

**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 RESPONSE IN CASE NO. ET-2008-0223 AND STAFF REQUEST FOR LEAVE  
TO LATE-FILE STAFF RESPONSE TO PUBLIC COUNSEL’S DECEMBER 13, 2007  
APPLICATION FOR REHEARING IN INSTANT CASE**

Comes now the Staff of the Missouri Public Service Commission (Staff), through the Office of the General Counsel, and files in the instant case the attached Staff’s Response To Commission Order And Motion For Leave To Late-File which was filed on Monday, January 14, 2008 in Case No. ET-2008-0223. In responding to the Missouri Public Service Commission’s (Commission) January 9, 2008 Order Directing Filing in Case No. ET-2008-0223, it became clear to undersigned Staff counsel that the Staff’s response is clearly relevant to matters pending in the instant case, ER-2006-0315, and, therefore, might be viewed as a late-filed Staff response to the Office of the Public Counsel’s (Public Counsel’s) December 13, 2007 Application For Rehearing in Case No. ER-2006-0315. As a consequence, the Staff is asking leave to late-file the attached Staff Response in Case No. ET-2008-0223 as a late-filed Staff Response To Public Counsel’s December 13, 2007 Application For Rehearing in the instant case, ER-2006-0315. The attached pleading addresses Paragraph 5 in Public Counsel’s December 13, 2007 Application For Rehearing in Case No. ER-2006-0315. The Staff does not believe that any party will be prejudiced by this filing at this time. Undersigned counsel apologizes for any inconvenience that this filing at this time may cause or may have caused the Commissioners, the Regulatory Law Judge or the parties in this case.

Wherefore the Staff files in the instant case the attached Staff's Response To Commission Order And Motion For Leave To Late-File, which was filed on Monday, January 14, 2008 in Case No. ET-2008-0223, and requests leave to late-file this Staff pleading as Staff Response To Public Counsel's December 13, 2007 Application For Rehearing in the instant case.

Respectfully submitted,

/s/ Steven Dottheim

Steven Dottheim  
Chief Deputy General Counsel  
Missouri Bar No. 29149

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 (Fax)  
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 15th day of January 2008.

/s/ Steven Dottheim

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

In the Matter of The Empire District Electric	)	Case No. ET-2008-0223
Company's Amendment of its P.S.C. Mo. No.	)	File No. YE-2008-0408
Section 4 Sheets No. 12-16c (Net Metering Rider)	)	

**STAFF'S RESPONSE TO COMMISSION ORDER  
AND MOTION FOR LEAVE TO LATE-FILE**

Comes now the Staff of the Missouri Public Service Commission (Staff), by and through its General Counsel's Office, and responds to the Missouri Public Service Commission's (Commission) January 9, 2008 Order Directing Filing and requests leave to late-file this response. The Staff was not able to file its response by January 11, 2008, because once the Staff reviewed in detail the Office of the Public Counsel's (Public Counsel's) January 9, 2007 Motion To Suspend Tariffs and Paragraph 5 of Public Counsel's December 13, 2007 Application For Rehearing in Case No. ER-2006-0315, it became clear that this matter is more involved than originally thought and would take greater time and effort to explain what has occurred. The Staff recommends that the Commission not suspend the Net Metering Rider tariff sheets which bear an effective date of February 2, 2008 and either take no action at this time or deny The Empire District Electric Company's (Empire's) request that the Net Metering Rider tariff sheets be permitted to go into effect on an expedited basis on January 17, 2008. In further response to the Commission's January 9, 2008 Order and Public Counsel's January 9, 2008 Motion To Suspend Tariffs, the Staff states as follows:

1       Public Counsel's Motion To Suspend Tariffs filed January 9, 2008, specifically addresses the Net Metering Rider tariff sheets filed by Empire on January 3, 2008, for Empire to be in compliance with Section 386.890 (Net Metering And Easy Connection Act) which became effective January 1, 2008, and a Motion For Expedited Treatment And Variance. The matter in

