

**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-2012-0345  
Service Provided to Customers in the            )  
Missouri Service Area of the Company            )

**EMPIRE’S REPLY TO MOTION TO REJECT  
AND OTHER REQUESTS IN OPPOSITION TO INTERIM RATE REQUEST**

COMES NOW The Empire District Electric Company (“Empire” or “Company”), by and through counsel, and, in reply to the pleadings filed in opposition to Empire’s interim rate request, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

1. On July 6, 2012, Empire filed certain revised rate schedules, to include a set of tariff sheets (Tracking No. TE-2013-0021) that represented Empire’s interim rate request. In support of the interim rate request, Empire filed a Motion Requesting that the Commission Exercise Its Discretion and Allow Empire’s Interim Rate Filing to Take Effect Without Suspension and By Operation of Law.

2. Three parties filed responses to Empire’s Motion – the Staff of the Commission (Staff), the Office of the Public Counsel (Public Counsel) and the Midwest Energy Users’ Association. (MEUA). Staff, Public Counsel and the MEUA all opposed Empire’s Motion and requested rejection of the interim rate tariff. Further, the Public Counsel filed a separately styled Motion to Reject Interim Tariff.

3. On July 23, 2012, the Commission issued its Order Suspending Interim Rate Tariff. Therein, the Commission suspended the subject tariff for 120 days, or until December 3,

2012. The Commission further stated that it “will conduct an evidentiary hearing to allow Empire an opportunity to present evidence to show that it is entitled to an interim rate increase.”

4. The Commission’s suspension and intent to conduct an evidentiary hearing would appear to make moot the issues raised by the parties in response to Empire’s Motion, as well as the Public Counsel’s Motion to Reject. However, because that Public Counsel Motion and the other requests to reject have not been expressly denied, Empire will take this opportunity to reply to those pleadings.

### **DISCRETION**

5. The various pleadings make the point that there is no “right” to interim rate relief.<sup>1</sup> Empire agrees. The Court of Appeals has stated that “[t]he ‘file and suspend’ provisions . . . lead inexorably to the conclusion that the Commission does have discretionary power to allow new rates to go into effect immediately or on a date sooner than that required for a full hearing as to what will constitute a fair and reasonable permanent rate.” *State ex rel. Laclede Gas Co. v. Public Service Com.*, 535 S.W.2d 561, 566 (Mo.App. W.D. 1976).

6. More recently, in a *Report and Order* dated January 13, 2010, effective January 23, 2010, in Case No. ER-2010-0036, the Commission reached the same conclusions, specifically holding as follows:

. . . the Commission finds that it has broad discretion to determine whether AmerenUE may implement an interim rate increase. In determining when an interim rate increase is appropriate, the Commission is not limited to an emergency or near emergency standard. However, any rate, including an interim rate, the commission approves must be just and reasonable to both the utility and its ratepayers.

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<sup>1</sup> The pleadings also suggest that the Commission should not award an increase to *increase a utility’s profits*. This is one of those arguments that may sound reasonable at first blush, but upon examination, has no import. Every base rate increase, interim or permanent, will increase a utility’s profits to some extent. If increasing a utility’s profits were a disqualifying factor, there would be no base rate increases in any circumstance.

7. This matter rests within the discretion of the Commission. Accordingly, the Commission should review the circumstances to be presented to it and, only after consideration of those circumstances, determine whether or not to grant Empire's request for an interim rate.

8. The Commission has indicated that one circumstance that may lead to an interim rate increase is when "the utility is facing extraordinary circumstances and there is a compelling reason to implement an interim rate increase." *In the Matter of AmerenUE*, Report and Order, Case No. ER-2010-0036 (January 23, 2010). There seems to be no dispute that the Joplin tornado and the costs resulting from that event constitute an extraordinary circumstance. Thus, under the approach in the *AmerenUE* case, the Commission might grant an interim rate increase where there is a compelling reason to do so.

### **REQUEST**

9. A grant of the requested interim rate relief will respond to the extraordinary circumstance in a way that will have some benefit for both the Company and its customers. From the Company's perspective, the interim rate would allow it to begin to recover the extraordinary cost it has incurred as a result of the Joplin tornado. From a customer perspective, a grant of the interim rate would end the tornado cost deferral accumulating as a result of the accounting authority granted by the Commission in Case No. EU-2011-0387 and, all else being equal, reduce the ultimate permanent revenue requirement associated with the tornado deferral, thus lowering the overall cost to the customer.

