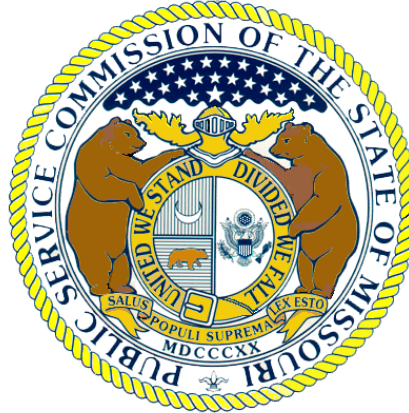


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



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)

File No. ER-2012-0345
YE-2013-0021

REPORT AND ORDER REGARDING INTERIM RATES

Issue Date: October 31, 2012

Effective Date: November 30, 2012

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Area of the Company)	

APPEARANCES

For The Empire District Electric Company:

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For the Staff of the Missouri Public Service Commission:

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For the Office of the Public Counsel and the Public:

Lewis R. Mills, Public Counsel, P.O. Box 2230, 200 Madison Street, Suite 650, Jefferson City, Missouri 65102;

For the Midwest Energy Users' Association:

Stuart Conrad, Finnegan, Conrad & Peterson, L.C., 3100 Broadway, Suite 1209, Kansas City, MO 64111

For Midwest Energy Consumers Group:

David Woodsmall, 807 Winston Court, Jefferson City, MO 65101;

REGULATORY LAW JUDGE: Michael E. Bushmann

REPORT AND ORDER

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The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision.

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. The Commission suspended the effective date of that general rate increase tariff until June 3, 2013, and a hearing on the general rate increase is scheduled to begin on February 18, 2013. On July 23, 2012, the Commission granted the applications to intervene as parties of the Missouri Department of Natural Resources, Southern Union Company d/b/a Missouri Gas Energy, and the Midwest Energy Users’ Association. The Midwest Energy Consumers Group was granted intervention on August 3, 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 proposes to increase each base rate or charge for electric service by 1.53 percent. In response to Empire's interim tariff filing, the Commission's Staff, the Office of Public Counsel, and an intervening party filed suggestions opposing Empire's request for an interim rate increase. 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.¹ The Missouri Department of Natural Resources and Southern Union Company d/b/a Missouri Gas Energy requested and were granted permission to be excused from attending and participating in the interim rate hearing.

Findings of Fact

1. The Empire District Electric Company is a Kansas corporation with its principal place of business in Joplin, Missouri. Empire is an electrical corporation and public utility as defined in Section 386.020, RSMo, engaged in the business of the manufacture, transmission and distribution of electricity and subject to the regulatory authority of the Commission pursuant to Chapters 386 and 393, RSMo. In Missouri, as of March 31, 2012, Empire provided electric service to approximately 124,600 residential

¹ Transcript, Volume 2. In total, the Commission admitted the testimony of 10 witnesses and received 22 exhibits into evidence. Final post-hearing briefs were filed on October 1, 2012 and the matter was deemed submitted for the Commission's decision on that date when the Commission closed the record regarding the interim rate request. "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

customers, 21,400 commercial customers, 283 industrial customers, 1,650 public authority and street and highway customers, and three wholesale customers.²

2. The Office of the Public Counsel (“Public Counsel”) “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.”³ Public Counsel “shall have discretion to represent or refrain from representing the public in any proceeding”⁴, and Public Counsel participated as a party in this matter.

3. The Staff of the Missouri Public Service Commission (“Staff”) is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.⁵

4. The Midwest Energy Users’ Association (“MEUA”) is an unincorporated association of large commercial and industrial users of electricity who combine resources and assert common interests in utility rate cases. On July 23, 2012, the Commission granted MEUA’s application to intervene as a party.

5. The Midwest Energy Consumers Group (“MECG”) is an unincorporated association of large users of electricity taking electric service from Empire. MECG was granted intervention on August 3, 2012.

6. On May 22, 2011, a tornado, rated by the National Weather Service as EF-5, struck Joplin, Missouri and other communities in Empire’s service area. The tornado caused extensive damage to these communities, including the destruction of approximately

² Empire Ex. 1, Beecher Direct, p. 2-3.