ATTACHMENT

part that Public Counsel is seeking to address in its Motion To Suspend Tariffs involves only one Net Metering Rider tariff sheet for which there was an intervening event in 2007 that resulted in a revised tariff sheet going into effect after January 1, 2007, but there were intervening events in 2007 that resulted in a few other revised tariff sheets going into effect between the Commission's December 29, 2006 Order Granting Expedited Treatment And Approving Tariffs in Case No. ER-2006-0315 and the Commission's December 4, 2007 Order Vacating December 29, 2006 Order Granting Expedited Treatment And Approving Tariffs, And Order Approving Tariffs in Case No. ER-2006-0315. These intervening events will be identified in greater detail in the paragraphs below. The tariff sheets for which there were intervening events in 2007 causing the Commission to approve revised or original tariff sheets or permit a revised tariff sheet to go into effect by operation-of-law are as follows:

PSC Mo. No. 5, Section 4

4th Revised Sheet No. 13, Canceling 3rd Revised Sheet No. 13: *Net Metering Rider NM*  
Date of Issue: July 23, 2007      Date Effective: August 22, 2007      EO-2006-0497

P.S.C. Mo. No. 5, Section A

22nd Revised Sheet No. 1, Canceling 21st Revised Sheet No. 1: *Table of Contents*  
Date of Issue: February 5, 2007      Date Effective: March 7, 2007      EO-2007-0161

P.S.C. Mo. No. 5, Section B

Original Sheet No. 9: *Map and Legal Description*  
 Original Sheet No. 10: *Map and Legal Description*  
 Original Sheet No. 11: *Map and Legal Description*  
 Original Sheet No. 12: *Map and Legal Description*  
 Original Sheet No. 13: *Map and Legal Description*  
 Original Sheet No. 14: *Map and Legal Description*  
 Original Sheet No. 15: *Map and Legal Description*  
Date of Issue: February 5, 2007      Date Effective: March 7, 2007      EO-2007-0161

P.S.C. Mo. No. 5, Section 4

15th Revised Sheet No. 6, Canceling 14th Revised Sheet No. 6  
*4 CSR 240-3.155 Requirements For Electric Utility Cogeneration Tariff – Avoided Cost*  
Date of Issue: January 16, 2007      Date Effective: February 15, 2007      JE-2007-0480

Of these tariff sheets for which a version was in place prior to Case No. ER-2006-0315, there were no substantive changes in these tariff sheets either proposed by Empire or any other party in Case No. ER-2006-0315 and no substantive change was ordered by the Commission in Case No. ER-2006-0315. Anomalously, even though there were no substantive changes proposed or ordered in these tariff sheets in Case No. ER-2006-0315, Empire filed revised tariff sheets. Thus, the only change that occurred in these tariff sheets in Case No. ER-2006-0315 is that the number of the tariff sheet revision changed and the issue date and effective date changed. Otherwise these revised tariff sheets were identical to the tariff sheets they replaced.

2. Public Counsel sought to alert the Commission and the parties to Case No. ER-2006-0315 to this matter in Paragraph 5 of Public Counsel's December 13, 2007 Application For Rehearing in Case No. ER-2006-0315:

5. The Commission, in its attempt to craft an order that ensures that the unlawfully-approved December 29, 2006 tariffs somehow remain in effect, has re-approved a number of tariff sheets that had already been superseded. For example, the Commission's December 4 Order approved P.S.C. Mo. No. 5, Section 4, 1st Revised Sheet No. 8a to be effective for service on and after December 14. But in an order effective on May 7 the Commission approved a new version of sheet 8a (Second Revised Sheet No. 8a) which was intended to – and did – replace and supersede the one which the Commission just approved for service on and after December 14. The Commission, in its order issued December 4, has undone all the tariff changes approved between January 1, 2007 and December 4, 2007. Net metering is another example. By re-approving Empire's old interconnection standard effective December 14, the Commission has created a headache-inducing mess with regard to compliance with the Interconnection Standard established in Section 1254 of EAct (PURPA Section 111(d)(15)). And the Commission has effectively undone at least one territorial agreement by rolling back Empire's service territory to the January 1, 2007 description. The December 4 Order is unjust, unlawful and unreasonable in that it

approved all those superseded tariffs with no findings of fact as to it why [sic] found them more appropriate than the ones it had more recently approved.

