

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 27<sup>th</sup> day of February, 2013.

In the Matter of The Empire District Electric Company of Joplin, Missouri Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company	) ) ) ) )	<b><u>File No. ER-2012-0345</u></b> YE-2013-0020
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**ORDER APPROVING STIPULATION AND AGREEMENT**

Issue Date: February 27, 2013

Effective Date: March 6, 2013

**Procedural History**

On July 6, 2012, The Empire District Electric Company (“Empire”) submitted a tariff with the Missouri Public Service Commission (“Commission”) designed to implement a general rate increase for electric service. In its filing, Empire requested an overall increase in its Missouri retail electric rates of \$30.7 million, exclusive of applicable fees or taxes, which constitutes an increase of approximately 7.6%. The Commission suspended the effective date of that general rate increase tariff until June 3, 2013. On July 23, 2012, the Commission granted the applications to intervene as parties of the Missouri Department of Natural Resources (“MDNR”), Southern Union Company d/b/a Missouri Gas Energy (“MGE”), and the Midwest Energy Users’ Association (“MEUA”)<sup>1</sup>. The Midwest Energy Consumers Group (“MECG”)<sup>2</sup> was granted intervention on August 3, 2012. By order issued

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<sup>1</sup> MEUA is an unincorporated association consisting of the following members: Explorer Pipeline Company, Enbridge Pipelines (Ozark), LLC, and Praxair, Inc.

<sup>2</sup> MECG is an unincorporated association consisting of the following members: Wal-Mart Stores East, L.P., Sam’s East, Inc., Tyson Foods, and Tamko Building Products, Inc.

on August 6, 2012, the Commission set a procedural schedule leading to an evidentiary hearing. That order also established the test year for this case as the twelve month period ending March 31, 2012, updated for known and measureable changes through June 30, 2012, with a true-up period through December 31, 2012.

Empire also filed a separate tariff (YE-2013-0021) to increase Empire's gross annual electric revenues on an interim basis by approximately \$6.2 million, subject to refund. The interim tariff proposed to increase each base rate or charge for electric service by 1.53 percent. On July 23, 2012, the Commission suspended the interim rate tariff in order to allow Empire an opportunity to present evidence to show that it should be granted an interim rate increase. The Commission held an evidentiary hearing on September 10, 2012 to address the issue of whether it was appropriate under the circumstances to grant Empire's request for interim rate relief. On October 31, 2012, the Commission issued a *Report and Order Regarding Interim Rates*, which rejected the tariff that would implement the interim rate increase and denied Empire's interim rate request.

On January 3-4, 2013, the Commission conducted two local public hearings in Joplin, Missouri, and one local public hearing in Reeds Spring, Missouri. At those hearings, the Commission received testimony from Empire's customers and the public regarding the request for a rate increase.

On February 15, 2013, the procedural schedule was suspended at the parties' request, and on February 22, 2013, several of the parties filed a *Nonunanimous Stipulation and Agreement* ("Agreement") purporting to resolve all issues in this matter. The signatory parties include Empire, the Commission's Staff, the Office of the Public Counsel, MDNR, MCEG, and MEUA. The remaining party, MGE, did not sign the Agreement.

The Commission held an on-the-record proceeding on February 25, 2013 to direct questions to the parties regarding the Agreement. While the Agreement is not unanimous, MGE stated at the on-the-record proceeding that it did not oppose the Agreement and did not intend to request a hearing.<sup>3</sup> Therefore, the Commission will treat the Agreement as unanimous.

### **The Agreement**

The Agreement waives procedural requirements that would otherwise be necessary before final decision.<sup>4</sup> Since the settlement disposes of this action, the Commission need not separately state its findings of fact.<sup>5</sup> The parties expressly ask for an order approving all of the specific terms and conditions of the Agreement.

The Agreement's terms include an increase to Empire's Missouri jurisdictional gross annual electric revenues in the approximate amount of \$27,500,000, exclusive of any applicable license, occupation, franchise, gross receipts taxes, or similar fees or taxes. The Agreement also includes specimen tariff sheets and appendices, which include provisions for rate design, specific assumptions underlying the Agreement and depreciation rates.

The parties further state that Empire will file tariff sheets no later than February 28, 2013 in compliance with the specimen tariff sheets, and that those tariff sheets will become effective on April 1, 2013.

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<sup>3</sup> Commission Rule 4 CSR 240-2.115 provides that the Commission may consider a non-unanimous stipulation to be unanimous if no party files an objection within seven days of the filing of the agreement. While seven days have not passed since the filing of the Agreement, MGE stated that it waived the seven day requirement.

<sup>4</sup> Section 536.060, RSMo 2000.

<sup>5</sup> Section 536.090, RSMo 2000.

