BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Empire District Electric Company of Joplin, Missouri, for authority to file tariffs increasing rates for electric service provided to customers in the Missouri service area of the company.	)))))	Case No. ER-2008-0093

PREHEARING BRIEF

OF

INDUSTRIAL INTEVENORS

Stuart W. Conrad (MBE #23966)
David L. Woodsmall (MBE #40747)
3100 Broadway, Suite 1209
Kansas City, MO 64111
(816) 753-1122 voice
(816) 756-0373 facsimile
E-mail: stucon@fcplaw.com

ATTORNEYS FOR INDUSTRIAL INTERVENORS

May 6, 2008

Rate of Return Issues

1. Return on Common Equity: What return on common equity should be used for determining Empire's rate of return?

   A. In the event the Commission grants Empire a fuel adjustment clause, what, if any, is the appropriate adjustment to the authorized return on equity?

Position: Consistent with the testimony of Michael Gorman, the Commission should authorize Empire a return on equity of 10.0%. This recommendation is consistent with the market driven return for a proxy group of companies exhibiting total company risk comparable to that of Empire.

In contrast to the testimony of Mr. Gorman, Empire requests a return on equity of 11.6%. Such a recommendation, given the Commission's previous reliance on a "zone of reasonableness" is inherently unreasonable. Specifically, the national average authorized return on equity for the first quarter of 2008 was 10.32%. Given the Commission's zone of reasonableness, Empire's requested return on equity is well beyond the upper bound of reasonableness (11.32%) and should be summarily rejected.

Furthermore, Empire's return on equity relies upon growth rate assumptions that are inherently unreasonable in that they exceed the projected rate of growth for the gross domestic product. While such growth rates are possible in the immediate future, these inflated growth rates are not consistent with a DCF formula which is long-term, if not perpetual, in focus. As such, the Commission should either: (1) reject such growth assumptions or (2) utilize such growth estimates in the context of a multi-stage DCF methodology that reflects a more reasonable second stage growth estimate.

Regulatory Plan Amortization

1. Ice Storm Costs: Should the expense amortization of the January 2007 and December 2007 ice storm costs be reflected in the regulatory plan amortization calculation? Has Empire raised this issue out of time?

Position: Industrial Intervenors support the position of Staff on this issue.

2. Purchased Power Agreement: Using a spreadsheet format agreed to by the Company, Staff and OPC, should the regulatory plan amortization be calculated using 2007 purchased power agreement (PPA) debt equivalent or 2008 PPA debt equivalent? Should the depreciation factor on purchased power agreements be reflected in the regulatory plan amortization calculation?

Position: The Commission should recognize the imputed debt equivalent of purchased power agreements in the regulatory plan amortization calculation. The reflection of the purchased power agreement imputed debt component is consistent with recent decisions of Standard & Poors and therefore consistent with the methodology for calculating the regulatory plan amortization.

Fuel Cost Recovery

1. Fuel Adjustment Clause: Should the Commission authorize Empire to use a fuel and purchased power recovery mechanism as authorized by law?

    A. Is Empire barred by the terms of the Stipulation and Agreement in Case No. ER-2004-0570 from requesting a fuel adjustment clause while an interim energy charge is pending?

Position: In the Stipulation and Agreement in Case No. ER-2004-0570, the signatories agreed to the implementation of an interim energy charge ("IEC"). In consideration for the agreement to implement the IEC, Empire agreed not to seek the implementation of a fuel adjustment clause for the duration of the IEC.

In its October 30, 2007 decision in *State ex rel. Office of Public Counsel v. Public Service Commission*, the Supreme Court found that the Commission had abused its authority in issuing its December 29, 2006 Order Granting Expedited Treatment and Approving Tariffs. Given this abuse of discretion, the Supreme Court ordered the Commission to vacate its December 29, 2006.

With the vacation of the December 29, 2006 Order, the tariffs from Case No. ER-2004-0570 were necessarily reinstated as the last lawfully approved rates. Included in those reinstated tariffs are Empire's IEC tariffs. As such, on October 1, 2007, the date that Empire filed its tariffs to implement a fuel adjustment clause, the IEC was still in effect. Given the express provisions of the Stipulation and Agreement in Case No. ER-2004-0570, such action is precluded.