³ Section 386.710(2), RSMo 2000; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

⁴ Section 386.710(3), RSMo 2000; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

⁵ Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

one-third of Joplin. The tornado destroyed approximately 4,000 of Empire's electric poles, thousands of distribution transformers, 110 miles of line, and either damaged or destroyed several electric substations.⁶

7. In response to the destruction caused by the tornado, Empire mobilized its employees and crews from other utility companies to inspect for damage, to ensure lines were de-energized for the safety of emergency personnel, and to begin restoring service to its customers.⁷

8. Within a few days, Empire restored electrical power to a hospital and a major retail area in Joplin, and provided service to temporary FEMA housing units within two weeks. Empire employees and other crews worked long hours through weekends and holidays to repair and construct service lines, provide logistical support, and communicate with customers and the media.⁸

9. Three days after the tornado, Empire's board of directors suspended the company's dividend for two calendar quarters as a result of Empire's low level of retained earnings, the anticipated lost revenue from lost and displaced customers, and a covenant in Empire's mortgage indenture that tied the ability to pay dividends to retained earnings.⁹

10. Retained earnings are the earnings that a company keeps to reinvest in its business instead of distributing to shareholders as dividends.¹⁰

⁶ Empire Ex. 1, Beecher Direct, p. 4-5.

⁷ Empire Ex. 1, Beecher Direct, p. 6-8.

⁸ Empire Ex. 1, Beecher Direct, p. 8-9.

⁹ Empire Ex. 4, Sager Direct, p. 6.

¹⁰ Staff Ex. 2, Atkinson Interim Rebuttal, p. 4.

11. Retained earnings provide a company with financial flexibility to deal with the impacts of unanticipated events.¹¹

12. Empire's payout ratio, the ratio of dividends per share to earnings per share, has consistently been above the average payout ratio of U.S. shareholder-owned electric utilities since 1993.¹² Empire's retained earnings balance as of March 31, 2011 was \$4.1 million, and dividends of \$13.3 million had been declared in April 2011 which reduced the balance further.¹³

13. At the end of 2011, Empire's retained earnings balance had increased to \$33.7 million, which was the highest it had been since 2003.¹⁴

14. Empire reinstated its dividend in the first quarter of 2012, but reduced the dividend from \$1.28 per share to \$1.00 per share on an annual basis.¹⁵

15. After the tornado, Standard & Poor's Rating Services affirmed Empire's existing investment grade credit rating and revised its outlook from "positive" to "stable". Moody's Investor's Service determined that Empire's credit ratings and stable outlook should remain unchanged.¹⁶

16. In April 2012, Empire entered into a bond purchase agreement for private placement of \$88 million aggregate principal amount of mortgage bonds. Empire has an unsecured revolving credit facility of \$150 million.¹⁷

¹¹ Staff Ex. 2, Atkinson Interim Rebuttal, p. 5.

¹² Staff Ex. 2, Atkinson Interim Rebuttal, p. 4

¹³ Empire Ex. 1, Beecher Direct, p. 10.

¹⁴ MCEG Ex. 1, p. 2.

¹⁵ Staff Ex. 2, Atkinson Interim Rebuttal, p. 3.

¹⁶ Staff Ex. 2, Atkinson Interim Rebuttal, Schedules SA-2 and SA-3.

¹⁷ Staff Ex. 2, Atkinson Interim Rebuttal, p. 9.

17. Empire invested over \$27.6 million to replace the electric infrastructure destroyed by the tornado.¹⁸

18. Immediately following the tornado, Empire lost approximately 8,000 customers.¹⁹ As of June 2012, Empire had regained many of those customers, as the number of lost customers compared to June 2010 was reduced to 1,104.²⁰ It is unknown how many of those lost customers are attributable to the tornado and not to other causes.²¹ The number of lost customers as of June 2012 constitutes an approximate decline of less than one percent of the total number of customers prior to the tornado.²²

19. After the tornado, during the period of June 2011 through July 2012 Empire's revenues increased by approximately \$1.6 million, which is attributable to warmer than normal weather and increased electric sales caused by the clean-up, restoration and reconstruction activities.²³

