

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

In the Matter of the tariff filing of The)	
Empire District Electric Company)	
to implement a general rate increase for)	Case No. ER-2004-0570
retail electric service provided to customers)	
in its Missouri service area.)	

**EMPIRE’S OBJECTION TO JOINT RECOMMENDATION, REVISED JOINT
RECOMMENDATION AND SECOND REVISED JOINT RECOMMENDATION
OF PUBLIC COUNSEL AND INTERVENORS**

COMES NOW The Empire District Electric Company (“Empire” or “Company”), and for its Objection to (i) the Joint Recommendation Regarding Structure for an Interim Fuel and Purchased Power Mechanism, (ii) the Revised Joint Recommendation Regarding Structure for an Interim Fuel and Purchased Power Mechanism, and (iii) the Second Revised Joint Recommendation Regarding Structure for an Interim Fuel and Purchased Power Mechanism (collectively the “Joint Recommendations”) filed herein by the Office of the Public Counsel (“Public Counsel”) and Praxair, Inc. and Explorer Pipeline Company (“Industrials”), respectfully states as follows to the Missouri Public Service Commission (“Commission”):

1. As the Commission is aware, after the close of business on December 8, 2004, Public Counsel and Industrials (collectively the “Filing Parties”) filed with the Commission what was entitled a “Joint Recommendation Regarding Structure for an Interim Fuel and Purchased Power Mechanism.” Shortly thereafter, also after the close of business on December 8, 2004, the Filing Parties filed what was entitled a “Revised Joint Recommendation Regarding Structure for an Interim Fuel and Purchased Power

Mechanism.” The next day, during the hearing, the Filing Parties filed what was entitled a “Second Revised Joint Recommendation Regarding Structure for an Interim Fuel and Purchased Power Mechanism.”

2. It is not clear exactly what the Joint Recommendations constitute. At the hearing on December 9, 2004, the Public Counsel (one of the Filing Parties) indicated that the Joint Recommendations were merely “recommendations” as the titles suggest and were not meant to be considered as nonunanimous stipulations; however, counsel for the Industrials (the other Filing Party) seemed to indicate that the Joint Recommendations were nonunanimous stipulations, and counsel for Commission Staff indicated that Staff considered them to be nonunanimous stipulations. Therefore, given the confusion surrounding exactly what the Joint Recommendations represent, to the extent that the Joint Recommendations are nonunanimous stipulations and agreements, pursuant to 4 CSR 240-2.115 Empire hereby objects to each of the Joint Recommendations in their entirety for the reasons and upon the bases discussed in detail in Empire’s testimony and during the hearings on December 7 – 9, 2004. Regardless of whether the Joint Recommendations are “recommendations” or nonunanimous stipulations, hearings have now been held on the issues addressed in the Joint Recommendations, all parties have been afforded a full opportunity to address such issues, and the witnesses have been excused. No further hearings should be or need be held concerning the issues addressed in the Joint Recommendations.

3. Notably, the threat of litigation by the Filing Parties regarding the adoption of an interim energy charge (“IEC”) is not removed by the Joint Recommendations. Even though Empire believes the IEC to be lawful, as was mentioned

during the hearings on December 7 – 9, 2004, if an IEC is adopted under the threat of litigation Empire is concerned about the possibility that some other party might succeed in getting a court order requiring that all or a portion of rates collected pursuant to an IEC tariff be paid into court or placed into escrow or under bond pending judicial resolution of the litigation. During such time, Empire would be deprived of the use of such money for both cash flow and financial reporting purposes, which would place Empire in an untenable position regardless of the ultimate outcome of the litigation.

4. Empire continues to believe that ultimately the most accurate and appropriate means by which to deal with fuel and purchased power from a policy perspective is the use of a fuel and purchased power adjustment mechanism or clause (*i.e.*, a fuel adjustment clause, or “FAC”). However, legislation likely cannot be enacted regarding same prior to the Commission’s decision in this case.

5. Apart from the FAC, Empire believes an interim energy charge (“IEC”) mechanism is the most effective and currently lawful means by which to balance the interests of consumers and shareholders in this case. However, as mentioned above, other parties dispute the lawfulness of the IEC. Therefore, to put the issue to rest, Empire supports, and believes that the Commission should also support, legislation to clarify that the IEC is lawful. To that end, attached hereto is a copy of proposed legislation which has been pre-filed in the Missouri General Assembly. Empire believes that such legislation can be enacted and effective prior to the Commission’s decision in this case, if the Commission supports the same.

6. If such legislation is not enacted and in effect prior to the Commission’s decision, the Commission should issue an order that allows the Company to recover its

actual prudently-incurred fuel and purchased power expense **without the threat of litigation**. To that end, if legislation is not enacted and in effect prior to the Commission's decision, the Commission should set Empire's rates under the "traditional" method based upon the only fuel and purchased power expense figure proposed for use under the "traditional" method and supported by credible, competent and substantial evidence in this case – namely, \$137,548,710 (*see*, Beecher Surrebuttal, Exhibit 7NP).

7. Finally, if the Filing Parties of the Joint Recommendations wanted to make a proposal regarding an interim energy charge mechanism and structure they should have done so in prefiled testimony, according to the Commission's rules (4 CSR 240-2.130) and prior orders in this case (*see* Order Concerning Test Year and True-up, and Adopting Procedural Schedule, issued herein on June 17, 2004). While perhaps it should not be surprising that the Filing Parties would attempt to submit their proposals via documents filed during the course of the hearing – given that they have failed to present credible, competent and substantial evidence to support a level of fuel and purchased power to be used for ratemaking purposes – since this should have been presented in their prefiled testimony, the Joint Recommendations should be stricken from the record of this case and they should not be relied upon by the Commission in reaching its decision in this case.

WHEREFORE, Empire respectfully submits this objection to the Joint
Recommendations and requests relief as set forth above.

Respectfully submitted,

/s/ Jeffrey A. Keevil

Jeffrey A. Keevil #33825
Charles Brent Stewart #34885
STEWART & KEEVIL, L.L.C.
4603 John Garry Drive, Suite 11
Columbia, Missouri 65203
(573) 499-0635
(573) 499-0638 (fax)
Email: stewart499@aol.com

James C. Swearengen #21510
Dean L. Cooper #36592
BRYDON, SWEARENGEN &
ENGLAND, P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, Missouri 65102-0456
(573) 635-7166
(573) 634-7431 (fax)
Email: ltrackers@brydonlaw.com

ATTORNEYS FOR THE EMPIRE DISTRICT ELECTRIC COMPANY

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was, on this 15th day of December, 2004, sent via electronic mail, U.S. Postal Service with postage paid, or hand delivered, to all parties of record.

/s/ Jeffrey A. Keevil
