

132 FERC ¶ 61,078  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Empire District Electric Company

Docket Nos. ER10-1358-000  
ER10-877-000  
ER10-877-001  
ER10-877-002  
(Consolidated)

ORDER ACCEPTING AND SUSPENDING PROPOSED TERMINATION OF  
AGREEMENTS, ESTABLISHING HEARING PROCEDURES, AND  
CONSOLIDATING PROCEEDINGS

(Issued July 28, 2010)

1. On May 28, 2010, Empire District Electric Company (Empire) filed notices of termination for the cost-based Wholesale Electric Service Schedule W-1 (W-1 Tariff),<sup>1</sup> and the service agreements between Empire and cities of Monett, Mt. Vernon, and Lockwood, Missouri, and the city of Chetopa, Kansas (Service Agreements) in Docket No. ER10-1358-000. As discussed below, the Commission accepts and suspends the proposed terminations for a nominal period to become effective July 31, 2010, subject to refund, establishes hearing procedures, and consolidates the terminations with ongoing rate proceedings in Docket No. ER10-877-000, et al.

**I. Background**

2. Empire is a public utility providing electric service to approximately 167,000 customers in southwest Missouri, southeast Kansas, northeast Oklahoma, and northwest Arkansas. Empire is also a transmission-owning member of Southwest Power Pool, Inc. (SPP), with its transmission facilities, most of which operate at 69 kV and 161 kV, under the functional control of SPP. All transmission service requests that would use Empire's

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<sup>1</sup> Empire's FERC Electric Tariff, Second Revised Volume No. 1, Wholesale Electric Service Schedule W-1.

transmission system are made through SPP and Empire takes transmission service over its facilities under the SPP tariff.

3. Empire states that it currently provides bundled full requirements wholesale service within its balancing authority area to the cities of Monett, Mt. Vernon, and Lockwood, Missouri, and the city of Chetopa, Kansas under grandfathered agreements with stated rates under the W-1 Tariff. Empire further indicates that it has continued to provide service under the bundled service agreements, even though the 20-year terms of the grandfathered service agreements have all expired.<sup>2</sup> However, Empire now proposes to terminate the W-1 Tariff and Service Agreements effective July 31, 2010, because it is implementing a proposed Full Requirements Electric Service Rate Schedule with a standard form of Electric Service Agreement in Docket No. ER10-877-000, i.e., a new cost-based full requirements wholesale electric service rate schedule and generation formula rate.

## **II. Notice of Filing and Responsive Pleadings**

4. Notice of Empire's filing was published in the *Federal Register*, 75 Fed. Reg. 32,937 (2010), with comments due on or before June 18, 2010. A timely motion to intervene, consolidate and protest was filed by Missouri Public Utility Alliance (MPUA).<sup>3</sup> Empire filed an answer to the MPUA protest on July 2, 2010, and MPUA filed an answer to Empire's answer on July 13, 2010.

## **III. MPUA Protest**

5. MPUA states that Empire filed a new rate schedule and service agreement in Docket No. ER10-877-000 that significantly overhauls its rate structure by proposing to change from the stated rates that have been in place for decades to a formula rate, and requiring service agreements that have a minimum term of 10 years. MPUA claims that any full requirements customer that wishes to continue to receive electric service from Empire after July 31, 2010 will be required to sign a new full requirements service agreement for a minimum 10-year term under the proposed tariff, without knowing the final terms and conditions and rates for electric service. MPUA notes that the

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<sup>2</sup> The city of Monett's service agreement expired on April 28, 2009, the city of Mt. Vernon's service agreement expired on April 29, 2008, the city of Lockwood's service agreement expired on April 1, 2003, and the city of Chetopa's service agreement expired on April 1, 2001.

<sup>3</sup> MPUA is a not-for-profit service organization representing municipally-owned electric, natural gas, water, wastewater and broadband utilities in Missouri. The cities of Monett, Mt Vernon, and Lockwood, Missouri (Missouri Cities) are MPUA members.

Commission issued an order on March 28, 2010,<sup>4</sup> setting the justness and reasonableness of Empire's proposed tariff and agreements for hearing and settlement procedures.<sup>5</sup>

6. MPUA argues that granting the requested termination places Missouri Cities in the position of having to either commit to service agreements with terms that have not yet been established or lose electric service from their longtime supplier. MPUA states that Missouri Cities are being forced to obtain full requirements service from an alternative supplier on short notice during the peak summer season when sellers' prices (even for long-term service) are usually at their highest, and where competition for wholesale power sales was inadequate to permit Empire market-based rate authority in its control area.

7. MPUA requests that the Commission hold Empire's termination request in abeyance until Empire's new tariff and service agreements have been approved and Missouri Cities have had an opportunity to evaluate the rates and terms approved in that proceeding, and compare Empire's service terms to other alternative suppliers. Finally, MPUA asks the Commission to consolidate the instant docket with Docket No. ER10-877-000 to seek a unified resolution of the interrelated issues through settlement negotiations.

