

FILED<sup>3</sup>

SEP 29 2006

Missouri Public  
Service Commission

*Exhibit No.:*

*Issues:* Energy Center 3 and 4  
Construction Costs; Tree  
Trimming Expense

*Witness:* Paul R. Harrison

*Sponsoring Party:* MoPSC Staff

*Type of Exhibit:* Direct Testimony

*Case No.:* ER-2006-0315

*Date Testimony Prepared:* June 23, 2006

**MISSOURI PUBLIC SERVICE COMMISSION**

**UTILITY SERVICES DIVISION**

**DIRECT TESTIMONY**

**OF**

**PAUL R. HARRISON**

**THE EMPIRE DISTRICT ELECTRIC COMPANY**

**CASE NO. ER-2006-0315**

Jefferson City, Missouri  
June 2006

**\*\*Denotes Highly Confidential Information\*\***

**NP**

STAFF Exhibit No. 42NP  
Case No(s) ER-2006-0315  
Date 9-05-06 Rptr RF

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

In the matter of The Empire District Company of )  
Joplin, Missouri for authority to file tariffs )  
increasing rates for electric service provided to )  
customers in Missouri service area of the Company. )

Case No. ER-2006-0315

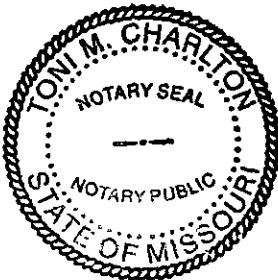
AFFIDAVIT OF PAUL R. HARRISON

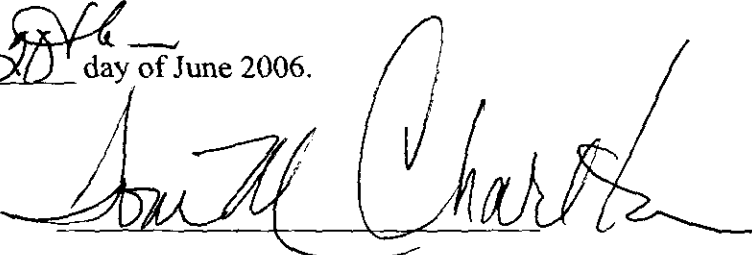
STATE OF MISSOURI     )  
                                  )     ss.  
COUNTY OF COLE     )

Paul R. Harrison, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Direct Testimony in question and answer form, consisting of 13 pages to be presented in the above case; that the answers in the foregoing Direct Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.

  
Paul R. Harrison

Subscribed and sworn to before me this 20<sup>th</sup> day of June 2006.



  
TONI M. CHARLTON  
Notary Public - State of Missouri  
My Commission Expires December 28, 2008  
Cole County  
Commission #04474301

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**PAUL R. HARRISON**  
**THE EMPIRE DISTRICT ELECTRIC COMPANY**  
**CASE NO. ER-2006-0315**

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1                                   **DIRECT TESTIMONY**  
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3                                   **PAUL R. HARRISON**  
4                                   **THE EMPIRE DISTRICT ELECTRIC COMPANY**  
5                                   **CASE NO. ER-2006-0315**

6           Q.    Please state your name and business address.

7           A.    Paul R. Harrison, P. O. Box 360, Jefferson City, Missouri 65102.

8           Q.    By whom are you employed and in what capacity?

9           A.    I am a Regulatory Auditor for the Missouri Public Service Commission (PSC  
10 or Commission).

11           **BACKGROUND OF WITNESS**

12          Q.    Please describe your educational background.

13          A.    I graduated from Park College, Kansas City, Missouri, where I earned a  
14 Bachelor of Science degree in Accounting and Management in July 1995. I also earned an  
15 Associate degree in Missile Maintenance Technology from the Community College of the  
16 Air Force in June 1990. In addition, I graduated from the Non-Commission Officer (NCO)  
17 Leadership School in July 1977, the NCO Academy in March 1983, and the Senior NCO  
18 Academy in February 1992. These professional military education schools trained and  
19 prepared Non-Commissioned Officers for increased levels of responsibility as Supervisors  
20 and Managers in the United State Air Force (USAF).

21          Q.    Please describe your work background prior to working at the Commission.

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1           A.     Prior to coming to work at the Commission, I was the manager for  
2 Tool Warehouse Inc. for four and one-half years. As the manager, I supervised eight sales  
3 representatives and managed merchandise and inventory in excess of \$1.5 million.

4           Prior to that, I was in the USAF for 23 years. During my career in the USAF, I was  
5 assigned to many different duty positions with varying levels of responsibility. I retired from  
6 active duty on May 1, 1994, as Superintendent of the 321st Strategic Missile Wing Missile  
7 Mechanical Flight. In that capacity, I supervised 95 missile maintenance technicians and  
8 managed assets valued in excess of \$50 million.

9           Q.     Please describe your duties while employed by the PSC.

10          A.     My duties at the Commission include performing audits of the books and  
11 records of regulated public utilities under the jurisdiction of the PSC, in conjunction with  
12 other Commission Staff (Staff) members. Acting in that capacity, I am also required to  
13 prepare testimony and serve as a Staff expert witness on cases involving the accounting  
14 issues that I am assigned.

15          Q.     Have you previously filed testimony before this Commission?

16          A.     Yes. Schedule 1 lists the cases in which I filed testimony, the issues that I  
17 have worked and the small informal cases that I have completed.

18       **PURPOSE OF TESTIMONY**

19          Q.     Did you make an examination and analysis of the books and records of  
20 The Empire District Electric Company (Empire) in regard to matters raised in this case?

21          A.     Yes, in conjunction with other members of the Staff. I specifically examined  
22 information provided by the Company in response to Staff data requests, portions of the

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1 Company's general ledger, as well as workpapers supplied by Empire. I also examined  
2 Empire's Annual Reports and other information filed at the Commission.

3 Q. What adjustments are you sponsoring?

4 A. I am sponsoring the following adjustments:

5 Plant in Service EC3&4 P-38.1, P-41.1, P-38.2 and P41.2

6 Depreciation Reserve EC3&4 R-38.1, R-41.1, R-38.2 and R-41.2

7 Tree Trimming S-48.1 and S-61.1

8 Q. What knowledge, skill, experience, training or education do you have in these  
9 matters?

10 A. I have performed duties as a Regulatory Auditor within the Auditing  
11 Department at the Commission since January 18, 2000. In addition to acquiring general  
12 knowledge of these topics through my education, I've acquired experience in prior rate cases  
13 before the Commission as well as through formal and informal training.

14 Q. Please describe the formal training for your position that you have received.

15 A. I attended the National Association Regulatory Utilities Commissioner's  
16 (NARUC) Water Rate School in San Diego, California, in May 2000. I also attended  
17 NARUC's "On the Missouri" 2003 seminar conducted in Jefferson City, Missouri, in  
18 January 2003.

