BEFORE THE PUBLIC SERVICE COMMISSION
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-2006-0315

APPLICATION FOR REHEARING

COMES NOW The Empire District Electric Company ("Empire" or the "Company"), by and through its undersigned counsel, pursuant to RSMo. §386.500, 4 CSR 240-2.080, and 4 CSR 240-2.160, and for its application for rehearing respectfully states as follows to the Public Service Commission of the State of Missouri (the "Commission")

1. On December 21, 2006, the Commission issued its Report and Order (the "*Order*") in the above-captioned case to be effective December 31, 2006.

2. It is readily apparent that the Commission devoted a substantial amount of time and effort in reaching its decisions in this case. Empire is very appreciative of this and believes that the *Order* represents a significant and positive step toward allowing the Company a reasonable opportunity to more timely recover its prudently incurred expenses and to earn its authorized rate of return.

3. Other parties, however, have now requested rehearing and may ultimately seek judicial review of the *Order*. This requires Empire to seek to protect its interests. Additionally, in the exercise of its fiduciary duty, Empire deems it necessary to continue to seek the ability to implement an energy cost recovery mechanism ("ECR") or fuel adjustment clause ("FAC"). As a consequence and for the reasons stated herein, with all due respect, the Company believes certain portions of the *Order* regarding the Commission's decisions concerning various issues as described herein are unlawful, unjust and unreasonable and should therefore be reheard and

reconsidered and/or clarified. Empire would point out, however, that assuming Empire's request in this case is "capped" by its initial filing, ultimate resolution of these issues in the Company's favor will not result in higher rates, but will simply lower the amortization portion of the revenue deficiency.

Cost of Capital/Rate of Return

3. Empire submits that competent and substantial evidence consisting of the testimony of its witness Dr. James H. Vander Weide demonstrates that the appropriate cost of common equity for the Company is 11.7 percent and not the 10.9 percent found by the Commission in its *Order*. Of the three rate of return recommendations presented in this case, only the Company's recommendation accurately captures and reflects the market-based rate of return expectations of investors in companies whose business and financial risks are comparable to Empire's.

4. The unreasonably low equity return recommendations of the Commission Staff ("Staff") and the Office of the Public Counsel ("OPC") do not satisfy the requirements set forth in *Bluefield Water Works v. Public Service Comm'n.*, 262 U.S. 679 (1923) and *Fed. Power Comm'n. v. Hope Natural Gas Co.*, 320 U.S. 591 (1944), with regard to the determination of a fair and reasonable rate of return for public utilities. Although both David Murray, the witness for Staff on this issue, and the OPC's witness, Charles W. King, use the same standard methods as Dr. Vander Weide to produce their cost of equity recommendations, neither of their recommendations is credible because both witnesses have manipulated the data inputs to produce results that are artificially low and, therefore, do not accurately reflect the return expectations of investors. Because the groups of proxy companies used by each of these witnesses to derive the data they input into their financial models is much smaller than Dr. Vander Weide's proxy

group, the data used by both Staff and the OPC suffer from the kinds of statistical distortions that are inherent to small survey samples. Distorted data inputs lead inevitably to distorted and unreliable results.

5. In reaching its decision to authorize a 10.9% return on common equity, (on the same date it authorized an 11.25% ROE for Kansas City Power & Light Company) to the extent that the Commission disregarded the recommendations of the Company on this issue, including Dr. Vander Weide's recommended upward adjustment based on risk, the Commission erred. To the extent the Commission relied on the testimony presented by Staff and OPC, the Commission erred.

6. The *Order* correctly cites that the "parties that filed testimony and took a position on [capital structure] agreed to use of Empire's actual consolidated capital structure." Report and Order, p. 27. The Commission's Order Concerning Test Year and True-Up and Adopting Procedural Schedule (April 11, 2006) identified capital structure as an item to be trued-up as of June 30, 2006.

