

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

In the Matter of Empire District Electric)
Company d/b/a Liberty (Empire) for)
Authority to Implement Rate Adjustments)
Related to the Company's Fuel and)
Purchase Power Adjustment (FAC))
Required in 20 CSR 4240-20.090)
Case No. ER-2021-0097

In the Matter of The Empire District)
Electric Company's Request for Authority)
to File Tariffs Increasing Rates for Electric)
Service Provided to Customers in its)
Missouri Service Area)
Case No. ER-2019-0374

PUBLIC COUNSEL'S RESPONSE TO ORDER

COMES NOW the Office of Public Counsel (Public Counsel) and responds to the Commission's November 4, 2020, *Order* directing it to respond to Staff's recommendation and Empire's *Amended Motion for Variance* and *Response to Staff Recommendation* by November 6, 2020, that the Commission served on Public Counsel on Wednesday, November 4, 2020, at 5:02 PM, as follows:

1. In its recommendation, in a footnote, Staff cites to *State ex rel. St. Louis County Gas Co. v. Public Service Commission*, 315 Mo. 312 (Mo. 1926), and *State ex rel. Kennedy v. Public Service Commission*, 42 S.W.2d 349, 353 (Mo. 1931), for the proposition that the Commission cannot give Empire relief from its tariff in this instance. Both cases involve tariffed line extension policies. In *St. Louis County Gas* the court held that the tariff had the force and effect of law, and that while the Commission had the power to alter the tariff upon proper findings, it did not have the power to ignore it. In that case the Court reversed the Commission which had ordered St. Louis County Gas to extend gas service to new customers at a cost to them below that of its tariff. In *State ex rel. Kennedy* the Court upheld the Commission's refusal to reduce the cost to new customers for extending a line to serve them, and held that a provision that allowed

Commission-approved exceptions to the general policy “in exceptional cases where conditions may appear to warrant departures from the rule”¹ was not discriminatory. In its opinion, as Staff notes, the Court observed that, absent the exception, the Commission could not grant relief.

2. Like Staff, Public Counsel cursorily reviewed Empire’s tariff and did not find a provision that creates an exception from the notice requirement in PSC MO No. 6, Section 4, Sheet Nos. 17c and 17d. However, Public Counsel did find an unrelated exception provision on P.S.C. Mo. No. 6 Sec. 5 Original Sheet No. 17f:

5. Unregulated competition:

Where the Company competes for business with unregulated competition, the Company may waive all or part of any charges associated with extensions of service and/or construction deposits, provided for in the Empire Distribution Policy, Chapter III B, Empire District Electric Company Rules and Regulations, and any additional non-rate schedule charges, required in order to effectively compete with offers made to developers and/or customers by unregulated competition after notifying the Missouri Public Service Commission and receiving an Order granting the waiver for good cause shown.

3. Public Counsel is aware of Executive Order 20-04² and its extensions which authorize extraordinary relief due to the COVID-19 pandemic, but that order does not appear applicable here.

4. Public Counsel expert Lena Mantle has conferred with Empire personnel regarding the amounts and calculations in its filing and as addressed in Staff’s memorandum. Based on those discussions, Public Counsel believes that, for the same costs and revenues, aggregating those costs and revenues into the two new charge types and also aggregating them into the former 37 charge types would give the same aggregate numerical result.

¹ *State ex rel. Kennedy*, 42 S.W.2d at 352.

² <https://www.sos.mo.gov/library/reference/orders/2020/eo4>.

5. To the extent “charge type” is ambiguous as used in Empire’s FAC tariff, since the charges are Southwest Power Pool charges, clarification of the meaning of charge type may lie with the SPP.

6. Public Counsel notes that Empire states the following in its original motion:

3. As explained in Liberty-Empire’s direct testimony filed in Case No. ER-2021-0097 on October 1, 2020, in August of 2020, the Southwest Power Pool (“SPP”) went live with Combined Interest Resource (“CIR”) modeling which allows Jointly Owned Units (“JOUs”) to model units as a single resource with combined interests, rather than as individual units.

4. Leading up to this point, SPP submitted to the Federal Energy Regulatory Commission (“FERC”) what is now the CIR modeling as a solution to the JOU market flaws. FERC approved the language for CIR modeling in July of 2019, but SPP members had to wait until SPP’s Settlement System Replacement Project (“SSRP”) was complete (February 2020) before adding the new CIR functionality to the settlement system, which occurred on August 1, 2020.

WHEREFORE, within the short time allowed it to respond, the Office of the Public Counsel responds to Commission’s *Order* as set forth above.

Respectfully,

/s/ Nathan Williams
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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 this 6th day of November 2020.

/s/ Nathan Williams