

**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)	<u>Case No. ER-2006-0315</u>
Service Provided to Customers in the)	
Missouri Service Area of the Company)	

RESPONSE TO ORDER DIRECTING FILING OF PROPOSED ORDERS

COMES NOW the Office of the Public Counsel and for its Response to Order Directing Filing of Proposed Orders states as follows:

1. The procedural history of this case is long and thorny, and need not be recited in detail here. Suffice it to say that the proceeding has become so convoluted that, on January 3, 2008, the Commission issued an order asking for the parties to provide draft orders to resolve all the pending issues. In a subsequent order issued on January 8, 2008, the Commission set a January 18, 2008 deadline for submission of proposed orders.

2. Given the Commission's actions to date, it appears unlikely that the Commission will take the path to resolving the issues that Public Counsel recommends. As a result, Public Counsel has not provided drafts of each order that would need to be issued to implement Public Counsel's recommended resolution, although one such order was previously filed on November 27, 2007. If the Commission chooses to follow, in whole or in part, the path that Public Counsel recommends, Public Counsel would certainly be pleased to provide drafts of any orders requested by the Commission.

3. It appears that the Commission is unwilling to correct the many errors it made in processing this case, and unwilling to acknowledge that there are any real

consequences from the Supreme Court's decision in SC88390. If this is correct, the parties will be best served by the Commission issuing one simple order denying all the pending applications for rehearing.¹ Further efforts on the Commission's part to ensure that all pending matters are resolved in Empire's favor will likely create other messes (like the inadvertent approval of obsolete tariff sheets) and only delay judicial review.

4. There is, however, a clear path to a resolution of the pending issues in this case, and Public Counsel recommends that the Commission take it. Public Counsel recommends the following actions:

- 1) Grant rehearing of the December 4, 2007 order, and:
 - a) Rescind that order; and
 - b) Issue the draft order Public Counsel filed on November 27, 2007.
- 2) Grant rehearing of the December 21, 2006 Report and Order.
- 3) Grant rehearing of the January 9, 2007 Order Supplementing and Clarifying Report and Order.
- 4) Issue a new Report and Order on Rehearing that:
 - a) Remedies the errors identified in Public Counsel's December 29, 2006 Application for Rehearing of the December 21, 2006 Report and Order;
 - b) Remedies the errors identified in Public Counsel's January 18, 2007 Application for Rehearing of the January 9, 2007 Order Supplementing and Clarifying Report and Order; and

¹ Public Counsel recommends that the Commission, even if it opts for this resolution, issue an order correcting the errors in the December 4, 2007 order rather than simply vaguely acknowledging these errors as the Commission did in its January 15, 2008 order.

- c) Directs Empire, Public Counsel, Staff and any other interested parties to work together to craft tariffs that comply with the new Report and Order on Rehearing.
- 5) If the parties are able to agree on tariffs that implement the Report and Order on Rehearing, issue an order approving those tariffs.
- 6) If the parties are unable to agree, expeditiously schedule a hearing to create a record for speedy Commission resolution of the tariff issues.

5. If the Commission declines to follow the path suggested above, it should – at least – actually clarify its December 4, 2007, order, rather than simply acknowledging the order’s lack of clarity. The Commission’s December 4, 2007, order approved the following tariff sheets² for service on and after December 14, 2007:

P.S.C. Mo. No. 5, Section A

21st Revised Sheet No. 1, Canceling 20th Revised Sheet No. 1

P.S.C. Mo. No. 5, Section B

2nd Revised Sheet No. 1, Canceling 1st Revised Sheet No. 1

1st Revised Sheet No. 2, Canceling Original Sheet No. 2

1st Revised Sheet No. 3, Canceling Original Sheet No. 3

1st Revised Sheet No. 4, Canceling Original Sheet No. 4

1st Revised Sheet No. 5, Canceling Original Sheet No. 5

1st Revised Sheet No. 6, Canceling Original Sheet No. 6

1st Revised Sheet No. 7, Canceling Original Sheet No. 7

1st Revised Sheet No. 7a, Canceling Original Sheet No. 7a

1st Revised Sheet No. 8, Canceling Original Sheet No. 8

P.S.C. Mo. No. 5, Section 1

13th Revised Sheet No. 1, Canceling 12th Revised Sheet No. 1

10th Revised Sheet No. 2, Canceling 9th Revised Sheet No. 2

6th Revised Sheet No. 3, Canceling 5th Revised Sheet No. 3

P.S.C. Mo. No. 5, Section 2

12th Revised Sheet No. 1, Canceling 11th Revised Sheet No. 1

1st Revised Sheet No. 1a, Canceling Original Sheet No. 1a

12th Revised Sheet No. 2, Canceling 11th Revised Sheet No. 2

1st Revised Sheet No. 2a, Canceling Original Sheet No. 2a

12th Revised Sheet No. 3, Canceling 11th Revised Sheet No. 3

7th Revised Sheet No. 3a, Canceling 6th Revised Sheet No. 3a

² The listing of tariff sheets herein was taken directly from the Commission’s December 4, 2007 order.

13th Revised Sheet No. 4, Canceling 12th Revised Sheet No. 4
 8th Revised Sheet No. 4a, Canceling 7th Revised Sheet No. 4a
 12th Revised Sheet No. 5, Canceling 11th Revised Sheet No. 5
 12th Revised Sheet No. 6, Canceling 11th Revised Sheet No. 6
 12th Revised Sheet No. 7, Canceling 11th Revised Sheet No. 7
 5th Revised Sheet No. 7a, Canceling 4th Revised Sheet No. 7a
 6th Revised Sheet No. 8, Canceling 5th Revised Sheet No. 8
 8th Revised Sheet No. 9, Canceling 7th Revised Sheet No. 9
 5th Revised Sheet No. 9a, Canceling 4th Revised Sheet No. 9a
 6th Revised Sheet No. 9b, Canceling 5th Revised Sheet No. 9b
 5th Revised Sheet No. 10, Canceling 4th Revised Sheet No. 10
 5th Revised Sheet No. 10a, Canceling 4th Revised Sheet No. 10a
 3rd Revised Sheet No. 11, Canceling 2nd Revised Sheet No. 11
 3rd Revised Sheet No. 11a, Canceling 2nd Revised Sheet No. 11a
 3rd Revised Sheet No. 12, Canceling 2nd Revised Sheet No. 12
 3rd Revised Sheet No. 12a, Canceling 2nd Revised Sheet No. 12a
 7th Revised Sheet No. 13, Canceling 6th Revised Sheet No. 13
 4th Revised Sheet No. 14, Canceling 3rd Revised Sheet No. 14
 4th Revised Sheet No. 14a, Canceling 3rd Revised Sheet No. 14a
 4th Revised Sheet No. 14b, Canceling 3rd Revised Sheet No. 14b
 4th Revised Sheet No. 14c, Canceling 3rd Revised Sheet No. 14c
 4th Revised Sheet No. 14d, Canceling 3rd Revised Sheet No. 14d
 4th Revised Sheet No. 14e, Canceling 3rd Revised Sheet No. 14e

P.S.C. Mo. No. 5, Section 3

13th Revised Sheet No. 1, Canceling 12th Revised Sheet No. 1
 6th Revised Sheet No. 1a, Canceling 5th Revised Sheet No. 1a
 17th Revised Sheet No. 2, Canceling 16th Revised Sheet No. 2
 8th Revised Sheet No. 2a, Canceling 7th Revised Sheet No. 2a
 12th Revised Sheet No. 3, Canceling 11th Revised Sheet No. 3
 1st Revised Sheet No. 3a, Canceling Original Sheet No. 3a
 12th Revised Sheet No. 4, Canceling 11th Revised Sheet No. 4
 4th Revised Sheet No. 5, Canceling 3rd Revised Sheet No. 5
 2nd Revised Sheet No. 6, Canceling 1st Revised Sheet No. 6
 1st Revised Sheet No. 7, Canceling Original Sheet No. 7
 1st Revised Sheet No. 8, Canceling Original Sheet No. 8
 1st Revised Sheet No. 9, Canceling Original Sheet No. 9

