

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

In the Matter of the tariff filing of The)	
Empire District Electric Company)	
to implement a general rate increase for)	Case No. ER-2004-0570
retail electric service provided to customers)	
in its Missouri service area.)	

**MOTION FOR EXPEDITED CONSIDERATION AND APPROVAL
OF TARIFF SHEETS FILED IN COMPLIANCE WITH
COMMISSION ORDER ON LESS THAN THIRTY DAYS' NOTICE**

COMES NOW The Empire District Electric Company ("Empire" or "Company"), by and through counsel, and for its Motion for Expedited Consideration and Approval of Tariff Sheets Filed in Compliance with Commission Order on Less than Thirty Days' Notice, respectfully states as follows to the Missouri Public Service Commission (the "Commission"):

1. On March 10, 2005, the Commission issued its *Report and Order* herein, bearing an effective date of March 27, 2005.
2. Among other things, the *Report and Order* authorizes Empire to file electric service tariff sheets sufficient to recover revenues as determined by the Commission in the *Report and Order*. (*Report and Order*, Ordered Paragraph 2, p. 57)
3. On this date, Empire has caused to be filed with the Commission revised tariff sheets designed to effectuate the decisions made by the Commission in the *Report and Order*. Those revised tariff sheets bear an issue date of March 17, 2005, and an effective date thirty days hence in order to comply with 4 CSR 240-3.145.¹ As reflected in the cover letter accompanying

¹ Empire has complied with the Commission rule by filing compliance tariff sheets with a proposed thirty day effective date, despite Empire's belief that this is unnecessary. The tariff sheets which initiated this proceeding were filed on April 30, 2004, and were designed to become effective thirty days after filing. The compliance tariff sheets filed simultaneously with this Motion are, in Empire's view, nothing more than substitute tariff sheets which should become effective on the same date as both the operation of law date and the effective date of the *Report and Order*, in this instance March 27, 2005.

the revised tariff sheets, however, and as reiterated more specifically herein, Empire requests that, for good cause, the compliance tariff sheets be made effective for service rendered on and after March 27, 2005.

4. The good cause for waiver of the “thirty day” rule pursuant to 4 CSR 240-2.015 and approval of the revised tariff sheets to be effective for electric service rendered on and after March 27, 2005, is, in part, Empire’s belief that the subject revised tariff sheets are in compliance with the Commission’s *Report and Order* herein. In this regard, Empire has worked with the Commission Staff, as well as other parties to this proceeding, in developing the revised tariff sheets, and, on information and belief, states that none of the parties have any objection to said revised tariff sheets. Further, the Staff should be able to file its recommendation to approve the revised tariff sheets in time to permit same to become effective for service rendered on and after March 27, 2005.

5. In addition, good cause for Empire’s request that the revised tariff sheets be permitted to be effective on March 27, 2005, is the fact that the request is consistent with the requirements of the law and long-standing Commission custom, practice and precedent, and not inconsistent with the purpose and intent of 4 CSR 240-3.145.

6. RSMo. Section 393.150.1 authorizes the Commission to suspend the effectiveness of rate schedules for a period of one hundred and twenty days beyond the proposed effective date. In addition, the Commission “. . . may, in its discretion, extend the time of suspension for a further period not exceeding six months.” Section 393.150.2. As a creature of statute, the Commission has only such powers as are expressly conferred by the statutes and those reasonably incidental thereto. *State ex rel. Kansas City Transit, Inc. v. Public Service Commission*, 406 S.W.2d 5 (1966). The Commission therefore has no authority to suspend the

effectiveness of rate schedules for a period longer than one hundred and twenty days plus six months beyond the proposed effective date.


7. Empire initiated this rate proceeding on April 30, 2004, by the filing of tariff sheets that bore a proposed effective date of May 30, 2004. The Commission suspended the effectiveness of those tariff sheets until March 27, 2005, the full suspension period permitted under the law. Accordingly, unless the Commission approves the revised tariff sheets filed by Empire to be effective on March 27, 2005, Section 393.150 will be violated.

8. The Commission itself has an extended history of acting in accordance with this interpretation of Section 393.150. *See In re Missouri Gas Energy*, Case No. GR-2004-0209, *Order Approving Tariff in Compliance with Commission Report and Order*, issued September 30, 2004; *see also In re Missouri Gas Energy*, Report and Order, Case No. GR-96-285, p. 81, issued January 22, 1997; *In re St. Louis County Water Company*, 4 MPSC 3d 94, 119 (1995); *In re Capital City Water Company*, 3 MPSC 3d 333, 349 (1995); *In re Missouri Public Service*, 2 MPSC 3d 206, 220 (1993); *In re Kansas Power & Light Company*, 1 MPSC 3d 235, 253 (1992); *In re St. Louis County Water Company*, 29 MPSC (N.S.) 425, 452 (1988). Empire therefore requests nothing more than compliance with the law and past Commission precedent and practice.

9. Should the Commission deny this motion and delay the effectiveness of the revised tariff sheets Empire has filed in compliance with the *Report and Order* beyond March 27, 2005 (the operation of law date pursuant to Section 393.150), Empire will be denied recovery of a certain portion of the rate relief to which the Commission has already found Empire to be entitled. This would be unlawful, unjust, unreasonable, confiscatory and, in Empire's opinion, a result not intended by the Commission.

WHEREFORE, Empire respectfully requests that the Commission grant this Motion for Expedited Consideration and Approval of Tariff Sheets Filed in Compliance with Commission Order on Less than Thirty Days' Notice and approve the revised tariff sheets Empire has filed this date to be effective for service rendered on and after March 27, 2005.

Respectfully submitted,



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ATTORNEYS FOR THE EMPIRE DISTRICT
ELECTRIC COMPANY

Certificate of Service

I hereby certify that the foregoing has been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record on the 17TH day of March, 2005.

