EXHIBIT 5

THE EMPIRE DISTRICT ELECTRIC COMPANY

10Q QUARTERLY REPORT FILED MAY 9, 2005

10-Q 1 a05-8114_110q.htm 10-Q

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

(Mark One)

☒ **Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended March 31, 2005 or

☐ **Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the transition period from to .

Commission file number: 1-3368

THE EMPIRE DISTRICT ELECTRIC COMPANY
(Exact name of registrant as specified in its charter)

Kansas (State of Incorporation)	**44-0236370** (I.R.S. Employer Identification No.)
602 Joplin Street, Joplin, Missouri (Address of principal executive offices)	**64801** (zip code)

Registrant's telephone number: **(417) 625-5100**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes ☒ No ☐

As of May 1, 2005, 25,815,282 shares of common stock were outstanding.

All such factors are difficult to predict, contain uncertainties that may materially affect actual results, and may be beyond our control. New factors emerge from time to time and it is not possible for management to predict all such factors or to assess the impact of each such factor on us. Any forward-looking statement speaks only as of the date on which such statement is made, and we do not undertake any obligation to update any forward-looking statement to reflect events or circumstances after the date on which such statement is made.

We caution you that any forward-looking statements are not guarantees of future performance and involve known and unknown risk, uncertainties and other factors which may cause our actual results, performance or achievements to differ materially from the facts, results, performance or achievements we have anticipated in such forward-looking statements.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

EXECUTIVE SUMMARY

The Empire District Electric Company is an operating public utility engaged in the generation, purchase, transmission, distribution and sale of electricity in parts of Missouri, Kansas, Oklahoma and Arkansas. We also provide water service to three towns in Missouri and have investments in some non-regulated businesses including fiber optics, Internet access, close-tolerance custom manufacturing and customer information system software services through our wholly owned subsidiary, EDE Holdings, Inc. In 2004, 93.0% of our gross operating revenues were provided from the sale of electricity, 0.4% from the sale of water and 6.6% from our non-regulated businesses. There were no significant changes in these percentages for the first quarter of 2005. In April 2005, we were granted a franchise for the water service we provide in Aurora, Missouri.

The primary drivers of our electric operating revenues in any period are: (1) weather, (2) rates we can charge our customers, (3) customer growth and (4) general economic conditions. Weather affects the demand for electricity for our regulated business. Very hot summers and very cold winters increase demand, while mild weather reduces demand. Residential and commercial sales are impacted more by weather than industrial sales, which are mostly affected by business needs for electricity and general economic conditions. The utility commissions in the states in which we operate, as well as the FERC, set the rates at which we can charge our customers. In order to offset expenses, we depend on our ability to receive adequate and timely rate relief. We continue to assess the need for rate relief in all of the jurisdictions we serve and file for such relief when necessary. Customer growth, which is the growth in the number of customers, contributes to the demand for electricity. We expect our annual customer growth to be approximately 1.6% over the next several years. We define sales growth to be growth in kWh sales excluding the impact of weather. The primary drivers of sales growth are customer growth and general economic conditions.

The primary drivers of our electric operating expenses in any period are: (1) fuel and purchased power expense, including the transportation thereof, (2) maintenance and repairs expense, (3) employee pension and health care costs, (4) taxes and (5) non-cash items such as depreciation and amortization expense. Fuel and purchased power costs are our largest expense items. Several factors affect these costs, including fuel and purchased power prices, plant outages and weather, which drives customer demand. In order to control the price we pay for fuel and purchased power, we have entered into long and short-term agreements to purchase coal and natural gas for our energy supply and currently engage in hedging activities in an effort to minimize our risk from volatile natural gas prices. We enter into contracts with counterparties relating to our future natural gas requirements that lock in prices (with respect to predetermined percentages of our expected future natural gas needs) in an attempt to lessen the volatility in our fuel expense and improve predictability.

During the first quarter of 2005, basic and diluted earnings (loss) per weighted average share of common stock decreased to $(0.01) as compared to $0.06 in the first quarter of 2004 despite an increase in revenues resulting from five days of the March 2005 Missouri rate increase. For the twelve months ended March 31, 2005, basic and diluted earnings per weighted average share of common stock were $0.78 as compared to $1.08 for the twelve months ended March 31, 2004. As reflected in the table below, the primary drivers for the decline were fuel costs.

