

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 19th day of October, 2011.

In The Matter of a Determination of Special)
Contemporary Resource Planning Issues to be)
Addressed by The Empire District Electric Company)
in its Next Triennial Compliance Filing or Next)
Annual Update Report)

File No. EO-2012-0040

**ORDER ESTABLISHING SPECIAL CONTEMPORARY RESOURCE
PLANNING ISSUES**

Issue Date: October 19, 2011

Effective Date: October 29, 2011

A provision in the Commission's revised electric utility resource planning rule, 4 CSR 240-22.080(4), requires Missouri's electric utilities to consider and analyze special contemporary issues in their triennial compliance filings and in their annual update reports. The regulation requires the Commission to issue an order by November 1 of each year specifying the list of special contemporary issues that each electric utility is to address. The regulation also provides that by September 15, Staff, Public Counsel, and other interested parties may file suggested issues for consideration. The regulation then allows the utilities and other parties until October 1 to file comments regarding the suggested issues.

Staff and the Missouri Department of Natural Resources (MDNR) filed suggested special contemporary issues for The Empire District Electric Company's analysis and response in its next IRP filing. MDNR and Empire filed responses to those suggestions.

The Commission must now determine what special contemporary issues Empire should address.

This is not a contested case. The Commission does not need to hear evidence before reaching a decision and does not need to make findings of fact and conclusions of law in announcing that decision.¹ The Commission's rule gives the Commission broad discretion in determining what issues a utility should be required to address, indicating:

[t]he purpose of the contemporary issues lists is to ensure that evolving regulatory, economic, financial, environmental, energy, technical, or customer issues are adequately addressed by each utility in its electric resource planning. Each special contemporary issues list will identify new and evolving issues but may also include other issues such as unresolved deficiencies or concerns from the preceding triennial compliance filing.²

It is also important to note that the Commission's IRP rules require Empire to file a full IRP study once every three years. Empire does not need to file its next full IRP study until April 1, 2013.³ That means Empire would need to address the special contemporary issues identified in this order in its 2012 annual update report, not in a full IRP study.

That distinction is important because in its annual update report, the electric utility is only expected to address "changing conditions since the last filed triennial compliance filing or annual update filing."⁴ For that reason, the requirement to examine special contemporary issues should not expand the limited annual update report into something more closely resembling a triennial compliance report.

Empire has raised a further complication by filing an application for variance that is pending both in this case and in Case No. EE-2012-0095. That application asks the

¹ *State ex rel. Public Counsel v. Public Service Com'n*, 259 S.W.3d 23, (Mo App., W.D. 2008)

² 4 CSR 240-22.080(4).

³ 4 CSR 240-22.080(1)(C).

⁴ 4 CSR 240-22.080(3)(B).

Commission to grant Empire a variance from several provisions of the IRP regulations in light of the stipulation and agreement that resolved Empire's last IRP case, EO-2011-0066.

Empire contends that the earlier stipulation and agreement requires Empire to update and communicate with various stakeholders in much the same manner as is required by the Commission's recently implemented IRP rules. For that reason, Empire asks the Commission to grant it a waiver of those communications requirements of the IRP rule. One of the rule provisions that Empire asks the Commission to waive is the requirement to file the annual update that would include the special contemporary resource planning issues that are to be identified by this order. Empire proposes to instead incorporate those special planning issues into the stakeholder updates it is required to make under the stipulation and agreement.

The Commission is not yet ready to rule on Empire's application for variance that is pending in Case Number EE-2012-0095 as other potentially interested parties have not yet had an opportunity to respond. However, the Commission does not need to make that ruling before identifying special contemporary resource planning issues in this order. The Commission will identify the issues in this order. In a subsequent order to be issued in EE-2012-0095, the Commission will decide whether those issues must be addressed in Empire's annual update or whether they must be addressed through the stakeholder update process required by the stipulation and agreement.

In preparing a list of special contemporary issues, the Commission is also mindful of the limited amount of time available to Empire to address the identified issues. The rule requires the company to file its annual update report no less than 20 days before its annual

update workshop, which must be held on or about April 1 of each year.⁵ That means Empire will have only a few months in which to prepare and report its analysis of the identified issues. If the Commission decides that Empire should instead follow the stakeholder update process established by the stipulation and agreement, the updated report would still be due by April 1, 2012. Therefore, the Commission must choose the identified issues wisely to allow Empire an opportunity to thoroughly address the chosen issues. Requiring the company to address every issue proposed by the various parties within the available time would only result in a superficial analysis that would be less helpful than a more detailed analysis of appropriately limited issues.

