

EMPIRE DISTRICT ELECTRIC COMPANY  
ER-2006-0315  
Data Request  
of  
Praxair, Inc. and Explorer Pipeline Company  
to  
Empire District Electric Company

*HR*

August 5, 2006

<u>Item No.</u>	<u>Description</u>
248.	Please provide a full and accurate copy of the 10Q filed on August 8, 2005.

**FILED**

SEP 29 2006

Missouri Public  
Service Commission

*Praxair Exhibit No. 123*  
*Case No(s) ER-2006-0315*  
*Date 9-12-06 Rptr HF*

The attached or above information provided to the requesting party or parties in response to this data or information request is accurate and complete and contains no material misrepresentations or omissions, based upon present facts to the best of the knowledge, information or belief of the undersigned. The undersigned agrees to immediately inform the requesting party or parties if during the pendency of this case any matters are discovered which would materially affect the accuracy or completeness of the attached information and agrees to regard this as a continuing data request.

As used in this request the term "document" includes publications in any format, work papers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies or data recordings, transcriptions and printer, typed or written materials of every kind in your possession, custody or control or within your knowledge. The pronoun "you" or "your" refers to the party to whom this request is tendered and named above and includes its employees, contractors, agents or others employed by or acting in its behalf.

Signed:

*Dwaine Buill*

Date:

*8-8-06*

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 10-Q**

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(Mark One)

- Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934  
For the quarterly period ended June 30, 2005 or
- Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission file number: 1-3368

**THE EMPIRE DISTRICT ELECTRIC COMPANY**

(Exact name of registrant as specified in its charter)

Kansas  
(State of Incorporation)

44-0236370  
(I.R.S. Employer Identification No.)

602 Joplin Street, Joplin, Missouri  
(Address of principal executive offices)

64801  
(zip code)

Registrant's telephone number: (417) 625-5100

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes  No

As of August 1, 2005, 25,951,932 shares of common stock were outstanding.

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# THE EMPIRE DISTRICT ELECTRIC COMPANY

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## PART I. FINANCIAL INFORMATION

### Item 1. Consolidated Financial Statements

#### EMPIRE DISTRICT ELECTRIC COMPANY CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)

	Three Months Ended	
	June 30,	
	<u>2005</u>	<u>2004</u>
<b>Operating revenues:</b>		
Electric	\$ 81,987,854	\$ 71,410,564
Water	363,441	337,528
Non-regulated (Note 9)	<u>5,540,252</u>	<u>5,554,469</u>
	87,891,547	77,302,561
<b>Operating revenue deductions:</b>		
Fuel	25,086,740	17,824,919
Purchased power	11,711,664	12,423,307
Regulated – other (Note 8)	13,776,022	12,747,749
Non-regulated (Note 9)	5,724,970	5,692,004
Maintenance and repairs	5,696,487	6,061,135
Depreciation and amortization	9,120,396	7,621,586
Provision for income taxes	1,607,335	1,092,151
Other taxes	<u>4,637,659</u>	<u>4,281,284</u>
	77,361,273	67,744,135
<b>Operating income</b>	10,530,274	9,558,426
<b>Other income and deductions:</b>		
Allowance for equity funds used during construction	28,137	27,732
Interest income	34,949	10,468
Provision for other income taxes	20,995	64,206
Minority interest	(22,689)	(109,761)
Other - non-operating income	-	67,016
Other - non-operating expense	<u>(206,042)</u>	<u>(230,453)</u>
	(144,650)	(170,792)
<b>Interest charges:</b>		
Long-term debt – other	5,967,784	6,159,686
Note payable to securitization trust	1,062,500	1,062,500
Commercial paper	109,463	3,623
Allowance for borrowed funds used during construction	(53,073)	(24,089)
Other	<u>140,864</u>	<u>107,775</u>
	7,227,538	7,309,495
<b>Net income</b>	<u>\$ 3,158,086</u>	<u>\$ 2,078,139</u>
<b>Weighted average number of common shares outstanding - basic</b>	<u>25,845,970</u>	<u>25,408,592</u>
<b>Weighted average number of common shares outstanding - diluted</b>	<u>25,894,742</u>	<u>25,455,030</u>
<b>Earnings per weighted average share of common stock - basic</b>	<u>\$ 0.12</u>	<u>\$ 0.08</u>
<b>Earnings per weighted average share of common stock - diluted</b>	<u>\$ 0.12</u>	<u>\$ 0.08</u>
<b>Dividends per share of common stock</b>	<u>\$ 0.32</u>	<u>\$ 0.32</u>

*See accompanying Notes to Consolidated Financial Statements.*

**EMPIRE DISTRICT ELECTRIC COMPANY**  
**CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)**

Six Months Ended

June 30,

	<u>2005</u>	<u>2004</u>
<b>Operating revenues:</b>		
Electric	\$ 155,223,272	\$ 143,147,927
Water	684,473	673,607
Non-regulated (Note 9)	<u>11,518,729</u>	<u>10,712,850</u>
	167,426,474	154,534,384
<b>Operating revenue deductions:</b>		
Fuel	47,837,942	34,920,611
Purchased power	23,826,954	26,489,880
Regulated – other (Note 8)	27,910,849	26,411,956
Non-regulated (Note 9)	11,859,615	10,993,801
Maintenance and repairs	10,496,549	11,244,020
Depreciation and amortization	17,073,392	15,193,553
Provision for income taxes	1,511,907	1,949,593
Other taxes	<u>9,212,801</u>	<u>8,767,572</u>
	149,730,009	135,970,986
<b>Operating income</b>	17,696,465	18,563,398
<b>Other income and deductions:</b>		
Allowance for equity funds used during construction	48,525	27,732
Interest income	103,444	29,202
Provision for other income taxes	56,561	109,392
Minority interest	(49,658)	(67,541)
Other - non-operating income	-	67,016
Other - non-operating expense	<u>(419,718)</u>	<u>(464,537)</u>
	(260,846)	(298,736)
<b>Interest charges:</b>		
Long-term debt – other	12,119,387	12,319,741
Note payable to securitization trust	2,125,000	2,125,000
Commercial paper	109,463	11,799
Allowance for borrowed funds used during construction	(86,841)	(36,208)
Other	<u>260,185</u>	<u>188,602</u>
	14,527,194	14,608,934
<b>Net income</b>	<u>\$ 2,908,425</u>	<u>\$ 3,655,728</u>
<b>Weighted average number of common shares outstanding - basic</b>	<u>25,794,216</u>	<u>25,346,003</u>
<b>Weighted average number of common shares outstanding - diluted</b>	<u>25,841,391</u>	<u>25,396,857</u>
<b>Earnings per weighted average share of common stock - basic</b>	<u>\$ 0.11</u>	<u>\$ 0.14</u>
<b>Earnings per weighted average share of common stock - diluted</b>	<u>\$ 0.11</u>	<u>\$ 0.14</u>
<b>Dividends per share of common stock</b>	<u>\$ 0.64</u>	<u>\$ 0.64</u>

See accompanying Notes to Consolidated Financial Statements.

**EMPIRE DISTRICT ELECTRIC COMPANY**  
**CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)**

	Twelve Months Ended	
	June 30,	
	2005	2004
<b>Operating revenues:</b>		
Electric	\$ 314,665,689	\$ 305,794,285
Water	1,380,181	1,381,245
Non-regulated (Note 9)	<u>22,385,856</u>	<u>21,355,088</u>
	<u>338,431,726</u>	<u>328,530,618</u>
<b>Operating revenue deductions:</b>		
Fuel	77,357,874	65,546,304
Purchased power	50,182,692	53,065,722
Regulated – other (Note 8)	54,461,255	51,766,895
Non-regulated (Note 9)	23,838,396	21,585,645
Maintenance and repairs	20,046,159	21,047,277
Depreciation and amortization	32,677,693	29,899,778
Provision for income taxes	10,616,349	13,064,929
Other taxes	<u>18,578,366</u>	<u>17,458,626</u>
	<u>287,758,784</u>	<u>273,435,176</u>
<b>Operating income</b>	<b>50,672,942</b>	<b>55,095,442</b>
<b>Other income and deductions:</b>		
Allowance for equity funds used during construction	142,465	27,732
Interest income	279,421	53,719
Provision for other income taxes	(298,796)	304,863
Minority interest	325,990	(115,410)
Other - non-operating income	-	120,178
Other - non-operating expense	<u>(924,279)</u>	<u>(948,969)</u>
	<u>(475,199)</u>	<u>(557,887)</u>
<b>Interest charges:</b>		
Long-term debt – other	24,440,458	24,792,371
Note payable to securitization trust	4,250,000	2,125,000
Trust preferred distributions by subsidiary holding solely parent debentures	-	2,125,000
Commercial paper	438,224	370,040
Allowance for borrowed funds used during construction	(148,687)	(24,963)
Other	<u>117,518</u>	<u>351,550</u>
	<u>29,097,513</u>	<u>29,738,998</u>
<b>Net income</b>	<b>\$ <u>21,100,230</u></b>	<b>\$ <u>24,798,557</u></b>
<b>Weighted average number of common shares outstanding - basic</b>	<b><u>25,690,338</u></b>	<b><u>24,177,053</u></b>
<b>Weighted average number of common shares outstanding - diluted</b>	<b><u>25,732,489</u></b>	<b><u>24,228,183</u></b>
<b>Earnings per weighted average share of common stock - basic</b>	<b><u>\$ 0.82</u></b>	<b><u>\$ 1.03</u></b>
<b>Earnings per weighted average share of common stock - diluted</b>	<b><u>\$ 0.82</u></b>	<b><u>\$ 1.02</u></b>
<b>Dividends per share of common stock</b>	<b><u>\$ 1.28</u></b>	<b><u>\$ 1.28</u></b>

*See accompanying Notes to Consolidated Financial Statements.*

**THE EMPIRE DISTRICT ELECTRIC COMPANY**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (UNAUDITED)**

	Three Months Ended	
	June 30,	
	<u>2005</u>	<u>2004</u>
Net income	\$ 3,158,086	\$ 2,078,139
Reclassification adjustments for losses/(gains) included in net income or reclassified to regulatory asset or liability	1,146,885	(2,280,500)
Change in fair market value of open derivative contracts for period	4,339,915	1,136,380
Income taxes	<u>(2,084,984)</u>	<u>434,765</u>
Net change in unrealized derivative contracts	<u>3,401,816</u>	<u>(709,355)</u>
<b>Comprehensive income</b>	<b>\$ <u>6,559,902</u></b>	<b>\$ <u>1,368,784</u></b>

	Six Months Ended	
	June 30,	
	<u>2005</u>	<u>2004</u>
Net income	\$ 2,908,425	\$ 3,655,728
Reclassification adjustments for losses/(gains) included in net income or reclassified to regulatory asset or liability	1,133,685	(5,218,130)
Change in fair market value of open derivative contracts for period	16,180,035	3,585,230
Income taxes	<u>(6,579,214)</u>	<u>620,502</u>
Net change in unrealized derivative contracts	<u>10,734,506</u>	<u>(1,012,398)</u>
<b>Comprehensive income</b>	<b>\$ <u>13,642,931</u></b>	<b>\$ <u>2,643,330</u></b>

	Twelve Months Ended	
	June 30,	
	<u>2005</u>	<u>2004</u>
Net income	\$ 21,100,230	\$ 24,798,557
Reclassification adjustments for losses/(gains) included in net income or reclassified to regulatory asset or liability	(5,119,205)	(13,561,761)
Change in fair market value of open derivative contracts for period	16,810,205	7,103,192
Income taxes	<u>(4,442,580)</u>	<u>2,454,256</u>
Net change in unrealized derivative contracts	<u>7,248,420</u>	<u>(4,004,313)</u>
<b>Comprehensive income</b>	<b>\$ <u>28,348,650</u></b>	<b>\$ <u>20,794,244</u></b>

*See accompanying Notes to Consolidated Financial Statements*

**THE EMPIRE DISTRICT ELECTRIC COMPANY  
CONSOLIDATED BALANCE SHEET (UNAUDITED)**

	<u>June 30, 2005</u>	<u>December 31, 2004</u>
<b>Assets</b>		
Plant and property, at original cost:		
Electric	\$1,240,970,462	\$ 1,221,384,998
Water	9,549,516	9,201,314
Non-regulated	25,108,243	23,668,864
Construction work in progress	<u>27,543,536</u>	<u>8,653,720</u>
	1,303,171,757	1,262,908,896
Accumulated depreciation and amortization	<u>421,228,975</u>	<u>405,873,917</u>
	<u>881,942,782</u>	<u>857,034,979</u>
<b>Current assets:</b>		
Cash and cash equivalents	3,793,319	12,593,369
Accounts receivable - trade, net	26,786,635	20,052,892
Accrued unbilled revenues	9,977,236	7,599,964
Accounts receivable - other (Note 7)	8,906,229	12,874,123
Fuel, materials and supplies	33,292,536	32,044,113
Unrealized gain in fair value of derivative contracts (Note 3)	4,862,370	2,867,550
Prepaid expenses	<u>2,167,997</u>	<u>1,952,236</u>
	<u>89,786,322</u>	<u>89,984,247</u>
<b>Noncurrent assets and deferred charges:</b>		
Regulatory assets (Note 6)	54,747,784	52,127,262
Unamortized debt issuance costs	5,831,227	5,881,384
Unrealized gain in fair value of derivative contracts (Note 3)	18,535,250	4,142,900
Prepaid pension asset	10,523,827	13,973,827
Other	<u>4,253,814</u>	<u>4,393,939</u>
	<u>93,891,902</u>	<u>80,519,312</u>
<b>Total Assets</b>	<u>\$1,065,621,006</u>	<u>\$1,027,538,538</u>

(Continued)

*See accompanying Notes to Consolidated Financial Statements.*



**THE EMPIRE DISTRICT ELECTRIC COMPANY  
CONSOLIDATED BALANCE SHEET (UNAUDITED)**

	<u>June 30, 2005</u>	<u>December 31, 2004</u>
<b>Capitalization and Liabilities</b>		
Common stock, \$1 par value, 25,939,498 and 25,695,972 shares issued and outstanding, respectively	\$ 25,939,498	\$ 25,695,972
Capital in excess of par value	325,911,946	321,632,092
Retained earnings	15,470,102	29,078,105
Accumulated other comprehensive income, net of income tax (Note 3)	<u>13,508,727</u>	<u>2,774,221</u>
<b>Total common stockholders' equity</b>	<u><b>380,830,273</b></u>	<u><b>379,180,390</b></u>
<b>Long-term debt:</b>		
Note payable to securitization trust	50,000,000	50,000,000
Obligations under capital lease	31,079	122,570
First mortgage bonds and secured debt	110,158,094	140,363,500
Unsecured debt	<u>249,215,182</u>	<u>209,430,556</u>
<b>Total long-term debt</b>	<u><b>409,404,355</b></u>	<u><b>399,916,626</b></u>
<b>Total long-term debt and common stockholders' equity</b>	<u><b>790,234,628</b></u>	<u><b>779,097,016</b></u>
<b>Current liabilities:</b>		
Accounts payable and accrued liabilities	41,817,945	36,926,520
Current maturities of long-term debt	492,884	10,462,211
Obligations under capital lease	235,864	239,684
Commercial paper	18,040,000	-
Customer deposits	6,049,163	5,724,211
Interest accrued	2,488,666	2,700,402
Unrealized loss in fair value of derivative contracts (Note 3)	1,012,500	1,030,100
Taxes accrued	6,128,337	1,411,355
Other current liabilities	<u>2,173,285</u>	<u>708,643</u>
	<u><b>78,438,644</b></u>	<u><b>59,203,126</b></u>
<b>Commitments, contingencies and benefits (Note 5)</b>		
<b>Noncurrent liabilities and deferred credits:</b>		
Regulatory liabilities (Note 6)	30,218,998	30,225,020
Deferred income taxes	138,973,211	132,694,686
Unamortized investment tax credits	4,991,771	5,041,000
Postretirement benefits other than pensions	7,778,762	8,248,004
Unrealized loss in fair value of derivative contracts (Note 3)	1,135,050	1,505,800
Minority interest	754,984	705,326
Other	<u>13,094,958</u>	<u>10,818,560</u>
	<u><b>196,947,734</b></u>	<u><b>189,238,396</b></u>
<b>Total Capitalization and Liabilities</b>	<u><b>\$1,065,621,006</b></u>	<u><b>\$1,027,538,538</b></u>

See accompanying Notes to Consolidated Financial Statements.

**EMPIRE DISTRICT ELECTRIC COMPANY**  
**CONSOLIDATED STATEMENT OF CASH FLOWS (UNAUDITED)**

	Six Months Ended	
	June 30,	
	2005	2004
<b>Operating activities:</b>		
Net income	\$ 2,908,425	\$ 3,655,728
Adjustments to reconcile net income to cash flows from operating activities:		
Depreciation and amortization	19,327,859	17,477,824
Pension expense	3,502,447	1,479,447
Deferred income taxes, net	258,616	1,227,602
Investment tax credit, net	(49,229)	(68,170)
Allowance for equity funds used during construction	(48,525)	(27,732)
Issuance of common stock and stock options for incentive plans	972,944	1,277,650
Unrealized (gain)/loss on derivatives	(179,250)	(114,650)
Cash flows impacted by changes in:		
Accounts receivable and accrued unbilled revenues	(4,425,671)	(5,166,683)
Fuel, materials and supplies	(1,248,423)	(97,816)
Prepaid expenses and deferred charges	(680,613)	(387,605)
Accounts payable and accrued liabilities	7,925,964	5,108,462
Customer deposits, interest and taxes accrued	4,830,198	4,760,658
Other liabilities and other deferred credits	1,900,416	219,665
<b>Net cash provided by operating activities</b>	<b>34,995,158</b>	<b>29,344,380</b>
<b>Investing activities:</b>		
Capital expenditures – regulated	(40,822,374)	(18,151,468)
Capital expenditures and other investments – non-regulated	(1,478,671)	(1,647,904)
<b>Net cash (used) in investing activities</b>	<b>(42,301,045)</b>	<b>(19,799,372)</b>
<b>Financing activities:</b>		
Proceeds from issuance of common stock	3,550,436	9,475,268
Net short-term borrowings (repayments)	15,005,461	(13,124,119)
Proceeds from issuance of senior notes	40,000,000	-
Redemption of first mortgage bonds	(40,000,000)	-
Dividends	(16,516,428)	(16,237,896)
Premium paid on extinguished debt	(1,162,500)	-
Long-term debt issuance costs	(448,896)	-
Payment of interest rate derivative	(1,385,935)	-
Discount on issuance of senior notes	(220,000)	-
Redemption of senior notes	(5,000)	-
Repayments from non-regulated notes payable	(215,991)	(194,085)
Other	(100,310)	(70,861)
<b>Net cash used in financing activities</b>	<b>(1,494,163)</b>	<b>(20,151,693)</b>
<b>Net decrease in cash and cash equivalents</b>	<b>(8,800,050)</b>	<b>(10,606,685)</b>
<b>Cash and cash equivalents at beginning of period</b>	<b>12,593,369</b>	<b>13,108,197</b>
<b>Cash and cash equivalents at end of period</b>	<b>\$ 3,793,319</b>	<b>\$ 2,501,512</b>

*See accompanying Notes to Consolidated Financial Statements.*

## **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)**

### **Note 1 - Summary of Significant Accounting Policies**

The accompanying interim financial statements do not include all disclosures included in the annual financial statements and therefore should be read in conjunction with the financial statements and notes thereto included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2004.

The information furnished reflects all adjustments, consisting only of normal recurring adjustments, which are in our opinion necessary to present fairly the results for the interim periods as well as present these periods on a consistent basis with the financial statements for the fiscal year ended December 31, 2004. Certain reclassifications have been made to prior year information to conform to the current year presentation.

### **Note 2 - Recently Issued Accounting Standards**

On March 30, 2005, the FASB issued FASB Interpretation No. 47, "Accounting for Conditional Asset Retirement Obligations" (FIN 47). FIN 47 clarifies that an entity must record a liability for a "conditional" asset retirement obligation if the fair value of the obligation can be reasonably estimated. It also clarifies the FASB's views on when an entity would have sufficient information to reasonably estimate the fair value of an asset retirement obligation. FIN 47 is effective for us no later than December 31, 2005. We are in the process of evaluating the impact of this new interpretation. It will likely require the accrual of additional liabilities and could result in increased expense if the costs associated with these additional liabilities are not recovered in electric rates. However, the amount of any additional liabilities cannot yet be determined.

In December 2004, the FASB issued Statement of Financial Accounting Standards No. 123 (revised 2004) "Share-Based Payments" (FAS 123(R)). The statement requires companies to record stock option expense in their financial statements based on a fair value methodology beginning no later than the first fiscal quarter beginning after June 15, 2005. During 2002, we adopted FAS 148, "Accounting for Stock-Based Compensation – Transition and Disclosure – an Amendment of SFAS 123" (FAS 148) and elected to adopt the accounting provisions of FAS 123 "Accounting for Stock-Based Compensation" (FAS 123). Under FAS 123, we currently recognize compensation expense over the vesting period of all stock-based compensation awards issued subsequent to January 1, 2002 based upon the fair-value of the award as of the date of issuance. On April 14, 2005, the SEC approved a new rule for public companies that delays the effective date of FAS 123(R), giving a number of those companies more time to develop their implementation strategies. Except for this deferral of the effective date, the guidance in FAS 123(R) is unchanged. FAS 123(R) will now be effective for us on January 1, 2006. We do not expect the adoption of this standard to have a material impact on our financial statements.

See Note 1 under "Notes to Consolidated Financial Statements" in our Annual Report on Form 10-K for the year ended December 31, 2004 for further information regarding recently issued accounting standards.

### Note 3 – Risk Management and Derivative Financial Instruments

We utilize derivatives to manage our natural gas commodity market risk to help manage our exposure resulting from purchasing natural gas, to be used as fuel, on the volatile spot market and to manage certain interest rate exposure.

We have recorded the following assets and liabilities (in thousands) representing the fair value of qualifying derivative financial instruments held as of June 30, 2005 and December 31, 2004 and subject to the reporting requirements of FAS 133:

	<u>June 30, 2005</u>	<u>December 31, 2004</u>
<b>Current assets</b>	\$ 4,862	\$ 2,868
<b>Noncurrent assets</b>	18,535	4,143
<b>Current liabilities</b>	1,013	1,030
<b>Noncurrent liabilities</b>	1,135	1,506

A \$13.5 million, net of tax, net unrealized gain representing the fair market value of the effective position of these contracts is recognized as Accumulated Other Comprehensive Income in the capitalization section of the balance sheet. The total tax effect of \$8.3 million on this gain is recorded in deferred taxes. These amounts will be adjusted cumulatively on a monthly basis during the determination periods beginning July 1, 2005 and ending on September 30, 2011. At the end of each determination period, any previously unrealized gain or loss for that period related to the instrument will be reclassified to fuel expense.

We record unrealized gains/(losses) on the overhedged portion of our gas hedging activities, if any, in "Fuel" under the Operating Revenue Deductions section of our income statements since all of our gas hedging activities are related to stabilizing fuel costs as part of our fuel procurement program and are not speculative activities.

The following table sets forth "mark-to-market" pre-tax gains/(losses) from our hedging activities included in "Fuel" (in thousands) for each of the periods ended June 30:

	<u>Three Months Ended</u>		<u>Six Months Ended</u>		<u>Twelve Months Ended</u>	
	<u>2005</u>	<u>2004</u>	<u>2005</u>	<u>2004</u>	<u>2005</u>	<u>2004</u>
<b>Overhedged Portion</b>	\$ 311	\$ (150)	\$ 504	\$ (32)	\$1,242	\$ (145)
<b>Qualified Portion</b>	\$ 239	\$ 2,281	\$ 252	\$5,218	\$6,505	\$8,462

As of July 29, 2005, 69.7% of our anticipated volume of natural gas usage for the remainder of year 2005 is hedged at an average price of \$4.68 per Dekatherm (Dth). In addition, the following percentages of our anticipated volume of natural gas usage for the next six years are hedged at the following average prices per Dth:

<u>Year</u>	<u>% Hedged</u>	<u>Average Price</u>
2006	53%	\$5.212
2007	43%	\$4.766
2008	21%	\$4.569
2009-2011	40%	\$4.522

See Note 4 – Long-Term Debt and Short-Term Borrowings (below) for information on our hedging of interest rates.

#### **Note 4 – Long-Term Debt and Short-Term Borrowings**

On April 1, 2005, we redeemed our \$10 million First Mortgage Bonds, 7.60% Series due April 1, 2005, using short-term debt. On June 27, 2005, we issued \$40 million aggregate principal amount of our Senior Notes, 5.8% Series due 2035 (2035 Notes), for net proceeds of approximately \$39.4 million less \$0.1 million of legal fees. We used the net proceeds from this issuance to redeem all \$30 million aggregate principal amount of our First Mortgage Bonds, 7.75% Series due 2025 for approximately \$31.3 million, including interest and a redemption premium, and to repay short-term debt. The \$1.2 million redemption premium paid in connection with the redemption of these first mortgage bonds, together with \$2.4 million of remaining unamortized loss on reacquired debt and \$0.3 million of unamortized debt expense, were recorded as a regulatory asset and are being amortized as interest expense over the life of the 2035 Notes. We had entered into an interest rate derivative contract in May 2005 to hedge against the risk of a rise in interest rates impacting the 2035 Notes prior to their issuance. Costs associated with the interest rate derivative (primarily due to interest rate fluctuations) amounted to approximately \$1.4 million and were recorded as a regulatory asset and are being amortized over the life of the 2035 Notes.

