

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 31st day
of October, 2012.

In The Matter of a Determination of Special)	
Contemporary Resource Planning Issues to be)	
Addressed by The Empire District Electric Company)	<u>File No. EO-2013-0105</u>
in its Next Triennial Compliance Filing or Next)	
Annual Update Report)	

**ORDER ESTABLISHING SPECIAL CONTEMPORARY RESOURCE
PLANNING ISSUES**

Issue Date: October 31, 2012

Effective Date: November 1, 2012

Commission Rule 4 CSR 240-22.080(4), requires Missouri's electric utilities to consider and analyze special contemporary electric resource planning 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 ("Empire") analysis and response in its next Integrated Resource Plan ("IRP") filing. Empire filed responses to those suggestions. The Commission must now determine what special contemporary issues Empire should address.

No law or regulation requires a hearing before determining what special contemporary issues Empire should address in its next IRP filing. Consequently, this is not a contested case.¹ Because this is a non-contested case, the Commission acts on evidence that is not formally adduced and preserved.² There is no evidentiary record.³ Consequently, the Commission bases its decision on the parties' verified filings.

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.⁴

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 submitted an IRP annual update filing in March 2012 in File Number EO-2012-0294. Empire's next full IRP study is due on April 1, 2013.⁵ Additionally, as agreed in Empire's previous IRP, File No. EO-2011-0066, Empire will be filing an application in relation to the Missouri Energy Efficiency Investment Act ("MEEIA") and the Commission's rules implementing that act.⁶ Special contemporary issues should not include issues that are already required to be included in Empire's

¹ Section 536.010(4) defines "contested case" as "a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing."

² *State ex rel. Public Counsel v. Public Service Comm'n*, 259 S.W.3d 23, 29-30 (Mo. App. 2008).

³ *Id.* The competent and substantial evidence standard of Article V, Section 18, does not apply to administrative cases in which a hearing is not required by law." *Id.*

⁴ 4 CSR 240-22.080(4).

⁵ 4 CSR 240-22.080(1)(B).

⁶ See also File No. EO-2012-0206.

upcoming triennial compliance report or that would be addressed in the planned MEEIA filing.

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. The regulation setting the deadline for suggestions and Empire's response does not allow time for further exchanges of suggestions. Ultimately, it is up to the Commission to decide whether Empire should address a particular issue. Based on the Commission's independent and impartial review of the verified filings, and its consideration of the factors outlined above, the Commission finds that it is in the public interest to 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 in its 2013 triennial Integrated Resource Plan:
 - a. Analyze and document the impacts of opportunities to implement distributed generation, DSM programs and CHP projects in collaboration with municipal water treatment plants and other local waste or agricultural/industrial processes with on-site electrical and thermal load requirements, especially in targeted areas where there may be transmission or distribution line constraints.
 - b. Investigate and document the impacts on the Company's preferred resource plan and contingency plans of aggressive regulations by the FERC, regional transmission organizations or Missouri statutes or regulations to allow aggregators of retail customers to operate and market demand response services in Missouri.

- c. Disclose and discuss the amount and impact of every state or federal subsidy the Company expects to receive with regard to any or all fuel sources it intends to use during the IRP study period.
2. This order shall become effective on November 1, 2012.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Kenney, and Stoll, CC.,
concur;
Jarrett, C., dissents, with separate
dissenting opinion to follow.

Stearley, Deputy Chief Regulatory Law Judge