#### **IV. Empire's Answer**

8. Empire states that the Commission should deny MPUA's protest because MPUA fails to adequately support its request for the Commission to hold Empire's termination request in abeyance until Empire's new tariff and service agreements have been approved in Docket No. ER10-877-000.<sup>6</sup> Specifically, Empire argues that Missouri Cities did receive adequate notice of the termination because Empire not only filed notices of termination sixty days prior to the proposed effective date, but also from earlier notices and various meetings between Empire and Missouri Cities.<sup>7</sup>

9. Empire states that because Missouri Cities received adequate notice of the termination filing, Missouri Cities have also had ample time to explore the market and

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<sup>4</sup> *Empire District Electric Co.*, 131 FERC ¶ 61,182 (2010).

<sup>5</sup> We note that the Chief Administrative Law Judge appointed a settlement judge and suspended the hearing schedule. *Empire District Electric Co.*, Docket Nos. ER10-877-000 and ER10-877-001, (June 15, 2010) (unpublished letter order).

<sup>6</sup> Empire Answer at 3.

<sup>7</sup> *Id.*

solicit offers to meet their power supply needs.<sup>8</sup> Empire asserts there is no ground to delay formal cancellation of Missouri Cities' W-1 service agreements.<sup>9</sup>

10. Empire also states that the Commission should deny MPUA's motion to consolidate. Empire argues that, despite the tangential relationship between the termination and the tariff proceedings, the two proceedings do not warrant consolidation because there are no genuine issues of material fact in dispute in the termination proceeding necessitating a hearing.<sup>10</sup>

#### **V. MPUA's Response to Empire's Answer**

11. MPUA states that Empire mischaracterizes MPUA's reasons for requesting that the terminations be held in abeyance. MPUA argues that the reason it is requesting that the application be held in abeyance is not that Missouri Cities' lacked notice, but rather the lack of established terms in the proposed new service agreements and rate schedule.<sup>11</sup> MPUA states that, while Missouri Cities have been generally aware of the impending changes in their service agreements, Missouri Cities do not yet have the information necessary to make a knowledgeable decision between continuing to take full-requirements service from Empire and signing with an alternative supplier.<sup>12</sup> Thus, MPUA argues that, until Missouri Cities are able to make an informed decision as to whether to enter into a 10-year service agreement under the proposed new tariff, Empire should be required to continue to serve Missouri Cities under their current contractual and tariff provisions.<sup>13</sup>

12. MPUA further states that such a sequence of events is consistent with Empire's original intent. MPUA states that in Empire's Docket No. ER10-877-000 filing proposing a new formula rate tariff and full requirements wholesale agreements, Empire stated that it would file to cancel its existing W-1 tariff and service agreements after receiving Commission approval of the proposed rate schedule.<sup>14</sup> MPUA states that this

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<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 5.

<sup>11</sup> MPUA Response at 3.

<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 5 (citing March 12, 2010 Filing Letter at 3).

claim was also made to customers in the January 2010 presentation to customers that Empire attached to its Answer.<sup>15</sup> MPUA contends that Empire intended to and communicated to its customers that it would terminate its existing contracts in a manner that would allow its customers to review the terms and conditions of service in its new agreements before losing service or being forced to sign long-term contracts.<sup>16</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We have accepted the answers of MPUA and Empire, because they have assisted us in our decisionmaking.

15. The Commission will grant the motion to consolidate the instant proceeding with Docket No. ER10-877-000. Consolidation will allow the common issues related to appropriate rates and terms for Empire's service to be heard together. Having considered the responsive pleadings, we find there are disputed issues of fact regarding the timing of the terminations and the intent of the parties, which will benefit from examination as part of the ongoing hearing in Docket No. ER10-877-000.

##### **B. Determination**

16. MPUA does not dispute Empire's right under the W-1 Tariff to seek termination of the service agreements. Rather, MPUA asks the Commission to hold Empire's termination request in abeyance until Empire's new tariff and service agreements are finalized and approved in Docket No. ER10-877-000, et al.

17. MPUA asserts that until the proceeding on Empire's proposed new tariff and service agreement is resolved, any new agreements will not have final terms and conditions and rates putting Missouri Cities in an untenable position. Requiring Missouri Cities to commit to service agreements with 10-year terms, when those terms and rates have not yet been established or to lose service from Empire and seek to obtain service from an alternative supplier on short notice may not be reasonable in these circumstances,

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<sup>15</sup> *Id.* (citing Attachment A to Empire Answer at 6).

<sup>16</sup> *Id.*

even though Empire has satisfactorily complied with the prior notice provision of section 35.15 of the Commission's regulations.<sup>17</sup>

18. Our preliminary analysis indicates that Empire's filing has not been shown to be just and reasonable, and may be unjust and unreasonable, unduly discriminatory or preferential, or other unlawful. Therefore, we will accept the proposed terminations of the W-1 Tariff and Service Agreements, suspend them for a nominal period, effective July 31, 2010, subject to refund, and consolidate the proceeding with Docket No. ER10-877-000, et al., for hearing.

The Commission orders:

(A) Empire's proposed terminations of the W-1 Tariff and Service Agreements are hereby accepted and suspended to become effective July 31, 2010, subject to refund, and subject to the outcome of a hearing.

(B) MPUA's motion to consolidate this proceeding with Docket No. ER10-877-000, et al. is granted.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>17</sup> 18 C.F.R. § 35.15 (2010).