On July 15, 2005, we entered into a \$150 million five year unsecured credit agreement with UMB Bank, N.A., as administrative agent, Bank of America, N.A., as syndication agent, and the other lenders party thereto. This agreement replaces our pre-existing \$100 million unsecured credit agreement, which was terminated upon entering into the new agreement. The credit agreement provides for \$150 million of revolving loans to be available for working capital, general corporate purposes and to back-up our use of commercial paper. Interest on borrowings under the credit agreement accrues at a rate equal to, at our option, (i) the bank's prime commercial rate plus a margin or (ii) LIBOR plus a margin, in each case based on our then current credit ratings. This agreement requires our total indebtedness (which does not include our note payable to the securitization trust) to be less than 62.5% of our total capitalization at the end of each fiscal quarter and our EBITDA (defined as net income plus interest, taxes, depreciation, amortization and certain other non-cash charges) to be at least two times our interest charges (which includes interest on the note payable to the securitization trust) for the trailing four fiscal quarters at the end of each fiscal quarter. Failure to maintain these ratios will result in an event of default under the credit facility and will prohibit us from borrowing funds thereunder. We are in compliance with these ratios as of June 30, 2005. This credit agreement is also subject to cross-default if we default on in excess of \$10 million in the aggregate on our other indebtedness. There were no outstanding borrowings under this agreement at July 15, 2005.

#### **Note 5 – Commitments, Contingencies and Benefits**

##### ***Pension and Other Employment and Post -Employment Benefits***

Based on the performance of our pension plan assets through January 1, 2004 and January 1, 2005, we were not required under the Employee Retirement Income Security Act of 1974 (ERISA) to fund any additional minimum ERISA amounts with respect to 2004 or 2005.

We expect to make Other Post-Employment Benefits (OPEB) contributions of \$6.5 million in 2005, of which \$3.3 million has been made as of June 30, 2005.

The components of our net periodic cost of pension (expensed and capitalized) and other post-employment benefits (in thousands) are summarized below:

	<b>Pension Benefits</b>		<b>OPEB</b>	
	Three months ended June 30			
	2005	2004	2005	2004
Service cost	\$ 875	\$ 742	\$ 550	\$ 249
Interest cost	1,725	1,536	975	834
Expected return on plan assets	(1,925)	(1,866)	(600)	(517)
Amortization of prior service cost	125	139	(150)	(152)
Amortization of transition obligation	-	-	275	271
Amortization of net loss	925	189	575	531
Net periodic benefit cost	<b>\$1,725</b>	<b>\$ 740</b>	<b>\$1,625</b>	<b>\$1,216</b>

	<b>Pension Benefits</b>		<b>OPEB</b>	
	Six months ended June 30			
	2005	2004	2005	2004
Service cost	\$ 1,750	\$ 1,484	\$ 1,100	\$ 498
Interest cost	3,450	3,072	1,950	1,668
Expected return on plan assets	(3,850)	(3,732)	(1,200)	(1,034)
Amortization of prior service cost	250	278	(300)	(305)
Amortization of transition obligation	-	-	550	542
Amortization of net loss	1,850	377	1,150	1,063
Net periodic benefit cost	<b>\$ 3,450</b>	<b>\$ 1,479</b>	<b>\$ 3,250</b>	<b>\$2,432</b>

	<b>Pension Benefits</b>		<b>OPEB</b>	
	Twelve months ended June 30			
	2005	2004	2005	2004
Service cost	\$ 3,025	\$ 2,756	\$ 2,120	\$ 1,040
Interest cost	6,524	6,016	3,273	3,371
Expected return on plan assets	(7,573)	(6,943)	(2,125)	(1,840)
Amortization of prior service cost	527	559	(605)	(305)
Amortization of transition obligation	-	-	1,092	1,084
Amortization of net loss	2,368	1,021	1,829	1,855
Net periodic benefit cost	<b>\$ 4,871</b>	<b>\$ 3,409</b>	<b>\$ 5,584</b>	<b>\$ 5,205</b>

We began recording a regulatory asset for deferred pension costs during the second quarter of 2005 per our March 10, 2005 Missouri rate case order. As of June 30, 2005, the deferral is approximately \$600,000 which we expect to collect in rates in future periods.

### ***Stock Compensation***

We utilize the accounting provisions of FAS 123 "Accounting for Stock-Based Compensation" and recognize compensation expense over the vesting period of stock-based compensation awards based upon the fair-value of the award as of the date of issuance. There were 24,200 stock awards granted in the first half of 2005, all of which were granted in the first quarter, relating to the performance-based restricted stock award portion of our stock incentive plan. The fair value of these awards is equal to the market price of Empire common stock on the date of grant, which will be recorded as expense over the vesting period.

We also utilize stock options as part of our employee compensation plan. The following table summarizes the activity of the stock option portion of our stock incentive plan for the first half of 2005.

	<u>Options</u>	<u>Weighted Average Exercise Price</u>
Outstanding, January 1, 2005	173,100	\$20.45
Granted	39,100	\$22.77
Exercised	69,700	\$20.95
Forfeited	-	-
Outstanding, June 30, 2005	142,500	\$20.84
Exercisable, June 30, 2005	-	-

In addition, we issued 8,988 common shares in the second quarter of 2005 relating to our 401(k) Plan matching contributions.

We recognized the following amounts (in thousands) in compensation expense for all of our stock-based compensation plans, as well as our employee stock purchase plan, for the periods listed.

	<u>June 30, 2005</u>	<u>June 30, 2004</u>
<b>Second Quarter</b>	\$ 393	\$ 585
<b>Six Months Ended</b>	862	1,242
<b>Twelve Months Ended</b>	1,847	1,782

#### **Note 6 – Regulatory Matters**

All of our regulatory assets as of June 30, 2005, have been allowed recovery in the state of Missouri as a result of the March 10, 2005 rate case order, except for \$2.1 million, including a realized loss associated with an interest rate derivative of \$1.4 million, which were incurred subsequent to this rate order (see “Note 4 – Long-Term Debt and Short-Term Borrowings” for additional information). We expect our regulatory assets related to premiums and related costs for reacquisitions and issuance of debt and those related to post-employment benefit cost incurred since our latest rate cases in the other jurisdictions to also be allowed recovery since these items have historically been allowed in our rate cases. In addition, losses and gains on our interest rate derivatives were included in our recently approved Missouri rate case. Since these items increase and reduce, respectively, our effective interest cost, we believe it is probable they will also be allowed in our other jurisdictions, as well. At June 30, 2005, our regulatory assets totaled \$54.7 million.

We are currently collecting an Interim Energy Charge (IEC) of 0.2131 cents per kilowatt hour of customer usage authorized by the Missouri Public Service Commission (MPSC). This IEC is designed to recover variable fuel and purchased power costs we incur subject to a ceiling (and floor) on the amount recoverable (including realized gains or losses associated with our natural gas hedging program discussed in Note 3) which are higher than such costs included in the base rates allowed in the most recent Missouri rate case. This revenue is recorded when service is provided to the customer and subject to refund to the extent collected amounts exceed variable fuel and purchased power costs. At each balance sheet date, we evaluate the probability that we would be required to refund either a portion or all of the amounts collected under the IEC to ratepayers. At June 30, 2005, no provision for refund has been recorded.

#### **Note 7 – Accounts Receivable - Other**

The following table sets forth the major components comprising “Accounts receivable – other” on our consolidated balance sheet (in thousands):

	June 30, 2005	December 31, 2004
Accounts receivable for meter loops, meter bases, line extensions, highway projects, etc.	\$ 1,053	\$ 1,890
Accounts receivable for insurance reimbursement for Energy Center (1)	-	1,941
Accounts receivable for non-regulated subsidiary companies	2,459	3,062
Accounts receivable from Westar Generating, Inc. for commonly-owned facility	1,059	544
Taxes receivable – overpayment of estimated income taxes	1,743	4,151
Accounts receivable for true-up on maintenance contracts (2)	2,454	1,199
Other	138	87
<b>Total accounts receivable – other</b>	<b>\$ 8,906</b>	<b>\$ 12,874</b>

(1) The decrease of \$1.9 million accounts receivable for insurance reimbursement for Energy Center at June 30, 2005 relates to \$4.1 million of total expenses for repairs to our Unit No. 2 combustion turbine at the Energy Center, less our \$1.0 million deductible which was expensed in the first quarter of 2004 and \$3.1 million of insurance reimbursement received as of June 30, 2005 (of which \$1.1 million had been received as of December 31, 2004).

(2) The \$2.4 million in accounts receivable for true-up on maintenance contracts represents the quarterly estimated credit from Siemens Westinghouse related to our maintenance contract entered into in July 2001 for the State Line Combined Cycle Unit (SLCC) accrued in the last six months of 2004 and the first six months of 2005. The measurement period for this maintenance contract runs from June 1, 2004 through May 31, 2005. 40% of this credit belongs to Westar Generating, Inc., the owner of 40% of the SLCC, and has been recorded in accounts payable as of June 30, 2005.

### **Note 8 - Regulated - Other Operating Expense**

The following table sets forth the major components comprising “Regulated – other” under “Operating Revenue Deductions” on our consolidated statements of operations (in thousands) for all periods presented ended June 30:

	3 Months Ended 2005	3 Months Ended 2004	6 Months Ended 2005	6 Months Ended 2004	12 Months Ended 2005	12 Months Ended 2004
Transmission and distribution expense	\$ 2,070	\$ 1,734	\$ 3,823	\$ 3,747	\$ 7,517	\$ 7,787
Power operation expense (other than fuel)	2,241	2,331	4,422	4,978	9,427	9,763
Customer accounts & assistance expense	1,752	1,720	3,437	3,465	7,072	6,933
Employee pension expense	995	662	2,467	1,365	4,120	3,102
Employee healthcare plan	2,562	2,003	5,090	3,770	9,320	7,250
General office supplies and expense	1,620	1,817	3,204	3,558	7,337	6,819
Administrative and general expense	2,136	2,112	4,460	4,449	8,163	8,455
Allowance for uncollectible accounts	356	332	927	1,003	1,380	1,556
Miscellaneous expense	44	37	81	77	125	102
<b>Total</b>	<b>\$ 13,776</b>	<b>\$ 12,748</b>	<b>\$ 27,911</b>	<b>\$ 26,412</b>	<b>\$ 54,461</b>	<b>\$ 51,767</b>



## Note 9 - Non-regulated Businesses

The table below presents information (in thousands) about the reported revenues, operating income, net income, capital expenditures, total assets and minority interests of our non-regulated businesses.

	<u>For the quarter ended June 30,</u>			
	<u>2005</u>		<u>2004</u>	
	<u>Non-Regulated</u>	<u>Total Company</u>	<u>Non-Regulated</u>	<u>Total Company</u>
<b>Statement of Operations Information</b>				
Revenues	\$ 5,619*	\$ 87,892	\$ 5,635*	\$ 77,303
Operating income (loss)	(365)	10,530	(301)	9,558
Net income (loss)	(453)	3,158	(435)	2,078
Minority interest	(23)	(23)	(110)	(110)
<b>Capital Expenditures</b>	\$ 806	\$ 26,618	\$ 1,045	\$ 10,854

	<u>As of June 30, 2005</u>		<u>As of December 31, 2004</u>	
	<u>Non-Regulated</u>	<u>Total Company</u>	<u>Non-Regulated</u>	<u>Total Company</u>
	<b>Balance Sheet Information</b>			
Total assets	\$ 25,702	\$ 1,065,621	\$ 25,296	\$ 1,027,539
Minority interest	\$ (755)	\$ (755)	\$ (705)	\$ (705)

	<u>For the six-months-ended June 30,</u>			
	<u>2005</u>		<u>2004</u>	
	<u>Non-Regulated</u>	<u>Total Company</u>	<u>Non-Regulated</u>	<u>Total Company</u>
<b>Statement of Income Information</b>				
Revenues	\$ 11,676*	\$ 167,426	\$ 10,875*	\$ 154,534
Operating income (loss)	(706)	17,696	(603)	18,563
Net income (loss)	(883)	2,908	(770)	3,656
Minority interest	(50)	(50)	(68)	(68)
<b>Capital Expenditures</b>	\$ 1,479	\$ 42,301	\$ 1,648	\$ 19,799

	<u>For the twelve-months-ended June 30,</u>			
	<u>2005</u>		<u>2004</u>	
	<u>Non-Regulated</u>	<u>Total Company</u>	<u>Non-Regulated</u>	<u>Total Company</u>
<b>Statement of Operations Information</b>				
Revenues	\$ 22,736*	\$ 338,432	\$ 21,749*	\$ 328,531
Operating income (loss)	(1,863)	50,673	(1,037)	55,095
Net income (loss)	(1,946)	21,100	(1,256)	24,799
Minority interest	326	326	(115)	(115)
<b>Capital Expenditures</b>	\$ 2,531	\$ 64,313	\$ 3,326	\$ 39,490

\*Includes revenues received from the regulated business that are eliminated in consolidation.

## **FORWARD LOOKING STATEMENTS**

Certain matters discussed in this quarterly report are "forward-looking statements" intended to qualify for the safe harbor from liability established by the Private Securities Litigation Reform Act of 1995. Such statements address or may address future plans, objectives, expectations and events or conditions concerning various matters such as capital expenditures, earnings, pension and other costs, competition, litigation, our construction program, our generation plans, our financing plans, rate and other regulatory matters, liquidity and capital resources and accounting matters. Forward-looking statements may contain words like "anticipate," "believe," "expect," "project," "objective" or similar expressions to identify them as forward-looking statements. Factors that could cause actual results to differ materially from those currently anticipated in such statements include:

- the amount, terms and timing of rate relief we seek and related matters;
- the cost and availability of purchased power and fuel, and the results of our activities (such as hedging) to reduce the volatility of such costs;
- electric utility restructuring, including ongoing state and federal activities;
- weather, business and economic conditions and other factors which may impact customer growth;
- operation of our generation facilities;
- legislation;
- regulation, including environmental regulation (such as NOx regulation);
- competition;
- the impact of deregulation on off-system sales;
- changes in accounting requirements;
- other circumstances affecting anticipated rates, revenues and costs, including pension and post-retirement costs;
- matters such as the effect of changes in credit ratings on the availability and our cost of funds;
- the periodic revision of our construction and capital expenditure plans and cost estimates;
- the performance and liquidity needs of our non-regulated businesses;
- the success of efforts to invest in and develop new opportunities; and
- costs and effects of legal and administrative proceedings, settlements, investigations and claims.

All such factors are difficult to predict, contain uncertainties that may materially affect actual results, and may be beyond our control. New factors emerge from time to time and it is not possible for management to predict all such factors or to assess the impact of each such factor on us. Any forward-looking statement speaks only as of the date on which such statement is made, and we do not undertake any obligation to update any forward-looking statement to reflect events or circumstances after the date on which such statement is made.

We caution you that any forward-looking statements are not guarantees of future performance and involve known and unknown risk, uncertainties and other factors which may cause our actual results, performance or achievements to differ materially from the facts, results, performance or achievements we have anticipated in such forward-looking statements.

## **Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

### **EXECUTIVE SUMMARY**

The Empire District Electric Company is an operating public utility engaged in the generation, purchase, transmission, distribution and sale of electricity in parts of Missouri, Kansas, Oklahoma and Arkansas. We also provide water service to three towns in Missouri and have investments in certain non-regulated businesses including fiber optics, Internet access, close-tolerance custom manufacturing and customer information system software services through our wholly owned subsidiary, EDE Holdings, Inc. In 2004, 93.0% of our gross operating revenues were provided from the sale of electricity, 0.4% from the sale of water and 6.6% from our non-regulated businesses. There were no significant changes in these percentages for the second quarter of 2005. In April 2005, we were granted a franchise for the water service we provide in Aurora, Missouri.

The primary drivers of our electric operating revenues in any period are: (1) weather, (2) rates we can charge our customers, (3) customer growth and (4) general economic conditions. Weather affects the demand for electricity for our regulated business. Very hot summers and very cold winters increase demand, while mild weather reduces demand. Residential and commercial sales are impacted more by weather than industrial sales, which are mostly affected by business needs for electricity and general economic conditions. The utility commissions in the states in which we operate, as well as the FERC, set the rates at which we can charge our customers. In order to offset expenses, we depend on our ability to receive adequate and timely rate relief. We continue to assess the need for rate relief in all of the jurisdictions we serve and file for such relief when necessary. Customer growth, which is the growth in the number of customers, contributes to the demand for electricity. We expect our annual customer growth to range from approximately 1.6% to 1.8% over the next several years, although our customer growth for the twelve months ended June 30, 2005 was 1.9%.

We define sales growth to be growth in kWh sales excluding the impact of weather. The primary drivers of sales growth are customer growth and general economic conditions.

The primary drivers of our electric operating expenses in any period are: (1) fuel and purchased power expense, (2) maintenance and repairs expense, (3) employee pension and health care costs, (4) taxes and (5) non-cash items such as depreciation and amortization expense. Fuel and purchased power costs are our largest expense items. Several factors affect these costs, including fuel and purchased power prices, plant outages and weather, which drives customer demand. In order to control the price we pay for fuel and purchased power, we have entered into long and short-term agreements to purchase coal and natural gas for our energy supply, have entered into a 20-year contract with PPM Energy to purchase approximately 550,000 megawatt-hours of energy, or 10% of our annual needs, from the Elk River Windfarm project beginning in December 2005, and currently engage in hedging activities in an effort to minimize our risk from volatile natural gas prices. We enter into contracts with counterparties relating to our future natural gas requirements that lock in prices (with respect to predetermined percentages of our expected future natural gas needs) in an attempt to lessen the volatility in our fuel expense and improve predictability. Our recent Missouri rate case order also contained factors to help mitigate the above costs, including an Interim Energy Charge (IEC), designed to recover variable fuel and purchased power costs we incur which are higher than such costs included in the base rates allowed in our rate case and a change in the recognition of pension costs allowing us to defer the Missouri portion of any costs above the amount included in our rate case as a regulatory asset.

During the second quarter of 2005, basic and diluted earnings per weighted average share of common stock increased to \$0.12 as compared to \$0.08 in the second quarter of 2004. For the six months ended June 30, 2005, basic and diluted earnings per weighted average share of common stock

were \$0.11 as compared to \$0.14 for the six months ended June 30, 2004. For the twelve months ended June 30, 2005, basic earnings per weighted average share of common stock were \$0.82 as compared to \$1.03 for the twelve months ended June 30, 2004 while diluted earnings per weighted average share of common stock were \$0.82 as compared to \$1.02 for the twelve months ended June 30, 2004. As reflected in the table below, the primary driver for the decline in basic earnings per share for both the six month and twelve month periods ended June 30, 2005 was greater fuel costs, while the primary positive driver for all periods ended June 30, 2005 was increased revenues.

The following reconciliation of basic earnings per share between the three months, six months and twelve months ended June 30, 2004 versus June 30, 2005 is a non-GAAP presentation. We believe this information is useful in understanding the fluctuation in earnings per share between the prior and current year periods. The reconciliation presents the after tax impact of significant items and components of the statement of operations on a per share basis before the impact of additional stock issuances which is presented separately. Earnings per share for the three months, six months and twelve months ended June 30, 2005 and 2004 shown in the reconciliation are presented on a GAAP basis and are the same as the amounts included in the statements of operations. This reconciliation may not be comparable to other companies or more useful than the GAAP presentation included in the statements of operations.

	<u>Three Months</u> <u>Ended</u>	<u>Six Months</u> <u>Ended</u>	<u>Twelve</u> <u>Months Ended</u>
<b>Earnings Per Share – 2004</b>	<b>\$ 0.08</b>	<b>\$ 0.14</b>	<b>\$ 1.03</b>
<b>Revenues</b>			
Electric	\$ 0.28	\$ 0.32	\$ 0.24
Non – Regulated	0.00	0.02	0.03
<b>Expenses</b>			
Fuel	(0.19)	(0.34)	(0.32)
Purchased power	0.02	0.07	0.08
Regulated – other (employee health care and pension expense)	(0.02)	(0.06)	(0.08)
Regulated – other (all other)	(0.01)	0.02	0.01
Non – Regulated expenses	0.00	(0.02)	(0.06)
Maintenance and repairs	0.01	0.02	0.03
Depreciation and amortization	(0.04)	(0.05)	(0.08)
Other taxes	(0.01)	(0.01)	(0.03)
Interest charges	0.00	0.00	0.02
Other income and deductions	0.00	0.00	0.00
Dilutive effect of additional shares	0.00	0.00	(0.05)
<b>Earnings Per Share – 2005</b>	<b><u>\$ 0.12</u></b>	<b><u>\$ 0.11</u></b>	<b><u>\$ 0.82</u></b>

### Second Quarter Activities

The Missouri Public Service Commission (MPSC) final order issued on March 10, 2005 approved an annual increase in base rates for our Missouri electric customers of approximately \$25.7 million, or 9.96%, and also approved an annual IEC of approximately \$8.2 million effective March 27, 2005 and expiring three years later. From inception of the IEC through June 30, 2005, we incurred \$2.6 million of fuel and purchased power costs in excess of the total cost set in our base rates and the IEC recorded during this period. For additional information regarding the IEC, see “- Results of Operations – Electric Operating Revenues and Kilowatt-Hour Sales - Rate Matters” below.

The Arkansas Public Service Commission (APSC) issued a final order on May 13, 2005, approving an annual increase in base rates for our Arkansas electric customers of approximately \$0.6 million, or 7.66%, effective May 14, 2005. On April 29, 2005, we filed a request with the Kansas Corporation Commission for an increase in base rates for our Kansas electric customers in the amount of \$4,181,078, or 24.64%. On June 24, 2005, we filed a request with the MPSC for an annual increase in base rates for our Missouri water customers of approximately \$523,000, or 38%. For additional information, see “-Results of Operations – Electric Operating Revenues and Kilowatt-Hour Sales - Rate Matters” below.

On February 4, 2005, we filed an application with the MPSC seeking approval of an Experimental Regulatory Plan concerning our possible participation in a new 800-850 MW coal-fired unit (Iatan 2) to be operated by Kansas City Power & Light Company (KCP&L) and located at the site of the existing Iatan Generating Station (Iatan 1) near Weston, Missouri, or other baseload generation options. Our application also sought a certificate of convenience and necessity to participate in Iatan 2, if necessary, and in connection therewith, obtain approval that is intended to provide adequate assurance to potential investors to make financial options available to us concerning this.

On June 10, 2005, we entered into a letter of intent with KCP&L with respect to our potential purchase of an undivided ownership interest in Iatan 2. The estimated construction budget for Iatan 2 is approximately \$1.26 billion. The letter of intent relates to an allocation of at least 100 MW of generation capacity (and a proportionate share of the construction, operation and maintenance costs) to us. The letter of intent, insofar as it relates to Iatan 2, is not binding on the parties. The letter of intent also contains a clarification as to our obligations with respect to environmental upgrades at Iatan 1 and an agreement to reallocate certain interests in common facilities at Iatan 1 to the owners of Iatan 2. Empire currently owns a 12% interest in Iatan 1.

On July 18, 2005, we filed a Stipulation and Agreement regarding our Experimental Regulatory Plan with the MPSC for its consideration and approval conditioned upon our participation in Iatan 2. Other parties to the Stipulation and Agreement include the Missouri Department of Natural Resources, the MPSC Staff, two of our industrial customers and the Office of the Public Counsel. The MPSC issued an order on August 2, 2005 approving the Stipulation and Agreement with an effective date of August 12, 2005.

On April 27, 2005, the Missouri House passed Bill SB 179 which authorizes the MPSC to grant fuel adjustment clauses for utilities in the state of Missouri. The bill had previously passed the Missouri Senate. The bill was signed by Governor Blunt on July 14, 2005 and will go into effect January 1, 2006. Prior to that time, rulemaking on how the law will be implemented will need to be completed.

At June 30, 2005, the construction at our Riverton plant was still on schedule for the installation of our new Siemens V84.3A2 combustion turbine, with a summer rated capacity of 155 megawatts, scheduled to be operational in 2007. On December 10, 2004, we entered into a 20-year contract with PPM Energy, to purchase the energy generated at the proposed Elk River Windfarm to be located in Butler County, Kansas. Construction of the windfarm began in May 2005 and is on schedule. We expect that the amount and percentage of electricity we generate by natural gas will decrease in 2006 and in the immediate future thereafter due to this contract. We anticipate purchasing approximately 550,000 megawatt-hours of energy, or 10% of our annual needs, from the project beginning in December 2005. We anticipate the cost of this contract to also be offset by purchasing less higher-priced power from other suppliers or by displacing on-system generation.

Although several of the nation's utilities are running short of coal due to railroad transportation problems delivering Wyoming coal, we are not currently experiencing a low inventory situation. As of June 30, 2005, we had over 70 days of inventory at our Riverton plant and

approximately 75 days of inventory at our Asbury plant. However, given the length of our recent train cycle times and the railroads' reluctance to add additional lease train sets, we will be in a declining inventory situation until a change in circumstances occurs, which could have an adverse effect on our fuel and purchased power costs in future periods. Such change in circumstances could be the addition of a lease train set or improved cycle times. Without conservation efforts or a change in circumstances, we expect we will exhaust our inventory at Asbury by the end of 2005. Similarly, slow train cycle times have affected Iatan. We have begun conservation measures at Iatan which we believe to be immaterial to our operations.

