

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 2nd day of
May, 2006.

In the Matter of the Empire District Electric
Company of Joplin, Missouri for Authority to
File Tariffs Increasing Rates for Electric
Service Provided to Customers in the Missouri
Service Area of the Company

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Case No. ER-2006-0315

**ORDER CLARIFYING CONTINUED
APPLICABILITY OF THE INTERIM ENERGY CHARGE**

Issue Date: May 2, 2006

Effective Date: May 12, 2006

On March 24, 2006, The Empire District Electric Company ("Empire") requested clarification of certain language contained in a Stipulation and Agreement entered in its previous rate case, ER-2004-0570. Empire, in the present case, seeks to terminate the use of the interim energy charge ("IEC") and implement an energy cost recovery rider ("ECR"). Certain other Parties oppose Empire's attempt, asserting that it contravenes the Stipulation and Agreement in Case No. ER-2004-0570 ("the Stipulation").

Empire's position is that the Stipulation contemplated the use of the IEC for up to three years, but it could be terminated at any time during that period by the Commission. Empire notes the following language:

The IEC tariff or rate schedule will expire no later than 12:01 a.m. on the date that is three years after the original effective date of the revised tariff sheets authorized by the Commission in this case, Case No. ER-2004-0570, unless earlier terminated by the Commission.

Empire asserts that this language contemplates the possibility that the IEC could be terminated early, allowing Empire to avail itself of the newly-created ECR.

In its Response to Empire's motion, the Staff points out that the tariffs filed pursuant to the Stipulation are not dispositive in that they do not provide for early termination of the IEC. However, Staff notes that although the previous tariffs did not so provide, the IEC was prematurely terminated despite the lack of such language. Staff indicates that it is clear that the Commission has the authority to terminate the IEC prematurely, according to the terms of the Stipulation, but that such language in the Stipulation is merely a restatement of the Commission's legal authority.

The Public Counsel notes that its agreement to the IEC was the result of consideration given by Parties on both sides to the Stipulation. On the one hand, Empire was permitted to use a type of fuel adjustment clause prior to the availability of the ECR, but the Public Counsel and others benefited by certain safeguards such as charge limits, true-ups and refunds.

Praxair, Inc and Explorer Pipeline ("Praxair") also oppose allowing Empire to elect early termination of the IEC in favor of the ERC, in that the four corners of the Stipulation document preclude it (among other reasons). Specifically, Praxair highlights the following language in section 4, page 12:

In consideration of the implementation of the IEC in this case and the agreement of the Parties to waive their respective rights to judicial review or to otherwise challenge a Commission order in this case authorizing and approving the subject IEC, for the duration of the IEC approved in this case Empire agrees to forego any right it may have **to request the use of**, or to use, any other procedure or remedy, available under current Missouri statute or subsequently enacted Missouri statute, in the form of a fuel adjustment clause, a natural gas cost recovery mechanism, or other energy related adjustment

mechanism to which the Company would otherwise be entitled.
[emphasis added]

Although Empire argues that the language of the Stipulation serves only to require that it not have both an IEC and an ERC in effect simultaneously, the language of the preceding paragraph does not support this. Empire's position requires that the phrase "to request the use of" highlighted above to be a nullity. The language following that phrase, "to use[,] any other procedure or remedy ... under Missouri statute" clearly precludes the simultaneous use of two different kinds of fuel adjustment mechanism. The inclusion of "to request the use of" can only mean that Empire is precluded from requesting the use of another fuel adjustment mechanism during the period in which the IEC is in effect.

However, Empire may have the option of requesting that the IEC be terminated. If the Commission grants that request, once the IEC is terminated, Empire would be able to request an alternative fuel adjustment mechanism.

The Stipulation and Agreement was freely negotiated. Consideration was given and received. The Commission approved it and it is binding. The Commission can and shall require that Empire remove from its pleadings and other filings in this case the request it consented not to make. Any other remedies that may address assertions that the request has "tainted" this proceeding are not available to the Commission. To the extent the Parties believed they have been aggrieved in a way the Commission cannot remedy, they should seek relief in an appropriate forum.

IT IS ORDERED THAT:

1. The Commission clarifies that The Empire District Electric Company, pursuant to the Stipulation and Agreement, may not make any request for an energy cost recovery rider while the existing interim energy charge is effective.
2. This order shall become effective on May 12, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written in a cursive style.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton,
Appling, CC., concur

Dale, Chief Regulatory Law Judge