

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

In the Matter of the Application of The Empire)	
District Electric Company for an Accounting Order)	<u>Case No. EO-2009-0233</u>
Concerning Reclassification of Certain Transmission)	
and Distribution Facilities.)	

**STAFF RECOMMENDATION TO
PROVISIONALLY GRANT ACCOUNTING AUTHORITY**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and, for its recommendation to provisionally grant The Empire District Electric Company accounting authority, respectfully states:

1. On December 1, 2008, The Empire District Electric Company (Empire) filed an application with the Commission seeking an order that would 1) grant it accounting authority to make no changes to the current classification of investment in transmission and distribution facilities recorded on Empire's books and records prior to January 1, 2008; 2) accept, as reasonable, Empire's methodology used to determine which of its transmission and distribution assets are Transmission Facilities and the resulting determinations by Empire regarding transmission and distribution assets placed in service prior to January 1, 2008, as described in its application; 3) authorize Empire to utilize the Southwest Power Pool's (SPP) criteria and definition to classify transmission and distribution assets placed in service after January 1, 2008; and 4) grant such further relief as the Commission finds to be reasonable and just.

2. The SPP exercises functional control over Empire's transmission assets and under SPP's FERC-approved Open Access Transmission Tariff (OATT) transmission facilities are defined differently than how Empire has historically defined them when classifying its plant as transmission plant or distribution plant. Because FERC has expressed its intent to give deference to state regulatory bodies regarding the classification of plant as transmission or distribution

plant, Empire filed its application that initiated this case, and it made similar filings in Arkansas, Kansas and Oklahoma.

3. In its Memorandum, attached hereto as Appendix A, the Staff, for the reasons stated in the Staff's memorandum, recommends the Commission provisionally grant Empire the specific relief it requests. Because the Staff is unsure of the possible impacts of (1) transmission/distribution plant reclassification on the amount of net payments Empire receives from or pays to SPP related to SPP transmission service and (2) actions on Empire's similar requests to regulatory authorities in Arkansas, Kansas and Oklahoma, rather than recommending the Commission unconditionally grant Empire the relief it requests, the Staff recommends that the Commission provisionally grant Empire the relief it requests until the effective date of new rates in Empire's next general electric rate proceeding before this Commission.

WHEREFORE, the Staff of the Missouri Public Service Commission recommends the Commission provisionally grant Empire until the effective date of new rates in its next general electric rate proceeding before this Commission the relief it requests, *i.e.*, issue an order that 1) grants Empire accounting authority to make no changes to the current classification of investment in transmission and distribution facilities recorded on Empire's books and records prior to January 1, 2008; 2) accepts, as reasonable, Empire's methodology used to determine which of its transmission and distribution assets are Transmission Facilities and the resulting determinations by Empire regarding transmission and distribution assets placed in service prior to January 1, 2008, as described in its application; and 3) authorizes Empire to utilize the SPP criteria and definition to classify transmission and distribution assets placed in service after January 1, 2008.

Respectfully submitted,

/s/ Nathan Williams

Nathan Williams
Deputy General Counsel
Missouri Bar No. 35512

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 20th day of February 2009.

/s/ Nathan Williams

MEMORANDUM

TO: Missouri Public Service Commission Case File
Case No. EO-2009-0233, The Empire District Electric Company

FROM: Mark L. Oligschlaeger, Auditing Department
Alan J. Bax, Energy Department

/s/ Mark L. Oligschlaeger 02/20/09 /s/ Nathan Williams 02/20/09
Project Coordinator/ Date General Counsel's Office/Date

SUBJECT: Staff's Recommendation for Temporary Approval of The Empire District Electric Company's Application for an Accounting Order Concerning Reclassification of Certain Transmission and Distribution Facilities

DATE: February 20, 2009

On December 1, 2008, The Empire District Electric Company (Empire or Company) filed its Application concerning reclassification of certain of its transmission and distribution plant. Specifically, Empire requests that the Missouri Public Service Commission (Commission) issue an order: 1) granting Empire accounting authority to make no changes to the current classification of investment in transmission and distribution facilities recorded on Empire's books and records prior to January 1, 2008; 2) accepting, as reasonable, Empire's methodology used to determine which of its transmission and distribution assets are Transmission Facilities and the resulting determinations by Empire regarding transmission and distribution assets placed in service prior to January 1, 2008, described herein; 3) authorizing Empire to utilize the Southwest Power Pool (SPP) criteria and definition to classify transmission and distribution assets placed in service after January 1, 2008; and 4) granting such further relief as the Commission shall find to be reasonable.

The SPP currently exercises functional control over all of Empire's transmission assets. Attachment AI of the SPP Open Access Transmission Tariff (OATT), approved by the Federal Regulatory Energy Commission (FERC), sets forth the definition of "Transmission Facilities" to be used by SPP to provide transmission service under its tariff. The SPP OATT definition of "Transmission Facilities" differed in some respects from the criteria historically used by Empire to classify its plant as either transmission or distribution. Notwithstanding the definitions found within the approved SPP OATT, FERC has expressed an intent to give deference to determinations made by state public utility commissions regarding the distinction between local distribution and transmission

facilities. Accordingly, the Company is seeking a determination from this Commission as to the appropriate classification of plant facilities in light of the SPP OATT. In addition, Empire is seeking identical determinations from the other retail electric jurisdictions in which it operates (Arkansas, Kansas, Oklahoma).