7. However, the capital structure used in the *Order* is as of March 31, 2006. The capital structure as of June 30, 2006, is found in the testimony of Staff witness Mark Oligschlaeger (Exh. 148, p. 3), and would result in the following composite weighted cost of capital, based upon the Commission's decision as to return on equity contained in the *Order*:

Component	Proportion	Cost	Weighted Cost
Long-term debt	43.81%	7.03%	3.08%
Preferred securities	5.39%	8.90%	0.48%
Common equity	50.80%	10.90%	5.54%
	100.00%		9.10%

8. The result of using the June 30, 2006, capital structure would not change Empire's overall revenue requirement, after consideration of the regulatory amortization, and would not cause higher rates. However, using the June 30, 2006, capital structure would serve to reduce the amount of regulatory amortization included in the revenue requirement by approximately $300,000.

Implementation of an Energy Cost Recovery Mechanism

9. Empire's proposed rate increase request which is the subject of this case was driven primarily by the higher costs it has experienced for fuel used in generating electricity and purchased power, although other costs associated with providing safe and reliable electric service to customers has also increased since the Company's last rate adjustment. The Company's Interim Energy Charge ("IEC"), which, when combined with base rates authorized in its last rate case, failed to allow Empire to recover the significant increases in energy costs it has experienced. As a consequence, in the instant case, Empire sought to replace the IEC with an ECR that in combination with base rates would allow timely recovery from customers of actual, prudently incurred fuel and purchased power costs. The Commission, however, ordered that Empire could not make any request for an ECR while the IEC was in effect.

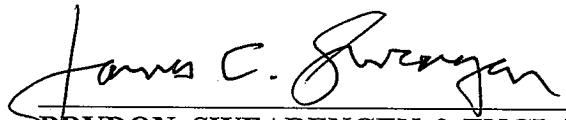
10. Empire submits that based on competent and substantial evidence and as a matter of law, the Company should have been able to seek an ECR or FAC in this proceeding and Empire should have been granted the authority to implement such a mechanism. In the context of the Company's last electric rate case, Case No. ER-2004-0570, Empire, the OPC, Praxair, Inc. and Explorer Pipeline Company stipulated that Empire could implement an IEC that would be in effect for three (3) years, "unless earlier terminated by order of the Commission." In that Stipulation and Agreement, the Company further agreed that "for the duration of the IEC" ... it would "forego any right it may have to request the use of, or to use, any other procedure or remedy, available under current Missouri statute or subsequently enacted Missouri statute, in the form of a fuel adjustment clause, a natural gas cost recovery mechanism, or any other energy related adjustment mechanism to which the Company would otherwise be entitled."

11. The Stipulation and Agreement prohibits the Company from having an ECR in place *in addition to* the IEC approved in that case. The Stipulation and Agreement does not prohibit the Company from seeking to terminate its IEC and implement an ECR or FAC in lieu of the IEC. Accordingly, in this proceeding, Empire should have been allowed to avail itself of the provisions of Senate Bill 179, RSMo. §386.266. Additionally, as a matter of law, the Commission has the authority to set just and reasonable rates and could not be prevented from doing so by the terms of the Stipulation and Agreement. The competent and substantial evidence before the Commission in this proceeding warranted the implementation of an ECR or other FAC in order to allow Empire a reasonable opportunity to timely recover its prudently incurred expenses and earn its authorized rate of return.

12. To the extent the Commission, by the *Order* or otherwise in this case, prevented Empire from seeking an ECR or FAC while the IEC was in effect and failed to authorize the requested ECR or FAC in this proceeding, the Commission erred.

WHEREFORE, The Empire District Electric Company respectfully requests that the Missouri Public Service Commission grant rehearing with respect to its *Report and Order* issued in the above-captioned case on December 21, 2006, to be effective on December 31, 2006, for the purpose of rehearing and reconsidering the issues raised herein, and, upon rehearing, issue a new order consistent with this pleading.

Respectfully submitted,



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Certificate of Service

I hereby certify that the foregoing has been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record on the 29th day of December, 2006.