The following reconciliation of earnings per share between the first quarter of 2004 and the first quarter of 2005 and the twelve months ended March 31, 2004 versus March 31, 2005 is a non-GAAP presentation. We believe this information is useful in understanding the fluctuation in earnings per share between the prior and current year periods. The reconciliation presents the after tax impact of significant items and components of the statement of operations on a per share basis before the impact of additional stock issuances which is presented separately. Earnings per share for the quarters and twelve months ended March 31, 2005 and 2004 shown in the reconciliation are presented on a GAAP basis and are the same as the amounts included in the statements of operations. This reconciliation may not be comparable to other companies or more useful than the GAAP presentation included in the statements of operations.

	First Quarter	Twelve Months Ended
Earnings Per Share – 2004	$ 0.06	$ 1.08
Revenues		
Electric	$ 0.04	$ 0.01
Non – Regulated	0.02	0.05
Expenses		
Fuel	(0.15)	(0.26)
Purchased power	0.05	0.13
Regulated – other (employee health care and pension expense)	(0.04)	(0.05)
Regulated – other (all other)	0.03	(0.00)
Non – Regulated expenses	(0.02)	(0.08)
Maintenance and repairs	0.01	(0.00)
Depreciation and amortization	(0.01)	(0.05)
Other taxes	0.00	(0.03)
Interest charges	0.00	0.04
Other income and deductions	0.00	0.01
Dilutive effect of additional shares	0.00	(0.07)
Earnings Per Share – 2005	$ (0.01)	$ 0.78

First Quarter Activities

The Missouri Public Service Commission (MPSC) issued a final order on March 10, 2005 approving an annual increase in base rates of approximately $25.7 million, or 9.96%, effective March 27, 2005 as well as an annual Interim Energy Charge (IEC) of approximately $8.2 million effective March 27, 2005 and expiring three years later. For additional information, see "-Results of Operations – Electric Operating Revenues and Kilowatt-Hour Sales - Rate Matters" below.

At March 31, 2005, the construction at our Riverton plant was still on schedule for the installation of our new Siemens V84.3A2 combustion turbine, with a summer rated capacity of 155 megawatts, scheduled to be operational in 2007. Plans are also still on schedule for the proposed Elk River Windfarm to be located in Butler County, Kansas. On December 10, 2004, we entered into a 20-year contract with PPM Energy, to purchase the energy generated at the proposed Elk River

Windfarm. We expect that the amount and percentage of electricity we generate by natural gas will decrease in 2006 and in the immediate future thereafter due to this contract. We anticipate purchasing approximately 550,000 megawatt-hours of energy, or 10% of our annual needs, from the project beginning in December 2005. We anticipate the cost of our on-system generation to also be offset by purchasing less higher-priced power from other suppliers.

On January 24, 2005, Flint Hills Tallgrass Prairie Heritage Foundation, Inc. filed a purported class action complaint in the United States District Court for the District of Kansas (the Court) styled Flint Hills Tallgrass Prairie Heritage Foundation, Inc. v. Scottish Power, PLC, et al., No. 05-1025JTM (D. Kansas), against, among others, The Empire District Electric Company. Also named as defendants in the action are Scottish Power, PLC, PacificCorp, PPM Energy, Inc., Greenlight Energy, Inc. and Elk River Windfarm LLC. The plaintiffs seek various forms of declaratory and injunctive relief under the United States and Kansas Constitutions as well as various statutory and common law bases. Plaintiffs seek, among other things, to enjoin the defendants from any development or operation of industrial wind turbine electric power generation facilities within the Flint Hills Tallgrass Prairie Ecosystem and challenge the tax status of any such facility. The complaint was dismissed with prejudice by the Court on February 11, 2005. A notice of appeal has been filed and plaintiffs appeal brief was filed April 18, 2005. Empire believes this case is without merit and will defend it vigorously.

On April 27, 2005, the Missouri General Assembly passed Bill SB 179 which authorizes the MPSC to grant fuel adjustment clauses for the state of Missouri. The bill has been sent to the Governor for his signature.

RESULTS OF OPERATIONS

The following discussion analyzes significant changes in the results of operations for the three-month and twelve-month periods ended March 31, 2005, compared to the same periods ended March 31, 2004.

Electric Operating Revenues and Kilowatt-Hour Sales

Of our total electric operating revenues during the first quarter of 2005, approximately 45% were from residential customers, 26% from commercial customers, 15% from industrial customers, 5% from wholesale on-system customers, 5% from wholesale off-system transactions and 4% from miscellaneous sources, primarily transmission services. The breakdown of our customer classes has not significantly changed from the first quarter of 2004.

