

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

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 THE EMPIRE
DISTRICT ELECTRIC COMPANY’S MOTION FOR PARTIAL WAIVER**

COMES NOW the Office of Public Counsel (Public Counsel) and responds to The Empire District Electric Company’s *Motion for Partial Waiver* as follows:

1. In its *Motion for Partial Waiver* Empire asserts that the facts it alleges in paragraph no. 6 of its unverified motion constitute “good cause” for it not having heat rate tested its Riverton Unit 11 within 24 months of the date it filed its general rate increase case—August 14, 2019—as required by Commission Rule 4 CSR 240-20.090(2)(A)(15). That paragraph six follows:

6. The required testing was performed at the Riverton 11 unit on August 3, 2017 – eleven days outside the 24-month time period. It would not have been a sound use of Liberty-Empire’s resources to race to perform a new heat rate test on this unit when it was determined that the general rate case filing would be made just over 24 months following the date of the last heat rate test. Additionally, Riverton 11 was unavailable for operation for much of July. Because the Riverton plant has only one fuel meter, heat rate tests on a unit can only be performed with all other units turned off. Since Riverton 11’s return to service, the Riverton Combined Cycle unit has been running to serve the Southwest Power Pool’s load, thus preventing a heat rate testing of Riverton 11 within 24 months preceding the general rate case filing. The operations staff at the Riverton plant is aware of the requirement to perform heat rate testing for Riverton 11 and will do so when the next feasible opportunity presents.

2. Public Counsel does not know why Empire last tested Riverton 11 on August 3, 2017, but in Case No. ER-2016-0023 the Commission last approved continuation of Empire’s fuel adjustment clause by an August 10, 2016, order approving a settlement, and a September 6, 2016, order approving tariff sheets that took effect on September 14, 2016. Section 386.266.5(3), RSMo., provides:

In the case of an adjustment mechanism submitted under subsections 1 and 2 of this section, includes provisions requiring that the utility file a general rate case with the effective date of new rates to be no later than four years after the effective date of the commission order implementing the adjustment mechanism.

It is the latter order approving the tariff sheets effective September 14, 2016, that implemented Empire's current fuel adjustment clause. Therefore, Empire knew as of September 14, 2016, that if it wanted to continue its fuel adjustment clause beyond September 13, 2020, it would need to file a general rate case that would result in a new fuel adjustment clause tariff in effect by September 14, 2020. Assuming eleven months from the filing of a general rate case to the effective date of tariff sheets continuing its fuel adjustment clause, Empire would need to file its new rate case before October 14, 2019. Empire also knew that if it wished to continue its fuel adjustment clause it was required by Commission Rule 4 CSR 240-20.090(2)(A)(15) to file in that rate case the results of generating unit heat rate testing conducted within twenty-four months before it filed that rate case.

3. While Public Counsel believes that Empire's averments in its motion do not establish good cause for relief from the heat rate testing results requirements of Commission Rule 4 CSR 240-20.090(2)(A)(15), because the purpose of those results is to establish the efficiencies of the generating units and Empire rarely runs its Riverton unit 11 combustion turbine, Public Counsel agrees with Empire that this deficiency in its filing is not so significant that it alone should bar Empire from pursuing continuation of its fuel adjustment clause in this case.

WHEREFORE, the Office of the Public Counsel responds to The Empire District Electric Company's *Motion for Partial Waiver* as set forth above.

Respectfully,

/s/ Nathan Williams

Nathan Williams
Chief Deputy Public Counsel
Missouri Bar No. 35512

Office of the Public Counsel
Post Office Box 2230
Jefferson City, MO 65102
(573) 526-4975 (Voice)
(573) 751-5562 (FAX)
Nathan.Williams@ded.mo.gov

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 16th day of August 2019.

/s/ Nathan Williams