## RESULTS OF OPERATIONS

The following discussion analyzes significant changes in the results of operations for the three-month, six-month and twelve-month periods ended June 30, 2005, compared to the same periods ended June 30, 2004. The amounts discussed below are on a pre-tax basis unless otherwise noted.

### Electric Operating Revenues and Kilowatt-Hour Sales

Of our total electric operating revenues during the second quarter of 2005, approximately 40% were from residential customers, 31% from commercial customers, 18% from industrial customers, 5% from wholesale on-system customers, 2% from wholesale off-system transactions and 4% from miscellaneous sources, primarily transmission services. The breakdown of our customer classes has not significantly changed from the second quarter of 2004.

The amounts and percentage changes from the prior periods in kilowatt-hour ("kWh") sales and operating revenues by major customer class for on-system sales were as follows:

#### kWh Sales (in millions)

	3 Months	3 Months	%	6 Months	6 Months	%	12 Months	12 Months	%
	Ended	Ended		Ended	Ended		Ended	Ended	
	2005	2004	Change*	2005	2004	Change*	2005	2004	Change*
Residential	386.3	353.5	9.3%	880.7	852.9	3.3%	1,731.7	1,747.3	(0.9)%
Commercial	359.6	344.3	4.5	683.7	674.6	1.3	1,426.4	1,406.2	1.4
Industrial	273.5	274.1	(0.2)	523.4	528.1	(0.9)	1,080.7	1,085.1	(0.4)
Wholesale On-System	79.4	74.7	6.3	154.7	147.9	4.6	312.5	306.1	2.1
Other**	26.4	25.4	3.8	53.4	53.1	0.6	108.4	106.5	1.8
Total On-System	1,125.2	1,072.0	5.0	2,295.9	2,256.6	1.7	4,659.6	4,651.2	0.2

#### Operating Revenues

##### (\$ in millions)

	3 Months	3 Months	%	6 Months	6 Months	%	12 Months	12 Months	%
	Ended	Ended		Ended	Ended		Ended	Ended	
	2005***	2004	Change*	2005***	2004	Change*	2005***	2004	Change*
Residential	\$ 32.4	\$ 27.1	19.5%	\$ 65.0	\$ 59.3	9.6%	\$130.1	\$127.3	2.2%
Commercial	25.8	22.2	16.0	45.2	41.6	8.6	96.0	91.6	4.8
Industrial	14.9	13.0	15.0	26.1	24.1	8.2	53.8	51.7	4.1
Wholesale On-System	4.0	3.5	17.0	7.5	6.7	12.2	14.4	13.2	8.9
Other**	2.0	1.8	9.4	3.8	3.6	5.9	7.7	7.5	3.6
Total On-System	\$ 79.1	\$ 67.6	17.1	\$147.6	\$ 135.3	9.1	\$302.1	\$291.3	3.7

\*Percentage changes are based on actual kWh sales and revenues and may not agree to the rounded amounts shown above.

\*\*Other kWh sales and other operating revenues include street lighting, other public authorities and interdepartmental usage.

\*\*\*Revenues include approximately \$2.0 million of the Interim Energy Charge collected in the second quarter of 2005 and approximately \$2.1 million collected in the first six months of 2005 that are not expected to be refunded to customers. See discussion below.

## ***On-System Electric Transactions***

kWh sales for our on-system customers increased during the second quarter of 2005 over the second quarter of 2004 primarily due to warmer temperatures during 2005 as compared to 2004. Total cooling degree days (the cumulative number of degrees that the average temperature for each day during that period was above 65 ° F) for the second quarter of 2005 were 14.1% more than the same period last year and 17.3% more than the 20-year average. Revenues for our on-system customers increased approximately \$11.6 million. The March 2005 Missouri rate increase and May 2005 Arkansas rate increase (discussed below) contributed an estimated \$5.7 million to revenues in the second quarter of 2005 while continued sales growth contributed an estimated \$1.8 million. Weather and other related factors contributed an estimated \$2.1 million and the collected IEC that is not expected to be refunded contributed approximately \$2 million during the second quarter of 2005. Our customer growth was 1.7% in 2004 and 1.6% in 2003. We expect our annual customer growth to range from approximately 1.6% to 1.8% over the next several years, although our customer growth for the twelve months ended June 30, 2005, was 1.9%.

The increase in residential and commercial kWh sales during the second quarter of 2005 was primarily due to the warmer weather conditions with revenues also being positively affected by the March 2005 Missouri rate increase and May 2005 Arkansas rate increase.

Industrial kWh sales, which are not particularly weather sensitive, decreased slightly, mainly due to a decrease in sales to our oil pipeline pumping customers while associated revenues increased for the second quarter of 2005 reflecting the March 2005 Missouri rate increase and May 2005 Arkansas rate increase.

On-system wholesale kWh sales increased during the second quarter of 2005 due mainly to the warmer temperatures and continued sales growth. Revenues associated with these FERC-regulated sales increased more than the kWh sales as a result of the fuel adjustment clause applicable to such sales. This clause permits the distribution to customers of changes in fuel and purchased power costs.

For the six months ended June 30, 2005, kWh sales to our on-system customers increased approximately 1.7% while the associated revenues increased approximately \$12.3 million, or 9.1%. Rate increases contributed approximately \$6.8 million to revenues with customer growth contributing approximately \$3.6 million. The collected IEC that is not expected to be refunded contributed approximately \$2.1 million during the six months ended June 30, 2005 while weather and other related factors decreased revenues approximately \$0.2 million. kWh sales and related revenues for our residential and commercial customers increased, mainly due to the warmer temperatures in the second quarter of 2005 as compared to the same period in 2004 and to continued sales growth. The increase in residential and commercial revenues during the six months ended June 30, 2005 also reflects the March 2005 Missouri rate increase and the May 2005 Arkansas rate increase. Industrial kWh sales decreased, mainly due to a decrease in sales to our oil pipeline pumping customers while associated revenues increased for the second quarter of 2005 reflecting the March 2005 Missouri rate increase and May 2005 Arkansas rate increase. On-system wholesale kWh sales increased, also reflecting the warmer temperatures in the second quarter of 2005 as compared to the same period in 2004 as well as continued sales growth. Revenues associated with these FERC-regulated sales increased more than the kWh sales as a result of the fuel adjustment clause applicable to such sales.

For the twelve months ended June 30, 2005, kWh sales to our on-system customers increased slightly with the associated revenues increasing approximately \$10.7 million. Missouri, Arkansas and Oklahoma rate increases (discussed below) contributed an estimated \$7.3 million to revenues and continued sales growth contributed an estimated \$8.3 million. Weather and other related factors offset these increases with an estimated \$7.0 million negative impact on revenues while the collected IEC

that is not projected to be refunded contributed approximately \$2.1 million. Residential kWh sales decreased slightly primarily due to milder temperatures in the first quarter of 2005 and the third and fourth quarters of 2004 as compared to the prior year periods while associated revenues increased reflecting the Missouri, Arkansas and Oklahoma rate increases discussed below. Commercial sales and revenues increased during the twelve months ended June 30, 2005 primarily due to continued sales growth and the Missouri, Arkansas and Oklahoma rate increases. Industrial kWh sales decreased slightly, mainly due to a decrease in sales to our oil pipeline pumping customers during 2005 while associated revenues increased reflecting the Missouri and Arkansas rate increases. On-system wholesale kWh sales and revenues increased for the twelve months ended June 30, 2005 reflecting continued sales growth and the operation of the fuel adjustment clause applicable to these FERC regulated sales.

### **Rate Matters**

The following table sets forth information regarding electric rate increases affecting the revenue comparisons discussed above:

Jurisdiction	Date Requested	Base Annual Increase Granted	Percent Increase Granted	Date Effective
Arkansas -Electric	July 14, 2004	595,000	7.66%	May 14, 2005
Missouri - Electric	April 30, 2004	\$ 25,705,500	9.96%	March 27, 2005
Oklahoma -Electric	March 4, 2003	766,500	10.99%	August 1, 2003

On March 4, 2003, we filed a request with the Oklahoma Corporation Commission for an annual increase in base rates for our Oklahoma electric customers in the amount of \$954,540, or 12.97%. On August 1, 2003 a Unanimous Stipulation and Agreement was approved by the Oklahoma Corporation Commission providing an annual increase in rates for our Oklahoma customers of approximately \$766,500, or 10.99%, effective for bills rendered on or after August 1, 2003. This reflects a rate of return on equity (ROE) of 11.27%.

On April 30, 2004, we filed a request with the MPSC for an annual increase in base rates for our Missouri electric customers in the amount of \$38,282,294, or 14.82%. Prior to the hearings, we were able to settle several miscellaneous issues with other parties to the case. On December 22, 2004, we, the MPSC Staff, the Office of the Public Counsel (OPC) and two intervenors filed a unanimous Stipulation and Agreement as to Certain Issues with the MPSC settling several of these issues. One of the issues we were able to agree on was a change in the recognition of pension costs allowing us to defer the Missouri portion of any costs above the amount included in this rate case as a regulatory asset. The amount of pension cost allowed in this rate case was approximately \$3 million. This stipulation became effective on March 27, 2005 as part of the final Missouri Order described below. Therefore, the deferral of these costs began in the second quarter of 2005.

The MPSC issued a final order on March 10, 2005 approving an annual increase in base rates of approximately \$25.7 million, or 9.96%, effective March 27, 2005. The order granted us a return on equity of 11%, an increase in base rates for fuel and purchased power at \$24.68/MWH and an increase in depreciation rates. The new depreciation rates now include a cost of removal component of mass property (transmission, distribution and general plant costs). In addition, the order approved an annual IEC of approximately \$8.2 million effective March 27, 2005 and expiring three years later. The IEC is \$0.002131 per kilowatt hour of customer usage. The recent extraordinarily high natural gas prices and extreme volatility of natural gas led the MPSC to allow forecasted fuel costs to be used rather than the traditional historical costs in determining the fuel portion of the rate increase. At the end of two years, an assessment will be made of the money collected from customers compared to the



greater of the actual and prudently incurred costs or the base cost of fuel and purchased power set in rates. If the excess of the amount collected over the greater of these two amounts is greater than \$10 million, the excess over \$10 million will be refunded to the customers. The entire excess amount of IEC, not previously refunded, will be refunded at the end of three years, unless the IEC is terminated earlier. Each refund will include interest at the current prime rate at the time of the refund. The IEC revenues recorded in the second quarter of 2005 did not recover all the Missouri related fuel and purchased power costs incurred in the second quarter of 2005. From inception of the IEC through June 30, 2005, the costs of fuel and purchased power were approximately \$2.6 million higher than the total of the costs in our base rates and the IEC recorded during the period. Future recovery of fuel and purchased power costs through the IEC are dependent upon a variety of factors, including natural gas prices, costs of non-contract purchased power, weather conditions, plant availability and coal deliveries.

On March 25, 2005, we, the OPC, the Missouri Industrial Energy Consumers and Intervenors Praxair, Inc. and Explorer Pipeline Company, filed applications with the MPSC requesting the MPSC grant a rehearing with respect to the return on equity granted in the March 2005 Missouri rate case. The MPSC denied these applications on April 7, 2005. We and the OPC have appealed this decision and we each filed initial briefs on June 24, 2005, with the MPSC response brief due August 16, 2005.

On July 14, 2004, we filed a request with the APSC for an annual increase in base rates for our Arkansas electric customers in the amount of \$1,428,225, or 22.1%. On May 13, 2005, the APSC granted an annual increase in electric rates for our Arkansas customers of approximately \$595,000, or 7.66%, effective May 14, 2005.

On April 29, 2005, we filed a request with the Kansas Corporation Commission for an increase in base rates for our Kansas electric customers in the amount of \$4,181,078, or 24.64%. Any new rates approved as a result of this request will not go into effect until the fourth quarter of 2005.

On June 24, 2005, we filed a request with the MPSC for an annual increase in base rates for our Missouri water customers in the amount of \$523,000, or 38%. Any new rates approved as a result of this request will not go into effect before 2006.

We will continue to assess the need for rate relief in all of the jurisdictions we serve and file for such relief when necessary.

### *Off-System Electric Transactions*

In addition to sales to our own customers, we also sell power to other utilities as available and provide transmission service through our system for transactions between other energy suppliers.

The following table sets forth information regarding these sales and related expenses:

	2005			2004		
	Three Months Ended	Six Months Ended	Twelve Months Ended	Three Months Ended	Six Months Ended	Twelve Months Ended
(in millions)						
Revenues	\$ 2.5	\$ 6.8	\$ 10.7	\$ 3.4	\$ 7.0	\$ 12.6
Expenses	<u>1.7</u>	<u>4.4</u>	<u>6.6</u>	<u>2.1</u>	<u>4.1</u>	<u>7.6</u>
Net	\$ 0.8	\$ 2.4	\$ 4.1	\$ 1.3	\$ 2.9	\$ 5.0

Revenues less expenses decreased for each of the periods reported in 2005 as compared to 2004, reflecting less transmission service revenues for all periods in 2005 as compared to the same periods in 2004. The expenses in the table above are included in our discussion of purchased power costs below.

## Operating Revenue Deductions

During the second quarter of 2005, total operating expenses increased approximately \$9.6 million (14.2%) compared with the same period last year. Fuel costs increased approximately \$7.3 million (40.7%) but were partially offset by a \$0.7 million (5.7%) decrease in purchased power costs during the second quarter of 2005. The increase in fuel costs was primarily due to increased generation by our gas fired units in the second quarter of 2005 (an estimated \$4.6 million) combined with higher prices for both hedged and unhedged natural gas that we burned in our gas-fired units (an estimated \$2.5 million). Increased coal costs contributed approximately \$0.2 million to the total fuel increase. The decrease in purchased power costs primarily reflected a shift from serving our energy needs with purchased power to generating our own power reflecting that it was more economical to run our own generating units during the second quarter of 2005 than to purchase power. The net increase in fuel and purchased power during the first quarter of 2005 as compared to the same period last year was \$6.6 million (21.7%). We had expected coal costs to increase in the first half of 2005 due to changes in delivered prices resulting from the expiration of our long-term coal and freight contracts. A long-term contract with a subsidiary of Peabody Holding Company, Inc. for the supply of low sulfur Western coal (Powder River Basin) at the Asbury and Riverton Plants expired in December 2004. We signed a new, three-year contract with Peabody on December 15, 2004 that covers approximately 100% of our anticipated 2005 Western coal requirements, approximately 67% of our anticipated 2006 Western coal requirements and approximately 33% of our anticipated Western coal requirements for 2007. Our prior contract with Union Pacific Railroad Company and The Kansas City Southern Railway Company which provides for transportation of the Powder River Basin coal expired at the end of June 2005. We signed a new, five-year contract with Burlington Northern and Santa Fe Railway Company and The Kansas City Southern Railway Company on April 8, 2005 that became effective June 30, 2005. Although the delivered price of coal under the new contracts was higher than the 2004 price during the second quarter of 2005, we expect the delivered price increase to be substantially mitigated beginning in the third quarter of 2005 due to a combination of our new coal supply and coal transportation contracts.

Regulated – other operating expenses increased approximately \$1.0 million (8.1%) during the second quarter of 2005 as compared to the same period in 2004. Expenses relating to our employee health care plan and our employee pension expense contributed approximately \$0.5 million and \$0.3 million, respectively, to this increase with transmission and distribution expense increasing approximately \$0.3 million. These increases in regulated – other operating expense were partially offset by a \$0.2 million decrease in general administrative expense due to reduced costs associated with Sarbanes-Oxley Section 404 compliance. As discussed previously, effective with the second quarter of 2005, we began deferring a portion of our pension cost into a regulatory asset as authorized in our latest rate case. We have deferred approximately \$0.6 million as of June 30, 2005.

Non-regulated operating expense for all periods presented is discussed below under “-Non-regulated Items”.

Maintenance and repairs expense decreased approximately \$0.4 million (6.0%) as compared to the second quarter of 2004 when maintenance costs were up due to generator repairs at the Energy Center.

Depreciation and amortization expense increased approximately \$1.5 million (19.7%) during the quarter due to higher depreciation rates that became effective on March 27, 2005, as well as increased plant in service. The provision for income taxes increased approximately \$0.5 million during the second quarter of 2005 due to increased income. Our effective federal and state income tax rate for the second quarter of 2005 was 33.4% as compared to 33.1% for the second quarter of 2004. Other taxes increased approximately \$0.4 million (8.3%) during the quarter due to increased property taxes and franchise taxes.

During the six months ended June 30, 2005, total operating expenses were up approximately \$13.8 million (10.1%) compared with the same period last year. Fuel costs increased approximately \$12.9 million (37.0%) but were partially offset by a \$2.7 million (10.1%) decrease in purchased power costs during the period. The increase in fuel costs was primarily due to increased generation by our gas fired units (an estimated \$5.6 million) and higher prices for the hedged and unhedged natural gas that we burned in our gas-fired units (\$6.4 million) as compared to the first six months of 2004. The decrease in purchased power costs primarily reflected a shift from serving our energy needs with purchased power to generating our own power reflecting that it was more economical to run our own generating units during the six months ended June 30, 2005 than to purchase power. The net increase in fuel and purchased power costs during the six months ended June 30, 2005 as compared to the same period last year was \$10.3 million (16.7%).

Regulated - other operating expenses for the first six months of 2005 increased approximately \$1.5 million (5.7%). Expenses relating to our employee health care plan and our employee pension expense contributed approximately \$1.3 million and \$1.1 million, respectively, to this increase, offset by a \$0.3 million decrease each in stock compensation expense and other power supply expense and a \$0.2 million decrease in regulatory commission expense.

Maintenance and repairs expense decreased \$0.7 million (6.7%) for the six months ended June 30, 2005 compared to the same period in 2004 primarily due to the \$1 million insurance deductible recorded to expense in the first quarter of 2004 related to the maintenance on the Energy Center's Unit No. 2 which experienced a rotating blade failure on January 7, 2004 (which caused damage throughout the machine) and to the second quarter maintenance costs related to generator repairs at the Energy Center. Depreciation and amortization expense increased approximately \$1.9 million (12.4%) during the six-month period due to increased depreciation rates and increased plant in service. Total provisions for income taxes decreased \$0.4 million (22.5%) due to decreased taxable income. Our effective federal income tax rate for the first six months of 2005 was 33.4% as compared to 33.5% for the first six months of 2004. Other taxes increased \$0.4 million (5.1%) during the six months ended June 30, 2005 due mainly to increased property taxes reflecting our additions to plant in service.

During the twelve months ended June 30, 2005, total operating expenses increased approximately \$14.3 million (5.2%) compared to the year ago period. Total fuel costs increased approximately \$11.8 million (18.0%) during the twelve months ended June 30, 2005 but were partially offset by a \$2.9 million (5.4%) decrease in purchased power costs during the same period. The increase in fuel costs was primarily due to higher prices for both the hedged and unhedged natural gas that we burned in our gas-fired units (an estimated \$6.2 million) and increased generation by our gas-fired units (an estimated \$5.5 million). The decrease in purchased power costs primarily reflected a shift from serving our energy needs with purchased power to generating our own power, reflecting that it was more economical to run our own generating units during the twelve months ended June 30, 2005 than to purchase power. The net increase in fuel and purchased power during the twelve months ended June 30, 2005 as compared to the same period last year was \$8.9 million (7.5%).

Regulated - other operating expenses increased approximately \$2.7 million (5.2%) during the twelve months ended June 30, 2005 as compared to the same period last year due primarily to a \$2.0 million increase in employee health care expense, an increase of approximately \$1.0 million in employee pension expense and a \$0.3 million increase in general administrative expense primarily due to costs associated with Sarbanes-Oxley compliance. These increases in regulated - other operating expense were partially offset by a \$0.3 million decrease in transmission and distribution expense, a \$0.4 million decrease in regulatory commission expense and a \$0.3 million decrease in professional services.

Maintenance and repairs expense decreased approximately \$1.0 million (4.8%) during the twelve months ended June 30, 2005, compared to the year ago period reflecting a decrease of approximately \$1.7 million in maintenance costs at the Energy Center compared to the prior year, primarily reflecting the \$1 million insurance deductible recorded in the first quarter of 2004 relating to turbine repairs as well as the second quarter maintenance costs related to generator repairs at the Energy Center. This decrease was partially offset by an approximate \$0.8 million increase in distribution maintenance costs during the twelve months ended June 30, 2005 as compared to the prior year.

Depreciation and amortization expense increased approximately \$2.8 million (9.3%) due to increased depreciation rates and increased plant in service. Provision for income taxes decreased \$2.4 million reflecting decreased income during the current period while other taxes increased approximately \$1.1 million (6.4%) due to increased property taxes reflecting our additions to plant in service. Our effective federal and state income tax rate for the twelve months ended June 30, 2005 was 34.1% as compared to 34.0% for the same period in 2004.

### **Non-regulated Items**

Our non-regulated businesses, which we operate through our wholly-owned subsidiary EDE Holdings, Inc., include leasing of fiber optics cable and equipment (which we are also using in our own operations), Internet access, close-tolerance custom manufacturing and customer information system software services. We evaluated our non-regulated businesses for impairment at December 31, 2004, updated our analysis at June 30, 2005, and believe, based on this analysis, that no impairment exists based on our forecast of future net cash flows. However, failure to achieve forecasted cash flows could result in impairment in the future.

During the second quarter of 2005, total non-regulated operating revenue and non-regulated operating expense were virtually the same as in the second quarter of 2004.

Our non-regulated businesses generated a \$0.5 million net loss in the second quarter of 2005 as compared to a \$0.4 million net loss in the second quarter of 2004.

For the six months ended June 30, 2005, total non-regulated operating revenue increased approximately \$0.8 million (7.5%) while total non-regulated operating expense increased approximately \$0.9 million (7.9%) compared with the same period in 2004. The increase in operating revenue was mainly attributable to MAPP, the close-tolerance custom manufacturing business in which we own a 50.01% interest. The increase in expense was due mainly to the activities of our fiber optics business and to Conversant, a software company in which we own a 100% interest. Conversant markets Customer Watch, an Internet-based customer information system software.

Our non-regulated businesses generated a \$0.9 million net loss for the six months ended June 30, 2005 as compared to a \$0.8 million net loss for the same period in 2004.

For the twelve-months ended June 30, 2005, total non-regulated operating revenue increased approximately \$1.0 million (4.8%) while total non-regulated operating expense increased approximately \$2.3 million (10.4%) compared with the same period in 2004. The increase in revenues for the twelve-month-ended period was primarily due to MAPP and our fiber optics business while the increase in expense was primarily due to MAPP, Conversant and our fiber optics business.

Our non-regulated businesses generated a \$1.9 million net loss for the twelve-months ended June 30, 2005 as compared to a \$1.3 million net loss for the same period in 2004.

### **Nonoperating Items**

Total allowance for funds used during construction (AFUDC) was virtually the same for the second quarter of 2005 as compared to the second quarter of 2004, increased slightly for the six

months ended June 30, 2005 and increased \$0.2 million during the twelve months ended June 30, 2005 as compared to the prior year period.

Total interest charges on long-term debt decreased \$0.2 million for both the second quarter of 2005 and the six months ended June 30, 2005 as compared to the same periods in 2004 and decreased \$0.4 million during the twelve months ended June 30, 2005 as compared to the same period in 2004. The decrease for the twelve months ended June 30, 2005 primarily reflects the refinancing we accomplished in 2003 by calling higher interest debt issues and replacing them with debt issues at lower interest rates.

### Other Comprehensive Income

The change in the fair value of the effective portion of our open gas contracts and our interest rate derivative contracts and the gains and losses on contracts settled during the periods being reported, including the tax effect of these items, are reflected in our Consolidated Statement of Comprehensive Income. This net change is recorded as accumulated other comprehensive income in the capitalization section of our balance sheet and does not affect net income or earnings per share. All of these contracts have been designated as cash flow hedges. The unrealized gains and losses accumulated in comprehensive income are reclassified to fuel, or interest expense, in the periods in which the hedged transaction is actually realized or no longer qualifies for hedge accounting.

The following table sets forth the net-of-tax increase/(decrease) and the change in the fair market value (FMV) of our open contracts in Other Comprehensive Income (in millions) for the presented periods ending June 30,:

	3 Months Ended 2005	3 Months Ended 2004	6 Months Ended 2005	6 Months Ended 2004	12 Months Ended 2005	12 Months Ended 2004
Natural gas contracts settled (1)	\$ (0.2)	\$ (2.2)	\$ (0.3)	\$ (5.2)	\$ (6.5)	\$ (8.5)
Interest rate contracts settled	<u>1.4</u>	<u>0.0</u>	<u>1.4</u>	<u>0.0</u>	<u>1.4</u>	<u>(5.1)</u>
Total contracts settled	\$ 1.2	\$ (2.2)	\$ 1.1	\$ (5.2)	\$ (5.1)	\$ (13.6)
Change in FMV of open contracts for natural gas	\$ 5.7	\$ 1.1	\$ 17.6	\$ 3.6	\$ 18.2	\$ 2.7
Change in FMV of open contracts for interest rates	<u>(1.4)</u>	<u>0.0</u>	<u>(1.4)</u>	<u>0.0</u>	<u>(1.4)</u>	<u>4.4</u>
Total change in FMV of contracts	\$ 4.3	\$ 1.1	\$ 16.2	\$ 3.6	\$ 16.8	\$ 7.1
Taxes - natural gas	\$ (2.1)	\$ 0.4	\$ (6.6)	\$ 0.6	\$ (4.4)	\$ 2.2
Taxes - interest rates	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.3</u>
Total taxes	\$ (2.1)	\$ 0.4	\$ (6.6)	\$ 0.6	\$ (4.4)	\$ 2.5
Total change in OCI - net of tax	\$ 3.4	\$ (0.7)	\$ 10.7	\$ (1.0)	\$ 7.3	\$ (4.0)

(1) Reflected in fuel expense

Our average cost for our open natural gas hedges increased from \$4.567/Dth at March 31, 2005 to \$4.703/Dth at June 30, 2005.

