

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held by telephone
and internet audio conference
on the 7th day of October,
2020.

In the Matter of The Empire District)
Electric Company's Filing for Authority to)
Implement Rate Adjustments Related to)
the Company's Fuel and Purchased Power)
Adjustment Required in 20 CSR 4240-)
20.090)

File No. ER-2020-0311

ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT

Issue Date: October 7, 2020

Effective Date: October 17, 2020

On April 1, 2020, The Empire District Electric Company, a Liberty Utilities company (Liberty-Empire) filed a tariff sheet proposing to adjust the company's fuel adjustment rates, as provided by Commission Rule 20 CSR 4240-20.090(8). On May 1, 2020, Staff recommended the Commission issue an interim rate adjustment order to approve Liberty-Empire's substitute tariff sheet,¹ subject to true-up and prudence review. On May 11, 2020, the Office of the Public Counsel (OPC) filed a pleading opposing Staff's recommendation. OPC contended the proposed tariff sheet impermissibly included coal inventory adjustments related to retirement of the Asbury generating facility.

After Staff and Liberty-Empire responded to OPC's objection, the Commission on May 21, 2020, determined the objection raised an issue about whether the proposed fuel adjustment rates complied with Liberty-Empire's fuel adjustment clause (FAC) tariff. As required by Commission Rule 20 CSR 4240-20.090(8)(H), the Commission rejected the

¹ Liberty-Empire's tariff filing was assigned to Tariff No. JE-2020-0171. On April 6, 2020, Liberty-Empire filed a substitute tariff sheet, under the same tariff number, to correct an error.

substitute tariff and ordered Liberty-Empire to file a tariff sheet to implement interim adjusted fuel adjustment rates reflecting the elements of the proposed adjustment not in question. On June 18, 2020, the Commission approved such an interim tariff sheet,² effective July 10, 2020.

Hearing was set for September 10, 2020, and the parties filed written testimony according to the procedural schedule. After the parties informed the Commission they had reached an agreement in principle,³ the Commission on August 18, 2020, suspended the procedural schedule and continued the hearing.

On October 2, 2020, Liberty-Empire filed, on behalf of Staff, Liberty-Empire, and OPC, a *Global, Unanimous Stipulation and Agreement* (“Agreement”) to resolve all the issues in this matter. As the title of the Agreement indicates, it is a unanimous agreement that includes all of the parties and purports to resolve all issues. No additional tariff filing would be required under the Agreement.

As a term of the Agreement, Liberty-Empire will not seek recovery in this case of a \$1,925,886 coal inventory adjustment (“Asbury adjustment”). The parties agree Liberty-Empire will “reverse its initial entry of the inventory adjustment” and will defer the adjustment to FERC Account 182.3 – Other Regulatory Assets for consideration in Liberty-Empire’s next general rate case. This treatment is consistent with the Commission’s decision to authorize an accounting authority order (AAO) related to Asbury in Liberty-Empire’s most recent rate case.⁴ The parties also agree that this case

² Tariff No. YE-2020-0214.

³ *Motion to Suspend Procedural Schedule*, File No. ER-2020-0311 (August 17, 2020).

⁴ The Commission authorized the use of an AAO to establish a regulatory asset/liability, beginning January 1, 2020, to reflect the impact of the closure of the Asbury plant. *Amended Report and Order*, pp. 107-121, File No. ER-2019-0374 (July 23, 2020).

shall not constitute a prudence determination regarding the Asbury adjustment.

In addition, the Agreement provides the fuel adjustment rate to be charged customers under the current tariff sheet, approved by the Commission effective July 10, 2020, will remain effective until modified by a subsequent order. The parties also agree that \$177,885 of “costs attributable to undistributed coal expenses” are eligible costs to include under Liberty-Empire’s FAC. Such costs are to be included for recovery in Liberty-Empire’s October 1, 2020, FAC filing,⁵ subject to future prudence review. The Agreement provides that a “prior-period adjustment” will be allowed for “each respective month and associated cost.”⁶

The parties in this case filed written testimony pursuant to the procedural schedule. The Agreement provides that such pre-filed testimony will be admitted into the record in this case if the Commission approves the Agreement.

Commission rule provides for hearings in contested fuel adjustment rate filings.⁷ A hearing requirement is met when the opportunity for hearing has been provided.⁸ The Agreement expressly disposes of all of the issues among the parties, and no party has requested a hearing.

After reviewing the Agreement, the Commission independently finds and concludes that the Agreement is a reasonable resolution of the issues in this case and should be approved. To avoid any unnecessary delay in Staff’s review of Liberty-Empire’s

⁵ On October 1, 2020, Liberty-Empire submitted a FAC filing and revised tariff sheet with an effective date of December 1, 2020. The matter was assigned to File No. ER-2021-0097.

⁶ *Global, Unanimous Stipulation and Agreement*, ¶4 (Oct. 2, 2020).

⁷ 20 CSR 4240-20.090(8)(H).

⁸ *State ex rel. Rex Deffenderfer Enters., Inc. v. Pub. Serv. Comm’n*, 776 S.W.2d 494, 496 (Mo. App. 1989).

currently pending FAC filing, this order will be effective fewer than 30 days from the date of issuance.

