

**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 Retail)
Electric Service Provided to Customers in its)
Missouri Service Area.)

Case No. ER-2006-0315

LIST OF ISSUES

Comes now the Staff of the Missouri Public Service Commission (“Staff”) and states:

1. On February 1, 2006, The Empire District Electric Company filed with the Commission tariff sheets designed to implement a general electric rate increase for service it provides to its Missouri customers. The Commission opened Case No. ER-2006-0315 to address that filing.

2. On April 11, 2006, the Commission issued its *Order Concerning Test Year and True-up and Adopting Procedural Schedule* in which it stated the parties are to agree on a list of issues to be filed by the Staff and that “[a]ny issue not included in the issues list will be presumed to not require determination by the Commission.” The Commission also stated in that order, with emphasis, “*If the Parties are able to agree on an issues list and agree to use that single format for all the pre-hearing briefs, a statement to that effect may be filed by Staff in lieu of the list of issues.*” Further, the Commission waived the issue format requirements of 4 CSR 240-2.080(21).

3. The Parties to this proceeding, alphabetically, are: Aquila, Inc., The Empire District Electric Company, Explorer Pipeline, Inc., Kansas City Power & Light Company,

Missouri Department of Natural Resources, the Missouri Public Service Commission Staff, the Office of the Public Counsel, and Praxair, Inc.

4. The listing of issues below does not mean that all parties agree that any particular listed issue is, in fact, a valid or relevant issue. Indeed, in their briefs or other filings, some parties may state that they consider a particular listed issue to not be a valid issue. This “non-binding” listing of issues is not to be construed as impairing any party’s ability to argue about any of these issues or related matters, or to restrict the scope of its response to arguments made by other parties.

5. Following is the list of issues the Staff has assembled for this case. The Staff believes the list includes all contested issues in the case and properly identifies them.

LIST OF ISSUES

REVENUE REQUIREMENT

Rate of Return Issues

1. Return on Common Equity: What return on common equity should be used for determining Empire’s rate of return?
2. Capital Structure: What capital structure should be used for determining Empire’s rate of return?
 - (1) Should the unamortized expenses and discounts be reduced from the total principal amount of long-term debt and trust preferred stock outstanding for determining Empire’s capital structure for ratemaking purposes?

Revenue Issue

3. Off-system Sales: What amount should be included in Empire’s revenue requirement for off-system sales?

Regulatory Plan Amortizations

4. Regulatory Plan Amortizations: Should Empire's revenue requirement include regulatory plan amortizations? If so, (i) how should Empire's off-balance sheet obligations be valued for purposes of the amortizations and (ii) should the amortized amount be subject to an income tax gross-up?

Expense Issues

5. Fuel and Purchased Power Expense: What is the appropriate level of on-system fuel and purchased power expense Empire should be allowed to recover in rates?
6. Fuel and Purchased Power Expense Recovery Method: What method should be used for recovery by Empire of its fuel and purchased power expense?

alternatively,

IEC Continuation: Should the Commission continue to enforce the 3-year term of the Interim Energy Clause that was approved by the Commission in Case No. ER-2004-0570?

- (1) Is the Commission barred from terminating the Interim Energy Clause by Section 386.266.8?
- (2) Relying upon the four corners of the Stipulation and Agreement, are the terms of the IEC ambiguous?
- (3) In the event that the Stipulation and Agreement is found to be ambiguous, does Empire's actions demonstrate its belief that it was bound to a 3-year term?
 - (i) What is the practical construction that Empire has given to the agreement?
 - (ii) What is the burden of proof of ambiguity and on whom does it rest?
 - (iii) What is the significance of a burden of proof?
- (4) Has Empire properly applied to terminate the Interim Energy Clause, approved by the Commission in Case No. ER-2004-0570?
- (5) What standard should the Commission apply in deciding whether to prematurely terminate the IEC?
- (6) What would be the extent of Empire's financial harm if it were bound to the remaining term of the IEC?

- (i) What is the comparative financial harm that would be experienced by the ratepayers if the Stipulation and Agreement were prematurely terminated?
- (7) In the event that Empire is permitted to prematurely terminate the Interim Energy Clause, what amount of revenues collected by Empire under the IEC should be refunded to customers?
- 7. Gain from unwinding forward natural gas contract: Should Empire's gain from unwinding a forward natural gas contract during the test year offset test year fuel and purchased power expense? If so, should the entire gain be an offset in the test year, or should it be amortized and only a portion of the gain be applied as an offset in the test year?
- 8. Incentive Compensation: Are all the costs of Empire's incentive compensation plan an expense Empire should recover from Empire's ratepayers? If not, what costs should be recovered?
- 9. Low Income Assistance Program: Should Empire's Experimental Low-Income Program (ELIP) be continued with changes? If so, what should those changes be, should the Customer Program Collaborative (CPC) determine those changes and have oversight responsibility respecting the program, and how should the cost of the program be included in Empire's cost-of-service for collection from ratepayers? What should be done with unspent ELIP funds?
- 10. Unspent Funding of Current Energy Efficiency and Affordability Programs: What should be done with unspent funds from the current energy efficiency and low-income weatherization programs? What should be the amortization amount respecting the demand side management (DSM) regulatory asset account?

CLASS COST OF SERVICE/RATE DESIGN

- 11. Rate Design/Cost-of-Service: How should any revenue increase for Empire that results from this case be implemented in rates?
 - (1) A sub-issue: What level of revenue credits should be recognized for purposes of allocating any revenue requirement increase?

WHEREFORE the Staff submits the foregoing list of issues.

Respectfully submitted,

/s/ Nathan Williams

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 28th day of August 2006.

/s/ Nathan Williams