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January 20, 2005

FILED

JAN 20 2005

Missouri Public  
Service Commission

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Public Service Commission  
Governor's Office Building  
Madison & E. Capitol  
Jefferson City, MO 65101

RE: *In the Matter of Empire District Electric Company's Application for Authority to File Tariffs Increasing Electric Rates for the Service Provided to Customers*, Case No. ER-2004-0570

Dear Judge Roberts:

Enclosed for filing in the above-referenced case are the original and 8 copies of the Missouri Department of Natural Resources' Outreach and Assistance Center, Missouri Energy Center's post-hearing brief. Thank you for your attention to this matter.

Sincerely,

JEREMIAH W. (JAY) NIXON  
Attorney General

Ronald Molteni  
Assistant Attorney General

Enclosures

cc: All Parties on the Service List

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED

JAN 20 2005

Missouri Public  
Service Commission

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

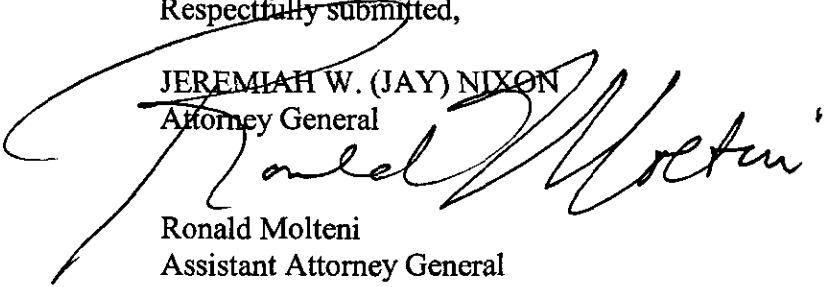
MISSOURI DEPARTMENT OF NATURAL RESOURCE'S  
POST-HEARING BRIEF

The Missouri Department of Natural Resources ("MDNR"), an intervenor in this case, settled its issues with the other parties and jointly submitted a stipulation to the Commission. The only other issue on which MDNR asserted a position was the Interim Energy Charge ("IEC"). MDNR, during opening arguments, argued to the Commission that an IEC appears to be unlawful in light of the Supreme Court's holding in *State ex rel. Utility Consumers Council, Inc. v. Public Serv. Comm'n*, 585 S.W.2d 41 (Mo. banc 1979) regarding fuel adjustment clauses. IEC's raise, among other things, concerns about single issue ratemaking, and they place all the volatility of fuel purchase price on the backs of ratepayers. While the Court of Appeals in *State ex rel. Midwest Gas Users' Ass'n v. Public Service Commission*, 976 S.W.2d 470 (Mo.App. W.D.1998), allows LDC's to utilize a purchase gas adjustment, which is similar in concept to an IEC, the Court of Appeals distinguished its holding from *State ex rel. Utility Consumers Council, Inc. v. Public Serv. Comm'n* by explaining the different character of LDC's versus electric utilities. Although, the same public policy concern about ratepayers having to shoulder all the burden of price volatility applies there, too. The Commission is of course bound by Supreme Court precedent.

Because of the stipulation on issues most directly pertaining to MDNR's interest and MDNR's limited role in the hearings on the unsettled issues, MDNR will not be filing proposed findings of fact and conclusions of law.

Respectfully submitted,

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Natural Resources

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, by United States mail, this 20th day of January, 2005, to:

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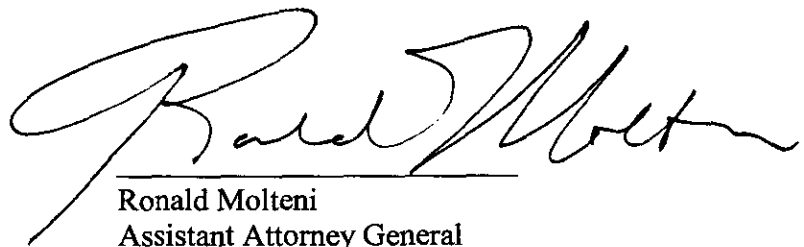
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