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Secretary/Chief Regulatory Law Judge

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General Counsel

December 22, 2004

Judge Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102

RE: Case No. ER-2004-0570 Empire District Electric Rate Increase Tariff Filing –  
Stipulation And Agreement As To Certain Issues

Dear Judge Roberts:

The Staff is filing, on behalf of the signatories, the following executed original of a Stipulation And Agreement As To Certain Issues. This Stipulation And Agreement As To Certain Issues addresses miscellaneous issues that were indicated on December 3, 2004 as having been resolved. These issues are reflected on the Revised Reconciliation which I filed in this case on December 7, 2004. Although there was no real question that these issues had settled, the signatory parties were not able to reach closure on the language of the Stipulation And Agreement As To Certain Issues until the end of the evidentiary hearings for various reasons. Should the Commissioners or Regulatory Law Judge Thompson have questions regarding the Stipulation And Agreement As To Certain Issues, provision for addressing such a situation is set out in said document.

Very truly yours,

/s/ Steven Dottheim

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cc: Regulatory Law Judge Kevin Thompson  
All Counsel of Record

**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 rate increase for	)	Case No. ER-2004-0570
retail electric service provided to customers	)	
in its Missouri service area	)	

**STIPULATION AND AGREEMENT  
AS TO CERTAIN ISSUES**

COME NOW The Empire District Electric Company (Empire or the Company); the Office of Public Counsel (Public Counsel); the Staff of the Missouri Public Service Commission (Staff); the Missouri Department of Natural Resources - Energy Center (except as to stipulation paragraphs 1-5); Praxair, Inc. and Explorer Pipeline Company, and respectfully state to the Missouri Public Service Commission ("Commission") that as a result of extensive negotiations, the undersigned parties ("Parties"), with the exception of intervenors Union Electric Company, d/b/a AmerenUE and Aquila, Inc. (who do not oppose the Stipulation and Agreement, as more fully described herein), have reached the stipulations and agreements contained herein in order to settle the certain issues identified below and in the Proposed List of Issues, List of Witnesses and Order of Cross-Examination, filed with the Commission on December 1, 2004:

1.     **Issues Settled.** This Stipulation and Agreement is intended to settle the following issues identified in the Proposed List of Issues, List of Witnesses and Order of Cross-Examination, filed with the Commission on December 1, 2004:

- 4 (Energy Center Units 3 & 4 Construction Cost);
- 5 (Deferred tax balances);
- 8 (Payroll O&M Factor);
- 9 (Energy Center 3 & 4 O&M);
- 10 (Annual Generator Inspections);
- 11 (Tree Trimming);
- 12 (Rate Case Expense);
- 13 (Enron Legal Fees);
- 14 (Incentive Compensation);

- 15 (Stock Options);
- 16 (Low-Income Customer Weatherization Assistance Programs);
- 17 (Energy Efficiency Programs);
- 18 (Wind Energy Assessment);
- 19 (Pensions); and,
- 20 (Late Payment Charge).

2. **Revenue Requirement.** The Company's revenue requirement, as computed by the Staff, shall be increased by \$1.4 million, as reflected in Staff's revised Reconciliation and Accounting Schedule 1, filed on December 7, 2004, respecting the issues listed in paragraph 1 above. (A further revised Reconciliation will soon be filed with the Commission.)

3. **Rate Base.** For the purposes of computing the Company's revenue requirement based on the decisions of the Commission on the remaining issues in this case only, the starting point for the Company's rate base, as shown by Staff's revised Accounting Schedule 1 filed on December 7, 2004, shall be increased by \$3,431,284, on a Missouri jurisdictional basis.

4. **Pensions.** Empire's accounting for pension expense will be governed by the provisions attached hereto as **Appendix A**.

5. **Late Payment Fee.** Empire will reduce its late payment charges to .5% per month for residential customers. Late payment charges for the other customer classes that are in the current filed and approved tariff will remain the same.

6. **Low Income Weatherization Program.** The parties agree that Empire will expend no less than \$155,000 annually to fund a low-income weatherization program that is consistent with federal weatherization assistance program guidelines. The program will be implemented through the Community Action Agencies operating within Empire's service territory for the benefit of Empire's low-income residential customers.

7. **Lighting.** The parties agree that Empire will expend no less than \$20,000 annually to fund the Change a Light, Change the World Program in Empire's service area through the entity that administers this program.

8. **Appliance and HVAC Rebate Program.** The parties agree that Empire will expend no less than

\$100,000 annually to fund an appliance and HVAC Rebate Program for Empire's residential customers. Empire agrees to work with representatives of the Department of Natural Resources - Energy Center and all other interested signatories to this Stipulation and Agreement to design a rebate program that will induce eligible-residential customers to purchase and install high efficiency electric appliances and/or heating and cooling equipment that have received the ENERGY STAR rating from the ENERGY STAR program sponsored by the United States Department of Energy and the United States Environmental Protection Agency.

