

**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 )	Case No. ER-2006-0315
Rate Increase for Retail Electric Service Provided )	
to Customers in its Missouri Service Area. )	

**STAFF RECOMMENDATION AND RESPONSE TO REQUEST  
BY PRAXAIR, INC. AND EXPLORER PIPELINE FOR DISCLOSURE  
OF APPARENT EX PARTE COMMUNICATION**

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission ("Commission") and files the attached Staff Recommendation in conjunction with this cover pleading stating that the Commission should approve the proposed tariff sheets filed by The Empire District Electric Company ("Empire") on December 28, 2006, in response to the Commission's Report And Order issued on December 21, 2006, to go into effect for service rendered on and after January 1, 2007 for good cause shown, pursuant to Section 393.140(11) RSMo 2000, if the tariff sheets as described below are consistent with the Commission's Report And Order. Also, the undersigned counsel responds below to the Request By Praxair, Inc. And Explorer Pipeline For Disclosure Of Apparent Ex Parte Communication. Undersigned counsel had intended to provide in this pleading the information requested by Praxair Inc. and Explorer Pipeline, even had their pleading not been made, in an effort to explain (1) the numbers on which the tariff sheets are based because the numbers in this case are complicated by the Interim Energy Charge (IEC) and the Empire Regulatory Plan amortization calculation and (2) the assumptions on which the tariff sheets are based given the Commission's December 21, 2006, Report And Order. Undersigned counsel spoke to the Chief Regulatory Law Judge at the end of the day on Wednesday, October 27, 2006, and on the morning of Thursday, December 28, 2006,

to provide to the Chief Regulatory Law Judge an indication where the Staff was in the processing of the Empire District Electric Company and the Kansas City Power & Light Company proposed tariff sheets in Case No. ER-2006-0315 and Case No. ER-2006-0314, and that the Staff would be setting out its assumptions in a cover pleading which would need to be reviewed for whatever Commission action might be deemed to be appropriate. In support of the above, the Staff states as follows:

1. Ordered paragraph 2 of the Commission's December 21, 2006, Report and Order in this case provides, "That [The] Empire District Electric Company shall file proposed electric service tariff sheets in compliance with this Report and Order."

2. On December 27, 2006, Empire filed its proposed tariff sheets in response to the Commission's Report And Order issued on December 21, 2006. Also on December 27, 2006, Empire filed its Motion For Expedited Consideration And Approval Of Tariff Sheets Filed In Compliance With Commission Order On Less than Thirty Days' Notice. In the first paragraph of the cover letter accompanying the Empire tariff sheets, Empire states "[t]he revised tariff sheets are designed to produce an increase in Empire's gross annual electric revenues of \$29,513,713, excluding gross receipt taxes, fees or other similar fees or taxes."

3. On December 28, 2006, Empire filed a transmittal letter in which it stated, in part, that it hereby withdraws its proposed tariff sheets and Motion filed on December 27, 2006. Also on December 28, 2006, Empire filed its Motion For Expedited Consideration And Approval Of Tariff Sheets Filed In Compliance With Commission Order On Less than Thirty Days' Notice. In the second paragraph of the cover letter accompanying the Empire proposed tariff sheets, Empire states "[t]he revised tariff sheets are designed to produce an increase in Empire's gross

annual electric revenues of \$29,369,397, excluding gross receipt taxes, fees or other similar fees or taxes.” In paragraphs 4, 5 and 7 of said Motion, Empire states, in part, as follows:

4. To show good cause for approval of the revised tariff sheets to be effective for electric service rendered on and after January 1, 2007, Empire states that the tariff sheets have been filed in compliance with the Commission’s *Report and Order* herein. . . .

5. Empire requests approval of the revised tariff sheets to be effective on January 1, 2007, as this would be consistent with the requirements of the law and long-standing Commission custom, practice and precedent.

. . . .

7. . . . Accordingly, unless the Commission approves the revised tariff sheets filed by Empire to be effective on January 1, 2007, the Commission will violate Section 393.150.

