

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED³
FEB 26 2001

In the Matter of the Tariff Revisions of)
The Empire District Electric Company)
Designed to Increase Rates on an Interim)
Basis for Electric Service to Customers in)
Its Missouri Service Area Case No. ER-2001-452

Missouri Public
Service Commission

MOTION TO DISMISS

COMES NOW, the Office of Public Counsel (Public Counsel) and for its Motion to Dismiss states as follows:

1. On February 16, 2001, Empire District Electric Company (Company) filed two interim tariff sheets along with the prepared testimony of Company witnesses Gipson, Gibson, and Kaplan, requesting that its customers' rates be increased by one surcharge commencing on March 1, 2001 (less than 30 days) and another surcharge on July 1, 2001.

Public Counsel was not notified prior to February 16 that Company had plans to requests interim relief. It is also worth noting that Empire's interim request was filed merely four days prior to the first legislative hearing scheduled in the Missouri State Legislature regarding House Bill 723, a bill that would permit a pass-through of projected gas costs through a fuel adjustment surcharge, such as was struck down by the Missouri Supreme Court in UCCM v. PSC, 585 S.W.2d 41(Mo. banc 1979).

2. Public Counsel believes that the appropriate standard for interim rate requests is the "emergency standard" applied in nearly all past interim rate cases in Missouri. This standard was stated by the Commission as follows:

Therefore, it is incumbent upon the Company to demonstrate conclusively that an emergency does exist. The Company must show that (1) it needs additional funds immediately, (2) that the need cannot be postponed, and (3) that no other alternatives exist to meet the need but rate relief.

Re: Missouri Public Service Company, 22 Mo. P.S.C. (N.S.) 427, 429 (1978).

Company does not even attempt in this case to suggest that its current situation would meet the Commission's Emergency Standard.

3. Public Counsel has found no sufficient justification in Company's interim request nor anywhere in the accompanying prepared testimony that would meet any standard that the Commission has ever used to review interim rate relief requests. Nothing in Company's prepared testimony suggests that it is currently facing an emergency financial situation, and instead Company testimony focuses on a projected decline in earnings based upon a forecast of future natural gas costs. Company testimony does not present any facts that would suggest that Company is experiencing or would experience a negative return in any month leading up to the legally required operation of law date in its ongoing permanent rate case (Case No. ER-2001-299). Company presents no facts to support its claims that its financial integrity would be threatened without the requested interim relief. Nothing in Company's request or Company's prepared testimony supports the notion that without the requested interim relief it could provide safe and adequate service to its customers.

4. In fact, it is clear from Company's prepared testimony that its current situation would not even meet the "good cause" standard it now wants the Commission to employ. The facts of Company's last interim rate request in 1996 (Case No. ER-97-82) are remarkably similar to the case at hand. In 1996, Company requested an interim rate increase based upon increases in natural gas costs but could not prove that there would be any significant impairment of its financial situation. The Commission found that interim rate request to be lacking:

Empire provided evidence showing that as of June 30, 1996, its return on average equity was 7.97 percent. Empire maintains that this is below a reasonable return for it or any other electric utility. Empire argues that an unexpected increase in natural gas prices occurring after its currently effective rates were put into effect is a significant factor causing a need for interim rate relief.

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In this case Empire has not demonstrated good cause for granting interim relief. The evidence demonstrates that Empire earned a return on equity of 7.97 percent and that was caused in large part by an unexpected increase in fuel costs. Under the facts of this case, the inability of the company to earn its authorized return on equity does not, in and of itself, constitute sufficient justification for granting interim relief.

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There is no showing by the Company that its financial integrity will be threatened or that its ability to render safe and adequate service will be jeopardized if this request is not granted. Furthermore, the Company has shown no other exigent circumstances that would merit interim relief.

Re: Empire Dist. Electric Company, 6 Mo. P.S.C. 3d 17, 19-21 (1997).

In the instant case, Company has yet again presented insufficient justification for interim relief. Company is currently experiencing healthy returns. Even if its prepared testimony was taken at face value, its claims do not even rise to a level necessary to meet a "good cause" standard as the Commission applied it to this electric company in 1997.


5. Public Counsel has numerous concerns about company's interim request, including the concerns expressed by the Commission Staff in subparagraphs 1-8 on pages 6-8 of Staff's Response to Commission Order and Recommendation. Public Counsel concurs in these concerns.

6. If the Commission does not grant Public Counsel's Motion to Dismiss, Public Counsel requests that the Commission suspend the interim tariff sheets for a time period that would be sufficient to permit Public Counsel to conduct at least two rounds of discovery through the data requests process, time to analyze data requests responses, the time to prepare written testimony supporting Public Counsel's positions in this case, and sufficient time to prepare for the evidentiary hearing.

WHEREFORE, Public Counsel respectfully requests that the Commission dismiss Company's interim tariff sheets filed in this case, because Company has not presented any facts that would support the assertion that its financial integrity is threatened or that its ability to provide safe and adequate service is currently threatened. In the alternative, Public Counsel requests that the Commission suspend the interim tariff sheets, set this case for an evidentiary hearing, and establish a procedural schedule providing Public Counsel sufficient time to prepare and present its testimony in this case as described herein.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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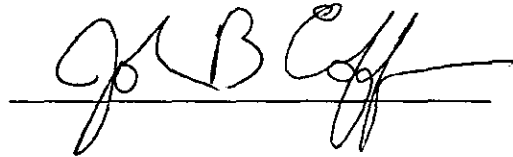
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 26th day of February 2001:

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A handwritten signature, likely of Stuart W. Conrad, is written over a horizontal line. The signature is stylized and cursive.