

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

In the Matter of The Empire District Electric)	
Company of Joplin, Missouri for Authority)	
to File Tariffs Increasing Rates for Electric)	Case No. ER-2008-0093
Service Provided to Customers in the)	
Missouri Service Area of the Company)	

SUGGESTIONS IN OPPOSITION TO MOTION TO STAY

COMES NOW The Empire District Electric Company (“Empire” or “Company”), by and through its undersigned counsel, and respectfully requests that the Missouri Public Service Commission (“Commission”) issue its order denying the Motion to Stay and Motion for Expedited Treatment filed herein on August 8, 2008 (the “Motion to Stay”), purportedly by the following entities: Praxair, Inc.; Explorer Pipeline, Inc.; General Mills, Inc.; Wal-Mart Stores, Inc.; and Enbridge Energy, L.P. (the “Movants”). For its Suggestions in Opposition to the Motion to Stay, Empire respectfully states as follows:

1. On July 30, 2008, the Commission issued its *Report and Order* herein, bearing an effective date of August 9, 2008, authorizing Empire to increase its annual revenues by approximately \$22 million. Among other things, the *Report and Order* authorized the Company to file compliance tariff sheets no later than August 9, 2008.

2. Accordingly, on August 6, 2008, after providing red-lined tariff sheets and consulting with the Staff of the Commission, Empire filed with the Commission compliance tariff sheets designed to effectuate the decisions made by the Commission in the *Report and Order*. After filing the compliance tariff sheets on August 6, 2008, and upon further review, certain errors were discovered by Empire and the other parties. Typographical errors in four of the sheets were addressed by the filing of “substitute” sheets. Additionally, Empire withdrew the four FAC tariff sheets (PSC Mo. No. 5, Sec. 4, sheet numbers 17, 17a, 17b, and 17c) filed on

August 6, 2008, and submitted new tariff sheets bearing the same sheet numbers.¹ Empire seeks expedited consideration and approval of its compliance tariffs.

3. On August 8, 2008, the Staff of the Commission filed its Staff Response to Commission Order, with attached affidavit. The Staff Response notes that Staff reviewed Empire's proposed tariff sheets "word-by-word and number-by-number," and the attached affidavit sets forth Staff's position that Empire's compliance tariffs should be approved by the Commission on an expedited basis.

4. As noted, the Motion to Stay was filed purportedly on behalf of Praxair, Explorer Pipeline, General Mills, Wal-Mart Stores, and Enbridge Energy. Two of the Movants, Wal-Mart and Enbridge, are not parties to this case, and, although permitted to seek rehearing and subsequent judicial review of the *Report and Order*, have no standing to file the subject motion.

5. Putting aside the above-noted issue regarding the Movants, the Motion to Stay should still be denied by the Commission. Simply put, the Movants have provided no compelling basis to stay the effectiveness of rates that have been determined by the Commission, with its *Report and Order*, to be just and reasonable. There is no cognizable legal argument that could provide sufficient reason to grant the motion – it is not even alleged that the compliance tariffs fail to comply with and/or implement the terms of the *Report and Order*. The Motion to Stay is nothing more than another effort by entities whose positions did not prevail at hearing to delay, with procedural maneuverings, the implementation of the terms of the *Report and Order*. If a stay were granted at this time, the statutory operation of law date, as well as the findings of the Commission, as set out in its *Report and Order*, would be rendered meaningless.

¹ Empire's Supplemental Motion for Expedited Treatment, filed herein on August 8, 2008, sets forth the reasons for the re-filing of the FAC tariff sheets.

6. The Movants have no legally cognizable interest in the existing rates being charged by Empire, so there is no “harm” to be suffered by the new rates taking effect. *State ex rel. Jackson County v. Public Service Commission*, 532 S.W.2d 20, 31-32 (Mo. banc 1976). Empire, on the other hand, has a constitutional right to receive just compensation for property it has dedicated to the public service. *State ex rel. Missouri Public Service v. Fraas*, 627 S.W.2d 882, 886 (Mo.App. 1981). Pursuant to the Commission’s findings in its *Report and Order*, the rates currently in effect do not provide that “just compensation.”

7. Further, the Movants have adequate remedies available at law. The Movants have sought rehearing of the *Report and Order*, will be able to seek rehearing or reconsideration of any order approving Empire’s compliance tariffs, and will be able to seek subsequent judicial review of all properly preserved issues. In conjunction with this judicial review, RSMo. §386.520.1 states that the pendency of a writ of review shall not of itself stay or suspend the operation of the Commission order, “but during the pendency of such writ, the circuit court in its discretion may stay or suspend, in whole or in part, the operation of the commission’s order or decision.” This statute requires a finding by the Circuit Court that, without a stay, “great or irreparable damage would otherwise result to the petitioner.” The Court must specify the nature of the damage.

8. Additionally, §386.520 provides that the stay order shall not become effective until “a suspending bond shall first have been executed and filed with, and approved by, the circuit court, payable to the state of Missouri, and sufficient in amount and security to secure the prompt payment, by the party petitioning for the review” of all damages caused by the delay in the enforcement of the order or decision of the Commission. The Movants should not be able to side-step the procedures and requirements of §386.520, including the bond requirement, simply

by filing a short stay motion with the Commission, pointing only to their Application for Rehearing and the mistaken belief that they will be “forced to pay rates that are unlawful.” (*See* Motion to Stay, ¶1 and ¶3)

WHEREFORE, for the reasons stated herein and in Empire’s previous filings, Empire moves the Commission to deny the Motion to Stay and grant the Company’s request for expedited consideration and approval of its compliance tariff sheets.

Respectfully submitted,

_____/s/ Diana C. Carter
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ATTORNEYS FOR THE EMPIRE DISTRICT
ELECTRIC COMPANY

Certificate of Service

I hereby certify that the foregoing has been sent by United States mail, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record on the 11th day of August, 2008.

_____/s/ Diana C. Carter