4. In summary, the Staff notes the following respecting Empire’s case as filed, the Commission’s Report And Order and the operation of the Case No. EO-2005-0263 Empire Regulatory Plan amortizations:

Amount of Empire’s filed rate case revenue requirement, including the elimination of the Interim Energy Charge (IEC), which prior to true-up produced \$8,665,335 in annual revenues – thus, Empire’s filed revised electric rate schedules were designed to increase Empire’s annual electric revenues by \$29,513,713 in addition to the \$8,665,335 IEC elimination – it should be noted that the trued-up value of the IEC is \$8,809,651, which changes the \$29,513,713 amount to \$29,369,397 – Empire’s maximum rate case filing amount remains \$38,179,048	\$38,179,048
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Additional revenue requirement per 12/21/06 Commission Report And Order	\$27,709,820
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Amortization resulting from the Empire Regulatory Plan amounts to \$10,982,687 – thus, the total amount including the Empire Regulatory Plan amortization of \$10,982,687 and Empire’s filed rate case revenue requirement of \$27,709,820 equals \$38,692,507, which is in excess of Empire’s maximum rate case filing of \$38,179,048, so Empire cannot receive the total Empire Regulatory Plan amortization amount of \$10,982,687, since the full amount would cause Empire’s increase in rates to be in excess of the amount that Empire filed for on February 1, 2006<sup>1</sup>

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<sup>1</sup> General Counsel Kevin A. Thompson desired that this pleading indicate that he does not subscribe to the view that the Commission cannot approve tariff sheets reflecting an increase in rates in excess of the amount for which the utility filed.

Quantification of Empire Regulatory Plan amortization amount to be reflected in Empire's rates as a result of 12/21/06 Commission Report And Order: \$10,469,228  
(\$38,179,048 – \$27,709,820 = \$10,469,228)

For the Empire tariff sheets, the calculation of the additional revenue requirement to be reflected in rates is \$29,369,397, which is derived as follows:

$$\$27,709,820 - \$8,809,651 = \$18,900,169 \qquad \$18,900,169 + \$10,469,228 = \$29,369,397$$

The Staff specifically recommends that the Commission's Order approving Empire's tariff sheets reflect that Empire's additional revenue requirement per the Commission's December 21, 2006, Report And Order is \$27,709,820, including the IEC, and the additional revenue requirement per the Empire Regulatory Plan amortization is \$10,469,228.

5. Undersigned counsel was not at the Commission's December 28, 2006, Agenda so has no first hand knowledge of what transpired. On the afternoon of December 27, 2006, after rates for Empire's tariff sheets had been calculated by Empire and the Staff based on the \$29,513,713 number, a "dispute" arose within the Staff, as the Staff was rethinking the calculations. The question arose within the Staff whether the number should be the \$29,513,713 that had been first used, or \$29,369,397. Since the true-up value of the IEC is \$8,809,651 instead of \$8,665,335, the Staff decided that the correct number is \$29,369,397 instead of \$29,513,713. This was determined after 5:00 p.m. on Wednesday, December 27, 2006. The Staff could not reach anyone at Empire so the evening of Wednesday, December 27, 2006, the Staff recalculated Empire's rates for the Empire tariff sheets. After midnight on the morning of Thursday, December 28, 2006, the Staff e-mailed to Empire the new rates for Empire to verify and place on new Empire tariff sheets to be filed with the Commission. If Empire agreed with, or accepted the Staff's position, Empire would need to withdraw its proposed tariff sheets which it had filed on December 27, 2006, generate new tariff sheets and file the new tariff sheets with

the Commission. The Staff did not know what Empire's response would be to the Staff's position. Undersigned counsel sought to indicate this development in a very abbreviated manner to the Chief Regulatory Law Judge on the morning of Thursday, December 28, 2006. Undersigned counsel was attempting to merely indicate where the Staff was in processing Empire's proposed tariff sheets

6. Undersigned counsel also indicated to the Chief Regulatory Law Judge on December 27 and 28, 2006, without going into detail, that the Staff would note, in its pleading regarding its tariff sheet review of Empire's proposed tariffs, some items for purposes of clarity and identify two items, which might be considered to be open. Thus, the Staff would note that Empire's proposed tariff sheets are based on (a) Empire's March 31, 2006 consolidated capital structure (see page 27 of the Report and Order), (b) off-system sales using an unadjusted five-year average ending with the update period of March 31, 2006 (see page 29 of the Report And Order), (c) the positions of the signatory parties to the Stipulations And Agreements, whether there were no objections or there were objections, including the positions of the signatory parties to (i) the Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Additional Amortizations and (ii) the Nonunanimous Stipulation And Agreement Regarding Corporate Allocations, and (d) the Staff's and Empire's position on off-system balance sheet obligations respecting Empire Regulatory Plan amortizations.