The amounts and percentage changes from the prior periods in kilowatt-hour ("kWh") sales and operating revenues by major customer class for on-system sales were as follows:

	kWh Sales (in millions)			kWh Sales (in millions)		
	First Quarter 2005	First Quarter 2004	% Change*	12 Months Ended 2005	12 Months Ended 2004	% Change*
Residential	494.4	499.4	(1.0)%	1,698.8	1,716.6	(1.0)%
Commercial	324.1	330.3	(1.9)	1,411.0	1,394.0	1.2
Industrial	249.9	253.9	(1.6)	1,081.4	1,063.2	1.7
Wholesale On-System	75.3	73.2	2.9	307.8	304.3	1.1
Other**	27.1	27.8	(2.3)	107.4	105.4	1.9
Total On-System	1,170.7	1,184.6	(1.2)	4,606.4	4,583.5	0.5

	Operating Revenues ($in millions) First Quarter 2005***	First Quarter 2004	% Change*	Operating Revenues ($in millions) 12 Months Ended 2005***	12 Months Ended 2004	% Change*
Residential	$ 32.6	$ 32.2	1.2%	$ 124.8	$ 125.0	(0.2)%
Commercial	19.4	19.4	0.1	92.4	90.9	1.6
Industrial	11.2	11.2	0.2	51.9	50.9	2.0
Wholesale On-System	3.4	3.2	7.0	13.8	12.9	7.4
Other**	1.8	1.7	2.2	7.6	7.4	2.8
Total On-System	$ 68.4	$ 67.7	1.0	$ 290.5	$ 287.1	1.2

**Percentage changes are based on actual kWh sales and revenues and may not agree to the rounded amounts shown above.*
***Other kWh sales and other operating revenues include street lighting, other public authorities and interdepartmental usage.*
****Revenues include five days of the new Missouri electric rates, including approximately $0.1 million of the Interim Energy Charge that is not projected to be refunded to customers. See discussion below.*

On-System Electric Transactions

KWh sales for our on-system customers decreased during the first quarter of 2005 over the first quarter of 2004 primarily due to milder temperatures during 2005 as compared to 2004. Total heating degree days (the number of degrees that the average temperature for that period was below 65 °F) for the first quarter of 2005 were 5.4% less than the same period last year and 2.8% less than the 20-year average. Despite the decreased kWh sales, revenues for our on-system customers increased approximately $0.7 million. Five days of the March 2005 Missouri rate increase (discussed below) contributed an estimated $0.5 million to revenues while continued sales growth contributed an estimated $1.8 million during the first quarter of 2005 with weather having a negative impact on revenues. Our customer growth was 1.7% in 2004 and 1.6% in 2003 and we expect our annual customer growth to approximate 1.6% over the next several years.

The decrease in residential and commercial kWh sales during the first quarter of 2005 was primarily due to the milder weather conditions with revenues being positively affected by five days of the March 2005 Missouri rate increase.

Industrial kWh sales, which are not particularly weather sensitive, decreased mainly due to a decrease in sales to our oil pipeline pumping customers while associated revenues increased for the first quarter of 2005 reflecting the March 2005 Missouri rate increase.

On-system wholesale kWh sales increased during the first quarter of 2005 due mainly to continued sales growth. Revenues associated with these FERC-regulated sales increased more as a result of the fuel adjustment clause applicable to such sales. This clause permits the distribution to customers of changes in fuel and purchased power costs.

For the twelve months ended March 31, 2005, kWh sales to our on-system customers increased slightly with the associated revenues increasing approximately $3.4 million. FERC, Oklahoma and Missouri rate increases (discussed below) contributed an estimated $1.2 million to revenues while continued sales growth contributed an estimated $8.5 million. Weather and other related factors offset these increases with an estimated $6.3 million negative impact on revenues. Residential kWh sales and revenues decreased slightly primarily due to milder temperatures in the first quarter of 2005 and the third and fourth quarters of 2004 as compared to the prior year periods. Commercial and industrial sales and revenues increased during the twelve months ended March 31, 2005 primarily due to continued sales growth and the Oklahoma and Missouri rate increases. On-system wholesale kWh sales and revenues increased for the twelve months ended March 31, 2005 reflecting continued sales growth, the May 2003 FERC rate increase and the operation of the fuel adjustment clause applicable to these FERC regulated sales.

