respond to pleadings, unless that time is otherwise shortened by the Commission. The Commission did not shorten the response time; thus, replies to the May 4 pleading were due by May 14. No such pleadings were filed.

Commission Rule 4 CSR 240-2.060(4) permits applications for variances from Commission Rules. Such an application shall set out a "complete justification setting out the good cause for granting the variance."

³ The forecast of net system loads and system peak demand rules specified in Empire's request "B" are: 4 CSR 240-22.030(1)(D)1 and 4 CSR 240-22.030(1)(D)2.

Although the term “good cause” is frequently used in the law,⁴ the rule does not define it. Therefore, it is appropriate to resort to the dictionary to determine its ordinary meaning.⁵ “Good cause” has been judicially defined as a “substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties.”⁶

Of course, not just *any* cause or excuse will do. To constitute *good* cause, the reason or legal excuse given “must be real not imaginary, substantial not trifling, and reasonable not whimsical.”⁷ And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.⁸

Based upon Empire’s verified application, Staff’s Recommendation, and MDNR’s agreement with Empire, the Commission finds good cause to grant Empire its requested variance.

THE COMMISSION ORDERS THAT:

1. The Commission grants The Empire District Electric Company the variance described above, subject to the condition that after the completion of its September 2010 Integrated Resource Plan (IRP), The Empire District Electric Company shall provide the Staff of the Commission with a plan that addresses the feasibility of changing the

⁴ *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971).

⁵ See *State ex rel. Hall v. Wolf*, 710 S.W.2d 302, 303 (Mo. App. E.D. 1986) (in absence of legislative definition, court used dictionary to ascertain the ordinary meaning of the term “good cause” as used in a Missouri statute); *Davis*, 469 S.W.2d at 4-5 (same).

⁶ *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective “ordinary person” standard. See, e.g., *Cent. Mo. Paving Co. v. Labor & Indus. Relations Comm’n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) (“[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.”)

⁷ *Belle State Bank v. Indus. Comm’n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

⁸ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975); *Havrisko v. U.S.*, 68 F. Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F.Supp. 831, 832 (S.D.N.Y. 1947).

Company's forecasting method for the IRP filing that will follow the September 2010 filing. This plan will include a proposed timeline and cost estimate that can be used for further discussions. The plan will consider the use of economic variables, forecasting at the class cost of service level, and the requirements in the Load Analysis and Forecasting rule that will be in place at the time of the IRP filing that is subsequent to the September 2010 filing.

2. The variance is also subject to a condition agreed upon by The Empire District Electric Company and The Missouri Department of Natural Resources, to-wit: The Empire District Electric Company agrees to provide full disclosure of its IRP load forecasting methodology, to include a description of all assumptions, equations and the rationale for any decisions made concerning any adjustments made to the data used to develop the forecast. As one aspect of this disclosure, The Empire District Electric Company will describe any assumptions concerning future economic conditions that influence or were incorporated into the company's specification or assignment of values to variables, coefficients or relationships in the equations used to forecast load over the 20-year planning horizon. The Empire District Electric Company will provide all work papers supporting the IRP load forecast when it is completed. In addition, The Empire District Electric Company's IRP load forecast work papers will be provided to The Missouri Department of Natural Resources in an electronic format.

3. This order shall become effective on June 26, 2010.
4. This case shall be closed on June 27, 2010.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

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

Pridgin, Senior Regulatory Law Judge