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Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.state.mo.us>

May 25, 2001

BRIAN D. KINKADE
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Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

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

FILED²
MAY 25 2001
Missouri Public
Service Commission

RE: Case No. ER-2001-299 – 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

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **UNANIMOUS STIPULATION AND AGREEMENT AS TO STATE LINE COMBINED CYCLE UNIT CAPITAL COSTS.**

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,

Nathan Williams
Associate General Counsel
(573) 751-7489
(573) 751-9285 (Fax)
nwilliams@mail.state.mo.us

Enclosure

cc: Counsel of Record

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

FILED²

MAY 25 2001

Missouri Public
Service Commission

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

**UNANIMOUS STIPULATION AND AGREEMENT
AS TO STATE LINE COMBINED CYCLE UNIT CAPITAL COSTS**

COME NOW The Empire District Electric Company ("Empire" or "Company"), Praxair, Inc. ("Praxair"), the Office of the Public Counsel ("Public Counsel"), and the Staff of the Missouri Public Service Commission ("Staff"), hereinafter to be known as "the Parties," and for their Unanimous Stipulation and Agreement ("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 directing the Parties to file 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 Parties have

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reached an agreement with respect to the appropriate amount of capital costs for inclusion in Missouri jurisdictional rate base regarding the State Line Combined Cycle ("SLCC") power plant, which is listed as Issue number 6 a. in the List of Issues filed in this case on May 14, 2001.

4. In its direct case, the Staff proposed a total project cost disallowance of approximately \$12 million for costs incurred on the SLCC's Heat Recovery Steam Generators, which costs were related to the Fru-Con contract, including the settlement between Fru-Con and Empire. Without admitting any imprudence on its part, and solely for the purpose of disposing of this issue, Empire agrees to accept an \$8.3 million total SLCC disallowance, which equates to a \$3.984 million reduction in Missouri jurisdictional rate base, for costs. An amount for Allowance for Funds Used During Construction (AFUDC) will be added to this disallowance. This lump sum amount is a negotiated settlement of Issue number 6 a. in the List of Issues, filed May 14, 2001. Empire agrees not to seek recovery of the \$3.984 million rate base settlement amount and related AFUDC associated with the Fru-Con contract in any subsequent rate proceeding in Missouri.

5. The current estimate to construct the SLCC project is approximately \$203.2 million (excluding AFUDC), which is approximately \$31 million higher than the original estimate. The \$31 million is comprised of approximately \$12 million relating to the Fru-Con contractor performance issue, and an additional amount equal to approximately \$19 million. Empire agrees to work with the Staff of the Commission to provide further and more detailed explanation for this additional approximately \$19 million difference. Empire will make this more detailed explanation available to the Staff no later than July 31, 2001, for use in the true-up in this case. If Empire fails to sufficiently detail the \$19 million difference to the reasonable satisfaction of the Staff, Empire will accept an additional \$1.0 million disallowance, which equates to about a \$480,000 reduction in Missouri jurisdictional rate base, for costs. An amount for Allowance for Funds Used During Construction (AFUDC) will be added to this disallowance. If Empire and Staff disagree on the reasonableness of the explanations detailing the \$19 million difference, Empire may seek rate base treatment of an additional \$480,000,

increased for related AFUDC, on a Missouri jurisdictional basis for SLCC (which would be \$1 million on a total plant and total company basis) in the August 2001 true-up hearing in this case.

6. The structure of and the dollars represented by this Agreement are depicted in the table below. The dollar amounts shown, however, are for the total SLCC plant (since a portion is owned by a party other than Empire), and for Empire on a total company (i.e., all jurisdictions, not just Missouri) basis. Empire's ownership share of the plant is 60 percent and Empire's Missouri jurisdictional allocation of its portion of the SLCC for purposes of this case is approximately 80 percent.

Current SLCC Cost Forecast, incl. approximately \$31 mil. in additional costs (w/o AFUDC)	\$203.2 M
Less Fru-Con Settlement with Staff and other parties	<u>< 8.3 M ></u>
Anticipated Dollar Amount for SLCC Rate Base	194.9 M
Less: Contingency for \$19 Million Difference, if not explained to Staff's satisfaction	<u>< 1.0 M ></u>
Minimum Dollar Amount for SLCC Rate Base	\$193.9 M

7. To the extent the final and completed cost of the SLCC plant exceeds the current forecasted amount of \$203.2 million, Empire will be required to provide a detailed explanation of the reasons for these additional costs experienced for the SLCC plant, if Empire desires to seek rate base treatment of the additional costs. In that event, these explanations should be provided to the Staff as soon as possible, but no later than July 31, 2001. If Empire fails to explain in sufficient detail any of the additional cost amounts incurred to the reasonable satisfaction of the Staff, Empire may seek rate base treatment of any of the unsatisfactorily explained additional costs above the current SLCC forecast in the August 2001 true-up hearing.

