

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

In the Matter of an Investigation into	)	
Southwest Power Pool Cost Allocations and	)	Case No. EO-2011-0134
Cost Overruns.	)	

**EMPIRE’S REPLY COMMENTS**

COMES NOW The Empire District Electric Company (Empire), and, in reply to the initial comments filed in this docket, states as follows to the Missouri Public Service Commission (Commission):

**BACKGROUND**

1. The Commission’s November 23, 2010 Order Opening an Investigation into Southwest Power Pool Cost Allocations and Cost Overruns, among other things, invited “all parties interested in the issue of the construction cost overruns as well as the problems posed by novations” to file comments in this docket by December 31, 2010, and to file reply comments by January 14, 2011. At the Commission’s January 12, 2011 agenda meeting, the Commission granted a request from the Southwest Power Pool, Inc. (SPP) to extend the filing date for reply comments until January 18, 2011.<sup>1</sup>

2. Initial comments were filed by Empire; SPP; Kansas City Power& Light Company and KCP&L Greater Missouri Operations Company (collectively, “KCPL”) and, the Staff of the Missouri Public Service Commission (Staff).

3. Empire has reviewed the public portions of these comments and, in reply, provides the following comments.

## REPLY COMMENTS

4. Empire is generally supportive of the comments submitted to date. However, it will offer these additional comments based on the other parties' filings and recommendations submitted.

### **A. EDE Costs/Benefits from SPP Membership – SPP Comments**

5. Empire believes that SPP submitted a fairly comprehensive overview of some of the key issues and services that Empire has received and continues to receive as a network integration transmission service and transmission owning member of the SPP. Empire has stated, and generally concurs with SPP's comments, that membership benefits in SPP outweigh the costs and provides value to Empire's consumers.

6. Until recently, due to the disagreement over the SPP highway/byway regional cost allocation method, Empire and the SPP have been fairly aligned in strategy related to SPP's provision of wholesale market and transmission services. SPP's aggressive initiative to move forward in constructing a cost effective and robust transmission service, without sufficient cost and policy oversight controls, unintended consequences/equity provisions, as well as a cost allocation policy for seams projects, have led Empire to address some of the issues identified in this docket, as well as raised the question as to whether or not SPP can continue to provide sufficient benefits to Empire consumers over the long term. Empire is optimistic that the SPP staff, Regional State Committee, and stakeholders will be supportive of the necessary changes in the current transmission planning, cost allocation and next day market design that will prove that continued membership in the SPP is appropriate for Empire and Missouri utilities.

---

<sup>1</sup> See Order Extending Time to File Reply Comments, issued January 13, 2011.

7. SPP makes comments on page 22 of its filing regarding Empire's membership benefits and describes in detail Empire's use of the SPP transmission system to deliver off-system resources. Rather than go into specific detail and take time to more accurately reflect Empire's arrangements and the statements made by SPP, it simply should be noted that Empire does incur Entergy access/transmission charges to deliver capacity and energy from the Plum Point Power Station, which is located near Osceola, Arkansas, as well as is responsible for Empire's share of SPP regional rate for base plan funded projects/use of SPP's regional network.

8. SPP also comments on page 22 that "With respect to the ITP, however, Empire has a relatively small service area. Its service territory accounts for approximately 2-3% of the SPP transmission footprint. Consequently, but for its membership in SPP, Empire would have relatively few resource alternatives available to it." SPP's statement implies that by its membership in SPP, Empire has available to it many more additional resources under the umbrella of SPP network service that "do not" require additional transmission(regional) service fees. SPP and stakeholders know that delivery of resources, on and off system, requires sufficient transmission capability and service. FERC's Open Access Transmission Tariff policies and rules enable wholesale customers, including Empire, the ability to procure transmission service to delivery off system resources regardless of RTO status and membership.

9. In addition, SPP states on page 23 that "Empire has utilized the EIS market to manage the variability of its wind farms, and but for SPP and SPP's EIS market, Empire's use of extensive wind resources would be less feasible." Empire does not disagree with SPP that the EIS market has supported Empire and other members' delivery and management of wind resources. However, Empire does not believe or share SPP's opinion that "use" of the Elk River and Meridian Way Wind Farm energy production would be less feasible. Empire is confident of

its ability to receive delivery of and manage the output of the wind farms output regardless of SPP's EIS market operation and/or SPP membership in general.

