

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 21st day of
May, 2009.

In the Matter of the Proposed Charges Related to)	
the Fuel Adjustment Clause of The Empire District)	<u>File No. EO-2009-0349</u>
Electric Company)	Tariff No. YE-2009-0712

**ORDER APPROVING TARIFF TO ESTABLISH
RATE SCHEDULES FOR FUEL ADJUSTMENT CLAUSE**

Issue Date: May 21, 2009

Effective Date: June 1, 2009

On April 1, 2009¹, The Empire District Electric Company (hereafter "Empire") filed proposed rate schedules, effective June 1, to make adjustments to its fuel adjustment clause (hereafter "FAC"). The rate schedules increase charges related to the FAC approximately \$1.9 million.

The Commission gave notice of this filing to the public, and set a deadline for the filing of intervention requests. The Commission received no intervention requests. But according to Commission Rule 4 CSR 240-3.161(10), parties in Empire's last general rate case² became intervenors in this case without applying for intervention.

As required by Commission Rule 4 CSR 240-20.090(4), on May 1, the Staff of the Commission (hereafter "Staff") filed its recommendation not later than 30 days after Empire's tariff filing. Staff is charged with analyzing Empire's filing to determine if the proposed adjustment to the FAC is in accordance with the provisions of Commission Rule

¹ All calendar references are to 2009 unless otherwise noted.

² File No. ER-2008-0093.

4 CSR 240-20.090, Section 386.266 RSMo, and the FAC mechanism established in Empire's most recent general rate proceeding. Staff recommends that the Commission approve the tariff sheet.

Commission Rule 4 CSR 240-2.080(15) allows parties not more than ten days to respond to pleadings unless otherwise ordered by the Commission. The Commission did not issue an order changing the ten-day deadline; therefore, any response to the Staff Recommendation was due on May 11. No party timely responded to Staff's Recommendation. Instead, Praxair, Inc., and Explorer Pipeline Company (hereafter "Industrial Intervenors") filed a Motion to Reject Tariffs on May 15.

The Commission finds that Industrial Intervenors acquiesced in Staff's Recommendation because they failed to object to it within ten days, as required by Commission Rule 4 CSR 240-2.080(15).³ In addition, the Commission also will deny the motion for the reasons stated below.

Industrial Intervenors claim that the increased costs for fuel and purchased power needed to replace the unavailable generation of Iatan 1 were not prudently incurred. Therefore, under Section 386.266.1 RSMo, they argue that the Commission must reject Empire's FAC request to recover those costs.

On May 20, Staff and Empire responded. Empire pointed out that the Commission's FAC rules have a three-step process: the periodic adjustment of rates, a true-up review, and a prudence review. Empire states that the instant case is in the first step, which is the periodic adjustment of rates. In contrast, Empire argues that the Industrial Intervenors' motion attacks the alleged imprudence of Empire's fuel cost, which is a motion proper for

³ Indeed, adhering to the Commission's ten-day requirement is even more critical when a tariff is pending.

the third step of the Commission's FAC review procedure, the prudence review. Staff's response largely echoed Empire's response, stating that Industrial Intervenors' concerns are the proper subject of a prudence review via Commission Rule 4 CSR 240-20.090(7), but not the basis for rejecting the tariff sheet. Later on May 20, Industrial Intervenors filed a Reply to Responses of Staff and Empire District Electric Company.

Commission Rule 4 CSR 240-20.090(4) states that if the FAC rate adjustment is in accordance with the provisions of Commission Rule 4 CSR 240-20.090, Section 386.266, and the FAC mechanism established in the most recent general rate proceeding, the Commission shall either issue an interim rate adjustment approving the tariff schedules or, if no such order is issued, the schedules shall take effect 60 days after the schedules were filed.⁴ After considering the verified application and testimony filed by Empire, Staff's verified Recommendation, and Industrial Intervenors' motion, the Commission finds that the above-recited standard is met. The Commission will approve the tariff sheet.

THE COMMISSION ORDERS THAT:

1. The tariff issued on April 1, 2009, by The Empire District Electric Company, and assigned Tariff No. YE-2009-0712, is approved to be effective June 1, 2009, as an interim rate adjustment order, subject to both true-up and prudence reviews. The tariff approved is:

P.S.C. Mo. No. 5, Section 4

1st Revised Sheet No. 17c, Canceling Original Sheet No. 17c

⁴ As opposed to the true-up and prudence portions of the Commission's rules, this periodic adjustment does not contain a provision granting a right to a hearing. As such, it is a noncontested case, and no hearing is required. See generally *State ex. rel. Utility Consumers' Counsel of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d. 41, 49 (Mo. banc. 1979); *State ex. rel. Jackson County v. Public Service Commission*, 532 S.W.2d 20, 31 (Mo. banc 1975); *State ex. rel. Public Counsel v. Public Service Commission*, 121 S.W.3d 534, 539 (Mo. App. 2003).

2. This order shall become effective on June 1, 2009.
3. This file shall be closed on June 2, 2009.

BY THE COMMISSION

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

Colleen M. Dale
Secretary

(S E A L)

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

Pridgin, Senior Regulatory Law Judge