

## BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of The Empire District )  
Electric Company for Authority to )  
Implement Rate Adjustments Required by )  
4 CSR 240-20.090(4) and the Company's )  
Approved Fuel Adjustment Clause (FAC). )

Case No. EO-2009-0349  
Tariff No. YE-2009-0712

### **STAFF RESPONSE TO MOTION TO REJECT TARIFF SHEET**

**COMES NOW** the Staff of the Missouri Public Service Commission ("Staff") and hereby urges the Commission to deny the Motion to Reject Tariff Sheets filed herein by Praxair, Inc. and Explorer Pipeline Company ("Industrials") on May 15, 2009, stating as follows:

1. On April 1, 2009, Empire filed with the Public Service Commission of the State of Missouri ("Commission") in this above-captioned case one (1) tariff sheet bearing a proposed effective date of June 1, 2009. With the tariff sheet Empire proposes its first revision to the Cost Adjustment Factor ("CAF") of its Fuel Adjustment Clause ("FAC") the Commission approved as part of its *Report and Order* in Case No. ER-2008-0093 from the initial CAF value of \$0.00000 to \$0.00081 per kilowatt hour. By means of this proposed change in the CAF Empire requests to increase the revenues it bills through its FAC by \$1,916,797.

2. On May 1, 2009 the Staff recommended that the Commission issue an Order approving the proposed tariff sheet, as filed on April 1, 2009, to become effective on June 1, 2009, subject to both true-up and prudence reviews.

3. On May 15, 2009, forty-four (44) days after Empire filed the proposed tariff sheet, fourteen (14) days after the Staff filed its recommendation and sixteen (16) days before the proposed effective date of the tariff sheet, Industrials filed their motion requesting the Commission to reject the tariff sheet on the basis that included in the costs underlying the change

in the CAF are imprudent costs the statute enabling the use of FACs—§ 386.266<sup>1</sup>—does not authorize be included in the FAC rate schedules. In their motion Industrials rely on the language from subsection 1 of §386.266 following:

Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge, or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation.

4. On May 18, 2009 the Commission ordered both Empire and the Staff to file responses to Industrials' motion by noon, Wednesday, May 20, 2009.

5. Industrials ignore the language in subsection 4 of § 386.266 that follows:

The commission shall have the power to approve, modify, or reject adjustment mechanisms submitted under subsections 1 to 3 of this section only after providing the opportunity for a full hearing in a general rate proceeding, including a general rate proceeding initiated by complaint. The commission may approve such rate schedules after considering all relevant factors which may affect the costs or overall rates and charges of the corporation, provided that it finds that the adjustment mechanism set forth in the schedules:

\* \* \* \*

4) In the case of an adjustment mechanism submitted under subsection 1 or 2 of this section, includes provisions for prudence reviews of the costs subject to the adjustment mechanism no less frequently than at eighteen-month intervals, and shall require refund of any imprudently incurred costs plus interest at the utility's short-term borrowing rate.

\* \* \* \*

6. Commission Rule 4 CSR 240-20.090(7) provides:

(7) Prudence Reviews Respecting RAMs. A prudence review of the costs subject to the RAM shall be conducted no less frequently than at eighteen (18)-month intervals.

(A) All amounts ordered refunded by the commission shall include interest at the electric utility's short-term borrowing rate.

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1. Statutory references are to RSMo Supp. 2008, unless otherwise noted.

(B) The staff shall submit a recommendation regarding its examination and analysis to the commission not later than one hundred eighty (180) days after the staff initiates its prudence audit. The timing and frequency of prudence audits for each RAM shall be established in the general rate proceeding in which the RAM is established. The staff shall file notice within ten (10) days of starting its prudence audit. The commission shall issue an order not later than two hundred ten (210) days after the staff commences its prudence audit if no party to the proceeding in which the prudence audit is occurring files, within one hundred ninety (190) days of the staff's commencement of its prudence audit, a request for a hearing.

1. If the staff, OPC or other party auditing the RAM believes that insufficient information has been supplied to make a recommendation regarding the prudence of the electric utility's RAM, it may utilize discovery to obtain the information it seeks. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel the processing timeline shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing timeline. For good cause shown the commission may further suspend this timeline.

2. If the timeline is extended due to an electric utility's failure to timely provide sufficient responses to discovery and a refund is due to the customers, the electric utility shall refund all imprudently incurred costs plus interest at the electric utility's short-term borrowing rate.

7. Harm to customers for having paid for imprudent costs is addressed by customers not only being refunded the imprudent costs, but also interest on that amount at the utility's short term borrowing rate. §386.266.4(4); 4 CSR 240-20.090(7)(A).

8. In their motion Industrials make the following allegations:

During a conference call held on February 27, Mr. Davis indicated that, at the time the unit was being brought back to service, the turbine was being heated and then loaded at a rate that represented the suggested upper limits. This rapid pace of heating and loading resulted in a differential expansion which caused both an axial and a radial rub. Interestingly, while visual and audible alarms exist to warn of the differential expansion, Mr. Davis admitted that KCPL operational personnel failed to properly acknowledge or respond to the differential expansion alarms. Recognizing that the proper response to such an alarm is to trip the unit, KCPL's failure to properly acknowledge and respond to the differential expansion

alarm likely led to unnecessary turbine damage and the protracted outage that was experienced.

9. In its filings in this case Empire alleges part of its increased CAF is due to unavailability of power from Iatan 1.

10. Commission Rule 4 CSR 240-20.090(4) provides:

(4) Periodic Adjustments of FACs. If an electric utility files proposed rate schedules to adjust its FAC rates between general rate proceedings, the staff shall examine and analyze the information filed by the electric utility in accordance with 4 CSR 240-3.161 and additional information obtained through discovery, if any, to determine if the proposed adjustment to the FAC is in accordance with the provisions of this rule, section 386.266, RSMo and the FAC mechanism established in the most recent general rate proceeding. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the electric utility files its tariff schedules to adjust its FAC rates. If the FAC rate adjustment is in accordance with the provisions of this rule, section 386.266, RSMo, and the FAC mechanism established in the most recent general rate proceeding, the commission shall either issue an interim rate adjustment order approving the tariff schedules and the FAC rate adjustments within sixty (60) days of the electric utility's filing or, if no such order is issued, the tariff schedules and the FAC rate adjustments shall take effect sixty (60) days after the tariff schedules were filed. If the FAC rate adjustment is not in accordance with the provisions of this rule, section 386.266, RSMo, or the FAC mechanism established in the most recent rate proceeding, the commission shall reject the proposed rate schedules within sixty (60) days of the electric utility's filing and may instead order implementation of an appropriate interim rate schedule(s).

11. The Staff suggests to the Commission that the issues Industrials have raised are the proper subject of a 4 CSR 240-20.090(7) prudence review, and not the basis for now rejecting the tariff sheet Empire filed.

**WHEREFORE**, the Staff recommends that the Commission issue an order denying the motion of Praxair, Inc. and Explorer Pipeline Company to reject The Empire District Electric Company's tariff sheet proposing its first revision to its cost adjustment factor of its fuel adjustment clause.

Respectfully submitted,

/s/ Nathan Williams

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronically mailed to all counsel of record this 20<sup>th</sup> day of May 2009.

/s/ Nathan Williams