

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

In the Matter of the Sixth Prudence Review of)
Costs Subject to the Commission-Approved)
Fuel Adjustment Clause of The Empire) Case No. EO-2017-0065
District Electric Company)

**THE EMPIRE DISTRICT ELECTRIC COMPANY’S RESPONSE TO
THE OFFICE OF THE PUBLIC COUNSEL’S MOTION TO COMPEL**

COMES NOW The Empire District Electric Company (“Empire”), by and through counsel, and, in response to the Motion to Compel (“Discovery Motion”) filed herein by the Office of the Public Counsel (“OPC”) and the *Order Establishing Time to Respond* issued herein on April 19, 2017, by the Missouri Public Service Commission (“Commission”), respectfully states as follows:

Introduction and Background

This case was opened on September 6, 2016, by the filing of Staff’s Notice of Start of Sixth Prudence Audit (“Staff’s Notice”). As noted therein, this case is regarding the Fuel and Purchased Power Adjustment Clause (“FAC”) review period of March 1, 2015 through August 31, 2016 (the “Audit Period”). The costs flowed through Empire’s FAC prior to the Audit Period were already reviewed, with no imprudence found; and the costs flowed or to be flowed through Empire’s FAC after the Audit Period will be the subject of subsequent review proceedings.

As set forth in Staff’s Notice, there have been five prudence reviews of Empire’s FAC. Staff identified no instances of imprudence by Empire regarding the costs associated with Empire’s FAC during any of these prudence reviews, and no imprudence was otherwise alleged or found by the Commission. It is also noteworthy that there has been no finding by the Commission of imprudence on the part of Empire associated with its FAC costs outside of a FAC review proceeding, such as in a general rate case or complaint proceeding.

Staff completed its sixth audit of Empire's FAC and filed Staff's Sixth Prudence Audit Report herein on February 28, 2017. As with the prior five reviews, Staff identified no instances of imprudence on the part of Empire during the Audit Period.

OPC filed a Motion for Evidentiary Hearing herein on March 10, 2017, asserting that "OPC's review revealed imprudent practices *during the audit period* that directly resulted in higher FAC rates than customers would have paid had Empire's practices been prudent." Hearing Motion, p. 1 (emphasis added). At least at the time OPC filed its Hearing Motion, OPC acknowledged that this proceeding is limited to the particular Audit Period.

Thereafter, OPC began serving data requests ("DRs") on Empire, covering a wide variety of topics and a broad timeframe, with some of the DRs asking for information back to 2009, and other DRs asking for information through the present. OPC's Discovery Motion requests Commission rulings as to Empire's objections to OPC DRs 1316, 1317, 1318, 1319, 8000, 8001, 8500, 8501, and 8502. Empire's objections to these DRs are set out below. Support for each objection is also provided, as well as a statement regarding the information Empire is willing to provide.

Empire understands the importance of OPC, and, as such, Empire wants OPC to have all information necessary in order for OPC to make a determination regarding the costs flowed through Empire's FAC for the Audit Period. Empire does not, however, want to waste time and resources gathering information as to periods that have already been reviewed, periods that will be reviewed in subsequent proceedings, and/or topics other than costs flowed through Empire's FAC during the Audit Period.

Data Requests, Objections, and Discussion

OPC DR 1316

Objection: Empire objects to this request on the bases that it is overbroad and seeks irrelevant information, in that the request seeks materials provided in 2014, 2015, 2016, and 2017. This proceeding is limited to the prudence of costs subject to Empire's Commission-approved fuel adjustment clause ("FAC") for the audit period of March 1, 2015 through August 31, 2016.

Subject to the above stated objections and without waiving the same, Empire will provide the requested information for the audit period.

Discussion: This objection is self explanatory. The DR asks for natural gas hedging reports for four years, while the Audit Period is 18 months. Initially, Empire provided the reports for the Audit Period.

At this time, subject to and without waiving its objections, Empire is willing to provide all requested reports. Nothing remains for a Commission decision on this request.

OPC DR 1317

Objection: Empire objects to this request to the extent it seeks materials not within the possession or control of Empire (ABB's analysis and workpapers) and on the bases that it is overbroad and seeks irrelevant information, in that the request seeks information pertaining to the gas forecasts listed in Empire's most recent IRP.

Empire will respond to this request subject to the above stated objections and without waiving the same.

Discussion: Empire does not use the IRP to determine hedging, and, as such, OPC's request for information on Empire's IRP is not relevant to this proceeding. If OPC desires additional information regarding Empire's IRP, that information should be requested in the IRP docket, where there are different parties involved and different issues under review.

Subject to its objections and without waiving the same, however, Empire fully responded to this request. Nothing remains for a Commission decision on this request.

OPC DR 1318

Objection: Empire objects to this request on the bases that it is overbroad and unduly burdensome, seeks irrelevant information, and requests actions outside the proper scope of discovery.

