

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

In the Matter of The Empire District Electric	)	
Company of Joplin, Missouri for Authority	)	<b><u>Case No. ER-2006-0315</u></b>
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**

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

1. On February 1, 2006, The Empire District Electric Company filed for a general rate increase. The filing consisted of 31 revised tariff sheets, a transmittal letter, a cover letter, information designed to comply with the minimum filing requirements, and supporting testimony. The tariffs bear an issue date of February 1, 2006 and an effective date of March 3, 2006.<sup>1</sup> In addition, Empire requested that the Commission issue its standard protective order.

2. On February 7, 2006, the Commission issued its suspension order whereby it suspended the tariffs until January 1, 2007.

3. As part of its filing, and as part of the tariff sheets included in that filing, Empire requested a type of fuel adjustment mechanism that it referred to as an Energy Cost Recovery charge or ECR. After a number of pleadings and responsive pleadings were filed, the Commission ruled, in an order issued on May 2, 2006, that "Empire is precluded from requesting the use of another fuel adjustment mechanism during the period in which the [interim energy charge or] IEC is in effect." The Commission also stated that it "can and shall require that

Empire remove from its pleadings and other filings in this case the request it consented not to make.” Finally, in Ordered Paragraph 1, the Commission stated that:

The Commission clarifies that The Empire District Electric Company, pursuant to the Stipulation and Agreement, may not make any request for an energy cost recovery rider while the existing interim energy charge is effective.

4. In essence, the Commission found that part of Empire’s rate case filing violated the Stipulation and Agreement filed in Case No. ER-2004-0570 and the Commission order approving that agreement. The Commission did not order any specific remedy for that violation in its May 2, 2006, order.<sup>2</sup>

5. After several more pleadings and responsive pleadings, on June 15, 2006, the Commission issued an order in which it rejected only a portion of the tariff sheets that constituted Empire’s rate increase request. The Commission’s June 15 order stated:

The Commission’s May 2, 2006 Order required Empire to remove “from its pleadings and other filings in this case the request it consented not to make.” Empire did not ask for rehearing of the Commission’s Order, but has not complied with the Commission’s Order. Empire’s failure to comply with the Commission’s Order necessitates removal by striking testimony and rejecting tariffs. [Footnote omitted.]

In Ordered Paragraph 1, the Commission ordered: “The tariff pages as stated above are rejected.”

The following tariff sheets appear to be the ones that the Commission rejected:

- P.S.C. Mo. No. 5, Section 4, 2nd Revised Sheet No. 21;
- P.S.C. Mo. No. 5, Section 4, Original Sheet No. 22; and
- P.S.C. Mo. No. 5, Section 4, Revised Sheet No. 23

6. The Commission quite properly found that Empire’s rate increase filing violated the Stipulation and Agreement filed and approved in Case No. ER-2004-0570. But the remedy

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<sup>1</sup> The tariff sheets initially bore a March 2, 2006 effective date, but substitute sheets were filed with a March 3 effective date.

that the Commission created to address this violation is unlawful. The Commission, without a hearing, without any evidence, without any findings of fact, without consideration of all relevant factors, rejected three sheets out of a 31-page tariff filing. The Commission has historically – and properly – treated a tariff filing as a package, and has approved, rejected, or suspended the filing as a whole. It has not in the past acted as it has done in its June 15, 2006 order by exercising a “line item veto” and rejecting only a portion of the tariff filing.

7. If the Commission finds that there is a legal problem with a tariff filing – as it has found here – the proper remedy is to reject the filing. The proper remedy is not to attempt to surgically remove only those sheets that appear to violate a Commission order.

8. One of the problems with the remedy the Commission has attempted to impose here is that it is difficult, if not impossible, to separately identify those portions of the filing that are in violation of the Commission’s order approving the agreement in ER-2004-0570. For example, P.S.C. Mo. No. 5, Section 1, 13th Revised Sheet No. 1 and P.S.C. Mo. No. 5, Section 2, 12th Revised Sheet No. 1 provide as follows:

**ENERGY COST RECOVERY**

The above charges will be adjusted in an amount provided by the terms and provisions of the Energy Cost Recovery, Rider ECR.

The Commission did not strike those tariff sheets, or others that may refer to and rely on the ECR. In order to be consistent with the Commission’s finding that Empire is legally precluded from requesting the ECR, the entire tariff filing must be rejected because the ECR request is spread throughout and literally permeates the entire filing. Even if the Commission followed its approach and only rejected those tariff sheets that are implicated by the inclusion of the ECR, it

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<sup>2</sup> Although the order stated that the Commission “can and shall require that Empire remove from its pleadings and other filings in this case the request it consented not to make,” the order did not – in the Ordered Paragraphs where such a requirement would normally be – order Empire or any other party to take any specific action.

would have to reject more tariff sheets than it has done so far, and some of those additional sheets are the ones that implement the rate increase.

9. The Commission clearly has the authority to reject tariff filings pursuant to Section 393.150 RSMo 2000. There do not appear to be any reported Missouri cases that authorize the Commission to reject only part of a tariff filing, nor do Missouri statutes explicitly confer that power. But because the Commission must decide all issues in general rate cases based on all relevant factors, it necessarily follows that the Commission cannot strip certain tariff sheets out of a rate case without taking evidence and considering all relevant factors on all issues.

10. Furthermore, Empire's minimum filing requirements, its press releases, its notices to customers, and the Commission's press release all refer to the amount of revenue that would be recovered with the ECR. The remaining 28 non-rejected tariffs sheets, if approved, would not recover that amount. Thus there has been no proper notice of Empire's rate increase request as it has been modified by the Commission.

11. The Commission has already determined that Empire cannot legally request an ECR in this case, and that decision is final and can be neither appealed nor collaterally attacked, so the Commission cannot consider the ECR in this case. The Commission cannot lawfully reject only a portion of Empire's tariff filing. Thus the only course of action that the Commission can take is to reject the tariff filing in its entirety. The Commission's June 15, 2006, Order Rejecting Tariffs and Striking Testimony is therefore unjust, unlawful and unreasonable.

WHEREFORE, Public Counsel respectfully requests that the Commission grant rehearing of its June 15, 2006, Order Rejecting Tariffs and Striking Testimony, and upon rehearing reject the entirety of Empire's February 1, 2006 tariff filing.

Respectfully submitted,

OFFICE OF THE Public Counsel

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

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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 23<sup>rd</sup> day of June 2006:

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