BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the tariff filing of The Empire District Electric Company to implement a general rate increase for retail electric service provided to customers in its Missouri service area.	)))))	**Case No. ER-2004-0570**

DISSENTING OPINION OF COMMISSIONERS STEVE GAW AND ROBERT CLAYTON III

By this Order the Commission sends its second signal that Missourians should expect higher bills from regulated utilities. At a time when Missourians are struggling to pay $2.00 per gallon gasoline prices and home heating bills that have increased drastically as a result of more than doubling unregulated wholesale gas prices in recent years, this Commission is adding to that burden by adopting new policies on rate cases that will increase that burden even more.

Instead of questioning whether this rate increase is driven primarily by Empire's management decisions over the last several years that have resulted in too much dependence on natural gas-driven generation and dividend policies that hide management's performance, the decision of the majority sends a reward package to the Company, paid for without consent by the citizens and businesses of southwest Missouri. Ultimately, this decision imposes a rate increase of approximately $30 million on these citizens and businesses.

This case falls on the heels of the Missouri Gas Energy (MGE) decision which raised rates by almost $25 million. That decision has been remanded by the Circuit Court because the majority's Report and Order discredited the Staff and the Office of Public Counsel (OPC) witnesses and then incredibly built the order on their testimony. As a result it is possible that the majority has painted itself in a corner on remand requiring a new rate of return based on the Company witnesses in that case – translating into an even higher return and higher rates.

In this case the majority follows the path even further. Here the majority not only discredits the experts of Staff and OPC in favor of individuals paid thousands of dollars by the Company to support its position, it also attacks the DCF model for calculating Return on Equity ("ROE") when this has been the accepted method of calculating ROE's at the Commission, and a multitude of other state utility commissions, for over 30 years.

I. INTRODUCTION

It is well established that the Commission's decision on return on equity must abide by the dictates of two Supreme Court decisions. First, *Bluefield Water Works and Improvement Company v. Public Service Commission of the State of West Virginia* provides that:

> A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties. . . The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and supports its credit and enable it to raise the money necessary for the proper discharge of its public duties.[1]

Approximately 20 years later, in *Federal Power Commission et al. v. Hope Natural Gas Company*, 320 U.S. 591 (1944), the Supreme Court pointed out that:

> From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. . . By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and attract capital"[2]

As interpreted by Dr. Morin in his book *Regulatory Finance, Utilities Cost of Capital*:

> The statements of the Court in the *Hope* and *Bluefield* cases established the following standards of fairness and reasonableness of the allowed rate of return for a public utility:

[1] 262 U.S. 679 (1923) at 692-693 (emphasis added).

[2] 320 U.S. 591 (1944) at 603 (emphasis added).

1. A standard of capital attraction
2. A standard of comparable earnings
3. Financial integrity.[3]

Additionally, when discussing the "standard of comparable earnings", these decisions obligate the Commission to review certain factors when determining an appropriate return on equity: (1) the proximity in time of the comparable return on equity; (2) the geographic proximity of the comparable return on equity; and (3) the corresponding risks and uncertainties. Finally, when considering the "financial integrity standard", the Commission is obligated, under the *Bluefield* standard to consider an efficient and economical management.

As is apparent in the Report and Order, the majority failed each of the standards set forth in the *Hope* and *Bluefield* decisions. First, the majority, in analyzing the "standard of capital attraction", relied solely upon data from the 1st quarter of 2004 from the entire country. In doing so, the majority failed to consider more recent data and failed to restrict their review of comparable earnings to those returns on equity currently earned from "the same general part of the country."

Second, in relying solely upon the comparable company analysis presented by Empire Witness Vander Weide, the majority failed to consider the "standard of capital attraction" or "financial integrity" requirements. As was demonstrated by Staff, OPC and Empire's witness, the capital attraction standard merely requires a return on equity which in most instances, as supported by Empire's witness Murry, is well below 10.0%.[4] As such, by failing to consider the other prongs from the *Hope* and *Bluefield* decisions, the majority authorized a return on equity that is clearly excessive and fails the statutory requirements that rates be just and reasonable.

