

**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) Case No. ER-2012-0345
Service Provided to Customers in the)
Missouri Service Area of the Company)

**EMPIRE’S MOTION REQUESTING THAT THE COMMISSION EXERCISE ITS
DISCRETION AND ALLOW EMPIRE’S INTERIM RATE FILING TO TAKE EFFECT
WITHOUT SUSPENSION AND BY OPERATION OF LAW**

COMES NOW The Empire District Electric Company (“Empire” or “Company”), by and through counsel, and respectfully states as follows to the Missouri Public Service Commission (“Commission”):

1. On this date, Empire, pursuant to RSMo. §393.140, filed with the Commission certain tariff sheets consisting of revised rate schedules. These tariff sheets have been assigned Tracking Nos. YE-2013-0020 and YE-2013-0021. The tariff sheets contained in Tracking No. YE-2013-0021 concern Empire’s request for interim rate relief in the amount of \$6.2 million, exclusive of fees and taxes, and are attached hereto as Exhibit A. This interim rate relief request is related to tornado recovery costs and post-tornado cost of service and is supported by the verified direct testimony filed herein on this date by Empire witnesses Brad Beecher, Kelly Walters, Scott Keith, and Robert Sager.

2. The status of this filing is one of a “noncontested” case, and the Commission has the discretionary power to allow the interim rates to become effective on the proposed effective date, August 5, 2012. By this motion, Empire requests that the Commission exercise its discretion and allow the interim tariff sheets, Tracking No. YE-2013-0021, to take effect without suspension and by operation of law thirty days after filing.

3. Empire submits that Section 393.140(11), RSMo., authorizes the Commission to provide expeditious rate treatment and to implement rates without the benefit of a full and complete hearing, or, under limited circumstances and upon “good cause” shown, without the necessity of providing thirty days notice. Good cause provides for *discretion* by the Commission when it makes its determination.

4. It is clear that no standard is specified in Missouri’s statutes to control the Commission as to whether or not to order a suspension of a utility’s tariffs, and, as such, the determination as to whether or not to do so rests within the Commission’s sound discretion. The case law is in support of this statutory interpretation. *State ex rel. Laclede Gas Co. v. Public Service Com.*, 535 S.W.2d 561, 566 (Mo.App. W.D. 1976). As explained by the Court of Appeals:

The “file and suspend” provisions . . . lead inexorably to the conclusion that **the Commission does have discretionary power to allow new rates to go into effect immediately** or on a date sooner than that required for a full hearing as to what will constitute a fair and reasonable permanent rate. This indeed is the intended purpose of the file and suspend procedure. Simply by non-action, the Commission can permit a requested rate to go into effect.

535 S.W.2d at 566 (emphasis added). The Court went on to explain that “(s)ince no standard is specified to control the Commission in whether or not to order a suspension, the determination as to whether or not to do so necessarily rests in its sound discretion.” *Id.*

5. In *Laclede*, it was argued that the Court should not place “a judicial stamp of approval on the power to grant interim increases,” and the Court considered arguments that allowing interim rate relief would “ignore the lack of statutory provision for notice and other procedural safeguards to consumers” and would “deprive customers of constitutional due process and equal protection of the law.” *Id.* at 567. The Court, however, found that the “identical argument directed against the file and suspend procedure was rejected in *State ex rel. Jackson*

County v. Public Service Commission, 532 S.W.2d 20, 31 (Mo. banc 1976).” *Id.* The *Laclede*

Court concluded as follows:

We hold that the Commission has power in a proper case to grant interim rate increases within the broad discretion implied from the Missouri file and suspend statutes and from the practical requirements of utility regulation.

Id.

6. Pursuant to the interim tariff sheets attached hereto as Exhibit A, the interim rate increase will be subject to refund pending the Commission’s decision regarding Empire’s permanent general electric rate case (Tracking No. YE-2013-0020). The interim tariff filing (Tracking No. YE-2013-0021) will allow Empire to put into place a surcharge which will increase its Missouri jurisdictional electric revenues by \$6.2 million, exclusive of applicable fees and taxes, resulting in an increase in rates of 1.53 percent.

7. The Commission recently considered AmerenUE’s request for interim rate relief in Commission Case No. ER-2010-0036. In its *Order Denying Motion for Summary Determination and Motion for Directed Verdict* in that matter, the Commission acknowledged its authority to grant an interim rate increase and its “‘broad discretion’ to determine whether an interim rate adjustment should be granted.” The Commission also noted that it is not required to use an emergency standard when considering an interim rate adjustment, holding that “the fact that AmerenUE has not offered proof that it is facing an emergency does not preclude the Commission from approving the company’s interim rate increase if it chooses to do so.” In its *Report and Order* dated January 13, 2010, effective January 23, 2010, in Case No. ER-2010-0036, the Commission reached the same conclusions, specifically holding as follows:

In determining when an interim rate increase is appropriate, the Commission is not limited to an emergency or near emergency standard. . . . However, the Commission will not act to short circuit the rate case review process by granting

an interim rate increase unless the utility is facing extraordinary circumstances and there is a compelling reason to implement an interim rate increase.

The Commission suspended the effective date of AmerenUE's interim tariff and established a procedural schedule for the processing of AmerenUE's interim rate relief request, but, as explained, Empire is requesting that the Commission exercise its discretion and allow Empire's interim tariff (Tracking No. YE-2013-0021) to take effect, without suspension and by operation of law, on August 5, 2012. As explained by the Court of Appeals, "the Commission does have discretionary power to allow new rates to go into effect immediately." *Laclede*, 535 S.W.2d at 566.

8. As detailed in the verified direct testimony of Empire witnesses Walters, Beecher, and Sager, good cause exists to grant the relief requested by this motion. Empire's circumstances are unique and merit discretionary review. Empire has faced and is continuing to face extraordinary circumstances, and there are compelling reasons for this Commission to allow Empire's interim rate surcharge to take effect on August 5, 2012, the requested effective date. Empire witness Beecher explains that it has been over a year since the Joplin tornado, that it is time for Empire to begin to recover financially, and that, absent interim relief, it will take over two years for Empire to begin to recover from the tornado from a financial standpoint. (Beecher Direct Testimony, p. 12) Mr. Beecher also explains that, given Empire's pre-tornado low level of retained earnings, the expected lost revenue from lost and displaced customers due to the tornado, and the fact that Empire's ability to pay dividends was tied to retained earnings through a covenant in the Company's mortgage indenture, Empire's Board was compelled to meet three days after the tornado and suspended the Company's dividend. (Beecher Direct Testimony, p. 10) Empire witness Walters explains the timing of Empire's interim rate relief request and the financial impact of the tornado on Empire. (Walters Direct Testimony, pp. 6-12) The Empire

testimonies demonstrate that the May 2011 Joplin tornado was an extraordinary event, resulting in extraordinary circumstances for Empire, its shareholders, and its customers, and that the granting of interim rate relief for Empire at this time is justified.

WHEREFORE, Empire respectfully moves the Commission to allow Empire's interim tariff sheets filed this date to take effect without suspension and by operation of law on the 5th day of August, 2012. Empire requests such other and further relief as is just and proper under the circumstances.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

By: /s/ Diana C. Carter
James C. Swearengen MBE #21510
Diana C. Carter MBE #50527
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
Phone: (573) 635-7166
Fax: (573) 634-7431
E-mail: DCarter@brydonlaw.com

ATTORNEYS FOR THE EMPIRE
DISTRICT ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via electronic mail on this 6th day of July, 2012, to the General Counsel for the Commission and to the Missouri Office of the Public Counsel.

 /s/ Diana C. Carter