

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

The Staff of the Missouri Public	)	
Service Commission,	)	
	)	
Complainant	)	
v.	)	Case No. EC-2009-0078
	)	
The Empire District Electric Company,	)	
	)	
Respondent.	)	

**STIPULATION AND AGREEMENT**

This **STIPULATION AND AGREEMENT** is made and entered into this 14<sup>th</sup> day of January, 2009, between The Empire District Electric Company (Empire or Company), the Staff of the Missouri Public Service Commission (Staff), and the Office of the Public Counsel (Public Counsel).

**WITNESSETH:**

**WHEREAS**, as a result of negotiations, the undersigned parties have reached the agreements contained herein for the purpose of settling among the parties all issues previously identified in Missouri Public Service Commission Case No. EC-2009-0078.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises and benefits inuring to the parties hereto, Empire, Staff and Public Counsel hereby agree as follows:

1. Empire represents that it no longer provides any electric service at retail within the boundaries of The Lakes at Shuyler Ridge subdivision. All customers within this subdivision are now served by Ozark Electric Cooperative. Empire has no electric operations of any kind within the subdivision and is not owed any money from a developer, customer, or anyone else, under current tariffs.

2. Empire agrees to contribute: (1) \$80,000.00 to Project Help, as administered by Economic Security Corporation of Southwest Area (ESC) – Joplin, Missouri; and (2) \$20,000.00 to the Public School Fund of the State of Missouri.

(1). To effectuate the contribution of \$80,000.00 to Project Help Empire agrees to deliver to Missouri Public Service Commission, BFS, Attn: Helen Davis, MPSC, Budget and Fiscal Services Department, P.O. Box 360, Jeff City 65102, a check in the amount of \$80,000.00, from Shareholder funds, made payable to Project Help, as administered by Economic Security Corporation of Southwest Area (ESC) – Joplin, Missouri. Empire warrants that it will not place any restrictions, direct or implied, on how that money is used or distributed. Empire further warrants that this amount will be contributed in excess of any annual amount it customarily contributes to this or a similar program. Empire shall not seek to include in the revenue requirement used to determine rates, directly or indirectly, all or any part of this contribution from any of its retail customers.

(2). To effectuate the contribution of \$20,000.00 to the Public School Fund of the State of Missouri, Empire agrees to deliver to Missouri Public Service Commission, Attn: Helen Davis, MPSC, Budget and Fiscal Services Department, P.O. Box 360, Jeff City 65102, a check in the amount of \$20,000.00, from Shareholder funds, made payable to the Public School Fund of the State of Missouri. Empire shall not seek to include in the revenue requirement used to determine rates , directly or indirectly, all or any part of this contribution from any of its retail customers.

3. Empire agrees to deliver to the Staff the \$80,000.00 and \$20,000.00 checks, described above, within five business days of a Commission order approving this Stipulation and Agreement.

4. Staff agrees to file a dismissal of its pending complaint (Case No. EC-2009-0078) with prejudice within five business days of receiving the above-referenced checks, utilizing the form attached hereto as **Appendix A**. Empire and Public Counsel agree to execute this dismissal thereby providing their written consent. Upon dismissal, Staff may deliver the above-referenced checks to the appropriate entities. If, for some reason, the Complaint is not dismissed, Staff shall return the checks to Empire. The referenced dismissal would mean that Staff would be prohibited from re-filing the present complaint, or filing a new complaint against Empire or anyone acting on behalf of Empire, on the grounds contained in the Complaint filed in EC-2009-0078, or on similar grounds involving Empire's provision of service or Empire's activities involved with the provision of service in The Lakes at Shuyler Ridge subdivision. Additionally, the Staff agrees that it will not aid in the filing or prosecution of a complaint by anyone else on the same or similar grounds involving The Lakes at Shuyler Ridge subdivision unless specifically ordered to do so by the Commission.

5. Public Counsel agrees that it will not file a complaint, or aid in the filing or prosecution of a complaint by anyone else, on the same or similar grounds to those contained in the Complaint in EC-2009-0078 involving Empire's provision of service or activities involved with the provision of service by Empire in The Lakes at Shuyler Ridge subdivision.

6. No prior Empire investment in plant within Shuyler Ridge shall be included in rate base in any rate case.

7. This Stipulation and Agreement does not prohibit either Staff or Public Counsel from making proposed accounting-related adjustments in Empire rate cases based on, and limited to, actual expenditures made by Empire in regard to The Lakes at Shuyler Ridge, if those expenditures have a measurable impact in the test period in such a rate case. It does, however, prohibit proposed adjustments by either Staff or Public Counsel in rate cases on the basis of hypothetical revenues or proposed adjustments of a general punitive nature on the basis of Empire's prior activities involving The Lakes at Shuyler Ridge subdivision.

8. As a part of its obligations pursuant to this Stipulation and Agreement, Empire agrees to consult with the Staff at least thirty days prior to filing an application for variance from its tariff provisions, unless Empire and Staff mutually agree that such thirty day period may be shortened. Empire further commits to abide by its tariffs (electric and gas).

9. This Stipulation and Agreement is being entered into solely for the purpose of settling this above-captioned case. Except as otherwise explicitly provided herein, none of the parties to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any method of cost determination or cost allocation or revenue-related methodology. Other than as explicitly provided herein, none of the parties shall be prejudiced or bound in any manner by the terms of this Stipulation and Agreement in any other proceeding.

10. This Stipulation and Agreement has resulted from negotiations among the parties and the terms hereof are interdependent. If the Commission does not approve this Stipulation and Agreement without modification, then the Stipulation and Agreement as a whole and without modification shall be void and no Party shall be bound by any of the agreements or provisions herein, except as specifically provided herein.

11. This Stipulation and Agreement constitutes the entire agreement between the parties and supersedes all previous discussions and agreements, and this Stipulation and Agreement may not be modified by any party, except in writing executed by the party to be charged with the modification.

12. This Stipulation and Agreement does not constitute a contract with the Commission.

13. If the Commission has questions for the Parties, the Parties will make available, at any on-the-record session, their representative(s) and attorneys on the issues resolved by this Stipulation and Agreement, so long as all Parties have had adequate notice of that session. The Parties agree to cooperate in presenting this Stipulation and Agreement to the Commission for approval, and will take no action, direct or indirect, in opposition to the request for approval of this Stipulation and Agreement.

14. If the Commission does not unconditionally approve this Stipulation and Agreement without modification, and notwithstanding its provision that it shall become void, neither this Stipulation and Agreement, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any Party has for a decision in accordance with Section 536.080 RSMo 2000

or Article V, Section 18 of the Missouri Constitution, and the Parties shall retain all procedural and due process rights as fully as though this Stipulation and Agreement had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this Stipulation and Agreement shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

**IN WITNESS WHEREOF**, the parties have hereunto subscribed their names the day and year first above written and executed the agreement.



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L. Russell Mitten     MBE #27881  
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**ATTORNEYS FOR THE EMPIRE  
DISTRICT ELECTRIC COMPANY**

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**ATTORNEYS FOR THE STAFF OF  
THE MISSOURI PUBLIC SERVICE  
COMMISSION**

//S//

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THE PUBLIC COUNSEL**

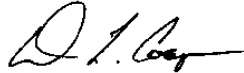
## CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on January 14, 2009, to the following:

Sarah Kliethermes  
Office of the General Counsel  
Governor Office Building  
Jefferson City, MO 65101  
[sarah.kliethermes@psc.mo.gov](mailto:sarah.kliethermes@psc.mo.gov)

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