

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

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| In the Matter of the Tariff Filing of The |) | |
| Empire District Electric Company of |) | |
| Joplin, Missouri to Implement a General |) | Case No. ER-2006-0315 |
| Rate Increase for Retail Electric Service |) | |
| Provided to Customers in the Missouri |) | |
| Service Area of the Company. |) | |

**STAFF SUGGESTIONS IN SUPPORT OF NONUNANIMOUS STIPULATION AND
AGREEMENT REGARDING REGULATORY PLAN AMORTIZATIONS AND
RESPONSE TO ORDER SETTING HEARING**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the Commission's General Counsel, and files this Staff Suggestions In Support Of Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Amortizations And Response To Order Setting Hearing. The Commission's October 24, 2006 Order Setting Hearing states in part that the Commission will reconvene the hearing at 9:30 a.m., Tuesday, October 31, 2006 for the limited purpose of allowing parties to cross-examine witnesses on the subjects of corporate allocations, Regulatory Plan amortizations and any true-up testimony. In part, the Staff suggests below that the hearing presently scheduled for tomorrow October 31, 2006 by the Commission's October 24, 2006 Order Setting Hearing, not address the Regulatory Plan amortizations subject matter, due to 4 CSR 240-2.115(2)(B), and that a subsequent hearing concerning the Regulatory Plan amortizations be scheduled once nonsignatory parties have had seven (7) days to file objections to the Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Amortizations and have had an opportunity within the timeframe contemplated by the rule to take whatever other action they may deem appropriate, if any. In support thereof, the Staff states as follows:

1. On September 11, 2006 when the Regulatory Plan Amortizations issue was originally scheduled to be heard in the instant case, the undersigned counsel indicated that the Staff's position, and as he understood it the position of the Office of the Public Counsel (Public Counsel), on the tax gross-up issue had changed, and, as a consequence, there was no substantive difference remaining between either the Staff and Public Counsel or The Empire District Electric Company (Empire). The Staff with the involvement of some of the other parties to the instant case has sought that a stipulation and agreement be drafted that not only the Staff, Public Counsel and Empire would enter into, but that other parties would enter into also. This effort has not been successful in that the stipulation and agreement is nonunanimous, it is only executed by the Staff, Public Counsel and Empire, and the Staff anticipates that not all other parties will indicate that they are not opposed to the stipulation and agreement. Due to the effort to reach such an agreement and the demands of other cases that are pending before the Commission, the Staff, Public Counsel and Empire were not able to file even a nonunanimous stipulation and agreement before last Friday, October 27, 2006. The Staff knows that this protracted effort on its part and on the part of other parties has been and is inconvenient for the Commission, but the Staff believes that in the long-run this effort will prove to have been of benefit, even though the stipulation and agreement is nonunanimous.

2. The Staff would note that in addition to, and more important than the technical explanation of the change in the Staff's position that undersigned counsel provided on the record on September 11, 2005, Staff witness Mark L. Oligschlaeger explains in his true-up testimony, which was filed on September 27, 2006, the Staff's change in position on the tax gross-up issue. The Staff notes that Public Counsel witness Russell W. Trippensee also addresses this matter in his true-up testimony filed on September 27, 2006.

3. There is one component of the Regulatory Plan amortizations calculation that arose as an issue first in the true-up phase and has now been resolved by the Staff, Public Counsel and Empire and is reflected in the Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Amortizations filed last Friday, October 27, 2006. In Mr. Oligschlaeger's true-up testimony filed on September 27, 2006, both Schedule MLO 3-1 IEC Termination Scenario and Schedule MLO 4-1 IEC Continuation Scenario, the amount shown on Line 5 for "Additional Net Balance Sheet Investment" for purposes of calculating the Regulatory Plan amortizations in this proceeding is \$61.9 million. Rather than this amount being used in the Regulatory Plan amortizations calculation as proposed by the Staff, in Paragraph 6 of the Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Amortizations filed last Friday, October 27, 2006, the Staff, Public Counsel and Empire agree that only for purposes of this case, there should be an additional net balance sheet investment amount of \$30 million for calculating the Regulatory Plan amortizations in this proceeding.

This issue, respecting additional net balance sheet investment for the Regulatory Plan amortizations calculation, first arose in the true-up phase of the case, and is due to the acquisition by Empire of Aquila, Inc.'s Missouri gas properties on June 1, 2006. The Staff and Public Counsel filed true-up testimony on September 27, 2006 that propose different approaches than the positions employed by them in their cases-in-chief to determine the amount of Empire's capital structure that should be included in KCPL's Regulatory Plan amortization calculations. The changes in approach taken by the Staff and Public Counsel were necessary in order to ensure that the Regulatory Plan amortization calculations reflect only Empire's Missouri electric operations and not Empire's new gas operations or Empire's existing nonregulated operations.