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[3] Regulatory Finance, Utilities Cost of Capital, Roger A. Morin (1994) at page 10.

[4] See, Murray Direct at page 41 (8.29% to 9.29%); Allen Direct at page 22 (8.96% to 9.41%); Murry Direct, Schedule DAM-13 (5.70% to 7.53%), Schedule DAM-14 (5.80% to 5.88%), Schedule DAM-15 (7.16% to 8.99%), Schedule DAM-16 (7.26% to 7.34%); Schedule DAM-17 (7.70% to 13.53%) and Schedule DAM-18 (7.80% to 11.88%).

Finally, in making its finding that "Empire's rates have been too low and must be increased", the majority failed to consider whether Empire's management meets the efficient and economical standard dictated by the *Bluefield* case. Evidence elicited in this proceeding clearly casts doubts regarding the decisions of Empire's management in the past 15 years to rely heavily on natural gas-driven electric generation. Given management's decision to rely heavily on natural gas generation and the attendant prices of that fuel, Empire's claims that it has been unable to reach its authorized return on equity should be summarily rejected.

II. STANDARD OF COMPARABLE EARNINGS

In its decision, the majority was obviously persuaded by the Company's claim that the national average ROE for electric utilities in 1st Quarter 2004 was 11.0%.[5] Despite the majority's claim in this case as well as previous decisions that the Commission should not "unthinkly mirror the national average",[6] the majority undertake ROE manipulations to land on that exact 11.0% return on.

That said, any reliance, in March of 2005 on a national average ROE from the 1st Quarter of 2004 is obviously flawed and clearly dated. Despite their public availability, the majority made no effort to review return on equity decisions issued after the 1st Quarter of 2004. Interestingly, these decisions indicate that the national average has declined significantly in the year since the study was offered by Company's return on equity witnesses. Attached to this dissent is a review of the state utility commission return on equity decisions issued since July 1, 2004 (Attachment 1). This study indicates that the national average return on equity authorization is now approximately 10.45%. In fact, of the 21 decisions issued during that time period, only four commissions have adopted a return on equity as high as that authorized by the

[5] Report and Order at pages 12 and 45.

[6] Id. at 46.

majority. On the other hand, eleven decisions have resulted in return on equity authorizations of less than 10.25%. This updated study clearly undermines the findings of the majority.

In addition to violating the requirement that the comparable earnings be "at the same time", the majority, by relying upon a national average return on equity study, violated the *Bluefield* requirement that comparable earnings be based upon those currently being made "in the same general part of the country." Again, a more timely and tailored analysis, as required by the *Bluefield* decision, would reveal that the standard of comparable earnings is met through an authorized return on equity well below that authorized in the current proceeding.

Of the recent orders which should have influenced the majority's decision, the most interesting is a recent decision of the Kansas Corporation Commission (KCC). On January 28, 2005, the KCC issued its decision regarding an electric rate increase request of Aquila Networks – WPK.[7] In that decision, the KCC authorized a 10.5% return on equity.

This decision is interesting and applicable in that it, unlike the majority's comparable company study, directly complies with the dictates of the *Bluefield* and *Hope* decisions as described above. First, the Kansas decision is proximate in time in that it precedes the majority's decision by only 41 days. This compares noticeably to the comparable company study relied upon by the majority which is at least a year old. Second, the Kansas decision is proximate in geography in that it is a neighboring state and a state in which Empire has significant electric operations. Again, this contrasts with the comparable company study relied upon by the majority which forsakes geographic proximity and relies upon return on equity decisions from the entire country. Third, the Kansas decision involves an electric utility. By comparing to an electric utility, many of the risk adjustments that arise by comparisons across industry lines (i.e., gas versus electric) are eliminated. Therefore, the only risk adjustments that are necessary are those which account for specific risk differences between the companies.

[7] Kansas Corporation Commission Case No. 04-AQLE-1065-RTS.