Rate Matters

The following table sets forth information regarding electric and water rate increases affecting the revenue comparisons discussed above:

Jurisdiction	Date Requested		Base Annual Increase Granted	Percent Increase Granted	Date Effective
Missouri - Electric	April 30, 2004	$	25,705,500	9.96%	March 27, 2005
FERC -Electric	March 17, 2003		1,672,000	14.00%	May 1, 2003
Oklahoma -Electric	March 4, 2003		766,500	10.99%	August 1, 2003

On March 4, 2003, we filed a request with the Oklahoma Corporation Commission for an annual increase in base rates for our Oklahoma electric customers in the amount of $954,540, or 12.97%. On August 1, 2003 a Unanimous Stipulation and Agreement was approved by the Oklahoma Corporation Commission providing an annual increase in rates for our Oklahoma customers of approximately $766,500, or 10.99%, effective for bills rendered on or after August 1, 2003. This reflects a rate of return on equity (ROE) of 11.27%.

On March 17, 2003, we filed a request with the FERC for an annual increase in base rates for our on-system wholesale electric customers in the amount of $1,672,000, or 14.0%. This increase was approved by the FERC on April 25, 2003 with the new rates becoming effective May 1, 2003.

On April 30, 2004, we filed a request with the MPSC for an annual increase in base rates for our Missouri electric customers in the amount of $38,282,294, or 14.82%. Prior to the hearings, we were able to settle several miscellaneous issues with other parties to the case. On December 22, 2004, we, the MPSC Staff, the OPC and two intervenors filed a unanimous Stipulation and Agreement as to Certain Issues with the MPSC settling several of these issues. One of the issues we were able to agree on was a change in the recognition of pension costs allowing us to defer the Missouri portion of any costs above the amount included in this rate case as a regulatory asset. The amount of pension cost allowed in this rate case was approximately $3 million. This stipulation became effective on March 27, 2005 as part of the final Missouri Order described below. Therefore, the deferral of these costs will begin in the second quarter of 2005.

The MPSC issued a final order on March 10, 2005 approving an annual increase in base rates of approximately $25.7 million, or 9.96%, effective March 27, 2005. The order granted us a return on equity of 11%, an increase in base rates for fuel and purchased power at $24.68/MWH and an increase in depreciation rates. The new depreciation rates now include a cost of removal component of mass property (transmission, distribution and general plant costs). In addition, the order approved an annual IEC of approximately $8.2 million effective March 27, 2005 and expiring three years later. The IEC is $0.0021 per kilowatt hour of customer usage. The recent extraordinarily high natural gas prices and extreme volatility of natural gas led the MPSC to allow forecasted fuel costs to be used rather than the traditional historical costs in determining the fuel portion of the rate increase. We will be required to refund to our customers any money collected under the IEC in excess of the greater of the actual and prudently incurred costs of fuel and purchased power or the base cost of fuel and purchased power set in rates (the "Excess IEC Amount"). Any portion of the Excess IEC Amount over $10 million will be refunded at the end of two years and the entire Excess IEC Amount not previously refunded will be refunded at the end of three years. Each refund will include interest at the current prime rate at the time of refund.

On March 25, 2005, we, the OPC, the Missouri Industrial Energy Consumers and Intervenors Praxair, Inc. and Explorer Pipeline Company, filed applications with the MPSC requesting the MPSC grant a rehearing with respect to the return on equity granted in our rate case. The MPSC denied these applications on April 7, 2005. We have appealed this decision.

On July 14, 2004, we filed a request with the Arkansas Public Service Commission for an annual increase in base rates for our Arkansas electric customers in the amount of $1,428,225, or 22.1%. A hearing was held on April 27, 2005. Any new rates approved as a result of this hearing would go into effect May 14, 2005.

On April 29, 2005, we filed a request with the Kansas Corporation Commission for an increase in base rates for our Kansas electric customers in the amount of $4,181,078, or 24.64%. Any new rates approved as a result of this request will not go into effect until the last quarter of 2005.

We will continue to assess the need for rate relief in all of the jurisdictions we serve and file for such relief when necessary.

Off-System Electric Transactions

In addition to sales to our own acustomers, we also sell power to other utilities as available and provide transmission service through our system for transactions between other energy suppliers.

The following table sets forth information regarding these sales and related expenses:

	2005		2004	
(in millions)	First Quarter	Twelve Months Ended March 31,	First Quarter	Twelve Months Ended March 31,
Revenues	$ 4.3	$ 11.6	$ 3.5	$ 14.7
Expenses	2.7	7.1	1.9	9.1
Net	$ 1.6	$ 4.5	$ 1.6	$ 5.6

Revenues less expenses were virtually the same for the first quarter of 2005 as compared to 2004 while decreasing for the twelve months ended March 31, 2005 as compared to the same period in 2004. Although we sold more power in the first quarter of 2005 as compared to the same period in 2004, expenses for the first quarter of 2005 increased primarily due to increased fuel costs for the power sold. The decrease in revenues less expenses for the twelve months ended March 31, 2005 as compared to the prior year period resulted primarily from the non-renewal of short-term contracts for firm energy that ran from January 2002 through June 2003. We sold this energy in the wholesale market when it was not required to meet our own customers' needs during that period. These expenses are included in our discussion of purchased power costs below.

