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 Service Provided to Customers in the Missouri Service Area of the Company	)))))	**Case No. ER-2006-0315** Tariff File No. YE-2006-0597

APPLICATION FOR REHEARING

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

1. On June 20, 2006 the Commission issued an order that requested additional information. That order is unjust, unreasonable, arbitrary and capricious, and unlawful for the following reasons.

2. By requiring parties to address issues well beyond the scope of the contested issues, the Commission is depriving Public Counsel of the due process of law. We are now almost five months into the statutorily-established eleven month rate case process. Public Counsel identified the issues that were likely to be most critical and devoted resources of in-house staff and outside experts to address them. For the Commission to require Public Counsel to divert those resources to answer questions that appear to have been posed on a whim is patently unfair.

3. To the extent that the answers to these questions rely on data that Empire possesses and is familiar with, the Commission is giving Empire a huge advantage over parties opposed to it. The time allowed to respond does not allow other parties to formulate discovery requests, submit them, and receive and review responses in time to comply with the

Commission's order. Furthermore, since much of the information sought is beyond the normal scope of the duties of Public Counsel's in-house experts and current in-house modeling capabilities, Public Counsel would have to retain outside experts to properly answer them, and even to properly formulate discovery requests to get the data on which to base the answers. The Commission's expectation that the parties can quickly provide adequate and reasoned responses to these questions is absolutely mistaken.

4. The order is unlawful and unreasonable in that it was issued by a Regulatory Law Judge rather than by the Commission. While the Commission has statutory authority to delegate matters, there was not any Commission action taken to delegate the authority to issue such an order.

5. The parties spent a great deal of time negotiating a procedural schedule that fairly apportions the eleven month period among the various tasks that must be accomplished. Interjecting these questions at this point in the process upsets the balance that the parties achieved, unravels the schedule that the Commission approved, and is contrary to due process. It also does not take into account the degree to which, given the current workload, any activity in any rate case is impacted by changes and additions to the scope of another rate case.

6. The Commission has tried over the last few years to make the rate case process more streamlined, and more efficient in getting to Commissioners information that will be helpful and relevant in their decision making. The June 20 order is a move in the exact opposite direction. An efficient regulatory process would clearly and definitively rule on legal questions about the scope of proceedings early in those proceedings. This is particularly important when, as is the case here, threshold questions about the Commission's jurisdiction have been raised. The parties should not be left wondering at this point in the case whether the Commission

believes the IEC agreement is binding on Empire or not. The Commission should make that determination first. If the Commission rejects all of Empire's tariffs or if the IEC remains in effect, then the Commission's questions are moot.

7. In addition to the overarching concerns about the timing and scope of the questions, there are numerous problems with the specific questions.

8. With respect to Question 1, whether to use a different period than the thirty years of weather data the Commission typically uses is a hugely complex issue, involving at least the disciplines of meteorology, climate science, and statistics. The last time it was raised, in a Laclede Gas Company rate case, both Laclede and the Commission's Staff hired outside experts to address it. The Commission's June 20 order does not allow parties time to address such an important issue with the seriousness it deserves. A Commission decision on this issue in this case will of course be cited in all future electric and gas cases. There is no reason for the Commission to require parties to address -- on the fly -- the question of the proper weather data period in this case when there is no dispute among them over the proper period.

9. With respect to Question 2, a proper answer would require parties to conduct fuel runs based on projected data. As noted above, there has been no need for Public Counsel to even request this type of projected data, much less to analyze it to determine if the projections are reasonable. This type of analysis is very time consuming, and the time allowed by the Commission is completely inadequate. Furthermore, there is no point to it. Empire and all the other parties are analyzing a historic test year, because the Commission ordered a historic test year. It would violate the matching principle (a basic tenet of ratemaking) to use projected data for natural gas and purchased power and historic data for everything else.

10. With respect to Question 3, it is based on an absurd premise. It would be unquestionably imprudent for a utility to hedge 100% of its expected gas purchases for the next three years. If one of the winters is a little warmer or one of the summers a little cooler, the utility would be stuck with gas it could not use and probably could not sell without incurring losses. The same situation would arise if growth projections were overly optimistic. The point of hedging is to reduce risk, not create it.

Furthermore, it is impossible to answer Question 3 without making numerous assumptions about what the Commission means by "100% hedging." Because the idea of 100% hedging is unreasonable, any assumptions about how to interpret the question are also unreasonable. Is the Commission asking about the cost of hedging 100% of the next three years of gas today? Or going into each year with 100% of the expected volumes hedged? Or going into each winter? Or each month?

Question 3 also makes it clear that the Commission gave little thought to these questions. It orders parties to use July 10, 2006 data, but suggests parties should respond in direct testimony to be filed on June 23, 2006! If parties are unable to meet the June 23 date, they are required to respond on or before July 15, 2006. That deadline falls on a Saturday – a day on which the Commission does not normally schedule filings. Since the July 10 prices will not be readily available until July 11, the parties will only have three business days before the due date to calculate the information requested. It is apparent that the questions and the order were hastily thrown together with little debate or discussion that would have revealed the deep problems.

11. With respect to Question 4, even to ask it reveals a lack of understanding about the ratemaking process. Empire has a hedging strategy today. The costs of that strategy are included in Empire's cost of service. No party is challenging Empire's hedging strategy or the

costs related to it. In order for this question to be an issue that effects rates in this rate case: A) a party would have to create an alternate strategy that it can prove to the Commission's satisfaction is superior to Empire's (or at least prove that Empire's strategy is unreasonable); and B) that superior strategy would have to have costs significantly different from the cost reflected in the test year. Unless both A and B come about, there is no issue and no reason for the Commission to create one. Does the Commission plan, on the basis of some quickly-complied information, to establish and approve a hedging strategy for Empire? Unless the Commission is determined that it wants to make a specific finding and affirmatively approve one particular hedging strategy, there is no reason to require the parties to go to the time, trouble, and expense to develop alternate strategies.

12. With respect to Question 5, it is yet another violation of Public Counsel's due process rights to open up the floodgates and allow any party to present any evidence on any topic in supplemental direct testimony. It is also contrary to the Commission's own rules on supplemental testimony. The parties are already in the process of creating a reconciliation of the issues; the Commission's June 20 order injects new issues that none of the parties have raised and may not want to pursue.

13. It appears that the Commission has raised these issues at least in part because Empire's filed case has gaps in it because of the forced removal of the Energy Cost Recovery (ECR) charge. It is not up to the Commission to try to bolster Empire's case because – as filed – it was in violation of agreements of the parties and previous Commission orders. As noted in Public Counsel's first Application for Rehearing (filed on June 23), the Commission should dismiss the instant rate case filing. Empire would, of course, be allowed to refile a proper case without an illegal request for an ECR.

In summary, it is impossible for Public Counsel to adequately respond to these questions in the time allowed. And it is unfair to require parties to devote the resources to attempt to answer them when there is absolutely no reason to believe that the answers would provide information that would be relevant to the issues in this case or helpful to the Commission in setting just and reasonable rates.

WHEREFORE, Public Counsel respectfully requests that the Commission grant rehearing of its June 20, 2006, Order Requiring Additional Information or Supplemental Filing, and upon rehearing rescind such order in its entirety.

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 emailed to all parties this 29th day of June 2006.

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