

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY**

March 8, 2001

CASE NO: ER-2001-452

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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 8th
day of March, 2001.

In the Matter of Tariff Revisions of)	
The Empire District Electric Company)	<u>Case No. ER-2001-452</u>
Designed to Increase Rates on an)	Tariff File No. 200100851
Interim Basis for Electric Service to)	
Customers in its Missouri Service Area)	

ORDER REJECTING TARIFFS AND GRANTING MOTION TO DISMISS

On February 16, 2001, The Empire District Electric Company (Empire) filed revised tariff sheets together with supporting testimony, a motion for a protective order, and a motion for expedited treatment. The revised tariff sheets would allow Empire to put in place a two-step surcharge increasing Empire's Missouri electric revenues by approximately \$16.8 million for March through September 2001. The tariff sheets bear an effective date of March 18, 2001, and Empire requested that they be approved as early as March 1, 2001.

According to Empire, the need for immediate rate relief is driven by expected increases in natural gas prices, and the projected in-service date of a new combined cycle generating unit. In the testimony of David W. Gibson, Empire states that, because of changes Empire made to prepare for a now-defunct merger with UtiliCorp United Inc. (UCU), its capital structure is not normal. Mr. Gibson testified that Empire is considering several financing alternatives, and does not find the prospect of issuing stock attractive. Empire believes that issuing trust preferred stock may give it an opportunity to obtain financing while waiting for rate relief. According to Mr. Gibson, and as discussed in more detail in the testimony of Stan M.

Kaplan, Empire projects that increases in natural gas prices will have a detrimental effect on Empire during 2001 before the new permanent rates (determined in Empire's currently pending general rate case, Case No. ER-2001-299) would be in place. Mr. Gibson concedes that Empire's proposed interim rate request is, at least in part, an attempt to avoid regulatory lag.

In the testimony of William L. Gipson, Empire states that it lost many talented and long-term employees in expectation of consummating the failed merger with UCU. Mr. Gipson also states that travel and seminars or conferences have been curtailed. Mr. Gipson argues that allowing Empire's rate of return to fall below what it considers acceptable levels, even for the short period of time before new permanent rates will be established in Case No. ER-2001-299, will impair Empire's ability to provide safe and reliable electric service to its customers. However, Mr. Gipson points out that he does not mean that there will be any direct impact on Empire's ability to provide safe and reliable electric service, but rather that a dip in Empire's returns may influence credit rating agencies, which in turn could affect its cost of new debt and ability to raise equity capital. Neither Mr. Gipson nor the other Empire witnesses provide explanation of how a possible increase in its cost of capital could impair Empire's ability to provide safe and reliable electric service to its customers.

Empire's third witness, Stan M. Kaplan, testified that the increase Empire seeks to receive with its proposed interim tariffs is mostly based on Empire's expectation that the price of natural gas in the next several months will be higher than the price during the same period last year. Mr. Kaplan's testimony explains why Empire projects this increase.

On February 20, 2001, Praxair, Inc. (Praxair) filed a motion to intervene. Praxair's motion complies with the Commission's rule on

intervention (4 CSR 240-2.075) and no party opposed it. Praxair will be granted intervention. Praxair, in addition to requesting intervention, requested that the Commission suspend the tariff filing and establish a procedural schedule including evidentiary hearings.

On February 22, 2001, the Staff of the Commission (Staff), in response to a Commission order, filed its recommendation that the Commission suspend the tariff sheets and establish a procedural schedule. Staff concluded that Empire has not presented a set of facts and circumstances that would support a grant of interim relief. Staff asserted that, in order to meet the standard for interim relief, a utility must be facing an emergency or near emergency situation. Staff stated that a utility must show that: 1) it needs the funds immediately; 2) the need cannot be postponed; and 3) that no other alternatives exist to meet the need but rate relief.

Staff identified a number of concerns with Empire's request for interim relief. Staff stated that Empire's claimed need for immediate relief is based on projected, rather than actual, gas prices. Staff also stated that the need is highly dependent on the in-service date of the new combined cycle generating unit. Staff noted that Empire has no emergency financing crisis, and that any problems with capital structure are of Empire's own making. Staff argued that the refund provision in the proposed tariff does not protect Empire's customers, and that Empire may not have accurately reflected savings that offset its projected increased costs.

