

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 1st day of June, 2011.

In the Matter of The Empire District Electric Company)
of Joplin, Missouri for Authority to File Tariffs Increasing) **File No. ER-2011-0004**
Rates for Electric Service Provided to Customers in the) Tariff No. YE-2011-0154
Missouri Service Area of the Company)

ORDER APPROVING GLOBAL AGREEMENT

Issue Date: June 1, 2011

Effective Date: June 6, 2011

Procedural History

On September 28, 2010, The Empire District Electric Company (“Empire”) submitted a tariff designed to implement a general rate increase for electric service. Empire indicated that the proposed electric service rates were designed to increase its gross annual revenues by approximately \$36.5 million, exclusive of applicable gross receipts, sales, franchise or occupational fees or taxes. The tariff sheets were suspended, notice was issued, and a procedural schedule was set that culminated in an evidentiary hearing to begin on May 23, 2011.

At the parties request, the procedural schedule was suspended, and on May 27, 2011 several of the parties filed a non-unanimous Global Agreement (“Agreement”) purporting to resolve all issues in this matter. The signatory parties include Empire, the Commission’s Staff, the Missouri Department of Natural Resources (“MDNR”) and the Office of the Public Counsel (“Public Counsel”). The remaining parties, the City of

Joplin, Missouri (“Joplin”), the Midwest Energy Users Association (“MEUA”)¹ and Kansas City Power and Light Company (“KCPL”) are non-signatories.

The Commission held an on-the-record proceeding on May 31, 2011 to direct questions to the parties regarding the Agreement. Joplin and MEUA did not appear at the proceeding.² While the Agreement is not unanimous, none of the non-signatories have objected to the Agreement, or any part of the Agreement.³

The Agreement

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

The Agreement’s terms include an increase to Empire’s Missouri jurisdictional gross annual electric revenues in the amount of \$18,685,000, 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 for latan 2.

¹ MEUA is an unincorporated ad-hoc association of large commercial and industrial users of electricity. For purposes of this case, MEUA participants are Praxair, Inc., Explorer Pipeline Company, and Enbridge Energy, LLP, each of which is an Empire customer.

² MEUA was not represented as an association, and none of MEUA’s participants appeared individually.

³ 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 Global Agreement, KCPL, Joplin and MEUA have indicated that they have no objection to the Agreement. Moreover, this provision of this order approving the Agreement does not become effective until June 6, 2011, thus, providing ten days since the filing of the Global Agreement for any objections to be filed.

⁴ Section 536.060, RSMo 2000.

⁵ Section 536.090, RSMo 2000.

The parties further request the Commission to order Empire to file tariff sheets no later than June 3, 2011 in compliance with the specimen tariff sheets, and that those tariff sheets be made effective on an expedited basis on June 15, 2011. And, without further discussion, the Commission incorporates all provisions of the Agreement, as if fully set forth, into this order.

Ratemaking Standards

The standard for rates is “just and reasonable,”⁶ 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.⁷

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.⁸

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.⁹

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

⁶ *Id.* and Section 393.150.2, RSMo 2000.

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

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

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

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.¹⁰

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.'¹¹

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.¹²

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.¹³

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

To provide service, a utility devotes resources, which accounting conventions classify as either expense or investment. Expenses include operation, replacement of

¹⁰ *Bluefield*, 262 U.S. at 692.

¹¹ *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).

¹² *Id.*

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

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.

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

But 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.

Conclusions¹⁴

A utility has the burden of proving that increased rates are just and reasonable¹⁵ by a preponderance of the evidence.¹⁶ In this order, the Commission grants the signatory

¹⁴ Section 386.420.2, RSMo 2000 requires a report of the Commission’s conclusions.

¹⁵ Section 393.150.2, RSMo 2000.

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 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 non-unanimous Global Agreement filed on May 27, 2011 is approved. The signatory parties shall comply with the terms of the Global Agreement. A copy of the Agreement shall be attached to this order as "Attachment A."

2. The tariff sheets submitted under Tariff File No. YE-2011-0154, on September 28, 2010, by The Empire District Electric Company ("Empire"), for the purpose of increasing rates for electric service, is rejected. The specific tariff sheets rejected are:

P.S.C. MO. No. 5

Sec. A, 26th, Revised Sheet No. 1; Canceling Sec. A, 25th, Revised Sheet No. 1

Sec. 1, 16th, Revised Sheet No. 1; Canceling Sec. 1, 15th, Revised Sheet No. 1

Sec. 2, 15th, Revised Sheet No. 1; Canceling Sec. 2, 14th, Revised Sheet No. 1

Sec. 2, 15th, Revised Sheet No. 2; Canceling Sec. 2, 14th, Revised Sheet No. 2

Sec. 2, 15th, Revised Sheet No. 3; Canceling Sec. 2, 14th, Revised Sheet No. 3

Sec. 2, 16th, Revised Sheet No. 4; Canceling Sec. 2, 15th, Revised Sheet No. 4

Sec. 2, 15th, Revised Sheet No. 6; Canceling Sec. 2, 14th, Revised Sheet No. 6

Sec. 2, 15th, Revised Sheet No. 7; Canceling Sec. 2, 14th, Revised Sheet No. 7

Sec. 2, 11th, Revised Sheet No. 9; Canceling Sec. 2, 10th, Revised Sheet No. 9

Sec. 2, 8th, Revised Sheet No. 9b; Canceling Sec. 2, 7th, Revised Sheet No. 9b

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

Sec. 2, 10th, Revised Sheet No. 13; Canceling Sec. 2, 9th, Revised Sheet No. 13

Sec. 3, 7th, Revised Sheet No. 1a; Canceling Sec. 3, 6th, Revised Sheet No. 1a
Sec. 3, 15th, Revised Sheet No. 3; Canceling Sec. 3, 14th, Revised Sheet No. 3
Sec. 3, 15th, Revised Sheet No. 4; Canceling Sec. 3, 14th, Revised Sheet No. 4

Sec. 4, 1st, Revised Sheet No. 8a.1; Canceling Sec. 4, Original Sheet No. 8a.1
Sec. 4, 4th, Revised Sheet No. 8c; Canceling Sec. 4, 3rd Revised Sheet No. 8c
Sec. 4, 2nd, Revised Sheet No. 8d; Canceling Sec. 4, 1st Revised Sheet No. 8d
 Sec. 4, 1st, Revised Sheet No. 8f; Canceling Sec. 4, Original Sheet No. 8f
 Sec. 4, 1st, Revised Sheet No. 8g; Canceling Sec. 4, Original Sheet No. 8g
 Sec. 4, 1st, Revised Sheet No. 8h; Canceling Sec. 4, Original Sheet No. 8h
 Sec. 4, 1st, Revised Sheet No. 8j; Canceling Sec. 4, Original Sheet No. 8j
Sec. 4, 6th, Revised Sheet No. 9; Canceling Sec. 4, 5th Revised Sheet No. 9
Sec. 4, 4th, Revised Sheet No. 10; Canceling Sec. 4, 3rd Revised Sheet No. 10
Sec. 4, 5th, Revised Sheet No. 11; Canceling Sec. 4, 4th Revised Sheet No. 11

Sec. 5, 7th, Revised Sheet No. A; Canceling Sec. 5, 6th Revised Sheet No. A
Sec. 5, 5th, Revised Sheet No. 1; Canceling Sec. 5, 4th Revised Sheet No. 1
Sec. 5, 6th, Revised Sheet No. 2; Canceling Sec. 5, 5th Revised Sheet No. 2
Sec. 5, 3rd, Revised Sheet No. 2a; Canceling Sec. 5, 2nd Revised Sheet No. 2a
Sec. 5, 6th, Revised Sheet No. 3; Canceling Sec. 5, 5th Revised Sheet No. 3
Sec. 5, 5th, Revised Sheet No. 4; Canceling Sec. 5, 4th Revised Sheet No. 4
Sec. 5, 4th, Revised Sheet No. 5; Canceling Sec. 5, 3rd Revised Sheet No. 5
Sec. 5, 4th, Revised Sheet No. 6; Canceling Sec. 5, 3rd Revised Sheet No. 6
Sec. 5, 5th, Revised Sheet No. 7; Canceling Sec. 5, 4th Revised Sheet No. 7
Sec. 5, 5th, Revised Sheet No. 8; Canceling Sec. 5, 4th Revised Sheet No. 8
Sec. 5, 6th, Revised Sheet No. 9; Canceling Sec. 5, 5th Revised Sheet No. 9
Sec. 5, 7th, Revised Sheet No. 10; Canceling Sec. 5, 6th Revised Sheet No. 10
Sec. 5, 6th, Revised Sheet No. 11; Canceling Sec. 5, 5th Revised Sheet No. 11
Sec. 5, 3rd, Revised Sheet No. 11a; Canceling Sec. 5, 2nd Revised Sheet No. 11a
Sec. 5, 8th, Revised Sheet No. 12; Canceling Sec. 5, 7th Revised Sheet No. 12
Sec. 5, 6th, Revised Sheet No. 13; Canceling Sec. 5, 5th Revised Sheet No. 13
Sec. 5, 5th, Revised Sheet No. 14; Canceling Sec. 5, 4th Revised Sheet No. 14
Sec. 5, 5th, Revised Sheet No. 15; Canceling Sec. 5, 4th Revised Sheet No. 15
Sec. 5, 5th, Revised Sheet No. 16; Canceling Sec. 5, 4th Revised Sheet No. 16
Sec. 5, 5th, Revised Sheet No. 17; Canceling Sec. 5, 4th Revised Sheet No. 17
Sec. 5, 2nd, Revised Sheet No. 17a; Canceling Sec. 5, 1st Revised Sheet No. 17a
Sec. 5, 2nd, Revised Sheet No. 17b; Canceling Sec. 5, 1st Revised Sheet No. 17b
Sec. 5, 2nd, Revised Sheet No. 17c; Canceling Sec. 5, 1st Revised Sheet No. 17c
Sec. 5, 2nd, Revised Sheet No. 17d; Canceling Sec. 5, 1st Revised Sheet No. 17d
Sec. 5, 2nd, Revised Sheet No. 17e; Canceling Sec. 5, 1st Revised Sheet No. 17e
Sec. 5, 2nd, Revised Sheet No. 17f; Canceling Sec. 5, 1st Revised Sheet No. 17f
Sec. 5, 6th, Revised Sheet No. 18; Canceling Sec. 5, 5th Revised Sheet No. 18
Sec. 5, 5th, Revised Sheet No. 19; Canceling Sec. 5, 4th Revised Sheet No. 19
Sec. 5, 4th, Revised Sheet No. 20; Canceling Sec. 5, 3rd Revised Sheet No. 20