The primary risk differences found between the Kansas decision, involving Aquila Networks – WPK, and the majority's decision involving Empire is a result of: (1) the relative capital structures of Aquila and Empire and (2) Aquila's risk associated with the junk bond status of its debt. As the KCC found, Aquila has a capital structure consisting of only 33.63% equity. As such, relative to Empire's 49.14% common equity ratio, Aquila Networks – WPK experiences significantly more risk. As such, based upon the financial risk associated with the relative capital structures, when making a comparable company comparison to this decision, it is apparent that, using the KCC decision as a comparable, Empire should be authorized a return on equity <u>less</u> than the 10.5% return on equity granted by the Kansas Commission.

Furthermore, it is well known regarding Aquila's recent financial struggles resulting from its exposure in the energy trading market. As a result of its participation in that market, Aquila has seen the downgrade of its debt instruments to junk status. As a result, Aquila shareholders necessarily demand a higher return on equity than a Company, such as Empire, which has investment grade ratings for its debt instruments. Therefore, as with the capital structure comparison, it is obvious that Empire should be granted a return on equity <u>less</u> than the 10.5% authorized by the Kansas Commission for Aquila.

As can be seen, the majority's reliance upon the national average ROE study presented by the Company is misplaced. By the time of the majority's Report and Order, the study was clearly outdated. By failing to update the study or even acknowledge more recent utility decisions, the majority has run afoul of the *Hope* and *Bluefield* dictates that the decisions be comparable in time. Moreover, by relying solely upon a <u>national</u> average study, the majority failed the *Bluefield* requirement that the comparable companies be "in the same general part of the country." The majority's failure to undertake a more tailored and recent study of comparable return on equity decisions has left them without knowledge of decisions, such as that recently issued in Kansas, which are precisely on point and undermine the logic of the majority's decision. Perhaps more importantly, the use of such averages alone gives into the temptation to find an easy answer – simply conceding the Commission's judgment to other Commissions in other states.

III. RECENT MISSOURI RETURN ON EQUITY DECISION

The majority, in its Report and Order, failed not only to analyze comparable earnings "from the same general part of the country", it also failed to take into account those decisions issued in this same state.

On September 21, 2004, the same majority as that participating in the current decision issued its Report and Order in the latest Missouri Gas Energy (MGE) rate proceeding, Case No. GR-2004-0209. In that decision, the majority authorized MGE to earn a 10.5% return on equity. That decision is notable in that it undermines the very logic of the return on equity decision issued by the majority a mere five months later.

The relative risk profiles of MGE and Empire dictate that the Empire return on equity decision should have been significantly less than the 10.5% authorized for MGE. First, as was previously mentioned, Empire maintains a capital structure with over 49% common equity. In contrast, the Commission found that MGE's capital structure only consisted of 30% equity. The risk to shareholders associated with a highly leveraged capital structure is well understood. As a result of this risk, shareholders of such highly leveraged companies generally demand a higher return on equity. In spite of such basic financial tenets, the Commission authorized the less risky company, Empire, to earn a higher return on equity than the more risky MGE.

Second, Empire shareholders face less risk relative to MGE as a result of Empire's dividend policy. Regardless of earnings, Empire management has continued to make its dividend payout. As such, Empire shareholders are comforted in knowing that they may see a return on their investment in the form of stock appreciation as well as dividends. In contrast, MGE paid no dividend. As such, MGE shareholders are only capable of realized a profit through appreciation of their stock. This dividend payout policy results in Empire having a lower risk profile and should result in a lower return on equity authorization.

Third, it is recognized that Empire operates in the less risky electric industry and should have a lower return on equity than MGE. Specifically, while the gas industry faces competition from propane, it also faces significant competition from the electric industry for space heating. As a result, many residential and commercial customers have become entirely electric dependent and no longer rely upon gas utilities. In contrast, electric utilities, like Empire, are comforted in knowing that, while gas may provide a competitive heating alternative, there is not substitute for the electricity needed to power lights, appliances, televisions and computers. Given the less risky nature of the electric industry, it should be expected that the majority would give a lower return on equity to Empire relative to MGE.