In its Application, Empire sets forth the process by which it made a determination of its existing plant facilities that it believes would be subject to reclassification between the transmission and distribution functions in accordance with the criteria set out in the SPP OATT. Empire also utilized the seven factor test from FERC Order 888 in its analyses. Empire appears to have identified all existing transmission and distribution lines, along with substations and associated equipment. Overall, Empire's conclusions as to the amounts of existing transmission and distribution plant that would be subject to reclassification pursuant to the SPP OATT criteria appear to be reasonable. However, assumptions made by Empire in attempting to simplify the process of reclassification may be subject to further scrutiny.

Full acceptance by retail public utility commissions (PUCs) of the SPP OATT Transmission Facility criteria would entail potential reclassification of plant previously treated by electric utilities as being either transmission or distribution into the other class. Such reclassification of plant between the transmission and distribution categories has the potential to affect retail and wholesale revenue requirements because different jurisdictional allocation methodologies and different depreciation rates are applied to each class of plant. In its Application, Empire provided its estimate of the revenue requirement impacts for the changes in plant classification if the SPP OATT criteria are applied to reclassify plant already recorded as of December 31, 2007 versus if they are not. As can be seen in Appendix B to the Company's Application, there would be a slight shift in revenue requirement from its wholesale (FERC) jurisdiction to its retail jurisdictions if the SPP OATT criteria are applied to reclassify plant already recorded on the Company's books as of December 31, 2007. And within the retail jurisdictions only, the Company's results show decreases to revenue requirement in Missouri and Oklahoma, and increases in Arkansas and Kansas. The estimated reduction in Missouri jurisdictional retail electric revenue requirement is depicted in Appendix B to be approximately \$86,000 annually. Empire characterizes this result as being immaterial to its overall electric revenue requirement in Missouri. On the basis of this immateriality, and to avoid certain alleged one-time and recurring costs associated with plant reclassification, Empire is seeking accounting authority from this Commission to maintain its current plant classifications for all of its existing plant as of December 31, 2007, and only apply the SPP OATT classification criteria prospectively to plant added to the Company's system on or after January 1, 2008.

The Staff reviewed the Company's Missouri revenue requirement analysis, and Empire's conclusion that reclassification of its existing plant between the transmission and distribution functions would have an immaterial impact on overall Missouri retail electric revenue requirement appears to be reasonable based upon the information

presented. However, the Company's analysis did not include consideration of any possible impact of transmission/distribution plant reclassification on the amount of net payments Empire receives from or pays to SPP related to SPP transmission service. Actual data to measure this potential impact, and its effect, if any, on the materiality analysis underlying the Company's requests in this docket should be available by the time of Empire's next general rate case.

The Staff also notes that the Company is contemporaneously asking each of its retail jurisdictions (Arkansas, Kansas, Oklahoma) for the same accounting authority it seeks in Missouri. If all of the four jurisdictions (Missouri, Arkansas, Kansas, Oklahoma) grant the requested relief, Empire would neither gain a windfall nor experience a revenue requirement detriment as a result of these applications. However, if one or more retail jurisdictions do not grant the requested relief, Empire could experience a windfall or detriment. As of the date of this recommendation, the Staff is not aware of any action taken upon Empire's applications in its other retail electric jurisdictions. Before making a final decision on Empire's request in this docket, the Staff believes it will be helpful for the Commission to have knowledge of other public utility commissions' responses to Empire's and other SPP entities' requests for similar regulatory actions.

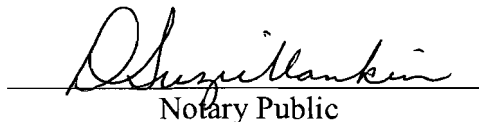
For these reasons, the Staff recommends that the accounting authority requested by Empire in this Application be granted on a temporary basis only, to expire upon the effective date of new rates resulting from Empire's next general rate proceeding. A decision on whether to grant this authority on a permanent basis would best be made in that upcoming rate proceeding, when additional information will be available. In the event the Commission adopts Staff's recommendation for a temporary grant of accounting authority in this proceeding, the Staff suggests that Empire be ordered to provide the following information as part of its next general rate case filing: 1) quantification of the impact, if any, of the temporary grant of accounting authority on the amount of net payments made by Empire to SPP related to transmission and other SPP services; 2) the disposition of the Company's applications for similar accounting authority in its other retail electric jurisdictions; and 3) the disposition of any similar requests to implement, or alternatively be granted a waiver from, reclassifications of plant made to regulatory authorities by other entities receiving transmission service from the SPP under the OATT.

In the Matter of the Application of The)
 Empire District Electric Company for an) Case No. EO-2009-0233
 Accounting Order Concerning)
 Reclassification of Certain Transmission and)
 Distribution Facilities)

[illegible]

Mark L. Oligschlaeger

Subscribed and sworn to before me this 20th day of February, 2009.



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AFFIDAVIT OF ALAN J. BAX

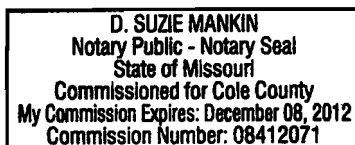
STATE OF MISSOURI)	
)	ss.
COUNTY OF COLE)	


Alan J. Bax, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was developed by him; that he has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true and correct to the best of his knowledge and belief.



Alan J. Bax

Subscribed and sworn to before me this 20th day of February, 2009.





Notary Public