

**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 issue and sell under its existing)
Indenture of Mortgage and Deed of Trust)
dated as of September 1, 1944, as amended)
and supplemented, up to and including)
\$200,000,000 principal amount of its First)
Mortgage Bonds, in one or more series and)
to, among other things, execute and deliver a)
Supplemental Indenture or Indentures to)
provide for the terms of said Bonds.)

Case No. EF-2004-0109

REPLY TO STAFF'S RESPONSE TO COMMISSION ORDER

COMES NOW Applicant, The Empire District Electric Company ("Empire") and for its Reply to Staff's Response to Commission Order filed on August 29, 2003, states as follows:

1. Empire has filed an Application for approval for authority from the Commission to mortgage or encumber its Missouri based properties to secure one or more new series of First Mortgage Bonds under its existing Indenture of Mortgage and Deed of Trust ("Indenture"). As noted in paragraph four (4) of the Application, this filing is just the most recent in a long series of filings seeking identical relief and, with respect to which, the Commission has routinely granted the relief requested. Thirty (30) supplemental indentures to Empire's Indenture have been issued since 1944, most of which have been in conjunction with the issuance of First Mortgage Bonds. The Application has been filed as part of Empire's on-going and routine practice of financing its utility operation in this state.

2. Despite the routine nature of Empire's Application, Staff has taken the opportunity to liken Empire's circumstances to those of Enron, an analogy that is disturbing and unwarranted. (See, Staff Response, ¶ 5(c)). The business circumstances and practices of the two companies could not be more different.

3. Staff complains that utilities have developed a habit of filing a request for expedited treatment in conjunction with filing financing applications. (Response, ¶ 3) Perhaps the reason most companies have developed this practice is that absent such a request, financing applications can remain unresolved indefinitely because there is no operation of law day on a financing application. Paradoxically, Staff's Response suggests the very reason why a Motion for Expedited Treatment is becoming a common practice with the regulated industry. Staff indicates that it is willing to expedite its review of Empire's Application, but that it will need three (3) months, until November 26, 2003, before it may be in a position to file its recommendation. (Response, ¶ 6.) Empire suggests that this is not an expeditious review. Three months can be an eternity in the world of business and corporate finance.

4. Moreover, the timing problems recited by Staff largely appear to be caused by its own new and expanded objectives. Staff states that it anticipates "protracted" negotiations the stated purpose of which appear to be to extract business or other concessions from Empire and other utilities concerning their non-regulated operations in the form of "additional conditions" to any recommendation it may file in any of the several pending financing dockets. (Response, ¶ 5 (b) and (c)). To the extent that additional ratepayer protections are either needed or desirable¹, these matters should be taken up

¹ Commission financing orders nearly always contain the limitation that (Continued, next page)

in a separate generic investigation or industry-wide rulemaking docket such that regulatory policies are implemented in a cooperative and coherent fashion and not under duress. Financing plans should not be held up by other issues which are not relevant to the singular statutory objective of permitting utilities to finance their operations for lawful purposes in a manner that is not detrimental to the public interest.²

5. It is important the utilities in this state be given the authority needed to pursue advantageous financing opportunities when and as they present themselves. In this case, Empire is merely attempting to move quickly to redeem outstanding long-term indebtedness³ and to repay short-term indebtedness incurred in connection with other redemptions, all as more particularly described in a May 16, 2003 press release (copy attached). Refinancing this debt at a lower interest rate reduces the company's overall cost of debt, something that is beneficial to ratepayers and shareholders. It is a classic and prudent win:win regulatory scenario.

6. Empire's desire to be in a position to issue a new series of First Mortgage Bonds during the month of October is not just an abstract request on its part. Empire has entered into a Treasury Lock forward transaction with an outside counterparty to hedge the risk of changes in the first sixty (60) semi-annual interest payment cash flows for \$60 million of the intended issuances. The risks being hedged are attributable to changes in the thirty (30) year benchmark Treasury Rate (risk free rate) for the debt pricing. The

they are not binding for ratemaking purposes which is the ultimate ratepayer protection. *Compare, Re Kansas Power & Light*, 1 Mo.P.S.C. 3d 150, 159 (1991). [Capital costs associated with a merger can be "screened" in post-merger rate cases to assure no ratepayer detriment.]

² Indeed, at page 2 of the Response, in footnote 2 thereof, Staff seems to recognize the need to streamline the financing approval process.

³ Staff asserts that none of Empire's long-term indebtedness is scheduled to "mature" until 2005, a statement that is both correct and misleading. Staff fails to take into account that some of Empire's long-term debt is callable prior to maturity. Empire proposes to do just that. (see attached press release)

Treasury Lock expires on October 15, 2003. In order for Empire to realize the benefits of the Treasury Lock, it must issue new securities near such expiration date. If this Application is not approved, Empire will not have the option of issuing First Mortgage Bonds and therefore may be forced to issue higher cost unsecured debt, which clearly would not be in the best interests of Empire or its ratepayers.

7. Empire was not aware of the fact when it filed its Application but it understands that there are other cases already on file that also deserve Staff's attention and it is not Empire's objective to butt into the queue. Nevertheless, the reasons for Empire's request are legitimate and compelling business objectives that are driven by deadlines and commitments that cannot be extended. As noted above, Empire's Application is just the most recent in a long series of similar filings over many years, all of which have been approved without difficulty and without adverse consequence. Thus, the process for reviewing and clearing the Application should not require any special or time-consuming effort on the part of Staff and should not cause any material delay in the review of any other ongoing proceeding.

8. Empire is also aware of its obligation to assist Staff with its expedited review of the Application. It has no objection to providing an expedited turnaround of responses to Staff data requests in the event that Empire's Request for Expedited Treatment is granted by the Commission.

WHEREFORE, Empire restates its request for expedited treatment of its Application and for such other orders and relief as are appropriate in the circumstances.

Respectfully submitted,

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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 5th day of September 2003, to:

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