

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE 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-2006-0315
retail electric service provided to customers)	
in its Missouri service area)	

**EMPIRE’S REPLY CONCERNING REPSONSES TO
MOTION FOR CLARIFICATION**

Comes now The Empire District Electric Company (Empire or the Company),
and, in reply to the responses to its Motion for Clarification, respectfully states as follows
to the Missouri Public Service Commission (Commission):

SUMMARY

The Commission has the authority to consider proposed tariff sheets to
determine whether those proposed tariff sheets should be approved and existing tariff
sheets should be replaced. This power cannot be limited by the parties. Similarly, a
public utility has the ability, in accordance with Section 393.140(11) and 393.150,
RSMo, to file tariff sheets with the Commission for consideration. This statutory process
cannot, and should not, be deemed limited by implication or inference. Parties have, in
the past, expressly described such moratoriums where they have been agreed to and
intended by the parties and approved by the Commission. Here, no such moratorium is
found in the pleading and, thus, none exists.

TABLE OF CONTENTS

SECTION	PAGE
BACKGROUND	2
MAY EMPIRE PROPOSE TO TERMINATE THE EXISTING IEC?	3
MAY THE COMMISSION TERMINATE THE EXISTING IEC?	7
MAY EMPIRE PROPOSE THE ADOPTION OF THE ECR?	9
STATEMENTS IN SEC FILINGS	10
AMORTIZATION IS NOT A SOLUTION	11

BACKGROUND

1. In its original filing in this case, Empire proposed to recover its fuel costs through its base rates. The Company further proposed that its existing interim energy charge (IEC) be terminated and an energy cost recovery rider (ECR), pursuant to Senate Bill 179, be implemented to allow for adjustments (up or down) to the charges for fuel and purchase power expense on a going-forward basis.

2. On March 24, 2006, after discussions with the Commission Staff (Staff) Empire filed a Motion for Clarification¹ concerning the relationship, if any, between the Nonunanimous Stipulation and Agreement approved by the Commission in Empire's last general rate case (Case No. ER-2006-0315) and the proposals the Company has made in this case in regard to fuel recovery.

¹ Praxair/Explorer challenge use of the word clarification ("to clear of confusion or uncertainty") in the title of Empire's Motion. A reading of the resulting responses would lead one to believe that there is at least confusion among the parties that needs to be cleared.

3. Responses to Empire's Motion were filed on April 24, 2006, by the Staff, the Office of the Public Counsel (Public Counsel), Praxair, Inc. and Explorer Pipeline Company (Explorer).²

4. Three primary questions are presented by the Motion and the various Responses –

- may Empire propose that the existing IEC be terminated prior to March 28, 2008;
- may the Commission terminate the existing IEC prior to March 28, 2008; and,
- may Empire propose that the Commission adopt the ECR pursuant to Senate Bill 179.

The responses, in general, range from the Public Counsel position that there is “clear evidence of [Empire’s] obligations” (Public Counsel Response, p. 3, para. 7) to the Staff’s statement that it “cannot say that the Stipulation and Agreement or other documents are conclusive as to the threshold question of whether or not Empire may seek early termination of the IEC” (Staff Response, p. 3, para. 6). Empire, similar to the Public Counsel, believes its obligations are clear. However, its view as to what those obligations are differs greatly.

MAY EMPIRE PROPOSE TO TERMINATE THE EXISTING IEC?

5. Both the Public Counsel and the Praxair/Explorer Responses attempt to interpret the Stipulation and Agreement to be a three year moratorium on changes in rates related to fuel recovery. These parties lean heavily on the fact that the IEC is

² Praxair and Explorer filed a joint response.

described as a three year IEC in both the Stipulation and Agreement and the resulting tariffs.

6. This approach ignores factors present both within the document itself and those known to the parties through their prior IEC interaction. First, it is important to note that the Stipulation and Agreement contains no prohibition against early termination of the IEC. The ability to propose tariff modifications is a right that is always available to a utility. Sections 393.140(11) and 393.150, RSMo form the basis for what has been called the “file and suspend” method of rate making. The Missouri Supreme Court has held that “these provisions mean that a public utility may by filing schedules suggest to the commission rates and classifications which it believes are just and reasonable, and, if the commission accepts them, they are authorized rates, but the commission alone can determine that question and make them a lawful charge.” *Jackson County, et al. v. Public Service Commission*, 532 S.W.2d 20, 28 (Mo. 1975), *citing May Department Stores Co. v. Union Electric Company*, 107 S.W.2d 41, ___ (Mo. 1937).