### Environmental

In mid-December 2003, the EPA issued proposed regulations with respect to SO<sub>2</sub>, NO<sub>x</sub> and mercury emissions from coal-fired power plants in a proposed rulemaking known as the Clean Air Interstate Rule (CAIR). The final CAIR was issued by the EPA on March 10, 2005 and will affect 28 states, including Missouri, where our Asbury and Iatan plants are located, but excluding Kansas, where our Riverton plant is located. Also in mid-December 2003, the EPA issued the proposed Clean Air Mercury Rule (CAMR) regulations for mercury emissions by power plants under the requirements of the 1990 Amendments to the Clean Air Act. The final CAMR was issued March 15, 2005. It is

possible that we may need to make some expenditures as early as 2007 in order to meet the compliance date of January 1, 2009 for mercury analyzers and the mercury emission compliance date of January 1, 2010. The CAIR and the CAMR were issued as a result of delays and setbacks in the legislative process for the President's Clear Skies Act legislation, which would have imposed different restrictions on SO<sub>2</sub>, NO<sub>x</sub> and mercury emissions. The CAIR and the CAMR are not directed to specific generation units, but instead, require the states (including Missouri and Kansas) to develop State Implementation Plans (SIP) within the next 18 months in order to comply with specific NO<sub>x</sub>, SO<sub>2</sub> and/or mercury state-wide annual budgets (although Kansas is not covered by the NO<sub>x</sub> or SO<sub>2</sub> requirements). Until these plans are finalized, we cannot determine the required emission rates of NO<sub>x</sub>, SO<sub>2</sub> and mercury for the Asbury or Iatan plants in Missouri or the required mercury emission rate for the Riverton plant in Kansas. Also, the SIPs will likely include allowance trading programs for NO<sub>x</sub>, SO<sub>2</sub> and/or mercury that could allow compliance without additional capital expenditures.

As part of our Experimental Regulatory Plan filed with the MPSC, we have committed to install pollution control equipment required at the Iatan plant by 2008 which will include a Selective Catalytic Reduction (SCR) system, a Flue Gas Desulphurization (FGD) system and a Bag House, with our share of the capital cost estimated at \$30 million, as previously disclosed. Approximately \$17 million of this amount was already included in our capital expenditure budget for equipment to be installed by 2008. Of the remaining amount, \$11 million is expected to be incurred in 2007, and is now included in the new capital expenditures budget approved by our Board of Directors on July 28, 2005. For additional information, see "-Liquidity and Capital Resources – Capital Requirements and Investing Activities" below.

As part of our Experimental Regulatory Plan we also committed to add an SCR at Asbury which we expect to be in service before January 2009. We are currently attempting to lay out a schedule to perform the tie-ins with the existing plant during our scheduled 2007 fall outage. Our current cost estimate for an SCR at Asbury is \$30 million. We also expect that additional pollution control equipment will be economically justified at the Asbury plant sometime prior to 2015 and may include a FGD and a Bag House at an estimated capital cost of \$75 million. At this time we do not anticipate the installation of additional pollution control equipment at the Riverton plant.

## **LIQUIDITY AND CAPITAL RESOURCES**

### **Cash Provided by Operating Activities**

Our net cash flows provided by operating activities increased \$6.1 million during the six months ended June 30, 2005 as compared to the six months ended June 30, 2004, despite a \$0.7 million decrease in net income. Changes in adjustments to income for non-cash items were \$2.3 million higher this year versus last year. In addition, a \$4.0 million increase due to reduced working capital requirements (primarily as a result of increased accounts payable and accrued liabilities) positively impacted cash flows.

### **Capital Requirements and Investing Activities**

Our net cash flows used in investing activities increased \$22.5 million during the six months ended June 30, 2005 as compared to the six months ended June 30, 2004, primarily reflecting additions to our transmission and distribution systems and construction expenditures for the new combustion turbine at Riverton.

Our capital expenditures totaled approximately \$26.6 million during the second quarter of 2005 compared to approximately \$11.9 million for the same period in 2004. For the six months ended June 30, 2005, capital expenditures totaled approximately \$42.3 million compared to approximately

\$19.8 million for the same period in 2004. These capital expenditures include AFUDC, capital expenditures to retire assets and benefits from salvage.

A breakdown of the capital expenditures for the quarter and six months ended June 30, 2005 is as follows:

	<b>Quarter Ended June 30, 2005</b>	<b>Six Months Ended June 30, 2005</b>
	<b>(in millions)</b>	
Distribution and transmission system additions	\$ 10.3	\$ 18.4
Additions and replacements – Asbury	2.8	3.9
Additions and replacements – Riverton, Iatan, Ozark Beach, Energy Center, State Line and State Line Combined Cycle	1.2	2.0
New generation – Riverton combustion turbine	10.1	14.6
Fiber optics (non-regulated)	0.6	1.1
Transportation	0.0	0.4
New generation – other	0.1	0.3
Other non-regulated capital expenditures	0.2	0.4
Other	0.9	1.8
Retirements and salvage (net)	0.4	(0.6)
<b>Total</b>	<b>\$ 26.6</b>	<b>\$ 42.3</b>

For the first six months of 2005, approximately 44% of our cash requirements for capital expenditures were satisfied internally from operations (funds provided by operating activities less dividends paid). We currently expect that internally generated funds will provide approximately all of the funds required for the remainder of our 2005 capital expenditures. We had originally estimated that our capital expenditures for 2006 and 2007 would be approximately \$86.0 million and \$88.4 million, respectively (including AFUDC). Due to planned new generation and our proposed Experimental Regulatory Plan, we have revised our estimate of these capital expenditures to approximately \$100.4 million for 2006 and \$140.9 million for 2007. As in the past, we intend to utilize short-term debt or the proceeds of sales of long-term debt or common stock (including common stock sold under our Employee Stock Purchase Plan, our Dividend Reinvestment and Stock Purchase Plan, and our 401(k) Plan and ESOP) to finance any additional amounts needed beyond those provided by operating activities for such capital expenditures. We will continue to utilize short-term debt as needed to support normal operations or other temporary requirements.

### **Financing Activities**

Our net cash flows used in financing activities decreased \$18.2 million during the six months ended June 30, 2005 as compared to the six months ended June 30, 2004 resulting in a \$1.6 million use of cash in the current year. Our net cash flows used in financing activities were primarily affected by increased proceeds from short-term debt (commercial paper) in 2005 as compared to 2004.

On December 17, 2003, we sold to the public in an underwritten offering, 2,000,000 newly issued shares of our common stock for \$42.3 million. The net proceeds of approximately \$40.3 million were used to repay short-term debt and for other general corporate purposes. On January 8, 2004, the underwriters purchased an additional 300,000 shares for approximately \$6.1 million to cover over-allotments. The proceeds were added to our general funds.

On April 1, 2005, we redeemed our \$10 million First Mortgage Bonds, 7.60% Series due April 1, 2005, using short-term debt. On June 27, 2005, we issued \$40 million aggregate principal amount of our Senior Notes, 5.8% Series due 2035, for net proceeds of approximately \$39.4 million less \$0.1 million of legal fees. We used the net proceeds from this issuance to redeem all \$30 million aggregate principal amount of our First Mortgage Bonds, 7.75% Series due 2025 for approximately

\$31.3 million, including interest and a redemption premium, and to repay short-term debt. The \$1.2 million redemption premium paid in connection with the redemption of these first mortgage bonds, together with \$2.4 million of remaining unamortized loss on reacquired debt and \$0.3 million of unamortized debt expense, were recorded as a regulatory asset and are being amortized as interest expense over the life of the 2035 Notes. We had entered into an interest rate derivative contract in May 2005 to hedge against the risk of a rise in interest rates impacting the 2035 Notes prior to their issuance. Costs associated with the interest rate derivative (primarily due to interest rate fluctuations) amounted to approximately \$1.4 million and were recorded as a regulatory asset and are being amortized over the life of the 2035 Notes.

We have an effective shelf registration statement with the SEC under which approximately \$49 million of our common stock, unsecured debt securities, preference stock and first mortgage bonds remain available for issuance. We are currently planning a new shelf registration for 2005.

On July 15, 2005, we entered into a \$150 million five year unsecured credit agreement with UMB Bank, N.A., as administrative agent, Bank of America, N.A., as syndication agent, and the other lenders party thereto. This agreement replaces our pre-existing \$100 million unsecured credit agreement, which was terminated upon entering into the new agreement. The credit agreement provides for \$150 million of revolving loans to be available for working capital, general corporate purposes and to back-up our use of commercial paper. Interest on borrowings under the credit agreement accrues at a rate equal to, at our option, (i) the bank's prime commercial rate plus a margin or (ii) LIBOR plus a margin, in each case based on our then current credit ratings. This agreement requires our total indebtedness (which does not include our note payable to the securitization trust) to be less than 62.5% of our total capitalization at the end of each fiscal quarter and our EBITDA (defined as net income plus interest, taxes, depreciation, amortization and certain other non-cash charges) to be at least two times our interest charges (which includes interest on the note payable to the securitization trust) for the trailing four fiscal quarters at the end of each fiscal quarter. Failure to maintain these ratios will result in an event of default under the credit facility and will prohibit us from borrowing funds thereunder. We are in compliance with these ratios as of June 30, 2005. This credit agreement is also subject to cross-default if we default on in excess of \$10 million in the aggregate on our other indebtedness. There were no outstanding borrowings under this agreement at July 15, 2005.

Restrictions in our mortgage bond indenture could affect our liquidity. The Mortgage contains a requirement that for new first mortgage bonds to be issued, our net earnings (as defined in the Mortgage) for any twelve consecutive months within the fifteen months preceding issuance must be two times the annual interest requirements (as defined in the Mortgage) on all first mortgage bonds then outstanding and on the prospective issue of new first mortgage bonds. Our earnings for the twelve months ended June 30, 2005 would permit us to issue approximately \$448.1 million of new first mortgage bonds based on this test with an assumed interest rate of 6.0%.

As of June 30, 2005, the ratings for our securities were as follows:

	Moody's	Standard & Poor's
First Mortgage Bonds	Baa1	A-
First Mortgage Bonds - Pollution Control Series	Aaa	AAA
Senior Notes	Baa2	BBB-
Commercial Paper	P-2	A-2
Trust Preferred Securities	Baa3	BB+

Moody's affirmed our ratings on May 13, 2005 and revised their rating outlook on us from negative to stable. On March 14, 2005, Standard & Poor's, reflecting the MPSC's March 10, 2005 rate order, affirmed its 'BBB/A-2' corporate credit rating on us and removed the rating from credit watch with negative implications. The outlook is now stable. These ratings indicate the agencies' assessment of our ability to pay interest, distributions, dividends and principal on these securities. The



lower the rating the higher our financing costs will be when our securities are sold. Ratings below investment grade (investment grade is Baa3 or above for Moody's and BBB- or above for Standard & Poor's) may also impair our ability to issue short-term debt, commercial paper or other securities or make the marketing of such securities more difficult.

## CONTRACTUAL OBLIGATIONS

Set forth below is information summarizing our contractual obligations as of June 30, 2005. Not included in these amounts are expected obligations associated with the installation of the new combustion turbine at Riverton, the wind energy agreement, postretirement benefit funding or any future pension funding commitments.

<u>Contractual Obligations*</u>	<u>Total</u>	<u>Payments Due by Period</u> (in millions)			
		<u>Less than</u> <u>1 Year</u>	<u>1-3 Years</u>	<u>3-5 Years</u>	<u>More than</u> <u>5 Years</u>
Long-term debt (w/o discount).....	\$ 358.1	\$ -	\$ -	\$ 70.0	\$ 288.1
Note payable to securitization trust....	50.0	-	-	-	50.0
Interest on long-term debt.....	438.8	26.0	52.5	49.8	310.5
Capital lease obligations.....	0.3	0.3	-	-	-
Operating lease obligations.....	2.4	0.6	1.2	0.6	-
Purchase obligations**.....	267.8	49.9	86.4	68.9	62.6
Open purchase orders.....	27.7	16.1	10.3	1.3	-
Other long-term liabilities***.....	2.8	0.5	2.3	-	-
<b>Total Contractual Obligations .....</b>	<b>\$ 1,147.9</b>	<b>\$ 93.4</b>	<b>\$ 152.7</b>	<b>\$ 190.6</b>	<b>\$ 711.2</b>

\*Some of our contractual obligations have price escalations based on economic indices, but we do not anticipate these escalations to be significant.

\*\*Includes fuel and purchased power contracts.

\*\*\*Other Long-term Liabilities primarily represents 100% of the long-term debt issued by Mid-America Precision Products, LLC. As of June 30, 2005, EDE Holdings, Inc. was the 50.01% guarantor of a \$2.5 million note included in this total amount.

## OFF-BALANCE SHEET ARRANGEMENTS

We have no off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources.

## CRITICAL ACCOUNTING POLICIES

The March MPSC rate order approved an annual IEC of approximately \$8.2 million effective March 27, 2005 and expiring three years later, which allows us to recover Missouri jurisdictional variable fuel and purchased power costs we incur within a range (collar) of \$21.97/Mwh (floor) and \$24.11/Mwh (ceiling). The IEC is \$0.002131 per kilowatt hour of customer usage. This revenue is recorded by revenue class when service is provided to the customer. If the Missouri variable fuel and purchased power \$/Mwh is below the floor, we record a provision for refund of the entire IEC actual recorded dollars. If the Missouri variable fuel and purchased power \$/Mwh is above the ceiling, we record all of the IEC collected as revenue. If the Missouri variable fuel and purchased power \$/Mwh falls within the collar, the difference between Missouri ceiling dollars and Missouri variable fuel and

purchased power dollars will be the provision for refund. The difference between the IEC actual recorded dollars and the provision for refund is the IEC we record as revenue. At each balance sheet date, we evaluate the probability that we would be required to refund either a portion or all of the amounts collected under the IEC to ratepayers.

See "Item 7 – Managements Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report Form 10-K for the year ended December 31, 2004 for a discussion of additional critical accounting policies.

## **RECENTLY ISSUED ACCOUNTING STANDARDS**

See Note 2 of "Notes to Consolidated Financial Statements (Unaudited)".

### **Item 3. Quantitative and Qualitative Disclosures about Market Risk**

Market risk is the exposure to a change in the value of a physical asset or financial instrument, derivative or non-derivative, caused by fluctuations in market variables such as interest rates or commodity prices. We handle our commodity market risk in accordance with our established Energy Risk Management Policy, which may include entering into various derivative transactions. We utilize derivatives to manage our gas commodity market risk and to help manage our exposure resulting from purchasing most of our natural gas on the volatile spot market for the generation of power for our native-load customers. See Note 3 of "Notes to Consolidated Financial Statements (Unaudited)" for further information.

*Interest Rate Risk.* We are exposed to changes in interest rates as a result of financing through our issuance of commercial paper and other short-term debt. We manage our interest rate exposure by limiting our variable-rate exposure (applicable only to commercial paper) to a certain percentage of total capitalization, as set by policy, and by monitoring the effects of market changes in interest rates.

If market interest rates average 1% more in 2005 than in 2004, our interest expense would increase, and income before taxes would decrease by less than \$100,000. This amount has been determined by considering the impact of the hypothetical interest rates on our highest month-end commercial paper balance for 2004. There was \$18 million in outstanding commercial paper as of June 30, 2005. These analyses do not consider the effects of the reduced level of overall economic activity that could exist in such an environment. In the event of a significant change in interest rates, management would likely take actions to further mitigate its exposure to the change. However, due to the uncertainty of the specific actions that would be taken and their possible effects, the sensitivity analysis assumes no changes in our financial structure.

*Commodity Price Risk.* We are exposed to the impact of market fluctuations in the price and transportation costs of coal, natural gas, and electricity and employ established policies and procedures to manage the risks associated with these market fluctuations, including utilizing derivatives.

We have entered into a three-year contract for the purchase of coal in order to manage our exposure to fuel prices. We satisfied 70.5% of our 2004 fuel supply need through coal. Approximately 90% of our 2004 coal supply was Western coal. Our new three-year coal contract satisfies approximately 100% of our anticipated 2005 requirements, approximately 67% of our 2006 requirements and approximately 33% of our anticipated requirements for 2007 for our Asbury and Riverton Western coal needs. Future coal supplies will be acquired using a combination of short-term and long-term contracts.

We are exposed to changes in market prices for natural gas we must purchase to run our combustion turbine generators. Our natural gas procurement program is designed to minimize our

risk from volatile natural gas prices. We enter into physical forward and financial derivative contracts with counterparties relating to our future natural gas requirements that lock in prices (with respect to predetermined percentages of our expected future natural gas needs) in an attempt to lessen the volatility in our fuel expense and improve predictability. We expect that increases in gas prices will be partially offset by realized gains under financial derivative transactions. As of July 29, 2005, 69.7%, or 2.13 million Dths's, of our anticipated volume of natural gas usage for the remainder of year 2005 is hedged. See Note 3 of "Notes to Consolidated Financial Statements (Unaudited)" for further information.

*Credit Risk.* We are exposed to credit risk by our use of derivative financial instruments. Credit risk is the risk that the counterparty might fail to fulfill its performance obligations under contractual terms. Our Risk Management Oversight Committee, which consists of senior management, has adopted credit risk and procedures policies and provides oversight in the monitoring of counterparty creditworthiness.

#### **Item 4. Controls and Procedures**

As of the end of the period covered by this report, an evaluation was carried out, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Rule 13a-15 of the Securities Exchange Act of 1934. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective, in all material respects, with respect to the recording, processing, summarizing and reporting, within the time periods specified in the SEC's rules and forms, of information to be required to be disclosed by us in reports that we file or submit under the Exchange Act.

There have been no changes in our internal control over financial reporting that occurred during the second quarter of 2005 that have materially affected or are reasonably likely to materially affect our internal control over financial reporting.

On April 28, 2005, the Company announced that Laurie A. Delano had been elected to the positions of Assistant Secretary and Assistant Treasurer and that, effective August 1, 2005, Ms. Delano would assume the positions of Controller and Principal Accounting Officer of the Company. Darryl L. Coit, who previously held the positions of Controller, Assistant Secretary, Assistant Treasurer and Principal Accounting Officer announced his retirement effective July 31, 2005.

## **PART II. OTHER INFORMATION**

#### **Item 4. Submission of Matters to a Vote of Security Holders.**

- (a) The annual meeting of Common Stockholders was held on April 28, 2005.
- (b) The following person was re-elected Director of Empire to serve until the 2008 Annual Meeting of Stockholders:

William L. Gipson (21,656,997 votes for; 1,405,638 withheld authority).

The following persons were elected Directors of Empire to serve until the 2008 Annual Meeting of Stockholders:

Bill D. Helton (21,613,405 votes for; 1,449,230 withheld authority).

Kenneth R. Allen (21,639,808 votes for; 1,422,827 withheld authority).

The term of office as Director of the following other Directors continued after the meeting: D. Randy Laney, Mary M. Posner, Ross C. Hartley, Myron W. McKinney, B. Thomas Mueller, Allan T. Thoms and Julio S. Leon.

The following plans were approved by shareholders:

**Amendment to the Employee Stock Purchase Plan**

Votes	Votes		Broker	Total Shares
For	Against	Abstentions	Non-Votes	Present
11,956,804	713,615	305,033	10,087,183	23,062,635

**2006 Stock Incentive Plan**

Votes	Votes		Broker	Total Shares
For	Against	Abstentions	Non-Votes	Present
10,315,454	2,313,264	346,735	10,087,182	23,062,635

**Amended and restated Stock Unit Plan for Directors**

Votes	Votes		Broker	Total Shares
For	Against	Abstentions	Non-Votes	Present
9,548,548	2,934,308	492,596	10,087,183	23,062,635

**Item 5. Other Information.**

For the twelve months ended June 30, 2005, our ratio of earnings to fixed charges was 2.08x. See Exhibit (12) hereto.

**Item 6. Exhibits.**

(a) Exhibits.

(4) \$150,000,000 Unsecured Credit Agreement, dated as of July 15, 2005, among Empire, UMB Bank, N.A., as administrative agent, Bank of America, N.A., as syndication agent, and the lenders named therein.

(12) Computation of Ratio of Earnings to Fixed Charges.

(31)(a) Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

(31)(b) Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

(32)(a) Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.\*

(32)(b) Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.\*

\* This certification accompanies this Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not be deemed filed by the Company for purposes of Section 18 or any other provision of the Securities Exchange Act of 1934, as amended.



**EXHIBIT (4)**

**FIVE YEAR**

**\$150,000,000 UNSECURED CREDIT AGREEMENT**

**DATED AS OF JULY 15, 2005**

**AMONG**

**THE EMPIRE DISTRICT ELECTRIC COMPANY  
AS BORROWER**

**AND**

**UMB BANK, N.A.  
INDIVIDUALLY AND AS ADMINISTRATIVE AGENT**

**AND**

**BANK OF AMERICA, N.A.  
INDIVIDUALLY AND AS SYNDICATION AGENT**

**AND**

**THE OTHER FINANCIAL INSTITUTIONS PARTY HERETO  
AS LENDERS**

**ARRANGED BY  
UMB BANK, N.A.**

---

**THE EMPIRE DISTRICT ELECTRIC COMPANY**

**UNSECURED CREDIT AGREEMENT**

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- A REVOLVING CREDIT NOTE
- B PRICING SCHEDULE
- C SUBSIDIARIES OF THE COMPANY
- D-1 COMPANY'S KANSAS COUNSEL'S OPINION
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- E QUARTERLY COMPLIANCE CERTIFICATE.
- F EXISTING LIENS

THE EMPIRE DISTRICT ELECTRIC COMPANY

UNSECURED CREDIT AGREEMENT

July 15, 2005

UMB Bank, N.A.  
Kansas City, Missouri

Bank of America, N.A.  
St. Louis, Missouri

The Other Financial Institutions Party Hereto

The undersigned, The Empire District Electric Company, a Kansas corporation (the "Company") hereby applies to you for your several commitments, subject to all the terms and conditions hereof and on the basis of representations and warranties hereinafter set forth, to make an unsecured revolving credit (the "Revolving Credit") available to the Company, all as more fully set forth herein. Each of you is hereinafter referred to individually as "Bank" and collectively as "Banks." UMB Bank, N.A., in its individual capacity is sometimes referred to herein as "UMB", and in its capacity as Administrative Agent for the Banks is hereinafter in such capacity referred to as the "Agent." All capitalized terms not defined in the text of this Agreement are defined in Section 1 hereof.

SECTION 1. Definitions.

Section 1.1. Certain Definitions. The terms hereinafter set forth when used herein shall have the following meanings:

"ABR" means a fluctuating rate of interest equal to the higher of (a) the Prime Rate or (b) the sum of the Federal Funds Effective Rate most recently determined by the Agent, plus one-half percent (1/2%) per annum.

"ABR Portion" shall have the meaning specified in Section 3.1 hereof.

"Adjusted LIBOR Rate" means a rate per annum determined pursuant to the following formula:

$$\text{Adjusted LIBOR Rate} = \frac{\text{LIBOR Rate}}{1 - \text{Reserve Percentage}}$$

"Affiliate" shall mean, for any Person, any other Person that directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, "control" means the power, directly or indirectly, to direct or cause the direction of management or policies of a Person (through ownership of voting securities, by contract or otherwise), provided that, in any event for purposes of this definition any

Person that owns directly or indirectly securities having ten percent (10%) or more of the ordinary voting power for the election of directors of a corporation or ten percent (10%) or more of the partnership or other ownership interests of any other Person will be deemed to control such corporation or other Person.

“Agent” shall have the meaning specified in the first paragraph of this Agreement.

“Agreement” shall mean this Credit Agreement as may be supplemented and amended from time to time.

“Applicable Margin” shall mean on any date, (a) when used to determine the interest payable on Loans comprising any LIBOR Portion or ABR Portion, the applicable number of basis points set forth in the Pricing Schedule attached hereto as Exhibit B and incorporated herein by reference under the heading for “Applicable Margin for LIBOR Portions” or “Applicable Margin for ABR Portions,” as the case may be, and (b) when used to determine the Facility Fee or the Utilization Fee, the applicable number of basis points set forth in such Pricing Schedule under such respective titles.

“Bank” and “Banks” shall have the meanings specified in the first paragraph of this Agreement.

“Borrowing” shall have the meaning set forth in Section 2.2 hereof.

“Business Day” shall mean any day, except Saturday or Sunday, on which banks are open for business in Kansas City, Missouri or Chicago, Illinois, and, with respect to LIBOR Portions, dealing in United States dollar deposits in London, England.

“Change of Control” shall mean the occurrence after the date of this Agreement of: (i) any Person, or two or more Persons acting in concert, acquiring beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended), directly or indirectly, of securities of the Company (or other securities convertible into such securities) representing greater than thirty-three and one-third percent (33-1/3%) of the combined voting power of all securities of the Company entitled to vote in the election of directors; or (ii) any Person, or two or more Persons acting in concert, acquiring by contract or otherwise, or entering into a contract or arrangement which, upon consummation, will result in its or their acquisition of, or control over, securities of the Company (or other securities convertible into such securities) representing greater than thirty-three and one-third percent (33-1/3%) of the combined voting power of all securities of the Company entitled to vote in the election of directors.