IV. FAILURE TO ANALYZE CAPITAL ATTRACTION / COMMISSION USE OF THE DCF FORMULA

As previously mentioned, the *Bluefield* decision requires the Commission to review not only comparable earnings, but also the standard of capital attraction as well as financial integrity. In its Report and Order, the majority has expressly adopted the recommendation of the Empire return on equity witness as a starting point for its return on equity decision ("For this reason, the Commission will adopt Vander Weide's recommendation of 11.3% as a starting point for determining Empire's Cost of Common Equity.")[8] As further found by the majority:

> Vander Weide used the comparable company approach and estimated Empire's cost of equity in two steps. The comparable company approach estimates the subject company's cost of common equity by identifying a group of companies of similar risk and then estimating the cost of equity for the companies in the proxy group . . . Of the four analysts, only Vander Weide performed the sort of risk-based comparative analysis *required* by Hope and Bluefield.[9]

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[8] Report and Order at page 45.

[9] Report and Order at pages 14 and 45.

The majority's Report and Order runs afoul in that, as recognized by the above quote, it is based solely on the comparable company approach offered by Vander Weide. Interestingly, unlike the other return on equity witnesses in this proceeding, including Empire's Witness Murry, Vander Weide never attempted to perform an analysis designed to satisfy the "standard of capital attraction." As noted by Dr. Morin,

> The attraction of capital standard, which focuses on investors' return requirements, is applied through the DCF or market value method. This test defines fair return as the return investors anticipate when they purchase equity shares of comparable risk companies in the financial marketplace; this is a market-based rate of return, defined in terms of anticipated dividends and capital gains relative to stock prices.[10]

The decision by the majority, to focus solely on the "standard of comparable earnings", also represents a drastic departure from over 30 years of established Commission precedent to rely upon the DCF formula in analyzing the "standard of capital attraction". As suggested by the Commission in a decision from **1975**, the Company has an obvious interest in inflating its return on equity recommendation.

> The Commission finds the DCF approach is considerably more systematic and allows this Commission to treat all utilities which it regulated in a consistent manner. The use of the comparable earnings approach can be helpful, but the results of the analysis of an individual person can vary so significantly that reliance on that approach could result in a considerable variation in the treatment accorded various companies before this Commission. Since a company has only its own interests in mind it can tout the advantages of the comparable earnings approach. However, this Commission, having a number of utilities under its jurisdiction should be expected to give evenhanded consideration in its determination of an appropriate rate of return for those companies subject to its jurisdiction.[11]

Given the objective nature of the DCF model, this Commission has unfailing utilized it in its determination of return on equity decisions for over 30 years. In fact, one questions, whether such an abrupt change in regulatory policy regarding the method for determining a return on

[10] Morin at page 13.

[11] Re Missouri Public Service Company, 20 Mo. P.S.C. (N.S.) 68, 108-109 (1975) (emphasis added).

equity, without sufficient explanation, violates the arbitrary and capricious standard to be applied by any reviewing court.

The DCF model has not only found steadfast acceptance by the Missouri Commission, it has also found universal acceptance by virtually all regulatory commissions. As Empire Witness Murry notes, "I used the Discounted Cash Flow ("DCF") analysis, surely the most common method used in rate proceedings, as one method."[12] Noted expert, David Parcell suggest that the DCF model is "the most commonly used."[13]

Had the majority utilized the DCF model deemed appropriate by over 30 years of Commission precedent as well as universally accepted in utility regulation, it is unlikely that return on equity would have been a litigated issue. As Vander Weide notes in his direct testimony, a DCF analysis applied to companies comparable to Empire would result in a return on equity 9.9%.[14] This study by Empire's witness merely serves to highlight the reasonableness of the objective recommendation of Staff, a range based upon both a company specific DCF analysis (capital attraction standard) and a comparable company DCF analysis (comparable earnings standard) with a high recommendation of 9.29% return on equity.[15]

Today, the DCF model is now seriously suspect as the primary means of determining ROE in rate cases. Exactly what the majority is saying is now appropriate, is uncertain. And that reminds us that regulated companies often complain here about regulatory uncertainty as though it were a terrible albatross they must bear (of course they rarely mention that regulated companies face far more certainty than unregulated business on the open market). Ironically, here the majority has created much more uncertainty about the way to determine ROE. But that uncertainty is more likely to be a detriment to consumers than to the utilities.