7. Thus, Praxair/Explorer is wrong to allege that an “early termination provision,” “early termination clause” or “premature termination provision” (Praxair/Explorer Response, p. 17, 22, para, 34, 41) must be found to support Empire’s proposed termination of the IEC. As a general proposition, if parties intend to impair a public utility’s right to utilize this statutory rate making process, they should expressly state as much. Without such an express waiver, a public utility can propose that any tariff be replaced the day after that tariff becomes effective. Accordingly, the burden in this matter is not on Empire to identify an express statement preserving its rights. The

burden is on opposing parties to identify an express limitation of those rights. No such limitation is found in the Stipulation and Agreement.

8. In the past, parties have been more than capable of describing a rate moratorium, when that is intended. An example of this can be found in the recent Aquila, Inc. electric rate case stipulation which states:

Aquila will not seek a general increase in the retail electric rates for its MPS or L&P operating divisions before July 1, 2006, unless there is the occurrence of a significant, unusual event that has a major impact on either or both of said operating divisions

9. This language represents a waiver of a right to propose revised tariffs relating to rates, with certain safeguards in the case of extraordinary events. Similar language can be found in many rate case stipulations that have been filed over the last several years. The cited language provides a level of certainty as to the length of time a rate may be in effect. No such language is present in the subject Stipulation and Agreement.

10. Empire is unfamiliar with any situation where a rate moratorium was found to have been “implied” by the language of an agreement. Nor can a rate moratorium be imposed by the Commission. See *Jackson County, et al. v. Public Service Commission*, 532 S.W.2d 20, 28 (Mo. 1975).

11. Second, the document expressly provides for the possibility of early termination. The Stipulation and Agreement clearly states that the IEC will “expire no later than . . . three (3) years after the original effective date,” “unless earlier terminated by order of the Commission.” (Nonunanimous Stipulation and Agreement Regarding

Fuel and Purchase Power Expense, Case No. ER-2004-0570, para. 1c, p. 4). An IEC required or bargained to last three years to guarantee stability would be described as expiring *no earlier than* three years.

12. Both Public Counsel and Praxair/Explorer indicate that the three year period of the IEC was extremely important to them. If this is the case, one must ask why there is no provision in the Stipulation stating as much. As experienced regulatory counsel, these parties would have all known that Empire could lawfully propose tariff sheets to replace existing rate tariff sheets at any time with the filing of a general rate case. It is with that knowledge that specific moratorium provisions are used when a moratorium is intended.

13. Again, if stability was important to those parties, the duration of the IEC would be described in terms of a minimum length of time. And yet, the Stipulation and Agreement actually describes the three year period as a maximum length of time. The Stipulation states that the IEC will “expire no later than . . . three (3) years after the original effective date.” (Nonunanimous Stipulation and Agreement Regarding Fuel and Purchase Power Expense, Case No. ER-2004-0570, para. 1c, p. 4) (emphasis added). Three years is clearly not designed to be a minimum, it is a maximum duration.

14. It is implied, if not expressly alleged, in the Public Counsel and Praxair/Explorer Responses that the parties believe Empire’s reaction would not be the same if it was over-recovering fuel costs under the IEC, rather than under-recovering those costs. However, the facts concerning Empire’s last IEC show otherwise.

15. As described in Staff’s Response, Empire was previously authorized an IEC in Case No. ER-2001-299. That IEC became effective on October 1, 2001, and

was a two year IEC. Report and Order, Case No. ER-2001-299 (September 20, 2001). After implementation of the IEC, a period of falling natural gas and purchased power prices ensued.

16. As a result, Empire entered into two agreements that were presented to the Commission. First, the Commission approved an immediate reduction of the IEC on June 4, 2002. Thereafter, the IEC itself was terminated by the Commission's approval of a stipulation effective December 1, 2002, only fourteen months after its implementation. Order Approving Tariffs Filed in Compliance with Commission Order, Case No. ER-2002-424 (November 22, 2002); Staff Response, p. 7, para. 13.

