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January 7, 2004

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**Re: Case No. EO-2004-0263**

Dear Mr. Roberts:

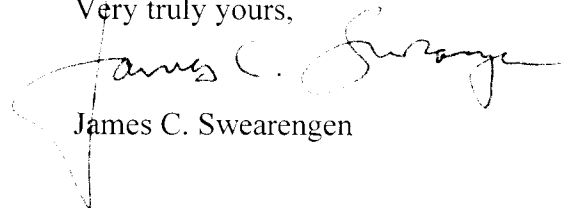
Provided herewith for filing on behalf of The Empire District Electric Company, please find in electronic format Empire's Response to Motion to Open Case and Request for Presentation in the above-referenced case.

A copy of this filing will be provided to all parties of record.

Please see that this filing is brought to the attention of the appropriate Commission personnel.

I thank you in advance for your cooperation in this matter.

Very truly yours,



James C. Swearengen

JCS/lar

Enclosure

cc: John Coffman  
Denny Frey

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

In the Matter of the Public Counsel's	)	
Investigation into Certain Resource	)	Case No. EO-2004-0263
Planning Decisions of The Empire District	)	
Electric Company.	)	

**EMPIRE'S RESPONSE TO MOTION TO OPEN CASE  
AND REQUEST FOR PRESENTATION**

**COMES NOW** The Empire District Electric Company ("Empire"), by counsel, and for its Response and Request states as follows to the Missouri Public Service Commission ("Commission"):

1. On December 18, 2003, the OPC filed with the Commission its Motion to Open Case (the "Motion"), which was docketed as Case No. EO-2004-0263. The Motion "requests that the Commission open a case that would serve as a vehicle for the Public Counsel to conduct a formal investigation into certain recent resource planning decisions of the Company." On December 29, 2003, the Commission issued its Order Directing Filing, therein directing that Empire and the Commission Staff respond to the OPC's Motion by January 7, 2004.

**SUMMARY OF EMPIRE'S POSITION**

2. Empire's circumstances and its options to fill the future energy needs of its customers have been the subject of recent public pronouncements as well as discussions with the OPC and Commission Staff in the context of the Commission's Integrated Resource Planning ("IRP") process. The most recent of these IRP discussions occurred on November 18, 2003 in Jefferson City. Unfortunately, Empire is not aware of the extent to which the Commission itself is informed with respect to these matters. Therefore, regardless of the Commission's decision with respect to the Motion, Empire would be more than willing to make a presentation to the Commission, if the

Commission so desires, concerning Empire's resource planning and its options to satisfy the future energy needs of its customers.

### **EMPIRE**

3. By way of background, Empire is a Kansas corporation with its principal office and place of business at 601 Joplin Street, Joplin, Missouri 64801. Empire is engaged, generally, in the business of generating, purchasing, transmitting, distributing and selling electric energy in Missouri to approximately 137,000 customers as well as to approximately 19,000 customers in Kansas, Oklahoma and Arkansas. Empire also provides water service in Missouri. Empire's Missouri operations are subject to the jurisdiction of the Commission as provided by law. Empire's Missouri electric production facilities include a 21 megawatt facility at Asbury, a 271 megawatt facility at Energy Center, a 389 megawatt facility at State Line, an 80 megawatt facility at Iatan, and a 16 megawatt hydro facility at Ozark Beach. In addition, Empire owns a 136 megawatt facility in Riverton, Kansas.

### **DISCUSSION**

4. Empire does not object to sharing its resource planning information with the OPC as Empire already provides such information to the OPC and Commission Staff on a regular and routine basis in connection with the IRP process. OPC correctly states in the Motion that Empire meets with the OPC and the Commission Staff twice a year for this purpose. Furthermore, OPC has recently submitted data requests to Empire in connection with the Motion which Empire will answer whether or not a special investigatory docket is opened. Thus, opening a special case for the examination of Empire's resource planning information would appear to be unnecessary.

5. The Motion states that OPC wants to conduct a "formal investigation into *certain recent resource planning decisions* of the Company" (emphasis added). However, the only

circumstance identified in the Motion is an Empire press release issued on December 3, 2003, indicating that Empire had ended talks concerning single proposed project. If an unusual circumstance exists for the opening of a case, as requested by the OPC, Empire submits that the OPC should identify that circumstance and explain why the present IRP process and the OPC's ability to issue data requests in the context of the IRP process or otherwise is inadequate to address this matter.

6. It is common for Empire, as well as other utilities, to examine potential projects and to decide whether or not to pursue those projects without a concurrent "investigation" by the OPC. Consequently, a listing of Empire's decisions which the OPC is interested in, or at a minimum, the identification of the involved time period, would provide a focus for the requested investigation, should one be authorized through the opening of a formal docket.

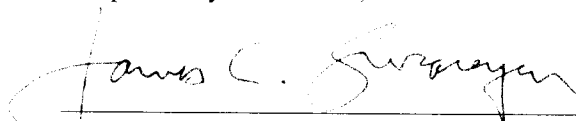
7. Similarly, in the event a special investigatory docket is opened, the Commission's establishment of a time constraint would be appropriate and helpful to the process. In this regard, Empire suggests that should the Commission authorize the opening of a docket, that it direct the OPC by March 31, 2004, to file a report indicating what additional steps should be taken by the Commission, or a statement that the case is no longer necessary. Such a time line would provide the parties with an idea as to what commitment of personnel and resources will be necessary to address whatever matters may be identified by the Commission.

8. Finally, the Motion states that the subject case "could also serve as a receptacle for the filing of the results of any investigation . . . regarding whether Empire's current resource planning process is consistent with providing safe and adequate service at just and reasonable rates." Empire believes that there exists a statutory vehicle for the OPC to bring to the Commission's attention concerns as to whether or not Empire's actions are "consistent with providing safe and adequate service at just and reasonable rates." That vehicle is the well-established complaint

process.

WHEREFORE, Empire prays that the Commission issue its order (a) scheduling an Empire presentation to the Commission, should the Commission so desire, concerning Empire's plans to meet the future energy needs of its customers; (b) denying the OPC's Motion or defining the parameters for the special investigatory docket in terms of subject and time should the Motion be granted.

Respectfully submitted,

  
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ATTORNEYS FOR THE EMPIRE DISTRICT  
ELECTRIC COMPANY

### **CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing was, on this 7<sup>TH</sup> day of January, 2004, sent via electronic mail, or hand delivered, to the following:

John B. Coffman  
Office of the Public Counsel  
Governor State Office Building  
6<sup>th</sup> Floor  
Jefferson City, MO 65101

Denny Frey  
Office of the General Counsel  
Governor State Office Building  
8<sup>th</sup> Floor  
Jefferson City, MO 65101