10. SPP's statement on page 24 that "If Empire was not an SPP member, it would have to build additional transmission facilities," and SPP's conclusion on page 31 that "Empire has been able to utilize significant wind resources and avoid building new transmission facilities and delay construction of generation facilities" and that such benefits cannot be attributed solely to SPP membership is somewhat misleading. Since the year 2000, Empire has invested approximately 95 million dollars in transmission facilities as a member of the SPP, as well as completed its largest generation investment program in its history. Although SPP's membership has provided benefits and was a factor in generation and transmission selection evaluations, it was not the key determining factor for Empire.

**B. Empire Comments Concerning Continued Membership in SPP**

11. With respect to the concluding positions of Staff and SPP regarding Empire's membership in SPP, Empire concurs that its membership in SPP is currently cost beneficial and respectfully requests that the Commission take no action at this time for the following reasons: (a) Empire has and will continue to receive sufficient benefit from SPP membership (given the current levels of regionally allocated costs to Empire and membership withdrawal obligations) and its participation in the EIS market; (b) no authorizations to plan(ATPs) or Notification to Construct (NTCs) will be issued from the ITP20; (c) the ITP10, which is scheduled to be approved in January 2012, will provide significantly greater detail on underlying, lower-voltage upgrades, benefits and costs, which should provide a greater level of clarification to the Commission; (d) the requisite Unintended Consequences review is under development and required to be completed by 2013. The results of that analysis, with input from the SPP RSC,

may ameliorate negative financial impacts to ratepayers in states such as Missouri, where Unintended Consequences are found to exist; and, e) The Stipulation and Agreement approved by the Commission in Case No. EO-2006-0141 requires Empire to file with the Commission a completed Interim Report on or before February 1, 2012. This provision also requires Empire to collaborate with Staff and the Public Counsel regarding issues they consider critical in a proper cost-benefit analysis for purposes of the Interim Report.

**C. Empire Comments Concerning Staff's Recommendations as to SPP Cost Overruns, Novations, and Additional Issues**

12. Staff's comments regarding SPP transmission project cost overruns, the novation process, and additional issues, raise many excellent points which most are being addressed by SPP staff and by SPP stakeholder committees that Empire and staff actively participate in. In general, Empire supports Staff's recommendations. However, Empire believes certain issues raised by the Commission in this docket and by Staff require additional stakeholder input and additional time for the SPP RSC to better understand the issues, implications of actions considered, and policy determinations. Empire does agree with SPP that although much work remains to be done, allowing these efforts to run their course will provide the Commission valuable information concerning these issues and potentially resolve, in whole or part, concerns raised in the Commission's Order.

**D. Additional Comments**

13. In the following paragraphs, Empire provides a brief opinion as to some of the key Staff recommendations that will be further discussed at the January 24<sup>th</sup> SPP Regional State Committee in New Orleans, Louisiana. If comments are not provided as to any other Staff, SPP, and/or KCPL recommendations or comments, Empire's lack of comment should not be interpreted as either agreement or disagreement with such comments. If the Commission

believes additional detail or comments to certain statements and/or recommendations made by any of the parties would be helpful, Empire will respond accordingly, upon such request.

**Application of a Specific ITP 20 Plan to ITP 10**

***Staff Recommendation 1: The state commissions should take an active role in the SPP process for determining the inputs to the 10-year plan. Most importantly, the states should determine their most immediate needs for renewable resources (with and without a federal renewable energy standard (RES)) over the next 10 years and should have the Cost Allocation Working Group perform a survey to determine expected needs on a year-by-year basis.***

**Empire Comments:** Empire concurs with Staff. Empire also believes the suggested ‘survey’ should distinguish between SPP member statutory obligations and commitments and economic non-binding targets/goals for renewable resource delivery.

***Recommendation 2: The state commissions should take an active role in the SPP process for determining the specific analysis used to determine “delivery of energy required.”***

**Empire Comments:** Empire concurs. Delivery of energy to load, specifically Empire and Missouri utilities’ loads is a critical assumption in the ITP10 analysis.