19 Q. Please describe the informal training for your position that you have received.

20 A. I have successfully completed each of my assigned issues, as listed in  
21 Schedule 1, and have had the opportunity to interact with other auditors concerning these and  
22 other issues that involved the Commission's Auditing Department.

1 I have attended in-house training classes, reviewed Auditing Department position  
2 papers, training manuals, and technical manuals pertaining to the accounting issues in this  
3 and other cases.

4 I have reviewed the Commission's report and orders, testimony, and transcripts of  
5 cases filed by Empire and other utilities within the jurisdiction of this Commission.

6 **EXECUTIVE SUMMARY**

7 Q. What is the purpose of your testimony?

8 A. This testimony addresses the Staff's position and adjustments concerning  
9 Empire's Energy Center units 3 and 4 construction costs (EC3&4) and its transmission and  
10 distribution vegetation control (tree trimming) costs.

11 Q. Please summarize your testimony.

12 A. Empire's EC3&4 plant was constructed and became fully operational in  
13 April 2003. In Empire's last rate case (Case No. ER-2004-0570), the Staff proposed a  
14 disallowance of a portion of the costs associated with the installation of EC3&4. This  
15 disallowance of \$3,155,356 was based upon the Staff's opinion that the Company acted  
16 imprudently by exposing Empire to an unnecessary level of financial risk. This unnecessary  
17 financial risk resulted from Empire's decision to not enforce its contract provision that  
18 required the contractor for EC3&4, Patch Construction L.L.C. (Patch), to obtain a  
19 performance bond within 21 days after signing the contract. In this case, the Staff is  
20 proposing the same disallowance because the full amount of the Patch construction costs are  
21 included in Empire's rate base, which it seeks to reflect in customer rates for this case.

1       The Staff's tree trimming expense adjustment addresses the normalized level of  
2 transmission and distribution tree trimming expense that it proposes to be included in rates  
3 for this case.

4       **ENERGY CENTER UNITS 3 AND 4 CONSTRUCTION COSTS**

5       Q.     Please describe the system that was installed at EC3&4 and became  
6 operational in April 2003.

7       A.     There were two new generating units, a control center, and  
8 Reverse Osmosis (RO) building installed at EC3&4 at a total cost of \$55,807,026. The two  
9 new units that were installed are aero-derivative combustion turbines with a nominal output  
10 of 50 MW each. An aero-derivative turbine is based on a design very similar to the engines  
11 on a large jet. Each unit consists of two of these engines, which turn one generator. The  
12 aero-derivative type units are able to withstand the stress of starting and stopping better than  
13 larger combustion turbines.

14       Q.     What is the purpose of your direct testimony concerning EC3&4?

15       A.     The purpose of my testimony concerning EC3&4 is to present background  
16 information concerning the Staff's review of the Company's construction costs for its  
17 EC3&4 units, which it seeks to reflect in customer rates for this case. This review began in  
18 Empire's last rate case, Case No. ER-2004-0570. In that case, the Staff proposed a  
19 disallowance of a portion of the costs associated with the installation of EC3&4. It was the  
20 Staff's opinion that the Company acted imprudently by exposing Empire to an unnecessary  
21 level of financial risk. This unnecessary financial risk resulted from Empire's decision to not  
22 enforce its contract provision that required the contractor, Patch Construction L.L.C. (Patch),  
23 to obtain a performance bond within 21 days after signing the contract. Patch filed for



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1 bankruptcy protection during its construction of the EC3&4 and was unable to finish the  
2 project. As a result, Empire's decision resulted in the additional unnecessary costs to  
3 complete the construction of EC3&4, which the Company sought to recover from its  
4 customers in that rate case.

5 During negotiations between the Company and the Staff in that case, a settlement was  
6 reached for the amount of construction overrun costs that would be included in rate base.

7 Q. If these costs are not addressed in this case, what will the impact be for  
8 Empire's rate payers?

9 A. The entire amount of Patch's construction overrun costs will be included in  
10 rate base. Therefore, the rates that are determined in this case will reflect the full amount of  
11 these costs.

12 Q. How did the Staff update its review of the EC3&4 construction costs from  
13 Empire's last rate case to this rate case?

14 A. The Staff set up a meeting with Empire to discuss EC3&4 construction costs,  
15 scheduled a tour of EC3&4 and submitted additional data requests that asked the Company to  
16 update its responses to the Staff's previous data requests concerning this issue that were  
17 submitted in Case No. ER-2004-0570, as appropriate. The Company responded to this  
18 request by stating that there had been no changes to the data request responses from the last  
19 case, and that the answers given then were still appropriate.

20 Q. Have the construction and installation costs for EC3&4 changed since the  
21 previous case (Case No. ER-2004-570)?

22 A. Yes, the original construction and installation costs for EC3&4 in  
23 Case No. ER-2004-0570 were established at \$55,220,300. The construction and installation

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1 costs for EC3&4 for this case amount to \$55,807,026 which is an increase of approximately  
2 \$586,726. The reason for this increase is that Allowance of Funds During Construction  
3 (AFUDC) amount had not yet been booked by the Company for EC3&4 during the last case.

4 Q. Was there an unnecessary risk associated with Empire's decision to hire Patch  
5 in February of 2002?

6 A. No. Patch was hired for the installation of the two FT-8 gas turbines and  
7 Balance of Plant (BOP) for EC3&4. When Empire decided to contract with Patch, the  
8 Company appropriately covered its financial risk that Patch would "fail to perform" through  
9 the contractual requirement by requiring Patch to acquire a "performance bond." However,  
10 Empire made the decision not to enforce this contractual requirement and exposed itself to  
11 the financial risk associated with cost over-runs when the contractor failed to perform.

12 Q. Please discuss the original safeguard Empire incorporated into its contract  
13 with Patch to address this risk.

14 A. As discussed and explained in the testimony of Staff witness David W. Elliot,  
15 of the Energy Department, Patch was required to obtain a performance bond within 21  
16 business days of the signing of the original contract. (See Schedule 3.) This performance  
17 bond would have provided a safeguard for Empire against the financial risk discussed above,  
18 by reimbursing Empire for the additional cost incurred due to the failure of Patch to complete  
19 the installation of EC3&4 at the contract price. (See Schedule 4.) By not enforcing this  
20 requirement, Empire exposed itself to increased financial risk and potential increase in cost.  
21 This contract requirement was important because Empire had evidence in its possession that  
22 Patch might fail to perform under the contract. The Company had this evidence prior to the  
23 signing of the original contract with Patch on February 15, 2002.

