

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 17th day of March, 2010.

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 APPROVING APPLICATION
FOR VARIANCE**

Issue Date: March 17, 2010

Effective Date: March 17, 2010

Background

Commission rule 20.090(2)(D) requires that an electric utility:

include in its initial notice to customers regarding [a] general case, a commission approved description of how the costs passed through [a] proposed rate adjustment mechanism [will] be applied to monthly bills.

Additionally, Commission rule 3.161(2)(D) and (3)(A) requires that an electric utility requesting an adjustment file a general description of the design and intended operation of the proposed adjustment and an example of the notice to be sent to customers as required by 20.090(2)(D).

Application

On March 3, 2010, The Empire District Electric Company filed an application requesting a variance or waiver from rules 3.161(2)(D) and (3)(A). Empire explains that although it did not include an example of the required notice with its initial filing, it did issue a press release announcing its request that the fuel adjustment clause approved in its last

rate case be continued. The company states that it became aware that it may not have fully complied with the Commission's rules through correspondence sent by Staff and through statement in Staff's Cost of Service Report, filed on February 26. By filing this application, the company seeks to remedy its noncompliance.

Additionally, the company states that because local public hearings are scheduled for later this month¹, there is not enough time to issue a supplemental notice nor would it be cost-effective to do so for the sole purpose of advising customers of the fuel adjustment clause. Finally, the company suggests that if the Commission believes additional notice should be required, then it should be provided in the form of a press release or notice in a newspaper of general circulation.

Discussion

Commission rule 3.015 requires that applications for waiver or variances specify the rule from which a variance or waiver is sought, the reason for the request and good cause for granting the requested relief. The Commission finds that Empire has specified the rule from which the variance or waiver is sought and its reason for the request. The Commission finds that because the rule requires that notice be sent at the beginning of the case, it is not possible for Empire to issue notice as required by the rules. Good cause therefore exists for the Commission to grant a waiver or variance.

Through its October 29, 2009 press release, Empire announced that it intended to seek a continuance of the Fuel Adjustment Clause that was approved in the last rate case. As Empire suggests in its application, the Commission finds that the spirit of the rule – to inform customers of the Fuel Adjustment Clause – has been served. Finally, during a

¹ Local Public Hearings are scheduled for March 22 and 23

prehearing conference held on March 10, 2010, all parties were asked if there were any objections to Empire's request and there were none.

In its application, Empire points out that mailing customer notice at this stage in the case would not be cost-effective and instead suggests ways to cure its oversight; namely, the issuance of a supplemental press release or publication in a newspaper. The Commission agrees that mailing customer notice would not be cost-effective. Further, the Commission finds that additional public notice may give appearance of a new case and lead to confusion. The Commission concludes that because the spirit of the rule has been served by the initial press release, it is appropriate to grant a variance rather than a waiver.

THE COMMISSION ORDERS THAT:

1. The Empire District Electric Company's application for variance is granted.
2. 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