Although there are June 30, 2006 true-up numbers in the record for Empire's consolidated capital structure, the Commission specified that Empire's March 31, 2006 consolidated capital structure be utilized. Use of the June 30, 2006 true-up numbers would have resulted in a higher rate of return and, therefore, a higher revenue requirement.

The Staff is not aware of there being June 30, 2006 true-up numbers in the record for off-system sales for an unadjusted five-year average.

Regarding the Nonunanimous Stipulation And Agreement Regarding Corporate Allocations, which was entered into by the Staff, Public Counsel and Empire, the Commission's Report And Order at page 4 states, in part:

. . . Two further stipulations were filed, one concerning corporate allocations and one on regulatory plan amortizations. As timely objections were raised to those two stipulations, by Commission rule the stipulations are reduced to non-binding position statements and all issues contained therein remain for determination on the merits.

In addition, the Commission's Report And Order states, in part, at page 56:

Two other Stipulations and Agreements were filed, but timely objections were raised to them. They have become, by operation of Commission rule 4 CSR 240-2.115(2)(D), non-binding statements of position by the signatory parties. The issues included in those Stipulations and Agreements have been fully addressed in the Findings of Fact and Conclusions of Law above.

The Staff does not find any other reference to the Nonunanimous Stipulation And Agreement Regarding Corporate Allocations in the Commission's Report And Order. Corporate Allocations developed late as an issue. The Nonunanimous Stipulation And Agreement Regarding Corporate Allocations states, in part: "Because this issue arose only in connection with the filing of true-up direct testimony on September 27, 2006, it was not included in the parties' List Of Issues, filed August 28, 2006." Counsel for Praxair/Explorer, Stuart W. Conrad, cross-examined, and Commissioner Steve Gaw had questions for, Staff witness Mark L. Oligschlaeger at the November 20, 2006 hearing convened by the Commission. Under the Nonunanimous Stipulation And Agreement Regarding Corporate Allocations, Empire's revenue requirement in the pending case is reduced \$650,000 to reflect the effect of Empire's acquisition of Aquila

Inc.'s Missouri natural gas properties, i.e., there is a shift of certain costs from Empire's electric operations to its recently acquired gas operations.

Finally, the Commission's Report And Order identifies at page 29 that the valuation of off-balance sheet obligations for purposes of the Empire Regulatory Plan amortizations is an issue. The Commission's Report And Order sets out in some detail the Staff's change in position regarding the Empire Regulatory Plan amortizations. The Commission's Report And Order states, in part, at page 32:

... it appears the parties involved in this issue are all now treating the Elk River Wind Farm agreement as a purchased power agreement. With the changes the Staff made to its position, which are reasonable, there appears to be no further dispute on this issue.

The Commission's first sentence above is evidently based on a paragraph in Empire's Post-Hearing Brief. The Staff, Empire and the Office of the Public Counsel (Public Counsel) did not resolve the off-balance sheet obligations issue. At the November 20, 2006 hearing, Public Counsel Lewis R. Mills, Jr. stated, in part, as follows:

Mr. Mills: With respect to the – to the contested issues in the true-up, really, the only one that – I have testimony on is the off-balance sheet obligations, and I think the testimony speaks for itself.

I'd be happy to answer questions if there are questions about it, but I don't have any argument prepared. Thank you.

(Transcript Vol. 20, pp.1306-07). This is the same issue that went to hearing in the KCPL rate increase case, ER-2006-0314, for which the Report And Order was issued on the very same day as the Empire rate increase case Report And Order. The facts in the KCPL case are not identical to the facts in the Empire case, but as the Commission is aware, in the Report And Order in Case No. ER-2006-0314, the Commission adopted the position of the Staff and KCPL, and rejected the Public Counsel's position.