The Commission agrees with Empire that the establishment of special contemporary issues should not be allowed to expand the annual update process into a triennial compliance filing. Many of the special issues identified by Staff and MDNR would be appropriate for Empire's next triennial compliance filing in 2013, but not for an annual update. Furthermore, the Commission will not require Empire to address in its annual update issues that are not truly significant and urgent. Such issues may be important and may be appropriately addressed in Empire's next triennial compliance filing, but do not need to be addressed as a special issue in the company's annual update report.

In addition to the issues it proposed in its own filing, MDNR's response to the other filings asks the Commission to require Empire to address several issues identified by the Natural Resources Defense Council (NRDC) in the parallel proceeding regarding Ameren Missouri, EO-2012-0039. The NRDC did not raise those issues with regard to Empire in this case. On October 12, Empire filed a motion asking the Commission to either strike that

⁵ 4 CSR 240-22.080(3).

portion of MDNR's comments or to refuse to consider the additional issues proposed by MDNR in its response.

The Commission's regulation requires the Commission to quickly determine what, if any additional issues it wants Empire to address in its next annual IRP update filing. That regulation sets a time for interested individuals and entities to offer suggestions and allows time for Empire and others to respond to those suggestions. The regulation does not allow time for further exchanges of suggestions. As a result, Empire and the other commenters have not had an opportunity to respond to the additional issues that MDNR would import into this case.

Ultimately, it is up to the Commission to decide whether Empire should address a particular issue. There is nothing wrong with MDNR bringing additional issues to the Commission's attention, but no one has shown a compelling reason why Empire should be required to address issues that were specifically addressed to Ameren Missouri by a commenter in another matter. Therefore, the Commission will deny Empire's Motion to Strike, but will not include MDNR's additional issues as special contemporary issues for Empire to address in this case.

The Commission's rule also allows the Commission to adopt special contemporary issues that have not been proposed by any party.⁶ The Commission notes that potential or anticipated changes in state and federal environmental or renewable energy standards could have a substantial impact on Missouri's electric utilities. Therefore, the Commission will direct the utilities to examine the potential or proposed changes in state or federal regulations and explain how the adoption of such changes would affect their compliance plans.

⁶ 4 CSR 240-22.080(4)(C).

The Commission is also concerned about the type and amount of any federal or state subsidies the electric utilities expect to receive in conjunction with their proposed resource planning. Therefore, the Commission will direct the utilities to disclose and discuss the amount of any estimated federal or state subsidies either implicit or explicitly part of their proposed resource planning.

After considering these factors, the Commission will adopt the list of special contemporary issues set forth in this order.

THE COMMISSION ORDERS THAT:

1. The Empire District Electric Company shall analyze and document the following special contemporary issues either in its 2012 annual update report or through the stakeholder update process established by the Stipulation and Agreement that resolved Case No. EO-2011-0066, depending upon a subsequent order of the Commission to be issued in Case No. EE-2012-0095:

- a. Analyze and document how Empire's load-forecast will account for the impact of tornado damage in its service territory. Analyze and document how on-going recovery efforts impact Empire's capacity balance and participation in DSM programs. Analyze and document how these changes impact the preferred resource plan or contingency plans;
- b. Investigate and document the impacts on Empire's preferred resource plan and contingency plans of a loss of significant load for the short term and potentially for the long term that may be the result of a prolonged double dip recession or a large customer or group of customers no longer taking service from Empire; and

- c. Investigate and document the updated impacts of newly proposed aggressive environmental regulations on Empire's preferred resource plan and contingency plans.
 - d. Analyze potential or proposed changes in state or federal environmental or renewable energy standards and report how those changes would affect Empire's plans for compliance with those standards.
 - e. Analyze the levelized cost of energy needed to comply with the current Renewable Energy Standards law compared to the cost of energy resulting from a portfolio comprised solely of existing resources with no additional renewable resources.
 - f. Disclose and discuss the amount and impact of every state or federal subsidy Empire expects to receive with regard to any or all fuel sources it intends to use during the IRP study period.
2. The Empire District Electric Company's Motion to Strike is denied.
 3. This order shall become effective on October 29, 2011.

BY THE COMMISSION



**Steven C. Reed
Secretary**

(S E A L)

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

Woodruff, Chief Regulatory Law Judge