

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held by telephone and internet audio conference on the 24th day of November, 2020.

In the Matter of Empire District Electric)	
Company d/b/a Liberty (Empire) for)	
Authority to Implement Rate Adjustments)	<u>File No. ER-2021-0097</u>
Related to the Company's Fuel and)	Tariff No. JE-2021-0092
Purchase Power Adjustment (FAC))	
Required in 20 CSR 4240-20.090)	

**ORDER APPROVING STIPULATION AND AGREEMENT AND NOTICE
THAT TARIFF WILL BE ALLOWED TO BECOME EFFECTIVE**

Issue Date: November 24, 2020

Effective Date: December 4, 2020

On October 1, 2020, The Empire District Electric Company d/b/a Liberty (Empire) filed tariff sheets and testimony designed to implement adjustments under its Fuel Adjustment Clause (FAC). Empire requested that the Commission approve its revised FAC tariff sheet, Tariff No. JE-2021-0092, to implement those adjustments. The tariff sheet, as substituted October 22, 2020, bears an effective date of December 1, 2020. Along with its FAC tariff filing, Empire also submitted its *Motion for Variance and Notice of New FAC Charge Types*. The motion requested a waiver of Commission Rule 20 CSR 4240-20.090(8)(D)1A, which provides that the party proposing the inclusion of costs or revenues covered by a new market settlement type or schedule (a new charge type) make

a filing providing notice of the new charge type at least 60 days prior to its next Fuel Adjustment Rate (FAR) adjustment filing.¹

The Commission directed notice of the filings, set an intervention deadline, and ordered its Staff (Staff) to file a recommendation. No applications to intervene were received. On October 30, 2020, Staff filed its recommendation. Staff recommended not granting the variance because Empire did not give notice of the new charge types 60 days prior to its FAR filing,² but gave notice on the same day as its FAR filing. In addition, Staff noted that Empire also has a 60-day notice provision in its tariff, from which Empire did not request a variance. Staff was unaware of any provision that would allow Empire a variance from its tariff requirement. Staff stated that while the FAC rate adjustment is in compliance with Commission Rule 20 CSR 4240-20.090 and Section 386.266 RSMo., Staff could not recommend that Empire's revised FAC adjustment tariff sheet be approved because of the 60-day notice provision in its tariff. In response, Empire filed an *Amended Motion for Variance* also requesting a variance from its tariff provision.

The Commission issued orders requesting additional information from specific parties. Empire asserted that, while changes approved by the Federal Energy Regulatory Commission appear to have created two new charge types that will be reported on the Southwest Power Pool settlement statements, Empire did not believe that the consolidation of 37 charge types into two charge types created a new market settlement type or schedule within the meaning of the Commission's Rule 20 CSR 4240-20.090(8)(D)1A, or its tariff provision. Both Staff and the Office of the Public Counsel

¹ Empire also filed its *Motion for Variance and Notice of New FAC Charge Types* in ER-2019-0374, as required by Commission Rule 20 CSR 4240-20.090(8)(D)1A. On November 6, 2020, the Commission issued notice that Empire's motion for variances shall be addressed in this file.

² An FAC adjustment tariff is a FAR filing.

(OPC) expressed belief that these changes were new charge types and therefore would require 60 days' notice. The Commission held a procedural conference on November 9, 2020, to ascertain whether there was any potential for resolution between the parties concerning the variance request, and discuss the deadline for Commission action in regard to Empire's FAC adjustment tariff sheet revision.

On November 13, 2020, Empire, Staff, and OPC (collectively "Signatories") filed their *Global Stipulation and Agreement* purporting to resolve the issues between the Signatories. Commission Rule 20 CSR 4240-20.090(17)(A), provides that parties to the most recent general rate case in which the Commission established, continued, or modified the fuel adjustment clause are also parties to subsequent rate adjustment and true-up proceedings without having to file an application for intervention. Thus, not all parties were signatories to the *Global Stipulation and Agreement*. Commission Rule 20 CSR 4240-2-115(2) says that where all parties are not signatories to a stipulation and agreement, each party shall have seven days to object to the stipulation and agreement. If no party files a timely objection to a stipulation and agreement, the Commission may treat it as a unanimous stipulation and agreement. More than seven days have passed since the stipulation and agreement was filed, and no party has objected. Therefore, the Commission will treat the stipulation and agreement as a unanimous.