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[12] Murry Direct at page 7.

[13] The Cost of Capital – A Practitioners Guide, by David C. Parcell, at page 8-1.

[14] Vander Weide Direct, filed April 2004, at pages 29-30.

[15] Murray Direct at page 41.

V. CURRENT ECONOMIC CONDITIONS

On September 20, 2001, the Commission authorized Empire to earn a 10.00% return on equity. Since that time, general economic conditions have changes such to make the cost of equity for Empire much lower. Specifically, the discount rate has been reduced by the Federal Reserve from 2.50% to 2.25%. In addition, the Federal Reserve has reduced the Federal Reserve rate from 3.00% to 1.25%. Moreover, the average prime interest rate has been reduced by over 55% from 9.50% to 4.25%. This reduction in the cost of money has occurred at the same time as the rate of inflation has decreased.[16] Clearly, the Federal Reserve has taken steps to ensure the availability of money to those entities seeking to access the capital markets.

Despite the ready availability of money, these market participants are not seeing significant competition from the debt markets for the available funds. Since the last Commission return on equity decision for Empire, the average yield on thirty-year U.S. Treasury Bonds has declined from 5.83% to 5.06%, approximately a 13% reduction. Moreover, specific to the utility industry, Mergent's Public Utility Bonds yields have decreased over 22% from 8.16% to 6.34%.[17]

Finally, given the most recent projections of inflation, it is unlikely that the Federal Reserve will take steps to tighten the supply of money in the capital markets. As Value Line notes, "Our sense is that we'll see a good deal of unevenness on the consumer and industrial sides. That mixed showing – assuming that it is accompanied by muted inflation – could persuade the Federal Reserve, which recently voted to raise a key lending rate for the second time this year, <u>to go slowly on the rate front</u>."[18]

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[16] See, Schedules 1-4 of Murray Direct Testimony filed September 20, 2004.

[17] <u>Id.</u> a Schedule 5.

[18] <u>Id.</u> at page 15.

In spite of the historic data since the Commission authorized a 10.0% return on equity in 2000 as well as the short-term economic projections indicating the ready availability of money, the majority has taken the illogical step of increasing Empire's authorized return on equity from 10.0% to 11.0%. This decision clearly ignores the economic conditions currently facing Empire's management and shareholders.

VI. ADOPTION OF COMPANY ROE RECOMMENDATIONS

Today's decision to reject the DCF in favor of the approach suggested by Empire is a dramatic departure from precedent. Adding to this departure from established policy is the majority's decision to adopt the recommendation of a Company witness. As was highlighted in the decision from 30 years ago, Company ROE witnesses have "only its own interests in mind." For this reason, the Commission has incessantly utilized the recommendations of its objective Staff as a starting point for any return on equity decision. As reflected in Attachment 2 to this dissent, the Commission, for at least 25 years, has steadfastly utilized the Staff recommendation as the appropriate starting point for any return on equity determination.

This case and the MGE case signal that the Commission now responds favorably to "true experts" (now being defined as in the old cliché as someone living far away and costing lots of money).

If these individuals did not have a track record of testifying nearly exclusively for companies and if they had been hired by a party without a monetary interest in the outcome, such "experts" could be very helpful. As it is they are suspect in their agenda and provide diminished assistance after discarding their prejudice. Staff and OPC witnesses, while having no flowering resume, presented to this Commission a straightforward analysis of the DCF model and adequate checks. Yet this was found lacking by the majority. After 25 years of steadfast acceptance by the Commission of its Staff's return on equity recommendations, the explicit rejection in the past two rate proceedings as well as the majority's insinuations regarding the credibility of such witnesses raises the following inevitable dilemma.

