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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 10th  
day of March, 1995.

Ahlstrom Development Corporation, and	)	
Cottonwood Energy Partners, L.P.,	)	
	)	
Complainants,	)	
	)	
v.	)	<u>Case No. EC-95-28</u>
	)	
The Empire District Electric Company,	)	
a corporation,	)	
	)	
Respondent.	)	
	)	

**ORDER DENYING MOTION FOR SUMMARY DETERMINATION**

On February 14, 1995, The Empire District Electric Company (Empire) filed a Motion For Summary Determination. On March 6, 1995, Ahlstrom Development Corporation and Cottonwood Energy Partners, L.P. (Ahlstrom) filed a reply. On March 9, 1995, Empire delivered a letter to Mr. Tom Luckenbill, Deputy Chief Hearing Examiner, with copies to all counsel of record. The letter requests that the agenda item be removed and the Commission wait until March 17, 1995, to rule on the Motion For Summary Determination so that Empire may reply to Ahlstrom's response.

The Commission will deny Empire's request to wait until March 17, 1995, because the Commission has the information it needs to rule on this motion.

Empire states that the complaint was not ripe for adjudication when filed by Ahlstrom in that Empire was still negotiating with various parties to satisfy its need for base load capacity and associated energy in the year 2000 and, thus, avoided costs could not be determined until Empire had determined the

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low cost, best alternative, and, therefore, the complaint should be dismissed as not ripe.

Empire argues, in the alternative, that the Commission should dismiss the complaint because Empire's avoided costs for the year 2000 under an agreement with Western Resources, Inc. (WRI) are less than the corresponding costs under Ahlstrom's proposal.

Finally, Empire argues that it no longer needs additional capacity in the year 2000, and, thus, this element of the complaint has been negated and a summary determination must be granted. The Commission finds that this reasoning is not consistent with the requirement under PURPA and its implementing regulations that electric utilities purchase output of qualifying facilities at or below avoided-cost rates.

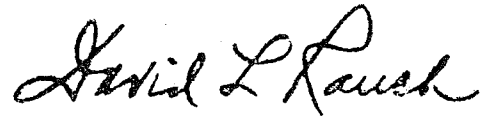
In its response Ahlstrom states that even assuming that Empire's agreement with WRI is relevant to this proceeding, the pricing proposals and pricing provisions contained in Ahlstrom's proposal over its 25-year term compare favorably with the WRI agreement.

The Commission has reviewed the motion and response. The Commission is not willing to adopt Empire's logic regarding the ripeness of Ahlstrom's complaint because this results in an analysis whereby ongoing negotiations for the acquisition of long term wholesale electrical power preclude prevailing upon complaints under PURPA and its implementing regulations, which require electric utilities to purchase output of qualifying facilities at or below avoided-cost rates. The Commission is of the opinion that Empire's avoided cost, for purposes of this proceeding, is a material fact. Therefore, regardless of the determination as to the legal issue of the effect of the WRI agreement on Empire's avoided cost, the determination of avoided cost remains a genuine issue of material fact. The Commission will deny Empire's Motion For Summary Determination because a genuine issue of material fact exists.

**IT IS THEREFORE ORDERED:**

1. That The Empire District Electric Company's request that the Commission delay issuance of this order until March 17, 1995 or later be, and is, hereby denied.
2. That the motion for summary determination filed by The Empire District Electric Company be, and is, hereby denied.
3. That this order shall become effective on the date hereof.

**BY THE COMMISSION**

A handwritten signature in cursive script, reading "David L. Rauch".

**David L. Rauch  
Executive Secretary**

( S E A L )

Mueller, Chm., Kincheloe and  
Crumpton, CC., concur.  
McClure and Perkins, CC.,  
dissent.