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1 Q. Please discuss the information that was available to Empire, prior to the  
2 signing of the original contract, relating to the risk associated with hiring Patch.

3 A. In response to Staff Data Request No. 429 in Case No. ER-2004-0570, the  
4 Company provided two memorandums dated August 17, 2004, written by  
5 Mr. Blake Mertens, Empire's Planning Engineer-Energy Supply. These memorandums were  
6 based on notes compiled by Mr. Mertens during telephone interviews he conducted on  
7 January 11, 2002, with representatives of Lockport Cogeneration (Lockport) and  
8 Puget Sound Energy (PSE), previous clients of Patch, for purposes of obtaining a background  
9 and reference check on the contractor.

10 Q. What experience did Lockport have with Patch?

11 A. Lockport's experience with Patch's work was very limited since only the  
12 foundation construction was completed prior to the entire project being suspended.

13 Q. Was Lockport satisfied with Patch?

14 A. Yes.

15 Q. What experience did PSE have with Patch?

16 A. Attached as Schedule 2 to this testimony is the memorandum summarizing  
17 PSE's experiences. \*\* \_\_\_\_\_  
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Q. Were the reference checks performed by Empire for Patch adequate?

4

A. Yes. The Company spoke with two prior Patch clients. One of these references had very limited experience in dealing with Patch while the other outlined

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\_\_\_\_ \*\*

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7

\_\_\_\_ \*\*, the Company did not enforce the contract provision, which required Patch to obtain a performance bond.

8

Q. What documentation did the Staff receive regarding Empire's diligence in obtaining a performance bond?

9

A. The Company provided two electronic mail messages dated March 21, 2002, and July 3, 2002. The electronic mail message dated March 21, 2002, indicated Patch was experiencing difficulty in obtaining a performance bond and needed a letter from Empire in order to satisfy a requirement imposed by the issuer of the bond. The electronic mail message dated July 3, 2002, indicated Patch was unable to obtain a performance bond. Empire decided to expose itself to the risk of Patch's non-performance by failing to obtain the protection that a performance bond would have afforded the Company.

10

Q. What, if anything, did Empire do at this point in an attempt to minimize the Company's exposure to a potential increase in financial risk?

11

A. Empire began pursuing an alternative solution to minimize the Company's exposure to increased financial risk. As a result, Patch and Empire agreed to amend the original contract (i.e., Amendment 1 to that contract, attached to this testimony as

12

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1 Schedule 5), whereby Patch Construction L.L.C., Patch Inc., Chester J. Patch, III and  
2 Patricia M. Patch became personally liable for any unapproved costs above the original  
3 contract amount. (See Schedule 6 attached to this testimony.) Empire and Patch signed this  
4 amendment on July 22, 2002.

5 Q. Did this amendment satisfactorily reduce Empire's exposure to the potential  
6 increase in cost and financial risk that resulted from the Company's failure to enforce the  
7 contract provision requiring Patch to obtain a performance bond?

8 A. No. This amendment's protection is dependent on the financial strength of the  
9 individuals and entities that assumed liability for non-performance. Patch was required to  
10 submit financial statements to Empire as a condition of approval prior to the signing of  
11 Amendment 1. The Company provided copies of these financial statements to the Staff in  
12 response to Staff Data Request No. 425 in Case No. ER-2004-0570. These financial  
13 statements contain sufficient evidence of Patch's financial difficulties that existed prior to the  
14 signing of Amendment 1. The proposed amendment to the contract did not satisfactorily  
15 address Empire's exposure to the increased financial risk that resulted from the Company not  
16 enforcing the contract provision requiring Patch to obtain a performance bond.

17 Q. Were Chester J. Patch, III and Patricia M. Patch, as well as the companies  
18 they controlled, ultimately able to provide sufficient funds to cover any personal liability for  
19 failure to perform?

20 A. No. In fact, Patch Inc. and Patch Construction L.L.C. filed for bankruptcy  
21 simultaneously on November 11, 2003. Chester J. Patch, III and Patricia M. Patch filed for  
22 bankruptcy on June 2, 2004. The court relieved Patch Inc. and Patch Construction L.L.C. of  
23 their debt owed to Empire as of August 1, 2004. Additionally, court documents from the

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1 bankruptcy proceeding reveal that Chester J. Patch, III and Patricia M. Patch did not have  
2 sufficient assets to pay the liability owed to Empire.

3 Q. What additional costs were incurred by Empire as a result of its imprudence?

4 A. Staff witness Elliott has identified \$4,321,356 as the total company amount of  
5 additional cost incurred by Empire to complete the installation of EC3&4 as a result of  
6 Patch's failure to perform. This is the maximum amount that could be considered for a  
7 disallowance as a result of Empire's imprudence.

8 Q. Is the Staff proposing to disallow the entire \$4,321,356 of cost overruns  
9 associated with this issue?

10 A. No. Before it made the decision to hire Patch, Empire had narrowed its  
11 consideration of contractors to two bidders, Patch and Sega. Based on Empire's evaluation  
12 of the bid proposals, the elimination of Patch from consideration would have resulted in Sega  
13 being awarded the contract to install EC3&4. However, since Sega's bid was \$1,166,000  
14 higher than Patch's, Empire would have incurred this additional amount for the installation of  
15 EC3&4. Therefore, the Staff is recommending a total company disallowance of \$3,155,356  
16 (\$4,321,356 - \$1,166,000).

17 Q. What accounts has the Staff adjusted to eliminate this cost overrun?

18 A. The Staff reduced plant in service accounts 341.000 (Structures and  
19 Improvements), and 344.000 (Generators) evenly by \$1,577,678 (total Company) in plant  
20 adjustments P-38.1 and P-41.1, respectively. The Staff has made a related adjustment to  
21 adjust the depreciation expense which has accumulated on the plant disallowance amount.  
22 Both depreciation reserve accounts 341.000 and 344.000 were decreased by \$33,499 in  
23 reserve adjustments R-38.1 and R-41.1, respectively. Furthermore, the Staff made

1 adjustments to the AFUDC portion of plant and depreciation reserve related to the  
2 disallowance. The AFUDC portion of plant was decreased by \$33,526 and the accumulated  
3 depreciation reserve was decreased by \$711 for both accounts 341.000 and 344.000 in plant  
4 adjustments P-38.2 and P-41.2, and reserve adjustments R-38.2 and R-42.2, respectively.

5 **TREE TRIMMING EXPENSE**

6 Q. What is the purpose of your testimony concerning transmission and  
7 distribution vegetation control costs (tree trimming)?

