

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Empire District Electric Company's)
Application for Authority to File Tariffs Increasing)
Electric Rates for the Service Provided) Case No. ER-2006-0315
to Customers)

MISSOURI DEPARTMENT OF
NATURAL RESOURCES
PRE-HEARING BRIEF

Pursuant to the Commission's Order, the Missouri Department of Natural Resources (MDNR) submits this pre-hearing brief in the above-styled case. As directed by the Commission, the MDNR is structuring this brief to address the List of Issues filed by Staff August 28, 2006.

Issue No. 1. Return on Common Equity. What return on common equity should be used for determining Empire's rate of return?

The MDNR does not have a position on Issue No. 1.

Issue No. 2. Capital Structure. What capital structure should be used for determining Empire's rate of return?

(1) Should the unamortized expenses and discounts be reduced from the total principal amount of long-term debt and trust preferred stock outstanding for determining Empire's capital structure for ratemaking purposes?

The MDNR does not have a position on Issue No. 2.

Issue No. 3. Off-system Sales. What amount should be included in Empire's

revenue requirement for off-system sales?

The MDNR does not have a position on Issue No. 3.

Issue No. 4. Regulatory Plan Amortizations. Should Empire's revenue requirement include regulatory plan amortizations? If so, (i) how should Empire's off-balance sheet obligations be valued for purposes of the amortizations and (ii) should the amortized amount be subject to an income tax gross-up?

The MDNR does not have a position on Issue No. 4.

Issue No. 5. Fuel and Purchased Power Expense. What is the appropriate level of on-system fuel and purchased power expense Empire should be allowed to recover in rates?

The MDNR does not have a position on Issue No. 5.

Issue No. 6. Fuel and Purchased Power Expense Recovery Method. What method should be used for recovery by Empire of its fuel and purchased power expense?

alternatively,

IEC Continuation. Should the Commission continue to enforce the 3-year term of the Interim Energy Clause that was approved by the Commission in Case No. ER-2004-0570?

(1) Is the Commission barred from terminating the Interim Energy Clause by Section 386.266.8?

(2) Relying upon the four corners of the Stipulation and Agreement, are the

terms of the IEC ambiguous?

(3) In the event that the Stipulation and Agreement is found to be ambiguous, does Empire's actions demonstrate its belief that it was bound to a 3-year term?

(i) What is the practical construction that Empire has given to the agreement?

(ii) What is the burden of proof of ambiguity and on whom does it rest?

(iii) What is the significance of a burden of proof?

(4) Has Empire properly applied to terminate the Interim Energy Clause approved by the Commission in Case No. ER-2004-0570?

(5) What standard should the Commission apply in deciding whether to prematurely terminate the IEC?

(6) What would be the extent of Empire's financial harm if it were bound to the remaining term of the IEC?

(i) What is the comparative financial harm that would be experienced by the ratepayers if the Stipulation and Agreement were prematurely terminated?

(7) In the event that Empire is permitted to prematurely terminate the Interim Energy Clause, what amount of revenues collected by Empire under the IEC should be refunded to customers?

The MDNR does not have a position on Issue No. 6.

Issue No. 7. Gain from unwinding forward natural gas contract. Should Empire's gain from unwinding a forward natural gas contract during the test year offset test year fuel and purchased power expense? If so, should the entire gain be an offset in the test year, or should it be amortized and only a portion of the gain be applied as an offset in the test year?

The MDNR does not have a position on Issue No. 7.

Issue No. 8. Incentive Compensation. Are all the costs of Empire's incentive compensation plan an expense Empire should recover from Empire's ratepayers? If not, what costs should be recovered?

The MDNR does not have a position on Issue No. 8.

Issue No. 9. Low-Income Assistance Program. Should Empire's Experimental Low-Income Program (ELIP) be continued with changes? If so, what should those changes be, should the Customer Program Collaborative (CPC0 determine those changes and have oversight responsibility respecting the program, and how should the cost of the program be included in Empire's cost-of-service for collection from ratepayers? What should be done with unspent ELIP funds?

The MDNR has no position on this issue.

Issue No. 10. Unspent Funding of Current Energy Efficiency and Affordability Programs. What should be done with the unspent funds from the current energy

efficiency and low-income weatherization programs. What should be the amortization amount respecting the demand-site management (DSM) regulatory account?

The MDNR's position on this issue is that the Commission should direct that the CPC address implementation of the current energy efficiency and affordability programs and that the unspent funds become part of the Regulatory Plan developed as part of Case No. E)-2005-0386. However, the MDNR again lacks the necessary expertise to suggest the precise mechanism for accomplishing that reconciliation and will rely on OPC and Staff's expertise in this area. Please see testimony of Brenda Wilbers, pp. 6-8. Empire witnesses Todd Tarter (Tarter Direct, Schedule TWT-7) and Sherrill McCormack (McCormack Direct) explain Empire's existing DSM and Affordability programs as well as future programs being planned by the CPC. The testimony of Staff witness Lena Mantle (Mantle Rebuttal, p. 5) and OPC's witness Barbara Meisenheimer (Meisenheimer Direct, pp. 19-20.) provide details of a proposed mechanism to reconcile the unspent funds with the current case.

Issue No. 11. Rate Design/Cost-of-Service. How should any revenue increase for Empire that results from this case be implemented in rates?

(1) A sub-issue. What level of revenue credits should be recognized for purposes of allocating any revenue requirement increase?

The MDNR does not have a position on this issue.

WHEREFORE, the MDNR submits this as its pre-hearing brief in the above-styled

case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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