20. Empire's net income or earnings for 2011 was \$54,971,000, which was the highest amount of earnings during any year since 1992.²⁴

21. On June 6, 2011, Empire filed an application with the Commission for an Accounting Authority Order (AAO) that would allow Empire to undertake certain accounting procedures in connection with the damage costs caused by the Joplin tornado.²⁵ On November 30, 2011, the Commission issued an *Order Approving and Incorporating Unanimous Stipulation and Agreement* in File No. EU-2011-0387, which authorized Empire, *inter alia*, "to defer actual incremental Operations & Maintenance expenses associated with

¹⁸ Empire Ex. 2, Walters Direct, p. 10.

¹⁹ Empire Ex. 2, Walters Direct, p. 11.

²⁰ Staff Ex. 4, Lange Interim Rebuttal, p. 6-7.

²¹ *Id.*

²² *Id.*; Empire Ex. 1, Beecher Direct, p.3; $1,104/147,936 + 1,104 = 0.0074$ or 0.74%.

²³ Staff Ex. 8; Staff Ex. 4, Lange Interim Rebuttal, p. 3-5; Staff Ex. 7, Oligschlaeger Interim Rebuttal, p. 12.

²⁴ MEGG Ex. 1, p. 3-4.

²⁵ MEUA Ex. 2.

repair, restoration, and rebuild activities associated with the May 22, 2011, tornado, and depreciation and carrying charges equal to its ongoing Allowance for Funds Used During Construction rates associated with tornado-related capital expenditures, to Account 182.3, Other Regulatory Assets".²⁶ This AAO allowed Empire to defer and capitalize expenses related to the tornado for possible future recovery in its next rate case.²⁷

22. On July 6, 2012, Empire filed tariff sheets with tariff tracking number YE-2013-0021, the Electric Interim Rider, to increase Empire's gross annual electric revenues by approximately \$6.2 million, subject to refund, on an interim basis. This amount consists of \$4.7 million for the replacement of infrastructure and electric facilities, and the amount of \$1.4 million for the ongoing loss in pre-tax margin associated with lost customers.²⁸ The tariff proposed to increase each base rate or charge for electric service by 1.53 percent, and provided the following condition:

Rider INT shall remain in effect until the permanent rates authorized by the Missouri Public Service Commission (MPSC) in Case No. ER-2012-0345 become effective. The revenue generated by Rider INT shall be subject to refund, and the Company shall refund with annual simple interest equal to the Company's short term interest rate, the amount, if any, by which the revenues produced by Rider INT exceed the aggregate revenues that the Company would have received under the permanent rates approved by the MPSC in ER-2012-0345. Such refund, if any, shall be made based upon the billing units of the customer to which the interim charges applied.²⁹

23. Empire's calculation of \$4.7 million for tornado-related capital additions did not include any offsets for depreciation reserve or accumulated deferred income tax

²⁶ MEUA Ex. 3.

²⁷ MEUA Ex. 3, p. 3.

²⁸ Empire Ex. 2, Walters Direct, p. 10-11.

²⁹ Empire Ex. 5, Keith Direct, Schedule WSK-4.

reserve, which are customarily subtracted from rate base, thereby causing the requested amount of \$4.7 million to be overstated.³⁰

24. As of the date of the hearing, Empire was not in an emergency financial situation, which was admitted by the company President and Vice-President.³¹

25. As of the date of the hearing, Empire was able to provide safe and adequate service to its customers³², regardless of whether Empire was granted interim rate relief.³³

26. Staff's workload precluded it from performing an audit of Empire's current revenue requirement as of the date of the hearing.³⁴

27. In 2009, the Commission authorized a return on equity for Empire of 10.8%.³⁵ In 2011, Empire's earned return on equity was 7.9%.³⁶

Conclusions of Law

Empire is an electrical corporation and a public utility, as those terms are defined by Section 386.020(15) and (43), RSMo 2000. As such, the Commission has jurisdiction over Empire pursuant to Sections 386.250(1), RSMo 2000, and 393.140, RSMo 2000.