17. Staff states that with respect to the prior case, it “does not recall a question arising as to whether terminating the IEC was permissible.” Staff Response, p. 8, para 14. Empire likewise remembers no such dispute arising. In fact, the parties were more than happy to cooperate with an immediate (prior to the end of the IEC period) reduction in rates to reflect this termination. Now that the shoe is on the other foot, there is suddenly a difficulty with the concept of an early termination of an IEC. Empire's approach to this issue has been consistent in regard to natural gas markets that have both fallen and risen outside predictable bounds.

MAY THE COMMISSION TERMINATE THE EXISTING IEC?

18. In spite of Public Counsel's statement alleging that Empire is trying to “unilaterally override the terms of the Stipulation and Agreement” (Public Counsel Response, p. 6, para. 13) and Praxair/Explorer's statement concerning the prospect of the IEC being “unilaterally terminated” (Praxair/Explorer Response, p. 19, para. 38), there appears to be no question that the Commission, and only the Commission, has

the power to terminate the existing IEC. Section 393.140(11), RSMo (“The Commission shall have power to prescribe the form of every such schedule, and from time to time prescribe by order such changes in the form thereof as may be deemed wise.”).

19. Public Counsel and Staff both agree that the Commission has this power. Public Counsel states that “the Commission has the authority to terminate the IEC,” although it believes there is no reason for the Commission to do so. Public Counsel Response, p. 6, para. 14. The Staff makes this point very directly stating that “regardless of whether Empire may propose early termination under the Stipulation and Agreement, the Commission always retains the power to terminate the IEC, in the context of a general rate proceeding, before the expiration of its three-year term” (Staff Response, p. 4, para. 8).

20. Similarly, the Commission has the power to leave the existing IEC in place. Unless replaced, the tariffs are otherwise effective until March 28, 2008. Much of the Praxair/Explorer Response is actually argument related to what the Commission “should” do as opposed to what Empire may or may not “propose.” Praxair/Explorer spends much time addressing whether the risks associated with the IEC are fair and appropriate, whether Empire thought they were fair and appropriate at the time the IEC was implemented, Empire’s representations concerning the benefits of the IEC, and various other matters. These matters may be relevant to the Commission’s ultimate decision as to whether to accept Empire’s proposed tariff sheets, order Empire to file different tariff sheets or to leave the existing tariff sheets in place.

21. Similarly relevant to that decision should be the Public Counsel’s indication that Empire is currently under recovering or will under recover in regard to

fuel costs by “at least 19 million dollars annually,” an estimate the Public Counsel indicates is “conservative” (Public Counsel Response, p. 5, para. 10; p. 7, para. 15).

22. The Commission must have the power to review such situations. To view the Commission’s powers otherwise could potentially “prevent alteration of rates confiscatory to the company or unreasonable to the consumers.” *State ex rel. Jackson County v. Public Service Commission*, 532 S.W.2d 20, 30 (Mo.banc 1975). “[T]he very purpose of having the Commission is to have an agency with such expertise as to be sensitive to changing conditions.” *Id.*

MAY EMPIRE PROPOSE THE ADOPTION OF THE ECR?

23. One specific provision of the Nonunanimous Stipulation and Agreement is relevant to the question of whether Empire may propose the adoption of its ECR in this case. That provision states that “for the duration of the IEC” ... Empire will “forego any right it may have to request the use of, or to use, any other procedure or remedy, available under current Missouri statute or subsequently enacted Missouri statute, in the form of a fuel adjustment clause, a natural gas cost recovery mechanism, or any other energy related adjustment mechanism to which the Company would otherwise be entitled.” (See Nonunanimous Stipulation and Agreement Regarding Fuel and Purchase Power Expense, Case No. ER-2004-0570, para. 4, pgs. 12-13) (emphasis added).

24. Empire believes that the plain intent of this agreement is to prohibit the Company from having an energy related adjustment mechanism in place in addition to the IEC (a fixed rate surcharge).

25. Empire’s proposal in this case is consistent with such an interpretation. The Company’s proposed ECR would only be implemented after the termination of the

IEC. Empire agrees with the Staff's statement that "if the Commission decides that the IEC must or shall continue . . . [Empire] may not seek implementation of an ECR in this case" (Staff Response, p. 3, para. 5). Thus, nothing about Empire's proposal seeks a fuel adjustment clause while the IEC is in effect.

