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May 14, 2001

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General Counsel

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

RE: Case No. ER-2001-299

Dear Mr. Roberts:

On behalf of the Staff of the Commission, the Office of the Public Counsel, and The Empire District Electric Company, enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **STIPULATION AND AGREEMENT REGARDING IN-SERVICE CRITERIA**. This Stipulation and Agreement has been entered into by those three of the four parties to this proceeding. Accordingly, this cover letter will also serve to provide notice to counsel for Praxair, Inc., under 4 CSR 240-2.115, of this filing of the Stipulation and Agreement Regarding In-Service Criteria, and the right of Praxair, Inc. to file a request for a hearing within seven (7) days from the filing of this Stipulation and Agreement.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Dennis L. Frey
Associate General Counsel
(573) 751-8700
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Enclosure
cc: Counsel of Record

FILED³
MAY 14 2001

Missouri Public
Service Commission

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

In the matter of The Empire District Electric)
Company's Tariff Sheets Designed to)
Implement a General Rate Increase for Retail)
Electric Service Provided to Customers in the)
Missouri service area of the Company.)

Case No. ER-2001-299

FILED³
MAY 14 2001
Missouri Public
Service Commission

**STIPULATION AND AGREEMENT
REGARDING IN-SERVICE CRITERIA**

COME NOW The Empire District Electric Company ("Empire" or "Company"), the Staff of the Missouri Public Service Commission ("Staff"), and the Office of the Public Counsel ("Public Counsel"), hereinafter to be known as "the Signatories," and for their Stipulation and Agreement Regarding In-Service Criteria ("Agreement"), respectfully state as follows:

1. On November 3, 2000, Empire submitted to the Missouri Public Service Commission ("Commission") proposed tariff sheets to increase rates for electric service provided to customers in the Missouri service areas of the Company. The proposed tariff sheets bear an effective date of December 3, 2000. The tariff sheets are designed to produce an annual increase of \$41,467,926.00 (approximately 19.3%) in the Company's electric revenues. Also on November 3, the Company submitted direct testimony in support of its requested rate increase.

2. On November 16, 2000, the Commission issued an Order suspending the proposed tariffs for a period of 120 days plus an additional six months beyond the proposed effective date, and ordering the filing of a proposed procedural schedule by December 28, 2000.

3. During the week of April 16, 2001, and in accordance with the procedural schedule adopted by the Commission in an Order issued January 4, 2001, the parties met for the purpose of clarifying, narrowing, and exploring settlement possibilities for the numerous issues raised in the case. As a result of those discussions and subsequent negotiations, the Signatories have reached an agreement with respect to the appropriate in-service criteria for the new State Line Combined Cycle plant (SLCC). Although a representative of Praxair, Inc., the only other

party to this case, participated in the pre-hearing conference discussions and subsequent negotiations on this matter, Praxair indicated on May 10, 2001, that it would not be a signatory to this Agreement. Therefore, this Agreement represents the position of three of the four parties to this case.

4. The Signatories agree that resolution of the in-service criteria issues in this case has been achieved as between themselves by their agreement to the following criteria:

- a) Major construction work, and pre-operational tests have been successfully completed such that the SLCC may be operated and successfully complete criteria items b) through g).
- b) Contract thermal performance guarantee testing will be successfully performed in accordance with the contracts for the new Siemens-Westinghouse Combustion Turbine, the new Siemens-Westinghouse steam turbine, and the new Nooter/Eriksen Heat Recovery Steam Generators.
- c) The SLCC will demonstrate its ability to startup from turning gear operation to nominal capacity on natural gas fuel when prompted by the operator.
- d) The SLCC will demonstrate its ability to shut down from minimum load resulting in turning gear operation when prompted by the operator.
- e) The SLCC will demonstrate its ability to operate at minimum load for one hour on natural gas fuel.
- f) The SLCC will demonstrate its ability to operate at or above 95% of nominal capacity for four continuous hours on natural gas fuel. During this test the unit will demonstrate its ability to operate at or above 98% of nominal capacity for one hour.
- g) The SLCC will demonstrate its ability to produce an amount of energy (Mwhr) within a 168 hour period that results in a capacity factor of at least 48.3 % during the period when calculated by the formula shown in note 4.
- h) Sufficient transmission facilities shall exist to carry the total design net electrical capacity of the SLCC into Empire's distribution/transmission system.
- i) There are no operational limits on the SLCC imposed by other agencies and/or government entities, such as Missouri Department of Natural Resources, other than those provided by permit.
- j) All testing will be completed by midnight on July 31, 2001.

Explanatory Notes to In-Service Criteria for SLCC

- 1) If the unit cannot demonstrate its ability to meet any of the criteria for which failure to meet the proposed criteria is judged to be immaterial to the overall in-service status of the unit, the Staff for good cause may waive that particular criterion. In making a decision to waive any particular criteria, the Staff may review the completed testing documentation, and any additional unit operating data, to determine if the unit should be

considered in-service, without further testing. Staff will provide its rationale in the event it decides to waive any particular criterion.

2) It is the Staff's intention, when possible, to witness the unit's ability to meet the criteria items. Regardless, Empire will provide to Staff all necessary documentation, including operating data logs, clearly demonstrating the capability of the unit to meet each of the criteria items.