9. **Commercial Energy Efficiency Audits.** The parties agree that Empire will expend no less than \$25,000 annually to fund 50% of the cost of technical energy efficiency audits for Empire's commercial customers, up to \$1,000 for a particular commercial customer, and provide incentives for installation of energy efficiency measures identified in the technical audit. The portion not paid for by Empire will be funded by those individual commercial customers receiving such audits. Empire agrees to work with representatives of the Department of Natural Resources - Energy Center and all other interested signatories to this Stipulation and Agreement to design this program.

10. **Wind Assessment.** The parties agree that Empire will make a one-time expenditure in an amount of no less than \$80,000, within a year of the effective date of the Order approving this Stipulation and Agreement, in order to perform an assessment of wind energy resources in or near its Missouri service territory at sites determined in concert with the Department of Natural Resources - Energy Center and other interested signatories. Empire will obtain access to two wind assessment locations in or near its service territory; and, Empire will contract with consulting meteorologists or the University of Missouri-Columbia Atmospheric Sciences Department to install wind measuring equipment and evaluate data collected at levels between 50 meters up to and including 100 meters above ground level for the ultimate purpose of producing site-specific measurements that can be used to quantify the wind resources in Southwest Missouri.

11. **Initiative Design, Implementation and Monitoring.** Empire will meet with Staff, Public Counsel, Department of Natural Resources - Energy Center, and any other interested signatories to this Stipulation and Agreement on a collaborative basis to determine the design, operational and administrative details of all of the above programs including but not limited to (1) the manner in which the funds will be handled and accounted for consistent with applicable federal and state guidelines, and (2) the data that will be collected to evaluate the

initiatives. If mutually agreeable design and criteria cannot be set by a date thirty (30) days after the effective date of a Commission Order approving this Stipulation and Agreement, the parties agree to return to the Commission and request it to set program criteria by a date ninety-five (95) days after the effective date of a Commission Order approving this Stipulation and Agreement. The energy efficiency and weatherization programs implemented as a result of this case will be analyzed by Empire, Department of Natural Resources – Energy Center and any other interested signatories for cost-effectiveness for Empire’s ratepayers prior to Empire’s next rate case. If there is not enough information from the programs implemented in this case for proper analysis in Empire’s next rate case, Empire, Department of Natural Resources – Energy Center and any other interested signatories will determine data to be used from similar programs implemented at similar utilities or data estimated by other means. Except for the Wind Assessment initiative, the levels of funding of the initiatives indicated above are on an annual basis.

12. **Quality Of Service.** Empire agrees to provide the following monthly information to the Staff and Public Counsel on a quarterly basis:

- Total calls answered
- Abandoned calls
- Total calls received
- Average % of calls answered in 30 seconds or less
- Average wait before call was answered
- Total calls busy or disconnected
- Total calls answered at Ozark Call Center
- Total calls answered at Joplin Call Center
  
- Average time per shift agents are logged in to answer calls
- Average talk time per shift
- Average number of calls answered per shift
- Average time between calls agents are available and waiting
- Average time per shift that agents are not in ready mode

Unadjusted and adjusted System Average Interruption Frequency Index (SAIFI), System Average Interruption Duration Index (SAIDI), and Customer Average Interruption Duration Index (CAIDI).

Empire agrees to respond to all inquiries and complaints from Staff’s Consumer Services Department within three (3) business days, except for interruption of service issues, which shall be responded to within one (1) business day. If the Company and customer fail to resolve the informal complaint, the Commission Staff will notify the customer of his/her right to file a formal complaint with the Commission.

13. **Testimony Received Into Evidence.** Unless called by the Commissioners or the Regulatory Law Judge to respond to questions of the Commissioners or the RLJ and in the event the Commission accepts the specific

terms of this Stipulation and Agreement, the testimony of the following witnesses shall be received into evidence without the necessity of these witnesses taking the stand:

Witnesses And Testimony Respecting Department of Natural Resources – Energy Center Issues:

Ex.	Witness	Testimony	Pgs.	Issue	Date Pre-Filed
#99	Randolph	Direct		Low Inc.-Energy Efficiency	09-27-04
#100	Randolph	Rebuttal		Low Inc.-Energy Efficiency	11-04-04
#101	Randolph	Surrebuttal		Low Inc.-Energy Efficiency	11-24-04
#102	Anderson	Direct		Wind	09-27-04
#103	Anderson	Surrebuttal		Wind	11-24-04
#104	Wyse	Direct		Low Inc.-Energy Efficiency	09-27-04
#4	Palmer	Rebuttal		Low Inc.- Energy Eff.-Wind	11-04-04
#58	Mantle	Rebuttal	All	Low Inc.- Energy Eff.-Wind	11-04-04
#59	Mantle	Surrebuttal	All	Low Inc.- Energy Eff.-Wind	11-24-04
#88	Kind	Rebuttal		Low Inc.- Energy Eff.-Wind	11-04-04
#					

