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Missouri Public Service Commission

Mr. Dale Hardy Roberts
Executive Secretary
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Case No. EX-99-442

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and fourteen copies of the initial comments of The Empire District Electric Company.

If you have any questions, please give me a call.

Sincerely yours,

Gary W. Duffy

Enclosures
cc w/encl:

Office of Public Counsel
Bill Gipson
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BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of 4 CSR 240-20.015 Proposed)
Rule - Electric Utilities Affiliate Transactions) Case No. EX-99-442

Initial Comments of The Empire District Electric Company

These initial comments are being submitted in response to the Notice of Proposed Rulemaking in the ***Missouri Register*** of June 1, 1999 (24 MoReg 1340 et seq.).

Generally, Empire believes any rule regarding transactions between an electric corporation and its affiliates should be coordinated in the context of restructuring or deregulation of the industry. Policy makers should encourage and protect competition, not individual competitors. Those issues aside, there are some areas in the proposed rule of particular concern. Specifically:

Throughout the rule there are references regarding the exchange of "information." Without a definition, the term "information" can be construed very broadly. This particular standard is anti-competitive and is a hurdle no other business must meet.

Subsection (1) (C) defines "control" such that an entity shall be presumed to have control over another entity if it owns more than a 10 percent interest in the other entity. Control is sufficiently defined previously in the rule and introducing this arbitrarily low level (10 percent) is unjustified and unwarranted.

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Section (2) defines when a financial advantage occurs. The use of the lesser of fair market price or fully distributed cost when the transaction is inward and the greater of the two when outward does not allow the business to take full advantage of integration or economies of scope or scale. Simply put, transactions should be allowed to occur at the prudent cost. That cost may be incremental, market, fully distributed or a combination. It is illogical to assume that transfers at only market or fully distributed cost will cause harm to the customers of the regulated entity. Under the proposal, costs to the customers of the regulated entity will be, in effect, subsidized by the customers of the non-regulated affiliate. A March 1995 report by the Department of Energy and the Federal Trade Commission to the President and Congress, Current Status and Likely Impacts of Integrated Resource Planning, reached this conclusion: "If economies of scope give the utility a competitive advantage in an unregulated business, consumers of both the regulated and unregulated products would be better off by allowing the utility to use those economies." Economies enable a company to supply a combination of products and services at lower costs than if it were to supply them separately. The proposed rule provides no incentive for the regulated entity to leverage its resources.

Subsection (2) (B) contains a standard that no other businesses must meet and is anti-competitive.

Subsection (2) (D) requires the regulated entity to provide information to its customers regarding goods and services of non-affiliated entities that may provide the same goods and services of its affiliate. This is an impossible standard to meet. The regulated entity is not in a position, and never will be in a position, to supply this type of

information to customers regarding all the potential competitors of one of its affiliates. Further, it is erroneous to assume that the regulated entity's customers will be disadvantaged when confronted with an option to choose to do business with an affiliated unit of the regulated entity which they recognize as having provided excellent service at a reasonable price. In reality, the option of additional goods or services from this company sets a standard that other companies should strive to meet.

Subsection (3) (A) requires the regulated entity to obtain competitive bids to justify transfers from one of its affiliates. Good business practices will determine at what dollar level competitive bids should be required. The concern here should be only that the costs incurred by the regulated entity are prudent and justifiable.

Subsection (3) (B): We find it difficult to understand how the fair market value of "information" can be obtained. The proposal would also require the regulated entity to document the cost of information it produces internally for its own uses. Such a process will necessarily be full of assumptions on how internal costs should be allocated. As the Commission is aware from dozens of cost allocation cases, such a process can be the subject of many potential arguments. We question its worth in this context. Again, this is an anti-competitive standard which forces costs onto a regulated entity that a non-regulated entity providing the same goods or services can escape.

Subsection (3) (C) sets standards so vague that it makes compliance nearly impossible to meet.

Paragraph (5) (A) 1: This requires a regulated entity to force a non-regulated entity to keep records in a certain fashion. We question whether the Commission's

jurisdiction can extend to non-regulated entities in this fashion. Further, what do the Commission, the Staff, and potential non-regulated intervenors plan to do with sensitive information regarding the affiliate's cost of doing business? We can only assume the intention is to gain information to aid in the regulation of the affiliate's profit or to secure a competitive advantage. It is completely unjustifiable for the regulated entity to be required to document costs of the affiliated entities or ensure that they are documented.

Paragraph (4) (A) 4: As with subsection (3) (A), good business practices will determine at what level (dollar or otherwise) a written contract is necessary.

Sections (5) and (6) regarding record keeping and access to the books and records of an affiliate are not necessary. Given the record keeping requirements set forth in section (4) which are imposed on the regulated entity, the Commission should have sufficient information to determine whether transfers did occur at the appropriate cost and that the associated cost was both prudent and justifiable. Further, we have doubts about the Commission's jurisdiction to require production of documents from affiliated entities which are not regulated by the Commission.

Respectfully submitted,

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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing was hand delivered this 1st day of July, 1999 to the Office of the Public Counsel.

Gary W. Duffy

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