The Stipulation

The Signatories request that the Commission issue an order approving the *Global Stipulation and Agreement*, and either approve Empire's revised FAC adjustment tariff sheet as substituted October 22, 2020, or allow it to become effective by operation of law.

Under the terms of the stipulation, the Signatories agree that the revised FAC adjustment tariff sheet originally filed on October 1, 2020, as substituted on October 22, 2020, shall take effect on December 1, 2020, subject to true-up and prudence reviews. Empire will withdraw its request for a variance from Commission Rule 20 CSR 4240-20.090(8)-(9) and its tariff regarding a notice of new charge types being submitted 60 days in advance of Empire's FAR filing. The Signatories agree that Empire will use the original 37 charge types for this FAR filing. With future monthly FAC submissions, Empire agrees to provide Staff and OPC with advanced notice of possible new charge types being implemented by the Southwest Power Pool, so that 60-day notice is given, even if all the details of the new or modified charges are not yet known. In addition to other general provisions, the parties agree to have the right to provide any oral explanation requested by the Commission at the Agenda meeting where approval of the *Global Stipulation and Agreement* is considered.

FAC tariff

With regard to Empire's FAC tariff filing, the proposed rate schedules are designed to recover from customers 95 percent of the company's net cost increases or decreases. The true-up amount of \$1,423,471 which Empire over-collected from its customers during the 22nd Recovery Period was approved by the Commission in File No. EO-2021-0098, and is a component of Empire's proposed FAC adjustment for Accumulation Period 24. The true-up amount is included with the over-recovery amount equal to 95 percent of the difference between Empire's actual fuel and purchased power costs plus net emissions allowance costs less off-system sales revenue and renewable energy credits revenue, and Empire's net base energy cost during Accumulation

Period 24. This equals (\$2,575,706), plus interest equal to \$(17,232), resulting in a total of (\$4,016,409) used to calculate the FARs for Accumulation Period 24.³

Due to a difference in line losses, there are different FARs for service at Primary and Secondary voltage levels resulting in proposed Accumulation Period 24 FARs of \$(0.00186)/kWh for Primary service and \$(0.00190)/kWh for Secondary service. Based on monthly usage of 1,000 kWh, the proposed FAR adjustment would decrease the FAC charge of a residential customer's monthly bill from \$.43 to \$(1.90), a decrease in the customer's bill of \$2.33 per month.

The Commission's rule regarding FACs requires the Commission to issue an order regarding the company's tariff within 60 days of its filing. If the FAC rate adjustment complies with the Commission's rule, Section 386.266, RSMo, and the FAC mechanism established in the most recent general rate proceeding, the Commission is required to approve the rate adjustment or allow the proposed tariff implementing the adjustment go into effect by operation of law. As previously stated, Staff has already determined that the rate adjustment is in compliance with Commission Rule 20 CSR 4240-20.090 and Section 386.266 RSMo.

After reviewing the *Global Stipulation and Agreement*, the Commission finds that it is a reasonable resolution of the issues contained therein and should be approved. The Commission shall make this order effective in ten days, so that the *Global Stipulation and Agreement* becomes effective contemporaneous to Empire's revised FAC adjustment tariff sheet. The Commission is providing notice that it will allow Empire's revised FAC adjustment tariff sheet to take effect on December 1, 2020, by operation of law.

³ $(\$1,423,471) + (\$2,575,706) + \$ (17,232) = (\$4,016,409)$.

THE COMMISSION ORDERS THAT:

1. The *Global Stipulation and Agreement* filed on November 13, 2020, is approved. The Signatories are ordered to comply with its terms. A copy of the *Global Stipulation and Agreement* is attached to this order and incorporated by reference.
2. This order shall be effective on December 4, 2020.

THE COMMISSION GIVES NOTICE THAT:

1. Empire's compliance tariff bearing Tariff No. JE-2021-0092, as substituted October 22, 2020, will take effect by operation of law on December 1, 2020.



