BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Tariff Filing of The Empire District Electric Company to Implement a General Rate Increase for Retail Electric Service Provided to Customers in its Missouri Service Area.	)))))	**Case No. ER-2004-0570** Tariff File No. YE-2004-1324

ORDER SETTING ON-THE-RECORD PRESENTATION

On April 30, 2004, The Empire District Electric Company submitted to the Missouri Public Service Commission certain proposed tariff sheets, Tariff File No. YE-2004-1324. The purpose of the filing, according to Empire, is to implement a general rate increase for retail electric service provided by the Company. Empire states that the new retail electric service rates are designed to produce an additional $38,282,294 in gross annual electric revenues excluding gross receipts, sales, franchise, and occupational taxes, a 14.82% increase over existing revenues. On May 5, the Commission suspended the proposed sheets for 120 days plus six months beyond the proposed effective date of May 30, 2004, until March 27, 2005.

On May 20, Empire filed its Motion and Suggestions urging the Commission to lift the suspension of a particular sheet, specifically, P.S.C. Mo. No. 5, Section 4, 4th Revised Sheet No. 17, Cancelling 3rd Revised Sheet No. 17, the Interim Energy Charge (IEC) Rider. Empire requests that the Commission convene "an immediate technical conference" and permit this sheet to become effective "as soon as possible and in any event no later than June 15, 2004." In support of its motion, Empire states that the IEC is a mechanism designed to quickly pass on to ratepayers changes in Empire's natural gas costs. Empire explains that natural gas is the primary fuel for more than half of Empire's generating capacity. Empire further notes that natural gas costs are historically very volatile. According to Empire, rates designed in the traditional manner, based on test year natural gas costs, are unlikely to accurately reflect the true cost of this fuel to Empire during the period that the tariffs now under consideration are effective. Consequently, either Empire or its ratepayers will inevitably suffer. Empire asserts that the IEC Rider, modeled on the PGA/ACA mechanism already found to be lawful by the Missouri Court of Appeals, would avoid this unfortunate result by passing gas cost variations rapidly through to ratepayers. Empire did not accompany its motion with a separately stated request for expedited treatment as required by Commission rule.[1]

The Commission issued its Order Directing Filing on May 20, the day upon which Empire filed its motion. Therein, the Commission directed that the other parties and intervention applicants should file responses to Empire's motion by 4:00 p.m. on May 26.

On May 25, the Public Counsel moved for an extension until June 1 within which to respond to Empire's motion.

Staff timely responded to Empire's motion on May 26. Staff states that Empire's motion is, in effect, a request for interim rate relief pending the final resolution of its current rate case. Staff notes that Missouri courts have acknowledged the Commission's authority to grant interim rate relief.[2] The Commission, with the approval of the courts, has consistently viewed interim rate relief as an emergency measure. The Western District has stated, "the Commission's authority to grant an interim rate increase is . . . to enable it to deal with a company in which immediate rate relief is required to maintain the economic life of the

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[1] Rule 4 CSR 240-2.080(17).

[2] *St. ex rel. Fischer v. Public Service Commission,* 670 S.W.2d 24, 26 (Mo. App., W.D. 1984).

company so that it might continue to serve the public."[3] The Commission has indicated that this authority must be exercised cautiously "since such relief requires the Commission to make a determination without the benefit of a thorough Staff audit."[4] Staff states that a review of the testimony filed by Empire in support of its current rate case shows that its financial condition is sound. Staff notes that "Empire's Motion does not attempt to show that its current circumstances constitute a financial emergency justifying immediate relief." Likewise, "Empire does not indicate that its ability to render safe and adequate service is impaired or jeopardized." Nonetheless, Staff is "agreeable" to promptly convening a technical conference.

