

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

In the Matter of The Empire District)	
Electric Company's Amendment of)	<u>Case No. ET-2008-0223</u>
its P.S.C. Mo. No. 5 Section 4 Sheets)	Tariff No. YE-2008-0408
No. 12-16c (Net Metering Rider))	

PUBLIC COUNSEL'S MOTION TO SUSPEND TARIFFS

COMES NOW the Office of the Public Counsel and for its Motion to Suspend Tariffs states as follows:

1. In an order issued on December 4, 2007 and effective December 14, 2007, the Commission approved the following relevant tariff sheets for service on and after December 14, 2007:

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

3rd Revised Sheet No. 13, Canceling 2nd Revised Sheet No. 13
3rd Revised Sheet No. 14, Canceling 2nd Revised Sheet No. 14
4th Revised Sheet No. 15, Canceling 3rd Revised Sheet No. 15
5th Revised Sheet No. 16, Canceling 4th Revised Sheet No. 16

2. On January 3, 2008, The Empire District Electric Company filed the following tariff sheets:¹

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

4th Revised Sheet No. 12 Cancelling 3rd Revised Sheet No. 12
5th Revised Sheet No. 13 Cancelling 4th Revised Sheet No. 13
4th Revised Sheet No. 14 Cancelling 3rd Revised Sheet No. 14
5th Revised Sheet No. 15 Cancelling 4th Revised Sheet No. 15
6th Revised Sheet No. 16 Cancelling 5th Revised Sheet No. 16
Original Section 4, Sheet No. 16a

¹ Empire also requested expedited treatment. While Public Counsel does not oppose the Commission acting relatively quickly, there is disagreement over which version of the tariffs sheets at issue here is in effect. This issue must be resolved before the Commission approves new tariff sheets that further compound it. Furthermore, the statute pursuant to which these tariffs are filed became law on August 28, 2007. Empire need not have waited until January 3, 2008 to file the tariffs.

Original Section 4, Sheet No. 16b
Original Section 4, Sheet No. 16c

3. Pursuant to the filed rate doctrine, Empire can only have one set of tariff sheets in effect at a time. Thus, for example,² when the Commission approved³ P .S .C. Mo. No. 5, Section 4, 3rd Revised Sheet No. 13, Canceling 2nd Revised Sheet No. 13, all other previously-approved versions of that sheet were necessarily no longer effective.

4. When it filed its revised tariff sheets on January 3, Empire filed them as though some different version of Sheets 13 through 16 of Section 4 than the ones approved by the Commission on December 4, 2007 were in effect. Empire cannot file 5th Revised Sheet No. 13 to cancel 4th Revised sheet No. 13 because 4th Revised Sheet No. 13 was already canceled by the Commission's order of December 4, 2007.

5. This situation has arisen from the Commission's – and Empire's – attempt to eliminate any effect whatsoever on Empire of the Supreme Court's finding that the December 29, 2006 approval of Empire's then-pending tariffs was unlawful. In its December 4, 2007 order, the Commission implemented a strained and incorrect reading of the filed rate doctrine to the effect that filed tariffs, which were never lawfully approved, supersede lawfully-approved tariffs. In that same order, the Commission also attempted to eliminate any harm to Empire by approving, almost a year later, the tariffs that it had failed to lawfully approve in the December 29, 2007 order. In so doing, it approved tariffs (including versions of the ones at issue here) that had since been properly and lawfully superseded.

² This pleading uses P .S .C. Mo. No. 5, Section 4, Sheet No. 13 as an example. Sheets 14, 15, and 16 suffer from the same infirmity.

³ Assuming, of course, that the Commission's December 4, 2007 order was lawful.

6. Until the Commission recognizes that it cannot simply pretend that the Supreme Court's invalidation of the December 29, 2006 order has no real effect, and recognizes that its unlawful approval of the December 28, 2006 tariff filing has created a mess that will require some serious effort to clean up, these problems will continue to arise.

WHEREFORE, Public Counsel respectfully requests that the Commission suspend Tariff File No. YE-2008-0408 until such time as the numbering issues have been fully resolved.

Respectfully submitted,

OFFICE OF THE Public Counsel

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 9th day of January 2008:

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