

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE 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

**POST-HEARING BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL**

**INTRODUCTION**

On February 1, 2006, The Empire District Electric Company filed with the Commission tariff sheets designed to implement a general electric rate increase for service it provides to its Missouri customers. Testimony was filed in accordance with the Commission's scheduling order, and a hearing was held from September 5 through September 14. The Commission established October 16 as the deadline for post-hearing briefs.

It is Public Counsel's understanding of the Commission's current briefing practice that post-hearing briefs are only to address significant testimony and evidence adduced at the evidentiary hearing, rather than fully briefing each issue. Without commenting on the wisdom of this approach, this brief will focus on testimony adduced at the evidentiary hearing (see Transcript Volumes 7-18, and Exhibits 1-143). This brief only addresses four issues that Public Counsel has pursued and that had significant testimony at the hearing. These issues are Return on Equity, Off-system Sales, Fuel and Purchased Power Expense, and the Low Income Assistance Program.

Public Counsel notes that the status of the evidentiary record in this case is, to put it mildly, complicated. There is a great deal of testimony that was stricken, but is preserved in the

record. There is a great deal of testimony that will necessarily be moot once the Commission finally decides the question of whether the Interim Energy Charge established in ER-2004-0570 will continue for its full term. There is testimony on issues addressed in a nonunanimous stipulation concerning which there is a pending application for rehearing. There is testimony, irrelevant to any of the issues in this case, that addresses questions posed in a Commission order concerning which there is another pending application for rehearing. There is true-up testimony that the Commission purported to admit into the record even though it had not been offered, and even though the Commission did not allow the opportunity to object.

## **ISSUES**

### **REVENUE REQUIREMENT**

#### **Rate of Return Issues**

Return on Common Equity: What return on common equity should be used for determining Empire's rate of return?

Empire witness VanderWeide has proposed adding 40 basis points to his calculated return on equity in order to account for what he considers to be Empire's singular risk profile. But he was unable to identify a single regulatory body that has accepted this type of financial risk adjustment. (Tr. 236-239).

Dr. VanderWeide testified that any increase in Empire's stock price would be reflected in the calculation of Empire's cost of equity, but admitted that none of the four methods he used to calculate Empire's cost of equity would reflect an increase in Empire's stock price. (Tr. 243-247).

Dr. VanderWeide conceded that his direct testimony revealed a steady decline in DCF results from 12.15 percent in March 2000 to 9.95 percent in August 2005, despite his characterization of the DCF results as volatile. (Tr. 247-248).

Dr. VanderWeide admitted that Empire's capital structure is so far out of line from the rest of the electric utility industry that he was unable to come up with a group of electric utilities that have a similar financial risk to Empire's. (Tr. 250-251).

Dr. VanderWeide recalculated his DCF results, at the request of the bench, to remove the three highest comparable companies. He also recalculated those results to remove the three highest and three lowest. (Exhibit 97). Both of those recalculations significantly lowered the DCF results. Had he done the same sort of recalculation for his CAPM determination, those results would also have been lower. (Tr. 328, 362-363).

Public Counsel witness King's testimony went virtually unchallenged at the hearing. (Tr. 1134-1145). No important issues were raised, and no points were scored. Public Counsel witness King presents the most balanced calculation of the required return. The appropriate return on equity for Empire is 9.65 percent.

## **Revenue Issues**

Off-system Sales: What amount should be included in Empire's revenue requirement for off-system sales?

The amount should be the five-year unadjusted average of off-system sales. This is the most reasonable approach and consistent with prior Commission treatment of similar issues. The five year average is also within \$50,000, or 2% of the test year actual off-system sales margin.

Empire advocated removing the margins related to a particular transaction with American Electric Power (AEP) in order to lower the level of off-system sales revenues, essentially removing one "peak" and averaging the rest of the data. But Empire did not remove a corresponding "valley" as would normally be done if an analyst were truly trying to arrive at a representative figure. (Tr. 685).