“Closing Date” shall mean July 15, 2005.

“Commitment” shall mean a Revolving Credit Commitment of any Bank.

“Commitment Percentage” shall have the meaning set forth in Section 2.2 hereof.

“EBITDA” means, with reference to any period, Net Income for such period plus all amounts deducted in arriving at such Net Income amount in respect of (a) Interest Charges for such period, plus (b) foreign, federal, state and local income taxes of the Company, and its Subsidiaries paid or accrued for such period, plus (c) all amounts properly charged by the Company and its Subsidiaries for depreciation and amortization of intangible assets during such period.

“Effective Date” shall mean the later of (i) the Closing Date or (ii) the date as of which the Company receives the approval of the Kansas Corporation Commission to enter into this Agreement.

“Environmental Laws” shall mean all federal, state and local environmental, health and safety statutes and regulations, including without limitation all statutes and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes and substances.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“Event of Default” shall mean any event or condition identified as such in Section 8.1 hereof.

“Exposure” shall mean, as to any Bank, the sum of such Bank’s (a) unused Revolving Credit Commitment, if any, and (b) outstanding Revolving Credit Loans, if any.

“Federal Funds Effective Rate” shall mean for any day, an interest rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published for such day by the Federal Reserve Bank of New York, or if such rate is not so published for such day, the average of the quotations for such day on such transactions received by the Agent from three (3) federal funds brokers of recognized standing selected by it.

“GAAP” shall mean generally accepted accounting principles as in effect on the date hereof applied by the Company on a basis consistent with the preparation of the Audit Report referred to in Section 6.3 hereof.

“Granting Bank” shall have the meaning set forth in Section 11.21.

“Indebtedness” shall mean as of any time the same is to be determined, the aggregate of:

- (a) all indebtedness with respect to borrowed money;
- (b) all reimbursement and other obligations with respect to letters of credit, banker’s acceptances, customer advances and other extensions of credit whether or not representing obligations for borrowed money;
- (c) the aggregate amount of capitalized lease obligations;
- (d) all indebtedness secured by any lien or any security interest on any Property, whether or not the same would be classified as a liability on a balance sheet;
- (e) all indebtedness representing the deferred purchase price of Property, but excluding all trade payables incurred in the ordinary course of business; and
- (f) all guaranties, endorsements (other than any liability arising out of the endorsement of items for deposit or collection in the ordinary course of business) and other contingent obligations in respect of, or any obligations to purchase or otherwise acquire, any of the foregoing.

Indebtedness of the Company shall be computed and determined, without duplication, on a consolidated basis for the Company and its Subsidiaries after the elimination of intercompany items in accordance with GAAP.

“Interest Charges” shall mean, with reference to any period, the sum of all interest charges (including imputed interest charges with respect to capitalized lease obligations, all amortization of debt discount and expense) of the Company and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP.

“Interest Coverage Ratio” shall mean, as of any time the same is to be determined, the ratio of (a) EBITDA for the most recent four (4) fiscal quarters then ended to (b) Interest Charges for such four (4) fiscal quarters.

“Interest Period” shall mean (a) with respect to any LIBOR Portion, the period used for the computation of interest commencing on the date the relevant LIBOR Portion is made, continued or effected by conversion and concluding on the date one (1) or two (2) months thereafter as selected by the Company in its notice as provided herein; provided that all of the foregoing provisions relating to Interest Periods are subject to the following:

- (i) if any Interest Period would otherwise end on a day which is not a Business Day, that Interest Period shall be extended to the next succeeding Business Day, unless in the case of an

Interest Period for a LIBOR Portion the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) no Interest Period may extend beyond the Revolving Credit Termination Date;

(iii) the interest rate to be applicable to each LIBOR Portion for each Interest Period shall apply from and including the first day of such Interest Period to but excluding the last day thereof; and

(iv) no Interest Period may be selected if after giving effect thereto the Company will be unable to make a principal payment scheduled to be made during such Interest Period without paying part of a LIBOR Portion on a date other than the last day of the Interest Period applicable thereto.

For purposes of determining an Interest Period, a month means a period starting on one day in a calendar month and ending on a numerically corresponding day in the next calendar month; provided, however, if an Interest Period begins on the last day of a month or if there is no numerically corresponding day in the month in which an Interest Period is to end, then such Interest Period shall end on the last Business Day of such month.

"LIBOR Index Rate" shall mean, for any Interest Period applicable to a LIBOR Portion, the rate per annum (rounded upwards, if necessary, to the next higher one hundred-thousandth of a percentage point) for deposits in U.S. Dollars for a period comparable to such Interest Period, which appears on Telerate Page 3750 as of 11:00 a.m. (London, England time) on the day two (2) Business Days before the commencement of such Interest Period.

"LIBOR Portion" shall have the meaning specified in Section 3.1 hereof.

"LIBOR Rate" shall mean for each Interest Period applicable to a LIBOR Portion, (a) the LIBOR Index Rate for such Interest Period, if such rate is available, and (b) if the LIBOR Index Rate cannot be determined, the arithmetic average of the rates of interest per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) at which deposits in U.S. dollars in immediately available funds are offered to the Agent at 11:00 a.m. (London, England time) two (2) Business Days before the beginning of such Interest Period by three (3) or more major banks in the London interbank market selected by the Agent for a period equal to such Interest Period and in an amount equal or comparable to the principal amount of the LIBOR Portion scheduled to be made by the Agent during such Interest Period.

"Loan" shall mean a Revolving Credit Loan and "Loans" shall mean any two or more of the foregoing.

"Loan Documents" shall mean this Agreement and any and all exhibits hereto and the Note.

"Material Adverse Effect" shall have the meaning specified in Section 6.1 hereof.

"Mortgage" shall have the meaning specified in Section 7.7(i) hereof.

"Net Income" shall mean, with reference to any period, the net income (or net loss) of the Company and its Subsidiaries for such period as computed on a consolidated basis in accordance with GAAP.

"Note" shall mean a Revolving Credit Note and "Notes" shall mean any two or more of the foregoing.

"PBGC" shall mean the Pension Benefit Guaranty Corporation.



"Person" shall mean and include any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, entity, party or government (whether federal, state, county, city, municipal, or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

"Plan" shall mean any employee benefit plan covering any officers or employees of the Company or any Subsidiary, any benefits of which are, or are required to be, guaranteed by the PBGC.

"Prime Rate" means for any day the rate of interest announced by UMB from time to time as its prime commercial rate in effect on such day, with any change in the Prime Rate resulting from a change in said prime commercial rate to be effective as of the date of the relevant change in said prime commercial rate, such rate not necessarily being the lowest rate charged by UMB to any customer.

"Property" shall mean all assets and properties of any nature whatsoever, whether real or personal, tangible or intangible, including, without limitation, intellectual property.

"Quarterly Compliance Certificate" shall have the meaning set forth in Section 7.4(c) hereof.

"Register" shall have the meaning specified in Section 11.20 hereof.

"Required Banks" shall mean any Bank or Banks which in the aggregate hold at least sixty-six and two-thirds percent (66-2/3%) of the Total Exposure.

"Reserve Percentage" means the daily arithmetic average maximum rate, expressed as a decimal, at which reserves (including, without limitation, any supplemental, marginal and emergency reserves) are imposed on members banks of the Federal Reserve System during the applicable Interest Period by the Board of Governors of the Federal Reserve System (or any successor) under Regulation D on "eurocurrency liabilities" (as such term is defined in Regulation D), subject to any amendments of such reserve requirement by such Board or its successor, taking into account any transitional adjustments thereto. For purposes of this definition, the LIBOR Portions shall be deemed to be eurocurrency liabilities as defined in Regulation D without benefit or credit for any prorations, exemptions or offsets under Regulation D.

"Revolving Credit" shall have the meaning specified in the first paragraph of this Agreement.

"Revolving Credit Commitment" and "Revolving Credit Commitments" shall have the meanings specified in Section 2.2 hereof.

"Revolving Credit Loan" and "Revolving Credit Loans" shall have the meanings specified in Section 2.1 hereof.

"Revolving Credit Note" or "Revolving Credit Notes" shall have the meanings specified in Section 2.2 hereof.

"Revolving Credit Termination Date" shall have the meaning set forth in Section 2.1 hereof.

"SPC" shall have the meaning set forth in Section 11.21.

"Subsidiary" shall mean, for any Person, any corporation or other entity of which more than fifty percent (50%) of the outstanding stock or comparable equity interests having ordinary voting power for the election of the Board of Directors of such corporation or similar governing body in the case of a non-corporate entity (irrespective of whether or not, at the time, stock or other equity interests of any other class or classes of such corporation or other entity shall have or might have voting power by reason of the

happening of any contingency) is at the time directly or indirectly owned by such Person or by one or more of its Subsidiaries

"Syndication Agent" means Bank of America, N.A.

"Total Assets" means all assets of the Company as shown on its most recent quarterly or annual consolidated balance sheet, as determined in accordance with GAAP.

"Total Exposure" shall mean the aggregate Exposure for all Banks.

"UMB" shall have the meaning specified in the first paragraph of this Agreement.

Section 1.2. Interpretation. Capitalized terms defined elsewhere in this Agreement shall, unless otherwise specified, have the meanings so ascribed to them in all provisions of this Agreement. The foregoing definitions are equally applicable to both the singular and plural forms of the terms defined. All references to time of day herein are references to Kansas City, Missouri time unless otherwise specifically provided. Where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, it shall be done in accordance with GAAP except where such principles are inconsistent with the specific provisions of this Agreement.

## SECTION 2. THE REVOLVING CREDIT.

Section 2.1. Revolving Credit Loans. Subject to all of the terms and conditions hereof, the Banks agree to extend the Revolving Credit to the Company which may be borrowed by the Company in its discretion from time to time, be repaid and borrowed again, during the period from the Closing Date to and including July 15, 2010 (the "Revolving Credit Termination Date"). The Revolving Credit may be utilized by the Company in the form of loans (individually a "Revolving Credit Loan" and collectively the "Revolving Credit Loans"), provided that the aggregate amount of the Revolving Credit Loans outstanding at any one time shall not exceed the Revolving Credit Commitments, as in effect from time to time.

Section 2.2. Revolving Credit Commitments. The respective maximum aggregate principal amounts of the Revolving Credit at any one time outstanding and the percentage of the Revolving Credit available at any time which each Bank agrees to make available to the Company (its "Commitment Percentage") are as follows (collectively, the "Revolving Credit Commitments" and individually, a "Revolving Credit Commitment"):

UMB Bank, N.A.	\$25,000,000	16.67%
Bank of America, N.A.	\$22,000,000	14.67%
M&I Marshall & Ilsley Bank	\$ 22,000,000	14.67%
National City Bank of the Midwest	\$ 22,000,000	14.67%
U.S. Bank, National Association	\$ 22,000,000	14.67%
Wells Fargo Bank, N.A.	\$ 22,000,000	14.67%
Comerica Bank	\$ 15,000,000	10%
Total	\$150,000,000	100%

The obligations of the Banks hereunder are several and not joint and no Bank shall under any circumstances be obligated to extend credit under the Revolving Credit in excess of its Revolving Credit Commitment or its Commitment Percentage of credit outstanding under the Revolving Credit.

All Revolving Credit Loans made by the Banks on the same date are hereinafter referred to as a "Borrowing". Each Borrowing shall be in a minimum amount as provided in Section 3.5 hereof and shall be made pro rata by the Banks in accordance with their respective Commitment Percentages. All Revolving Credit Loans made by each Bank under the Revolving Credit shall be evidenced by a Revolving Credit Note of the Company (individually a "Revolving Credit Note" and collectively the "Revolving Credit Notes") payable to the order of such Bank in the amount of its Revolving Credit Commitment, each Revolving Credit Note to be in the form (with appropriate insertions) attached hereto as Exhibit A. Without regard to the face principal amount of each Revolving Credit Note, the actual principal amount at any time outstanding and owing by the Company on account thereof during the period ending on the Revolving Credit Termination Date shall be the sum of all advances then or theretofore made thereon less all principal payments actually received thereon during such period.

**Section 2.3. Procedure For Borrowing.** The Company shall notify the Agent (which may be written or oral, but which must be given prior to 11:00 a.m. Kansas City time) of the date (which may, subject to the immediately preceding parenthetical and Section 3 hereof, be the date on which such notice is given) upon which it requests that any advance be made to it under the Revolving Credit Commitments, and the Agent shall promptly (but in any event not later than 2:00 p.m. Kansas City time) notify each Bank in writing of its receipt of each such notice. Subject to all of the terms and conditions hereof, each Bank shall make available to the Agent its share of each advance, and the proceeds of each advance, to the extent received by the Agent from the Banks, shall be made available to the Company at the office of the Agent in Kansas City and in funds there current. Each Loan from each Bank shall initially constitute part of an ABR Portion except to the extent the Company has otherwise timely elected a LIBOR Portion, all as provided in Section 3 hereof. Unless the Agent shall have been notified by a Bank prior to the date a Loan is to be made by such Bank hereunder that such Bank does not intend to make its pro rata share of such Loan available to the Agent, the Agent may assume that such Bank has made such share available to the Agent on such date and the Agent may in reliance upon such assumption (but shall not be required to) make available to the Company a corresponding amount. If such corresponding amount is not in fact made available to the Agent by such Bank and the Agent has made such amount available to the Company, the Agent shall be entitled to receive such amount from such Bank forthwith upon its demand (or, if such Bank fails to pay such amount forthwith upon such demand, to recover such amount, together with interest thereon at the rate otherwise applicable thereto under Section 3 hereof, from the Company), together with interest thereon in respect of each day during the period commencing on the date such amount was made available to the Company and ending on but excluding the date the Agent recovers such amount at the Federal Funds Effective Rate for each day as determined by the Agent (or in the case of a day which is not a Business Day, then for the preceding Business Day). Nothing in this Section 2.3 shall be deemed to permit any Bank to breach its obligations to make Loans under this Agreement or to limit the Company's claims against any Bank for such breach.

### SECTION 3. INTEREST.

**Section 3.1. Elections.** Subject to all of the terms and conditions of this Section 3, portions of the principal indebtedness evidenced by the Notes (all of the indebtedness evidenced by the Notes bearing interest at the same rate for the same period of time being hereinafter referred to as a "Portion") may, at the election of the Company, bear interest with reference to the ABR (the "ABR Portions") or with reference to the Adjusted LIBOR Rate ("LIBOR Portions"), and Portions may be converted from time to time from one basis to the other. All of the indebtedness evidenced by the Notes which is not part of a LIBOR Portion shall constitute a single ABR Portion. All of the indebtedness evidenced by the Notes which bears interest with reference to a particular Adjusted LIBOR Rate for a particular Interest Period shall constitute a single

**LIBOR Portion.** The Company promises to pay interest on each Portion at the rates and times specified in this Section 3. Each Bank holding a Note shall have a ratable interest in each Portion evidenced thereby.

**Section 3.2. ABR Portions.** Each ABR Portion shall bear interest (which the Company promises to pay at the times herein provided), at the rate per annum equal to the ABR as in effect from time to time plus the Applicable Margin, as determined from time to time under the Pricing Schedule set forth in Exhibit B attached hereto and hereby incorporated by reference, provided that upon the occurrence of an Event of Default hereunder such Portion shall, upon written notice from the Agent, bear interest (which the Company promises to pay at the times hereinafter provided), whether before or after judgment, for the period from the date such Event of Default occurred and during the continuation thereof, at the rate per annum determined by adding two percent (2%) to the interest rate which would otherwise be applicable thereto from time to time. Interest on the ABR Portions shall be payable in arrears on the last day of each calendar quarter in each year, upon prepayment of any ABR Portion and at maturity of the applicable Notes and default interest shall be due and payable upon demand.

**Section 3.3. LIBOR Portions.** Each LIBOR Portion shall bear interest (which the Company promises to pay at the times herein provided) for each Interest Period selected therefor at a rate per annum equal to the Adjusted LIBOR Rate for such Interest Period plus the Applicable Margin, as determined from time to time under the Pricing Schedule set forth in Exhibit B attached hereto, provided that upon the occurrence of an Event of Default hereunder such Portion shall, upon written notice from the Agent, bear interest (which the Company promises to pay at the times hereinafter provided) whether before or after judgment, for the period from the date such Event of Default occurred and during the continuation thereof, through the end of the Interest Period then applicable thereto at the rate per annum determined by adding two percent (2%) to the interest rate otherwise applicable thereto, and effective at the end of such Interest Period such LIBOR Portion shall automatically be converted into and added to the applicable ABR Portion and shall thereafter bear interest at the interest rate applicable to the applicable ABR Portion after default. Interest on each LIBOR Portion shall be due and payable on the last day of each Interest Period applicable thereto and, at maturity of the applicable Notes, and default interest shall be due and payable upon demand. The Company shall notify the Agent on or before 11:00 a.m. (Kansas City time) on the third Business Day preceding the end of an Interest Period applicable to a LIBOR Portion whether such LIBOR Portion (or any portion thereof) is to continue as a LIBOR Portion, in which event the Company shall notify the Agent of the new Interest Period selected therefor, and in the event the Company shall fail to so notify the Agent, such LIBOR Portion shall automatically be converted into and added to the applicable ABR Portion as of and on the last day of such Interest Period. The Agent shall promptly notify each Bank of each notice received from the Company pursuant to the foregoing provisions. Anything contained herein to the contrary notwithstanding, the obligation of the Banks to create, continue or effect by conversion any LIBOR Portion shall be conditioned upon the fact that at such time no Event of Default shall have occurred and be continuing.

**Section 3.4. Computation.** Interest on the LIBOR Portions and all fees, charges and commissions due hereunder shall be computed on the basis of a year of three hundred sixty (360) days for the actual number of days elapsed. All other interest on the Notes shall be computed on the basis of a year of 365/366 days for the actual number of days elapsed unless otherwise specifically provided in this Agreement.

**Section 3.5. Minimum Amounts.** Each ABR Portion shall be in a minimum amount of \$1,000,000 or such greater amount which is an integral multiple of \$250,000. Each LIBOR Portion shall be in a minimum amount of \$5,000,000 or such greater amount which is an integral multiple of \$1,000,000.

**Section 3.6. Manner of Rate Selection.** The Company shall notify the Agent by 11:00 a.m. (Kansas City time) at least three (3) Business Days prior to the date upon which it requests that any LIBOR Portion be created or continued or that any part of a ABR Portion be converted into a LIBOR Portion (such notice to specify in each instance the amount thereof and the Interest Period selected therefor) and the Agent shall promptly advise each Bank of each such notice. If any request is made to convert a LIBOR Portion into an ABR Portion, such conversion shall only be made so as to become effective as of the last day of the Interest

Period applicable thereto. All requests for the creation, continuance or conversion of Portions under this Agreement shall be irrevocable. Such requests may be written or oral and the Agent is hereby authorized to honor telephonic requests for creations, continuances and conversions received by it from any person purporting to be a person authorized to act on behalf of the Company hereunder, the Company hereby indemnifying the Agent and the Banks from any liability or loss ensuing from so acting.

Section 3.7. **Lawful Rate.** All agreements between the Company, the Agent and each of the Banks, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no event whatsoever, whether by reason of demand or acceleration of the maturity of any of the indebtedness hereunder or otherwise, shall the amount contracted for, charged, received, reserved, paid or agreed to be paid to the Agent or each Bank for the use, forbearance, or detention of the funds advanced hereunder or otherwise, or for the performance or payment of any covenant or obligation contained in any Loan Document, exceed the highest lawful rate permissible under applicable law (the "Highest Lawful Rate"), it being the intent of the Company, the Agent and each of the Banks in the execution hereof and of the Loan Documents to contract in strict accordance with any applicable usury laws, if any. If, as a result of any circumstances whatsoever, performance by the Company of any provision hereof or of any of such documents, at the time performance of such provision shall be due, shall involve exceeding the limits of applicable usury laws or result in the Agent or any Bank having or being deemed to have contracted for, charged, reserved or received interest (or amounts deemed to be interest) in excess of the maximum, lawful rate or amount of interest allowed by applicable law to be so contracted for, charged, reserved or received by the Agent or such Bank, then the obligation to be performed by the Company shall be reduced to the legal limit of such performance, and if, from any such circumstance, the Agent or such Bank shall ever receive interest or anything of value which might be deemed interest under applicable law which would exceed the Highest Lawful Rate, such amount which would be unlawful interest shall be refunded to the Company or, if permitted by applicable law and such unlawful interest does not exceed the unpaid principal balance of the Notes and the amounts owing on other obligations of the Company to the Agent or any Bank under any Loan Document such unlawful interest may be applied to the reduction of the principal amount owing on the Notes or the amounts owing on other obligations of the Company to the Agent or any Bank under any Loan Document. All interest paid or agreed to be paid to the Agent or any Bank shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full period of the indebtedness hereunder until payment in full of the principal of the indebtedness hereunder (including the period of any renewal or extension thereof) so that the interest on account of the indebtedness hereunder for such full period shall not exceed the highest amount permitted by applicable law. This Section 3.7 shall control all agreements between the Company, the Agent and the Banks.

#### SECTION 4. FEES, PREPAYMENTS, TERMINATIONS AND APPLICATION OF PAYMENTS.

Section 4.1. **Facility Fee.** For the period from the Closing Date to and including the Revolving Credit Termination Date, or such earlier date on which the Revolving Credit is terminated in whole pursuant to Section 4.6 or any other provision hereof, the Company shall pay to the Agent for the account of the Banks, a facility fee with respect to the Revolving Credit at the rate per annum as determined from time to time under the Pricing Schedule set forth in Exhibit B attached hereto, multiplied by the aggregate amount of the Revolving Credit Commitments (calculated in each case after giving effect to any reductions thereof as specified in Section 4.6 hereof and as if no Loans are outstanding hereunder). Such fee shall be payable in arrears on the last day of July, October, January and April commencing July 31, 2005, and on the Revolving Credit Termination Date, unless the Revolving Credit is terminated in whole on an earlier date, in which event the fees for the period from the date of the last payment made pursuant to this Section 4.1 through the effective date of such termination in whole shall be paid on the date of such earlier termination in whole.

Section 4.2. **Utilization Fee.** For the period from the Closing Date to and including the Revolving Credit Termination Date, or such earlier date on which the Revolving Credit is terminated in whole

pursuant to Section 4.6 or any other provision hereof, the Company shall pay to the Agent for the account of the Banks a utilization fee with respect to the Revolving Credit at the rate per annum as determined from time to time under the Pricing Schedule set forth in Exhibit B attached hereto, multiplied by the aggregate amount of the Revolving Credit Commitments (calculated after giving effect to any reductions thereof as specified in Section 4.6 hereof and as if no Loans are outstanding hereunder) on any date on which the outstanding Revolving Credit Loans for all the Banks are greater than thirty-three percent (33%) of the total Revolving Credit Commitments. Such fee shall be payable in arrears on the last day of each July, October, January and April commencing on July 31, 2005, and on the Revolving Credit Termination Date, unless the Revolving Credit is terminated in whole on an earlier date, in which event the fees for the period from the date of the last payment made pursuant to this Section 4.2 through the effective date of such termination in whole shall be paid on the date of such earlier termination in whole.

Section 4.3. Upfront Fee. The Company shall pay on the date hereof to the Agent for the respective account of each Bank an upfront fee equal to 0.20% of the Revolving Credit Commitment of each Bank which offered a Revolving Credit Commitment of less than \$25,000,000 and 0.25% of the Revolving Credit Commitment of each Bank which offered a Revolving Credit Commitment of \$25,000,000 or more as of the date hereof (whether or not then in use or available).

Section 4.4. Agent's Fee. The Company shall pay to and for the sole account of the Agent such fees as the Company and the Agent may agree upon in writing from time to time. Such fees shall be in addition to any fees and charges the Agent may be entitled to receive under the other Loan Documents.

Section 4.5. Prepayments. (a) Optional Prepayments of ABR Portions. The Company shall have the privilege of prepaying without premium or penalty and in whole or in part (but if in part, then in a minimum principal amount of \$1,000,000) the ABR Portion of any Loan at any time upon prior telecopy or telephonic notice from the Company to the Agent on or before 11:00 a.m. (Kansas City time) on the Business Day immediately preceding such prepayment.

(b) Optional Prepayments of LIBOR Portions. The Company may prepay any LIBOR Portion, upon written or telephonic notice (which telephonic notice shall be promptly confirmed in writing by facsimile communication, telex or telegraph) by no later than 11:00 a.m. (Kansas City time) on the third Business Day immediately preceding the date of such prepayment from the Company to the Agent, such prepayment to be made by the payment of the principal amount to be prepaid and accrued interest thereon and any compensation required by Section 9.4 hereof, if applicable; provided, however, that any such prepayment in part shall be in a principal amount of no less than \$5,000,000 or such greater amount which is an integral multiple of \$1,000,000.

(c) Mandatory Prepayments of Excess Borrowings. If the outstanding principal amount of all Revolving Credit Loans shall ever exceed the aggregate amount of all Revolving Credit Commitments in effect from time to time for any reason, the Company shall immediately prepay Revolving Credit Loans in such amount as shall be necessary to eliminate such excess.