THE COMMISSION ORDERS THAT:

1. The *Global, Unanimous Stipulation and Agreement*, filed on October 2, 2020, is approved. A copy of the Agreement is attached to this order and incorporated by reference.
2. Liberty-Empire, Staff, and the Office of the Public Counsel shall comply with the terms of the Agreement.
3. Testimony filed by the parties in this matter shall be admitted to the record in this case.
4. The procedural schedule is vacated.
5. This order shall be effective on October 17, 2020.



BY THE COMMISSION

A handwritten signature in dark ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and
Holsman CC., concur.

Jacobs, Regulatory Law Judge

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

In the Matter of The Empire District Electric Company's)
Request for Authority to Implement Rate Adjustments) Case No. ER-2020-0311
Related to the Company's Fuel and Purchased Power)
Adjustment ("FAC") Required by 20 CSR 4240-20.090)

GLOBAL, UNANIMOUS STIPULATION AND AGREEMENT

COME NOW all parties hereto, The Empire District Electric Company ("Liberty" or "Company"), the Staff of the Commission ("Staff"), and the Office of the Public Counsel ("OPC") (collectively, the "Signatories"), and submit this Global, Unanimous Stipulation and Agreement ("Stipulation") for consideration and approval by the Missouri Public Service Commission ("Commission"):

1. This Stipulation is being entered into for the purpose of settling all issues in this case on behalf of the Signatories. Pursuant to this Stipulation, no order other than an order approving this Stipulation as a full and complete resolution of this case shall be needed herein, and no additional tariff filing in this matter will be required.

2. Pursuant to this Stipulation, Empire is no longer seeking recovery of the \$1,925,886 coal inventory adjustment in this Fuel & Purchased Power Adjustment Clause ("FAC") docket. Empire shall reverse its initial entry of the inventory adjustment. The coal inventory adjustment will be deferred to FERC Account 182.3, Other Regulatory Assets, for future ratemaking consideration in Empire's next general rate case. No determination regarding the prudence of this adjustment is determined in this FAC docket.

3. The FAR to be charged to customers under Empire's currently effective tariff sheet shall continue in effect until modified by a subsequent order of the Commission.

4. The Signatories agree that the \$177,885 of costs attributable to undistributed coal expenses are eligible costs to include in the Company's FAC. The undistributed coal expenses shall be included for recovery in Empire's FAC docket, filed October 1, 2020, subject to future prudence review. This shall be accomplished with a prior-period adjustment for each respective month and associated cost.

5. No Signatory will be deemed to have approved, accepted, agreed, consented, or acquiesced to any substantive or procedural principle, treatment, calculation, or other determinative issue underlying the provisions of this Stipulation except as otherwise specifically set forth herein. Except as specifically provided herein, no Signatory shall be prejudiced or bound in any manner by the terms of this Stipulation in any other proceeding, regardless of whether this Stipulation is approved.

6. This Stipulation has resulted from extensive negotiations among the Signatories and the terms hereof are interdependent. In the event the Commission does not approve this Stipulation, or approves it with modifications or conditions to which a Signatory objects, then this Stipulation shall be null and void, and no Signatory shall be bound by any of its provisions.

7. If the Commission does not approve this Stipulation unconditionally and without modification, and notwithstanding its provision that it shall become void, neither this Stipulation, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with Section 536.090, RSMo, or Article V, Section 18 of the Missouri Constitution, and the Signatories shall retain all procedural and due process rights as fully as though this Stipulation had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this Stipulation shall become privileged as

reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

8. If the Commission unconditionally accepts the specific terms of this Stipulation without modification, the Signatories waive, with respect only to the issues resolved herein: their respective rights (1) to call, examine and cross-examine witnesses pursuant to Section 536.070(2), RSMo 2000; (2) their respective rights to present oral argument and/or written briefs pursuant to Section 536.080.1, RSMo 2000; (3) their respective rights to the reading of the transcript by the Commission pursuant to Section 386.080.2, RSMo 2000; (4) their respective rights to seek rehearing pursuant to Section 386.500, RSMo 2000; and (5) their respective rights to judicial review pursuant to Section 386.510, RSMo Supp. 2011, as applies to the other signatories to this Stipulation. These waivers apply only to a Commission order respecting this Stipulation issued in this above-captioned proceeding, and do not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters not explicitly addressed by this Stipulation.

9. The Signatories shall also have the right to provide, at any agenda meeting at which this Stipulation is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that each Signatory shall, to the extent reasonably practicable, provide the other parties with advance notice of the agenda meeting for which the response is requested. A Signatory's oral explanations shall be subject to public disclosure, except to the extent they refer to matters that are privileged or protected from disclosure pursuant to the Commission's rules on confidential information.

10. This Stipulation contains the entire agreement of the Signatories concerning the issues addressed herein.

11. This Stipulation does not constitute a contract with the Commission and is not intended to impinge upon any Commission claim, right, or argument by virtue of the Stipulation's approval. Acceptance of this Stipulation by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigative or other power which the Commission presently has or as an acquiescence of any underlying issue. Thus, nothing in this Stipulation is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information, or any statutory obligation.

12. Contingent upon Commission approval of this Stipulation without modification, the Signatories hereby stipulate to the admission into the evidentiary record of the pre-filed written testimony of their witnesses.

WHEREFORE, Liberty, Staff, and OPC request approval of this Global, Unanimous Stipulation and Agreement as a full and complete resolution of this case.

Respectfully submitted,

The Empire District Electric Company

/s/ Diana C. Carter

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STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 7th day of October, 2020.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

October 7, 2020

File/Case No. ER-2020-0311

**Missouri Public Service
Commission**

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.