P.S.C. Mo. No. 5, Section 4

4th Revised Sheet No. 1, Canceling 3rd Revised Sheet No. 1
 11th Revised Sheet No. 2, Canceling 10th Revised Sheet No. 2
 9th Revised Sheet No. 3, Canceling 8th Revised Sheet No. 3
 9th Revised Sheet No. 4, Canceling 8th Revised Sheet No. 4
 5th Revised Sheet No. 4a, Canceling 4th Revised Sheet No. 4a
 3rd Revised Sheet No. 4b, Canceling 2nd Revised Sheet No. 4b
 3rd Revised Sheet No. 4c, Canceling 2nd Revised Sheet No. 4c
 3rd Revised Sheet No. 5, Canceling 2nd Revised Sheet No. 5
 14th Revised Sheet No. 6, Canceling 13th Revised Sheet No. 6

6th Revised Sheet No. 7, Canceling 5th Revised Sheet No. 7
3rd Revised Sheet No. 8, Canceling 2nd Revised Sheet No. 8
1st Revised Sheet No. 8a, Canceling Original Sheet No. 8a
2nd Revised Sheet No. 8b, Canceling 1st Revised Sheet No. 8b
2nd Revised Sheet No. 8c, Canceling 1st Revised Sheet No. 8c
4th Revised Sheet No. 9, Canceling 3rd Revised Sheet No. 9
3rd Revised Sheet No. 10, Canceling 2nd Revised Sheet No. 10
3rd Revised Sheet No. 11, Canceling 2nd Revised Sheet No. 11
3rd Revised Sheet No. 12, Canceling 2nd Revised Sheet No. 12
3rd Revised Sheet No. 13, Canceling 2nd Revised Sheet No. 13
3rd Revised Sheet No. 14, Canceling 2nd Revised Sheet No. 14
4th Revised Sheet No. 15, Canceling 3rd Revised Sheet No. 15
5th Revised Sheet No. 16, Canceling 4th Revised Sheet No. 16
5th Revised Sheet No. 17, Canceling 4th Revised Sheet No. 17
1st Revised Sheet No. 18, Canceling Original Sheet No. 18
1st Revised Sheet No. 19, Canceling Original Sheet No. 19
1st Revised Sheet No. 20, Canceling Original Sheet No. 20
2nd Revised Sheet No. 21, Canceling 1st Revised Sheet No. 21

P.S.C. Mo. No. 5, Section 5

5th Revised Sheet No. A, Canceling 4th Revised Sheet No. A
4th Revised Sheet No. 1, Canceling 3rd Revised Sheet No. 1
5th Revised Sheet No. 2, Canceling 4th Revised Sheet No. 2
2nd Revised Sheet No. 2a, Canceling 1st Revised Sheet No. 2a
5th Revised Sheet No. 3, Canceling 4th Revised Sheet No. 3
4th Revised Sheet No. 4, Canceling 3rd Revised Sheet No. 4
3rd Revised Sheet No. 5, Canceling 2nd Revised Sheet No. 5
3rd Revised Sheet No. 6, Canceling 2nd Revised Sheet No. 6
4th Revised Sheet No. 7, Canceling 3rd Revised Sheet No. 7
4th Revised Sheet No. 8, Canceling 3rd Revised Sheet No. 8
5th Revised Sheet No. 9, Canceling 4th Revised Sheet No. 9
6th Revised Sheet No. 10, Canceling 5th Revised Sheet No. 10
5th Revised Sheet No. 11, Canceling 4th Revised Sheet No. 11
2nd Revised Sheet No. 11a, Canceling 1st Revised Sheet No. 11a
7th Revised Sheet No. 12, Canceling 6th Revised Sheet No. 12
5th Revised Sheet No. 13, Canceling 4th Revised Sheet No. 13
4th Revised Sheet No. 14, Canceling 3rd Revised Sheet No. 14
4th Revised Sheet No. 15, Canceling 3rd Revised Sheet No. 15
4th Revised Sheet No. 16, Canceling 3rd Revised Sheet No. 16
4th Revised Sheet No. 17, Canceling 3rd Revised Sheet No. 17
1st Revised Sheet No. 17a, Canceling Original Sheet No. 17a
1st Revised Sheet No. 17b, Canceling Original Sheet No. 17b
1st Revised Sheet No. 17c, Canceling Original Sheet No. 17c
1st Revised Sheet No. 17d, Canceling Original Sheet No. 17d
1st Revised Sheet No. 17e, Canceling Original Sheet No. 17e
1st Revised Sheet No. 17f, Canceling Original Sheet No. 17f
5th Revised Sheet No. 18, Canceling 4th Revised Sheet No. 18