## Ratemaking Standards

The standard for rates is “just and reasonable,”<sup>6</sup> a standard founded on constitutional provisions, as the United States Supreme Court has explained:

Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.<sup>7</sup>

But the Commission must also consider the customers:

The rate-making process . . . i.e., the fixing of ‘just and reasonable’ rates, involves a balancing of the investor and the consumer interests.<sup>8</sup>

Further, that balancing has no single formula:

The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.<sup>9</sup>

Moreover, making such pragmatic adjustments is part of the Commission’s duty:

What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts.<sup>10</sup>

And:

[T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of ‘pragmatic adjustments.’<sup>11</sup>

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<sup>6</sup> *Id.* and Section 393.150.2, RSMo 2000.

<sup>7</sup> *Bluefield Water Works & Improvement Co. v. Public Serv. Com’n of the State of West Virginia*, 262 U.S. 679, 690 (1923).

<sup>8</sup> *Federal Power Com’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

<sup>9</sup> *Federal Power Com’n v. Natural Gas Pipeline Co.*, 315 U.S. 575, 586 (1942).

<sup>10</sup> *Bluefield*, 262 U.S. at 692.

<sup>11</sup> *State ex rel. Associated Natural Gas Co. v. Public. Serv. Com’n*, 706 S.W.2d 870, 873 (Mo. App. 1985) (citing *Hope Natural Gas Co.*, 320 U.S. at 602-03).

Thus, the law requires a just and reasonable end, but does not specify a means:

Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling. It is not theory but the impact of the rate order which counts.<sup>12</sup>

Determining whether a rate adjustment is necessary requires comparing Empire's current net income to Empire's revenue requirement. Revenue requirement is the amount of money that a utility may collect per year, which depends on the requirements for providing safe and effective service at a profit. Those requirements are tangible and intangible:

From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock.<sup>13</sup>

That and similar holdings have led to a conventional analysis of the resources devoted to service, from which the Commission determines revenue requirement.

To provide service, a utility devotes resources, which accounting conventions classify as either expense or investment. Expenses include operation, replacement of capital items as they depreciate ("current depreciation"), and taxes on the return. Investment is the basis ("rate base") on which the utility seeks profit ("return"). Return is therefore a percentage ("rate of return") of rate base. Rate base includes capital assets ("gross plant"), less historic deterioration of such assets ("accumulated depreciation"), plus other items.

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<sup>12</sup> *Id.*

<sup>13</sup> *Hope Natural Gas Co.*, 320 U.S. at 603 (1944).

Those components relate to each other in the following formula:

Revenue Requirement = Cost of Providing Utility Service or  $RR = O + (V - D) R$   
where,

RR = Revenue Requirement;  
O = Operating Costs; (such as fuel, payroll, maintenance, etc.,  
Depreciation and Taxes);  
V = Gross Valuation of Property Used for Providing Service;  
D = Accumulated Depreciation Representing the Capital Recovery  
of Gross Property Investment.  
(V - D) = Rate Base (Gross Property Investment less Accumulated  
Depreciation = Net Property Investment)  
R = Overall Rate of Return or Weighted Cost of Capital  
(V - D) R = Return Allowed on Net Property Investment

However, determining the revenue requirement does not end the analysis because the utility must collect that amount from its customers, and all customers need not receive identical treatment. Rate design is how a utility distributes its revenue requirement among its various classes of customer. Customers vary as to the costs attributable to their service. Accordingly, their rates should reflect their costs, respectively. Just and reasonable rates may account for such differences among customers.

### **Conclusions<sup>14</sup>**

A utility has the burden of proving that increased rates are just and reasonable<sup>15</sup> by a preponderance of the evidence.<sup>16</sup> In this order, the Commission grants the signatory parties' unopposed request to enter all pre-filed testimony and affidavits prepared by the parties into the record. The record thus contains substantial and competent evidence. The Commission has compared the substantial and competent evidence on the whole record with the Agreement as to both rate adjustment and rate design. The Commission independently finds and concludes that Empire has met its burden of proof that the rates

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<sup>14</sup> Section 386.420.2, RSMo 2000 requires a report of the Commission's conclusions.

<sup>15</sup> Section 393.150.2, RSMo 2000.

<sup>16</sup> *State Board of Nursing v. Berry*, 32 S.W.3d 638, 641 (Mo. App. 2000).

proposed in the Agreement are just and reasonable rates. Additionally, upon review of the record and the Agreement, the Commission independently finds and concludes that the Agreement's proposed terms support safe and adequate service.

**THE COMMISSION ORDERS THAT:**

1. The *Nonunanimous Stipulation and Agreement* filed on February 22, 2013, is approved. The signatory parties shall comply with the terms of the *Nonunanimous Stipulation and Agreement*, specifically including paragraph 16 of that Agreement.<sup>17</sup> A copy of the Agreement shall be attached to this order as "Attachment A" and is incorporated by reference as if fully set forth herein.

