

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

In the Matter of The Empire District Electric)	
Company of Joplin, Missouri for Authority)	<u>Case No. ER-2006-0315</u>
to File Tariffs Increasing Rates for Electric)	Tariff File No. YE-2006-0597
Service Provided to Customers in the Missouri)	
Service Area of the Company)	

**APPLICATION FOR REHEARING OF ORDER SUPPLEMENTING AND
CLARIFYING REPORT AND ORDER**

COMES NOW the Office of the Public Counsel and for its Application for Rehearing of Order Supplementing and Clarifying Report and Order states as follows:

1. On December 21, 2006 the Commission issued its Report and Order in this case. Public Counsel, on December 29, 2006, filed an Application for Rehearing of that Report and Order. Public Counsel incorporates by reference as though fully set forth herein all the grounds raised in the Application for Rehearing filed on December 29, 2006.

2. On January 9, 2007, approximately three weeks after issuing the Report and Order, and approximately ten days after approving tariffs allegedly in compliance with that Report and Order, the Commission issued an Order Supplementing and Clarifying Report and Order (Order Supplementing). The Order Supplementing is unjust, unreasonable, arbitrary and capricious, and unlawful for the following reasons. The Order Supplementing is unlawful, unjust, unreasonable and unconstitutional in that it completely fails to separately and adequately identify conclusions of law and findings of fact. The Order Supplementing is unlawful, unjust, and unreasonable in that it is not based upon competent and substantial evidence of record.

3. The Order Supplementing attempts to resolve, in favor of The Empire District Electric Company and the Staff of the Commission and against Public Counsel, an issue¹ that was neither discussed nor resolved in the Report and Order. As the Regulatory Law Judge who presided over this case noted during the Commission's Agenda meeting on January 29, there is nothing in the Report and Order that addresses the risk factor adjustment, because the judge did not know until after the Report and Order was issued that there was an issue concerning the risk factor adjustment.

The Order Supplementing is unlawful because it attempts to resolve an issue raised in the rate case after the operation of law date. The Order Supplementing is unlawful because it – after the operation of law date – resolves an issue in favor of the moving party even though the Commission did not timely find facts that support a decision in favor of Empire.

The Order Supplementing is unlawful because the facts that it belatedly found do not support its decision. The entire finding with respect to this issue is:

We find the Staff's present calculation of the regulatory plan amortizations to be correct, including the use of the S&P valuation of off-balance sheet obligations without further adjustment. We find that the adjustment recommended by the OPC would result in an unreasonably low valuation of the off-balance sheet obligations.

The first sentence is a conclusion, not a finding. It simply states that the Commission adopted the Staff's position. It does not reveal what evidence in the record persuaded the Commission that the Staff position was correct. The second sentence is also a conclusion. The Commission never made a finding as to the valuation of the off-balance sheet obligations under either the Empire/Staff approach or the Public Counsel approach. Without a finding as to the valuation under both approaches, the statement that

¹ The issue is whether to apply a 10% risk factor to certain off-balance sheet obligations.

Public Counsel's approach "would result in an unreasonably low valuation" is an unsupported conclusion.

WHEREFORE, Public Counsel respectfully requests that the Commission grant rehearing of its January 9, 2007, Order Supplementing and Clarifying Report and Order.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 18th day of January 2007:

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