3rd Revised Sheet No. 19, Canceling 2nd Revised Sheet No. 19
 3rd Revised Sheet No. 20, Canceling 2nd Revised Sheet No. 20
 3rd Revised Sheet No. 21, Canceling 2nd Revised Sheet No. 21
 5th Revised Sheet No. 22, Canceling 4th Revised Sheet No. 22
 5th Revised Sheet No. 23, Canceling 4th Revised Sheet No. 23
 2nd Revised Sheet No. 23a, Canceling 1st Revised Sheet No. 23a
 5th Revised Sheet No. 24, Canceling 4th Revised Sheet No. 24
 4th Revised Sheet No. 25, Canceling 3rd Revised Sheet No. 25
 6th Revised Sheet No. 26, Canceling 5th Revised Sheet No. 26
 5th Revised Sheet No. 27, Canceling 4th Revised Sheet No. 27
 5th Revised Sheet No. 28, Canceling 4th Revised Sheet No. 28
 5th Revised Sheet No. 29, Canceling 4th Revised Sheet No. 29
 3rd Revised Sheet No. 30, Canceling 2nd Revised Sheet No. 30
 3rd Revised Sheet No. 31, Canceling 2nd Revised Sheet No. 31
 1st Revised Sheet No. 32, Canceling Original Sheet No. 32
 1st Revised Sheet No. 33, Canceling Original Sheet No. 33
 1st Revised Sheet No. 34, Canceling Original Sheet No. 34
 1st Revised Sheet No. 35, Canceling Original Sheet No. 35
 2nd Revised Sheet No. 36, Canceling 1st Revised Sheet No. 36
 2nd Revised Sheet No. 37, Canceling 1st Revised Sheet No. 37
 2nd Revised Sheet No. 38, Canceling 1st Revised Sheet No. 38
 2nd Revised Sheet No. 39, Canceling 1st Revised Sheet No. 39
 2nd Revised Sheet No. 40, Canceling 1st Revised Sheet No. 40
 1st Revised Sheet No. 41, Canceling Original Sheet No. 41

In an order issued January 15, 2008, the Commission noted that it did not really mean to approve all of the tariff sheets that it specifically and explicitly approved sheet-by-sheet in the December 4, 2007 order, but it did not state which sheets it really did mean to approve and which it did not. Staff's review of the tariff sheets apparently revealed five instances in which obsolete sheets were approved.³ Public Counsel's review, while generally similar, did not reach the exact same conclusion.⁴ The Commission should correct its December 4, 2007 (or its January 15, 2008 order) by explaining precisely which tariff sheets explicitly approved in the December 4, 2007 order should not have been so approved.

³ See "Staff Response In Case No. ET-2008-0223 And Staff Request For Leave To Late-File Staff Response To Public Counsel's December 13, 2007 Application For Rehearing In Instant Case" filed in this case on January 15, 2008.

⁴ See "Public Counsel's First Set of Requests for Admissions" filed in this case on December 19, 2007.

WHEREFORE, Public Counsel respectfully submits its Response to Order
Directing Filing of Proposed Orders.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 18th day of January 2008.

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