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July 9, 1999

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

FILED

JUL 9 1999

**Missouri Public
Service Commission**

**RE: In the matter of 4 CSR 240-20.015 Proposed Rule -
Electric Utilities Affiliate Transactions, Case No. EX-99-442**

Dear Mr. Roberts:

Enclosed for filing in the above referenced case, please find the original and 14 copies of Public Counsel's **Motion to Compel Data Requests Submitted to Empire District Electric Company**. Please "file stamp" the extra enclosed copy and return it to this office. I have on this date mailed, faxed, or hand-delivered the appropriate number of copies to all counsel of record.

Thank you for your attention to this matter.

Sincerely,

John B. Coffman
Deputy Public Counsel

JBC:kh

cc: Lera L. Shemwell, Assistant General Counsel
Gary W. Duffy, Brydon, Swearingen & England

Enclosure

FILED

BEFORE THE PUBLIC SERVICE COMMISSION JUL 9 1999
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

In the matter of 4 CSR 240-20.015 proposed)
Rule - electric utilities affiliate transactions.)

Case No. EX-99-442

MOTION TO COMPEL DATA REQUESTS
SUBMITTED TO EMPIRE DISTRICT ELECTRIC

COMES NOW the Office of the Public Counsel (Public Counsel), pursuant to Section 386.450 RSMo. 1994, and for its Motion to Compel states as follows:

1. On June 4, 1999, Public Counsel propounded a series of sixteen data requests to each regulated electric utility in Missouri as part of its discovery and research into the subject matter of the Public Service Commission's (Commission's) proposed affiliated transaction rule in this case. (The text of these data requests, numbered 501 through 516, is provided on Attachment 1 to this Motion.) In general, the data requests at issue in this Motion were designed to allow Public Counsel to illustrate to the Commission the current trend of diversification by utility companies and examples of the type of affiliate transactions that could affect regulated ratepayers and the public interest in Missouri. It was hoped that these data requests were to provide Public Counsel with enough information that its initial and reply comments might include specific examples of current activity that should be covered by an affiliated transaction rule.

2. On June 25, 1999, the Commission issued its Order Adopting Protective Order, which provided protection for highly confidential materials and procedures by which this information may be reviewed by the Commission for purposes of this case, and further acknowledged Public Counsel's discovery powers in this matter, stating "Data requests are

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allowed to be filed by OPC in a rulemaking even though there is no contested proceeding or case *per se.*"

3. On June 14, 1999, Empire District Electric Company (Empire) submitted a letter stating the general objection that the subject matter of these data requests are not within the Commission's jurisdiction and are not relevant to this case. Public Counsel believes that these data requests are indeed within the Commission's jurisdiction and specifically tailored to the subject of the Commission's proposed affiliated transaction rule. Empire's additional objections have subsequently been resolved by the Commission's June 25, 1999 Order.

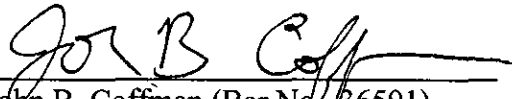
4. Public Counsel is still awaiting a complete response to Data Requests 507, 508, 512, 514 and 515. Public Counsel and Empire have thus far been unsuccessful in good-faith attempts to resolve this discovery matter. In view of the pending deadline for reply comments (August 1, 1999), Public Counsel believes that it would be in the public interest to expedite the resolution of this discovery dispute, so that the production of any information to be compelled could be reviewed in a sufficient time prior to the reply comment deadline.

WHEREFORE, Public Counsel respectfully requests that, pursuant to Commission rule 4 CSR 240-2.090, and Civil Rule 56, the Commission issue an order compelling Empire to answer Data Requests 507, 508, 512, 514 and 515, along with any other relief deemed just and reasonable.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY:


John B. Coffman (Bar No. 36591)

Senior Public Counsel

P. O. Box 7800, Suite 250

Jefferson City, MO 65102-0250

Telephone: (573) 751-5565

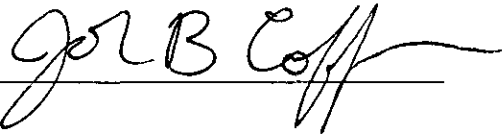
Facsimile: (573) 751-5562

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been either faxed, mailed, or hand-delivered to the following counsel of record on this 9th day of July, 1999:

Gary W. Duffy
Brydon, Swearengen & England
P. O. Box 456
Jefferson City, Missouri 65102