On February 26, 2001, the Office of the Public Counsel (Public Counsel) filed a motion to dismiss and a motion to remove the Highly

Confidential designation from portions of Empire's filing.¹ Public Counsel found no justification in Empire's testimony or pleadings that would meet any standard that the Commission has used to review interim rate relief requests. Like the Staff, Public Counsel pointed out that Empire's request is based largely on projections. Public Counsel also concurred in the long list of concerns raised by the Staff. Public Counsel suggested a connection between Empire's request for interim relief and House Bill 723, which would permit a pass-through of projected gas costs through a fuel adjustment surcharge. Public Counsel asked, since Empire's filings do not demonstrate a need for interim relief, that the Commission dismiss Empire's request.

On March 1, 2001, Praxair filed a response opposing Empire's interim request. Praxair, like the Staff and Public Counsel, asserted that Empire has failed to show, or even allege, that it needs interim relief. Praxair also noted that Empire has failed to recognize actual cost savings that may offset its projected cost increases. On March 5, 2001, Praxair filed pleadings supporting Public Counsel's motions to dismiss and to remove the Highly Confidential designation from portions of Empire's testimony.

On February 28, 2001, Empire filed a response to Staff and Public Counsel. Although Empire stated that it needs timely interim relief to maintain its financial integrity, it clarified that, to Empire, maintaining its financial integrity means it needs a quick infusion of revenue to sustain its earnings at a reasonable level.

In its pleadings and testimony, Empire focuses on the word "need" and asserts that it needs an interim rate increase in order to maintain what it

¹ Because the Commission is herein rejecting Empire's tariff filing and closing the case, it will not address Public Counsel's motion to remove the Highly Confidential designation.

believes is an acceptable rate of return. The proper application of the standard is that a utility must need an interim rate increase in order to meet the emergency or near emergency it faces.² The Commission determines that, even viewing its testimony in the light most favorable to Empire, Empire has not demonstrated that it needs interim relief. Empire does not allege that it is not earning a positive return, or that its earnings will be negative in the period before new rates are determined in Case No. ER-2001-299. Neither does Empire allege any risk that its ability to provide safe and adequate service will be impaired in that period. Finally, Empire does not allege inability to finance its operations. The Commission will reject the proposed interim tariffs and grant Public Counsel's motion to dismiss.

IT IS THEREFORE ORDERED:

1. That the following tariff sheets filed by The Empire District Electric Company on February 16, 2001, and assigned Tariff File No. 200100851, are rejected:

P.S.C. MO No. 5

Section A, 14th Revised Sheet No. 1 canceling Section A,
13th Revised Sheet No. 1
Section 4, Original Sheet No. 21

2. That the motion to intervene filed by Praxair, Inc. on February 20, 2001, is granted.

² As Empire notes in its pleadings, the Commission did partially develop a "good cause" standard for interim relief in In Re The Empire District Electric Company, 6 MoPSC 3rd 17 (Case No. ER-97-82). However, in that case the Commission based its denial of Empire's request on its conclusion that: "There is no showing by the Company [Empire] that its financial integrity will be threatened or that its ability to render safe and adequate service will be jeopardized if this request is not granted." The differences, if any, between this good cause standard and the historically applied emergency or near emergency standard were not clearly annunciated, and the Commission now returns to its historic emergency or near emergency standard.

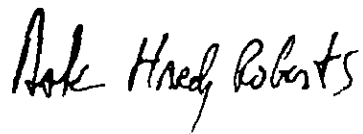
3. That the motion to dismiss filed by the Office of the Public Counsel on February 26, 2001, is granted and this case is hereby dismissed.

4. That all other motions not heretofore expressly ruled upon are hereby denied.

5. That this order shall become effective on March 18, 2001.

6. That this case may be closed on March 19, 2001.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray,
Schemenauer, and Simmons, CC., concur.

Mills, Deputy Chief Regulatory Law Judge

Atty/Sec'y:

M. H. Boyle

Date Circulated

3-7
ER-2001-452
CASE NO.

HL
Lumpke, Chair

ML
Draiser, Vice Chair

ML
Murray, Commissioner

ML
Schemmeyer, Commissioner

KS
Simmons, Commissioner

Agenda Date

3-8
pp 15

Action taken:

5-045

Must Vote Not Later Than

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 8th day of March 2001.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

