

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 30th day of March, 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 REGARDING THE EMPIRE DISTRICT ELECTRIC COMPANY'S
MOTION TO ADMIT TESTIMONY AND EXHIBITS
FROM FILE NO. ER-2010-0355**

Issue Date: March 30, 2011

Effective Date: March 30, 2011

On March 21, 2011, The Empire District Electric Company ("Empire") filed a motion seeking admission, into the evidentiary record, testimony and exhibits concerning the allegations of imprudence on the part of Kansas City Power & Light Company ("KCPL") with regard to the latan plants that was adduced in the recently completed KCPL rate case, File No. ER-2010-0355. Empire asked for an expedited ruling to allow this admission prior to the deadline for filing rebuttal testimony on the same issue. Empire believes that addressing this issue (which it believes is common to both actions) in this manner will promote administrative economy.

The Commission set a deadline for responses, and extended the deadline for filing rebuttal testimony on revenue requirement until April 7, 2011. The Commission's Staff, KCPL, and the Midwest Energy Users' Association ("MEUA") responded. KCPL supports Empire's motion. Staff supports the motion with the caveat that it reserves the right to fully litigate any issue relating to Empire's participation in the latan project and to supplement

the record as would be appropriate. MEUA opposes the motion claiming that admission of the testimony and exhibits would somehow implicate improper applications of the doctrines of collateral estoppel and official notice. MEUA further argues that Empire has failed to establish the relevance of these materials and is making a bootstrap effort to evade its burden of proof.

The issue is simply due process. The parties must have a full and fair opportunity to litigate all of the issues specific to this matter. While the Commission appreciates Empire's objective to promote administrative economy, the parties to this action must be allowed the opportunity to properly raise individual objections to any offered testimony and must have a full opportunity to cross-examine witnesses and rebut any evidence presented.

The Commission will direct Empire to file the testimony and exhibits from File No. ER-2010-0355 that it believes are relevant to this matter. The Commission will also provide a second extension of the deadline to file rebuttal testimony on revenue requirement. If a party requires additional time to respond to the testimony and exhibits from File No. ER-2010-0355, it may file an appropriate request for an extension of time.

The Commission reminds the parties that to-date there is no evidentiary record. Any testimony or exhibit that a party wishes to offer into evidence can be offered during the evidentiary hearing. It is the parties' responsibility to ensure that any witness necessary to their case is present at the evidentiary hearing and available for cross examination. If the parties agree that prefiled testimony may be received into evidence while waiving cross-examination, then a witness' presence may not be required.

THE COMMISSION ORDERS THAT:

1. The Empire District Electric Company's motion to admit testimony and exhibits into the evidentiary record from File No. ER-2010-0355 is denied.
2. The Empire District Electric Company shall file any testimony and exhibits from ER-2010-0355 that it believes are relevant to this action no later than April 4, 2011.
3. The deadline for filing rebuttal testimony on revenue requirement is extended until April 18, 2011.
4. This order shall become effective immediately upon 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