Public Counsel filed his response on June 1. Public Counsel opposes the motion, stating that it would amount to a rate increase of $6.0 million without any opportunity for a hearing. On a per-customer basis, the average residential customer would pay an additional $45.85 over the nine-month period from June 15, 2004, through March 30, 2005.[5] And these customers would have no opportunity to comment on the increase before it takes effect. Public Counsel asserts that the Commission cannot grant Empire's motion because to do so would violate the bans on single-issue ratemaking and retroactive ratemaking.[6] Public Counsel joins Staff in noting that Empire's motion does not assert that interim rate relief is necessary to meet any emergency. Furthermore, Public Counsel states that Empire's IEC Rider is similar to the Fuel Adjustment Clause (FAC) struck down in *Utility Consumers Council*.[7] Unlike Staff, Public Counsel opposes a technical conference.

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[3] *Id.*

[4] *In the Matter of Gas Service Company*, 25 Mo.P.S.C. (N.S.) 633, 637 (1983).

[5] The IEC Rider would evidently impose a surcharge of $0.0040 per kilowatt hour.

[6] Public Counsel relies on *St. ex rel. Utility Consumers Council of Missouri v. Public Service Commission*, 585 S.W.2d 41, 47-49 (Mo. Banc 1979).

[7] *Id.*

Intervenor Praxair, Inc., and Intervenor-Applicant Explorer Pipeline Co. also responded in opposition to Empire's motion on June 1. Like Staff and Public Counsel, these Intervenors[8] point out that Empire's motion does not meet the established grounds for interim relief. Reviewing the history of interim rate relief, the Intervenors quote the *Utility Consumers Council* Court for the proposition that, "[a]n interim rate increase may be requested where an emergency need exists."[9] As noted by other parties, too, Empire doesn't even claim that there is an emergency here. The Intervenors further argue that any rate order issued in June 2004 would not be supported by competent and substantial evidence of record as required by law because no adequate hearing would have been held.[10] Even when the Commission permits a tariff to take effect without suspension, the Intervenors state, Missouri law requires that the Commission consider all relevant factors.[11] Like the Public Counsel, these Intervenors oppose a technical conference.

Empire replied on June 7, stating that certain points are not at issue. No one disputes that natural gas is the primary fuel source for over half of Empire's generation. No one disputes that gas prices are volatile. Empire asserts that gas prices continue to rise, despite Empire's hedging strategies. For these reasons, Empire argues that it has shown the Commission "a significant, unusual event" that merits interim relief outside of the parameters of the traditional emergency test. As Empire puts it, "will [the Commission] move in the direction of attempting to create innovative solutions to deal with changing circumstances?"

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[8] Explorer Pipeline's unopposed Application to Intervene was granted at the Prehearing Conference on June 3, 2004.

[9] *Supra*, at 48.

[10] Note that *Utility Consumers Council*, *id.* at 57 and quoted by the Intervenors, refers to "an abbreviated hearing."

[11] *Id.*, at 49.

Empire renews its motion and, additionally, requests an opportunity to make an oral presentation to the Commission.

The Commission has reviewed Empire's motion, the responses filed by the other parties, and Empire's reply. The Commission agrees that an on-the-record presentation would be useful.

IT IS THEREFORE ORDERED:

1. That an on-the-record presentation will be held at the Commission's offices at the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, Room 310, on Monday, July 26, 2004, beginning at 9:00 a.m. This building meets accessibility standards required by the Americans With Disabilities Act. If a person needs additional accommodations to participate in the hearing, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or dial 711 for Relay Missouri prior to the hearing. The parties shall be prepared to present legal and factual arguments in support of their positions on Empire's Motion to List the Suspension of the IEC Rider Tariff and to respond to questions from the bench.

2. That any party wishing to file additional suggestions in support of, or in opposition to, Empire's motion shall do so by 4:00 p.m. on Tuesday, July 20, 2004.

3. That this order will become effective on June 17, 2004.

BY THE COMMISSION

(S E A L)

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Kevin A. Thompson, Deputy Chief
Regulatory Law Judge, by
delegation of authority under
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 17th day of June, 2004.