In their true-up testimony filed on September 27, 2006, the Staff and Public Counsel advocate different approaches to determining Empire's capital structure for Regulatory Plan amortization purposes. In the true-up testimony of Staff witness Mark L. Oligschlaeger, the Staff proposes that Empire's Regulatory Plan amortization capital structure should be calculated as the Staff's recommended rate base plus any net assets (assets less liabilities) on Empire's financial statement balance sheet as of June 30, 2006, the end of the true-up period, that are not otherwise reflected in the Staff's rate base for ratemaking purposes. The amount added to Empire's rate base includes construction work in progress (CWIP) and net regulatory assets. Under this approach, the amount to add to Empire's rate base would be approximately \$61.9 million to determine Empire's Regulatory Plan amortization capital structure for purposes of the Regulatory Plan amortization calculation.

In the true-up testimony of Public Counsel witness Mr. Trippensee, Public Counsel recommends that Empire's capital structure for Regulatory Plan amortization calculation purposes should be the amount of Public Counsel's recommended rate base, plus the balance of Empire's CWIP account as of June 30, 2006, offset by Empire's balance of short-term debt at the same point in time. Under Public Counsel's approach, the amount of "Additional Net Balance Sheet Investment" to be added to rate base for Regulatory Plan amortization calculation purposes would be approximately \$31.7 million, as compared to the Staff's proposed amount of \$61.9 million.

Empire's true-up testimony does not address this issue.

Subsequent to the filing of true-up testimony on September 27, 2006, the Staff, Public Counsel and Empire have agreed that Empire's capital structure for Regulatory Plan amortization purposes should be calculated as the amount of Empire's rate base deemed reasonable by the

Commission, as of June 30, 2006, based on the Commission's determination of contested issues, plus \$30 million, and not \$31.7 million as proposed by Public Counsel, \$61.9 million as proposed by the Staff or some other amount. This agreement of the Staff, Public Counsel and Empire to the amount of \$30 million to be added to Empire's rate base as of June 30, 2006 is an agreement on a number only, and not an agreement on an underlying methodology for deriving Empire's Regulatory Plan amortization capital structure in this proceeding or in any future rate proceeding. Adoption of this method for determining Empire's capital structure for Regulatory Plan amortization purposes has the effect of reducing the Staff's recommended Regulatory Plan amortization amount by approximately \$4 million from the amounts shown on Line 90 for "Total Amortization Req for FFO Adj" for the IEC Continuation Scenario Schedule MLO 4-2 and the IEC Termination Scenario Schedule MLO 3-2 to Staff witness Oligschlaeger's true-up testimony:

IEC Continuation Scenario: \$43 million - \$4 million = \$39 million Regulatory Plan amortization

IEC Termination Scenario: \$21 million - \$4 million = \$17 million Regulatory Plan amortization

4. Regarding the Commission's scheduling of a hearing on October 31, 2006 concerning regulatory plan amortizations. As the Commission is aware, 4 CSR 240-2.115 Stipulations and Agreements states, in pertinent part:

(2) Nonunanimous Stipulations and Agreements:

(A) A nonunanimous stipulation and agreement is any stipulation and agreement which is entered into by fewer than all of the parties.

(B) Each party shall have seven (7) days from the filing of a nonunanimous stipulation and agreement to file an objection to the nonunanimous stipulation and agreement. Failure to file a timely objection shall constitute a full waiver of that party's right to a hearing.

(C) If no party timely objects to a nonunanimous stipulation and agreement, the commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement.

(D) A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.

(E) A party may indicate that it does not oppose all or part of a nonunanimous stipulation and agreement.

Regardless of the fact that the Commission has scheduled a hearing for tomorrow October 31, 2006 to include Regulatory Plan amortizations, the Staff would suggest that now that a Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Amortizations has been filed, 4 CSR 240-2.115(2)(B) is applicable.

5. The parties and the Commission could have proceeded, and arguably still could proceed, with changes in positions by the Staff and the Public Counsel and without the Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Amortizations filed on October 27, 2006. The Staff did not believe that was the preferred way to proceed and still does not believe that is the preferred way to proceed. The Staff takes the position that a nonunanimous stipulation and agreement is the preferred way to proceed rather than a change of positions by the parties changing positions and no stipulation and agreement, as an observer to the dispute respecting the continuation/termination of the Interim Energy Charge (IEC) and what is the correct reading of the terms of the IEC Stipulation And Agreement. The Staff believes that Empire's ratepayers and regulation in general respecting Empire are best served by the Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Amortizations having been filed, even belatedly, on October 27, 2006, rather than proceeding by some other manner, without the Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Amortizations.

6. The procedure that the Staff recommends herein suggests that the hearing

scheduled for tomorrow October 31, 2006 not address the Regulatory Plan amortizations subject matter and that a subsequent hearing concerning the Regulatory Plan amortizations be scheduled once nonsignatory parties, pursuant to 4 CSR 240-2115(2)(B), have had seven (7) days to file objections to the Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Amortizations and have had an opportunity within the timeframe contemplated by the rule to take whatever other action they may deem appropriate, if any.

WHEREFORE, the Staff files the instant Staff Suggestions In Support Of Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Amortizations And Response To Order Setting Hearing and suggests that 4 CSR 240-2.115(2)(B) is now applicable, such that the hearing scheduled for October 31, 2006 not address Regulatory Plan amortizations and that a subsequent hearing addressing the Regulatory Plan amortizations be scheduled.

Respectfully submitted,

/s/ Steven Dottheim

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record on this 30th day of October, 2006.

/s/ Steven Dottheim