***Recommendation 3 and 6: The state commissions should recommend that the higher voltage upgrades in the Common Plan be given priority as candidates for in the ITP 10 plan.***

**Empire Comments:** Empire concurs. Simply because a transmission project is approved in the ITP10 process, should not mean that a Notification to Construct should be automatically issued. An ATP –authorization to plan – is more appropriate for the ITP10 test year.

*Recommendations 4 and 5: If the Common Plan is not sufficient to provide delivery of generation, the state commissions should recommend that the upgrades included for evaluation in the ITP 10 plan be limited to those in Robust Plan 3. In any case, the SPP should evaluate substitution of the Tuco to Potter 345 kV line for the Tolk to Potter 345 kV line.*

**Empire Comments:** Empire supports SPP’s Cost Effective Plan as detailed in the ITP20 report. Since Robust Plan 1 and 3 have projects that are “on” or “near” SPP’s seams/3<sup>rd</sup> party transmission provider neighbors and no discussion of 3<sup>rd</sup> party benefit or allocation of costs has been resolved, Robust Plans 1 and 3 projects should be evaluated again in the ITP10 study process after further discussion with seams counterparties.

**SPP Integrated Transmission Planning/ITP20 Process and Cost Overrun**

*Staff Recommendation 1: The Commission’s RSC representative should not vote in favor of recommending the SPP Board issue any additional NTCs without the NTCs being the result of a more thorough cost estimation process.*

**Empire Comments:** Empire concurs as it relates to ITP “regional” projects, 345kV transmission lines and related autotransformers.

***Staff Recommendation 2: The Commission’s RSC representative should recommend and vote in favor of a stricter cost estimation process, with no NTCs issued until a more thorough cost estimate has been produced and put in place.***

**Empire Comments:** Empire concurs as it relates to ITP “regional projects”, not SPP Transmission Expansion Plan (STEP) projects identified in the 2010 STEP Appendix B.

***Staff Recommendation 3: The Commission’s RSC representative should recommend and vote in favor of SPP not selling transmission service over a project until an NTC based on a more thorough cost estimation process than is currently in place has been returned with a firm cost estimate.***

**Empire Comments:** Empire concurs as it relates to ITP projects.

***Staff Recommendation 4: The Commission’s RSC representative should recommend and vote in favor of a proposal where SPP develops construction standards for cost estimation, as recommended in RSC Motion 3.***

**Empire Comments:** Empire concurs as it relates to general construction standards for cost estimation. Variations from such standards, and costs should be transparent to stakeholders. Empire believes the cost estimation policy and impacts of cost overruns should be addressed in terms of what circumstances would need to exist such that a certain cost would not be cost allocated based on SPP’s base plan funding/highway-byway method. The implications of cost overruns should be borne by the constructor of the transmission facilities, not automatically assigned to the customers located in that zone (i.e. SPP states that cost overruns could be allocated “zonally” rather than regionally). Empire believes it should be ‘directly assigned’ to



the entity constructing the project and it then becomes the constructing entity's responsibility to seek recovery of such costs, as appropriate.

***Staff Recommendation 5: The Commission's RSC representative should recommend and vote in favor of a proposal where SPP should: (1) establish who has audit rights regarding costs of transmission projects where the SPP Board has issued an NTC; (2) create an obligation of entities constructing transmission projects where the SPP Board has issued an NTC to furnish information requested by an entity who has such audit rights. The goal of this recommendation is to prevent unaudited transmission project costs from going into customer rates.***

**Empire Comments:** Empire generally concurs and believes that a construction of transmission facilities FERC accepted "formula rate" may provide some auditing rights. However, disagreements over such findings will require a Section 206 filing proceeding at FERC.

### **Novations**

***Staff Recommendation 1: The Commission's RSC representative should recommend and vote in favor of: If a novation occurs during the NTC process, or after the NTC is returned, a new cost estimate developed based on the new construction company's cost estimate and rate of return.***

**Empire Comments:** Empire concurs. It is important that a financial impact analysis/projected Annual Transmission Revenue Requirement assessment be made available to stakeholders, as well as a compelling reason for the need for such novation be provided. Empire

believes that the development of the “novation” policy should also apply to ‘assignment’ provisions as outlined in SPP OATT Attachment O.