Section 4.6. Revolving Credit Reduction. The Company shall have the right at any time upon ten (10) Business Days' prior notice to the Agent, which shall promptly give notice to the Banks, to reduce the Revolving Credit in whole or in part (but if in part, in a minimum principal amount of \$5,000,000 or such greater amount which is an integral multiple of \$5,000,000); provided, however, that the Company may not reduce any portion of the Revolving Credit which represents outstanding Revolving Credit Loans. Each

such reduction in part shall automatically terminate each Bank's Revolving Credit Commitment by an amount equal to its Commitment Percentage of the amount of the reduction of the Revolving Credit.

**Section 4.7. Place and Application of Payments.** All payments by the Company hereunder shall be made to the Agent at its office at 1010 Grand Boulevard, Kansas City, Missouri 64106 and in immediately available funds, prior to 2:00 p.m. (Kansas City time) on the date of such payment. Subject to Section 11.18 of this Agreement, all such payments shall be made without setoff or counterclaim and without reduction for, and free from, any and all present and future levies, imposts, duties, fees, charges, deductions withholdings, restrictions or conditions of any nature imposed by any government or any political subdivision or taxing authority thereof. Any payments received after 2:00 p.m. (Kansas City time) shall be deemed received upon the following Business Day. The Agent shall remit to each Bank its proportionate share of each payment of principal, interest and fees, owed to it, received by the Agent by 2:00 p.m. (Kansas City time) on the same day of its receipt and its proportionate share of each such payment received by the Agent after 2:00 p.m. (Kansas City time) on the Business Day following its receipt by the Agent. In the event the Agent does not remit any amount to any Bank when required by the preceding sentence, the Agent shall pay to such Bank interest on such amount until paid at a rate per annum equal to the Federal Funds Effective Rate. Should the Company be late in making any required payment hereunder, the Company hereby authorizes the Agent to automatically debit any of its accounts with UMB for any principal, interest and fees when due under the Notes or this Agreement and to transfer the amount so debited from such account to the Agent for application as herein provided. The Agent shall notify the Company by telephonic notice confirmed in writing of any such debit.

**Section 4.8. Capital Adequacy.** If, after the Closing Date, any Bank or the Agent shall have determined in good faith that the adoption after such date of any applicable law, rule or regulation regarding capital adequacy, or any change therein (including, without limitation, any revision in the Final Risk-Based Capital Guidelines of the Board of Governors of the Federal Reserve System (12 CFR Part 208, Appendix A; 12 CFR Part 225, Appendix A) or of the Office of the Comptroller of the Currency (12 CFR Part 3, Appendix A), or in any other applicable capital rules heretofore adopted and issued by any governmental authority), or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Bank with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such bank's capital, or on the capital of any corporation controlling such Bank, in each case as a consequence of its obligations hereunder, to a level below that which such Bank would have achieved but for such adoption, change or compliance (taking into consideration such Bank's policies with respect to capital adequacy) by an amount deemed by such Bank to be material, then from time to time, within thirty (30) days after demand by such Bank (with a copy to the Agent), the Company shall pay to such Bank such additional amount or amounts as will compensate such Bank for such reduction.

#### **SECTION 5. CONDITIONS PRECEDENT.**

The obligation of the Banks to make any Loan pursuant hereto shall be subject to the following conditions precedent:

**Section 5.1. Initial Extension of Credit.** Prior to, or substantially concurrently with, the initial Loan hereunder:

- (a) the Company shall have delivered to the Agent for the benefit of the Banks in sufficient counterparts for distribution to the Banks duly executed originals of the following:

- (i) the Notes;
- (ii) good standing certificates for the Company and each Subsidiary issued by its state of organization, issued not more than thirty (30) days before the date of this Agreement;
- (iii) copies of the Articles or Certificate of Incorporation, and all amendments thereto, of the Company and each Subsidiary, certified by the Secretary of State of its state of incorporation to the extent any of such documents have not previously been provided to the Agent;
- (iv) copies of the By-Laws, and all amendments thereto, of the Company and each Subsidiary, certified as true, correct and complete on the Closing Date by the Secretary or Assistant Secretary of the Company or such Subsidiary, as the case may be to the extent any of such documents have not previously been provided to the Agent;
- (v) copies, certified as true, correct and complete by the Secretary or Assistant Secretary of the Company of resolutions regarding the transactions contemplated by this Agreement, duly adopted by the Board of Directors of the Company and reasonably satisfactory in form and substance to the Agent;
- (vi) an incumbency and signature certificate for the Company satisfactory in form and substance to the Agent;

(b) Prior to the initial Loan hereunder, the Agent shall have received the favorable written opinion of Anderson & Byrd, Kansas counsel to the Company, substantially in the form of Exhibit D-1 attached hereto and the favorable written opinion of Spencer, Scott & Dwyer, P.C., Missouri counsel to the Company, substantially in the form of Exhibit D-2 attached hereto;

(c) The Agent, the Syndication Agent and each of the other Banks shall have received all fees due and payable to each of them at closing in connection with the execution and delivery of this Agreement and the transactions contemplated hereby.

Section 5.2. Each Extension of Credit. As of the time of the making of each Loan hereunder (including the initial Loan):

- (a) no Event of Default shall have occurred and be continuing;
- (b) with respect to any requested Revolving Credit Loan, after giving effect thereto the aggregate principal amount of all outstanding Revolving Credit Loans shall not exceed the aggregate Revolving Credit Commitments; and
- (c) the request by the Company for any Loan pursuant hereto shall be and constitute a warranty to the effect set forth in (a) and (b), above and that the Compliance Certificate most recently delivered to the Banks is materially correct.



**SECTION 6. REPRESENTATIONS AND WARRANTIES.**

As of the date of this Agreement and upon delivery of each Quarterly Compliance Certificate, the Company represents and warrants to the Agent and the Banks as to itself and, where the following representations and warranties apply to Subsidiaries, as to each of its Subsidiaries, as follows:

Section 6.1. **Organization and Qualification.** The Company is a corporation duly organized and existing and in good standing under the laws of the State of Kansas, has full and adequate corporate power to carry on its business as now conducted, and is duly licensed or qualified in all jurisdictions wherein the nature of its activities requires such licensing or qualification and in which the failure to be so licensed or qualified would have a material adverse effect upon the business, operations or financial condition of the Company and its Subsidiaries taken as a whole, a "Material Adverse Effect."

Section 6.2. **Subsidiaries.** Each Subsidiary is duly organized and existing under the laws of the jurisdiction of its organization, has full and adequate corporate power to carry on its business as now conducted and is duly licensed or qualified in all jurisdictions wherein the nature of its business requires such licensing or qualification and the failure to be so licensed or qualified would have a Material Adverse Effect. The only Subsidiaries of the Company are listed on Exhibit C hereto.

Section 6.3. **Financial Reports.** The Company has heretofore delivered to the Banks a copy of the Audit Report as of December 31, 2004 of the Company and its Subsidiaries (the "Audit Report"). The financial statements contained in such Audit Report have been prepared in accordance with GAAP on a basis consistent, except as otherwise noted therein, with that of the previous fiscal year and fairly present, in all material respects, the financial position of the Company and its Subsidiaries as of the date thereof, and the results of its operations for the period covered thereby. As of December 31, 2004, the Company and its Subsidiaries had no material contingent liabilities other than as indicated on said financial statements (including the notes thereto).

Section 6.4. **No Material Adverse Change.** Since December 31, 2004, there has been no material adverse change in the business, operations or financial condition of the Company and its Subsidiaries taken as a whole that has not been disclosed in writing to the Banks.

Section 6.5. **Litigation; Tax Returns; Approvals.** There is no litigation nor governmental proceeding pending, nor to the knowledge of the Company threatened, against the Company or any Subsidiary which could reasonably be expected to result in a Material Adverse Effect. All federal and state income tax returns and all other material tax returns for the Company required to be filed have been filed on a timely basis and all amounts required to be paid as shown by said returns have been paid, except such amounts, if any, as are being contested in good faith and by appropriate proceedings. There are no pending or, to the best of the Company's knowledge, threatened objections to or controversies in respect of the income tax returns of the Company for any fiscal year which could reasonably be expected to have a Material Adverse Effect. Except as have already been obtained, no authorization, consent, license, exemption or filing or registration with any court or governmental department, agency or instrumentality, is necessary for the valid execution, delivery or performance by the Company of the Loan Documents.

Section 6.6. **Regulation U.** Neither the Company nor any Subsidiary is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) and no part of the proceeds of any Loan made hereunder will be used to purchase or carry any margin stock or to extend credit to others for such a purpose.

Section 6.7. **No Default.** As of the date of this Agreement, the Company is materially in compliance with all of the terms and conditions of this Agreement, and no Event of Default exists under this Agreement.

Section 6.8. **ERISA.** With respect to each of the Plans, the Company and its Subsidiaries are in compliance with ERISA to the extent applicable to them, other than such noncompliance that would not

reasonably be expected to result in a Material Adverse Effect and have received no notice to the contrary from the PBGC or any other governmental entity agency.

Section 6.9. Full Disclosure. The written statements and information furnished to the Agent and the Banks in connection with the negotiation of this Agreement and the other Loan Documents and the commitments by the Banks to provide the financing contemplated hereby do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading, the Agent and the Banks acknowledging that as to any projections furnished to the Agent and the Banks, the Company only represents that the same were prepared on the basis of information and estimates the Company believed to be reasonable.

Section 6.10. Corporate Authority and Validity of Obligations. The Company has full corporate power and authority to enter into this Agreement and the other Loan Documents, to make the Borrowings herein provided for, to issue its Notes in evidence thereof, and to perform all of its obligations hereunder and under the other Loan Documents. The Loan Documents delivered by the Company have been duly authorized, executed and delivered by the Company and constitute valid and binding obligations of the Company enforceable in accordance with their terms except as enforceability may be limited by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and general principles of equity. This Agreement and the other Loan Documents do not, nor does the performance or observance by the Company of any of the matters and things herein or therein provided for, (a) contravene or constitute a default under (i) any provision of law or any judgment, injunction, order or decree binding upon the Company or any provision of the charter, articles of incorporation or by-laws of the Company or (ii) any material covenant, indenture or agreement of or affecting the Company or any of its Properties, except in the case of this clause (ii) for any such contravention or default which could not be reasonably expected to result in a Material Adverse Effect or (b) result in the creation or imposition of any lien, security interest or other encumbrance on any Property of the Company.

Section 6.11. No Default Under Other Agreements. Neither the Company nor any Subsidiary is in default with respect to any note, indenture, loan agreement, mortgage, lease, deed or other agreement to which it is a party or by which it or its Property is bound, which default might adversely affect the repayment of the Indebtedness, obligations and liabilities under the Loan Documents, or any Bank's or the Agent's rights under the Loan Documents or which could reasonably be expected to have a Material Adverse Effect.

Section 6.12. Status Under Certain Laws. Neither the Company nor any of its Subsidiaries is an "investment company" or a person directly or indirectly controlled by or acting on behalf of an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

Section 6.13. Compliance with Laws. The Company and its Subsidiaries each are in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to their Properties or business operations, including, without limitation, the Occupational Safety and Health Act of 1970, the Americans with Disabilities Act of 1990, and Environmental Laws, non-compliance with which could reasonably be expected to have a Material Adverse Effect. Neither the Company nor any Subsidiary has received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local Environmental Laws, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could reasonably be expected to have a Material Adverse Effect.

Section 6.14. Ownership of Property. The Company and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of their respective businesses except for such defects in title or interests as could not, individually or in the aggregate, have a Material Adverse Effect.

Section 6.15. Solvency. The Company and each of its Subsidiaries existing as of the date of this Agreement: (a) own, on a consolidated basis, assets, the fair saleable value of which are (i) greater than the

total amount of their liabilities (including contingent liabilities) and (ii) greater than the amount that will be required to pay their liabilities when they become due; (b) have, on a consolidated basis, capital that is not unreasonably small in relation to their respective business as presently conducted or after giving effect to any contemplated transaction; and (c) do not intend to incur and do not believe that they will incur debts beyond their ability to pay such debts as they become due.

Section 6.16. *Pari Passu*. All Loans of the Company incurred under or pursuant to this Agreement shall rank pari passu with all other senior unsecured Indebtedness of the Company.

#### SECTION 7. COVENANTS.

It is understood and agreed that so long as any credit is in use or available under this Agreement or any amount remains unpaid on any Note except to the extent compliance in any case or cases is waived in writing by the Required Banks:

Section 7.1. *Maintenance of Property*. The Company will, and will cause each Subsidiary to, keep and maintain all of its Properties necessary or useful in its business in good condition, and make all necessary renewals, replacements, additions and improvements thereto, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 7.2. *Taxes*. The Company will, and will cause each Subsidiary to, duly pay and discharge all material taxes, rates, assessments, fees and governmental charges upon or against the Company or any Subsidiary or against its Properties in each case before the same becomes delinquent and before penalties accrue thereon unless and to the extent that the same is being contested in good faith and by appropriate proceedings.

Section 7.3. *Maintenance of Insurance*. The Company will, and will cause each Subsidiary to, maintain insurance with insurers recognized as financially sound and reputable by prudent business persons in such forms and amounts and against such risks as is usually carried by companies engaged in similar business and owning similar Properties in the same general areas in which the Company or such Subsidiary operates. The Company shall provide the Agent with copies of all insurance policies maintained by it upon the Agent's request.

Section 7.4. *Financial Reports*. The Company will, and will cause each Subsidiary to, maintain a system of accounting in accordance with sound accounting practice and will furnish promptly, and in any event within thirty (30) days after the receipt of a request, to each of the Banks and their duly authorized representatives such information respecting the business and financial condition of the Company and its Subsidiaries as may be reasonably requested by the Agent or any Bank and, without any request, will furnish to each Bank:

(a) as soon as available, and in any event within forty-five (45) days after the close of each fiscal quarter other than the fourth fiscal quarter of the Company commencing with the fiscal quarter ending June 30, 2005, a copy of the unaudited consolidated balance sheets, income statements and cash flow statements for the Company and its Subsidiaries for such quarterly period and the fiscal year to date and for the corresponding periods of the preceding fiscal year, all in reasonable detail, prepared by the Company (it being understood that delivery to the Agent of the Company's quarterly report on Form 10-Q filed with the Securities and Exchange Commission shall meet the requirements of this Section 7.4(a)) and certified by the chief financial officer of the Company;

(b) as soon as available, and in any event within ninety (90) days after the close of each fiscal year of the Company, a copy of the audit report (including an unqualified

opinion of the Company's auditors) for such year and accompanying financial statements, including consolidated balance sheets, statements of stockholder equity, statements of income and statements of cash flow for the Company and its Subsidiaries showing in comparative form the figures for the previous fiscal year of the Company and its Subsidiaries, all in reasonable detail, prepared and certified by PricewaterhouseCoopers LLP or other independent certified public accountants of nationally recognized standing selected by the Company and reasonably satisfactory to the Required Banks (it being understood that delivery to the Agent of the Company's annual report on Form 10-K filed with the Securities and Exchange Commission shall meet the requirements of this Section 7.4(b)); and

(c) no later than forty-five (45) days after the close of each fiscal quarter, commencing with the fiscal quarter ending June 30, 2005, a Compliance Certificate in the form of Exhibit E attached hereto (the "Quarterly Compliance Certificate") prepared and signed by the chief financial officer of the Company.

If any of the information referred to in this Section 7.4 is sent to the Agent, but for any reason any Bank does not also receive it, the Agent will provide it to such Bank promptly upon request.

**Section 7.5. Inspection.** Upon reasonable notice and during normal business hours, the Company shall, and shall cause each Subsidiary to, permit each of the Banks, by their representatives and agents, to inspect any of the Properties, corporate books and financial records of the Company and each Subsidiary, to examine and make copies of the books of accounts and other financial records of the Company and each Subsidiary and to discuss the affairs, finances and accounts of the Company and each Subsidiary with, and to be advised as to the same by, its officers and employees at such times and intervals as each Bank may reasonably request. The Company shall reimburse the Agent for any reasonable costs and expenses incurred by it in connection with any such inspections.

**Section 7.6. Consolidation, Merger and Sale of Assets.** The Company will not, and will not permit any Subsidiary with assets valued at greater than Fifteen Million Dollars (\$15,000,000) to, consolidate with or merge into any Person, or permit any other Person to merge into it or sell or otherwise dispose of all or substantially all of their respective Property, except that any Subsidiary may merge with and into any other Subsidiary and except that any Person engaged in a regulated business may be merged into the Company or any Subsidiary. The Company shall give written notice to the Banks of any such merger contemporaneously with its consummation.

**Section 7.7. Liens.** The Company will not and will not permit any Subsidiary with assets valued at greater than Twenty-Five Million Dollars (\$25,000,000) to, pledge, mortgage or otherwise encumber or subject to or permit to exist upon or be subjected to any lien, charge or security interest of any kind (including any conditional sale or other title retention agreement and any lease in the nature thereof), on any of its Properties of any kind or character at any time owned by the Company or any Subsidiary (collectively "Liens"), other than:

(a) Liens, pledges or deposits for workers' compensation, unemployment insurance, old age benefits or social security obligations, taxes, assessments, statutory obligations or other similar charges, good faith deposits made in connection with tenders, contracts or leases to which the Company or a Subsidiary is a party or other deposits

required to be made in the ordinary course of business, provided in each case the obligation secured is not overdue or, if overdue, is being contested in good faith by appropriate proceedings and adequate reserves have been provided therefor in accordance with GAAP and that the obligation is not for borrowed money, customer advances, trade payables, or obligations to agricultural producers;

(b) Liens securing an appeal or stay or discharge in the course of any legal proceedings, provided that the aggregate amount of liabilities of the Company or a Subsidiary so secured by a pledge of Property permitted under this subsection (b) including interest and penalties thereon, if any, shall not be in excess of \$10,000,000 at any one time outstanding;

(c) Liens not otherwise permitted hereunder in an amount not in excess of \$25,000,000 at any time the same is to be determined;

(d) Liens (and any replacements thereof without increase) existing on the date hereof and disclosed in Exhibit F hereto;

(e) Liens securing Indebtedness incurred to finance, or which represents, the purchase price of Property, provided (a) such Liens attach only to the Property financed with such Indebtedness and (b) the amount of such secured Indebtedness does not exceed the purchase price of such Property plus any reasonable related fees and costs;

(f) the filing of financing statements solely as a precautionary measure in connection with operating leases or other Liens permitted under this Agreement;

(g) Liens with respect to judgments which do not constitute Events of Default pursuant to this Agreement;

(h) any interest of a lessor in any Property subject to any lease entered into by the Company or a Subsidiary in an amount not in excess of \$7,500,000 at any time the same is to be determined;

(i) Liens securing Indebtedness under that certain Indenture of Mortgage and Deed of Trust, dated as of September 1, 1944, as and to be amended and supplemented, among the Company, The Bank of New York and UMB Bank & Trust, N.A. (the "Mortgage");

(j) any Lien on Property of any Person existing at the time such Person is merged or consolidated with or into the Company or a Subsidiary and not created in contemplation of such event;

(k) any Lien existing on any Property prior to the acquisition thereof by the Company or a Subsidiary and not created in contemplation of such acquisition;

(l) Liens incurred in connection with or related to the construction or purchase of utility Property;

(m) the replacement, extension or renewal of any Lien permitted by clauses (e), (j) or (k) above upon or in the same Property theretofore subject thereto or the replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor) of the Indebtedness secured thereby;

(n) Liens securing the claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other like persons for labor, materials, supplies or rentals incurred in the ordinary course of the Company's or a Subsidiary's business, but only if the payment thereof is not at the time past due or is being contested in good faith and by appropriate proceedings with adequate reserves maintained in accordance with GAAP; and

(o) reservations, exceptions, easements, rights of way, and other similar encumbrances affecting real property, provided that they do not individually or in the aggregate detract from the marketability of said properties or materially interfere with their use in the ordinary course of the Company's or a Subsidiary's business as permitted under the Mortgage.

Section 7.8. Notice of Suit or Material Adverse Change in Business or Default. The Company shall, as soon as possible, and in any event within fifteen (15) days after it learns of the following, give written notice to the Banks of (a) any proceeding(s) being instituted or threatened to be instituted by or against the Company or any Subsidiary in any federal, state or local court or before any commission or other regulatory body (federal, state or local) which could reasonably be expected to have a Material Adverse Effect and (b) the occurrence of any Event of Default.

Section 7.9. ERISA. The Company will, and will cause each Subsidiary to, promptly pay and discharge all obligations and liabilities arising under ERISA of a character which if unpaid or unperformed is likely to result in the imposition of a Lien against any of its Property, and will promptly notify the Agent of (a) the occurrence of any reportable event (as defined in ERISA) for which the notice requirement has not been waived by the PBGC and which is reasonably likely to result in the termination by the PBGC of any Plan, (b) receipt of any notice from PBGC of its intention to seek termination of any such Plan or appointment of a trustee therefor, and (c) its intention to terminate or withdraw from any Plan, other than a "standard termination" meeting the requirements of Section 4041(b) of ERISA. The Company will not, and will not permit any Subsidiary to, terminate any such Plan or withdraw therefrom unless it shall be in

compliance with all of the terms and conditions of this Agreement after giving effect to any liability to PBGC resulting from such termination or withdrawal.

Section 7.10. **Use of Proceeds.** The Company shall use the proceeds of the Loans hereunder for working capital, general corporate purposes and to back up the Company's use of commercial paper.

Section 7.11. **Compliance with Laws.** The Company will, and will cause each of its Subsidiaries to, comply in all material respects with all applicable laws, rules, regulations and orders, including Environmental Laws, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 7.12. **Fiscal Year.** The Company shall not change its fiscal year.

Section 7.13. **Maintenance of Existence.** The Company shall maintain its corporate existence except for mergers permitted by Section 7.6 hereof.

Section 7.14. **Maximum Total Indebtedness to Total Capitalization Ratio.** The Company will maintain as of the last day of each fiscal quarter of the Company a ratio of Total Indebtedness to Total Capitalization of not more than 0.625 to 1. For purposes of this Section 7.14, "Total Indebtedness" shall mean all Indebtedness of the Company and its Subsidiaries on a consolidated basis but shall exclude all accounts payable and expenses incurred in the ordinary course of the Company's and its respective Subsidiaries' businesses and also shall exclude all obligations of the Company and its Subsidiaries related to the issuance in 2001 of Trust Preferred Securities by Empire District Electric Trust I; and "Total Capitalization" shall mean the sum of Total Indebtedness and stockholders' equity, preferred and preference stock and other securities included on the consolidated balance sheet of the Company and its Subsidiaries including the Junior Subordinated Debenture Securities issued in 2001 by the Company.

Section 7.15. **Minimum Interest Coverage Ratio.** The Company will maintain an Interest Coverage Ratio of not less than 2.0 to 1 as of the last day of each fiscal quarter of the Company.

Section 7.16. **Acquisitions.** During the term of this Agreement, the Company will not, and will not permit any Subsidiary to, (x) acquire any assets or equity interests of any other Person or Persons engaged predominantly in an unregulated business activity unless the aggregate consideration to be paid by the Company and its Subsidiaries in connection with any such acquisition or acquisitions is, in the aggregate, less than Eighty Million Dollars (\$80,000,000.00) or (y) acquire all or part of a regulated business; provided that in the case of this clause (y) any such acquisition shall be permitted with the consent of the Required Banks (not to be unreasonably withheld) if the Company is in compliance with all financial covenants of this Agreement at the time of such proposed acquisition and will be in compliance with such financial covenants following consummation of such acquisition as evidenced by projected financial information covering a minimum of an 18 month period after the acquisition. Such projections will be delivered to the Banks within a reasonable time prior to entering into any written commitments for such acquisition.

Section 7.17. **Patriot Act.** The Agent hereby notifies the Company that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), and the Agent's policies and practices, the Agent is required to obtain, verify and record certain information and documentation that identifies the Company, which information includes the name and address of the Company and such other information that will allow the Agent to identify the Company in accordance with the Act.

The Company shall (a) ensure, and cause each Subsidiary to ensure, that no Person who owns a controlling interest in or otherwise controls the Company or any Subsidiary is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loans to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause each Subsidiary to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

**SECTION 8. EVENTS OF DEFAULT AND REMEDIES.**

**Section 8.1. Events of Default.** Any one or more of the following shall constitute an Event of Default:

(a) (i) Default in the payment when due of any principal of any Note whether at the stated maturity thereof or at any other time provided in this Agreement, or (ii) default in the payment when due of any interest on any Note or any fee or other amount payable pursuant to this Agreement which default shall continue unremedied for one (1) Business Day.