3) The "nominal capacity" of the SLCC shall be 500 megawatts, at ISO conditions (i.e., 59 degrees F and 60% relative humidity). The term "nominal heat rate" shall be defined as 7200 Btu/kWh HHV when operating at nominal capacity. Manufacturer supplied ambient correction factors will be used when operation occurs at other than ISO conditions.

4) Capacity Factor of 48.3% = (Mwhs generated in a 168 hour period) / ((nominal capacity) x (168 hours)).

5) The contract thermal performance guarantees referenced in criteria item 2 can be found in the Westinghouse Combustion Turbine contract section IVa, the Westinghouse Steam Turbine contract section IVb, and the Nooter/Eriksen contract Table 2A-1 and Section GC-40.2. Manufacturer supplied ambient correction factors will be used when operation occurs at other than ISO conditions.

6) If any test is completed using only Empire's ownership portion of 300 MW, instead of the nominal unit capacity of 500 MW, Empire will provide written documentation stating the reasons why Empire was required to operate the unit at 300 MW. Included in this documentation will be a summary of all conversations held with Western Resources, the joint owner, regarding the operation of the unit at 500 MW.

5. Section 393.135 RSMo 2000 provides: " Any charge made or demanded by an electrical corporation for service, or in connection therewith, which is based on the costs of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service, is unjust and unreasonable, and is prohibited." The Signatories agree and respectfully recommend to the Commission that the above in-service criteria, if met by Empire, will determine that the SLCC unit is "fully operational and used for service" and therefore in compliance with section 393.135 RSMo 2000.

6. The Signatories agree and respectfully recommend to the Commission that in satisfying criteria f) and g), the "additional test power costs," to the extent reasonably and prudently incurred, should be included in plant-in-service accounts for the SLCC for recovery of the investment over the useful life of the asset. For purposes of this agreement, the "additional test power costs" are the excess of Empire's actual fuel costs when generating test power by the

SLCC over what Empire's fuel costs would have been absent the generation of the test power, minus any revenues received from the off-system sale of power generated during testing. The Company will maintain the necessary records on a daily report with sufficient hourly data to allow a review of the incremental costs relating to the test power amounts. Staff will examine this information after the July 31, 2001 end of testing date and make a recommendation to the Commission as to the reasonableness of the additional test power costs and the quantification of these costs to be included as part of the SLCC in the true-up proceeding.

7. The agreements set forth herein are the result of extensive negotiations among the Signatories and are interdependent; however, the agreements expressed herein are limited solely to the issues described herein.

8. In the event that the Commission accepts the specific terms of this Agreement, the Signatories agree that the direct, rebuttal and surrebuttal testimony of the following witnesses (or other witnesses), to the extent they address the issues settled herein, may be received into evidence without the necessity of said witnesses taking the stand:

Company witnesses: Brill, Beecher

Staff witness: Elliott

9. Nothing in this Agreement is designed to prevent any party from presenting oral testimony at the evidentiary hearing in support of the Agreement. The Signatories agree to cooperate with each other in presenting for approval to the Commission this Agreement, and will take no action, direct or indirect, in opposition to the request for approval of this Agreement.

10. The Staff shall file a memorandum or testimony in support of this Agreement, and the other parties shall have the right to file responsive suggestions or prepared testimony.

11. The Staff shall have the right to provide, at any agenda meeting at which this Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties and participants with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff.

Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.

12. By entering into this Agreement, none of the Signatories shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, or any method of cost determination or cost allocation, and none of the Signatories shall be prejudiced or bound in any manner by the terms of this Stipulation and Agreement in this or any other proceeding, except as expressly specified herein. If the Commission does not approve this Agreement, this Agreement shall immediately become null and void and none of the Signatories shall be bound by the terms hereof.

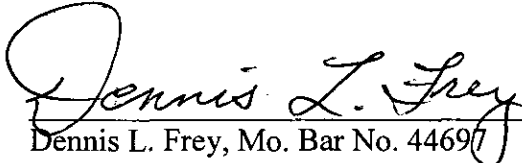
13. The Signatories respectfully note that this Agreement is being presented to the Commission with the intent of disposing of several issues that might otherwise consume considerable evidentiary hearing time. The Signatories respectfully request that the Commission indicate as quickly as possible whether it intends to accept or reject this Agreement. Depending upon when and how the Commission rules on the acceptance of this Agreement, or whether a hearing is requested by Praxair pursuant to 4 CSR 240-2.115, additional hearing dates may be required. The Signatories have reflected possible hearing dates for that in the Statement of Issues.

14. Another consideration for early Commission action on this Agreement is that it seeks to resolve the issue of what testing is required for the State Line Combined Cycle power plant. The Signatories respectfully request that the Commission issue an order before the evidentiary hearing is scheduled to commence on May 29, 2001, as the testing of the SLCC unit is scheduled to begin in June.

WHEREFORE, the Signatories respectfully request that the Commission issue an order approving this Stipulation and Agreement.


Respectfully submitted,

DANA K. JOYCE
General Counsel



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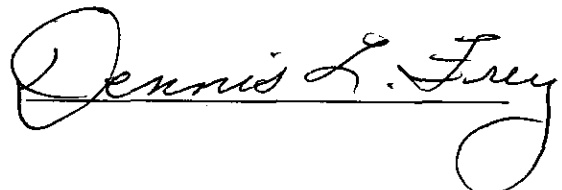


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Attorney for the
Office of the Public Counsel

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 14th day of May 2001.



Service List for
Case No. ER-2001-299
Verified: May 10, 2001 (ccl)

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