***Staff Recommendation 2: The Commission’s RSC representative should recommend and vote in favor of a process where when a novation is proposed, the estimated financial impact of that novation must be presented to stakeholders.***

**Empire Comments:** Empire concurs.

***Staff Recommendation 3: The Commission’s RSC representative should recommend and vote in favor of a proposal regarding payments made for novations not being added to the cost a transmission project that is ultimately passed on to customers. To enforce this proposal, action may need to be taken at FERC.***

**Empire Comments:** Empire concurs.

***Staff Recommendation 4: The Commission’s RSC representative should recommend and vote in favor of a proposal where all novation payments amounts are released to the public.***

**Empire Comments:** Empire concurs.

***Staff Recommendation 5: The SPP proposal is to bring proposed novations before the RSC prior to when they are brought before the SPP Board. A concern is that novations can occur before and after NTCs are returned by transmission owners. Thus, the Commission’s RSC representative should recommend and vote in favor of a proposal where (1) transmission project costs estimates are newly generated whenever a***

*novation takes place; and (2) NTCs are reevaluated based on those updated cost estimates whenever a novation takes place.*

**Empire Comments:** Empire concurs, and further states that the re-evaluation should include a detailed cost impact/ATRR over the life of the project.

*Staff Recommendation 6: The Commission's RSC representative should recommend and vote in favor of SPP installing a process of review of changes in cost estimation / cost overrun that would allow a re-evaluation of a project, including possible revocations of ATPs and / or NTCs, after new cost information has been received.*

**Empire Comments:** Empire concurs and supports a new SPP policy regarding cost estimation, tracking, and a direct assignment cost allocation method for over runs to be developed in 2011. Such policies should apply to the Priority Projects.

*Staff Recommendation 7: The Commission's RSC representative should recommend and vote in favor of SPP not selling any transmission service over transmission projects that have received an ATP without a more thorough cost estimate having been performed in the project selection process.*

**Empire Comments:** Empire concurs.

### **Unintended Consequences/Equity Considerations**

***Staff Recommendation 1: The Commission's RSC representative should recommend and vote in favor of a proposal where: SPP considers a process where transmission owner (TO) members are allowed to not "participate" in projects the TO believes are not cost effective to their utility customers that will ultimately pay for the projects.***

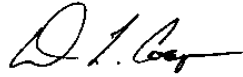
**Empire Comments:** Empire concurs. Empire believes that SPP and RSC must develop cost allocation waiver provisions or balanced portfolio "like" transfer payment/crediting provisions for the ITP planning process. Empire suggests the RSC work with SPP staff on taking the lead and getting such "unintended consequences" policy developed in 2011 for implementation in 2012.

***Staff Recommendation 2: The Commission's RSC representative should recommend and vote in favor of a proposal where: SPP considers a process where TO utilities have the right to contribute their regional share of a transmission projects cost in an up front payment in lieu of paying fixed carrying charges related to the project's cost over time.***

**Empire Comments:** Empire believes this could be a component of the "unintended consequences"/equity balancing policy to be developed by the SPP and RSC for ITP projects.

WHEREFORE, Empire prays that the Commission consider its initial and reply comments and, thereafter, issue such orders as the Commission deems to be appropriate.

Respectfully submitted,



---

Dean L. Cooper MBE #36592  
BRYDON, SWEARENGEN & ENGLAND P.C.  
312 E. Capitol Avenue  
P. O. Box 456  
Jefferson City, MO 65102  
(573) 635-7166 voice  
(573) 635-3847 facsimile  
Email: dcooper@brydonlaw.com

ATTORNEYS FOR THE EMPIRE DISTRICT  
ELECTRIC COMPANY

#### **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on January 18, 2011, to the following:

Sarah Kliethermes  
Office of the General Counsel  
Governor Office Building, 8<sup>th</sup> Floor  
Jefferson City, Mo 65101  
[Sarah.Kliethermes@psc.mo.gov](mailto:Sarah.Kliethermes@psc.mo.gov)

Lewis Mills  
Office of the Public Counsel  
Governor Office Building, 6<sup>th</sup> Floor  
Jefferson City, MO 65101  
[lewis.mills@ded.mo.gov](mailto:lewis.mills@ded.mo.gov)

David C. Linton  
David C. Linton, L.L.C.  
424 Summer Top Lane  
Fenton, Missouri 63026  
[djlinton@charter.net](mailto:djlinton@charter.net)