STATEMENTS IN SEC FILINGS

26. Praxair/Explorer makes much of statements made by Empire in a variety of Securities and Exchange Commission (SEC) filings related to the IEC. What these filings show very clearly is that Empire hoped and intended that the IEC would run its three year course. Absent from the statements recited by Praxair/Explorer is any indication that the IEC could not be terminated prior to the end of the three year period.

27. The best way to examine Empire's consistency in this regard is to look at the filings made by Empire during the term of its previous IEC. Empire's 10-K for the fiscal year ended December 31, 2002 (**Appendix A**), described the IEC in effect at that time as follows:

In addition, the order approved an annual Interim Energy Charge, or IEC, of approximately \$19.6 million effective October 1, 2001 and expiring two years later.

28. This description of the earlier IEC is strikingly similar to that which concerns the Case No. ER-2004-424 IEC. This is significant because the IEC that was said to expire "two years later" was, in fact, terminated early. The same Form 10-K that says the IEC was designed to be in place for two years also describes its early termination.

29. On the other hand, when Empire believes it does not have the ability to make a change, it describes that situation very clearly in its SEC filings. Examples of this can be found in both Empire's Form 10-K referenced above and in its Form 10-Q concerning the quarterly period ended June 30, 2002. In the Form 10-K, Empire describes the contents of a Stipulation and Agreement filed with the Commission on October 29, 2002, in part, by stating that "each of parties to the Agreement also agreed not to file a new request for a general rate increase or decrease before September 1, 2003, barring any unforeseen, extraordinary occurrences" (**Appendix A**). In the Form 10-Q, Empire describes an agreement approved by the Kansas Corporation Commission as stating that Empire "will not file for general rate relief before November 1, 2003 barring unforeseen, extraordinary occurrences" (**Appendix B**).

30. A review of Empire's SEC filings in regard to its prior IEC and a review of Empire's SEC filings in regard to situations where Empire believed its right to make a future filing has been limited by a prior stipulation and agreement, shows that Empire never waived its right to seek a rate change that would put the IEC into play, if it became necessary.

AMORTIZATION IS NOT A SOLUTION

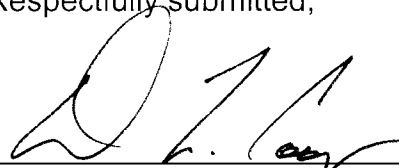
31. Both the Staff and Praxair/Explorer responses refer to the possibility that if Empire is under-recovering its fuel costs, and if as a result its cash flows are falling below certain benchmarks, Empire may seek ratemaking recognition of this condition through the amortization mechanism provided for in its approved regulatory plan (Case No. EO-2005-0263) (Staff Response, p. 8-9, para. 16; Praxair/Explorer Response, p. 27-28, para 50-51).

32. The raising of this alleged “possibility” is a mere diversion intended to distract the Commission from the real issues before it. The amortization referenced by these parties is not designed to provide recovery of ongoing operation expenses. It is designed to provide additional cash flow to address cash needs (and the impact of those cash needs on investment ratings) during the period of construction related to Iatan 2. Furthermore, there is no construction underway at this time and Empire currently has no cash needs associated with Iatan 2. In fact, at this point in time, Empire has not yet even executed an agreement to become a partner in Iatan 2. The Stipulation and Agreement in Case No. EO-2005-0263 states that it will become “null and void,” if Empire does not become a partner with KCPL for an ownership interest in the Iatan 2 plant. Moreover, utilizing the amortization in this situation would be extremely unreasonable and unfair. Essentially, it would fund ongoing operating expenses (fuel costs), through a reduction in the Company’s future rate base. Thus, earnings would be impacted negatively both now and in the future.

33. Additionally, it is not clear that the cited amortization provisions are even applicable to this situation. The Stipulation states in part that “Empire will not argue for or receive increased cash flows from its Missouri regulated electric operations needed to meet the financial ratio targets . . . to the extent caused by . . . any costs not included in Empire’s Missouri jurisdictional electric revenue requirement by the Commission” (EO-2005-0263, Stipulation and Agreement, p. 14). The amortization “suggested” by the Staff and Praxair/Explorer would only be necessary because of a failure to include Empire’s fuel costs in its revenue requirement. Thus, it does not appear to be applicable to the situation at hand.

