

FILED³

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

NOV 02 2001

Missouri Public
Service Commission

In the matter of the Application of)
The Empire District Electric Compa-)
ny for authority to file tariffs)
reflecting increased charges for)
electric service within its Mis-)
souri service area)

Case No. ER-2001-299

INTERVENOR PRAXAIR'S COMMENTS
ON EMPIRE MOTION REGARDING TARIFFS

I. INTRODUCTION.

Pursuant to the direction of the Commission, Praxair offers its comments on the Tariff Filing and Motion for Expedited Treatment filed by Empire on October 26, 2001.

II. COMMENTS.

The situation described by Empire in its motion is troubling to Praxair in several particulars.

A. Nature of Asserted Error.

Empire states that the Commission did not approve a specific revenue requirement. This is true. As it happens, counsel for Praxair was engaged in the hearing in another matter, GR-96-450, before the Commission on the day that the Commission finally voted on this matter in its agenda session. As there was a break in the hearing, Praxair counsel sat in the public agenda session on September 20.

There was discussion among the Commissioners regarding the level of return on equity, with one Commissioner (Commissioner Murray) indicating that 10.25 was appropriate and Commissioner Gaw believing that 10 percent was acceptable to him in the circumstances as he perceived them. There thus appeared to be a consensus at the 10 percent number, but partly because Commissioner Gaw expressed concerns about the cost overruns on the SLCC project and observed that, unless he moved to the 10 percent level, the Commission would be unable to vote an order and the proposed rates would go into effect. This result was unacceptable to him and he indicated that a separate concurrence stating his position would be filed.

There was also discussion regarding the absence of a specific number on revenue requirement. Mr. Mills indicated to the Commissioners that he believed there was some precedent for the Commission to issue a rate order which approved a methodology or "roll out" number. There was then discussion regarding the scenarios and Ms. Ruth indicated that she would direct the Staff to rerun its scenario using the 10 percent rate of return number on which there appeared to be Commission consensus. This method appeared to meet with approval and a vote was taken with the result of the Staff scenario rerun at 10 percent return on equity gaining three of four votes.

From these observations, counsel infers that Commissioner Gaw and others were concerned about the overall amount of the

revenue award as indicated on the Staff scenario that had been run at the 10.25 return level. It also seems a fair inference that Commissioner Gaw was concerned about the level of revenue award even at the 10 percent level and the cost overrun issue, but was willing to agree to an order at that level to prevent a deadlock on the Commission.

There was no discussion of the accuracy of the Staff scenario that was apparent to this observer. It did appear clear, however, that the basis of the revenue award was the Staff scenario, but rerun at a 10 percent return on equity.

It is completely uncertain what the respective positions of the Commissioners would have been had there been knowledge of a claimed error of this magnitude nor is it at all apparent what various Commissioners would have felt regarding the level of return on equity if the Staff scenario had reflected the revenue level Empire now asserts is correct according to its motion. It also appears to be a fair inference that, while an error as claimed by Empire may have been embedded in the Staff scenario being discussed by the Commission, the Commission clearly knew that the result of its decisions and deliberations was to approve a revenue requirement that would be lower than that reflected on the Staff 10.25 percent scenario as a result of reducing the return on equity calculation from 10.25 to 10 percent.

B. Timing of Assertion of Error.

The Commission voted out its Order on September 20 with an effective date of October 2. Shortly after its approval, Empire (without objection) submitted tariffs that Empire represented to be in conformance with the issued order, and thus with the result of the Staff scenario rerun at 10 percent return on equity. Following its review, Staff filed a recommendation to the Commission indicating that it had also reviewed the rates and found them to be in compliance with the Report and Order. We would assume that both parties had verified their respective calculations and reviews. Presumably relying upon the respective representation and recommendation, the Commission duly issued a further Order approving the tariffs.

During the course of these events, Empire provided a set of its compliance tariffs to Counsel for Praxair who transmitted relevant portions to Praxair management and Praxair's consultant for their review. A copy of the rerun Staff scenario was not provided. This necessitated that we query Staff regarding the revenue requirement target so as to complete verification of the impact on Praxair and validate the rate calculations from our perspective. This information was provided by Staff initially in the form of summary pages from a revised EMS run at 10 percent and subsequently a complete copy of the revised EMS run.

With the revenue requirement indicated, Praxair's representatives were able to verify that Praxair's rate appeared to have

been properly developed in a manner consistent with the Order. As a result of this determination, and consistent with other agreements regarding the several settled issues and the Commission's determinations on the remaining disputed issues, Praxair did not seek reconsideration or rehearing of any portion of the Commission's Order. The time for doing so expired with the effective date of the Order and the tariffs.

Thus, within the time period provided, and with the assistance of Staff counsel Frey and Dottheim and Messrs. Featherstone and Traxler, Praxair was able to resolve its verification of the calculation of its rate as against the roll-out revenue award from the Commission. There is obvious concern, had Praxair at some later date discovered an error that was not in Empire's favor, that the existing procedures might not provide us with an opportunity to have such an error corrected if we had not made such difficulty known during the ten-day period for seeking reconsideration or filing rehearing applications.

C. The New Tariff Filing.

Praxair is also concerned that, perhaps by inadvertence, Empire may have initiated a new rate case with uncertain perturbations. It is not at all clear that this is Empire's intention. Certainly no supporting documentation resembling a rate case filing has been provided. Initiation of a new rate case at this time would present immense problems with implications disturbing or possibly requiring reopening of the new-born fuel settlement

and reopening matters thought to have been settled in the prior case including the cost overrun issue that remained a concern to Commissioner Gaw despite the settlement of those issues.^{1/}

Under Missouri's "file and suspend" mechanism, the newly-filed rates will become effective for service on and after their effective date, unless they are earlier rejected or suspended by the Commission. The apparent result of allowing the new tariffs to go into effect without suspension or rejection would be to further increase Empire's overall revenue by roughly \$3.6 million annually with a corresponding further increase to Praxair's rates.

At the same time, suspension would appear to give rise to a new contested case with the requirement of a hearing, a new test year and a full inquiry into all relevant factors bearing upon the utility's revenue requirement, all of which would appear at least initially to necessitate reopening of the fuel cost issues thought to have been resolved in the ER-2001-299 case.

The Commission has issued an order closing the ER-2001-299 case and has assigned Empire's new tariff proposal a new case number. We are, frankly, uncertain whether Empire has the intent of initiating a new case, how its filing will be regarded by

^{1/}The respective settlements, though unanimous or deemed unanimous by reason of non-opposition, are explicitly for the purpose of settling issues in unique cases. Their "boilerplate" provisions would appear to limit their applicability in a subsequent case, even one filed before the course of events indicated in, for example, the fuel stipulation have fully played out.

Staff and other parties, or whether such newly initiated case would have the effect of reopening issues settled in the earlier case.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

A handwritten signature in dark ink, appearing to read "Stuart W. Conrad", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by hand delivery, First Class US Mail or electronic means upon each person designated on the official service list compiled by the Secretary in this proceeding as follows:

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Dated: November 2, 2001



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