Addressing the same matter, but limited to the Net Metering Rider tariff sheets, Public Counsel asserts in its Motion To Suspend Tariffs filed on January 9, 2008 that “Empire cannot file 5<sup>th</sup> revised Sheet No. 13 to cancel 4<sup>th</sup> Revised sheet No. 13 because 4<sup>th</sup> Revised Sheet No. 13 was already canceled by the Commission’s order of December 4, 2007.” It is the Staff’s view that this is the only one of the Net Metering Rider tariff sheets at issue.

3. The Commission’s December 29, 2006 Order Granting Expedited Treatment And Approving Tariffs in Case No. ER-2006-0315 approved the relevant tariff sheets as follows (bold-face type utilized below to show the tariff sheets that the Staff believes are at issue):

PSC Mo. No. 5, Section 4

3rd Revised Sheet No. 12, Canceling 2nd Revised Sheet No. 12: *Net Metering Rider NM*  
**3rd Revised Sheet No. 13, Canceling 2nd Revised Sheet No. 13: Net Metering Rider NM**  
3rd Revised Sheet No. 14, Canceling 2nd Revised Sheet No. 14: *Net Metering Rider NM*  
4th Revised Sheet No. 15, Canceling 3rd Revised Sheet No. 15: *Net Metering Rider NM*  
5th Revised Sheet No. 16, Canceling 4th Revised Sheet No. 16: *Net Metering Rider NM*  
Date of Issue: December 28, 2006    Date Effective: January 1, 2007    ER-2006-0315

P.S.C. Mo. No. 5, Section A

**21st Revised Sheet No. 1, Canceling 20th Revised Sheet No. 1: Table of Contents**  
Date of Issue: December 28, 2006    Date Effective: January 1, 2007    ER-2006-0315

P.S.C. Mo. No. 5, Section 4

**14th Revised Sheet No. 6, Canceling 13th Revised Sheet No. 6**  
*4 CSR 240-3.155 Requirements For Electric Utility Cogeneration Tariff – Avoided Cost*  
Date of Issue: December 28, 2006    Date Effective: January 1, 2007    ER-2006-0315

P.S.C. Mo. No. 5, Section 4

**1st Revised Sheet No. 8a, Canceling Original Sheet No. 8a**  
**2nd Revised Sheet No. 8b, Canceling 1st Revised Sheet No. 8b**  
*Commercial and Industrial Facility Rebate Program*  
Date of Issue: December 28, 2006    Date Effective: January 1, 2007    ER-2006-0315

4. The Commission’s December 4, 2007 Order Vacating December 29, 2006 Order Granting Expedited Treatment And Approving Tariffs, And Order Approving Tariffs in Case

No. ER-2006-0315 in approving all of the tariff sheets filed by Empire the preceding December 28, 2006 “reapproved” certain revised tariff sheets that had been canceled by intervening events in 2007. The “reapproved” tariff sheets that had been canceled are the following that appear in bold-face type, only one of the Net Metering Rider tariff sheets falling into this category:

PSC Mo. No. 5, Section 4

3rd Revised Sheet No. 12, Canceling 2nd Revised Sheet No. 12: *Net Metering Rider NM*  
**3rd Revised Sheet No. 13**, Canceling 2nd Revised Sheet No. 13: *Net Metering Rider NM*  
3rd Revised Sheet No. 14, Canceling 2nd Revised Sheet No. 14: *Net Metering Rider NM*  
4th Revised Sheet No. 15, Canceling 3rd Revised Sheet No. 15: *Net Metering Rider NM*  
5th Revised Sheet No. 16, Canceling 4th Revised Sheet No. 16: *Net Metering Rider NM*  
Date of Issue: December 28, 2006    Date Effective: December 14, 2007    ER-2006-0315

P.S.C. Mo. No. 5, Section A

**21st Revised Sheet No. 1**, Canceling 20th Revised Sheet No. 1: *Table of Contents*  
Date of Issue: December 28, 2006    Date Effective: December 14, 2007    ER-2006-0315

P.S.C. Mo. No. 5, Section 4

**14th Revised Sheet No. 6**, Canceling 13th Revised Sheet No. 6  
*4 CSR 240-3.155 Requirements For Electric Utility Cogeneration Tariff – Avoided Cost*  
Date of Issue: December 28, 2006    Date Effective: December 14, 2007    ER-2006-0315