(b) Default in the observance or performance of any covenant set forth in Sections 7.3, 7.5, 7.6, 7.7, 7.8, 7.10, 7.13, 7.14 and 7.15 hereof;

(c) Default in the observance or performance of the covenants set forth in Section 7.4 and such default shall continue for ten (10) days after the earlier of (i) the date on which such default first became known to a responsible officer of the Company or (ii) written notice thereof to the Company by the Agent;

(d) Default in the observance or performance of any other covenant, condition, agreement or provision hereof or any of the other Loan Documents and such default shall continue for thirty (30) days after the earlier of (i) the date on which such default first became known to a responsible officer of the Company or (ii) written notice thereof to the Company by the Agent;

(e) Default shall occur under any evidence of Indebtedness in a principal amount exceeding \$10,000,000 issued, assumed or guaranteed by the Company or any Subsidiary, or under any mortgage, agreement or other similar instrument under which the same may be issued or secured and such default shall continue for a period of time sufficient to permit the acceleration of maturity of any Indebtedness evidenced thereby or outstanding or secured thereunder;

(f) Any representation or warranty made by the Company herein or in any Loan Document or in any statement or certificate furnished by it pursuant hereto or thereto, proves untrue in any material respect as of the date made or deemed made pursuant to the terms hereof;

(g) Any judgment or judgments, writ or writs, or warrant or warrants of attachment, or any similar process or processes in an aggregate amount in excess of \$10,000,000 which is not covered by insurance issued by an insurer that has acknowledged its liability thereon shall be entered or filed against the Company, or any Subsidiary or against any of their respective Property or assets and remain unpaid,



unbonded, unstayed and undischarged for a period of sixty (60) days from the date of its entry;

(h) (i) Any reportable event (as defined in Section 4043 of ERISA and for which the notice requirement has not been waived pursuant to any applicable regulations promulgated thereunder) which results in the PBGC instituting proceedings to terminate any Plan of the Company or (ii) the appointment by the appropriate United States District Court of a trustee to administer or liquidate any such Plan shall have been made pursuant to Title IV of ERISA and continues for thirty (30) days after written notice to such effect shall have been given to the Company by the Agent or (iii) any such Plan shall be terminated other than in a "standard termination" meeting the requirements of Section 4041(b) of ERISA;

(i) The Company shall (i) have entered involuntarily against it an order for relief under the Bankruptcy Code of 1978, as amended, (ii) admit in writing its inability to pay or not pay, its debts generally as they become due (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, conservator, liquidator or similar official for it or any substantial part of its Property or, (v) file a petition seeking relief or institute any proceeding seeking to have entered against it an order for relief under the Bankruptcy Code of 1978, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors;

(j) (1) A custodian, receiver, trustee, conservator, liquidator or similar official shall be appointed for the Company or any substantial part of its Property, (2) a final order of condemnation shall be entered in a court of appropriate jurisdiction against any substantial amount of the Company's Property, the loss of the use of which would have a Materially Adverse Effect, or (3) a proceeding described in Section 8.1(i)(iv) shall be instituted against the Company and such appointment continues undischarged or any such proceeding continues undismissed or unstayed for a period of sixty (60) days;

(k) A Change of Control shall occur; or

(l) The revocation or other loss after all available appeals have been taken or administrative proceedings have been completed of any permit or other governmental authority the revocation or loss of which would have a Materially Adverse Effect.

Section 8.2. Remedies for Non-Bankruptcy Defaults. When any Event of Default, other than an Event of Default described in subsections (i) and (j) of Section 8.1 hereof, has occurred and is continuing, the Agent, if directed by the Required Banks, shall give notice to the Company and take any or all of the

following actions: (a) terminate the remaining Commitments hereunder on the date (which may be the date thereof) stated in such notice, (b) declare the principal of and the accrued interest on the Notes to be forthwith due and payable and thereupon the Notes including both principal and interest, shall be and become immediately due and payable without further demand, presentment, protest or notice of any kind, and (c) take any action or exercise any remedy under any of the Loan Documents or exercise any other action, right, power or remedy permitted by law. Any Bank may, without prior notice to the Company, exercise the right of set off with regard to any deposit accounts or other accounts or investments maintained by the Company with such Bank upon the occurrence and continuation of an Event of Default if notice of such Event of Default has been given by the Agent to the Company upon the direction of the Required Banks.

Section 8.3. Remedies for Bankruptcy Defaults. When any Event of Default described in subsections (h) or (i) of Section 8.1 hereof has occurred and is continuing, then the Notes shall immediately become due and payable without presentment, demand, protest or notice of any kind, and the obligation of the Banks to extend further credit pursuant to any of the terms hereof shall immediately terminate.

#### SECTION 9. CHANGE IN CIRCUMSTANCES REGARDING LIBOR PORTIONS.

Section 9.1. Change of Law. Notwithstanding any other provisions of this Agreement or any Note to the contrary, if with respect to LIBOR Portions, any Bank shall determine in good faith that any change in applicable law or regulation or in the interpretation thereof at any time after the Closing Date makes it unlawful for such Bank to create or continue to maintain any LIBOR Portion or to give effect to its obligations to create, continue or convert LIBOR Portions as contemplated hereby, such Bank shall promptly give notice thereof to the Company and to the Agent to such effect, and such Bank's obligation to create, continue or convert any such affected LIBOR Portions under this Agreement shall terminate until it is no longer unlawful for such Bank to create or maintain such affected Portion. The Company shall prepay the outstanding principal amount of any such affected LIBOR Portion made to it, together with all interest accrued thereon and all other amounts due and payable to such Bank under Section 9.4 of this Agreement, on the earlier of the last day of the Interest Period applicable thereto and the first day on which it is illegal for such Bank to have such LIBOR Portion outstanding; provided, however, the Company may convert the affected LIBOR Portions into an ABR Portion, subject to all of the terms and conditions of this Agreement.

Section 9.2. Unavailability of Deposits or Inability to Ascertain the Adjusted LIBOR Rate. Notwithstanding any other provision of this Agreement or any Note to the contrary, if prior to the commencement of any Interest Period any Bank shall determine (a) that deposits in the amount of any LIBOR Portion scheduled to be outstanding are not available to them in the relevant market or (b) by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Adjusted LIBOR Rate, then such Banks shall give telephonic or telex notice thereof to the Company, the Agent and the other Banks (such notice to be confirmed in writing), and the obligation of the Banks to create, continue or convert any such LIBOR Portion in such amount and for such Interest Period shall terminate until deposits in such amount and for the Interest Period selected by the Company shall again be readily available in the relevant market and adequate and reasonable means exist for ascertaining the Adjusted LIBOR Rate. Upon the giving of such notice, the Company shall elect to either (i) pay or prepay, as the case may be, such affected Portion or (ii) convert the affected LIBOR Portion into an ABR Portion, subject to all terms and conditions of this Agreement.

Section 9.3. Taxes and Increased Costs. (a) With respect to the LIBOR Portions, if any Bank shall determine in good faith that any change in any applicable law, treaty, regulation or guideline (including, without limitation, Regulation D of the Board of Governors of the Federal Reserve System) or any new law, treaty, regulation or guideline, or any interpretation of any of the foregoing by any governmental authority charged with the administration thereof or any central bank or other fiscal, monetary or other

authority having jurisdiction over such Bank or the LIBOR Portions contemplated by this Agreement (whether or not having the force of law) ("Change in Law") shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirements against assets held by, or deposits in or for the account of, or loans by, or any other acquisition of funds or disbursements by, such Bank (other than reserves included in the determination of the Adjusted LIBOR Rate);

(ii) subject such Bank, any LIBOR Portion or any Note to any tax (including, without limitation, any United States interest equalization tax or similar tax however named applicable to the acquisition or holding of debt obligations and any interest or penalties with respect thereto), duty, charge, stamp tax, fee, deduction or withholding in respect of this Agreement, any LIBOR Portion or any Note except such taxes (x) as may be measured by the overall net income of such Bank and imposed by the jurisdiction, or any political subdivision or taxing authority thereof, in which such Bank's principal executive office is located, and (y) any U.S. Taxes (as defined in Section 11.18(c) hereof) that are deductible or otherwise directly payable by the Company, which shall be governed exclusively by Section 11.18 hereof;

(iii) change the basis of taxation of payments of principal and interest due from the Company to such Bank hereunder or under any Note (other than by a change in taxation of the overall net income of such Bank); or

(iv) impose on such Bank any penalty with respect to the foregoing or any other condition regarding this Agreement, any LIBOR Portion or any Note;

and such Bank shall determine that the result of any of the foregoing is to increase the cost (whether by incurring a cost or adding to a cost) to such Bank of making or maintaining any LIBOR Portion hereunder or to reduce the amount of principal or interest received by such Bank, in either case by an amount determined by such Bank to be material, then the Company shall pay to such Bank from time to time as specified by such Bank such additional amounts as such Bank shall reasonably determine are sufficient to compensate and indemnify it for such increased cost or reduced amount. If any Bank makes such a claim for compensation, it shall provide to the Company a certificate setting forth such increased cost or reduced amount as a result of any event mentioned herein specifying such Change in Law, and such certificate shall be conclusive and binding on the Company as to the amount thereof, absent manifest error.

(b) In the event any Bank requires payment under Section 4.8 or 11.18 hereof, delivers a certificate pursuant to subsection (a) above or gives notice under Section 9.1 that it will not fund or maintain LIBOR Portions, the Company may require, at its expense, such Bank to assign (in accordance with Section 11.17 hereof) all its interests, rights and obligations hereunder (including all of its Commitment and the Loans at the time owing to it, and the Notes held by it), to one or more financial institutions specified by the Company (each a "Substitute Bank"), provided that (i) such assignment shall not conflict with or violate any law, rule or regulation or order of any court or other governmental agency or instrumentality, (ii) the Agent shall assist the Company in finding a Substitute Bank that is reasonably acceptable to the Company and the Agent and (iii) the Company shall have paid to the assigning Bank all monies then due to it under the Loan Documents (including pursuant to this Section 9.3 and Sections 4.8 and 11.18) with the Substitute Bank purchasing all accrued but not yet due indebtedness, obligations and liabilities of the Company owed such assigning Bank.

**Section 9.4. Funding Indemnity.** (a) In the event any Bank shall incur any loss, cost, expense or premium (including, without limitation, any loss, cost, expense or premium incurred by reason of the liquidation or re-employment of deposits or other funds acquired by such Bank to fund or maintain any LIBOR Portion or the relending or reinvesting of such deposits or amounts paid or prepaid to such Bank) as a result of:

(i) any conversion, payment or prepayment of a LIBOR Portion on a date other than the last day of the then-applicable Interest Period; or

(ii) any failure by the Company to borrow, continue or convert any LIBOR Portion on the date specified in the notice given pursuant to Sections 3.3 or 3.6 hereof, then, upon the demand of such Bank, the Company shall pay to such Bank such amount as will reimburse such Bank for such loss, cost or expense.

(b) If any Bank makes a claim for compensation under this Section 9.4, it shall provide to the Company a certificate setting forth the amount of such loss, cost or expense in a reasonable detail and such certificate shall be conclusive and binding on the Company as to the amount thereof, absent manifest error.

**Section 9.5. Discretion of Bank as to Manner of Funding.** Notwithstanding any provision of this Agreement to the contrary, each Bank shall be entitled to fund and maintain its funding of all or any part of its Loans in any manner it sees fit, it being understood however, that for the purposes of this Agreement, all determinations hereunder shall be made as if the Banks had actually funded and maintained each LIBOR Portion during each Interest Period for such LIBOR Portion through the purchase of deposits in the relevant interbank market having a maturity corresponding to such Interest Period and bearing an interest rate equal to the Adjusted LIBOR Rate, for such Interest Period.

#### **SECTION 10. THE ADMINISTRATIVE AGENT.**

**Section 10.1. Appointment and Powers.** UMB is hereby appointed by the Banks as Administrative Agent (the "Agent") under the Loan Documents, and each of the Banks irrevocably authorizes the Agent to act as the agent of such Bank. The Agent agrees to so act as such upon the express conditions contained in this Agreement.

**Section 10.2. Powers.** The Agent shall have and may exercise such powers hereunder as are specifically delegated to the Agent by the terms of the Loan Documents, together with such powers as are incidental thereto. The Agent shall have no implied duties to the Banks nor any obligation to the Banks to take any action under the Loan Documents except any action specifically provided by the Loan Documents to be taken by the Agent, and in no event shall the Agent have any fiduciary responsibilities to any Bank.

**Section 10.3. General Immunity.** Neither the Agent nor any of its directors, officers, agents, representatives, consultants, advisors, counsel or employees shall be liable to the Banks or any Bank for any action taken or omitted to be taken by it or them under the Loan Documents or in connection therewith except for its or their own gross negligence or willful misconduct.

**Section 10.4. No Responsibility for Loans, Recitals, etc.** The Agent shall not (a) be responsible to the Banks for any recitals, reports, statements, warranties or representations made by the Company contained in the Loan Documents or furnished pursuant thereto, (b) be responsible for any Loans of the other Banks hereunder, or (c) be bound to ascertain or inquire as to the performance or observance of any of the terms of the Loan Documents. In addition, neither the Agent nor its counsel shall be responsible to the Banks for the enforceability or validity of any of the Loan Documents.

**Section 10.5. Right to Indemnity.** The Banks hereby indemnify the Agent for any actions taken in accordance with this Section 10, and the Agent shall be fully justified in failing or refusing to take any

action hereunder unless it shall first be indemnified to its satisfaction by the Banks pro rata in accordance with their respective Exposures against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action, other than any liability which may arise out of the Agent's gross negligence or willful misconduct.

Section 10.6. **Action Upon Instructions of Required Banks.** The Agent agrees, upon the written request of the Required Banks, to take any action of the type specified in the Loan Documents as being within the Agent's rights, duties, powers or discretion. The Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder in accordance with written instructions signed by the Required Banks (or all of the Banks, if the Loan Documents specifically require the consent of all of the Banks), and such instructions and any action taken or failure to act pursuant thereto shall be binding on all of the Banks and on all holders of the Notes. In the absence of a request by the Required Banks, the Agent shall have authority, in its sole discretion, to take or not to take any action, unless the Loan Documents specifically require the consent of the Required Banks or all of the Banks.

Section 10.7. **Employment of Agents and Counsel.** The Agent may execute any of its duties as Agent hereunder by or through employees, agents, and attorneys-in-fact and shall not be answerable to the Banks, except as to money or securities actually received by it or its authorized agents, for the default or misconduct of any such agents or attorneys-in-fact selected by it in good faith and with reasonable care. The Agent shall be entitled to act upon the advice and opinion of legal counsel concerning all matters pertaining to the duties of the agencies hereby created.

Section 10.8. **Reliance on Documents; Counsel.** The Agent shall be entitled to rely upon any Note, notice, consent, certificate, affidavit, letter, telegram, statement, paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, and, in respect to legal matters, upon the opinion of legal counsel selected by the Agent.

Section 10.9. **May Treat Payee as Owner.** The Agent may deem and treat the payee of any Note as the owner thereof for all purposes hereof unless and until a written notice of the assignment or transfer thereof shall have been filed pursuant to Section 11.20 hereof with the Agent. Any request, authority or consent of any person, firm or corporation who at the time of making such request or giving such authority or consent is the holder of any such Note shall be conclusive and binding on any subsequent holder, transferee or assignee of such Note or of any Note issued in exchange therefor.

Section 10.10. **Agent's Reimbursement.** Each Bank agrees to reimburse the Agent pro rata in accordance with its Exposure for any reasonable out-of-pocket expenses (including fees and charges for record inspections) not reimbursed by the Company (a) for which the Agent is entitled to reimbursement by the Company under the Loan Documents and (b) for any other reasonable expenses incurred by the Agent on behalf of the Banks, in connection with the preparation, execution, delivery, administration and enforcement of the Loan Documents, provided, however, that no Bank shall be liable for any of the foregoing to the extent any of the foregoing arise from the gross negligence or willful misconduct of the Agent.

Section 10.11. **Rights as a Bank.** With respect to its commitment, Loans made by it and the Notes issued to it, the Agent shall have the same rights and powers hereunder as any Bank and may exercise the same as though it were not the Agent, and the term "Bank" or "Banks" shall, unless the context otherwise indicates, include the Agent in its individual capacity. Any of the Banks, including the Agent as if it were not the Agent for the Banks, may accept deposits from, lend money to, and generally engage in any kind of banking or trust business with the Company.

Section 10.12. **Bank Credit Decision.** Each Bank acknowledges that it has, independently and without reliance upon the Agent, the Syndication Agent, or any other Bank and based on the financial statements referred to in Section 6.3 and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into the Loan Documents. Each Bank also acknowledges that it will, independently and without reliance upon the Agent or any other Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking

or not taking action under the Loan Documents. The Agent and the Syndication Agent shall not have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Banks as such except as otherwise expressly stated herein. Without limiting the foregoing, the Agent and the Syndication Agent shall not have or be deemed to have any fiduciary duty to or fiduciary relationship with any Bank. In addition to the agreement set forth in this Section 10.12, each of the Banks agrees that it has not relied on, and will not rely on, the Agent or the Syndication Agent or any other Bank, in deciding to take or not to take any action hereunder.

Section 10.13. Resignation of Agent. Subject to the appointment of a successor Agent, the Agent may resign as Agent for the Banks under this Agreement and the other Loan Documents at any time upon thirty (30) days' notice in writing to the Banks. Such resignation shall take effect upon appointment of such successor. The Required Banks, with the consent of the Company (unless an Event of Default shall have occurred and be continuing, in which event the Company's consent shall not be required) shall have the right to appoint a successor Agent who shall be entitled to all of the rights of, and vested with the same powers as, the original Agent under the Loan Documents. In the event a successor Agent shall not have been appointed within the sixty (60) day period following the given of notice by the Agent, the Agent may appoint its own successor. Resignation by the Agent shall not affect or impair the rights of the Agent under Sections 10.5 and 10.10 hereof with respect to all matters preceding such resignation. Any successor Agent must be a national banking association or a bank chartered in any State of the United States, in each case having capital and surplus of not less than \$500,000,000, or one of the Banks.

Section 10.14. Duration of Agency. The agency established by Section 10.1 hereof shall continue, and Sections 10.1 through and including this Section 10.14 shall remain in full force and effect, until the Notes and all other amounts due hereunder and thereunder shall have been paid in full and the Banks' commitments to extend credit to or for the benefit of the Company shall have terminated or expired.

#### SECTION 11. MISCELLANEOUS.

Section 11.1. Amendments and Waivers. Any term, covenant, agreement or condition of this Agreement and the other Loan Documents may be amended only by a written amendment executed by the Company, the Required Banks and, if the rights or duties of the Agent are affected thereby, the Agent, or compliance therewith only may be waived (either generally or in a particular instance and either retroactively or prospectively), if the Company shall have obtained the consent in writing of the Required Banks and, if the rights or duties of the Agent are affected thereby, the Agent, provided, however, that

(a) without the consent in writing of the holders of all outstanding Notes, or all Banks if no Notes are outstanding, no such amendment or waiver shall (i) change the amount or postpone the date of payment of any scheduled payment or required prepayment of principal of the Notes at a time that the Company would not be able to obtain a Loan or reduce the rate or extend the time of payment of interest on the Notes, or reduce the amount of principal thereof, or modify any of the provisions of the Notes with respect to the payment or prepayment thereof, (ii) amend the definition of Required Banks, (iii) alter, modify or amend the provisions of this Section 11.1, (iv) change the amount or term of any of the Banks' Revolving Credit Commitments or the fees required under Section 4 hereof or increase the aggregate amount of all of the Banks' Commitments, (v) alter, modify or amend any Bank's right hereunder to consent to any action, make any request or give any notice, or (vi) alter, modify or amend the provisions of Section 5 of this Agreement; and

(b) without the consent of the Agent, no such amendment or waiver shall affect the rights of the Agent under Section 10 hereof, and

(c) except to the extent provided in Sections 11.16 and 11.17, no such amendment or waiver shall amend Section 2.2 hereof without the consent of UMB;

Any such amendment or waiver shall apply equally to all Banks and the holders of the Notes and shall be binding upon them, upon each future holder of any Note and upon the Company, whether or not such Note shall have been marked to indicate such amendment or waiver. No such amendment or waiver shall extend to or affect any obligation not expressly amended or waived.

Section 11.2. **Waiver of Rights.** No delay or failure on the part of the Agent or any Bank or on the part of the holder or holders of any Note in the exercise of any power or right shall operate as a waiver thereof, nor as an acquiescence in any Event of Default, nor shall any single or partial exercise of any power or right preclude any other or further exercise thereof, or the exercise of any other power or right, and the rights and remedies hereunder of the Agent, the Banks and of the holder or holders of any Notes are cumulative to, and not exclusive of, any rights or remedies which any of them would otherwise have.

Section 11.3. **Several Obligations.** The commitments of each of the Banks hereunder shall be the several obligations of each Bank and the failure on the part of any one or more of the Banks to perform hereunder shall not affect the obligation of the other Banks hereunder, provided that nothing herein contained shall relieve any Bank from any liability for its failure to so perform. In the event that any one or more of the Banks shall fail to perform its commitment hereunder, all payments thereafter received by the Agent on the principal of Loans hereunder, shall be distributed by the Agent to the Banks making such additional Loans ratably as among them in accordance with the principal amount of additional Loans made by them until such additional Loans shall have been fully paid and satisfied. All payments on account of interest shall be applied as among all the Banks ratably in accordance with the amount of interest owing to each of the Banks as of the date of the receipt of such interest payment.

Section 11.4. **Non-Business Day.** If any payment of principal or interest on any Loan shall fall due on a day which is not a Business Day, interest at the rate such Loan bears for the period prior to maturity shall continue to accrue on such principal from the stated due date thereof to and including the next succeeding Business Day on which the same is payable.

Section 11.5. **Documentary Taxes.** The Company agrees to pay any documentary or similar taxes, if any, with respect to the Loan Documents, including interest and penalties, in the event any such taxes are assessed irrespective of when such assessment is made and whether or not any credit is then in use or available hereunder.

Section 11.6. **Representations.** All representations and warranties made herein or in certificates given pursuant hereto shall survive the execution and delivery of this Agreement and of the Notes, and shall continue in full force and effect with respect to the date as of which they were made and as reaffirmed by Quarterly Compliance Certificates as long as any credit is in use or available hereunder.

Section 11.7. **Notices.** Unless otherwise expressly provided herein, all communications provided for herein shall be in writing or by telecopy and shall be deemed to have been given or made when served personally, when confirmation of receipt is received in the case of notice by telecopy, when actually delivered by a reputable courier service or five (5) Business Days after the date when deposited in the United States mail (registered, if to the Company) addressed, if to the Company to 602 Joplin Street; Joplin, Missouri 64801; Attention: Gregory A. Knapp (Telephone number (417) 625-6595, Telecopy number (417) 625-5153); if to the Agent or UMB at 1010 Grand Boulevard; Kansas City, Missouri 64106; Attention: Charles J. Wolf (Telephone number (816) 860-7130, Telecopy number (816) 860-7143); and, if to any of the Banks, at the address for each Bank set forth under its signature hereon; or at

such other address as shall be designated by any party hereto in a written notice to each other party pursuant to this Section 11.7.

Section 11.8. **Costs and Expenses; Indemnity.** (a) The Company agrees to pay on demand (i) all reasonable costs and expenses of the Agent incurred in connection with the negotiation, preparation, execution and delivery of this Agreement, the Notes and any other instruments and documents to be delivered hereunder or in connection with the transactions contemplated hereby, including the reasonable fees and expenses of Spencer Fane Britt & Browne LLP, counsel to the Agent; (ii) all reasonable costs and expenses of the Agent (including reasonable attorneys' fees) incurred in connection with any consents or waivers hereunder or amendments hereto; and (iii) all reasonable costs and expenses (including reasonable attorneys' fees), if any, incurred by the Agent, the Banks or any other holders of a Note in connection with the enforcement of this Agreement or the Notes and any other instruments and documents to be delivered hereunder. The Company agrees to indemnify and save harmless the Banks and the Agent from any and all liabilities, losses, costs and expenses incurred by the Banks or the Agent in connection with any action, suit or proceeding brought against the Agent or any Bank by any Person which arises out of the transactions contemplated hereby or by the Notes, or out of any action or inaction by the Agent or any Bank hereunder or thereunder, except for such thereof as is caused by the gross negligence or willful misconduct of the party indemnified.

(b) The provisions of this Section 11.8 and the protective provisions of Section 9.4 hereof shall survive payment of the Notes and the termination of the Banks' Commitments hereunder.

Section 11.9. **Counterparts.** This Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument. This Agreement shall become effective as and when the Agent, all of the Banks and the Company have executed this Agreement or a counterpart thereof and delivered, except in the case of the Agent, the same to the Agent.

Section 11.10. **Successors and Assigns; Governing Law; Entire Agreement.** This Agreement shall be binding upon each of the Company, the Agent and the Banks and their respective successors and assigns, and shall inure to the benefit of the Company, the Agent and each of the Banks and the benefit of their respective successors and assigns, including any subsequent holder of any Note (in the case of the Banks and their respective successors and assigns, to the extent provided in Sections 11.16 and 11.17 hereof). This Agreement and the rights and duties of the parties hereto shall be construed and determined in accordance with the laws of the State of Missouri, except conflict of laws principles. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and any prior agreements, whether written or oral, with respect to the subject matter hereof are superseded hereby. The Company may not assign any of its rights or obligations hereunder without the written consent of the Banks.

Section 11.11. **No Joint Venture.** Nothing contained in this Agreement shall be deemed to create a partnership or joint venture among the parties hereto.

Section 11.12. **Severability.** In the event that any term or provision hereof is determined to be unenforceable or illegal, it shall be deemed severed herefrom to the extent of the illegality and/or unenforceability and all other provisions hereof shall remain in full force and effect.

Section 11.13. **Table of Contents and Headings.** The table of contents and section headings in this Agreement are for reference only and shall not affect the construction of any provision hereof.

Section 11.14. **Sharing of Payments.** Each Bank agrees with each other Bank that if such Bank shall receive and retain any payments, whether by set-off or application of deposit balances or otherwise ("Set-Off"), on any Loan or other amount outstanding under this Agreement or the other Loan Documents in excess of its ratable share of payments on all Loans and other amounts then outstanding to the Banks, then



such Bank shall purchase for cash at face value, but without recourse (except for defects in title), ratably from each of the other Banks such amount of the Loans held by each such other Bank (or interest therein) as shall be necessary to cause such Bank to share such excess payment ratably with all the other Banks; provided, however, that if any such purchase is made by any Bank, and if such excess payment or part thereof is thereafter recovered from such purchasing Bank, the related purchases from the other Banks shall be rescinded ratably and the purchase price restored as to the portion of such excess payment so recovered, but without interest. Each Bank's ratable share of any such Set-Off shall be determined by the proportion that the aggregate principal amount of Loans and other amounts then due and payable to such Bank bears to the total aggregate principal amount of Loans and other amounts then due and payable to all the Banks.