Public Counsel witness Smith pointed out another approach that would have been more balanced than simply throwing out one piece of data as Empire proposes. If one were to determine that the period of time in which the AEP contract was in effect was abnormal – and Public Counsel would not agree with such a determination – then a three year average or a two year average excluding those years in which the AEP contract was in effect could be calculated. Although Public Counsel does not advocate this approach, it would yield results much closer to Public Counsel’s recommendation than Empire’s. (Tr. 683-685).

Empire witness Scott Keith testified that Empire actually made the sales and received the profit from the AEP contract. (Tr. 1067). He also admitted that in any given year, Empire does not make the exact level of off-system sales from the exact resources, and that the levels vary quite a bit. (Tr. 1067). In the context of another issue, Empire did not throw out any data when calculating a five-year average. (Tr. 695). Public Counsel submits that the appropriate approach to calculating off-system sales revenues is to use a five-year average of all the data.

## **Expense Issues**

Fuel and Purchased Power Expense: What is the appropriate level of on-system fuel and purchased power expense Empire should be allowed to recover in rates?

The Commission's April 11, 2006 order accepted Empire's recommendation that the test-year be the twelve-month period ending December 31, 2005, adjusted and updated for any known and measurable changes through March 31, 2006. If the Commission decides to base Empire’s fuel and purchased power costs on a test year adjusted amount (rather than holding Empire to the terms of the IEC), then the allowed amount for such costs should be \$164,804,530. <sup>1</sup> (Exhibit

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<sup>1</sup> Although Exhibit 111HC is a highly confidential exhibit, this particular number is not highly confidential.

111HC). This is the only fuel and purchased power run submitted in the case that properly reflects March 31, 2006 data.

Low Income Assistance Program: Should Empire's Experimental Low-Income Program (ELIP) be continued with changes? If so, what should those changes be, should the Customer Program Collaborative (CPC) determine those changes and have oversight responsibility respecting the program, and how should the cost of the program be included in Empire's cost-of-service for collection from ratepayers? What should be done with unspent ELIP funds?

Empire witness McCormack confirmed that the ELIP program is still an ongoing program, and no party has offered evidence to the contrary. (Tr. 493). Empire suggested two options with respect to how to move forward with the ELIP program; one of those is to continue the ELIP program. (Tr. 495). Ms. McCormack testified that there is nothing in the ELIP tariff sheets do not specify a date certain or even a triggering event that would cause the ELIP program to end. (Tr. 495). Ms. McCormack testified that shareholder matching should continue until the ELIP program ends. (Tr. 497). Empire agreed that it would be best to use the ELIP balance for other programs under the auspices of the CPC rather than allow it to go into Project Help. (Tr. 501-502). Ms. McCormack agreed that the evaluation gave a positive recommendation to the ELIP program. (Tr. 503).

Staff witness Mantle testified that the Stipulation and Agreement that created the ELIP program did not mention Project Help, did not mention what should be done with any excess funds, and did not mention how the ELIP program might end. (Tr. 521). Ms. Mantle admitted that even though she filed testimony on July 28 recommending that the ELIP program be discontinued, she did not read the evaluator's recommendation about the program until a month and a half later. (Tr. 523). Ms. Mantle's recommendation to terminate the program should therefore be given no weight. Staff witness Mantle agreed that it would be worthwhile to require

participants to apply for weatherization assistance as a prerequisite for receiving funds from the ELIP program. (Tr. 524). She also agreed that it would be a good idea for participants who are renters to require that their landlords at least be requested to apply for weatherization assistance. (Tr. 524).

The only reasonable way to move forward is to continue the ELIP program with the modifications recommended by Public Counsel witness Meisenheimer.

Respectfully submitted,  
OFFICE OF THE Public Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed to all parties this 17th day of October, 2006.

By: \_\_\_\_\_