P.S.C. Mo. No. 5, Section 4

**1st Revised Sheet No. 8a**, Canceling Original Sheet No. 8a  
**2nd Revised Sheet No. 8b**, Canceling 1st Revised Sheet No. 8b  
*Commercial and Industrial Facility Rebate Program*  
Date of Issue: December 28, 2006    Date Effective: December 14, 2007    ER-2006-0315

5.     The Net Metering Rider tariff sheets filed by Empire on January 3, 2008 are as follows with the one Net Metering Rider tariff sheet which the Staff considers at issue appearing in bold-face type:

PSC Mo. No. 5, Section 4

4th Revised Sheet No. 12, Canceling 3rd Revised Sheet No. 12: *Net Metering Rider NM*  
**5th Revised Sheet No. 13, Canceling 4th Revised Sheet No. 13: *Net Metering Rider NM***  
4th Revised Sheet No. 14, Canceling 3rd Revised Sheet No. 14: *Net Metering Rider NM*  
5th Revised Sheet No. 15, Canceling 4th Revised Sheet No. 15: *Net Metering Rider NM*  
6th Revised Sheet No. 16, Canceling 5th Revised Sheet No. 16: *Net Metering Rider NM*  
Original Sheet No. 16a: *Net Metering Rider NM*  
Original Sheet No. 16b: *Net Metering Rider NM*  
Original Sheet No. 16c: *Net Metering Rider NM*

Date of Issue: January 3, 2008      Date Effective: February 2, 2008      ET-2008-0223

The Net Metering Rider tariff sheets now in effect are as follows:

PSC Mo. No. 5, Section 4 (*Net Metering Rider NM*)

3rd Revised Sheet No. 12, Canceling 2nd Revised Sheet No. 12

Date of Issue: December 28, 2006      Date Effective: December 14, 2007      ER-2006-0315

**4th Revised Sheet No. 13, Canceling 3rd Revised Sheet No. 13**

**Date of Issue: July 23, 2007      Date Effective: August 22, 2007      EO-2006-0497**

**OR**

**3rd Revised Sheet No. 13, Canceling 2nd Revised Sheet No. 13**

**Date of Issue: December 28, 2007      Date Effective: December 14, 2007      ER-2006-0315**

3rd Revised Sheet No. 14, Canceling 2nd Revised Sheet No. 14

Date of Issue: December 28, 2006      Date Effective: December 14, 2007      ER-2006-0315

4th Revised Sheet No. 15, Canceling 3rd Revised Sheet No. 15

Date of Issue: December 28, 2006      Date Effective: December 14, 2007      ER-2006-0315

5th Revised Sheet No. 16, Canceling 4th Revised Sheet No. 16

Date of Issue: December 28, 2006      Date Effective: December 14, 2007      ER-2006-0315

6. Prior to the Net Metering Rider tariff sheets that Empire filed in Case No. ER-2006-0315 on February 1, 2006, Empire had the following Net Metering Rider tariff sheets in effect from August 28, 2003 through December 31, 2006:

PSC Mo. No. 5, Section 4

2nd Revised Sheet No. 12, Canceling 1st Revised Sheet No. 12: *Net Metering Rider NM*

**2nd Revised Sheet No. 13, Canceling 1st Revised Sheet No. 13: *Net Metering Rider NM***

2nd Revised Sheet No. 14, Canceling 1st Revised Sheet No. 14: *Net Metering Rider NM*

3rd Revised Sheet No. 15, Canceling 2nd Revised Sheet No. 15: *Net Metering Rider NM*

4th Revised Sheet No. 16, Canceling 3rd Revised Sheet No. 16: *Net Metering Rider NM*

Date of Issue: August 12, 2003      Date Effective: August 28, 2003

Since no party in Empire's rate increase case prior to Case No. ER-2006-0315, which was Case No. ER-2004-0570, sought to change the Net Metering Rider tariff sheets, Empire did not file revised Net Metering Rider tariff sheets in Case No. ER-2004-0570 and the Commission in its March 10, 2005 Report And Order in Case No. ER-2004-0570 did not approve any revised Net Metering Rider tariff sheets. Empire and no party in Case No. ER-2006-0315 sought to make any change to the Net Metering Rider tariff sheets. The Commission in its Report And Order in Case No. ER-2006-0315 did not order any change to the Net Metering Rider tariff sheets.



