

August 9, 2007

FILED VIA EFIS

Missouri Public Service Commission
Attention: Colleen M. Dale,
Secretary of the Commission
P.O. Box 360
Jefferson City, MO 65102

RE: PSC Case No. EX-2007-0214

Ms. Dale:

Please accept this letter and its attachments as The Empire District Electric Company's (Empire) comments concerning the proposed Electrical Corporation Vegetation Management Standards and Reporting Requirements rule (4 CSR 240-23.030) and the Electrical Corporation Infrastructure Standards rule (4 CSR 240-23.020), as published in the *Missouri Register*, dated July 16, 2007.

The Missouri Public Service Commission (Commission), Missouri public utilities and Missouri's citizens all have a vested interest in the provision of a safe, reliable, and economical power supply. Empire believes that an appropriately crafted vegetation management rule and/or infrastructure rule could potentially have a very positive influence on the furthering of this interest for all concerned.

PROCESS THUS FAR

Empire does not believe that the approach to the subject rulemakings thus far is the best method for accomplishing this goal. This Commission has commonly utilized work shops and technical conferences prior to the publication of rule proposals as a way to vet proposed rules with relevant stakeholders such as the Office of the Public Counsel, consumer groups, industry representatives, other agencies and the Commission's own Staff.

Empire believes this traditional approach has merit in this situation. It would provide a forum for the Commission to receive information from a variety of perspectives and to take this information into account in crafting rules. Even if proposed rules are not modified as a result of this process, it would provide a forum whereby those subject to the rules (in this case electric corporations) may gain a greater understanding of the intent of specific provisions.

Such a format would allow for a level of discussion and give and take that is not available in a formal rulemaking hearing where a utility's role is to provide comments and answer questions, not ask them.

It is Empire's belief that this lack of opportunity for real discussion in regard to the subject rules has led to the great variance in the cost estimates provided that are reflected in the fiscal notes. A quick review of these estimates reflected in the *Missouri Register* reveals a variety of assumptions have been used by the utilities. For example, the utilities have made different assumptions even as to the definitions of "rural," "urban," and "detail" inspections. Open discussions would have provided guidance regarding the Commission's intent as to various provisions of the rules and would likely have narrowed the estimates and thus provided the Commission with a clearer picture of the costs.

IMPACT OF PROPOSED RULES

The proposed rules appear to be overly broad. Empire notes that there have been no findings or conclusions associated with the Commission's "finding of necessity" in regard to these rules. Thus, Empire is not absolutely certain what situation the Commission is attempting to correct with this rule. If, as Empire assumes, the Commission is attempting to address the recent outages experienced as the result of weather conditions, Empire believes much less onerous standards can be applied to the benefit of Missouri customers.

The proposed rules, if put into effect, will have extremely serious financial impacts for the Missouri jurisdictional utilities and their customers. To put things in perspective, Empire's 12 month ending June 2007 Net Income is \$40.8 million dollars. Empire's estimate, as reported in the Missouri Register is \$45.433 million dollars annually to comply with the vegetation management rule alone. Absent a funding or deferral mechanism within the rules, it will make it financially impossible for Empire to comply and to continue our current operations. In the longer term, it must be assumed that the costs will be passed onto Missouri customers, substantially increasing the costs of electrical service.

Empire is also concerned that the rules neglect property owners by mandating numerous inspections and expedited compliance which will increase damage to property and crops. In addition, initial compliance with the vegetation management rule will upset many property owners, customers and communities as vegetation is removed at a rapid pace.

Some of these concerns can be addressed if the Commission makes an attempt to balance safety, reliability and economic impacts in its further consideration of the proposed rules. Empire has attempted to approach its comments directed toward this goal.

VEGETATION RULES

Empire performed an extensive internal review of the rules and hired an external vegetation management firm to help develop specific comments concerning the rules.

