

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 30th day  
of April, 2008.

In the Matter of The Empire District Electric	)	
Company of Joplin, Missouri for Authority	)	
to File Tariffs Increasing Rates for Electric	)	<b><u>Case No. ER-2008-0093</u></b>
Service Provided to Customers in the Missouri	)	Tariff File No. YE-2008-0205
Service Area of the Company.	)	

**ORDER DENYING MOTION IN LIMINE**

Issue Date: April 30, 2008

Effective Date: May 10, 2008

On October 1, 2007, The Empire District Electric Company submitted to the Missouri Public Service Commission certain proposed tariff sheets to implement a general rate increase for retail electric service to customers in its Missouri service area. On November 16, 2007, the Commission issued its Order Concerning Test Year and True-Up and Adopting Procedural Schedule. That order, among other things, established the deadlines for parties to file direct, rebuttal and surrebuttal testimony in this case. In support of its requested rate increase, Empire timely filed direct testimony of several witnesses, including Mr. James H. Vander Weide who recommended that the Commission authorize Empire to earn a return on equity of 11.6%.

On April 8, 2008, Praxair, Inc., Explorer Pipeline, Inc., and General Mills, Inc. (collectively referred to as "Industrial Intervenors") filed a Motion in Limine requesting that the Commission reject the Direct Testimony of James H. Vander Weide on the basis that

his recommended return on equity falls outside the “zone of reasonableness”<sup>1</sup> and is therefore worthy of no further discussion. Empire responded on April 17, arguing that the Industrial Intervenors’ Motion in Limine is contrary to the law governing motions in limine and contrary to past decisions of the Commission which clearly state how the “zone of reasonableness” should and will be used in determining the appropriate return on equity for a given utility.

The Commission has reviewed both the Industrial Intervenors’ motion and Empire’s response and finds no factual or legal argument that supports granting the Industrial Intervenors’ motion. The “zone of reasonableness” is merely one of many tools available to the Commission to assist in the evaluation of the rate of return recommendations offered by expert witnesses in rate cases. The fact that a given rate of return recommendation is above or below the “zone of reasonableness” does not in and of itself render such testimony without merit.

The Commission will consider and evaluate Mr. Vander Weide’s testimony, along with that of the other rate of return expert witnesses filing testimony in this case, and evaluate the credibility of such testimony utilizing all tools available to the Commission, including the “zone of reasonableness.” For these reasons, the Commission will deny the Industrial Intervenors’ motion.

**IT IS ORDERED THAT:**

1. The April 8, 2008 Motion in Limine filed by Praxair, Inc., Explorer Pipeline, Inc., and General Mills, Inc., is denied.

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<sup>1</sup> The “Zone of Reasonableness” referenced herein is derived by taking the Regulatory Research Association’s national average authorized return on equity for a given period of time and adding 100 basis points above and below that average.

2. This order shall become effective on May 10, 2008.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'CMD', is positioned above the name of the signatory.

Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Jarrett, and  
Gunn, CC., concur.  
Clayton, C., concurs, with separate  
concurring opinion attached.

Voss, Regulatory Law Judge