8 A. The purpose of my testimony is to discuss and reflect the Staff's normalized  
9 level of transmission and distribution tree trimming expense that should be included in the  
10 test year. Empire has included approximately \$5,350,689 for tree trimming expense in their  
11 rate case filing. \$2,095,192 of these costs are associated with transmission and distribution  
12 maintenance expense. The Staff removed the costs associated with maintenance expense  
13 from its analysis of tree trimming expense, and chose to analyze that amount as part of the  
14 Company's maintenance expense. The transmission and distribution maintenance expense  
15 analysis is being performed by Staff Auditing witness Kofi Boateng for this case.

16 Q. Has the Company recently made changes to its tree trimming program?

17 A. Yes. In July 2005, the Company made extensive changes to their tree  
18 trimming program. The changes were primarily related to distribution vegetation control, but  
19 refinements to their transmission trimming program were also made. These changes include  
20 how the work is planned, how it is performed and the reimbursement costs of Empire's  
21 contractors. They have also changed their primary vegetation control contractor and retained  
22 an outside consultant to assist in the planning of their vegetation control projects.

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1           Q.     What level of tree trimming expense did the Staff include in Empire's rate  
2 case?

3           A.     The Staff's adjustment annualized the Company's tree trimming expense to  
4 reflect the current costs associated with Empire's implemented changes that began in  
5 July 2005. The Company's tree trimming expense for the test year was \$3,814,971.  
6 However, since the Company could only provide the Staff with six months of tree trimming  
7 data under the new program, the Staff used this amount to annualize the total cost over a  
8 period of one year. Based upon this analysis, the annualized tree trimming expense for the  
9 test year is \$4,118,782. The Staff believes this represents a reasonable level of ongoing tree  
10 trimming expense for Empire.

11          Q.     Does this conclude your direct testimony?

12          A.     Yes it does.



**CASE PROCEEDING/PARTICIPATION**

**PAUL R. HARRISON**

<b>COMPANY</b>	<b>CASE NO.</b>	<b>TESTIMONY/ISSUES</b>
Missouri Gas Energy	<b>GR-2006-0422</b>	<b>Case in Progress</b>  <b>Direct-</b> Revenues; Purchased Gas Adjustments; Bad Debt Expense; Pensions & OPEBS; Income Taxes and Case Reconciliation
Empire Electric Company	<b>ER-2006-0315</b>	<b>Case in Progress</b>  <b>Direct-</b> Tree Trimming Expense; Storm Damage Tracker and Construction Over-Run Costs
Missouri Pipeline & Missouri Gas Company LLC	<b>GC-2006-0378</b>	<b>Case in Progress</b>  Plant in Service, Depreciation Reserve, Depreciation Expense, Acquisition Costs and Income Taxes
New Florence Telephone	<b>TC-2006-0184</b>	<b>Case in Progress</b>  Plant in Service; Depreciation Reserve; Depreciation Expense; Plant Overage; and Materials & Supplies
Cass County Telephone	<b>TC-2005-0357</b>	<b>May 2006</b>  Plant in Service; Depreciation Reserve; Depreciation Expense; Plant Overage; Plant Held for Future Use and Missouri Universal Service Fund
Cass County Telephone & New Florence Telephone Fraud Investigation Case	<b>TO-2005-0237</b>	<b>May 2006</b>  Fraud Investigation case involving Cass County Telephone and New Florence Telephone
Missouri Gas Energy	<b>GR-2004-0209</b>	<b>June 2004</b>  <b>Surrebuttal</b> - Revenues and Bad Debt Expense  <b>True-Up</b> - Revenues; Bad Debt Expense

<b>COMPANY</b>	<b>CASE NO.</b>	<b>TESTIMONY/ISSUES</b>
Missouri Gas Energy	<b>GR-2004-0209</b>	<b>Litigated-</b> Manufactured Gas Plant  <b>May 2004</b>  <b>Rebuttal</b> - Revenues; Bad Debt Expense; and Manufactured Gas Plant
Missouri Gas Energy	<b>GR-2004-0209</b>	<b>April 2004</b>  <b>Direct</b> – Revenues; Purchased Gas Adjustments; Bad Debt Expense; Medical Expense; Rents; and Income Taxes
Union Electric Company d/b/a AmerenUE (Gas)	<b>GR-2003-0517</b>	<b>October 2003</b>  <b>Direct</b> – Corporate Allocations; UEC Missouri Gas Allocations; CILCORP Allocations; Rent Expense; Maintenance of General Plant Expense; Lease Agreements; and Employee Relocation Expense
Union Electric Company d/b/a AmerenUE	<b>EC-2002-1</b>	<b>June 2002</b>  <b>Surrebuttal</b> - Coal Inventory; Venice Power Plant Fire; Tree Trimming Expense; and Automated Meter Reading Service
Laclede Gas Company	<b>GR-2002-356</b>	<b>June 2002</b>  <b>Direct</b> - Payroll; Payroll Taxes; 401k Pension Plan; Health Care Expenses; Pension Plan Trustee Fees; and Clearing Account;  <b>True- Up</b> – Payroll; Payroll Taxes; and Clearing Accounts
Union Electric Company d/b/a AmerenUE (2 <sup>nd</sup> period, 3 <sup>rd</sup> EARP)	<b>EC-2002-1025</b>	<b>April 2002</b>  <b>Direct</b> - Revenue Requirement Run; Plant in Service; Depreciation Reserve; Other Rate Base items; Venice Power Plant Fire expenditures; Tree Trimming Expense; and Coal Inventory

COMPANY	CASE NO.	TESTIMONY/ISSUES
<p>2<sup>nd</sup> Complaint Case, Union Electric Company d/b/a AmerenUE</p> <p>New Test Year ordered by the Commission.</p>	<p>EC-2002-1</p>	<p>Deposition – April 11, 2002</p> <p>March 2002</p> <p>Direct - Materials and Supplies; Prepayments; Fuel Inventory; Customer Advances for Construction; Customer Deposits; Plant in Service; Depreciation Reserve; Venice Power Plant Fire Expenditures; Tree-Trimming Expense; Automated Meter Reading Expense; Customer Deposit Interest Expense; Year 2000 Computer Modification Expense; Regulatory Advisor's Consulting Fees; and Property Taxes</p>
<p>1<sup>st</sup> Complaint Case, Union Electric Company d/b/a AmerenUE</p>	<p>EC-2002-1</p>	<p>Deposition – November 27 2001</p> <p>July 2001</p> <p>Direct - Materials and Supplies; Prepayments; Fuel Inventory; Customer Advances for Construction; Customer Deposits; Plant in Service; Depreciation Reserve; Power Plant Maintenance Expense; Tree-Trimming Expense; Automated Meter Reading Expense; Customer Deposit Interest Expense; Year 2000 Computer Modification Expense; Computer Software Expense; Regulatory Advisor's Consulting Fees; Board of Directors Advisor's Fees and Property Taxes.</p>
<p>Union Electric Company d/b/a AmerenUE (2<sup>nd</sup> period, 2<sup>nd</sup> EARP)</p>	<p>EC-2001-431</p>	<p>February 2001</p> <p>Coal Inventory</p>
<p>Union Electric Company d/b/a AmerenUE (Gas)</p>	<p>GR-2000-512</p>	<p>August 2000</p> <p>Direct - Cash Working Capital; Advertising Expense; Missouri PSC Assessment; Dues and Donations; Automated Meter Reading Expenses; Computer System Software Expenses (CSS); Computer System Software Expenses (Y2K); Computer System Software Expenses (EMPRV); Generation Strategy Project Expenses; Regulatory Advisor's Consulting fees; Board of Directors Advisor's fees</p>