Subject to the above stated objections and without waiving the same, Empire states as follows:

- Empire would be happy to work with OPC on scheduling one or more mutually convenient meetings, with the topics and other parameters to be determined.
- Empire will make its Board of Director meeting minutes available to OPC, pursuant to OPC's power to view the utility's books and records.
- Empire will provide the reports, analyses, memos, and similar communications between ABB and Empire pertaining to the costs subject to Empire's Commission-approved FAC for the audit period of March 1, 2015 through August 31, 2016.

Discussion: Empire arranged a meeting with OPC, as requested, and Empire said it would make its board meeting minutes available to OPC pursuant to OPC's power to view the utility's books and records. Subject to its objections and without waiving the same, Empire fully responded to subparts (1), (2), and (3) of this request. Nothing remains for a Commission decision on these subparts.

Empire did not fully respond to subpart (4) and stands by its objections. A request for "each and every report, analysis, memo or similar communication between ABB and Empire in 2014, 2015, 2016 and 2017" is grossly overbroad in scope and timeframe, and requiring a response to this request would place an undue burden on Empire. OPC requested more specific information regarding ABB, such as in DR 1317, and Empire provided the requested information.

OPC DR 1319

Objection: Empire objects to this request on the bases that it is overbroad and seeks irrelevant information, in that the request seeks information from 2010 to the present. This proceeding is limited to the prudence of costs subject to Empire's Commission-approved FAC for the audit period of March 1, 2015 through August 31, 2016.

Subject to the above stated objections and without waiving the same, Empire will provide the requested information for the audit period.

Discussion: Subject to its objections and without waiving the same, Empire responded to this request for the entire timeframe requested. Nothing remains for a Commission decision on this request.

OPC DR 8000

Objection: Empire objects to this request on the bases that it is overbroad and seeks irrelevant information, in that the request seeks data from outside of the audit period. This proceeding is limited to the prudence of costs subject to Empire's Commission-approved FAC for the audit period of March 1, 2015 through August 31, 2016.

Subject to the above stated objections and without waiving the same, Empire will provide the requested information for the audit period.

Discussion: Subject to its objections and without waiving the same, Empire will respond to this request for the entire timeframe requested. Nothing remains for a Commission decision on this request.

OPC DR 8001

Objection: Empire objects to this request on the bases that it is overbroad and seeks irrelevant information, in that the request seeks data from outside of the audit period. This proceeding is limited to the prudence of costs subject to Empire's Commission-approved FAC for the audit period of March 1, 2015 through August 31, 2016.

Subject to the above stated objections and without waiving the same, Empire will provide the requested information for the audit period.

Discussion: Subject to its objections and without waiving the same, Empire will respond to this request for the entire timeframe requested. Nothing remains for a Commission decision on this request.

OPC DR 8500

Objection: Empire objects to this request on the bases that is vague and overbroad and seeks irrelevant information.

Subject to the above stated objections and without waiving the same, Empire will provide the requested explanation for any such differences pertaining to the prudence of costs subject to Empire's Commission-approved FAC for the audit period of March 1, 2015 through August 31, 2016.

Discussion: This request from OPC is vague and overbroad, in that no timeframe is provided, no specific case numbers are listed, and no particular data requests are identified. Empire did, however, respond to this request with an explanation regarding heat rates. Empire is unable to provide any additional information in response to this request as drafted.

OPC DR 8501

Objection: Empire objects to this request on the bases that it is overbroad and seeks irrelevant information.

Subject to the above stated objections and without waiving the same, Empire will provide the requested explanation for any such "outliers" pertaining to the prudence of costs subject to Empire's Commission-approved FAC for the audit period of March 1, 2015 through August 31, 2016.

Discussion: This request is grossly overbroad, as OPC is asking for information back to 2009. Empire's actions during these prior years have already been review and found to be prudent. OPC's request, in effect, is an attempted collateral attack on prior Commission orders.

Subject to its objections and without waiving the same, however, Empire will respond to this request for the entire timeframe requested. Nothing remains for a Commission decision on this request.

OPC DR 8502

Objection: Empire objects to this request on the bases that it is overbroad and seeks irrelevant information.

Subject to the above stated objections and without waiving the same, Empire will provide the requested explanation for any such “outliers” pertaining to the prudence of costs subject to Empire’s Commission-approved FAC for the audit period of March 1, 2015 through August 31, 2016.

Discussion: This request is grossly overbroad, as OPC is again asking for information back to 2009. Empire’s actions during these prior years have already been review and found to be prudent. OPC’s request, in effect, is an attempted collateral attack on prior Commission orders. Subject to its objections and without waiving the same, however, Empire will respond to this request for the entire timeframe requested. Nothing remains for a Commission decision on this request.

WHEREFORE, with regard to OPC’s Discovery Motion, Empire respectfully requests a ruling from the Commission sustaining Empire’s objections as to OPC DRs 1318(4) and 8500. Subject to its objections and without waiving the same, Empire fully responded to or will, by Tuesday, April 25, 2017, fully respond to OPC DRs 1316, 1317, 1318(1)-(3), 1319, 8000, 8001, 8501, and 8502. Empire requests such other and further relief as is prudent under the circumstances.

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By:

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was filed in EFIS, with notice of the same being sent to all counsel of record.

/s/ Diana C. Carter