Section 393.150, RSMo 2000, allows the Commission to suspend a tariff filed by an electric utility for a maximum of 120 days, plus six months, beyond the date the tariff would otherwise become effective. That statute provides that "after a full hearing ... the commission may make such order in reference to such rate...as would be proper in a proceeding initiated after the rate ... had become effective." The statute also states "[a]t any hearing involving a rate sought to be increased, the burden of proof to show that the

³⁰ Staff Ex. 7, Oligschlaeger Interim Rebuttal, p. 14; Transcript, Vol. 2, p. 99, 108-109.

³¹ Transcript, Vol. 2, p. 88-89, 110.

³² Transcript, Vol. 2, p. 88-89.

³³ Transcript, Vol. 2, p. 106-107.

³⁴ Staff Ex. 7, Oligschlaeger Interim Rebuttal, p. 10.

³⁵ Empire Ex. 4, Sager Direct, p. 4.

³⁶ Empire Ex. 4, Sager Direct, Schedule RWS-1.

increased rate or proposed increased rate is just and reasonable shall be upon the ... electrical corporation”. In deciding whether a proposed rate is just and reasonable, the Commission must consider all relevant factors.³⁷ Ultimately, the Commission’s purpose is to fix a rate that is just and reasonable both to the utility and to ratepayers.³⁸

The Commission has the authority to grant interim rate relief, which is implied from the “file and suspend” statutes, Sections 393.140 and 393.150, RSMo.³⁹ While the statutes do not provide any specific legal standard regarding exercise of the Commission’s implied authority⁴⁰, it is clear that “[a]n interim rate increase may be requested where an emergency need exists”.⁴¹ This implied authority to grant interim rate increases is necessary to enable the Commission to “deal with a company in which immediate rate relief is required to maintain the economic life of the company so that it might continue to serve the public”.⁴² Previous Commissions have granted interim rate increases in emergency or near emergency situations or where the utility’s financial integrity or ability to provide safe and adequate service was threatened.⁴³ In the most recent Commission rate case where a utility requested an interim rate increase, the Commission declined to grant interim relief

³⁷ *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc 1979).

³⁸ *State ex rel. Valley Sewage Co. v. Public Service Commission*, 515 S.W.2d 845, 850 (Mo. Ct. App. 1974).

³⁹ *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n*, 535 S.W.2d 561, 566 (Mo. Ct. App. 1976).

⁴⁰ *Id.*

⁴¹ *State ex rel. Util. Consumers' Council of Missouri, Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d at 48.

⁴² *State ex rel. Fischer v. Pub. Serv. Comm'n of Missouri*, 670 S.W.2d 24, 26 (Mo. Ct. App. 1984).

⁴³ *In re Missouri Public Service Co.*, Case No. ER-79-59, 28 P.U.R.4th 109, 22 Mo.P.S.C. (N.S.) 427 (Dec. 1, 1978); *Raytown Water Company*, Case No. WR-94-300, 1994 WL 321226; *In the Matter of Sho-Me Power Corporation of Marshfield, Missouri, for Authority to File Emergency Interim Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*, Case No. ER-83-20, 1982 WL 190892; *In the Matter of Timber Creek Sewer Company, Inc.'s Tariff Designed to Increase Rates for Sewer Service*, File No. SR-2008-0080, 2007 WL 3243348; *In the Matter of the Application of Citizens Electric Corporation for Approval of Interim Rates, Subject to Refund, and for a Permanent Rate Increase*, Case No. ER-2002-217, 2001 WL 1840788.

“unless the utility is facing extraordinary circumstances and there is a compelling reason to implement an interim rate increase”.⁴⁴

The Commission’s exercise of this implied authority is not limited to emergency situations, as the Commission’s wide discretion to exercise its powers has been liberally recognized by the courts.⁴⁵ It may be theoretically possible for a utility to show on some extraordinary fact situation that its rate structure has become unjustly low without any existing financial emergency, such that the Commission may determine it is reasonable to grant interim rate relief.⁴⁶ Empire has the burden of proof in this case to show that the proposed increased rate is just and reasonable.⁴⁷ In order to carry its burden of proof, Empire must meet the preponderance of the evidence standard,⁴⁸ and must convince the Commission it is “more likely than not” that Empire’s proposed rate increase is just and reasonable.⁴⁹ Therefore, in order to prevail it must present sufficient evidence of extraordinary circumstances and compelling reasons to grant the rate increase.