The firm Empire retained to help develop comments is Environmental Consultants, Inc. (ECI). ECI has completed comprehensive assessments of the vegetation management programs of over 150 electric utilities. ECI also co-authored the Utility Specialist Certification Study Guide published by the International Society of Arboriculture to prepare arborists for the utility specialist certification exam. As the leading industry expert in the area of utility vegetation management, ECI also authored the Vegetation Management Manual for the Cooperative Research Network of the National Rural Electric Cooperative Association. ECI provides vegetation management consulting and support services to Empire.

ECI prepared a report for Empire dated August 7, 2007, summarizing their concerns by section with the proposed rulemaking. The report is attached in its entirety hereto as **Attachment A**. The entire report should be reviewed by the Commission. However, the following is a sample of comments from the report (emphasis added) that are representative of the issues discussed within the proposed rules.

From Page 22 of the report: “The proposed requirement to provide fall clearance for all trees on all transmission voltages, with out exception, is **nearly impossible** given the normal easement provisions of typical utilities. Transmission systems were not designed, particularly at lower operation voltages, to eliminate the risk that trees could fall on conductors from outside the right-of-way or easement.”

From Page 31 of the report: “Implementation of the proposed standards within the specified timeframe will require significant additional vegetation management resources. It will be **likely impossible** for the vegetation management contractor industry to be able to meet the demands for the significant additional labor and equipment resources that will be required in such a short time period. This will obviously be a statewide issue, but may disproportionately impact individual utilities, thus hindering efforts to achieve compliance.”

From Page 32 of the report: “Maintaining 25 feet of clearance is **nearly impossible** to achieve and unnecessary for lower voltage transmission lines that were not designed for this standard, assuming the clearance to be maintained at all times is from the point of maximum sag or blowout.”

From Page 32 of the report: “Furthermore, 69kv rights-of-way on the Empire system are only 50 feet wide. With a 12 foot crossarm, the distance from the outermost conductor to the edge of the right-of-way is less than 20 feet. The 25 foot proposed clearance requirement means that Empire would be expected to not allow vegetation to encroach any closer than about five feet outside the edge of the existing right-of-way. In order to maintain this clearance, Empire would be required to trim and/or remove trees that are as much as 15 to 20 feet (or more) away from the existing right-of-way boundary. Without obtaining additional rights-of-way, **compliance would be impossible.**”

From Page 33 of the report: The cost of maintaining 10 feet of clearance on climbable trees **is nearly impossible to determine**, since the population of trees meeting the MOPSC definition of climbable is not known. This provision would apply to any evergreen with a main stem within 10 feet of conductors that has not had low branches removed. The cost to maintain at least three (3) feet of clearance on all other trees will require increased clearance from current practice, and/or shorter cycles. Benefits to reliability from this provision are likely to be small.

From Page 34 of the report: “To the extent that intrusion of limited small branches are allowed within six (6) inches of distribution conductors (this provision makes no sense for transmission lines) items 2, 3 and 4 are essentially a no touch rule. Such **a standard would increase costs considerably**. Such rules do not help improve reliability since few interruptions result from incidental contact between trees and distribution lines, and only under certain conditions. Most tree-caused interruptions occur as a result of branch failures or entire tree trunk failures.”

Empire developed a high level cost estimate of what it would cost to attempt to comply with the proposed vegetation rule. This was a particularly challenging process for those aspects of the rules that are said by ECI to be “nearly impossible”, “maybe even impossible” or, more directly, that “compliance is impossible.”

Empire’s estimate for an attempt to comply with the rules over the first 3 years is \$138 million, or approximately \$120 million more than Empire spends on its current vegetation management program.

To put this number in perspective, \$40 million is approximately equal to Empire’s entire twelve month ending June 2007 Net Income. All else being equal, an increase in expenses of \$40 million per year would equate to about 13% cost increase to each of Empire’s Missouri customers once it is reflected in rates. The estimated cost increase of \$120 million would ultimately represent a rate increase of approximately 39%. This, of course, does not take into account any increases that might result from Empire’s participation in Iatan 2 or other capital investments.

