

**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 Service Provided to)
Customers in the Missouri Service Area of)
the Company.)

File No. ER-2012-0345

EMPIRE'S SUPPLEMENTAL REPLY BRIEF

COMES NOW The Empire District Electric Company ("Empire" or "Company"), by and through counsel, and respectfully submits this Supplemental Reply Brief to the Missouri Public Service Commission (the "Commission"):

Paragraph 7 of the Staff's Post-Hearing Reply Brief and related footnotes contain factually inaccurate information. Schedule 1 of the Direct Testimony of Empire witness Sager, attached hereto as Appendix A and titled "Authorized ROE vs Actual ROE," is clear in its representation that Empire's common equity return ("ROE") was 7.9 percent as of the end of 2011, as contrasted with the 10.8 percent ROE previously authorized by the Commission. (Empire Ex. 4, Sch. RWS-1) Empire witness Walters testified that the Company's reported return as of June 30, 2012 was 7.8 percent (Trans. Vol. 2., p. 113, lines 18-25), and Ms. Walters' testimony was clear that Empire's "ROE is low which does consider all relevant factors." (Ex. 3, p. 7) Each reference from Empire is to an equity return – there was no improper comparison with an overall weighted average return or ROR, as alleged in Staff's Post-Hearing Reply Brief.

The issue before the Commission is whether or not Empire's proposed Rider INT, designed to generate approximately \$6.2 million on an annual basis, subject to refund, should be approved at this time. The Staff of the Commission, the Midwest Energy Users' Association, the Office of the Public Counsel, and the Midwest Energy Consumers Group believe the

Commission should decide this issue by application of an emergency standard. Empire disagrees that any so-called “emergency standard” is applicable. Empire’s proposed Rider INT was suspended by the Commission, and the Commission must now consider the Company’s rate increase request pursuant to RSMo. §393.150. As such, Empire has presented its case to demonstrate to the Commission that its proposed Rider INT represents just and reasonable rates to be approved by the Commission at this time.¹

RSMo. §393.150 does not distinguish between “interim” or “permanent” rate increases. The statute does not qualify the granting of rate relief only in “emergency” circumstances. The case of *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561 (Mo.App. 1976), is often pointed to as authority to apply an emergency standard when considering “interim” rate relief requests. In that case, however, the Commission was concerned with an application and not a tariff filing subject to suspension. This distinction is critical. Section 393.150 clearly provides that any rate increase request, after suspension of the tariff, places upon the utility the burden of demonstrating that the proposed rate is just and reasonable. It is also noteworthy that §393.150 allows for suspension of a tariff for up to 120 days, plus an additional six months, but the statute does not mandate or guaranty suspension for that length of time. To the contrary, §393.150.2 actually requires the Commission to decide the issue “as speedily as possible.”

¹ In Empire’s Statement of Position on the Issued to be Heard, filed herein prior to the evidentiary hearing, Empire clearly stated its belief that its proposed Rider INT is just and reasonable and should be authorized by the Commission pursuant to §393.150 in response to the following issue: “Is there any other basis(es) that warrant(s) the Commission authorizing Empire to implement an interim-subject-to-refund rate increase pending implementation of final general rates in this case?” Empire’s counsel also stressed the application of the “just and reasonable” standard in Empire’s opening statement at the evidentiary hearing. This standard was also the focus of Empire’s two post-hearing briefs filed herein.

The "interim" request is for a \$6.2 million portion of the "permanent" request of \$30.7 million. The revenues collected will be subject to refund, with interest, thereby protecting Empire's customers. This is the only reason for labeling the current rate request as one for "interim" relief. Of course, all tariffs are likely "interim" in nature, as it is unlikely that any Commission-approved tariffed rate will be the one and only "permanent" rate for a utility for all time.

The parties agreed to a procedural schedule for the processing of Empire's "interim" portion of its rate request, testimony was pre-filed, a full and fair evidentiary hearing was held, and the issues were briefed by the parties. The record evidence demonstrates that Empire's proposed Rider INT meets the statutory "just and reasonable" standard. In accordance with RSMo. §393.150, Empire's rate request should be evaluated by the Commission "as speedily as possible," and Empire's proposed Rider INT should be approved at this time.

WHEREFORE, Empire hereby submits this Supplemental Reply for the Commission's consideration.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

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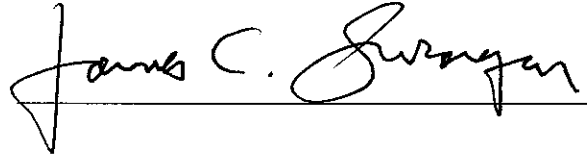
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ATTORNEYS FOR THE EMPIRE
DISTRICT ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via electronic mail on this 17th day of October, 2012, to all parties of record.

A handwritten signature in black ink, reading "James C. Swanson", is written above a solid horizontal line. The signature is cursive and stylized.