Empire’s interim rate tariff would allow the company to recover approximately \$6.2 million of its total requested annual rate increase on an interim basis, subject to refund. The proposed interim rate would end when the Commission establishes “permanent” rates following completion of the general rate increase procedure. Empire contends that it should be permitted to charge its existing customers a higher rate immediately because it

⁴⁴ *In the Matter of Union Electric Company d/b/a AmerenUE’s Tariffs to Increase its Annual Revenues for Electric Service*, File No. ER-2010-0036, Report and Order Regarding Interim Rates, p. 12.

⁴⁵ *State ex rel. Laclède Gas Co. v. Pub. Serv. Comm’n*, 535 S.W.2d at 568. See also, *State ex rel. Kansas City Transit, Inc. v. Pub. Serv. Comm’n*, 406 S.W.2d 5, 8 (Mo. 1966).

⁴⁶ *State ex rel. Laclède Gas Co. v. Pub. Serv. Comm’n*, 535 S.W.2d at 574.

⁴⁷ Section 393.150.2, RSMo 2000.

⁴⁸ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996) citing to *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804, 1808, 60 L.Ed.2d 323, 329 (1979).

⁴⁹ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 109-111 (Mo. banc 1996); *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

expended \$27.6 million and lost many customers in the aftermath of the May 2011 tornado, which was a catastrophic disaster for Joplin and surrounding communities. The Commission agrees that the tornado was a devastating event for the people of those affected communities, and Empire deserves praise for its efforts in the clean-up and restoration following the storm. However, the issue for determination does not hinge on the past circumstances of May 2011, however extraordinary they may have been, but rather on Empire's financial situation today and whether there are any present circumstances that would justify immediate rate relief.

Immediately following the tornado in May 2011, Empire suspended its dividend payments for two calendar quarters, thereby causing hardship for its shareholders. While the financial uncertainty after the tornado undoubtedly played a role in that decision, Empire's retained earnings balance had been lower than similar electric utilities for years relative to the company's earnings. In fact, the retained earnings balance had gone negative just a month prior to the tornado because of a dividend payment in April 2011 that exceeded the balance in that account. This limited the amount of funds that Empire had available to deal with unforeseen circumstances, which is a reason for maintaining retained earnings. However, warmer than normal temperatures and increased sales from restoration activities during that period of time helped Empire to receive increased revenues for 2011 compared to the previous year, rather than the lower revenues that it anticipated. Empire experienced record earnings for 2011, which caused its retained earnings balance by the end of that year to reach the highest levels since 2003. The company was able to reinstate its dividend beginning in 2012, although at a lower level than in previous years.

Empire's financial position after the tornado did not negatively impact its standing with the financial services industry or prevent it from accessing the capital markets. Both Standard & Poor's and Moody's retained Empire's investment grade credit rating following the tornado, and the company was able to borrow \$88 million through a bond purchase agreement in April 2012. Empire also has access to its retained earnings balance and an unsecured revolving credit facility of \$150 million to ensure financial flexibility.

The overwhelming and undisputed evidence presented at the hearing shows that Empire is not now experiencing a financial emergency, or near emergency, and is able to provide safe and adequate service to its customers, regardless of whether or not it receives an interim rate increase. In addition, the Commission has already taken regulatory action concerning the Joplin tornado by issuing an accounting authority order to protect Empire's earnings until completion of its general rate proceedings. That order permits Empire to defer its tornado-related costs for potential recovery in rates until the conclusion of this rate case.