10. In Case No EU-2011-0387, Empire, with the agreement of the parties to that case, was granted an accounting authority order (AAO) authorizing it to defer:

. . . actual incremental Operations & Maintenance expenses associated with repair, restoration, and rebuild activities associated with the May 22, 2011, tornado, and depreciation and carrying charges equal to its ongoing Allowance for Funds Used During Construction rates associated with tornado-related capital expenditures.

11. The AAO further provided that, if Empire filed a rate case before June 1, 2013, Empire was to:

. . . ratably amortize to Account 182.3 over a ten-year (120-month) period any deferrals it has already booked, beginning on the earlier of: 1) the effective date of new rates implemented in its next general rate increase case or rate complaint case; or 2) June 1, 2013.

12. MEUA asserts that “with this interim request, Empire now appears to be seeking to recover some portion of these same costs, thereby evading the terms of the AAO settlement that it accepted.” (MEUA Objection to Interim Relief, p. 4). Empire agrees that it is indeed attempting to begin to recover some portion of the costs that would otherwise be deferred. However, doing so is very much consistent with the terms of the AAO. The AAO language cited above contemplates the possibility of a rate case being filed prior to June 1, 2013. It further contemplates amortization of the deferred amounts to expense at the time new rates are implemented in that rate case and, thus, recovery of the deferred amounts within that rate case.

13. Empire’s proposal, as stated in the Direct Testimony of Kelly Walters (p. 12), was that “[e]ffective with new rates, whether interim or permanent, the deferral of tornado related cost authorized by the Commission in the tornado AAO should be stopped.” Thus, at the time of new rates, the costs subject to deferral as a result of Case No. EU-2011-0387 would no longer be deferred for future recovery. The proposed interim rates cannot “allow a duplicate recovery” as alleged by MEUA (p. 9), because the proposed interim rates would substitute actual recovery for deferral and possible future recovery.

14. MEUA further erroneously suggests that this request for interim relief “seeks to do an end run around [the AAO] and, additionally, seek the speculative recovery of ‘lost margin’ or profits on sales that never occurred.” (MEUA Objection to Interim Relief, p. 2). Empire’s interim rate proposal requests a portion of the revenues necessary to provide Empire with a just

and reasonable rate NOW, based on CURRENT circumstances, on an ongoing basis. There has been no deferral of Empire's lost profits between the date of the tornado and the date of effective rates in this rate case. Empire's proposal "reflects [its] estimate of future net margin losses and does not include any of the actual losses Empire experienced . . . ." (Walters Dir., p. 11).<sup>2</sup>

15. Thus, Empire's proposal seeks to adjust rates on a going-forward basis, to reflect the costs of its actual investment and its actual ongoing loss of customers. It does this in a very conservative manner, as it "is equal to about 21 percent of Empire's overall request of \$30.7 million, and would result in an interim increase to [Empire's] Missouri customers of around 1.5 percent." (Walters Dir., p. 6).

16. The Commission should deny the Public Counsel's Motion and the other requests that the Commission reject Empire's interim rate tariff filing and move toward the hearing that has been proposed in order to consider Empire's interim rate request.

WHEREFORE, Empire respectfully requests that the Commission consider the above information, deny the Public Counsel's Motion to Reject and the other requests to reject Empire's interim rate tariff and, thereafter, grant such other and further relief as is just and

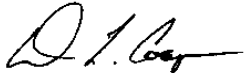
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<sup>2</sup> Even if this were a request for lost revenue, it would still not be an "end run" around the AAO. The Stipulation in EU-2011-0387 required Empire to "file a pleading in this docket withdrawing, *without prejudice*, that portion of its application that seeks authority to defer the lost fixed cost components of Empire's rates." (Stip., p. 4) (emphasis added). Empire believes that the significance of the phrase "without prejudice" was appreciated by all of the parties to the Stipulation.

proper under the circumstances.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

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**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 30<sup>th</sup> day of July, 2012, to the following:

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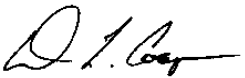
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