

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 13th day
of July, 2006.

In the Matter of the Application of The Empire District)	
Electric Company for Authority to Transfer Functional)	<u>Case No. EO-2006-0141</u>
Control of Certain Transmission Assets to the)	
Southwest Power Pool, Inc.)	

AMENDED ORDER APPROVING STIPULATION AND AGREEMENT

Issue Date: July 13, 2006

Effective Date: July 23, 2006

Background

On September 28, 2005, The Empire District Electric Company (EDE) filed an application under Section 393.190.1, RSMo 2000, and Commission rule 4 CSR 240-3.110 to transfer functional control of certain transmission assets to the Southwest Power Pool, Inc. As required by Section 393.190.1, the Commission issued an Order Directing Notice of Tax Impact, wherein the Commission informed the County Clerks of Barry, Barton, Cedar, Christian, Dade, Dallas, Green, Hickory, Jasper, Lawrence, McDonald, Newton, Polk, St. Clair, Stone and Taney Counties that the proposed transaction will have no tax impact on the revenues of their respective counties. The Commission subsequently set an intervention deadline and ordered that notice be properly given. The Commission granted intervention to Southwest Power Pool, Inc., Aquila, Inc. – Investor (Electric), Midwest Independent Transmission System Operator (MISO) and the Kansas City Power & Light Company.

On February 24, 2006, the parties filed a Stipulation and Agreement. The signatories include: EDE; Southwest Power Pool; Kansas City Power & Light; the Staff of the Commission; and the Office of the Public Counsel. Although not signatories to the Agreement, Aquila filed a Notice of No Opposition and MISO filed a Waiver of Right to Hearing. No party has filed opposition to the agreement. The Staff of the Commission filed its Memorandum in Support of the Stipulation and Agreement on March 14, 2006. Thereafter, the Commission held an on-the-record presentation to better understand certain circumstances surrounding Empire's participation in the SPP.

The Agreement

The signatories to the Stipulation and Agreement addressed the following:

- EDE's interim and conditional participation in the SPP
- transmission service to the Missouri Bundled Retail Load – the terms and conditions of which are contained in the "Service Agreement", Attachment A, to the Stipulation and Agreement.
- SPP administrative costs
- SPP geographic scope and function
- joint operating agreements addressing an intrastate RTO seam
- sunset provision and effective date

The signatories agree that EDE's interim and conditional participation in the SPP is "prudent and reasonable" and is "not detrimental to the public interest."

Staff's Memorandum in Support

In its Memorandum, Staff points out that the standard for approval of this type of application is that the transfer is not detrimental to the public interest. In addition to being

measured in terms of dollars, this standard should also take into consideration the following:

- reliability of the interconnected power system
- public safety
- improvements or detriments to system planning
- impact on the jurisdiction of the Missouri Commission

Staff goes on to discuss each of these considerations in great detail.

Monetary cost/benefit

With regard to a “dollar” cost/benefit analysis, Staff considers two elements: 1) the costs paid by EDE to SPP for its administration of the RTO; and 2) the savings related to more efficient use of existing generation and transmission assets. Staff informs the Commission that the SPP contracted with Charles River Associates, International to conduct a study of the cost and benefits of the entire SPP region. That study concluded that the SPP, as an RTO, is cost beneficial for EDE. Further, the study shows a strong indication that the net benefits to Missouri ratepayers from EDE joining the SPP are positive. Staff does, however, point out that any lack of accuracy of the study may primarily have to do with the relative costs of fuels, concluding that higher gas costs lead to an increase in benefit but that higher coal prices would result in lower benefits.

Although the studies were the best information available at the time they were performed, Staff adds that it supports the Commission granting interim approval of EDE’s participation in the SPP. Further, the Stipulation and Agreement require an Interim Report that measures the benefits of participation. The Interim Report reviews the actual costs of participation compared to an estimate of what the costs would have been absent such

participation. Additionally, if the cost of administration of non-market functions increases by more than 25% or the load of the SPP membership decreases by more than 25%, EDE will file a pleading with the Commission to address the merits of continued participation. Finally, with regard to transmission upgrades, if any one supplemental upgrade project exceeds \$25 million, EDE agrees to provide Staff and the OPC with a report detailing the need, costs and anticipated benefits of the upgrade.

Reliability

Staff states that reliability will be improved simply because transmission service will be provided on an integrated regional basis in which all of the physical flows are accurately taken into account. Information is faster and more accurate than if processed by a single Regional Transmission Provider. Also, with the additional flexibility of the RTO to dispatch generation, the RTO is better able to manage congestion and thereby improve the reliability of the system.

Public Safety

EDE will remain responsible to ensure that its bulk power systems do not threaten public safety. However, removing the responsibilities to also manage the provision of transmission service should allow EDE to better focus on public safety issues.

