

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of The Empire District Electric	)	
Company's 2019 Triennial Compliance	)	<b><u>File No. EO-2019-0049</u></b>
Filing Pursuant to 4 CSR 240-22	)	

**STAFF'S RESPONSE TO EMPIRE'S APPLICATION FOR VARIANCES**

**COMES NOW** Staff of the Missouri Public Service Commission ("Staff"), by and through Staff Counsel's Office, and files its Response to The Empire District Electric Company's ("Empire") Application for Variances from specific provisions of Commission Rules 4 CSR 240-22.030 and 4 CSR 240-20.094 related to the Load Analysis and Load Forecasting of Electric Utility Resource Planning and Demand-Side Programs, respectively. In response thereto, Staff states as follows:

1. On September 20, 2018, Empire filed an Application For Variances from portions of Commission Rules 4 CSR 240-22.030 and 4 CSR 240-20.094 with regard to Empire's 2019 Chapter 22 Electric Utility Resource Planning<sup>1</sup> triennial compliance filing. For the variances which Empire requests, Empire has provided two appendices (Appendix A and Appendix B) in which it sets out more detailed explanations of the variances it is requesting. Empire also notes that the variances being requested for Empire's 2019 Chapter 22 triennial compliance filing were requested by Empire and granted by the Commission in Empire's 2016 Chapter 22 Electric Utility Resource Planning triennial compliance filing.

2. Empire in its request for variances from Rule 4 CSR 240-22.030(4)(A)(1) and (7)(A) states in Appendix B to its Application that it plans to forecast by revenue class, as it did in its 2016 load forecast, rather than by cost-of-service class as provided

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<sup>1</sup> Integrated resource planning ("IRP").

for by the Chapter 22 rule and use end-use information for the analysis of each major class, although Empire does not maintain end-use data for the industrial class. The revenue class approach aggregates similar customers into larger groups that offer data stability, and align with economic drivers, which is important for statistical modeling to correlate historical sales, economic drivers, and end-use data. Staff agrees with this approach and recommends approval of Empire's request for variances from Rule 4 CSR 240-22.030(4)(A)(1) and (7)(A).

3. However, for variances from Rule 4 CSR 240-22.030(4)(A)(1) and (7)(A), Rule 4 CSR 240-22.080(13) provides that the Commission may grant an application for waiver or variance filed less than twelve (12) months prior to the triennial compliance filing upon a showing of good cause for the delay in filing the application for waiver or variance less than twelve (12) months prior to the triennial compliance filing. On April 1, 2015, when Empire filed for variances respecting its then upcoming Chapter 22 Electric Resource Planning compliance filing, its filing for variances was one year in advance of its April 1, 2016 filing of its 2016 Chapter 22 triennial compliance filing. As a consequence, Empire was not required by Rule 4 CSR 240-22.080(13) to make a for good cause shown filing.

Rule 4 CSR 240-22.080(13) provides as follows:

Upon written application made at least twelve (12) months prior to a triennial compliance filing, and after notice and an opportunity for hearing, the commission may waive or grant a variance from a provision of 4 CSR 240-22.030–4 CSR 240-22.080 for good cause shown. **The commission may grant an application for waiver or variance filed less than twelve (12) months prior to the triennial compliance filing upon a showing of good cause for the delay in filing the application for waiver or variance.** [Emphasis added.]

4. In the situation where the Rule provides for the filing for a variance a year before the date of a Chapter 22 triennial compliance filing, if the utility meets the timing requirement of filing for the variance at least one year in advance of the triennial compliance filing, there is arguably still time for the utility to change plans on its own or if directed to do so by the Commission. When the filing for a variance is much less than one year from the date of the utility's filing of its Chapter 22 triennial compliance filing, the utility may not have enough time to complete the task it is seeking a variance from or perform the task well, (1) if it were to try to change course and perform the task, or (2) if the utility's request for a variance were denied by the Commission.

5. That is the situation Empire's Application For Variances under Rule 4 CSR 240-22.080(13) presents in part because at the time of the filing on September 20, 2018, there was just over six (6) months remaining prior to the April 1, 2019, Chapter 22 triennial compliance filing. Empire failed to request a variance or waiver from the twelve (12) month filing requirement in 4 CSR 240-22.080(13) and make a showing of good cause for the delay in filing the Application for waiver or variance. Empire's Appendix B does not constitute a showing of good cause for the delay in filing its Application for variance from Rule 4 CSR 240-22.030(4)(A)(1) and (7)(A).

6. For a variance from Rule 4 CSR 240-20.094(3)(A)2 and 3, Rule 4 CSR 240- 20.094(11) states good cause must be shown:

Upon request and for good cause shown, the commission may grant a variance from any provision of this rule.

There is no request in Empire's Application For Variances or in its Appendix A for a request for a variance from Rule 4 CSR 240-20.094(3)(A)2 and 3 for good cause shown.<sup>2</sup>

Rule 4 CSR 240-20.094(3)(A)2 and 3 require collection of primary data by an independent third party in support of the 2019 market potential study. Empire proposes to use 2015/2016 study data instead of new data because it contends that the prior study data is still applicable and relevant and can be supplemented with information from secondary sources, new primary data collection is costly and no significant market transformation or standard changes have occurred. Staff agrees and recommends approval of Empire's request for variance from Rule 4 CSR 240-20.094(3)(A)2 and 3. Although Empire did not plead in its Application for good cause shown, Staff believes that Empire's Appendix A makes a showing of good cause.

7. Staff does not oppose the granting of the variances requested by Empire regardless of Staff's concern that Empire did not recognize that the Commission's Rules require a showing of good cause. Staff expects it will revisit this matter in the course of its addressing Empire's 2019 Electric Utility Resource Planning triennial compliance filing.

**WHEREFORE** Staff submits its Response to Empire's Application For Variances.

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<sup>2</sup> There is language in Rule 4 CSR 240-20.094 similar to language previously in Rule 4 CSR 240-3.164(2)(A). The latter was rescinded on February 28, 2018. In 2016 Empire requested a variance from Rule 4 CSR 240-3.164(2)(A).

Respectfully submitted,

**/s/ Steven Dottheim**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record in File No. EO-2019-0049 this 24th day of October, 2018.

**/s/ Steven Dottheim**