7. Undersigned counsel notes that he had hoped to have had this pleading filed earlier but the timing of the processing of two major tariff filings during a shortened week, in which testimony in another major rate case is being filed, with certain Staff of the office has proved to be a very daunting task.

WHEREFORE the Staff files the attached Staff Recommendation in conjunction with this cover pleading stating that the Commission should approve for good cause shown, pursuant to Section 393.140(11) RSMo 2000, the proposed tariff sheets filed by Empire on December 28, 2006, in response to the Commission's Report And Order issued on December 21, 2006, to be effective for service rendered on and after January 1, 2007, if the tariff sheets as described above are consistent with the Commission's Report And Order.

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 29th day of December, 2006.

**/s/ Steven Dottheim**



## MEMORANDUM

TO: Missouri Public Service Commission Official Case File  
Case No. ER-2006-0315, File No. YE-2007-0448  
The Empire District Electric Company

FROM: James Watkins, Project Coordinator  
Mack McDuffey, Rate & Tariff Examiner II

/s/ James Watkins / 12-29-06  
Project Coordinator/Date

/s/ Steven Dottheim / 12-29-06  
General Counsel's Office/Date

SUBJECT: Staff Recommendation For **Approval** Of Tariff Sheets Filed To Comply With The  
Commission's December 21, 2006 Report and Order

DATE: December 29, 2006

On December 28, 2006, The Empire District Electric Company (Empire) filed with the Commission eighty-one (81) rate tariff sheets and fifty-one (51) rules and regulations tariff sheets with an issue date of December 28, 2006, and a proposed effective date of January 27, 2007. Empire also filed its Motion For Expedited Consideration And Approval Of Tariff Sheets Filed In Compliance With Commission Order On Less Than Thirty Days Notice. Later on December 28, 2006 Empire filed one (1) substitute tariff sheet. These tariff sheets are designed to comply with the Commission's December 21, 2006 Report and Order (Order), wherein Ordered Paragraph 2. states, "That Empire District Electric Company shall file proposed electric service tariff sheets in compliance with this Report and Order."

The Missouri Public Service Commission Energy Department Staff (Staff) has reviewed the filed tariff sheets and is of the opinion that if they are in compliance with the Commission's Order as related in the General Counsel's Office cover pleading, they should be approved. They are otherwise in compliance with the Commission's Order, and Staff therefore recommends that the Commission should issue an order **approving** the following proposed tariff sheets, as filed on December 28, 2006, to become effective on January 1, 2007, subject to the condition in the preceding sentence:

P.S.C. Mo. No. 5

<u>Section</u>	<u>Designated</u>	<u>Canceling</u>	<u>Sheet No.</u>
A	21st Revised	20th Revised	1
B	2nd Revised	1st Revised	1
B	1st Revised	Original	2
B	1st Revised	Original	3
B	1st Revised	Original	4
B	1st Revised	Original	5
B	1st Revised	Original	6
B	1st Revised	Original	7

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B	1st Revised	Original	7a
B	1st Revised	Original	8
1	13th Revised	12th Revised	1
1	10th Revised	9th Revised	2
1	6th Revised	5th Revised	3
2	12th Revised	11th Revised	1
2	1st Revised	Original	1a
2	12th Revised	11th Revised	2
2	1st Revised	Original	2a
2	12th Revised	11th Revised	3
2	7th Revised	6th Revised	3a
2	13th Revised	12th Revised	4
2	8th Revised	7th Revised	4a
2	12th Revised	11th Revised	5
2	12th Revised	11th Revised	6
2	12th Revised	11th Revised	7
2	5th Revised	4th Revised	7a
2	6th Revised	5th Revised	8
2	8th Revised	7th Revised	9
2	5th Revised	4th Revised	9a
2	6th Revised	5th Revised	9b
2	5th Revised	4th Revised	10
2	5th Revised	4th Revised	10a
2	3rd Revised	2nd Revised	11
2	3rd Revised	2nd Revised	11a
2	3rd Revised	2nd Revised	12
2	3rd Revised	2nd Revised	12a
2	7th Revised	6th Revised	13
2	4th Revised	3rd Revised	14
2	4th Revised	3rd Revised	14a
2	4th Revised	3rd Revised	14b
2	4th Revised	3rd Revised	14c
2	4th Revised	3rd Revised	14d
2	4th Revised	3rd Revised	14e
3	13th Revised	12th Revised	1
3	6th Revised	5th Revised	1a
3	17th Revised	16th Revised	2
3	8th Revised	7th Revised	2a
3	12th Revised	11th Revised	3
3	1st Revised	Original	3a
3	12th Revised	11th Revised	4
3	4th Revised	3rd Revised	5
3	2nd Revised	1st Revised	6
3	1st Revised	Original	7
3	1st Revised	Original	8
3	1st Revised	Original	9

