

**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)	<u>Case No. ER-2008-0093</u>
Rates for electric service provided to)	
Customers in the Missouri service area)	
Of the Company.)	

MOTION IN LIMINE

COMES NOW, Praxair, Inc. (“Praxair”), Explorer Pipeline, Inc. (“Explorer”), and General Mills, Inc. (collectively referred to as “Industrial Intervenors”) in support of their Motion In Limine and respectfully state as follows:

1. On October 1, 2007, the Empire District Electric Company (“Empire”) filed the pending rate increase. In support of its rate increase, Empire filed the direct testimony of James H. Vander Weide. In his direct testimony, Vander Weide recommends that the Commission authorize Empire to earn a return on equity of 11.6%.¹

2. In both recent Empire rate proceedings, the Commission has utilized the concept of a “zone of reasonableness” as applied to the return on equity recommendations.² As utilized by this Commission, the zone of reasonableness, defined as a 100 basis points above or below the industry average, is a tool by which the Commission can immediately judge the reasonableness of a witness’ return on equity recommendation. In fact, at least when it comes to considering the return on equity recommendation of non-utility parties, the Commission has utilized the tool in a hard and

¹ Direct Testimony of James H. Vander Weide at page 4.

² See, *Report and Order Upon Reconsideration*, Case No. ER-2006-0315, issued March 26, 2008 at pages 27-28; and *Report and Order*, Case No. ER-2004-0570, issued March 10, 2005, at page 25.

fast manner. “Because the return on equity recommended by DOE falls outside the ‘zone of reasonableness’, the Commission will discard it and find that it merits no further discussion.”³

4. As indicated, Vander Weide recommends a return on equity of 11.6%. The evidence indicates that the current industry average for return on equity is: (1) 10.36% for 2007 and (2) 10.32% for first quarter of 2008.⁴ Therefore, the zone of reasonableness in this case lies between 9.32% and 11.36%. Utilizing the rationale previously expressed by the Commission, “because the return on equity recommended by [Empire] falls outside the zone of reasonableness,” the Commission should “discard it and find that it merits no further discussion.”

WHEREFORE, the Industrial Intervenors respectfully request that the Commission issue its Order granting the attached Motion in Limine and rejecting the Direct Testimony of James H. Vander Weide on the basis that it falls outside the zone of reasonableness and therefore should be discarded and worthy of no further discussion.

³ *Report and Order*, Case No. ER-2006-0314, issued December 21, 2006 at pages 21-22.

⁴ Barnes Rebuttal Testimony, filed 4, 2008. See also, Gorman Direct Testimony, filed February 22, 2008.

Respectfully submitted,

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ATTORNEY FOR THE INDUSTRIAL
INTERVENORS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the forgoing 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: April 8, 2008