Given the decisions and dicta of the majority in the last two rate proceedings, the use of in-house Staff and OPC witnesses seemingly are no longer found useful by the majority. This means that the Staff and OPC must spend significant amounts of money hiring their own outside "experts" in the cases to come. Will this Commission authorize Staff to expend such funds? Will OPC – already under budget constraints – have the resources to pay for that luxury turned necessity? If not, then the book is written on ROE's in coming cases – the companies have already won by default for "experts" with adequate credibility will appear to contravene their position.

VII. EFFICIENCY OF EMPIRE MANAGEMENT

As previously indicated, the *Bluefield* and *Hope* decisions provide that the "return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties."[19] Therefore, in evaluating the ability of a company to attain its authorized return on equity, one must necessarily evaluate whether that utility's management is performing in an efficient and economical way.

In its Report and Order, the majority found that:

> Empire's return on year-end common equity (ROE) has been relatively consistent from 1999 through 2003, except for 2001 when the ROE was 3.89%. Otherwise, the ROEs were in the 8 to 9 percent range. Empire's 2003 ROE of 8.79% was below the average of a group of comparable at 13.78 percent for the year ending December 31, 2003.[20]

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[19] 262 U.S. 679 (1923) at 692-693 (emphasis added).

[20] Report and Order at pages 12-13.

> The evidence is unrefuted that Empire's credit rating has been downgraded. The evidence also shows that Empire's access to capital has been correspondingly impaired, Empire must pay higher rates to borrow money. Its earnings per share have declined and it has not been able to realize the return on equity of 10.0% authorized in its last rate case. These facts are significant objective indicators that Empire's rates have been too low and must be increased.[21]

Rather than their blind acceptance of Empire's stated historical return on equity calculations as well as the long leap of logic based thereon that "Empire's rates have been too low and must be increased", the majority should have undertaken the task dictated by the *Bluefield* and *Hope* decisions and undertaken a review of whether Empire has been led by an "efficient and economical management."

Such a review would obviously indicate that Empire has failed to realize its authorized return on equity because of management's imprudent decision to rely heavily on natural gas generation. As indicated by Empire's Chief Executive Officer, "Thirty percent of the energy during the test year was generated from Empire's natural gas-fired units or purchased on the spot market. In recent years, the wholesale natural gas market has seen a substantial increase in prices. . . While less an issue during the last couple of years due to Empire's success in locking in low prices, the current long-term trend in gas prices would create substantial credit pressure if left unaddressed."[22] Later, Empire's CEO notes that as a result of the position of certain parties on issues such as fuel and purchased power, "the Company, in the short run, cannot earn its allowed rate of return and will suffer financial harm that cannot be recovered."[23]

Rather than blind acceptance of Empire's excuses for its failure to earn its authorized return on equity, it is necessary for the Commission to question Empire's decision to rely heavily on natural gas-fired generation. The evidence in this case indicates that Empire has added

[21] Report and Order at 45.

[22] Gibson Direct at page 6.

[23] Gibson Surrebuttal at page 2.

approximately 522 MW of capacity in the last 17 years, that capacity was entirely natural gas dependent.[24] Interestingly, Empire also claims that the limited steam production facilities owned by Empire, approximately 382 MW, 302 MW (79%) will be retired within the next 9 years. Despite (1) the limited amount of steam production generation; (2) Empire's stated plans to retire those facilities; and (3) Empire's tremendous dependence on natural gas, Empire's management indicates an intention to add further natural gas generation.[25] Moreover, other than the purchase of some wind energy which carries no capacity rating, Empire management has yet to present this Commission with definitive plans to obtain additional coal generation or to diversify away from their dependence on natural gas generation facilities.

The current regulatory model has been shown to work in Missouri. Electric utilities that have diversified and not become overly dependent on one fuel source have been in an era of declining costs and rate reductions. On the other hand, those utilities that have continued to rely solely upon natural gas generation are experiencing earnings volatility. This volatility in earnings is primarily a result of the utility's reliance on the volatile natural gas prices and not a reflection that the electric utility regulatory mechanism in Missouri is faulty and must be otherwise corrected through extravagant return on equity authorizations.