Lera L. Shemwell
Assistant General Counsel
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102



- 501 Please provide copies of the Company's two most recent annual reports.
- 502 Does the Company use the monthly bill that is sent to its customers to bill some of these same customers for unregulated products and services that are provided by the Company or its affiliates? If yes, please: (1) list and describe each of the unregulated products and services that are (or have been) included in the charges on monthly utility bills for some customers and (2) describe procedures that the Company has in place to allocate a portion of utility billing costs to the Company's unregulated operations.
- 503 Does the Company use the monthly bill that is sent to its customers to promote/inform some of these same customers about unregulated products and services that are provided by the Company or its affiliates? If yes, please: (1) list and describe each of the unregulated products and services that are (or have been) promoted on monthly utility bills for some customers within the last three years and (2) describe procedures that the Company has in place to allocate a portion of utility billing costs to the Company's unregulated operations.
- 504 Does the Company make customer lists or other customer specific information available to its unregulated operations that are selling unregulated products and services? If yes, please describe each of the unregulated operations to which customer lists and other customer specific information have been made available over the last three years and provide a complete description of the customer information that has been made available to each unregulated operation.
- 505 Does the Company's regulated operation solicit business for or make leads available to its unregulated operations that are selling unregulated products and services? If yes, please describe each of the unregulated operations for which the Company's regulated operations have solicited business or made leads available over the last three years and provide a complete description of the business leads provided and business solicitation that has occurred over the last three years.
- 506 Does the Company promote or inform its customers about unregulated products and services that are provided by the Company or its affiliates at the time when new customers sign up for utility service with the Company? If yes, please: (1) list and describe each of the unregulated products and services that are (or have been) promoted in this manner and (2) describe procedures that the Company has in place to allocate a portion of utility "sign up" costs to the Company's unregulated operations.
- 507 Please provide a copy of the Company's two most recent strategic plans (business

plans) for its (1) overall regulated and (2) overall non-regulated electric operations. If the Company does not possess or have access to some of the documents within the scope of those requested in this DR, please identify which of the requested documents that the Company does not possess or have access to.

508 Please provide a copy of the Company's most recent strategic plans (business plans) for each of its unregulated business units and affiliates. If the Company does not possess or have access to documents within the scope of those requested in this DR, please provide a statement to that effect..

509 Does the Company ever receive compensation for providing leads to its unregulated affiliates or to partners in joint ventures, strategic alliances, or joint marketing? If yes, please provide a copy of the contracts or agreements that provide for this compensation and provide a copy of all documents created in the last three years that contain summaries or analysis of the level of compensation that has been provided.

510 Does the Company ever receive compensation for allowing its unregulated affiliates or partners in joint ventures, strategic alliances, or joint marketing to use the Company's name or logo? If yes, please provide a copy of the contracts or agreements that provide for this compensation and provide a copy of all documents created in the last three years that contain summaries or analysis of the level of compensation that has been provided.

511 Please provide a list of all entities with which the Company or its affiliated entities have entered into partnership, joint venture, strategic alliance, or joint marketing agreements within the last three years and provide a copy of all such contracts or agreements that have been entered into within the last three years. For purposes of this DR, the term "affiliated entities" should be interpreted to have the same meaning that it has in the proposed affiliate transactions rule. If the Company or its affiliated entities have NOT entered into any partnership, joint venture, strategic alliance, or joint marketing agreements within the last three years, please provide a statement to that effect.

512 Please provide a list of the Company's top ten (by amount of regulated revenues or however the Company classifies these customers) customers. Also, please provide a copy of all contracts, agreements, or letters of intent that the Company has entered into over the last three years with its top ten customers for nonregulated products or services.

513 Please provide an organizational chart that shows the relationships between the

Company and all of its affiliated entities. For purposes of this DR, the term “affiliated entities” should be interpreted to have the same meaning that it has in the proposed affiliate transactions rule. If the Company does not have any affiliates, please provide a statement to that effect.

514 Please provide a copy of all documents created by or for the Company within the last five years that contain policies or guidelines for selling or leasing dark fiber that has been installed as part of the Company’s internal communications network. If no such documents exist, please provide a statement to that effect.