8. Although by the terms of this agreement, Empire waives its right to seek, in any subsequent rate proceeding in Missouri, recovery of the aforementioned \$3.984 million disallowance related to the Fru-Con contract, the Parties recognize that the Company may, in a

subsequent proceeding, seek rate recovery of any portion of the aforementioned \$1 million difference between the minimum and anticipated SLCC rate base allowance (as set forth in paragraph 6 above), or of any portion of any expenditures in excess of the current SLCC forecast of \$203.2 million, as may be disallowed in this proceeding as a result of insufficient justification.

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

10. In the event that the Commission accepts the specific terms of this Agreement, the Parties agree that the direct, rebuttal and surrebuttal testimony of the following 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: Wilson, Rolph, Beecher, Brill

Staff witnesses: Featherstone, Oligschlaeger, Elliott

11. In the event the Commission accepts the specific terms of this Agreement, the Parties waive, but only with respect to the issues explicitly resolved herein: their respective rights, pursuant to §536.080 RSMo 2000, to present testimony, to cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2 RSMo 2000; their respective rights to seek rehearing pursuant to §386.500 RSMo 2000; and their respective rights to seek judicial review pursuant to §386.510 RSMo 2000. Nothing in this provision is designed to prevent any party from presenting oral testimony at the evidentiary hearing in support of the Agreement. The Parties 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.

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

13. 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.

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

15. The Parties respectfully note that this Agreement is being presented to the Commission with the intent of disposing of an issue that might otherwise consume considerable evidentiary hearing time. The Parties respectfully request that the Commission indicate as quickly as possible whether it intends to accept or reject this Agreement. If the Commission rejects this Agreement, additional hearing dates after those already scheduled may be required. Accordingly, the Parties respectfully request that, should it be deemed necessary, the Commission schedule a date as soon as possible for a presentation hearing regarding this Agreement.

WHEREFORE, the Parties respectfully request that the Commission issue an order approving this Unanimous Stipulation And Agreement As To State Line Combined Cycle Unit Capital Costs, or in the alternative, schedule a date as early as possible for a presentation hearing regarding the Agreement.

Respectfully submitted,

DANA K. JOYCE
General Counsel

Dennis L. Frey by Nathan Williams

Dennis L. Frey, Mo. Bar No. 44697
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 751-8700
(573) 751-9285 (fax)
e-mail: dfrey03@mail.state.mo.us

Attorney for the Staff of the
Missouri Public Service Commission

John B. Coffman
John B. Coffman, Mo. Bar No. 36591
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102-7800
(573) 751-5565
(573) 751-5562 (fax)
e-mail: jcoffman@mail.state.mo.us

Attorney for the
Office of the Public Counsel

Gary W. Duffy by Nathan Williams

Gary W. Duffy, Mo. Bar No. 24905
Brydon, Swearingen & England P.C.
P.O. Box 456
312 E. Capitol Avenue
Jefferson City, MO 65102-0456
(573) 635-7166
(573) 635-3847 (fax)
e-mail: Duffy@Brydonlaw.com

Attorneys for The Empire District Electric
Company

Stuart W. Conrad by Nathan Williams
Stuart W. Conrad, Mo. Bar No. 23966
Finnegan, Conrad & Peterson, L.C.
3100 Broadway, Suite 1209
Kansas City, MO 64111
(816) 753-1122
(816) 756-0373
stucon@fcplaw.com

Attorney for Praxair, Inc.

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 25th day of May 2001.

Nathan Williams

**Service List for
Case No. ER-2001-299
Verified: May 22, 2001 (ccl)**

**Office of the Public Counsel
P. O. Box 7800
Jefferson City, MO 65102**

**Gary Duffy
Brydon, Swearingen & England, P.C.
P. O. Box 456
Jefferson City, MO 65102-0456**

**Stuart W. Conrad
Finnegan, Conrad & Peterson
3100 Broadway, Suite 1209
1209 Penntower Office Bldg.
Kansas City, MO 64111**

**Henry T. Herschel
308 E. High Street Suite 301
Jefferson City, MO 65101**