

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 26<sup>th</sup> day of April, 2017.

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

**ORDER REGARDING MOTION TO COMPEL DISCOVERY**

Issue Date: April 26, 2017

Effective Date: April 26, 2017

On April 18, 2017, the Office of the Public Counsel filed a motion asking the Commission to compel The Empire District Electric Company to answer several data requests. Empire responded to that motion on April 21.

Public Counsel asks the Commission to order Empire to respond to nine data requests that cover three issues: hedging decisions for natural gas purchases; purchased power and off-system sales; and heat-rate testing to determine whether Empire has maintained the efficiency of its generation units. Empire initially objected to these data requests and refused to provide data outside the audit period of March 1, 2015 through August 31, 2016, arguing that such data is irrelevant to the prudence review that is before the Commission. In its April 21 response, Empire indicates that despite its objections, it has now fully responded to most of the data requests. It has, however, refused to fully respond to two requests.

Assuming, without deciding, that Empire has fully responded to most of the data requests, the Commission will address only those data requests to which Empire has indicated it has not fully responded. If Public Counsel believes that Empire has not fully

responded to the other data requests, it may bring those concerns to the attention of the Commission.

The first data request to which Empire indicates it has not fully responded is DR 1318.

That data request asks:

**DR 1318:** *Please arrange a meeting between Empire personnel and OPC personnel during the week of April 24-28 2017. 1) OPC would like to review the minutes of Liberty and Empire Board of Director meetings in 2014, 2015, 2016 and 2017. 2) OPC would like to meet with Empire's fuel procurement personnel to discuss fuel procurement policies and procedures. 3) OPC would like to meet with Empire's natural gas hedging personnel to discuss Empire's natural gas hedging policies and procedures, including details surrounding how and why Empire decides to purchase specific financial hedges. 4) OPC would like to review a copy of each and every report, analysis, memo or similar communication between ABB and Empire in 2014, 2015, 2016 and 2017.*

Empire says that it has now fully responded to the first three subparts of this data request. The only subpart to which it has not responded is (4). Empire contends Public Counsel's request to review every "report, analysis, memo or similar communication between ABB and Empire in 2014-2015, 2016 and 2017" is overbroad in scope and timeframe. It contends requiring such a response would impose an undue burden on Empire. Further, Empire argues it has already provided all relevant information about ABB's analysis in response to DR 1317.

Neither Public Counsel, nor Empire fully explains what ABB is, or what its relationship with Empire might be. Based on the language of DR 1317, quoted in Public Counsel's motion, it appears that ABB is a separate company that provided certain natural gas forecasts that were listed in Empire's most recent Integrated Resource Plan. Data request 1317, to which Empire says it has fully responded, asks Empire to provide "the analysis and workpapers that ABB used or created to substantiate the natural gas forecasts listed in the Company's most recent Integrated Resource Plan." It appears that DR 1318(4) seeks much the same information, but over a broader timeframe.

Public Counsel's data request 1318(4) appears to be reasonably calculated to lead to the discovery of relevant information in that the information it seeks would enable Public Counsel to better evaluate the reasonableness of ABB's forecasts and the reasonableness of Empire's reliance on those forecasts. Empire has not shown that the burden of producing this information covering a longer time-period is unduly burdensome. The Commission will grant this portion of Public Counsel's motion to compel. However, because of the lack of argument regarding why this request would be unduly burdensome, if Empire wishes to submit additional argument on this point for the Commission's reconsideration, it may do so no later than April 28. Public Counsel will be given two additional business days following submission of such argument to respond.

The second DR to which Empire indicates it may not have fully responded is DR 8500. That data request asks:

**DR 8500.** *Please provide an explanation of why the monthly heat rate information provided as part of prudence audit data requests are on average higher than the efficiency test results provided in rate cases.*

Empire objects that this data request is vague and overbroad and seeks irrelevant information. Nevertheless, it says that it has provided Public Counsel with an explanation regarding heat rates, but is unable to provide any additional information in response to the request.

The Commission finds the data request to be neither vague nor overbroad when read in the context of this case. Since the Commission has not seen the explanation that Empire offered to Public Counsel, it cannot know whether that explanation satisfies Public Counsel's request. Therefore, the Commission will order Empire to fully respond to the data request if it has not already done so.

**THE COMMISSION ORDERS THAT:**

1. The Empire District Electric Company shall fully respond to the Office of the Public Counsel's Data Request Numbers 1318(4) and 8500 by May 1, 2017.
2. If The Empire District Electric Company wishes to request reconsideration regarding the order to fully respond to Data Request Number 1318(4), it shall submit additional argument no later than April 28, 2017.
3. This order shall be effective when issued.

**BY THE COMMISSION**



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

Morris L. Woodruff  
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and  
Coleman, CC., concur.

Woodruff, Chief Regulatory Law Judge