Anomalously, even though there were no changes ordered in the Net Metering Rider tariff sheets in Case No. ER-2006-0315, Empire filed revised tariff sheets for the Net Metering Rider tariff sheets. The Commission authorized the revised Net Metering Rider tariff sheets to go into effect for service rendered on and after January 1, 2007 in its December 29, 2006 Order Granting Expedited Treatment And Approving Tariffs and then again in its December 4, 2007 Order Vacating December 29, 2006 Order Granting Expedited Treatment And Approving Tariffs, And Order Approving Tariffs.

7. On July 12, 2007, the Commission issued its Report And Order in Case No. EO-2006-0497, In the Matter of the Consideration of Adoption of the PURPA Section 111(d)(15) Interconnection Standard as Required by Section 1254 of the Energy Policy Act of 2005. In its Report And Order in Case No. EO-2006-0497, the Commission directed all Commission regulated electric utilities to file with the Commission revised tariffs to specifically identify compliance with “IEEE 1547” as a criterion for approval of customer interconnection of distributed generation source. On July 23, 2007 Empire filed the following revised tariff sheet containing a reference to IEEE 1547 and bearing an effective date of August 22, 2007:

PSC Mo. No. 5, Section 4  
4th Revised Sheet No. 13, Canceling 3rd Revised Sheet No. 13: *Net Metering Rider NM*  
Date of Issue: July 23, 2007      Date Effective: August 22, 2007      EO-2006-0497

On August 13, 2007 in Case No. EO-2006-0497, the Commission issued an Order Approving Tariff Filings In Compliance With Commission Order in which it approved the Empire tariff sheet identified above to become effective on August 22, 2007. There were no applications for rehearing respecting the Commission’s July 12, 2007 Report And Order or its August 13, 2007 Order Approving Tariff Filings In Compliance With Commission Order in Case No. EO-2006-0497.

8. In Case No. EO-2007-0161, In the Matter of the Application of The Empire District Electric Company and White River Valley Electric Cooperative for Approval of a Written Territorial Agreement Designating the Boundaries of Exclusive Service Areas for Each Applicant within the Missouri Counties of Stone and Taney, the Commission issued on January 11, 2007 a Report And Order approving the territorial agreement of Empire and White River Valley Electric Cooperative. In the Report And Order, the Commission directed Empire to file tariff sheets to add the map and legal description of the exclusive territory it obtained from the Fifth Territorial Agreement to those it has from prior Commission approved territorial agreements. On February 5, 2007, Empire filed a revised and original tariff sheets as follows:

P.S.C. Mo. No. 5, Section A  
22nd Revised Sheet No. 1, Canceling 21st Revised Sheet No. 1: *Table of Contents*  
Date of Issue: February 5, 2007      Date Effective: March 7, 2007      EO-2007-0161

P.S.C. Mo. No. 5, Section B  
Original Sheet No. 9: *Map and Legal Description*  
Original Sheet No. 10: *Map and Legal Description*  
Original Sheet No. 11: *Map and Legal Description*  
Original Sheet No. 12: *Map and Legal Description*  
Original Sheet No. 13: *Map and Legal Description*  
Original Sheet No. 14: *Map and Legal Description*  
Original Sheet No. 15: *Map and Legal Description*  
Date of Issue: February 5, 2007      Date Effective: March 7, 2007      EO-2007-0161

On February 22, 2007 the Commission issued an Order Approving Tariff Filings In Compliance With Commission Order with a March 7, 2007 effective date. No applications for rehearing were filed.

