



Diana M. Vuylsteke
Voice: 259-2543
dmvuylsteke@bryancave.com

FILED

MAR 25 2005

Missouri Public
Service Commission

March 25, 2005

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Governor Office Building
200 Madison Street
Jefferson City, Missouri 65101

Re: Case No. ER-2004-0570

Dear Mr. Roberts:

Attached for filing in the above-referenced case are an original and eight (8) copies of the *Missouri Industrial Energy Consumers' Motion for Clarification and Alternative Application for Rehearing*.

Thank you for your assistance in bringing this filing to the attention of the Commission, and please call me if you have any questions.

Very truly yours,

Diana M. Vuylsteke
DMV:rms
Enclosures (9)
cc: All Parties

Bryan Cave LLP
Riverview Office Center
221 Bolivar Street
Jefferson City, MO 65101-1574
Tel (573) 556-6620
Fax (573) 556-6630
www.bryancave.com

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And Bryan Cave,
A Multinational Partnership,
London

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

MAR 25 2005

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 Public
Service Commission

**MISSOURI INDUSTRIAL ENERGY CONSUMERS'
MOTION FOR CLARIFICATION AND
ALTERNATIVE APPLICATION FOR REHEARING**

Pursuant to Section 386.500.1 RSMo. and Commission Rule 4 C.S.R. 240-2.160, Anheuser-Busch, Boeing, DaimlerChrysler, Ford, General Motors, Hussmann, J. W. Aluminum, Monsanto, Pfizer, Precoat, Procter & Gamble, Nestlé Purina and Solutia, hereafter referred to as the Missouri Industrial Energy Consumers or "MIEC", hereby moves for clarification of certain portions of the Commission's Report and Order issued March 10, 2004 (the "Order"), and, alternatively, applies for rehearing of the Order. In support of its Motion and Application, the MIEC states as follows:

It is not clear whether the Order rejects the Discounted Cash Flow ("DCF") model for calculating return on equity ("ROE"). The Order states that its confidence in the method's results is "necessarily shaken" and "diminished", and arguably relies exclusively on a comparable company analysis presented by Company witness Vander Weide. The Order states "only through comparative analysis" can a return that is commensurate with returns in other enterprises with corresponding risk be determined. The Order implies that investor expectations under the DCF method are not a touchstone of proper, just and reasonable ROE determination. However, the Order does not explicitly reject the DCF method, and acknowledges that Vander Weide applied a DCF analysis in developing his recommendation. Therefore, it is unclear whether or not the Commission's Order rejects the DCF method.

The DCF method has been the Commission's traditional method of calculating ROE, and the majority of state utility commissions employ the DCF method. The DCF method is consistent with the standards set by the Supreme Court in *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 64 S. Ct. 281, 88 L.Ed. 333 (1943) and *Bluefield Water Works and Improvement Company v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 43 S. Ct. 675, 67 L.Ed. 1176 (1923). The DCF method encompasses the financial soundness of the utility, the ability to attract capital and the expectations of investors along with comparative earnings to businesses with similar risks at the same time and in the same general part of the country. Because the Commission's Order could be construed to reject the DCF method to rely on exclusively on comparison to other utility earnings, the MIEC respectfully requests that the Commission clarify its Order regarding the continued validity of the DCF method.

If the DCF method is indeed rejected by the Commission's Order, the MIEC requests rehearing on the issue of the proper establishment of the Company's ROE. If the DCF method is rejected in favor of a pure comparative method or comparable company approach, the Commission's Order violates the Supreme Court standard of *Hope and Bluefield* by improperly weighing the other factors which much be considered under those decisions, including financial integrity and investor confidence. As a result, the Order authorizes an excessive return on equity that fails the requirement that rates be just and reasonable. To the extent that the Order rejects the DCF method, it is arbitrary and capricious because it abandons 30 years of established methodology employed by the overwhelming majority of states, without sufficient explanation. Additionally, rejection of the DCF method is not based on substantial and competent evidence on the whole record, because no evidence in the record supports rejection of that method, and the testimony of Company witness Vander

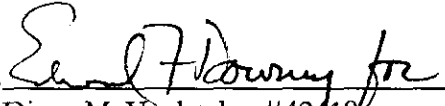
Weide primarily relied upon by the Commission employs the DCF method in its analysis. Further, there is no competent evidence in the record supporting a comparable earnings analysis and the rejection of the DCF analysis; therefore the Commission's stated reliance on the comparable earnings analysis is not supported by evidence in the record.

Additionally, if the Commission's Order rejects the DCF method, the Order is unjust, unreasonable, arbitrary and capricious, and not based on substantial and competent evidence on the whole record for the following reasons: (1) it results in abrogation of the Commission's duty to regulate by relying on decisions by public utility regulators in other states to the exclusion of the evidence regarding the specific evidence regarding the Missouri utilities before the Commission; (2) it relies upon data for the entire nation and is not merely limited to comparable earnings for utilities "in the same general part of the country", and is therefore contrary to the standard set forth in *Hope* and *Bluefield*; (3) it is contrary to *Hope* and *Bluefield* in that it is not based on information regarding returns of utilities "being made at the same time", but rather examines average returns on equity for electric utilities in the 1st quarter of 2004.

WHEREFORE, the MIEC respectfully requests that the Commission (1) clarify its Order regarding the continued validity of the DCF method of establishing ROE; and, in the alternative (2) grant rehearing on the issue of the just and reasonable ROE for the Company.

Respectfully submitted,

BRYAN CAVE LLP

By: 

Diana M. Vuylsteke, #42419

211 N. Broadway, Suite 3600

St. Louis, Missouri 63102

Telephone (314) 259-2543

Facsimile (314) 259-2020

dmvuylsteke@bryancave.com

ATTORNEY FOR THE MISSOURI
INDUSTRIAL ENERGY CONSUMERS

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been sent to all parties by electronic service
this 25th day of March 2005.