B. If the Commission authorizes Empire to use a fuel adjustment clause (FAC), how should it be structured?

a. What proportion of future increases and decreases in fuel and purchased power costs (increases and decreases) from base rates should be assigned to Empire and what proportion to its customers?

Position: Without prejudice to its position regarding the legality of implementing a fuel adjustment clause during the duration of Empire's IEC, the Commission should implement a fuel adjustment clause that seeks to preserve the incentives for Empire to procure fuel and purchased power in a least cost manner. In this case, Mr. Brubaker proposes a sharing mechanism whereby increases and decreases in fuel and purchased power costs are shared between shareholders and ratepayers. (See, Brubaker Revenue Requirement Direct (Exhibit 500); Brubaker Rebuttal (Exhibit 502) and Brubaker Surrebuttal (Exhibit 505).

b. What components of fixed and variable fuel and purchased power costs should be recovered through a FAC?

Position: In addition to the requirement that the cost be prudent, costs flowed through the FAC should generally be only those that are variable with the level of kWh generated, are volatile and/or difficult to predict or control. In addition, the magnitude of the costs should be significant to the utility. Among the costs that should be excluded from recovery in the fuel adjustment clause are (1) unit train costs; (2) fuel handling costs; (3) natural gas transportation demand charges; and (4) emission allowance costs from the FAC.

c. What heat rate testing of generation plants should be conducted?

Position: Industrial Intervenors take no position on this issue, but reserve the right to express its position either during hearing or during the Posthearing briefs.

d. What rate design should be applied to FAC charges?

1. Should the base cost of fuel be determined by season?
2. How should the actual $/kWh cost of fuel and purchased power energy be determined?
3. How should the Cost Adjustment Factor be determined?

Position: Industrial Intervenors take no position on this issue, but reserve the right to express its position either during hearing or during the Posthearing briefs.

e. What incentive mechanisms, if any, should be included in the FAC?

Position: The Commission should implement a fuel adjustment clause that contains incentive mechanisms similar to that contained in the testimony of Mr. Brubaker and summarized in response to subsection (a), *supra.*

f. Should off-system sales be included in the FAC?

Position: Total variable fuel and purchased power costs (associated with native load sales as well as off-system sales) should be included in the fuel clause, and the entire amount of revenues collected from off-system sales should be handled as a credit and used to offset costs in the FAC. Inclusion of all of the costs, with an offset for all revenues collected from off-system sales, eliminates the risk of mis-assignments and allocations. In addition, because the level of off-system sales is difficult to predict, including the revenues from off-system sales in the FAC has the added benefit of tracking the level of sales and flowing the actual level through to customers.

g. Should the net cost of emissions (Account 509) costs be recovered through the FAC?

Position: Since SO_2 and similar emission-related costs are really environmental in nature, these costs, to the extent that they are to be recovered outside of base rates, should be included in the ECRM surcharge, and not in the FAC. It is important that they be recovered through the ECRM because the ECRM has a "cap" on the recovery of environmental costs. If these costs are instead recovered through the FAC, then the cap would be, in effect, "bypassed" and customers would pay more than they should.

2. Fuel and Purchased Power Expense: Should Empire's recovery of fuel and purchased power expense be based upon its current adjusted expense levels, or on the rate allowance for this item ordered by the Commission in Case No. ER-2004-0570?

Position: As described in subsection 1(A), the level of fuel and purchased power expenses to be reflected in rates in this case should be consistent with that contained in the Stipulation and Agreement in Case No. ER-2004-0570.

Respectfully submitted,

Stuart W. Conrad, MBE #23966
David L. Woodsmall, MBE #40747
3100 Broadway, Suite 1209
Kansas City, Missouri 64111
(816) 753-1122 Ext. 211
Facsimile: (816) 756-0373
Internet: stucon@fcplaw.com

ATTORNEYS FOR INDUSTRIAL INTERVENORS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

David L. Woodsmall

Dated: May 6, 2008