WHEREFORE, in view of the foregoing Empire moves the Commission to issue its order clarifying that Empire may seek to terminate its existing IEC and implement an ECR in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. C. Swearngen', is written over a horizontal line.

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered, on this 1st day of May, 2006, to:

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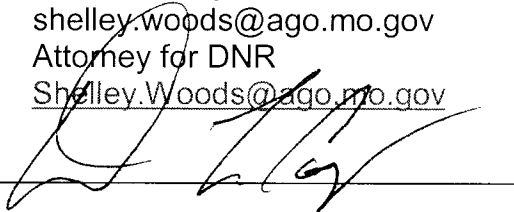
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UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K

(Mark One)

- ☒ Annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the fiscal year ended December 31, 2002 or
- ☐ Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the transition period from _____ to _____

Commission file number: 1-3368

THE EMPIRE DISTRICT ELECTRIC COMPANY

(Exact name of registrant as specified in its charter)

Kansas
(State of Incorporation)

44-0236370
(I.R.S. Employer Identification No.)

602 Joplin Street, Joplin, Missouri
(Address of principal executive offices)

64801
(zip code)

Registrant's telephone number: (417) 625-5100

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock (\$1 par value)	New York Stock Exchange
Preference Stock Purchase Rights	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [☐]

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes ☒ No ☐

The aggregate market value of the registrant's voting common stock held by nonaffiliates of the registrant, based on the closing price on the New York Stock Exchange on June 28, 2002, was approximately \$459,862,868.

As of January 31, 2003, 22,595,071 shares of common stock were outstanding.

The following documents have been incorporated by reference into the parts of the Form 10-K as indicated:

The Company's proxy statement, filed pursuant to Regulation 14A under the Securities Exchange Act of 1934, for its 2002 Annual Meeting of Stockholders to be held on April 24, 2003.

Part of Item 10 of Part III
All of Item 11 of Part III
Part of Item 12 of Part III
All of Item 13 of Part III

Our future revenues from the sale of electricity will continue to be affected by economic conditions, weather, business activities, competition, fuel costs, changes in electric rate levels, customer growth and changes in patterns of electric energy use by customers and our ability to receive adequate and timely rate relief.

Rate Matters

The following table sets forth information regarding electric and water rate increases affecting the revenue comparisons discussed above:

Jurisdiction	Date Requested	Annual Increase Requested	Annual Increase Granted	Percent Increase Granted	Date Effective
Missouri - Electric	11-03-00	\$ 41,467,926	\$ 17,100,000	8.40%	10-02-01
Missouri - Electric	03-08-02	19,779,916	11,000,000	4.97%	12-01-02
Missouri - Water	05-15-02	361,000	358,000	33.70%	12-23-02
Kansas - Electric	12-28-01	3,239,744	2,539,000	17.87%	07-01-02

On November 3, 2000, we filed a request with the Missouri Commission for a general annual increase in base rates for our Missouri electric customers in the amount of \$41,467,926, or 19.36%. The Missouri Commission issued a final order on September 20, 2001 granting us an annual increase in rates of approximately \$17.1 million, or 8.4%, effective October 2, 2001. In addition, the order approved an annual Interim Energy Charge, or IEC, of approximately \$19.6 million effective October 1, 2001 and expiring two years later. This IEC was collected subject to refund (with interest) at the end of the two year period to the extent money was collected from customers above the greater of the actual and prudently incurred costs or the base cost of fuel and purchased power set in rates.

On March 8, 2002, we filed a request with the Missouri Commission for an annual increase in base rates for our Missouri electric customers in the amount of \$19,779,916 and also asked to have the IEC put into effect in the last rate case reconfigured to reflect a decrease of \$9,994,888 in the amount to be billed to customers. The reconfigured IEC would remain subject to refund with interest. This request sought to recover new operating costs and obligations and reflect the changes in our capital structure since the rate increase in October 2001. Also on March 8, 2002, we filed an interim rate case for an annual increase in base rates of \$3,562,983, the amount that was erroneously omitted from the increase granted in our 2001 rate case. The Missouri Commission rejected the interim request. After extensive negotiations with the Missouri Commission staff, Office of Public Counsel and other intervening parties, we filed a Unanimous Stipulation and Agreement Regarding "Error" in the 2001 rate case and an Immediate Reduction of the IEC with the Missouri Commission on May 14, 2002. This agreement was approved by the Missouri Commission on June 4, 2002 and provided for a \$7 million annual reduction in the IEC.