2. The tariff sheets submitted under Tariff File No. YE-2013-0020, on July 6, 2012, by The Empire District Electric Company, for the purpose of increasing rates for electric service, are rejected. The specific tariff sheets rejected are:

**P.S.C. MO. No. 5**

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Sec. A, 27<sup>th</sup> Revised Sheet No. 1; Canceling Sec. A, 26<sup>th</sup> Revised Sheet No. 1

Sec. B, 1<sup>st</sup> Revised Sheet No. 17; Canceling Sec. B, Original Sheet No. 17

Sec. B, 1<sup>st</sup> Revised Sheet No. 18; Canceling Sec. B, Original Sheet No. 18  
Sec. B, 2<sup>nd</sup> Revised Sheet No. 19; Canceling Sec. B, 1<sup>st</sup> Revised Sheet No. 19

Sec. 1, 17<sup>th</sup> Revised Sheet No. 1; Canceling Sec. 1, 16<sup>th</sup> Revised Sheet No. 1

Sec. 2, 16<sup>th</sup> Revised Sheet No. 1; Canceling Sec. 2, 15<sup>th</sup> Revised Sheet No. 1

Sec. 2, 16<sup>th</sup> Revised Sheet No. 2; Canceling Sec. 2, 15<sup>th</sup> Revised Sheet No. 2

Sec. 2, 16<sup>th</sup> Revised Sheet No. 3; Canceling Sec. 2, 15<sup>th</sup> Revised Sheet No. 3

Sec. 2, 17<sup>th</sup> Revised Sheet No. 4; Canceling Sec. 2, 16<sup>th</sup> Revised Sheet No. 4

Sec. 2, 16<sup>th</sup> Revised Sheet No. 6; Canceling Sec. 2, 15<sup>th</sup> Revised Sheet No. 6

Sec. 2, 16<sup>th</sup> Revised Sheet No. 7; Canceling Sec. 2, 15<sup>th</sup> Revised Sheet No. 7

Sec. 2, 12<sup>th</sup> Revised Sheet No. 9; Canceling Sec. 2, 11<sup>th</sup> Revised Sheet No. 9

Sec. 2, 9<sup>th</sup> Revised Sheet No. 9b; Canceling Sec. 2, 8<sup>th</sup> Revised Sheet No. 9b

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<sup>17</sup> In the Agreement, the parties specifically request that this order include the terms described in paragraph 16 of the Agreement. Since the Commission is incorporating the Agreement in its entirety into this order, there is no need to re-state that paragraph.

Sec. 3, 17<sup>th</sup> Revised Sheet No. 1; Canceling Sec. 3, 16<sup>th</sup> Revised Sheet No. 1  
Sec. 3, 21<sup>st</sup> Revised Sheet No. 2; Canceling Sec. 3, 20<sup>th</sup> Revised Sheet No. 2  
Sec. 3, 16<sup>th</sup> Revised Sheet No. 3; Canceling Sec. 3, 15<sup>th</sup> Revised Sheet No. 3  
Sec. 3, 16<sup>th</sup> Revised Sheet No. 4; Canceling Sec. 3, 15<sup>th</sup> Revised Sheet No. 4  
Sec. 3, 5<sup>th</sup> Revised Sheet No. 5; Canceling Sec. 3, 4<sup>th</sup> Revised Sheet No. 5

Sec. 4, 1<sup>st</sup> Revised Sheet No. 17h; Canceling Sec. 4, Original Sheet No. 17h  
Sec. 4, 1<sup>st</sup> Revised Sheet No. 17i; Canceling Sec. 4, Original Sheet No. 17i  
Sec. 4, 1<sup>st</sup> Revised Sheet No. 17j; Canceling Sec. 4, Original Sheet No. 17j  
Sec. 4, 3<sup>rd</sup> Revised Sheet No. 17k; Canceling Sec. 4, 2<sup>nd</sup> Revised Sheet No. 17k  
Sec. 4, Original Sheet No. 22  
Sec. 4, Original Sheet No. 22a  
Sec. 4, Original Sheet No. 22b

3. The prefiled testimony, including all exhibits, appendices, schedules, etc. attached thereto, as well as all reports of all witnesses, that are already filed in the Commission's Electronic Filing and Information System ("EFIS") are hereby admitted into evidence. A notation in EFIS for the issuance of this order shall stand in lieu of a notation in EFIS for any exhibit's entry into the record.

4. Empire shall file new tariff sheets consistent with this order and the specimen tariff sheets attached to the Agreement no later than February 28, 2013, bearing an effective date of April 1, 2013.

5. The Commission's Staff shall file a recommendation regarding approval of Empire's new tariff sheets no later than March 6, 2013.

6. Any other party wishing to respond to Empire's new tariff sheets shall file such response no later than March 6, 2013.



7. This order shall become effective on March 6, 2013, except for paragraphs 4, 5 and 6, which shall become effective immediately upon this order's issuance.

**BY THE COMMISSION**

A handwritten signature in cursive script that reads "Shelley Brueggemann".

Shelley Brueggemann  
Acting Secretary

( S E A L )

Gunn, Chm., Jarrett, R. Kenney,  
Stoll, and W. Kenney, CC., concur.

Bushmann, Regulatory Law Judge