COMPANY	CASE NO.	TESTIMONY/ISSUES
<b>SUMMARY OF SMALL RATE CASES WORKED</b>		
Aqua Missouri Water and Sewer	QS-2005-0008 QW-2005-009 QS-2005-0010 QW-2005-0011	<b>In Progress</b>  Plant In Service; Depreciation Reserve, Depreciation Expense, Rate Base; Revenues and Expenses  Lead Auditor
Lake Region Water and Sewer Certificate Case	WA-2005-0463	<b>In Progress</b>  Certificate of Necessitate Application Case  Lead Auditor
Tri-State Utility Inc.	WA-2006-0241	<b>May 2006</b>  Certificate of Necessitate Application Case  Lead Auditor
Osage Water Company Environmental Utilities Missouri American Water	WO-2005-0086	<b>February 2005</b>  Rate Base; Cost of Service; Income Statement Items; Pre-Post Sale of OWC, Sale of EU Assets to MAWC
North Suburban Water & Sewer	WF-2005-0164	<b>December 2004</b>  Sale of All Stocks of Lake Region Water & Sewer to North Suburban Water & Sewer, Value of Rate Base Assets, Acquisition Premium  Lead Auditor
Roark Water and Sewer	WR-2005-0153 SR-2005-0154	<b>September 2004</b>  Plant In Service; Rate Base; Revenues; and Expenses. 2 <sup>nd</sup> Update September 2004 1 <sup>st</sup> Update October 2003 Filed February 2003  Lead Auditor

COMPANY	CASE NO.	TESTIMONY/ISSUES
Mill Creek Sewer	SR-2005-0116	<p align="center"><b>December 2004</b></p> <p>Plant In Service; Rate Base; Revenues; and Expenses.  2<sup>nd</sup> update December 2004  1<sup>st</sup> update September 2003  Filled October 2002</p> <p>Lead Auditor</p>
Osage Water Company	WT-2003-0583 SR-2003-0584	<p align="center"><b>December 2003</b></p> <p>Cost of Service; All Expenses related to Osage Water;  Plant in Service; Depreciation Reserve &amp; other Rate  Base Items</p>
<b>SUMMARY OF NON-CASE RELATED AUDITS</b>		
<b>January 2006</b> – Environmental Utilities and Osage Water Company Audit Concerning Provision of Service to Eagle Woods Subdivision and Disconnect Notice		
<b>November 2004</b> - Internal Audit of Public Service Commission (PSC) Fixed Assets, Physical Inventory Control Process and Location of Assets		

SCHEDULE 2  
HAS BEEN  
DEEMED  
HIGHLY CONFIDENTIAL  
IN ITS  
ENTIRETY

already performed, upon the failure of Owner to make an undisputed payment to Contractor within thirty (30) days of the date such payment was due, by so notifying Owner in writing seven (7) Business Days in advance. Disputes will be handled according to Exhibit F.

5.5 Contractor shall procure a performance bond within twenty-one (21) business days after the execution of the Agreement and provide Owner evidence in the form of Exhibit G.

## ARTICLE 6 START-UP AND TESTING

### 6.1. Mechanical Completion.

6.1.1 Contractor shall perform the Work so that Mechanical Completion shall occur not later than the Scheduled Mechanical Completion Date. Contractor shall, whenever it has cause to anticipate any delay in or impediment to proper and timely performance of the Work on its part, promptly notify Owner in writing and Contractor shall take reasonable steps, in accordance with this Agreement, to alleviate or mitigate such effects.

6.1.2 Contractor shall provide written notice to Owner that Contractor deems the Work to meet the requirements of Mechanical Completion. Within ten (10) Business Days after receiving notice of Mechanical Completion, Owner shall advise Contractor in writing of any known defects or deficiencies in the Project or discrepancies between installed Equipment, Bulk Materials and Supplies and as represented by the Specifications and Drawings. Contractor shall then take appropriate corrective action and again notify Owner in writing that the Project has achieved Mechanical Completion. Owner shall have three (3) Business Days after such notification to advise Contractor of any remaining known defects, deficiencies and discrepancies. If Owner fails to notify Contractor of any such known defects, deficiencies or discrepancies within the allocated time, the Project shall be deemed to have achieved Mechanical Completion.

6.1.3 If due to the fault of Owner or Owner's representatives, Mechanical Completion is not accomplished within thirty (30) days of the Schedule Mechanical Completion Date, Contractor shall be entitled to reimbursement of all expenses incurred for the demobilization and remobilization on a cost plus fifteen (15%) percent basis.

6.2 Performance Tests. As soon as practical after Mechanical Completion, Contractor shall conduct the Performance and Emission Tests (as described in Section 9 of Exhibit D) to ensure CEMS meets EPA standards and requirements and that emission limits are met as described in Revised Exhibit 4 (dated January 30, 2002) of Exhibit D.

### **ARTICLE 13**

#### **ASSIGNMENT**

13.1 Assignment. Except as set forth in this Article 13.1 no interest in this Agreement shall, in whole or in part, be assigned or encumbered by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Owner shall have the right to assign this Agreement in whole or in part to (i) an entity established to own, operate and to obtain funds for the construction and operation of the Project, and (ii) the Lender. Any such assignment shall not relieve the assigning party of any obligation under this Agreement. Upon the assignment of this Agreement to a Lender, Contractor shall, at the request of Owner, enter into a consent agreement with Lender pursuant to the terms of Article 19.7.

13.2 Succession. This Agreement shall inure to the benefit of and be binding upon the successor and permitted assigns (as provided for by Article 13.1) of the parties. Owner agrees that any assignees or transferee of its interest or any portion thereof in this Agreement or in the Project, including any lienholder or party holding a security interest with respect thereto will be bound by the releases and limitations of liability set forth in this Agreement such that the total aggregate liability of Contractor to Owner and such assignees or transferee shall not in the aggregate exceed the limits of liability set forth in this Agreement.