9. In Case No. ET-2007-0375, In the Matter of The Empire District Electric Company's Tariff Sheets Designed to Revise Its Missouri Commercial & Industrial Facility Rebate Program, Empire filed tariff sheets to revise an existing program in the promotional practices area of Empire's tariff sheets. The revisions were suggested and approved by the

Customer Program Collaborative (CPC). The program and the CPC resulted from the Empire Experimental Regulatory Plan relating to the Iatan 2 Stipulation And Agreement in Case No. EO-2005-0263. On April 5, 2007, Empire filed the following revised and original tariff sheets:

P.S.C. Mo. No. 5, Section 4		
2nd Revised Sheet No. 8a, Canceling 1st Revised Sheet No. 8a		
Original Sheet No. 8a.1		
3rd Revised Sheet No. 8b, Canceling 2nd Revised Sheet No. 8b		
<i>Revisions to Commercial and Industrial Facility Rebate Program</i>		
<u>Date of Issue: April 5, 2007</u>	<u>Date Effective: May 7, 2007</u>	<u>ET-2007-0375</u>

On May 3, 2007, the Commission issued an Order Approving Tariff Sheets approving the tariff sheets to become effective May 7, 2007. No applications for rehearing were filed.

10. In addition to having a rule on net metering, the Commission has a rule on small power production / cogeneration: 4 CSR 240-3.155 Requirements For Electric Utility Cogeneration Tariff Filings. Empire made a tariff filing on January 16, 2007 pursuant to that rule which requires that standardize rates for facilities at or under one hundred (100) kilowatts on design capacity shall be submitted no later than January 15, 2005 and updated and revised on or before January 15 of every odd numbered year after that unless otherwise ordered by the Commission.<sup>1</sup> Empire's January 16, 2007 filing of the following tariff sheet reflected an increase in the rate that Empire would pay its customers under the tariff sheet titled "Cogeneration Purchase Rate, Schedule CP":

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<sup>1</sup> 4 CSR 240-3.155 Requirements For Electric Utility Cogeneration Tariff Filings

- (2) All regulated electric utilities shall –
  - (A) File tariffs providing standardized rates for facilities at or under one hundred (100) kilowatts on design capacity. . . .
- (3) All tariffs and other data required to be prepared and filed by electric utilities under the provisions of section (2) shall be submitted no later than January 15, 2005, and updated and revised on or before January 15 of every odd-numbered year after that, unless otherwise ordered by the commission.

Empire's January 16, 2007 cover letter making the tariff filing shows the Office of the Public Counsel as having been copied. The Staff reviewed the tariff filing and had no objection to the tariff becoming effective. The Staff copied the Office of the Public Counsel on its review of the filing. Commission Rule 4 CSR 240-2.065 Tariff Filings Which Create Cases addresses the matter of tariff filings that result in the establishment of a case and, as a consequence, tariff filings that do not result in the establishment of a case. There was no case established for this tariff filing of Empire and the tariff went into effect by operation-of-law. No entity sought to have the tariff sheet suspended.

11. The Staff at this stage recommends that the Commission not take any further action respecting the Net Metering Rider tariff sheets filed on January 3, 2008 pending the filing of proposed orders on January 18, 2008 in Case No. ER-2006-0315. Empire's January 3, 2008 Motion For Expedited Treatment And Variance requests that the Net Metering Rider tariff sheets be permitted to go into effect on an expedited basis on January 17, 2008, but the Net Metering Rider tariff sheets filed by Empire on January 3, 2008 appropriately bear an effective date of February 2, 2008. Therefore, the Commission either can take no action respecting Empire's Motion For Expedited Treatment And Variance or deny it without concern that the tariff sheets will go into on January 17, 2008. The Staff suggests that the Commission take no action until it sees the January 18, 2008 filings in Case No. ER-2006-0315 and any responses to those filings.

12. The Staff refers the Commission to the following paragraphs in Empire's Response To The Applications For Rehearing Of Public Counsel And Praxair/Explorer filed by Empire on December 21, 2007 in Case No. ER-2006-0315:

6. With regard to the Order Vacating December 29, 2006 Order Granting Expedited Treatment and Approving Tariffs, and Order Approving Tariffs issued December 4, 2007, to be effective December 14, 2007, Public Counsel, among other things, asserts that the issuance of said order has now displaced other tariffs of the Company filed during 2007. Empire disagrees with this assertion, but it may be prudent for the Commission to address this matter through a new order.

