

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of The Empire District Electric)
Company of Joplin, Missouri's application)
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

CONCURRING OPINION OF COMMISSIONER ROBERT M. CLAYTON III

This Commissioner concurs in the majority decision to deny an intervening party's Motion in Limine. While the intervenors' theory of excluding the witness' testimony is novel and worthy of discussion, the entire concept of a "Zone of Reasonableness," previously adopted by the majority and on which intervenors rely, should be rejected by this commission. There is no basis in regulatory theory or practice for setting rates or returns on equity based on the concept known as the "Zone of Reasonableness." This Commissioner has never endorsed the practice of basing rates on profit margins set by arbitrary standards. The majority order refers to the "Zone of Reasonableness" as a potential "regulatory tool," a statement with which this Commissioner disagrees. This Commissioner is not aware of any other state utility regulatory agency that considers or uses such standards.

In this case, intervenors seek to exclude testimony of the utility, but in the past, this concept has been used to endorse higher returns on behalf of the utility. Intervenors imply that "what is good for the goose is also good for the gander." However, the entire concept should be rejected and the Commission should return to traditional rate making principles including the Discounted Cash Flow model or others.

For the foregoing reasons, this Commissioner agrees that the Motion should be denied but dissents to the Order's suggestion that the "Zone of Reasonableness" has any place in Missouri Public Service Commission practice.

For the foregoing reasons, this Commissioner concurs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Clayton III", written over a horizontal line.

Robert M. Clayton III, Commissioner
Dated this 30th day of April 2008.