### **ARTICLE 14**

#### **SUBCONTRACTORS AND LABOR RELATIONS**

14.1 Subcontractors. Contractor shall have the right to enter into purchase orders for the provision of Equipment, Start-up Spare Parts, Bulk Materials and Supplies, and to subcontract a portion of the Work. The issuance of any purchase order or subcontract shall not relieve Contractor of any of its obligations under this Agreement, including, but not limited to, the obligation to properly supervise and coordinate the tasks of Subcontractors and Vendors so as to ensure that all tasks performed by Subcontractors and Vendors conform to the standards set forth in this Agreement.

14.2 Labor Relations. Contractor shall promptly undertake all reasonable efforts to resolve any labor disputes among its employees. If a labor disturbance occurs, Contractor shall take all reasonable actions to minimize any resulting disruption of the progress of the Work. Contractor shall advise Owner promptly in writing of any known actual or anticipated or threatened labor dispute that might affect the performance of the Work.

### **ARTICLE 15**

#### **SUSPENSION AND TERMINATION**

#### **15.1 Right of Owner to Suspend Work.**

15.1.1 Owner may suspend the performance of the Work by Contractor, in whole or in part, at any time and from time to time upon thirty (30) days' prior written notice of such suspension. The notice of suspension shall state the reason for suspension and the anticipated term of suspension. Thereafter, Contractor shall resume performance of the Work when directed to do so upon reasonable notice by Owner. Notice of suspension does not relieve Owner from making payments for milestone events already completed at the time of suspension or milestones scheduled for completion within thirty (30) days of the notice of suspension.



15.1.2 In the event of suspension of the performance of the Work at Owner's request, Contractor shall be entitled to a reimbursement of direct and indirect expenses and costs which were incurred by Contractor as a result of the suspension plus ten (10%) percent. Such expenses and costs shall include, but not be limited to, the costs of stopping the Work, preparing the Equipment, Construction Equipment, Start-up Spare Parts, Supplies and Bulk Materials for storage, moving such items to a storage facility, the cost of storage and insurance, cost increase in material and labor incurred during the suspension period, costs of removing such items from storage and transportation back to the manufacturing facility or Project Site, and costs of restarting the Work. The Scheduled Mechanical Completion Date and all other dates by which Contractor's responsibilities are measured shall be equitably adjusted to reflect any delays resulting from such suspension.

15.1.3 In the event suspensions by the Owner pursuant to Article 15.1.1 in the aggregate exceed ninety (90) days, Contractor may terminate its obligations under the Agreement by so notifying Owner in writing and the provisions of this Article 15.1 shall apply to such termination as if the termination were made by Owner without cause under Article 15.2.

15.2 Termination. Owner may terminate the Work with or without cause at any time by giving thirty (30) days written notice of termination to Contractor. Owner may terminate Contractor for cause should Contractor commit a material breach of or default under this Agreement, abandon the Project, make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudicated as bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law or regulation, file any answer admitting or not contesting the material allegations of a petition filed against Contractor in any such proceeding, or seek, consent to or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Contractor or of all or any substantial part of the properties of Contractor, or if Contractor, its directors or shareholders take action to dissolve or liquidate Contractor. In the case of a termination for material breach of or default under this Agreement, Owner may not terminate this Agreement for cause if after notice of such breach or default which identifies in detail the acts or omissions of Contractor causing such breach or default and prior to expiration of the thirty (30) day period set forth above, Contractor has commenced and is diligently pursuing efforts to cure such breach or default.

15.3 Payments upon Termination. In the event of termination as provided in Article 15.2 without cause, Owner shall pay to Contractor a pro rata portion of the Agreement Price consistent with the Project Schedule up to thirty (30) days following the date of notice of termination, plus any costs directly or indirectly attributable to, and reasonably incurred in terminating the Work, including, without limitation, cancellation charges owed to third parties. Contractor shall provide Owner with invoices of all such costs. In the event of termination as provided in Article 15.2 for cause, Owner shall pay to Contractor for a pro rata portion of the Agreement Price consistent with the Project Schedule up to the date of notice of termination but Owner shall have no obligation to make such payment to Contractor until the amount of Owner's offset rights for any reasonable and necessary expenses incurred by Owner to complete the Project under substantially similar terms and conditions are agreed upon by Owner and Contractor. Upon termination, Contractor shall deliver to Owner possession of the Work in its then condition, including without limitation all Drawings and Specifications, contracts with Vendors and Subcontractors, all other documentation associated with the Project, and all construction supplies and aids dedicated solely to construction of the Project. In the event of

termination neither party shall be liable to the other except to the extent obligations, by their terms, expressly survive termination.

**15.4 Assumption of Obligations.** In the event of termination, Owner shall assume and become liable for any written obligations and commitments that Contractor may have undertaken with Vendors and Subcontractors in connection with the Work, and any other obligations Owner chooses to assume which are by law or by their terms assumable by Owner and are not covered by the payments made to Contractor under Article 15.3. Such obligations include, without limitation, any leases or rentals of Construction Equipment utilized in connection with construction of the Work. Contractor shall execute all papers and take all other reasonable steps requested by Owner which may be required to vest in Owner all rights, setoffs, benefits and titles necessary to such assumption by Owner of such obligations described in this Article 15.4. Owner agrees to indemnify and hold Contractor harmless against any liability under any obligations assumed by Owner pursuant to this Article 15.4 arising after the assumption by Owner.

**15.5 Liability Limitations.** Notwithstanding anything in this Agreement to the contrary, in no event shall the maximum liability under this Agreement of Contractor, its corporate affiliates, and their employees, agents, partners, officers and directors (referred to as the "Released Parties") to Owner, its partners, Lender, their affiliates, employees, agents, partners, officers and directors (referred to as the "Releasing Parties") with respect to all claims, including those of third parties, however caused, arising out of the performance or non-performance of the Work and obligations under this Agreement, whether based in contract, warranty, tort (including negligence), strict liability, or otherwise, including without limitation, liability for liquidated damages, pursuant to Article 6 exceed in the cumulative aggregate the sum of five (5%) percent of the Agreement Price and the Releasing Parties hereby release, indemnify and hold harmless the Released Parties from any excess liability. No claim shall be asserted against the Released Parties unless the injury, loss or damage giving rise to the Claim is sustained prior to the expiration of one (1) year from the date of Mechanical Completion.