VIII. CONCLUSION

This case and the MGE case send a clear signal to the Missouri utility companies and their captive ratepayers, the welcome mat is out and the days of generally lower than average utility rates in Missouri are over. A wave of rate filings is now a certainty. Currently, Laclede Gas has a pending gas rate increase. Aquila has announced its plan to file an electric increase in May. The moratorium for AmerenUE expires at the end of this year. Given the return on equity

[24] Roff Direct, Tietjen Direct at Schedule JST-1.

[25] Tr. 1375.

authorizations recently seen out of the majority, the ratepayers (residential, commercial and industrial) will inevitably suffer.

This decision has further boxed in the Commission on the future of rates for Missourians. The health of Missouri utilities is important to all citizens, particularly those that that are being served by them. Most Missouri companies are very healthy – some currently expanding through acquisitions under the same regulatory oversight and methodologies that the majority concludes must now change. But if a utility has put itself in a position of financial difficulty – through its own management decisions – the first answer should not be to raise the rates of the company consumers. Yet that is the first and last answer given by the majority here. We must disagree.

Respectfully Submitted

Steve Gaw
Commissioner

Robert Clayton, III
Commissioner

Dated at Jefferson City, Missouri,
on this 10th day of March, 2005.

ATTACHMENT ONE

RECENT PUC DECISIONS (since July 1, 2004)

1. California American Water: stipulated to 10.1% ROE, decided 12-16-2004
2. San Jose Water Company, stipulated to 9.9% ROE, decided 8-19-2004
3. Southern California Water Company, stipulated to 9.9% ROE, decided 8-19-04
4. Aquila – Colorado, stipulated to 10.25% ROE, decided 8-17-04
5. Florida Public Utilities, decided at 11.25% ROE, decided 11-8-2004
6. Avista Corporation – Idaho, decided at 10.4%, decided 10-8-2004
7. South Beloit Water, Gas, and Electric, decided at 9.87%, decided on 10-6-2004
8. Indiana-American Water, decided at 9.25%, decided on 11-18-2004
9. Interstate Power & Light (Iowa), decided at 10.7%, decided on 1-14-2005
10. Aquila – Kansas, decided at 10.5%, decided on 1-28-2005 (only had 33.6% equity)
11. Delta Gas Company (Kentucky), decided at 10.5%, decided on 11-10-04
12. People's Water (Louisiana), decided at 10.04%, decided on 2-11-2005
13. Centerpoint Energy (Louisiana), decided at 10.25%, decided on 8-6-2004
14. Detroit Edison (Michigan), decided at 11.0%, decided on 11-23-2004
15. Interstate Power & Light (Minnesota), decided at 11.25%, decided on 7-1-2004
16. Southwest Gas Corp. (Nevada), decided at 10.25%, decided on 8-26-2004
17. South Jersey Gas, decided at 10.0%, decided on 7-8-2004
18. South Carolina Electric, decided at 10.7%, decided on 1-6-2005
19. Chattanooga Gas, decided at 10.2%, decided on 10-20-2004
20. Madison Gas & Electric, decided at 11.5%, decided on 12-22-2004
21. Wisconsin Public Service, decided at 11.5%, decided on 12-21-2004

