

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

In the Matter of the Application of	)	
The Empire District Electric Company	)	
for Authority to Transfer Functional Control	)	Case No. EO-2006-0141
of Certain Transmission Assets to the	)	
Southwest Power Pool, Inc.	)	

**MOTION FOR CLARIFICATION**

COME NOW the Staff of the Missouri Public Service Commission (Staff); The Empire District Electric Company (Empire), Kansas City Power & Light Company (KCPL); and, Southwest Power Pool, Inc. (SPP) (collectively, the Signatories), and state as follows to the Missouri Public Service Commission (Commission) as their Motion for Clarification:

1. On June 13, 2006, the Commission issued its Order Approving Stipulation and Agreement (the Order) in this case (effective June 23, 2006). The Order approved a Stipulation and Agreement (Stipulation) that was filed with the Commission on February 24, 2006.

2. The Signatories seek to clarify certain matters that were addressed in the Order and may not be completely consistent with the Signatories' understanding of their own Stipulation. The Signatories labored over the language of the Stipulation because the nuances of the words are not insignificant and on certain items not all of the Signatories had identical positions. The Signatories do not believe that these matters substantially change the bases of the decision. Rather, the Signatories' only interest is attempting to keep the record consistent to the extent possible. Even if the Commission chooses not to issue an Order of Clarification, the Staff, Empire, KCPL and SPP believe that the record of this proceeding will be best served by their filing this pleading.

3. These matters are as follows:

a. On page 2, the Order states that the Signatories "agreed on the following" and then lists a number of matters. It is not strictly correct that all of the Signatories agreed on those matters in the Stipulation. The statement would be more accurate if changed to say that the Signatories (or the Stipulation and Agreement) "addressed the following:"

b. The first sentence of page 4 concerning the trigger provision that will bring about a re-examination of the authority is not completely accurate in that it refers only to "cost of administration" and "participation in the market." It would be more accurate to substitute the following: "Additionally, if the cost of administration of non-market functions increases by more than 25% or the load of the SPP membership decreases by more than 25%, EDE will file a pleading with the Commission to address the merits of continued participation."

c.

i. The first paragraph of the "Commission Jurisdiction" section of the Order (p. 5) contains a description of the function of the Service Agreement, based on the Staff's Memorandum in Support of the Stipulation, that may exceed some Signatories' understanding of legal certainty. Specifically, Empire, KCPL and SPP believe that it may overstate the untested legal effect of the Service Agreement on FERC's jurisdiction for one or more of the Signatories to imply that it or they can definitively indicate that the Service Agreement "retains" the ratemaking authority of the Commission or that the Service Agreement definitively "prevents" transfer of ratemaking to FERC-determined SPP rates. Empire, KCPL and SPP believe that perhaps it would be most accurate to use the following description found in the Stipulation: "Empire, Staff and Public Counsel agree and SPP acknowledges that the Service Agreement's primary function is to ensure

that the MoPSC continues to set the transmission component of Empire's rates to serve its Missouri Bundled Retail Load."

ii. The last sentence of the first paragraph of the "Commission Jurisdiction" section of the Order (p. 5) appears to describe a provision of the Stipulation that is not part of the Service Agreement approval process. The right of Signatories to file a pleading within ninety (90) days stating whether the Commission should rescind or maintain its approval of Empire's participation in the SPP relates to "Unanticipated FERC Actions" apart from FERC's treatment of the Service Agreement. This provision is found at Section IIC of the Stipulation. In regard to the Service Agreement, anything other than unconditional acceptance by the FERC will require a second Commission order to address the result of the FERC approval process.

d. The third sentence in the "On-the-Record Presentation" section may be somewhat overly broad ("With regard to 'requirements' customers, the contracts under which those customers are operating would not be disturbed during the duration of the contract."). This is a representation that was not made by all Signatories. Specifically, Empire and KCPL indicated that they did not anticipate "any renegotiation of any charges associated with SPP with the [full requirements] customers, unless the contract is expiring." (Tr. 93).

e. On page 6 in the Conclusion section, the Order states that the Commission "... finds that the proposed transfer of EDE's assets to the SPP is not detrimental to the public interest . . . ." The Signatories believe that the statement would be more accurate if it stated "... finds that the transfer of functional control of EDE's assets . . . .", as no assets are being

transferred. Empire will maintain ownership of the subject assets. The Commission's ordered paragraph 2 is accurate in this regard.

f. On page 6 in the Conclusion section, the Order states that “. . . the parties have agreed that Empire's participation with the SPP is for a duration of up to seven years.” The Signatories believe that, depending upon what events may transpire, Empire's participation may not be limited to seven years (*See* Section IIA(1) (“If the MoPSC does not issue an order to terminate or extend its interim approval prior to the end of the Interim Period, approval of such participation shall no longer be deemed to be interim.”)). Additionally, there is some difference between what Empire, the Staff and the Public Counsel have agreed to and what SPP has agreed to (i.e. Empire, Staff and Public Counsel have agreed to conditional approval on an interim basis, while all Signatories agree that the decision to participate on an interim and conditional basis is prudent and reasonable; Section IIA(1)). The Signatories suggest that the subject statement would be more accurate if it said that “The Commission points out that ~~the parties have agreed that~~ Empire's participation with the SPP is for an initial period of a duration of up to seven years.”

g. On page 6 in the Conclusion section, the Order states “Also the parties have acknowledged and agreed that, prior to the end of the Interim Period, the Missouri Public Service Commission has the jurisdiction to terminate, modify or further condition Empire's participation with the SPP.” This issue was the subject of some discussion during the negotiation of the Stipulation and the Commission's description varies somewhat from what the Signatories were able to agree to and acknowledge. The Stipulation uses the following language in three places (Section IIA(2)(d), p. 5; Section IIA(2)(e), p. 6-7; and, Section IID(1), p. 14-15):

Empire, Staff, and Public Counsel acknowledge that, 1) prior to the end of the Interim Period, the MoPSC has the jurisdiction to order that Empire's approval for participation in SPP be terminated, modified, or further conditioned; and 2) if the MOPSC rescinds its approval of Empire[']s participation in SPP, it has the jurisdiction to require Empire to timely initiate any notices, filings, and actions necessary to seek withdrawal. SPP acknowledges that there is a possibility that the MoPSC could issue such an order to Empire.

The language of the Stipulation was intended to recognize that like the approval process, termination of SPP membership contains approval and notification requirements beyond the Missouri Commission. The use of statement "1)" above would more closely capture what the Signatories have acknowledged – "Empire, Staff, and Public Counsel acknowledge that prior to the end of the Interim Period, the MoPSC has the jurisdiction to order that Empire's approval for participation in SPP be terminated, modified, or further conditioned."

h. In ordering paragraphs 3, 4 and 5, on page 7 of the Order, the Commission authorizes SPP to take certain actions and to comply with the Stipulation. Since the underlying Application was filed by Empire, the regulated entity, the Order should merely authorize and direct Empire to take action. SPP filed an Application To Intervene and was granted intervenor status in this case.

WHEREFORE, the Signatories respectfully request the Commission consider this motion for clarification and thereafter clarify its order as described herein.

Respectfully submitted,

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//S// Dean L. Cooper

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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 electronic mail on this 22<sup>nd</sup> day of June, 2006, to the Parties of record as shown by the Commission's records.

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//S// Dean L. Cooper