

**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-2004-0570
retail electric service provided to customers)	
in its Missouri service area		

**REPLY OF THE EMPIRE DISTRICT ELECTRIC COMPANY
OFFICE OF THE PUBLIC COUNSEL, PRAXAIR, INC.
AND EXPLORER PIPELINE COMPANY TO STAFF'S RESPONSE
TO NONUNANIMOUS STIPULATION AND AGREEMENT
AND SUGGESTIONS IN SUPPORT OF SAID AGREEMENT**

COME NOW The Empire District Electric Company ("Empire" or the "Company"), the Office of the Public Counsel ("Public Counsel"), Praxair, Inc. ("Praxair") and Explorer Pipeline Company ("Explorer"), and respectfully state to the Missouri Public Service Commission ("Commission") as follows:

1. That at approximately 5:00 p.m. on March 1, 2005, the Staff of the Missouri Public Service Commission ("Staff") filed with the Commission its Response to the Nonunanimous Stipulation and Agreement Regarding Fuel and Purchased Power Expense ("Agreement") which had been filed with the Commission on February 22, 2005, by Empire, Public Counsel, Praxair and Explorer.

2. The Staff response contains the statement "that it will not oppose the Agreement." No other party objected to the Agreement. Pursuant to 4 CSR 240-2.115, the Staff and all other parties have waived their right to a hearing with respect to the Agreement and the Commission may treat the Agreement as a Unanimous Stipulation and Agreement.

3. The Staff's Response sets out three "concerns" regarding the Agreement - a concern that the floor amount of the IEC should be reduced by \$5 million on a total company basis; a question concerning the potential refund at the end of year two of the IEC; and the minimum excess amount to be refunded at the end of year two of the IEC.

4. With respect to its first concern, the Staff does not recommend or suggest any relief from the Commission. With respect to the second concern, the Staff recommends the Commission condition its approval of the Agreement with a modification of the language of paragraph 1.d. of the Agreement. With respect to the third concern, the Staff recommends that the Commission condition its approval of the Agreement with a modification of the Agreement to include specification of the minimum amount required to trigger a refund at the end of year two of the IEC.

5. The Staff's first and third concerns were the subject of negotiations among the parties to the Agreement and have been addressed by the Agreement.

6. Paragraph 6 of the Agreement states:

"This Nonunanimous Stipulation and Agreement has resulted from extensive negotiations among the Parties and the terms hereof are interdependent. If the Commission does not approve this Nonunanimous Stipulation and Agreement unconditionally and without modification, then this Nonunanimous Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof, except as expressly specified herein."

This language means what it says. Any modifications to the Agreement by the Commission will render the Agreement void.

7. With respect to the Staff's second concern, paragraph 1.c. of the Agreement specifies that the charge collected pursuant to the IEC is subject to refund **pursuant to the terms of this Agreement.** The terms of the Agreement, specifically,

paragraph 1.d., provide that "after the IEC has been in effect for two (2) years, if the amount held subject to refund at that time exceeds \$10 million, Empire shall refund to its customers the amount **in excess of** \$10 million with interest."

8. With respect to paragraph 1.d., the Staff states at page 2 of its response:

It seems almost certain that "the amount held subject to refund," referenced in paragraph 1-d of the Agreement, is intended to mean "the accrued refund obligation," which is to be reported pursuant to paragraph 1-h of the Agreement. In other words, if at the end of two years, the reported status of the IEC mechanism indicates that Empire's customers are due a refund in excess of \$10 million, under the Agreement, the amount of that excess will be refunded to the customers.

9. Empire, Public Counsel, Praxair and Explorer all agree with the Staff's interpretation of paragraph 1.d. It is the intent of the parties to the Agreement that at the end of year two of the IEC, Empire will hold **not more** than \$10 million subject to refund and that any IEC amounts held by Empire in excess of \$10 million will be refunded to customers.

10. The signatory parties to the Agreement have worked long and diligently to craft an equitable solution to a difficult issue. It should be apparent from these parties' positions through the time of the hearing that these parties necessarily were forced to compromise in order to reach the Agreement and that the negotiations were not easy. Representing as it does the collective interests of all the financial stakeholders with respect to the fuel and purchased power issue, the Commission should adopt the Agreement, without modification, as being a fair, just and reasonable resolution of the issue in this case.

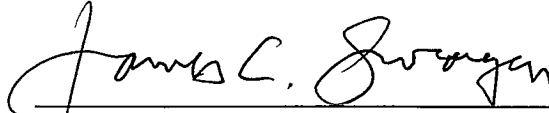
11. One final matter needs to be addressed. During the concluding days of the hearing in this case in December, Staff was made aware that the Public Counsel

and Praxair/Explorer were seeking to propose a solution to the fuel and purchased power conundrum. The Commission will recall that Commissioner Davis invited them to suggest something creative to solve the problem that Empire and the Commission faced.

12. The Staff was not excluded from these efforts on the part of Public Counsel and Praxair/Explorer. As a result, a change to the proposed IEC rate design set out in the Agreement was made to accommodate the concerns addressed by Staff. Also added to the Agreement at the Staff's suggestion was a prohibition against an AAO request.

13. The Agreement is sponsored by the Public Counsel, who is charged by statute to represent the ratepaying public and who has chosen to focus his activity on the residential and commercial classes, by representatives of industrial customers and by the Company. In other words, the real parties in interest, through their respective representatives, have come to an agreement. It is respectfully submitted that the Staff's concerns should be rejected, and the Agreement should be approved.

Respectfully submitted



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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was, on this 7TH day of March, 2005, sent via electronic mail, U.S. Postage, or hand delivered, to all parties of record.