Operating Revenue Deductions

The amounts discussed below are on a pre-tax basis unless otherwise noted.

During the first quarter of 2005, total operating expenses increased approximately $4.1 million (6.1%) compared with the same period last year. Fuel costs increased approximately $5.7 million (33.1%) but were partially offset by a $2.0 million (13.9%) decrease in purchased power costs during the first quarter of 2005. The increase in fuel costs was primarily due to higher prices for both hedged and unhedged natural gas that we burned in our gas-fired units (an estimated $3.8 million) combined with increased generation by our gas fired units in the first quarter of 2005 (an estimated $1.1 million). Increased coal costs contributed approximately $0.8 million to the total fuel increase. The decrease in purchased power costs primarily reflected a shift from serving our energy needs with purchased power to generating our own power reflecting that it was more economical to run our own generating units during the first quarter of 2005 than to purchase power. The net increase in fuel and purchased power during the first quarter of 2005 as compared to the same period last year was $3.7 million (11.9%). We expect fuel costs to increase in 2005 due to changes in delivered prices resulting from the expiration of our long-term coal and freight contracts. A long-term contract with a subsidiary of Peabody Holding Company, Inc. for the supply of low sulfur Western coal (Powder River Basin) at the Asbury and Riverton Plants expired in December 2004. We signed a new, three-year contract with Peabody on December 15, 2004 that covers approximately 100% of our anticipated 2005 Western coal requirements, approximately 67% of our anticipated 2006 Western coal requirements and approximately 33% of our anticipated Western coal requirements for 2007. Our current contract with Union Pacific Railroad Company and The Kansas City Southern Railway Company which provides for transportation of the Powder River Basin coal expires at the end of June 2005. We signed a new, five-year contract with Burlington Northern and Santa Fe Railway Company and The Kansas City Southern Railway Company on April 8, 2005 that will be effective June 30, 2005. The delivered price of coal under the new contracts is expected to be higher than the 2004 price during the second quarter of 2005, but we expect the delivered price increase to be substantially mitigated beginning in the third quarter of 2005 and continuing through the balance of the year due to a combination of our new coal supply and coal transportation contracts.

Regulated – other operating expenses increased approximately $0.5 million (3.4%) during the first quarter of 2005 as compared to the same period in 2004. Expenses relating to our employee health care plan and our employee pension expense contributed $0.8 million each to this increase. As discussed previously, effective with the second quarter, we will begin deferring a portion of our pension cost into a regulatory asset as authorized in our latest rate case. These increases in regulated – other operating expense were partially offset by a $0.3 million decrease in transmission and distribution expense, a $0.2 million decrease in stock compensation costs and a $0.2 million decrease in customer accounts expense. Although customer accounts expense decreased, we recorded a $0.3 million reserve during the first quarter of 2005 due to the bankruptcy filing of Eagle Picher, one of our industrial customers. We expect Eagle Picher, however, to be an ongoing customer.

Non-regulated operating expense for all periods presented is discussed below under "-Non-regulated Items".

Maintenance and repairs expense decreased approximately $0.4 million (7.4%) as compared to the first quarter of 2004 when one of the original combustion turbine peaking units at the Energy Center, Unit No. 2, experienced a rotating blade failure on January 7, 2004 which caused damage throughout the machine. We recorded $1 million of expense, which was the amount of our insurance deductible relating to that turbine, in the first quarter of 2004. This $1.0 million decrease in maintenance and repairs expense at the Energy Center in the first quarter of 2005 was partially offset by a $0.7 million increase in maintenance and repairs expense at our Iatan plant due to a scheduled outage in March 2005.

Depreciation and amortization expense increased approximately $0.4 million (5.0%) during the quarter due to increased plant in service. The provision for income taxes decreased approximately $1.0 million during the first quarter of 2005 due to decreased income. Our effective federal and state income tax rate for the first quarter of 2005 was 34.4% as compared to 34.0% for the first quarter of 2004. Other taxes increased slightly during the first quarter of 2005.

During the twelve months ended March 31, 2005, total operating expenses increased approximately $8.9 million (3.3%) compared to the year ago period. Total fuel costs increased approximately $9.4 million (15.5%) during the twelve months ended March 31, 2005 but were