Sec. 5, 4th, Revised Sheet No. 21; Canceling Sec. 5, 3rd Revised Sheet No. 21
 Sec. 5, 6th, Revised Sheet No. 22; Canceling Sec. 5, 5th Revised Sheet No. 22
 Sec. 5, 6th, Revised Sheet No. 23; Canceling Sec. 5, 5th Revised Sheet No. 23
 Sec. 5, 3rd, Revised Sheet No. 23a; Canceling Sec. 5, 2nd Revised Sheet No. 23a
 Sec. 5, 6th, Revised Sheet No. 24; Canceling Sec. 5, 5th Revised Sheet No. 24
 Sec. 5, 6th, Revised Sheet No. 25; Canceling Sec. 5, 5th Revised Sheet No. 25
 Sec. 5, 7th, Revised Sheet No. 26; Canceling Sec. 5, 6th Revised Sheet No. 26
 Sec. 5, 6th, Revised Sheet No. 27; Canceling Sec. 5, 5th Revised Sheet No. 27
 Sec. 5, 6th, Revised Sheet No. 28; Canceling Sec. 5, 5th Revised Sheet No. 28
 Sec. 5, 6th, Revised Sheet No. 29; Canceling Sec. 5, 5th Revised Sheet No. 29
 Sec. 5, 4th, Revised Sheet No. 30; Canceling Sec. 5, 3rd Revised Sheet No. 30
 Sec. 5, 4th, Revised Sheet No. 31; Canceling Sec. 5, 3rd Revised Sheet No. 31
 Sec. 5, 2nd, Revised Sheet No. 32; Canceling Sec. 5, 1st Revised Sheet No. 32
 Sec. 5, 2nd, Revised Sheet No. 33; Canceling Sec. 5, 1st Revised Sheet No. 33
 Sec. 5, 2nd, Revised Sheet No. 34; Canceling Sec. 5, 1st Revised Sheet No. 34
 Sec. 5, 2nd, Revised Sheet No. 35; Canceling Sec. 5, 1st Revised Sheet No. 35
 Sec. 5, 3rd, Revised Sheet No. 36; Canceling Sec. 5, 2nd Revised Sheet No. 36
 Sec. 5, 3rd, Revised Sheet No. 37; Canceling Sec. 5, 2nd Revised Sheet No. 37
 Sec. 5, 3rd, Revised Sheet No. 38; Canceling Sec. 5, 2nd Revised Sheet No. 38
 Sec. 5, 3rd, Revised Sheet No. 39; Canceling Sec. 5, 2nd Revised Sheet No. 39
 Sec. 5, 3rd, Revised Sheet No. 40; Canceling Sec. 5, 2nd Revised Sheet No. 40
 Sec. 5, 2nd, Revised Sheet No. 41; Canceling Sec. 5, 1st Revised Sheet No. 41

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 Global Agreement no later than June 3, 2011, bearing an effective date of June 15, 2011.

5. The Commission's Staff may either join Empire with filing its compliance tariff sheets, or file a separate recommendation regarding their approval no later than June 6, 2011.

6. This order shall become effective on June 6, 2011, except for paragraphs 4 and 5 that shall become effective immediately upon this order's issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

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

Stearley, Senior Regulatory Law Judge