On October 29, 2002, we filed a Unanimous Stipulation and Agreement, agreed to by the Missouri Commission staff, Office of Public Counsel and other intervening parties, with the Missouri Commission. This Agreement was approved by the Missouri Commission on November 22, 2002 and settled all matters covered by our March 2002 filings, provided us with an annual increase in rates of approximately \$11.0 million, or 4.97%, effective December 1, 2002 and eliminated the IEC as of that date. The Agreement also calls for us to refund all funds collected under the IEC, with interest, by March 15, 2003.

At December 31, 2002, we had recorded a current liability of approximately \$18.7 million for such rate refunds. We collected \$2.8 million in 2001 and recorded \$0.75 million as revenue. We collected \$15.9 million in 2002 and recorded a revenue reduction of (\$0.75) million associated with the revenue recognized in 2001 because it became certain that the entire amount of IEC revenues collected would be refunded. As a result, we have recognized no revenue in the aggregate for combined 2001 and 2002 associated with the IEC collections. The remainder of the funds collected in 2001 and 2002 were set aside as a provision for rate refunds and not recognized in operating revenue. As a result of the non-recognition of these funds, the refunds have already been reflected in our results (except for \$0.3 million of interest) and will have no material impact on our earnings in 2003. The Agreement also provided for a change to the summer/winter rate differential for our residential customers with the new rates reflecting a smaller differential between summer and winter rates for usage above 600 kilowatt hours. Each of the parties to the Agreement also agreed not to file a new request

for a general rate increase or decrease before September 1, 2003, barring any unforeseen, extraordinary occurrences.

On May 15, 2002, we filed a request with the Missouri Commission for an annual increase in base rates for our Missouri water customers in the amount of approximately \$361,000, or 33.9%. This was the first requested increase in rates for our water customers since 1994. On November 7, 2002, we filed an Agreement Regarding Disposition of a Small Company Rate Increase Request, agreed to by the Commission staff, with the Missouri Commission. This agreement was approved by the Missouri Commission effective December 23, 2002 and provides us with an annual increase in rates of approximately \$358,000, or 33.7%.

On December 28, 2001, we filed a request with the Kansas Corporation Commission (KCC) for an annual increase in base rates for our Kansas electric customers in the amount of \$3,239,744, or 22.81%. This request sought to recover costs associated with our investment in State Line Unit No. 1, State Line Unit No. 2 and the State Line Combined Cycle Unit (SLCC), as well as significant additions to our transmission and distribution systems and operating cost increases which had occurred since our last rate increase in September 1994. We also requested reinstatement of a fuel adjustment clause for our Kansas rates. We filed a Unanimous Stipulation and Agreement, agreed to by the KCC staff and all intervening parties, with the KCC on June 7, 2002. The agreement stipulates that we will not file for general rate relief before November 1, 2003 barring any unforeseen, extraordinary occurrences. This agreement was approved by the KCC on June 27, 2002 providing us an annual increase in rates of approximately \$2,539,000, or 17.87%, effective July 1, 2002. It did not provide for the reinstatement of a fuel adjustment clause.

On March 4, 2003, we filed a request with the Oklahoma Corporation Commission for an annual increase in base rates for our Oklahoma electric customers in the amount of \$954,540, or 12.97%.

We are currently discussing an increase in rates with our on-system wholesale electric customers, and will make a FERC rate filing in 2003.

We will continue to assess the need for rate relief in all of the jurisdictions we serve and file for such relief when necessary.

Off-System Transactions

In addition to sales to our own customers, we sell power to other utilities as available and provide transmission service through our system for transactions between other energy suppliers. During 2002 revenues from such off-system transactions were approximately \$25.4 million as compared to approximately \$7.5 million in 2001 and approximately \$10.6 million during 2000. The increase in revenues during 2002 resulted primarily from the availability of competitively priced power from our SLCC which was placed in service in June 2001 and term purchases of firm energy during 2002 which, when not required to meet our own customers' needs, could be sold in the wholesale market. Revenues for 2001 were less than for 2000 primarily because of our peak hour market-based rates being substantially lower during the summer months of 2001 than in 2000 and milder regional weather conditions in the fourth quarter of 2001 affecting demand. See "Competition" below.