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4	4th Revised	3rd Revised	1
4	11th Revised	10th Revised	2
4	9th Revised	8th Revised	3
4	9th Revised	8th Revised	4
4	5th Revised	4th Revised	4a
4	3rd Revised	2nd Revised	4b
4	3rd Revised	2nd Revised	4c
4	3rd Revised	2nd Revised	5
4	14th Revised	13th Revised	6
4	6th Revised	5th Revised	7
4	3rd Revised	2nd Revised	8
4	1st Revised	Original	8a
4	2nd Revised	1st Revised	8b
4	2nd Revised	1st Revised	8c
4	4th Revised	3rd Revised	9
4	3rd Revised	2nd Revised	10
4	3rd Revised	2nd Revised	11
4	3rd Revised	2nd Revised	12
4	3rd Revised	2nd Revised	13
4	3rd Revised	2nd Revised	14
4	4th Revised	3rd Revised	15
4	5th Revised	4th Revised	16
4	5th Revised	4th Revised	17
4	1st Revised	Original	18
4	1st Revised	Original	19
4	1st Revised	Original	20
4	2nd Revised	1st Revised	21
5	5th Revised	4th Revised	A
5	4th Revised	3rd Revised	1
5	5th Revised	4th Revised	2
5	2nd Revised	1st Revised	2a
5	5th Revised	4th Revised	3
5	4th Revised	3rd Revised	4
5	3rd Revised	2nd Revised	5
5	3rd Revised	2nd Revised	6
5	4th Revised	3rd Revised	7
5	4th Revised	3rd Revised	8
5	5th Revised	4th Revised	9
5	6th Revised	5th Revised	10
5	5th Revised	4th Revised	11
5	2nd Revised	1st Revised	11a
5	7th Revised	6th Revised	12
5	5th Revised	4th Revised	13
5	4th Revised	3rd Revised	14
5	4th Revised	3rd Revised	15
5	4th Revised	3rd Revised	16

5	4th Revised	3rd Revised	17
5	1st Revised	Original	17a
5	1st Revised	Original	17b
5	1st Revised	Original	17c
5	1st Revised	Original	17d
5	1st Revised	Original	17e
5	1st Revised	Original	17f
5	5th Revised	4th Revised	18
5	3rd Revised	2nd Revised	19
5	3rd Revised	2nd Revised	20
5	3rd Revised	2nd Revised	21
5	5th Revised	4th Revised	22
5	5th Revised	4th Revised	23
5	2nd Revised	1st Revised	23a
5	5th Revised	4th Revised	24
5	4th Revised	3rd Revised	25
5	6th Revised	5th Revised	26
5	5th Revised	4th Revised	27
5	5th Revised	4th Revised	28
5	5th Revised	4th Revised	29
5	3rd Revised	2nd Revised	30
5	3rd Revised	2nd Revised	31
5	1st Revised	Original	32
5	1st Revised	Original	33
5	1st Revised	Original	34
5	1st Revised	Original	35
5	2nd Revised	1st Revised	36
5	2nd Revised	1st Revised	37
5	2nd Revised	1st Revised	38
5	2nd Revised	1st Revised	39
5	2nd Revised	1st Revised	40
5	1st Revised	Original	41

The Staff has verified that The Empire District Electric Company has filed its 2005 annual report and is not delinquent on any assessment. Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