BY THE COMMISSION

Morris L. Woodruff

Morris L. Woodruff
Secretary

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

Clark, Senior Regulatory Law Judge

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

In the Matter of The Empire District Electric)	
Company's Filings to Implement Rate)	Case No. ER-2021-0097
Adjustments Related to the Company's Fuel and)	Tariff No. JE-2021-0092
Purchased Power Adjustment ("FAC"))	

GLOBAL STIPULATION AND AGREEMENT

COME NOW The Empire District Electric Company ("Liberty-Empire" or "Company"), the Staff of the Missouri Public Service Commission ("Staff"), and the Office of the Public Counsel ("OPC") (collectively, the "Signatories"), and submit this Global 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 and either approving the tariff sheet which is the subject of this case or allowing it to take effect by operation of law shall be needed herein, and no additional tariff filing in this matter will be required.

2. The Signatories agree that the FAR tariff sheet originally filed on October 1, 2020, as substituted on October 22, 2020, should take effect on December 1, 2020, subject to true-up and prudence reviews, as proposed by Liberty-Empire. Staff submits this Settlement in lieu of the submission of a revised Staff Recommendation.

3. Pursuant to this Stipulation, Liberty-Empire withdraws its request for a variance from Commission Rule 20 CSR 4240-20.090(8)-(9) (i.e., 20 CSR 4240-20.090(8)(D)1A) **and** its tariff regarding a notice of new charge types being submitted 60 days in advance of Liberty-Empire's FAR filing.

4. The Signatories agree that Liberty-Empire will use the original 37 charge types for this FAR filing, thus eliminating the need for the variances and Motions for Variance regarding the two new charge types, as originally requested. Usage of the original charge types results in calculations and dollar amounts remaining the same as contained within the Company's FAR filing, since they are based on charge types that existed prior to August 1, 2020, and still exist today. Staff verified the calculations in the FAR filing are accurate using the 37 charge types, since Liberty-Empire was able to allocate charges back to their unconsolidated form. A copy of Liberty-Empire's workpaper showing the calculations using the original 37 charge types is being filed with this Stipulation.

5. The Company's next FAR filing will utilize the new charge types referenced in the Company's Notice submitted herein on October 1, 2020, and Staff and OPC agree that said Notice satisfies the requirements of Commission Rule 20 CSR 4240-20.090(8)-(9) and Liberty-Empire's tariff regarding notice of new charge types being submitted 60 days in advance, with regard to the Company's next and subsequent FAR filings.

6. With future monthly FAC submissions, Liberty-Empire agrees to provide Staff and OPC with advanced notice of possible new charge types being implemented by SPP. Liberty-Empire will include in the monthly FAC submissions information obtained from the Southwest Power Pool ("SPP") describing new or modified market charges that result from Liberty-Empire's participation in the SPP Integrated Marketplace ("IM") and that may be implemented in the future. The 60-day advanced notice provision remains in effect. This stipulation provision is designed to clarify that notice should be given even if all details are not yet known at the 60-day mark and/or even if it is not certain that the new or modified market charges will take effect.

7. 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.

8. 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.

9. 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.

10. 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 RSMo. §536.070(2); (2) their respective rights to present oral argument and/or written briefs pursuant to RSMo. §536.080.1; (3) their respective rights to the reading of the transcript by the Commission pursuant to RSMo. §386.080.2; (4) their respective rights to seek rehearing pursuant to RSMo. §386.500; and (5) their respective rights to judicial review pursuant to RSMo. §386.510. 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.

11. 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.

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

13. 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.

WHEREFORE, Liberty-Empire, Staff, and OPC request an order from the Commission either approving the tariff sheet which is the subject of this case or allowing it to take effect by operation of law and approving this Global 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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CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 13th day of November, 2020, with a copy sent by email to all counsel of record.

/s/ Diana C. Carter

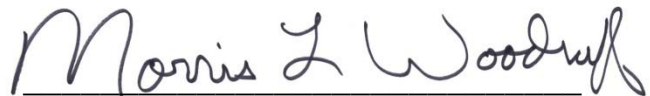
STATE OF MISSOURI

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 24th day of November, 2020.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

November 24, 2020

File/Case No. ER-2021-0097

Missouri Public Service Commission

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The Empire District Electric Company SERP Retirees, LLC

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

Sincerely,

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

**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.