

**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI**

In the Matter of the Tariff Filing of )	
The Empire District Electric Company )	
to Implement a General Rate Increase )	<b><u>Case No. ER-2006-0315</u></b>
for Retail Electric Service Provided to )	
Customers in its Missouri Service Area. )	

**RESPONSE TO ORDER OF NOVEMBER 20, 2007**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through the Commission's General Counsel, and for its Response to the Commission's Order of November 20, 2007, and to the Notice and Proposed Order filed by The Empire District Electric Company on November 19, 2007, states as follows:

1. Pursuant to the peremptory writ of mandamus and mandate of the Missouri Supreme Court, issued in Case No. SC88390 and filed herein on November 20, 2007, the Commission must forthwith vacate its *Order Granting Expedited Treatment and Approving Tariffs*, issued herein on December 29, 2006.

2. The Commission should thereafter immediately issue a new order approving the compliance tariffs because the defect alleged by the Public Counsel has been addressed. Said order should become effective on the tenth day after its issuance.

3. Both of these objects may be accomplished in the same order as proposed by The Empire District Electric Company.

4. Public Counsel has pointed out that the *Report and Order* of December 21, 2006, failed to address the issue of the risk factor to apply to off-balance-sheet obligations. *Public Counsel's Response to Response of The Empire District Electric Company to Staff Recommendation*, filed December 29, 2006, at pp. 1-2. Staff concurred that the *Report and Order* failed to resolve this issue in its *Staff Recommendation and Response to Request by Praxair, Inc. and Explorer Pipeline for Disclosure of Apparent Ex Parte Communication*, filed on December 29, 2006, at page 7:

Finally, the Commission's Report And Order identifies at page 29 that the valuation of off-balance sheet obligations for purposes of the Empire Regulatory Plan amortizations is an issue. The Commission's Report And Order sets out in some detail the Staff's change in position regarding the Empire Regulatory Plan amortizations. The Commission's Report And Order states, in part, at page 32:

. . . it appears the parties involved in this issue are all now treating the Elk River Wind Farm agreement as a purchased power agreement. With the changes the Staff made to its position, which are reasonable, there appears to be no further dispute on this issue.

The Commission's first sentence above is evidently based on a paragraph in Empire's Post-Hearing Brief. The Staff, Empire and the Office of the Public Counsel (Public Counsel) did not resolve the off-balance sheet obligations issue. At the November 20, 2006 hearing, Public Counsel Lewis R. Mills, Jr. stated, in part, as follows:

Mr. Mills: With respect to the – to the contested issues in the true-up, really, the only one that – I have testimony on is the off-balance sheet obligations, and I think the testimony speaks for itself.

I'd be happy to answer questions if there are questions about it, but I don't have any argument prepared. Thank you.

(Transcript Vol. 20, pp.1306-07). This is the same issue that went to hearing in the KCPL rate increase case, ER-2006-0314, for which the Report And Order was issued on the very same day as the Empire rate increase case Report And Order. The facts in the KCPL case are not identical to the facts in the Empire case, but as the Commission is aware, in the Report And Order in Case No. ER-2006-0314, the Commission adopted the position of the Staff and KCPL, and rejected the Public Counsel's position.

5. Thereafter, on January 9, 2007, effective January 19, 2007, the Commission issued its *Order Supplementing and Clarifying Report and Order*, in which the Commission set out its findings of fact, conclusions of law and decision resolving the omitted issue on the basis of Staff's position.

6. It is the opinion of the Commission's Staff that the compliance tariffs implement the position adopted by the Commission in its *Order Supplementing and Clarifying Report and Order* and in the *Report and Order* of December 21, 2006, and should be approved.

7. Section 393.150.1, RSMo 2000, provides in pertinent part: "and after full hearing, whether completed before or after the rate, charge, form of contract or agreement, rule, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, form of contract or agreement, rule, regulation or practice as would be proper in a proceeding initiated after the rate, charge, form of contract or agreement, rule, regulation or practice had become effective."

**WHEREFORE**, on account of all the foregoing, Staff recommends that the Commission approve the proposed tariff sheets filed by The Empire District Electric Company on December 28, 2006, for service rendered on and after January 1, 2007.

Respectfully submitted,

**/s/ Kevin A. Thompson**

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record on this **27<sup>th</sup> day of November, 2007.**

**/s/ Kevin A. Thompson**