**15.6 Liability Limitation for Empire District Electric Company.** Notwithstanding anything in this Agreement to the contrary, in no event shall the maximum liability under this Agreement of Owner, its corporate affiliates, and their employees, agents, partners, officers and directors (referred to as the "Released Parties") to Contractor, its partners, Lender, their affiliates, employees, agents, partners, officers and directors (referred to as the "Releasing Parties") with respect to all claims, including those of third parties, however caused, arising out of the performance or non-performance of the Work and obligations under this Agreement, whether based in contract, warranty, tort (including negligence), strict liability, or otherwise, including without limitation, liability for liquidated damages, pursuant to Article 6 exceed in the cumulative aggregate the sum of five (5%) percent of the Agreement Price and the Releasing Parties hereby release, indemnify and hold harmless the Released Parties from any excess liability. No claim shall be asserted against the Released Parties unless the injury, loss or damage giving rise to the Claim is sustained prior to the expiration of one (1) year from the date of Mechanical Completion.

**15.7 Consequential Damages.** The Released Parties shall not be liable to the Releasing Parties for incidental, indirect, punitive, exemplary, special or consequential loss or damage, including, but not limited to loss of use, loss of profit, loss of revenue, loss by reason of plant shutdown or inability to operate at rated capacity, increased costs of purchasing or providing the Equipment or other materials, supplies or services, debt service, rental payments or contractual damages incurred by Owner to others, resulting from any cause whatsoever,

Including but not limited to any delay, act, error or omission of Contractor, whether or not involving the sole or concurrent fault or negligence of Contractor.

15.8 Exclusivity. The remedies described in Articles 6.1.4, 6.3.1 and 6.3.2, subject to the limitation of liability specified in Article 15.5, shall constitute Owner's sole and exclusive remedies for liabilities of Contractor arising from the failure of Contractor to achieve Mechanical Completion by the Scheduled Mechanical Completion Date and failure of the Project to meet the Performance Guarantees.

## **ARTICLE 16** **FORCE MAJEURE**

16.1 Events Constituting Force Majeure. Force Majeure means the occurrence of any event or circumstance or combination of any event or circumstance beyond the reasonable control of either party which materially and adversely affects the ability of either party to perform its obligations under the Agreement. Neither party shall be excused from timely payment of any amounts due under this Agreement due to an event of Force Majeure.

Without limiting the generality of the foregoing, events constituting Force Majeure shall include, but not be limited to the following events and circumstances to the extent they satisfy the above requirements:

- (a) Acts of war, terrorism, hostilities (whether war be declared or not), invasion, act of foreign enemies.
- (b) The making or changing of any statute, ordinance, order, law, regulation or by-law by any branch of the government or any political subdivision thereof which has the effect of prohibiting or rendering unlawful the performance of the Agreement.
- (c) Rebellion, revolution, insurrection, military or usurped power or civil war.
- (d) Riot, civil commotion or disorder.
- (e) Epidemic or plague.
- (f) Any material effect of the natural elements, including lightning, fire, earthquake, flood, storm, blizzards, hail, cyclone, typhoon, or tornado.
- (g) Strikes, works to rule or go slows which are either widespread, nationwide, regional or local or of a political nature.
- (h) Change, denial, delay or failure to renew licenses or permits required for the Project.
- (i) Subsurface or latent physical conditions at the Project Site.
- (j) Delays or accidents in transportation (including delays in customs).
- (k) Partial or entire delays or failures in the provision of any necessary utilities at the Project Site.

**EXHIBIT G****PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned \_\_\_\_\_ of PATCH CONSTRUCTION LLC, hereinafter referred to as "Contractor", and \_\_\_\_\_ a corporation organized under the laws of the state of \_\_\_\_\_ and authorized to transact business in the states of Missouri and Kansas as "Surety," are held and firmly bound unto THE EMPIRE DISTRICT ELECTRIC COMPANY, hereinafter referred to as "Owner," in the penal sum of \_\_\_\_\_ US DOLLARS (US\$ \_\_\_\_\_), lawful money of the United States of America, for the payment of which sum, well and truly to be made to the Owner, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, by these presents:

WHEREAS, on the \_\_\_\_\_ day of \_\_\_\_\_, 2002, the Contractor entered into a written Agreement with the Owner for furnishing materials, supplies, and equipment not furnished by the Owner, construction tools, equipment, and plant, and the performance of all necessary labor, for and in connection with the construction of certain improvements designated, defined, and described in the said Agreement and the conditions thereof, and in accordance with the Agreement documents therefor, a copy of the said Agreement being attached hereto and made a part hereof, and

WHEREAS, it was a condition of the Agreement award by the Owner that these presents be executed by the Contractor and Surety;

NOW THEREFORE, if the said Contractor shall, in all particulars, well, duly, and faithfully observe, perform, and abide by each and every covenant, condition, and part of the said Agreement, and the conditions, specifications, guarantees (including those of equipment performance), drawings, and other Agreement documents thereto attached or, by reference, made a part thereof, according to the true intent and meaning in each case, then this obligation shall be null and void; otherwise, it shall remain in full force and effect, and

PROVIDED, that in the event the Contractor shall be in default under the Agreement or the Agreement shall be terminated by the Owner under the provisions of the Agreement, the Surety shall promptly remedy the default or shall promptly (1) complete the Agreement in accordance with its terms and conditions, or (2) arrange for a contract between the Owner and a mutually acceptable contractor to complete the original contract in accordance with its terms and conditions; and in the event the Surety does not commence performance within thirty (30) days after notice of default or termination, the Owner may take over and prosecute the work to completion by Agreement or otherwise and the Surety shall pay to the Owner the cost of completion less the unpaid balance of the Agreement price. (The "unpaid balance of the Agreement price" shall mean the total Agreement price less the amount paid to the Contractor under the terms of the Agreement.)

PROVIDED FURTHER, that if the Contractor shall fail to pay all just claims and demands by, or in behalf of, any employee or other person, or any firm, association, or corporation, for labor performed or materials, supplies or equipment furnished, used or consumed by the Contractor or his, their or its subcontractor or subcontractors in the performance of the work, then the Surety will pay the full value of all such claims or demands in

any total amount not exceeding the amount of this obligation, together with interest as provided by law.

THE UNDERSIGNED SURETY, for value received, hereby agrees that no extension of time, change in, addition to, or other modification of the terms of the Agreement or work to be performed thereunder, or of the specifications or other Agreement document, shall in any way affect its obligation on this bond, and the Surety does hereby waive notice of any such extension of time, change, addition, or modification.

IN TESTIMONY WHEREOF, the Contractor has hereunto set his hand and the Surety has caused these presents to be executed in its name and its corporate seal to be affixed by its attorney-in-fact at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
(Contractor)

By: \_\_\_\_\_

\_\_\_\_\_  
(Surety Company)

By: \_\_\_\_\_  
(Attorney-in-Fact)

By: \_\_\_\_\_  
(State Representative)

**AGREEMENT FOR INSTALLATION OF TWO FT-8 TWIN PAC'S  
AND ENGINEERING, PROCUREMENT  
AND CONSTRUCTION OF BOP EQUIPMENT  
NEAR SARCOXIE, MISSOURI**

By and Between

THE EMPIRE DISTRICT ELECTRIC COMPANY

And

PATCH CONSTRUCTION LLC AND PATCH INC.

