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February 28, 2001

**FILED<sup>3</sup>**

FEB 28 2001

Mr. Dale Hardy Roberts  
Executive Secretary  
Public Service Commission  
Governor State Office Building  
Jefferson City, MO

Missouri Public  
Service Commission

Hand Delivery

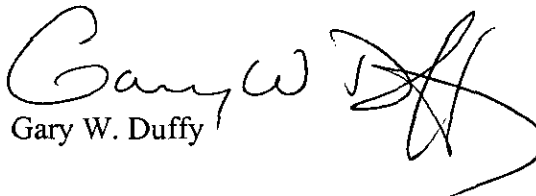
**RE:** Case No. ER-2001-452  
The Empire District Electric Company

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and eight copies of "Reply of The Empire District Electric Company to Staff's Response and Public Counsel's Motion to Dismiss."

If you have any questions, please give me a call.

Sincerely yours,

  
Gary W. Duffy

Enclosures  
cc w/encl:

John Coffman, Office of Public Counsel  
Denny Frey, Office of the General Counsel  
Stuart W. Conrad  
Bill Gipson

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

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

**FILED<sup>3</sup>**  
FEB 28 2001  
Missouri Public  
Service Commission

**REPLY OF THE EMPIRE DISTRICT ELECTRIC COMPANY  
TO STAFF'S RESPONSE  
AND PUBLIC COUNSEL'S MOTION TO DISMISS**

Comes now The Empire District Electric Company ("Empire"), by and through its counsel, and for its reply to "Staff's Response to Commission Order, And Recommendation" filed on February 22, 2001, and the Office of the Public Counsel's ("OPC's") "Motion to Dismiss" filed on February 26, 2001, respectfully states as follows:

1. Empire needs timely interim rate relief to maintain its financial integrity. That fact exists despite the arguments made in Staff's response and OPC's motion to dismiss, and, indeed, is not refuted by those pleadings. The Commission should not suspend the proposed interim tariff (which bears an effective date of March 18<sup>1</sup>), or if it does suspend the tariff, the suspension should be for the briefest period possible. The reason is that Empire needs a quick infusion of revenue to sustain its earnings at a reasonable level. A quick infusion of revenue to address the problem is only possible through interim rate relief in Missouri. No other remedy is available. The Commission should refer to the Highly Confidential Table 1 on page 7 of the HC version of the direct testimony of Mr. Dave Gibson to see what will happen to Empire's return on

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<sup>1</sup> Empire filed a motion with the tariff filing asking the Commission to implement the increase on March 1, 2001, prior to the proposed effective date of March 18.

equity without timely interim rate relief. Inaction by the Commission, which is the Staff's recommendation, will not change that trend. Inaction by the Commission now can lead to long-term adverse consequences, including higher overall costs for ratepayers such as increased borrowing costs due to the lowering of financial ratings on Empire's debt. The Commission has a brief window of opportunity in which it can deal with this situation. If it fails to deal with it quickly, the consequences will be adverse and long-lived.

2. As explained in the direct testimony accompanying the interim tariff filing, natural gas costs are a major component of Empire's cost of producing electricity for its customers. Empire's previous actions in obtaining relatively (i.e. compared to today's market) low cost gas natural gas supply contracts have allowed it to keep rates relatively low in the past. The last of those relatively low cost contracts expires today (February 28, 2001) and, in the current environment of natural gas costs, cannot be replaced at historical costs. This situation is what is largely driving Empire's request for interim relief. Ironically, it also allows the Staff to make the accurate but irrelevant and incomplete observation that Empire's earnings were increasing in a time of rising gas costs. That is what logically happens when the benefit of those lower gas cost contracts is considered. But when those lower cost contracts disappear, so do the rising earnings. And when current higher natural gas costs are substituted for the expiring lower cost contracts, the earnings no longer rise, and the results can be significant, as depicted in the direct testimony of Mr. Gibson. No arguments made by Staff or OPC refute those facts or change that situation.

3. The Staff's first argument in its response is to allege "lack of cooperation" or a failure to meet with them. This is untrue and irrelevant. While alleging that Empire did not "afford the Staff the courtesy of a meeting to advise Staff of the impending filing" (Staff

response, p. 2) the Staff in the *same paragraph* acknowledges that it was told back in late January that Empire was considering making this filing.<sup>2</sup> The Staff then acknowledges that it was told after the Empire board meeting that the question of whether and when to file was being left to Empire management. This pattern of keeping the Staff informed of the decision-making process hardly merits a charge of lack of cooperation or lack of forewarning by Empire. Whether a formal meeting was held is irrelevant since the Staff admits it has had actual knowledge of Empire's intentions since at least January 24, 2001. The Staff doesn't indicate what, if anything, such a formal meeting would have accomplished and it certainly doesn't indicate that its position in its recommendation would be any different if such a meeting had occurred.