Settled Issues Listed In Paragraph 1 Above, Excluding Department of Natural Resources – Energy Center Issues:

Empire Witnesses And Testimony:

#3 Palmer Direct - All  
#4 Palmer Rebuttal – All  
#8HC/NP Mertens Direct – All  
#109 Mertens Rebuttal – All  
#110 Mertens Surrebuttal – All  
#9 Walters Direct – All, but pp. 14-30  
#10 Walters Rebuttal – All  
#21 Vogl Direct – All  
#22 Vogl Rebuttal – All  
#23 Vogl Surrebuttal – All  
#27 Eads Direct – All  
#32 Williams Rebuttal – All  
#33 Bauer Rebuttal – All

Staff Witnesses And Testimony:

#57 Mantle Direct – All  
#65HC/NP McKiddy Direct – All  
#66HC/NP McKiddy Surrebuttal – All  
#53 Kiebel Direct – All  
#39 Elliott Direct – All  
#40 Elliott Surrebuttal – All  
#34 Cassidy Direct – All (received into evidence during fuel and purchased power issue)  
#35 Cassidy Surrebuttal – All (received into evidence during fuel and purchased power issue)  
#71 Teel Direct – All (received into evidence during depreciation issue)  
#72 Teel Rebuttal – All (received into evidence during depreciation issue)  
# 73 Teel Surrebuttal – All (received into evidence during depreciation issue)  
#37 DeVore Direct - All  
#38HC/NP DeVore Surrebuttal – All  
#41 Gibbs Direct – All  
#42 Gibbs Rebuttal – All

#43	Gibbs Surrebuttal – All
#60	McDuffy Direct - All
#61	McDuffy Surrebuttal – All
#67	Pyatte Direct - All

Public Counsel Witnesses And Testimony:

#96	Robertson Direct – All
#97	Robertson Rebuttal – All
#98	Robertson Surrebuttal – All

Other Staff Witnesses, Testimony And Accounting Schedules:

#44	Bax Direct – All (system energy loss factor and jurisdictional allocations)
#46	Campbell Direct – All (weather and days adjustments to class usage)
#47	Campbell Direct – All (weather normalized hourly class loads)
#48	Chikhladze Direct – All (weather)
#79	Staff Accounting Schedules (September 20, 2004)
#80	Revised Staff Accounting Schedules (December 3, 2004)

Other Public Counsel Witnesses And Testimony:

#84	Bolin Direct – All
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14. **Non-Signatories.** While AmerenUE and Aquila do not join in this Stipulation and Agreement, they nevertheless have indicated that they do not oppose this Stipulation and Agreement and do not request a hearing concerning the issues addressed by this Stipulation and Agreement. Additionally, DNR does not oppose stipulation paragraphs 1-5 and does not request a hearing concerning those issues.

15. This Stipulation and Agreement is being entered into solely for the purpose of settling the identified issues above in this case. None of the signatories to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any method of cost determination or cost allocation or revenue related methodology, and none of the signatories shall be prejudiced or bound in any manner by the terms of this Stipulation and Agreement in this or any other proceeding, whether this Stipulation and Agreement is approved or not.

16. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. If the Commission does not approve this Stipulation and Agreement unconditionally and without modification, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof, except as explicitly stated herein.

17. If the Commission does not unconditionally approve this Stipulation and Agreement without modification, and notwithstanding its provision that it shall become void therein, neither this Stipulation and

Agreement, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any Party has for a decision in accordance with §536.080 RSMo 2000 or Article V, Section 18 of the Missouri Constitution, and the Parties shall retain all procedural and due process rights as fully as though this Stipulation and Agreement had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this Stipulation and Agreement shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

18. In the event the Commission unconditionally accepts the specific terms of this Stipulation and Agreement without modification, the signatories waive their respective rights to present oral argument and written briefs pursuant to §536.080.1 RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2 RSMo 2000; their respective rights to seek rehearing, pursuant to §386.500 RSMo 2000; and their respective rights to judicial review pursuant to §386.510 RSMo 2000. This waiver applies only to a Commission Order respecting this Stipulation and Agreement issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters not explicitly addressed by this Stipulation and Agreement.