ATTACHMENT TWO

MoPSC Rate Case Decisions since 1980

	Case Number	Staff Range	Company Range	Commission Ordered
Kansas City Power & Light	EO-85-185	14.5%-15.7%	16.25%	15.0%
	ER-83-49	15.46%-16.25%	19.0%	16.25%
	ER-82-66	15.56%-16.42%	18.0%	15.76%
	ER-81-42	13.9%-14.8%	19.0%	14.4%
	ER-80-48	13.4%-14.2%	15.4%	13.4%
Union Electric	ER-84-168	15.5%-16.4%	17.0%	16.1%
	ER-83-163			Stipulated
	ER-82-52	15.11%-15.87%	17.0%	15.62%
	ER-81-180			Stipulated
Aquila / Utilicorp / MPS	ER-2004-0034			Stipulated
	ER-2001-672			Stipulated
	ER-97-394	10.0%-11.0%	12.25%	10.75%
	ER-93-37			Stipulated
	ER-90-101	12.51%-12.84%	13.75%	12.84%
	EO-86-83			Stipulated
	ER-83-40	14.0%-15.5%	16.0%	14.9%
	ER-82-39	14.9%-15.4%	17.5%	14.9%
	ER-81-85			Stipulated
	ER-79-60	12.97%-13.90%	15.5%	13.0%
Empire District Electric	ER-2002-424			Stipulated
	ER-2001-299	8.5%-9.5%	11.5-12.0%	10.0%
	ER-97-81			Stipulated
	ER-95-279			Stipulated
	ER-94-174			Stipulated
	ER-90-138			Stipulated
	ER-83-42	14.03-15.05%	16.5%	14.63%
	ER-81-209			Stipulated
	ER-79-19	12.8%-13.7%	13.25%-13.7%	13.0%
St. Joseph Light & Power	ER-99-247			Stipulated
	ER-94-163			Stipulated
	ER-93-41	10.14%-11.27%	12.78%	11.67%
	ER-81-43			Stipulated
Laclede Gas	GR-2002-356			Stipulated
	GR-2001-629			Stipulated
	GR-99-315	9.0%-10.0%	12.75%	10.5%
	GR-98-374			Stipulated

	GR-96-193			Stipulated
	GR-94-220			Stipulated
	GR-92-165			Stipulated
	GR-90-120			Stipulated
	GR-84-161			Stipulated
	GR-83-233			Stipulated
	GR-80-210			Stipulated
MGE	GR-2004-0209	8.52%-9.52%	12.0%	10.5%
	GR-2001-292			Stipulated
	GR-98-140	10.67%-11.19%	12.00%	10.93%
	GR-96-285	11.30%	12.25%	11.30%
	GR-93-240			Stipulated
	GR-91-291	12.37%-12.84%	12.84%+	12.84%
	GR-90-50			Stipulated
	GR-87-89			Stipulated
	GR-81-155	14.4%-15.1%	16.0%	14.8%
	GR-80-173			Stipulated
SWBT	TC-93-224	10.62%-11.72%	14.1%	11.72%
	TC-89-14	12.61%-13.32%	14.5%-15.5%	12.61%
	TR-86-84			Stipulated
	TR-83-253	14.65%	16.5%	14.70%
	TR-82-199	14.85%-15.95%	17.1%	15.45%
	TR-80-256			Stipulated
GTE	TR-89-182	11.51%-12.64%	13.7%	13.0%
	TR-89-106			Stipulated
	TR-85-176			Stipulated
	TR-82-23			Stipulated
United Telephone	TR-93-181	11.7%-12.30%	13.66%	11.7%
	TR-90-273			Stipulated
	TR-85-179			Stipulated
	TR-80-235	11.6%-11.9%	17.0%	11.9%
Mo. American Water	WR-2003-0500			Stipulated
	WR-2000-281	9.50%-10.75%	11.65%	10.0%
	WR-97-237			Stipulated
	WR-95-205	11.2%-12.15%	12.25%	11.48%
	WR-91-211			Stipulated
	WR-89-265			Stipulated
Missouri Cities Water	WR-92-207	11.63%-12.62%		12.09%
	WR-91-172	12.73%-13.25%	15.5%	13.01%
	WR-90-236			Stipulated
	WR-83-14	13.5%-14.5%	18.5%	14.5%
	WR-81-280			Stipulated
	WR-78-107			Stipulated
St. Louis County Water	WR-2000-844	10.25%-11.25%	12.0%	10.75%

	WR-97-382			Stipulated
	WR-96-263	10.74%-11.05%	12.75%	11.60%
	WR-95-145	11.1%-11.6%	12.75%	11.6%
	WR-94-166			Stipulated
	WR-89-246			Stipulated
	WR-87-2			Stipulated
	WR-78-276	11.8%	15.0%	11.8%

Of the 87 major rate cases reported in the last 25 years, 38 of the cases were litigated. In <u>none</u> of these reported decisions did the Commission adopt the recommended ROE of a Company witness.