Operating Revenue Deductions

During 2002, total operating expenses increased approximately \$11.8 million (7.4%) compared to the prior year. Total purchased power costs increased by approximately \$0.4 million (0.6%) during 2002 although the amount of power purchased increased 20%, reflecting increased demand in the second and third quarters of 2002 and the term purchases of firm energy previously discussed. Purchased power costs reflected lower purchased power prices in 2002 than in 2001. Total fuel costs decreased approximately \$5.5 million (9.8%) during 2002 as compared to 2001 primarily reflecting lower natural gas prices in 2002 as well as less generation by our gas-fired units due in large part to the term purchases of firm energy. Natural gas costs (on a per MMBtu basis) were lower by 30.5% during 2002 than in 2001. This is a result of a combination of lower commodity prices during 2002 and our natural gas procurement program.

Expenses relating to the proposed merger with Aquila, Inc., formerly UtiliCorp United Inc. (which was terminated by UtiliCorp on January 2, 2001) were \$1.5 million during 2002 as compared to \$1.4 million in 2001. Expenses related to the terminated merger in both 2002 and 2001 were primarily the result of expenses related to severance benefits incurred under our Change in Control Severance Pay Plan in the first quarters of those years. See Note 2 to "Notes to Financial Statements" for more information on the terminated merger. Other operating expenses increased approximately \$6.3 million (17.3%) during 2002 primarily due to

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
WASHINGTON, D.C. 20549

FORM 10-Q

(Mark One)

- ☒ Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the quarterly period ended June 30, 2002 or
- ☐ Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the transition period from _____ to _____

Commission file number: 1-3368

THE EMPIRE DISTRICT ELECTRIC COMPANY

(Exact name of registrant as specified in its charter)

Kansas
(State of Incorporation)

44-0236370
(I.R.S. Employer Identification No.)

602 Joplin Street, Joplin, Missouri
(Address of principal executive offices)

64801
(zip code)

Registrant's telephone number: (417) 625-5100

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Common stock outstanding as of August 1, 2002: 22,445,591 shares.

Commercial revenues increased during the second quarter of 2002 reflecting the October 2001 Missouri rate increase discussed below.

During the second quarter of 2002, industrial Kwh sales and related revenue grew due to an increase in April sales as compared to the prior year and to the Missouri rate increase.

On-system wholesale Kwh sales increased during the second quarter of 2002 reflecting the temperatures discussed above while revenues associated with these sales increased less as a result of the operation of the fuel adjustment clause applicable to these FERC regulated sales. This clause permits the pass through to customers of changes in fuel and purchased power costs.

Six Months Ended June 30, 2002. For the six months ended June 30, 2002, Kwh sales to our residential and commercial customers decreased, reflecting milder temperatures during the first quarter of 2002 as compared to unusually cold temperatures during the same period of 2001. Residential and commercial revenues increased during the second quarter of 2002 reflecting the Missouri rate increase. Industrial Kwh sales decreased slightly reflecting a general slowdown in economic activity while related revenues increased due to the positive effect of the Missouri rate increase. On-system wholesale Kwh sales and revenues decreased reflecting the milder temperatures and economic slowdown described above. Revenues associated with these sales decreased more than the corresponding Kwh sales as a result of the operation of the fuel adjustment clause.

Twelve Months Ended June 30, 2002. For the twelve months ended June 30, 2002, residential and commercial Kwh sales decreased, reflecting mild temperatures during the third and fourth quarters of 2001 as well as the first quarter of 2002. Residential and commercial revenues increased during this period due to the Missouri rate increase. Industrial sales decreased during the twelve-month period reflecting a general slowdown in economic activity. Revenues increased reflecting the Missouri rate increase. On-system wholesale Kwh sales decreased during the twelve-month period reflecting the mild temperatures and general economic slowdown discussed above. Revenues associated with these sales increased as a result of the operation of the fuel adjustment clause applicable to these FERC regulated sales.

Rate Matters

On November 3, 2000, we filed a request with the Missouri Public Service Commission for a general annual increase in rates for our Missouri electric customers in the amount of \$41,467,926, or 19.36%. The Missouri Commission issued a final order on September 20, 2001 granting us an annual increase in rates of approximately \$17.1 million, or 8.4%, effective October 2, 2001. In addition, the order approved an annual IEC of approximately \$19.6 million effective October 1, 2001 and expiring two years later. This IEC was \$0.0054 per kilowatt hour of customer usage before being reconfigured (see below) and is being collected subject to refund at the end of the two year period to the extent money is collected from customers above the greater of the actual and prudently incurred costs or the base cost of fuel and purchased power set in rates. Any excess money collected will be refunded to customers with interest equal to the current prime rate at that time.