INFRASTRUCTURE RULE

Empire performed an extensive internal review of the rules and hired an external specialized distribution firm to help develop specific comments concerning the rules.

The firm Empire retained to help develop comments is Osmose, Incorporated. Over the past 70 years utility and telecommunication customers have relied on Osmose to help reduce costs and extend the life of their outside plant. Osmose provides inspection, repair, maintenance, data acquisition and data management services including pole inspection and treatment, pole restoration, overhead line and attachment surveys, field data collection and a full line of utility products. Osmose serves more than 800 customers in all 50 states.

Osmose prepared a report for Empire dated August 8, 2007, summarizing their concerns by section with the proposed rulemaking. The report is attached in its entirety hereto as **Attachment B**. The entire report should be reviewed by the Commission. However, the following is a sample of comments from the report (emphasis added) that are representative of the issues discussed within the proposed rules.

From Page 2 of the report: “**The vagueness** of the MOPSC proposed rule provides for broad interpretation as is evident in the fiscal response provided by the affected utilities as listed in the Missouri Register...”

Also from Page 2: “The lack of quantifying the condition rating makes it difficult for utilities to comply with the rule.”

From Page 6: “It is critical that the MOPSC bring clarity to the reporting requirements of the data to be collected before implementation.”

From Page 8: If an IOU does not already have an existing program in place it **will be difficult to fully implement and be compliant with the rule in a 6 month timeframe** due to lack of budget, personnel, and training.

From Page 9: The subjectivity of this loose guide seems to have the potential to drive costs up. **The rules are vague and make it impossible to understand the total operational and financial impact if the ruling is finalized as written.**

From Page 10: **The ruling is vague** relative to underground inspections. It appears definitions are needed to define the criteria for inspection of direct buried distribution circuits and buried distribution circuits constructed of ethylene propylene rubber. **It’s not clear** how this would impact the cycle for transformers, switching/protective devices, regulators and capacitors.

Also from Page 10: **The interpretation of ‘detailed inspection’ significantly impacts the cost** of the detailed inspection of overhead and underground equipment. Also, the interpretation could unduly increase the exposure of inspectors and the public to hazards during the inspection.

Empire developed a high level cost estimate of what it would cost to attempt to comply with the proposed infrastructure inspection rule. This was a particularly challenging process for those aspects of the rules that are said by Osmose to be “vague”, “difficult to fully implement” or, where interpretation “significantly impacts the cost.”

Empire’s estimate for an attempt to comply with the rules is substantial. We estimate one-time implementation costs between \$6.7 million and \$9.9 million. We estimate between \$6.6 million and \$12.8 million of ongoing costs.

Reliability Rules:

The Commission is also sending Reliability Rules to the Secretary of State without the opportunity for direct input or for querying on intent from interested stakeholders. The two Rulemakings which are the source of this proceeding are inextricably tied to the Reliability Rulemaking. For if Empire cuts trees as required by rulemaking and inspect and maintain distribution plant as required by rulemaking, Empire is unsure what other steps are left to improve reliability if we fall short of the Commissions top 25th percentile targets in the current draft of the Reliability Rules.

CONCLUSION

Each of the three rulemakings alone has significant financial impacts on the utilities and customers. We ask the Commission to consider the aggregate impact of all three rulemakings when making their final determination.

In summary, Empire has a vested interest in providing safe, reliable, and economical power to our customers and believes that an appropriately crafted vegetation management and infrastructure rule could have a positive impact on its Missouri customers. A workshop process with appropriate input from all parties would more likely produce this result than the current process. Empire therefore requests that the Commission not promulgate the proposed rules as drafted and instead initiate a process that provides for input and discussion among the various interested parties.

Sincerely

A handwritten signature in black ink that reads "Brad Beecher". The signature is written in a cursive, flowing style.

Brad Beecher
VP & COO- Electric
The Empire District Electric Company