7. It is Empire's position that the Public Counsel is correct that the Order Approving Tariffs issued on December 4, 2007, should, upon reconsideration, be amended to the extent necessary to clarify that said order does not purport to displace or otherwise impact tariffs which were approved or which otherwise took effect between the effective date of the original Report and Order and the effective date of the recent Order Approving Tariffs.

8. First, the recently issued Order Approving Tariffs did not address and should, therefore, have no impact on "original" sheets which took effect between January 2 and December 13, 2007. Those tariff sheets stand on their own and have no relationship to the subject order. It is also Empire's position that the recent Order Approving Tariffs did not displace or otherwise impact subsequently filed, revised sheets. For example, the recently issued Order Approving Tariffs approves the No. 5, Section A, 21<sup>st</sup> Revised Sheet No. 1 for Empire's service to its customers. On its face, this sheet simply replaces the 20<sup>th</sup> Revised Sheet. Issues concerning this tariff sheet became moot when the sheet was replaced by the 22<sup>nd</sup> Revised Sheet No. 1, replacing the 21<sup>st</sup> Revised Sheet, which became effective on March 7, 2007. The 22<sup>nd</sup> Revised Sheet No. 1 has not been found to be unjust or unreasonable, nor has any challenge to that tariff sheet been raised.

9. Empire would, however, encourage the Commission to amend or clarify its Order Approving Tariffs after reconsideration to the extent necessary to clarify that the tariffs that became effective between January 2 and December 13, 2007, remain in effect and are not impacted by the Commission's order issued in response to the Missouri Supreme Court's decision in SC88390.

13. The Staff's present suggestion regarding how to address the specific tariff matter identified by Public Counsel respecting the "reapproved" tariff sheets is for the Commission to clarify its December 4, 2007 Order Vacating December 29, 2006 Order Granting Expedited Treatment And Approving Tariffs, And Order Approving Tariffs by the Commission stating that the references to the following tariff sheets from the December 4, 2007 Order in Case No. ER-2006-0315 should be treated as being deleted from that December 4, 2007 Order or the

December 4, 2007 Order should not be deemed to have the effect of “reapproving” the following previously canceled tariff sheets that are identified in the December 4, 2007 Order:

PSC Mo. No. 5, Section 4  
3rd Revised Sheet No. 13, Canceling 2nd Revised Sheet No. 13: *Net Metering Rider NM*  
Date of Issue: December 28, 2006    Date Effective: December 14, 2007    ER-2006-0315

P.S.C. Mo. No. 5, Section A  
21st Revised Sheet No. 1, Canceling 20th Revised Sheet No. 1: *Table of Contents*  
Date of Issue: December 28, 2006    Date Effective: December 14, 2007    ER-2006-0315

P.S.C. Mo. No. 5, Section 4  
14th Revised Sheet No. 6, Canceling 13th Revised Sheet No. 6  
*4 CSR 240-3.155 Requirements For Electric Utility Cogeneration Tariff – Avoided Cost*  
Date of Issue: December 28, 2006    Date Effective: December 14, 2007    ER-2006-0315

P.S.C. Mo. No. 5, Section 4  
1st Revised Sheet No. 8a, Canceling Original Sheet No. 8a  
2nd Revised Sheet No. 8b, Canceling 1st Revised Sheet No. 8b  
*Commercial and Industrial Facility Rebate Program*  
Date of Issue: December 28, 2006    Date Effective: December 14, 2007    ER-2006-0315

14.     The Staff intends to further address the matters set out in this pleading in Case No. ER-2006-0315.

14.     The Staff apologizes for any inconvenience that this late-filing may have caused the Commission, the Regulatory Law Judge or the parties.

Wherefore, for the above stated reasons, the Staff requests that the Commission not suspend the Net Metering Rider tariff sheets, which bear an effective date of February 2, 2008, and pending the filing of pleadings in Case No. ER-2006-0315 on January 18, 2008 and responses thereto, take no action at this time or deny Empire’s request that the Net Metering Rider tariff sheets be permitted to go into effect on an expedited basis on January 17, 2008. The Staff also requests leave to late-file this response.

Respectfully submitted,

**/s/ Steven Dottheim**

Steven Dottheim

Chief Deputy General Counsel

Missouri Bar No. 29149

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 (Fax)

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 14th day of January 2008.

**/s/ Steven Dottheim**