On March 8, 2002, we filed a request with the Missouri Public Service Commission for an annual increase in base rates for our Missouri electric customers in the amount of \$19,779,916 and also asked to have the IEC that was granted in the last rate case reconfigured to reflect a decrease of \$9,994,888 in the amount billed to customers. The reconfigured IEC would remain subject to refund with interest. This request seeks to recover new operating costs and obligations and reflects the changes in our capital structure since the rate increase in October 2001. A hearing is set to begin on October 28, 2002. Any rate increase approved as a result of the filing would not become effective until early 2003. We cannot predict the amount or timing of any increase that might be granted as a result of this filing.

Also on March 8, 2002, we filed an interim rate case for an annual increase in base rates of \$562,983, the amount that was erroneously omitted from the increase granted in our previous permanent rate case (Case No. ER-2001-299). The Missouri Commission rejected the interim request. After extensive negotiations with the Missouri Commission staff, Office of Public Counsel and other intervening parties, we filed a Unanimous Stipulation and Agreement Regarding "Error" in Case No. ER-2001-299 and an Immediate Reduction of the Interim Energy Charge with the Missouri Commission on May 14, 2002. This agreement was approved by the Missouri Commission on June 4, 2002 and provides for a \$7 million annual reduction in the IEC. In addition, this agreement sets out a framework for the recovery of off-system sales exposure in the IEC, which will provide the opportunity for us to recover the \$3,562,983 million in off-system sales expenses previously omitted from our prior rate case. As a result of the stipulation, we are able to recognize as revenue amounts formerly required to be reserved for refund.

At June 30, 2002, we had recorded a liability of approximately \$12.1 million of the IEC collected in the fourth quarter of 2001 and the first and second quarters of 2002 as a provision for rate refunds and are not recognizing that revenue in total electric operating revenue. In an effort to manage our fuel costs, we utilize forward physical contracts and financial instruments to manage our gas commodity market risk. As of July 29, 2002, 100% of our anticipated volume of natural gas usage for the remainder of year 2002 is hedged at an average price of \$2.54 per Dekatherm (Dth), down from the \$2.93 per Dth reported in our Annual Report on Form 10-K for the year ended December 31, 2001 under Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations - Operating Revenues and Kilowatt-Hour Sales." This change in our average hedged price was partially due to lower average hedged prices for the last six months of 2002 than during the first six months of 2002 and partially due to term purchases of firm energy that displaced our generation, causing us to be overbought on natural gas. As a result, we sold futures contracts at relatively high market prices, which helped lower our financial position. In addition, approximately 68% of our anticipated volume of natural gas usage for the year 2003 is hedged at an average price of \$3.32 per Dth.

On December 28, 2001, we filed a request with the Kansas Corporation Commission (KCC) for an annual increase in base rates for our Kansas electric customers in the amount of \$3,239,744, or 22.81%. This request sought to recover costs associated with our investment in State Line Unit No. 1, State Line Unit No. 2 and the State Line Combined Cycle Unit as well as significant additions to our transmission and distribution systems and operating cost increases which had occurred since our last rate increase in September 1994. We also requested reinstatement of a fuel adjustment clause for our Kansas rates. We filed a Unanimous Stipulation and Agreement, agreed to by the KCC staff and all intervening parties, with the KCC on June 7, 2002. The agreement stipulates that we will not file for general rate relief before November 1, 2003 barring any unforeseen, extraordinary occurrences. This agreement was approved by the KCC on June 27, 2002 providing us an annual increase in rates of approximately \$2,539,000, or 17.87%, effective July 1, 2002 and excludes the reinstatement of a fuel adjustment clause.

On May 15, 2002, we filed a request with the Missouri Public Service Commission for an annual increase in base rates for our Missouri water customers in the amount of approximately \$361,000, or 33.9%. This is the first requested increase in rates for our water customers since 1994. We had previously announced plans to sell our water facilities but have discontinued efforts to do so.