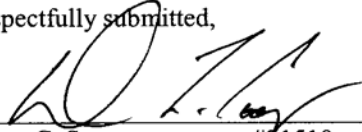
19. The Staff shall file suggestions or a memorandum in support of this Stipulation and Agreement. Each of the Parties shall be served with a copy of any such suggestions or memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's suggestions or memorandum, responsive suggestions of a responsive memorandum which shall also be served on all Parties. The contents of any suggestions or memorandum provided by any Party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.

20. The Staff also shall have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.



WHEREFORE, for the foregoing reasons, the undersigned Parties respectfully request that the Commission issue its Order approving all of the specific terms and conditions of this Stipulation and Agreement.

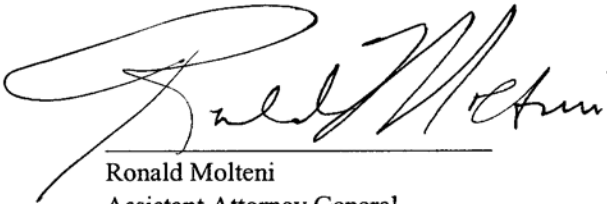
Respectfully submitted,



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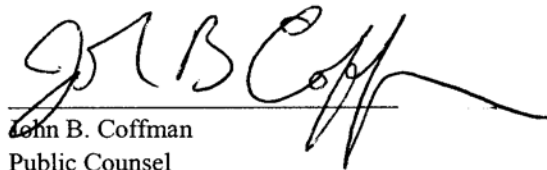
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**ATTORNEY FOR PRAXAIR, INC. AND  
EXPLORER PIPELINE COMPANY**

#### **CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing was, on this 22nd day of December, 2004, sent via electronic mail, U.S. Postage, or hand delivered, to all parties of record.



## Appendix A

The intent of this settlement is to:

- A. ensure that the Company recovers the amount of the “prior prepaid pension asset” per the Stipulation and Agreement from the Company’s last rate case, Case No. ER-2002-424, and to include this “prior prepaid pension asset” in rate base; and
- B. ensure that the amount collected in rates is based on the FAS 87 cost recognized by the Company for financial reporting purposes, using the methodology described below in item 2; and
- C. ensure that, once the amount in A has been collected in rates by the Company, all pension cost collected in rates is contributed to the pension trust; and
- D. ensure that all amounts contributed by the Company to the pension trust per items 3 and 5 below are recoverable in rates; and
- E. ensure that the Company will receive no more or less than the amount in A before the Company is required to fund the plan.

To accomplish these goals, the following items are agreed upon as part of this settlement:

1. The Company’s FAS 87 cost will be recognized in rates and for financial reporting purposes.
2. FAS 87 cost will be calculated based on the following methodology:
  - a. Market Related Value for asset determination, smoothing all asset gains and losses that occur on and after January 1, 2004.
  - b. No 10% Corridor
  - c. Amortization period of 10 years for unrecognized gains and losses. (With a 5 year MRV amortization - all gains/losses are reflected in 15 years.)
- 3) Any FAS 87 amount (as calculated above) which exceeds the Minimum ERISA contribution will reduce the prior prepaid asset currently recognized in rate base. When the prior prepaid pension asset currently recognized in rate base is reduced to zero, any amount of FAS 87 (as calculated above) which exceeds the minimum ERISA level must be funded.
- 4) In the case that FAS 87 expense becomes negative, the Company is ordered to set up a regulatory liability to offset the negative expense. In future years, when FAS 87 expense becomes positive again, rates will remain zero until the prepaid pension asset that was created by negative expense is reduced to zero. The regulatory

liability will be reduced at the same rate as the prepaid pension asset. This regulatory liability is a non-cash item and should be excluded from rate base in future years.

- 5) The Company will be allowed rate recovery for contributions made to the pension trust in excess of the FAS 87 expense for the following reasons: the minimum required contribution is greater than the FAS 87 expense level, avoidance of PBGC variable premiums, and avoidance of write-off of an existing prepaid pension asset (i.e. charge to other comprehensive income).
- 6) A regulatory asset or liability will be established on the Company's books to track the difference between the level of FAS 87 expense during the rate period and the level of pension expense built into rates for that period. If the FAS 87 expense during the period is more than the expense built into rates for the period, the Company will establish a regulatory asset. If the FAS 87 expense during the period is less than the expense built into rates for the period, the Company will establish a regulatory liability. If the FAS 87 expense becomes negative, a regulatory liability equal to the difference between the level of pension expense built into rates for that period and \$0 will be established. Since this is a cash item, the regulatory asset or liability will be included in rate base and amortized over 5 years at the next rate case.
- 7) Any prepaid pension asset other than the amount accumulated from August 15, 1994 through December 1, 2002, currently being amortized, will not be included in rate base in any future case. The regulatory assets/liabilities identified in this settlement will address the inclusion of any rate base amounts.