

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

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.)

Case No. ER-2008-0093

**STAFF’S MOTION TO FILE ADDITIONAL TESTIMONY IN RESPONSE
TO EMPIRE’S IMPROPER SURREBUTTAL REGULATORY PLAN
AMORTIZATIONS TESTIMONY OR IN THE ALTERNATIVE TO
STRIKE EMPIRE’S IMPROPER SURREBUTTAL TESTIMONY**

Comes now the Staff of the Missouri Public Service Commission (Staff) by and through the Office of the General Counsel, and for its Motion for an order (1) allowing it to file additional testimony in response to The Empire District Electric Company’s (Empire’s) improper Regulatory Plan Amortizations surrebuttal testimony of Mr. Robert W. Sager, or (2) in the alternative striking Mr. Sager’s improper surrebuttal testimony. In support thereof, the Staff states as follows:

1. The Staff included in its direct filing a five-year amortization of Empire’s January 2007 ice storm costs. This amortization expense is a component of the Staff’s Regulatory Plan Amortizations (RPA) calculation. Empire did not take issue with this adjustment in its rebuttal testimony. Appendix 6 to the Staff Revenue Requirement Cost Of Service Report filed as part of the Staff’s direct case shows the Staff’s Regulatory Plan Amortizations calculation, and line item 35 entitled “Amortization” on Appendix 6 includes the amortization for the January 2007 ice storm costs.

2. A test year ending June 30, 2007 with an update period ending December 31, 2007 was agreed upon by various parties to this case and adopted by the Commission in an Order Concerning Test Year And True-Up And Adopting Procedural Schedule issued November 16,

2007. The Staff did not include Empire's December 2007 ice storm costs in its direct filing, but concurrent with rebuttal testimony, various parties filed a Stipulation And Agreement that called for a five-year amortization of the December 2007 ice storm costs in concept, stating that the total costs would be determined later. In the Staff's surrebuttal testimony, the Staff included an amortization for the December 2007 ice storm costs and consistent with how the Staff treats such an amortization and how it treated the January 2007 ice storm costs, the December 2007 ice storm costs amortization is a component of the Staff's Regulatory Plan Amortizations calculation.

3. Empire filed the surrebuttal testimony of Mr. Sager opposing the inclusion of ice storm expenses in the RPA calculation. This was the first occasion that Empire opposed inclusion of ice storm cost amortizations in the Staff's RPA calculation. Since the January 2007 ice storm cost amortization is included in the Staff's RPA calculation which is part of its direct filing, the position of Empire opposing this treatment should have been filed by Empire in its rebuttal testimony. If that course of action had been taken by the Company, then the Staff could have addressed the Company's arguments in opposition in the Staff's surrebuttal filing. Since Empire, for whatever reason, improperly did nothing in testimony until its surrebuttal filing to state its position on this issue, the Staff is prejudiced by Empire raising an issue for the first time in surrebuttal. The Staff should have the opportunity to respond to Empire's surrebuttal testimony by filing responsive testimony to address the Company's improper surrebuttal. In the alternative, the Commission should strike the surrebuttal testimony of Mr. Robert W. Sager as being in violation of 4 CSR 240-2.130(7)(B).

4. The Staff notes that on April 9, 2008 the Commission issued an Order Setting Deadline To Object To Prefiled Testimony setting May 6, 2008 as the deadline for objecting to

the admission into evidence of any prefiled testimony. The Staff apologizes for not more timely making its objection, but notes that as recently as April 30, 2008, the Commission chose in Case No. EM-2007-0374 to not enforce a November 28, 2007 deadline it had set for making objections to prefiled testimony. The Staff does not believe that Empire is prejudiced by this late filing of an alternative motion to strike.

WHEREFORE, the Staff prays the Commission for an order (1) allowing it to file testimony in response to Empire witness Robert W. Sager's improper surrebuttal testimony on Regulatory Plan Amortizations, or (2) in the alternative striking the surrebuttal testimony of Mr. Sager on Regulatory Plan Amortizations.

Respectfully submitted,

/s/ Steven Dottheim

Steven Dottheim
Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7489 (telephone)
(573) 751-9285 (facsimile)
steve.dottheim@psc.mo.gov (e-mail)

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 9th day of May, 2008.

/s/ Steven Dottheim