4. The Staff has been on site at Empire on the audit in Empire's permanent rate case filing (Case No. ER-2001-299) since December 2000. Numerous informal conversations have taken place between Empire and Staff personnel regarding the impending nature of this interim filing. There are no surprises in Empire's interim filing. For example, the information regarding natural gas prices on which Empire has relied in this interim filing was sent to the Staff by Federal Express on December 4, 2000 in response to Staff's data request no. 1 in Case No. ER-2001-299. Other significant aspects of the interim case are consistent with the permanent case, which in turn is consistent with past rate case filings.

5. The Staff alleges on page 3 that Empire is attempting to create the "appearance of a crisis" situation and preventing the Staff and the Commission from conducting the necessary level of review of Empire's filing. Empire has not alleged that this is a "crisis" situation. Empire's direct testimony attempts to describe the financial situation in detail and discusses the

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<sup>2</sup> In fact, on January 5, 2001, in Case No. ER-2001-291, the Staff invited utilities suffering the adverse effects of rising natural gas prices to seek interim rate relief.

longer-term consequences of Commission inaction. Empire has stated facts showing its projected earnings due to the impact of increased natural gas costs. Increased natural gas costs are an undoubtable nationwide situation. In any event, the *very nature* of an interim rate request means that the Commission and Staff will not conduct the same level of scrutiny as in a permanent rate case. Empire has asked for interim relief within the context of the permanent case and proposed safeguards, such as the “subject to refund” provision in the proposed tariff sheet, which have been deemed sufficient in the past for interim relief. In other words, if Empire does not receive from the Commission in the permanent case an annual revenue increase of at least \$16,770,495, it will refund the difference to customers with interest. The Commission is not abandoning its authority to scrutinize the permanent request.

6. Empire will not engage in a lengthy response to the discussion by the Staff and OPC of the various standards the Commission has employed for granting interim rate relief. The simple fact is that the courts have said the Commission can let the interim tariff take effect without making any findings. The most recent pronouncement by the Commission, in *In Re The Empire District Electric Company*, 6 MoPSC 3<sup>rd</sup> at 20, (Case No. ER-97-82) was that only a “good cause” standard exists. “Since no standard is specified in statutes to control the Commission as to whether to order suspension of a proposed rate schedule, the result is within the sound discretion of the Commission *and an emergency situation need not necessarily be established.*” (Emphasis supplied) As discussed in its prepared direct testimony accompanying the interim filing, Empire meets the criteria cited by the Staff, in that Empire “needs the funds immediately, the need cannot be postponed, and no other alternatives exist but rate relief.” It also meets the “good cause” criteria cited by the Commission in Case No. ER-97-82. In response to Staff’s claim that Empire has placed the “full responsibility” for the request on its Missouri

customers, Empire states that Missouri represents approximately 85 percent of Empire's operations and it is in Missouri that Empire is experiencing its greatest growth. Therefore, it is the jurisdiction where the impact is the greatest and where the responsibility lies. Also, as explained in the direct testimony, most of Empire's other jurisdictions have fuel adjustment mechanisms in place which remove the need for it to even request interim relief for dramatically increased natural gas costs. Thus, the fact situation and the unique nature of Missouri's regulatory structure force Empire to make this request.

7. Empire also will not engage in a point-by-point refutation of Staff's arguments because none of them refute the existence of higher gas costs and their impact on Empire's earnings. All of the arguments raised by Staff can be addressed in great detail in the permanent rate case. In general, Empire cannot voluntarily cut enough costs to make a difference in this situation. It already is suffering from 62 vacant positions. Empire's financial structure would presumably have been somewhat different if the merger agreement had not been signed, but whether or not UtiliCorp United Inc. abandoned the merger, the lower-cost gas contracts still would have expired.

8. In summary, Empire is in a situation where it has demonstrated that it needs immediate rate relief, it has demonstrated that the need cannot be postponed because it will be replacing lower cost gas contracts with higher priced gas contracts due to nationwide market conditions, rate relief in Missouri is the *only* alternative available since Missouri represents the overwhelming majority of its operations, and Missouri does not have an automatic fuel cost adjustment mechanism as Empire's other jurisdictions do. The Commission needs to be both responsive and responsible in this situation in order to protect the long-term interests of Empire, its shareholders, and Empire's customers. Inaction by the Commission, which can allow damage

to be done to Empire's credit ratings, is not the solution. The Commission should therefore grant Empire's motion to allow the proposed interim tariff to go into effect March 1, 2001, on a temporary and subject to refund basis. Alternatively, the Commission should allow the tariff to take effect on March 18, 2001, as that is the effective date it bears. If the Commission determines that modifications to the tariff are necessary for the ultimate protection of ratepayers, Empire stands ready to consider and implement all reasonable suggestions. Time is of the essence in this situation because inaction or delay will only make matters worse.

Respectfully submitted,

  
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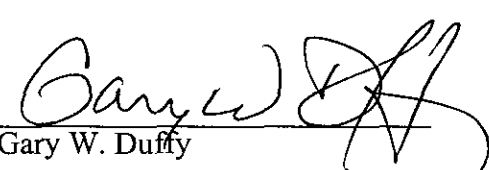
Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing was either hand delivered or sent by first class mail, postage prepaid, this 28<sup>th</sup> day of February, 2001, to the following counsel of record:

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Jefferson City, Missouri

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