

**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 Tariff Increasing)	File No. ER-2010-0130
Rates for Electric Service Provided to)	Tariff File No. YE-2010-0303
Customers in the Missouri Service Area)	
of the Company)	

RESPONSE OF PUBLIC COUNSEL TO SUSPENSION ORDER AND NOTICE

COMES NOW the Office of the Public Counsel and for its Response to Suspension Order and Notice states as follows:

1. On October 29, 2009,¹ the Empire District Electric Company submitted to the Missouri Public Service Commission proposed tariff sheets intended to implement a general rate increase for electric service provided to customers in the company’s Missouri service area.

2. On November 4, the Commission issued its Suspension Order and Notice (“suspension order”). That order stated that:

Empire will be required to file both its recommendation concerning the proper test year to be used in these proceedings and any request for a true-up no later than two weeks after the date of this order. **Any true-up request must include a proposed date to which Empire’s financial data is to be brought forward.**

The suspension order also required parties to state their positions regarding Empire’s true-up and test year proposals no later than December 1.

3. On November 20, Empire filed two pleadings, one regarding the test year and one regarding the true-up. Empire recommended that the Commission adopt a

¹ All dates are 2009 unless otherwise noted.

historical test year ending June 30 adjusted for known and measurable changes. Empire did not recommend an update period. Empire did not request a true-up as ordered by the Commission. As noted above, the Commission explicitly ordered Empire to “include a proposed date to which Empire’s financial data is to be brought forward” as part of any true-up request. Empire vaguely suggests a true-up that would allow inclusion of the Plum Point and Iatan 1 and 2 projects in rate base, but gives not even a hint of a recommended timeframe.

4. On November 30, Staff filed a response to the suspension order in which it concurs in Empire’s proposed June 30 test year, updated for known and measurable changes through December 31. Staff also recommended a true-up through April 30, 2010.

5. A test year is an analytical device that allows the Commission to examine the relationship among revenues, expenses, and rate base. Analysis of this relationship allows the Commission to set rates for the future that are designed to afford the utility the opportunity to recover its prudent expenses plus a fair return on its investment. The ratemaking process is not intended to recover past expenses; it simply uses them as a guide to understand future expenses. Because the relationship among revenues, expenses, and rate base changes over time, it is generally agreed that using as recent a period as possible is the best way to establish rates going forward. In Missouri, three practices are sometimes used to examine the relationship at a point even more recent than the end of the test year.

6. The first of these is the use of an update period. An update period is very much like an extension of the test year. It examines revenues, expenses, and rate base for

a specific period of time beyond the test year in order to capture the most recent data that is practically useable within the schedule of a rate case. The use of an update period is not driven by any particular events but rather by the general principle that using recent data is the best way to accurately reflect the relationship among revenues, expenses, and rate base in rates. The Commission refers to this practice in its suspension order as using a “test year as updated,” or “updated test year.”

7. The second practice is adjusting the relationship for known and measurable changes. A common example of a known and measurable change is a new union contract. If the test-year expenses reflect wages at a certain level, but a new contract executed after the end of the test year establishes a different level that is both known and measurable, the new level may be reflected in the ratemaking calculation. Even though the known and measurable change may take place months after the end of the test year, not all items are updated to the date of the contract; a known and measurable change is reflected as an isolated event.

8. The third practice sometimes used to examine the relationship among revenues, expenses, and rate base beyond the end of the test year is the use of a true-up. Unlike an update to the test year, the use of a true-up is generally driven by a specific change in the relationship (frequently the addition of a significant amount of rate base) after the end of the test year. Unless there is some demonstrated specific need for a true-up, the rate case is processed without a true-up. In order to be considered for a true-up, specific items or events must be both: 1) later than the end of the test year (or updated test year); and 2) far enough in advance of the operation of law date to allow them to be audited and verified, and to allow testimony and hearing concerning the items or events.

A true-up does not make changes based solely on the specific items or events like a reflection of a known and measurable change, but instead examines a package of representative revenue, expenses and rate base items in order to maintain the relationship among them.

9. In this case, Empire has proposed a test year ending June 30, and the Staff concurs. Public Counsel also concurs; it appears that the data for this period was available and used by Empire to file its direct case, and should be recent enough to accurately evaluate the relationship among revenues, expenses, and rate base to set rates going forward.

10. Neither Empire nor Staff proposes a “test year as updated” or “updated test year” as contemplated by the Commission in its suspension order, but both suggest updates for known and measurable changes. Empire does not recommend any cut-off for known and measurable adjustments, but Staff recommends a cut-off of December 31. Public Counsel concurs with Staff. There should be some end date for allowing known and measurable changes, and December 31 strikes a reasonable balance between capturing new data and making isolated adjustments based on changes far beyond the test year.

11. Staff recommends a true-up cut-off of April 30, 2010, and Empire does not recommend a specific cut-off. There is no indication that there are any specific significant items or events that would be captured by Staff’s recommended April 30, 2010 true-up cut-off. At the other end of the scale, Empire suggests an unspecified true-up cut-off that is late enough to capture Iatan 2 and Plum Point. Neither of those projects is completed, and there is no indication that they will be completed sufficiently in

advance of the operation of law date to be considered in this case even with the most generous true-up cut-off date. Thus there is no reason to believe that a true-up will be necessary or useful to properly reflect the relationship among revenues, expenses, and rate base to set rates going forward, and Public Counsel recommends that a true-up not be ordered.

12. Both Empire and Staff note discussions among the parties about issues including those addressed herein, and Public Counsel is participating in those discussions. It is certainly possible that the discussions may lead to an agreement on a true-up, but it is also possible that they may not. The Commission has long recognized the need to establish the parameters of the test year (including an update or true-up) early in the rate case process. In its suspension order, the Commission stated that: “A resolution of the test year issue must be made early in the proceedings so that the parties’ testimony can be reconciled to the same period.” The Commission should not wait to establish the parameters of the test year, updates, and true-up, but should do so expeditiously and in accordance with this response.

WHEREFORE Public Counsel respectfully requests that the Commission establish a historical test year ending June 30, 2009, updated for known and measurable changes (if any) through December 31, 2009, and that the Commission not establish a true-up.

Respectfully submitted,

OFFICE OF THE Public Counsel

/s/ Lewis R. Mills, Jr.

By: _____

Lewis R. Mills, Jr. (#35275)
Public Counsel
P O Box 2230
Jefferson City, MO 65102
(573) 751-1304
(573) 751-5562 FAX
lewis.mills@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been emailed to parties of record this 1st day of December 2009.

General Counsel Office
Missouri Public Service
Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
GenCounsel@psc.mo.gov

Mitten L. Russell
Swearengen C James
Empire District Electric
Company, The
312 E. Capitol Ave
P.O. Box 456
Jefferson City, MO 65102
rmitten@brydonlaw.com
LRackers@brydonlaw.com

Kliethermes Sarah
Missouri Public Service
Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
sarah.kliethermes@psc.mo.gov

/s/ Lewis R. Mills, Jr.