515 Please provide a list of all affiliated entities and other non-affiliated entities to whom the Company has sold or leased or otherwise allowed use of dark fiber that has been installed as part of the Company’s internal communications network. Also, please provide a copy of all documents created by or for the Company within the last three years that contain summaries or analysis of the amount of revenues that the Company has received for the sale or lease of dark fiber that has been installed as part of the Company’s internal communications network. If the Company has NOT sold or leased or otherwise allowed use of dark fiber that has been installed as part of the Company’s internal communications network, please provide a statement to that effect.

516 Please provide a copy of all comments, affidavits, testimony, and briefs that the Company or its affiliates have filed in affiliated transaction cases or rulemakings or similar proceedings in other jurisdictions. If no such filings have been made by the Company or its affiliates, please provide a statement to that effect.

COPY

FILE COPY

LAW OFFICES

BRYDON, SWEARENGEN & ENGLAND

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June 14, 1999

Mr. John B. Coffman
Deputy Public Counsel
Office of the Public Counsel
Harry S Truman Building Suite 250
Jefferson City, Missouri

RE: Case No. EX-99-442

Dear Mr. Coffman:

On June 4, 1999, you served us with Public Counsel data requests number 501 through 516 in this docket for The Empire District Electric Company. This is notice within 10 days of receipt regarding certain of those data requests.

While Empire is willing to cooperate in responding to some of these data requests, there are some threshold questions which are unanswered at this time, and the responses are being made in that vein. While discovery may be appropriate among "parties" to a proceeding, I have not seen anything which purports to make Empire a "party" to this proceeding. Discovery in the context of a rulemaking proceeding is highly unusual, but a rulemaking could be considered to be a contested case. Accordingly, Empire is reserving all of its procedural rights which may exist in Case No. EX-99-442 and neither its cooperation in answering some of the data requests, nor its refusal to answer some of the data requests, shall be considered to be a waiver of any such rights.

DR 507 Empire objects to part (1) of this request to the extent that it calls for the production of proprietary or highly confidential material. Empire will not produce such information until there is a valid and proper protective order in place pertaining to this docket. Empire will be filing a request for such relief.

Empire objects to part (2) of this request on the basis that it does not seek information which is relevant to this proceeding giving consideration to the subject matter jurisdiction of the Missouri Public Service Commission, nor is it reasonably calculated to lead to the discovery of admissible evidence.

Empire also objects in that it seeks the production of information from entities which are not parties and which are not subject to the jurisdiction of the Missouri Public Service

Attachment 2

JUN 14 1999

Commission.

DR 508 Empire objects to this request on the basis that it does not seek information which is relevant to this proceeding giving consideration to the subject matter jurisdiction of the Missouri Public Service Commission, nor is it reasonably calculated to lead to the discovery of admissible evidence.

Empire also objects in that it seeks the production of information from entities which are not parties and which are not subject to the jurisdiction of the Missouri Public Service Commission.

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Empire also objects in that it seeks the production of information from entities which are not parties and which are not subject to the jurisdiction of the Missouri Public Service Commission.

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Empire also objects in that it seeks the production of information from entities which are not parties and which are not subject to the jurisdiction of the Missouri Public Service Commission.

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Empire also objects in that it seeks the production of information from entities which are not parties and which are not subject to the jurisdiction of the Missouri Public Service Commission.

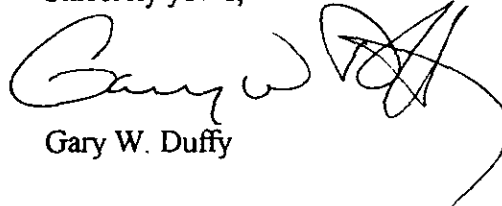
DR 515 Empire objects to this request on the basis that it does not seek information which is relevant to this proceeding giving consideration to the subject matter jurisdiction of the Missouri Public Service Commission, nor is it reasonably calculated to lead to the discovery of admissible evidence.

Empire also objects in that it seeks the production of information from entities which are not parties and which are not subject to the jurisdiction of the Missouri Public Service Commission.

DR 516 Empire is not able to respond to this data request within 20 days of receipt since it will have to engage in an effort to determine the extent to which such filings have been made in other jurisdictions, especially since no time periods were specified in the data request. Empire estimates that it will be able to complete the inquiry and produce copies of the material, if any, by no later than July 14, but that is merely an estimate at this time.

If you have any questions, please give me a call.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Gary W. Duffy", followed by a large, stylized flourish or checkmark-like mark.

Gary W. Duffy

cc: Bob Fancher
Dave Gibson

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