

**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 December, 2009.

In the Matter of The Empire District Electric Company)
of Joplin, Missouri for Authority to File Tariff Increasing) **File No. ER-2010-0130**
Rates for Electric Service Provided to Customers in the) Tariff File No. YE-2010-0303
Missouri Service Area of the Company)

ORDER GRANTING APPLICATIONS TO INTERVENE

Issue Date: December 16, 2009

Effective Date: December 16, 2009

In this order, the Commission grants the applications to intervene of the Missouri Energy Users' Association¹ and the Missouri Department of Natural Resources.

Missouri Energy Users' Association

MEUA filed a timely request to intervene. The Empire District Electric Company filed an objection to the Associations' intervention arguing that: 1) the application does not comply with the Commission rules² regarding verification by affidavit; 2) Praxair, Inc. and Explorer Pipeline Company, the only members of MEUA at the time of filing, are already parties to this case via a stipulation and agreement entered into in a previous matter;³ and 3) the Commission rules⁴ governing intervention would be thwarted by MEUA adding members.

¹ MEUA's members now include Praxair, Inc., Explorer Pipeline Company and, most recently, Enbridge Pipeline.

² 4 CSR 240-2.075 (1).

³ See Commission File No. EO-2005-0263.

⁴ 4 CSR 240-2.075 (3).

Empire's first concern is that the application does not comply with the Commission's rule that applications be verified by affidavit. The first section of 4 CSR 240-2.075 requires that "an application to intervene shall comply with *these rules* [italics added]." The question is whether the Commission, by use of the words "these rules", intended applications to intervene to comply with the general application rule⁵ or just the rule regarding intervention.

In a subsequent filing,⁶ MEUA points out that there has been confusion regarding the applicability of the general application rules to those governing intervention. To this end and to the extent that the Commission believes that MEUA's application is deficient, MEUA requests a waiver. The Commission agrees that there has been confusion in this regard. The Commission notes that the only application to intervene, which complies with the general application rules as well as those under intervention, is that of Kansas City Power & Light Company. MEUA's point is well taken. The Commission, to the extent that it is necessary, waives the requirement that MEUA file an affidavit.

Secondly, Empire states that Praxair and Explorer are already parties through a stipulation and agreement in a prior case. In its objection, Empire argues that "because Praxair and Explorer are already parties to this case, it is neither necessary nor proper for the Commission to give those parties additional intervenor status under the alter ego MEUA." Empire fails to show the legal relevance or practical implications of a party having "additional intervenor status." The argument therefore fails.

Finally, Empire argues that because additional members may join MEUA during the course of this proceeding, MEUA has not therefore listed all of its members and is attempting to thwart the Commission's rule requiring such. Initially, Praxair and Explorer

⁵ 4 CSR 240-2.060

⁶ See Response to Order Directing MEUA to Respond, filed December 8, 2009.

were the only members of MEUA. Since that time, Enbridge Pipeline has joined MEUA. Empire's point is well taken. However, because MEUA listed all of its members at the time the application to intervene was filed, MEUA was in compliance with the Commission's rule. On the other hand, the Commission notes that whether a company joins MEUA or not, because such company's interests are similar to those already members to MEUA, then the interest is represented by MEUA. Because the interests are similar, then positions and arguments will not vary as to cause unfairness to Empire. Most recently, Enbridge Pipeline has joined MEUA. Due to the timing, the Commission finds that Empire has not been prejudiced by Enbridge joining MEUA. If additional members attempt to join MEUA, the Commission invites Empire to file a pleading setting out how it would be prejudiced or how fairness or due process would be thwarted.

The Department of Natural Resources

The Department of Natural Resources filed an application to intervene after the deadline and a motion to file its application out of time. DNR states that because of a move to a different office building, the state holiday and the press of business, it inadvertently lost track of this case and the intervention filing deadline. Further, DNR points out that the timing of its request to intervene will not cause prejudice. No party has objected to DNR's request.

Commission rule⁷ allows the Commission to grant applications to intervene filed after the deadline upon a showing of good cause. The Commission finds that DNR has shown good cause and will grant the motion to file out of time as well as the application to intervene.

⁷ 4 CSR 240-2.075(5)

THE COMMISSION ORDERS THAT:

1. The Missouri Energy Users' Association, which includes: Praxair, Inc.; Explorer Pipeline Company; and, Enbridge Pipeline Company, is granted intervention.
2. Missouri Energy Users' Association shall immediately notify the Commission of the identity of any additional members as they join the Association.
3. The Missouri Department of Natural Resources' motion to file out of time is granted.
4. The Missouri Department of Natural Resources is granted intervention.
5. This order shall become effective upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

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

Jones, Senior Regulatory Law Judge