With regard to the issue of lost customers, any ungenerated revenue in the past due to the loss of customers after the tornado is not deferred under the accounting authority order.⁵⁰ "Services not provided and revenues not generated are mere expectancies" and cannot be deferred under an accounting authority order.⁵¹ Empire claims that it is not seeking past ungenerated revenue, but rather requesting that an interim rate reflect its lower number of customers on a going-forward basis. However, the reduced number of customers constitutes less than 1% of the number of Empire customers prior to the

⁵⁰ See, MEUA Ex. 4, where Empire withdrew its request for the "fixed cost components" of its rates as part of the stipulation and agreement settling the AAO case.

⁵¹ Report and Order, *In the Matter of the Application of Southern Union Company for the Issuance of an Accounting Authority Order Relating to Its Natural Gas Operations and for a Contingent Waiver of the Notice Requirement of 4 CSR 240-4.020(2)*, File No. GU-2011-0392, issued January 25, 2012, p. 25.

tornado. The Commission concludes that this small number of lost customers does not substantially affect Empire's financial condition or justify interim rate relief prior to the completion of the general rate proceedings in this case.

The Commission is required by law to consider all relevant factors in determining a just and reasonable rate to be charged, and it is within the Commission's discretion to decide which facts are relevant to that determination.⁵² At this point in the case, Staff has not had time to conduct an audit to investigate and report on some factors that may affect the rate-making process. While it would be preferable to have the results of an audit in making any rate decision, the Commission determines that the most important facts to consider in relation to the granting of an interim rate increase are those describing the utility's present financial condition. The parties presented ample evidence of Empire's current financial circumstances at the hearing. The Commission concludes that it has considered all relevant factors in rendering a decision on the issue of the proposed interim rate increase.

Finally, Empire argues that it should receive interim rate relief because it is not earning its authorized return on equity. The Commission authorized a return of 10.8%, but Empire has recently earned 7.9%. Empire asserts that this difference between the authorized and earned returns makes its rates no longer just and reasonable. However, Missouri law does not require that rates yield any particular return⁵³, and at the hearing Empire did not present sufficient evidence of why or how its earned return on equity is

⁵² "In determining the price to be charged for gas, electricity, or water the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question ..." (emphasis added) Section 393.270.4, RSMo 2000; *State ex rel. Missouri Water Co. v. Pub. Serv. Comm'n*, 308 S.W.2d 704, 719 (Mo. 1957); *State ex rel. Util. Consumers' Council of Missouri, Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d at 49.

⁵³ *State ex rel. Capital City Water Co. v. Pub. Serv. Comm'n of Missouri*, 298 Mo. 524, 252 S.W. 446, 456 (Mo. banc 1922); *State ex rel. Missouri Gas Energy v. Pub. Serv. Comm'n*, 186 S.W.3d 376, 383 (Mo. Ct. App. 2005).

unjust or unreasonable. Since Empire's argument is not supported by the evidence, it has failed to meet its burden of proof on this issue.

Decision

Based on its findings of fact and conclusions of law, the Commission concludes that Empire has failed to meet its burden of proof to demonstrate that an interim rate increase is just and reasonable at this point in time. The evidence presented at the hearing clearly shows that Empire is not now experiencing a financial emergency, or near emergency, and is able to provide safe and adequate service to its customers, regardless of whether or not it receives an interim rate increase. While the company experienced an extraordinary event in the past due to the May 2011 tornado and its aftermath, Empire's earnings are already protected through the accounting authority order and nothing relating to its current financial condition constitutes a compelling reason to impose an interim rate increase at this time. Since the Commission determines that interim rate relief is not warranted, it need not address the issue of whether Empire properly calculated the amount of the interim rate increase request.

Empire may be able to justify a rate increase after the consideration of all evidence at the conclusion of the general rate proceedings. However, there is insufficient evidence of the need for an interim increase now, and it would be unreasonable to grant such an increase under the present circumstances. Therefore, the Commission will reject the tariff that would implement the interim rate increase.

THE COMMISSION ORDERS THAT:

1. The tariff sheets filed by The Empire District Electric Company on July 6, 2012, assigned tariff tracking number YE-2013-0021, are rejected.
2. This report and order shall become effective on November 30, 2012.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Kenney and Stoll, CC.,
concur;
Jarrett, C., dissents, with separate
dissenting opinion to follow;
and certify compliance with the
provisions of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 31st day of October, 2012