System Planning

A primary benefit of regional planning is that reliable transmission service can be provided on a region-wide basis at a lower cost. One specific aspect of planning has to do with system upgrades. Although the SPP is allowed by FERC to require regional cost sharing for Base-Plan Projects, those projects must be needed in order to fix reliability

issues. The Interim Report to be filed by EDE also addresses the issue of system upgrades.

Commission Jurisdiction

Empire, Staff and Public Counsel agree and SPP acknowledges that the Service Agreement's primary function is to ensure that the MoPSC continues to set the transmission component of Empire's rates to service its Missouri Bundled Retail Load. The Service Agreement, however, must be approved by FERC. If changes are required and the signatories can agree on those changes, the revised Service Agreement will be provided to the Commission's Staff and OPC.

With regard to unanticipated FERC actions, Empire, Staff and Public Counsel acknowledge that the Service Agreement is an integral part of the Stipulation and that the Service Agreement's primary function is to ensure that the MoPSC continues to set the transmission component of Empire's rates to serve its Missouri Bundled Retail Load. Therefore, Empire, Staff and Public Counsel agree that the MoPSC will have the right to rescind its approval of Empire's participation in SPP and to require Empire to timely initiate any notices, filings and actions necessary to seek withdrawal on the bases of an unanticipated FERC action that would either preclude the MoPSC's ability to set the above rates or that would have the effect of changing the Service Agreement.

Staff concludes that the parties have crafted a Stipulation and Agreement that accommodates EDE's request, while protecting the public interest.

On-the-Record Presentation

The Commission held an on-the-record presentation on May 12, 2006. The Commissioners and the parties discussed issues having to with the interests of both the

company's customers and the general public. With regard to "full requirements" customers, the contracts under which those customers are operating would not be disturbed during the duration of the contract. Additionally, the Commission was assured that after the transfer the Commission, not the FERC, would continue to have jurisdiction over the retail rates of the company.

The Commission also discussed with the parties the consequences that would result from the company withdrawing from the SPP. Witnesses explained that the company would have to pay an exit fee that Staff deemed reasonable and further, that the company would have to honor its obligations with regard to new transmission expansions.

Finally, as there are two regional "power pools" in Missouri, SPP and MISO, the Commission solicited input on potential issues that may arise. The Commission was informed that these two entities can operate efficiently and in the public interest through "seams agreements." These agreements are necessary to address issues having to do with power flow and reliability.

Conclusion

The Commission has reviewed EDE's application, the resulting Stipulation and Agreement, and Staff's memorandum in support of the Stipulation and Agreement and, having considered these verified pleadings, which are admitted into evidence, finds that the transfer of functional control of EDE's assets to the SPP is not detrimental to the public interest and shall be approved. Furthermore, no party objects to the Stipulation and Agreement. Therefore, under Commission rule 4 CSR 240-2.115(2)(C), the Commission will treat it as unanimous.

The Commission points out that Empire's participation with the SPP is for an initial period of up to seven years. Further, that two years prior to the conclusion of the Interim Period, Empire has agreed to file a pleading with the Missouri Public Service Commission regarding Empire's continued participation. Empire, Staff and Public Counsel acknowledge that; 1) prior to the end of the Interim Period, the MoPSC has the jurisdiction to order that Empire's approval for participation in SPP be terminated, modified, or further conditioned; and 2) if the MoPSC rescinds its approval of Empire's participation in SPP, it has the jurisdiction to require Empire to timely initiate any notices, filings, and actions necessary to seek withdrawal. SPP acknowledges that there is a possibility that the Mo PSC could issue such an order to Empire. It is with this understanding that the Commission approves the Stipulation and Agreement.

IT IS ORDERED THAT:

1. The Unanimous Stipulation and Agreement filed by the signatories in this matter is approved.
2. The Empire District Electric Company is authorized to transfer to the Southwest Power Pool, Inc., conditional and interim functional control of certain transmission assets as identified in Appendix C attached to EDE's application.
3. The Empire District Electric Company shall comply with the terms and conditions contained in the Stipulation and Agreement.
4. The Empire District Electric Company is authorized to comply with the Stipulation and Agreement and the attached Service Agreement.
5. The Empire District Electric Company is authorized to enter into, execute and perform in accordance with the terms of all other documents, not inconsistent with the

Stipulation and Agreement, which may be reasonable necessary and incidental to the performance of the transaction.

6. During The Empire District Electric Company's transfer of functional control of certain transmission assets, such assets and the control thereof remains subject to the Missouri Public Service Commission's jurisdiction as specifically described in the Stipulation and Agreement and generally described in the body of this order.

7. This order shall become effective on July 23, 2006.

8. This case may be closed on July 24, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw,
and Clayton, CC., concur.
Appling, C., absent.

Jones, Regulatory Law Judge