Section 11.15. Jurisdiction; Venue; Waiver of Jury Trial. The Company hereby submits to the nonexclusive jurisdiction of the United States District Court for the Western District of Missouri and of any Missouri court sitting in Kansas City, Missouri, for purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. The Company irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. The Company, the Agent and each Bank hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relative to any Loan Document or the transactions contemplated thereby.

Section 11.16. Participants. Each Bank shall have the right at its own cost to grant participations (to be evidenced by one or more agreements or certificates of participation) in the Loans made and Commitments held by such Bank at any time and from time to time to other financial institutions; provided that (a) no such participation shall relieve any Bank of any of its obligations under this Agreement (b) no such participant shall have any direct rights under this Agreement except as provided in this Section 11.16, and the Agent shall not have any obligation or responsibility to such participant. Any agreement pursuant to which such participation is granted, except with respect to a participation in which a participant is an Affiliate of a Bank, shall provide that the granting Bank shall retain the sole right and responsibility to enforce the obligations of the Company under this Agreement and the other Loan Documents including, without limitation, the right to approve any amendment, modification or waiver of any provision of the Loan Documents, except that such agreement may provide that such Bank will not agree to any modification, amendment or waiver of the Loan Documents that would reduce the amount of or postpone any fixed date for payment of any obligation in which such participant has an interest. Any party to which such a participation has been granted shall have the benefits of Section 9.3 and Section 9.4 hereof, up to an amount not exceeding the amount that would otherwise have been payable to the Bank who sold the participation interest to such party. Subject to the provisions of Section 11.19 hereof, the Company authorizes each Bank to disclose to any participant or prospective participant under this Section 11.16 any financial or other information pertaining to the Company. Notwithstanding the foregoing, in no event may a participation be granted to any entity which is not a financial institution without the express prior written consent of the Company.

#### Section 11.17. Assignment Agreements.

(a) Assignments. Each Bank may, at its own expense, from time to time, assign to other financial institutions all or part of its rights and obligations under this Agreement (including without limitation the Indebtedness evidenced by the Notes then owned by such assigning Bank, together with an equivalent proportion of its obligation to make loans and advances) pursuant to written agreements executed by such assigning Bank, such assignee lender or lenders, the Company and the Agent, which agreements shall specify in each instance the portion of the Indebtedness evidenced by the Notes which is to be assigned to

each such assignee lender and the portion of the Commitments of the assigning Bank to be assumed by it (the "Assignment Agreements"); provided, however, that unless the Agent, the Company, the assignor Bank and the assignee lender, in writing, agree to the contrary, (i) except in connection with any assignment by a Bank to any of its Affiliates, the aggregate amount of the Exposure of the assigning Bank being assigned to such assignee lender pursuant to each such assignment (determined as of the effective date of the relevant Assignment Agreement) shall in no event be less than the lesser of \$5,000,000 or the assignor Bank's unused Revolving Credit Commitment; (ii) the parties to each such assignment shall execute and deliver to the Agent, for its acceptance and recording in the Register pursuant to Section 11.20 hereof, an Assignment Agreement, together with any Notes subject to such assignment, (iii) the Agent and (except for an assignment made during the continuance of any Event of Default) the Company must consent to each such Assignment Agreement, which consents shall not be unreasonably withheld, to each such assignment to (provided no such consent is required for any assignment to any Affiliate of the assigning Bank), and (iv) except in connection with any assignment by a Bank to any of its Affiliates, the assignee lender must pay to the Agent a processing and recordation fee of \$4,000 and any out-of-pocket attorneys' fees incurred by the Agent in connection with such Assignment Agreement. Upon the execution of each Assignment Agreement by the assigning Bank thereunder, the assignee lender thereunder, the Company and the Agent, satisfaction of all of the conditions set forth above and payment to such assigning Bank by such assignee lender of the purchase price for the portion of the Exposure being acquired by it, (i) such assignee lender shall thereupon become a "Bank" for all purposes of this Agreement with an Exposure in the amounts set forth in such Assignment Agreement and with all the rights, powers and obligations afforded a Bank hereunder, (ii) such assigning Bank shall have no further liability for funding the portion of any of its Commitments assumed by such other Bank, and (iii) the address for notices to such assignee Bank shall be as specified in the Assignment Agreement executed by it. Concurrently with the execution and delivery of such Assignment Agreement executed by it, the Company shall execute and deliver new Notes to the assignee Bank in the amount of its applicable Commitment or Loan and new Notes to the assigning Bank in the amounts of its applicable Commitment or Loan after giving effect to the reduction occasioned by such assignment, such new Notes to constitute "Notes" for all purposes of this Agreement. Notwithstanding the foregoing, in no event may any assignment be made pursuant to this Section 11.17(a) to any entity which is not a financial institution without the express prior written consent of the Company.

(b) Pledges. Any Bank may at any time pledge or grant a security interest in all or any portion of its rights under this Agreement to secure obligations of such Bank, including any such pledge or grant to a Federal Reserve Bank, and Section 11.17(a) shall not apply to any such pledge or grant of a security interest; provided that no such pledge or grant of a security interest shall release a Bank from any of its obligations hereunder or substitute any such pledgee or secured party for such Bank as a party hereto; provided further, however, the right of any such pledgee or grantee (other than any Federal Reserve Bank) to further transfer all or any portion of the rights pledged or granted to it, whether

by means of foreclosure or otherwise, shall be at all times subject to the terms of this Agreement.

**Section 11.18. Withholding Taxes.**

(a) **U.S. Withholding Tax Exemptions.** Each Bank that is not a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended (the "Code")) shall submit to the Company and the Agent on or before the date the initial Borrowing is made hereunder or, if later, the date such Bank becomes a Bank hereunder, two (2) properly completed and duly executed copies of (i) either Internal Revenue Service Form W-8 ECI (certifying the Bank's status as a beneficial owner and entitlement to complete exemption from withholding on all amounts to be received by such Bank, including fees, pursuant to this Agreement and the Loans as effectively connected with the conduct of a U.S. trade or business) or W-8 BEN (certifying the Bank's status as beneficial owner and entitlement to a complete exemption from withholding on all amounts to be received by such Bank, including fees, pursuant to this Agreement and the Loans, or any successor form as shall be adopted from time to time by the Internal Revenue Service; or (ii) solely if such Bank is claiming exemption from United States withholding tax under Section 871(h) or 881(c)(3)(A) of the Code with respect to payments of "portfolio interest", Internal Revenue Service Form W-8 BEN, and a certificate representing that such Bank is not a bank for purposes of Section 881(c) of the Code, is not a ten percent (10%) shareholder (within the meaning of Section 871(h)(3)(B) of the Code) of the Company and is not a controlled foreign corporation related to the Company (within the meaning of Section 864(d)(4) of the Code) (or in the case of any such form, such successor form as shall be adopted from time to time by the Internal Revenue Service. Thereafter and from time to time, each such Bank shall submit to the Company and the Agent such additional properly completed and duly executed copies of one of such Forms (or such successor forms as shall be adopted from time to time by the relevant United States taxing authorities) as may be (i) notified by the Company or Agent to such Bank and (ii) required under then-current United States law or regulations to establish an available exemption from United States withholding taxes on payments in respect of all amounts to be received by such Bank, including fees, pursuant to this Agreement or the Loans. Upon the request of the Company or Agent, each Bank that is a United States person (as such term is defined in Section 7701(a)(30) of the Code) shall submit to the Company two accurate and complete signed copies of Internal Revenue Service Form W-9 or any successor thereto, as appropriate.

(b) **Inability of Bank to Submit Forms.** If any Bank determines, as a result of any change in applicable law, regulation or treaty, or in any official application or interpretation thereof, that it is unable to submit to the Company any form or certificate that such Bank is obligated to submit pursuant to subsection (a) of this Section 11.18, or that such Bank is required to withdraw or cancel any such form or certificate previously submitted or any such form or certificate otherwise becomes ineffective or inaccurate, such Bank shall promptly notify the Company and Agent of such fact and the Bank shall to

that extent not be obligated to provide any such form or certificate and will be entitled to withdraw or cancel any affected form or certificate, as applicable.

(c) **Payment of Additional Amounts.** If, as a result of any change in applicable law, regulation or treaty, or in any official application or interpretation thereof after the date of this Agreement or, if later, the date a bank becomes a Bank hereunder, the Company is required by law or regulation to make any deduction, withholding or backup withholding of any taxes, levies, imposts, duties, fees, liabilities or similar charges of the United States of America, any possession or territory of the United States of America (including the Commonwealth of Puerto Rico) or any area subject to the jurisdiction of the United States of America ("U.S. Taxes") from any payments to a Bank in respect of Loans then or thereafter outstanding, or other amounts owing hereunder, the amount payable by the Company will be increased to the amount which, after deduction from such increased amount of all U.S. Taxes required to be withheld or deducted therefrom, will yield the amount required under this Agreement to be payable with respect thereto; provided that the Company shall not be required to pay any additional amount pursuant to this subsection (c) to any Bank that (i) is not, on the date this Agreement is executed by such Bank or, if later, the date such Bank became a Bank hereunder, either (x) entitled to submit Form W-8 BEN relating to such Bank and entitling it to a complete exemption from withholding on all amounts to be received by such Bank, including fees, pursuant to this Agreement and the Loans, Form W-8 BEN relating to all amounts to be received by such Bank, including fees, pursuant to this Agreement and the Loans or Form W-8 BEN relating to such Bank and entitling it to a complete exemption from withholding on all amounts to be received by such Bank, including fees, pursuant to this Agreement and the Loans (or, in any such case, such successor forms as shall be adopted from time to time by the Internal Revenue Service), or (y) a U.S. person (as such term is defined in Section 7701(a)(30) of the Code), or (ii) has failed to submit any form or certificate that it was required to file pursuant to subsection (a) of this Section 11.18 and entitled to file under applicable law, or (iii) is no longer entitled to submit Form W-8 BEN or Form W-8 ECI as a result of any change in circumstances other than a change in applicable law, regulation or treaty or in any official application or the account of any Bank pursuant to this subsection (c), then such Bank will agree to use reasonable efforts to change the jurisdiction of its applicable lending office so as to eliminate or reduce any such additional payment which may thereafter accrue if such change, in the judgment of such Bank, is not otherwise disadvantageous to such Bank. Within thirty (30) days after the Company's payment of any such U.S. Taxes, the Company shall deliver to the Agent, for the account of the relevant Bank(s), originals or certified copies of official tax receipts evidencing such payment thereof or other evidence of payment reasonably satisfactory to the Agent. The obligations of the Company under this subsection (c) shall survive the payment in full of the Loans and the termination of the Commitments. If any Bank or the Agent determines it has received or been granted a refund, credit against, relief or remission for, or repayment of, any taxes paid or payable by it because of any U.S. Taxes paid by the Company and evidenced by such a tax receipt, such Bank or Agent shall, to the extent it can do so without prejudice to the retention of the amount of such refund, credit, relief, remission or repayment, pay to the Company such amount as such Bank or Agent

determines is attributable to such deduction or withholding and which will leave such Bank or Agent (after such payment) in no better or worse position than it would have been in if the Company had not been required to make such deduction or withholding. Nothing in this Agreement shall interfere with the right of each Bank and the Agent to arrange its tax affairs in whatever manner it deems fit nor oblige any Bank or the Agent to disclose any information relating to its tax affairs or any computations in connection with such taxes.

**Section 11.19. Confidentiality.** The Agent and each Bank will keep confidential any non-public information concerning the Company and its Subsidiaries furnished by the Company (which is designated by the Company as confidential at the time such information is furnished to the Agent or such Bank) or obtained by the Agent or such Bank through its inspections pursuant to Section 7.5 hereof and known by such Bank to be confidential, except that the Agent or any Bank may disclose such information (a) to regulatory authorities having jurisdiction, (b) pursuant to subpoena or other legal process, (c) to the Agent's and such Bank's counsel and auditors in connection with matters concerning this Agreement, (d) to the Agent and such Bank's consultants in connection with negotiations concerning this Agreement or the other Loan Documents and (e) to prospective participants and assignees and participants in the credit extended hereunder, provided that any Persons described in clauses (d) and (e) shall be bound to comply with the terms of this Section 11.19. In the situations described above (except where the Company is a party or where disclosure is made during the course of a regulatory examination of a Bank), the Agent or the relevant Bank shall notify the Company as promptly as practicable of the receipt of a request for such disclosure and furnish it with a copy of such subpoena or other legal process (to the extent the Agent or such Bank is legally permitted to do so). The provisions of this Section shall survive the payment of the Notes and the termination of this Agreement.

**Section 11.20. Register.** The Agent, on behalf of the Company, shall maintain at its address referred to in Section 11.7 a copy of each assignment and acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of the Banks and each Commitment of, and principal amount of the Loans owing to, each Bank from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Company, the Agent and the Banks may treat each Person whose name is recorded in the Register as a Bank hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Company or any Bank at any reasonable time and from time to time upon reasonable prior notice. Upon its receipt of an assignment and acceptance executed by an assigning Bank, an assignee and the Company, if required, the Agent shall, if such assignment and acceptance has been completed and is acceptable to the Agent in form and substance, (a) accept such assignment and acceptance, (b) record the information contained therein in the Register and (c) give prompt notice thereof to the Company.

**Section 11.21. SPCs.** Notwithstanding anything to the contrary contain herein, any Bank except the Agent, (a "Granting Bank") may grant to a special purpose funding vehicle (an "SPC") the option to fund all or any part of any Loan that such Granting Bank would otherwise be obligated to fund pursuant to this Agreement; provided, that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to fund all or any part of such Loan, the Granting Bank shall be obligated to fund such Loan pursuant to the terms hereof, (iii) no SPC shall have any voting rights pursuant to Section 11.1 (all such voting rights shall be retained by the Granting Bank) and (iv) with respect to notices, payments and other matters hereunder, the Borrower the Agent and the Banks shall not be obligated to deal with an SPC, but may limit their communications and other dealings relevant to such SPC to the applicable Granting Bank. The funding of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Bank to the same extent that, and as if, such Loan were funded by such Granting Bank. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or

payment under this Agreement for which a Lender would otherwise be liable for so long as, and to the extent, the Granting Bank provides such indemnity or makes such payment. In furtherance of the foregoing, each party hereto hereby agrees (which agreements shall survive termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any state thereof. Notwithstanding anything to the contrary contained in this Agreement, any SPC may disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or guarantee to such SPC. The grant of an option pursuant to this Section shall not be deemed either an assignment or a participation pursuant to Section 11.16 or 11.17, respectively, and shall not reduce the Commitment of the Granting Bank. This Section 11.21 may not be amended without the prior written consent of each Granting Bank, all or any part of whose Loan is being funded by an SPC at the time of such amendment.

Section 11.22. 2002 Agreement Terminated. The Unsecured Credit Agreement dated as of May 7, 2002, as amended, between the Company, the Agent, the Syndication Agent and other lenders is hereby terminated on the Effective Date of this Agreement and all indebtedness of the Borrower outstanding thereunder or pursuant thereto, if any, shall be immediately due and payable on the Effective Date of this Agreement.

Section 11.23. STATUTORY STATEMENT MADE PURSUANT TO MO. REV. STAT. §432.045. ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING PAYMENT OF A DEBT, INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE. TO PROTECT YOU, THE COMPANY, AND US, THE BANKS, FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING AND THE DOCUMENTS REFERRED TO HEREIN, WHICH ARE THE COMPLETE AND EXCLUSIVE STATEMENTS OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT.

Upon your acceptance hereof in the manner hereinafter set forth, this Agreement shall be a contract between us for the purposes hereinabove set forth.

Dated as of July 15, 2005.

THE EMPIRE DISTRICT ELECTRIC COMPANY

By: /s/ Gregory A. Knapp

Its: Vice President – Finance and CFO

Accepted and Agreed to as of the day and year last above written.

UMB BANK, N.A., individually and as  
Administrative Agent

By: /s/ Charles J. Wolf

Charles J. Wolf

Its: Senior Vice President

Address: 1010 Grand Boulevard  
Kansas City, MO 64106

Attention: Charles J. Wolf

Telephone No.: 816-860-7130

Telecopy No.: 816-860-7143

[charles.wolf@umb.com](mailto:charles.wolf@umb.com)

Bank of America, N.A.,  
individually and as Syndication Agent

By: /s/ Eric A. Escagne

Eric A. Escagne

Its: Vice President

Address: 800 Market Street, 12<sup>th</sup> Floor  
St. Louis, MO 63101

Attention: Eric A. Escagne

Telephone No.: 314-466-6112

Telecopy No.: 314-466-6744

[eric.escagne@bankofamerica.com](mailto:eric.escagne@bankofamerica.com)

M & I MARSHALL & ILSLEY BANK,  
individually

By: /s/ Gregg Weyer

Gregg Weyer

Its: Vice President

Address: 770 North Water Street  
Milwaukee, WI 53202

Attention: Nenita Yumang

Telephone No.: 262-938-8675

Telecopy No.: 262-938-8684

[gregg.weyer@micorp.com](mailto:gregg.weyer@micorp.com)

National City Bank of the Midwest, individually

By: /s/ Eric Hartman

Eric Hartman

Its: Vice President

Address: 10401 Clayton Road  
St. Louis, MO 63131

Attention: Eric Hartman

Telephone No.: 314-587-7812

Telecopy No.: 314-995-5772

[eric.hartman@nationalcity.com](mailto:eric.hartman@nationalcity.com)

U.S. BANK, NATIONAL ASSOCIATION,  
individually

By: /s/ Joseph Howard

Joseph Howard

WELLS FARGO BANK, N.A., individually

By: /s/ Jennifer Mihelic

Jennifer Mihelic

**Its: Vice President**  
**Address: One U.S. Bank Plaza**  
**Mail Code: SL-MO-T12M**  
**St. Louis, MO 63101**  
**Attention: Joseph Howard**  
**Telephone No.: 314-418-8247**  
**Telecopy No.: 314-418-3859**  
[joseph.howard@usbank.com](mailto:joseph.howard@usbank.com)

**Its: Assistant Vice President**  
**Address: 4100 North Mulberry Drive, Ste. 105**  
**Kansas City, MO 64116**  
**Attention: Jennifer Mihelic**  
**Telephone No.: 816-584-8275**  
**Telecopy No.: 816-587-9537**  
[mihelicj@wellsfargo.com](mailto:mihelicj@wellsfargo.com)

**COMERICA BANK, individually**

**By: /s/ Mark J. Leveille**  
**Mark J. Leveille**  
**Its: Commercial Banking Officer**  
**Address: 500 Woodward Avenue-MC 3269**  
**Detroit, MI 48226**  
**Attention: Mark J. Leveille**  
**Telephone No.: 313-222-3958**  
**Telecopy No.: 313-222-9516**  
[mjleveille@comerica.com](mailto:mjleveille@comerica.com)



**EXHIBIT B**  
**THE EMPIRE DISTRICT ELECTRIC COMPANY**  
**(THE "COMPANY")**

**PRICING SCHEDULE**

<b>Basis for Pricing</b>	<b>Level I A- / A3</b>	<b>Level II BBB+/Baa1</b>	<b>Level III BBB/Baa2</b>	<b>Level IV BBB-/Baa3</b>	<b>Level V BB+ / Ba1</b>	<b>Level VI &lt;BB+ / Ba1</b>
Applicable Margin for ABR Portions	0.0 bps	0.0 bps	0.0 bps	0.0 bps	50.0 bps	100.0 bps
Applicable Margin for LIBOR Portions	62.5 bps	75.0 bps	80.0 bps	100.0 bps	145.0 bps	170.0 bps
Facility Fee Rate	15.0 bps	17.5 bps	22.0 bps	31.5 bps	40.0 bps	45.0 bps
Utilization Fee Rate	12.5 bps	12.5 bps	12.5 bps	12.5 bps	25.0 bps	25.0 bps
Drawn Cost (<33% usage)	77.5 bps	90.0 bps	102.0 bps	131.5 bps	185.0 bps	215.0 bps
Drawn Cost (>33% usage)	90.0 bps	102.5 bps	114.5 bps	144.0 bps	210.0 bps	240.0 bps

For purposes of utilizing the above schedule:

"Level I Status" exists at any date if, on such date, the Company's Moody's Rating is A3 or better or the Company's S & P Rating is A- or better.

"Level II Status" exists at any date if, on such date, (i) the Company has not qualified for Level I Status and (ii) the Company's Moody's Rating is Baa1 or better or the Company's S & P Rating is BBB+ or better.

"Level III Status" exists at any date if, on such date, (i) the Company has not qualified for Level I or II Status and (ii) the Company's Moody's Rating is Baa2 or better or the Company's S & P Rating is BBB or better.

"Level IV Status" exists at any date if, on such date, (i) the Company has not qualified for Level I, II or III Status and (ii) the Company's Moody's Rating is Baa3 or better or the Company's S & P Rating is BBB- or better.

"Level V Status" exists at any date if, on such date, (i) the Company has not qualified for Level I, II, III or IV Status and (ii) the Company's Moody's Rating is Ba1 or better or the Company's S & P Rating is BB+ or better.

"Level VI Status" exists at any date if, on such date, the Company has not qualified for Level I, II, III, IV or V Status.

"Moody's Rating" means, at any time, the rating issued by Moody's Investors Service and then in effect with respect to the Company's senior unsecured long-term debt securities without third-party credit enhancement.

"S & P Rating" means, at any time, the rating issued by Standard & Poor's and then in effect with respect to the Company's senior unsecured long-term debt securities without third-party credit enhancement.

"Status" means Level I Status, Level II Status, Level III Status, Level IV Status, Level V Status or Level VI Status.

The Applicable Margin and Applicable Fee Rate shall be determined from time to time in accordance with the foregoing schedule based on the Company's Status as determined from its then-current Moody's Rating and/or S & P Rating, *provided*, that, if the Company has neither a Moody's Rating nor an S & P Rating at closing, Level VI shall apply until the Company first receives either a Moody's Rating or an S & P Rating. The credit

rating in effect on any date for the purposes of the foregoing schedule is that in effect at the close of business on such date. If, at any time, the Company has neither a Moody's Rating nor an S & P Rating, Level VI Status shall exist. If, at any time the Company has only a Moody's Rating or an S & P Rating, but not both, the Status shall be determined by reference to such rating.

If the Company is split-rated and the differential between ratings is one level, the higher rating will apply. If the Company is split-rated and the differential between ratings is two levels or more, the intermediate ratings at the midpoint will apply. If there is no midpoint, the higher of the two intermediate ratings will apply.

## COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES

	Twelve Months Ended <u>June 30, 2005</u>
Income before provision for income taxes and fixed charges (Note A)	\$ 60,964,028
<b>Fixed charges:</b>	
Interest on first mortgage bonds and secured debt	\$ 10,160,282
Amortization of debt discount and expense less premium	1,935,043
Interest on short-term debt	117,518
Interest on unsecured long-term debt	12,345,134
Interest on note payable to securitization trust	4,250,000
Other interest	438,224
Rental expense representative of an interest factor (Note B)	<u>28,442</u>
<b>Total fixed charges</b>	<b>29,274,643</b>
 Ratio of earnings to fixed charges	 2.08x

NOTE A: For the purpose of determining earnings in the calculation of the ratio, net income has been increased by the provision for income taxes, non-operating income taxes, minority interest and by the sum of fixed charges as shown above.

NOTE B: One-third of rental expense (which approximates the interest factor).

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE  
SARBANES-OXLEY ACT OF 2002**

I, William L. Gipson, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Empire District Electric Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the period presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15(d)-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting, which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 8, 2005

By: /s/ William L. Gipson

Name: William L. Gipson

Title: President and Chief Executive Officer

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO SECTION 302 OF THE  
SARBANES-OXLEY ACT OF 2002**

I, Gregory A. Knapp, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Empire District Electric Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the period presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15(d)-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 8, 2005

By: /s/ Gregory A. Knapp

Name: Gregory A. Knapp

Title: Vice President - Finance and Chief Financial Officer

**Exhibit (32)(a)**

**Certification Pursuant to 18 U.S.C. Section 1350,  
As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report of The Empire District Electric Company (the "Company") on Form 10-Q for the period ending June 30, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), William L. Gipson, as Chief Executive Officer of the Company, certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

**By /s/ William L. Gipson**

Name: William L. Gipson

Title: President and Chief Executive Officer

Date: August 8, 2005

A signed original of this written statement required by Section 906 or other document authenticating, acknowledging or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to The Empire District Electric Company and will be retained by The Empire District Electric Company and furnished to the Securities and Exchange Commission or its staff upon request.

**Certification Pursuant to 18 U.S.C. Section 1350,  
As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report of The Empire District Electric Company (the "Company") on Form 10-Q for the period ending June 30, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Gregory A. Knapp, as Chief Financial Officer of the Company, certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

**By /s/ Gregory A. Knapp**

Name: Gregory A. Knapp

Title: Vice President - Finance and Chief Financial Officer

Date: August 8, 2005

A signed original of this written statement required by Section 906 or other document authenticating, acknowledging or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to The Empire District Electric Company and will be retained by The Empire District Electric Company and furnished to the Securities and Exchange Commission or its staff upon request.