**AMENDMENT – 01**

week. As these costs are prepared on a weekly estimated basis, each request for payment will be supported with documents for the preceding week and the payment request reconciled as necessary.

5.4 Payment of Change Order Price: The payment of Change Orders shall be made by Owner in accordance with the provisions of the Change Orders approved by Owner.

5.5 Interest: Any portion of the Agreement Price not paid by Owner when due in accordance with this Article 5 may incur Interest charges from the Suppliers. Any such additional costs caused solely by delay of Owner, including Contractor's costs resulting from late payments shall be to the Owner's account. Any such additional costs caused by delay of Contractor, shall be to the Contractor's account. Provided Contractor is not in default under the Agreement or this amendment, any portion of the Agreement Price due directly to the Contractor and not paid by Owner when due in accordance with this Article 5 shall bear interest from the date payment was due to the date of payment at a rate per annum equal to the lesser of the maximum lawful rate or the prime rate as then published by Bank of America in Houston, Texas plus three (3%) percent.

5.6 Contractor's Right for Non-Payment by Owner: Notwithstanding the provisions of Article 5.5 above, and provided Contractor is not in default of its obligations under the Agreement or this amendment, Contractor shall have the right to terminate this agreement in its entirety, and to be released from any liability except with respect to its warranty obligations for Work already performed, upon the failure of Owner to make an undisputed payment to Contractor within thirty (30) days of the date such payment was due, by so notifying owner in writing seven (7) Business Days in advance. Disputes will be handled according to Exhibit F.

#### A1.2 Exhibit B: Payment Terms and Values

Exhibit B: Payment Terms and Values is deleted in its entirety and replaced with the following provisions:

- 1 Attached as Exhibit J is Contractor's Project Cost Report as of the date of this Amendment 01, disclosing in full the Original Budget, Current Budget, Current Commitments and the Forecast to Complete.

2. The latest Cost Report referred to above contains the forecast costs at Project completion based on actual order values and quantity take-offs at over 80% Engineering completion. The economies achieved by Contractor have enabled Contractor to create a First Tier Contingency (FTC) in the amount of \$915,258.
3. Contractor hereby assigns the First Tier Contingency to Owner's control. This contingency will be re-allocated to and from estimated areas of the project to maintain the project budget at \$10,450,124 or less. (\$11,365,382 - \$915,258). Contractor shall not be required to provide a Performance Bond.
4. The Cost Report also defines Contractor's originally planned Overhead, Profit and Contingency. The Original Budget for Profit and Contingency was \$1,067,011. This amount shall be defined as the Second Tier Contingency. Owner has in effect paid this amount as part of the Notice to Proceed payment of \$ 1,136,000. Should the First Tier Contingency be exhausted, Contractor shall reimburse Owner for all costs above \$10,450,124 within seven (7) working days, provided such costs have been invoiced to Owner by Contractor and provided Owner has paid the invoiced amounts.
5. Should both the First and Second Tier Contingency's be exhausted (i.e. the cost of the project exceeds \$11,365,382) then Contractor will make assets from Patch LLC, Patch Inc, and the personal assets of Mr. C J Patch III, PE available as collateral to insure completion of the project at the contracted value of \$11,365,382 pursuant to Exhibit M.
6. Unused First Tier Contingency will be allocated as follows: In recognition of the Owner's increased accounting and administrative functions, the first \$60,000 of remaining First Tier contingency will be retained by the Owner. The remaining First Tier contingency is payable by Owner to Contractor progressively as noted below:

Event	Anticipated Date	% FTC
Mechanical Completion of Unit 3	11-Feb-03	25%
Mechanical Completion of Unit 4	26-Feb-03	25%
Achieve Commercial Operation Unit 3	01-Apr-03	25%
Achieve Commercial Operation Unit 4	15-Apr-03	25%



Owner shall release to Contractor the payments as referred to above for achieving Commercial Operation by the dates specified, irrespective of whether Commercial Operation had been achieved or not, provided however, any delay to achieving Commercial Operation is not in whole or in part attributable to any deficiency in the work performed by Contractor, and provided that Contractor is in not in breach of the Agreement or this amendment and all lien waiver releases have been provided by owner.

**A1.3 EXHIBIT C: PROJECT SCHEDULE**

The Project Schedule, Run Date 05 Feb 02 is replaced with a new Schedule, Run Date 19 July 02, reflecting Owner's request to bring forward Unit 4 completion.

**A1.4 EXHIBIT E: CONTRACTOR'S PARTIAL RELEASE OF CLAIMS**

Contractor confirms receipt of payments from Owner in the sum of \$3,442,774 (Three million, four hundred forty two thousand, seven hundred seventy four), through the invoice dated June 7, 2002, covering all work performed up to and including May 31, 2002, and further confirms that Contractor has satisfactorily fulfilled his obligations with respect to Exhibit E: CONTRACTOR'S PARTIAL RELEASE OF CLAIMS for all payments made to date. The provisions of the Exhibit E referenced herein shall apply as described in section A 1.1 (5.3.3) described above.

**A1.5 EXHIBIT G: PERFORMANCE BOND**

Exhibit G: PERFORMANCE BOND, to the Agreements deleted in its entirety, pursuant to section A1.2 above.

A1.6 Contractor has furnished Owner with the following Financial Statements and the Owner has reviewed the same and Owner's requirements, resulting from this review, are incorporated in this AMENDMENT-01:

- Operating Statement for Patch LLC
- Operating Statement for Patch Inc
- Personal Statement for Mr. C J Patch III, PE

**A1.7 EXHIBIT H: EXAMINATION OF RECORDS**

IN WITNESS WHEREOF, the parties have caused this AMENDMENT 01 to "The ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT" made and entered into February 15, 2002 by and between The Empire District Electric Company ("Owner") and Patch Construction LLC ("Contractor") to be executed as of the date first above written:

CONTRACTOR

OWNER

Patch Construction L.L.C.

The Empire District Electric Company

By: C.J. Patch

By: Brad Beecher

Printed Name: C.J. PATCH III

Printed Name: BRAD BEECHER

Title: PRESIDENT

Title: VP ENERGY SUPPLY

CONTRACTOR

Patch Inc.

By: C.J. Patch

Printed Name: C.J. PATCH III

Title: PRESIDENT

# EXHIBIT M

## GUARANTY AGREEMENT

**DATE AND PARTIES.** The date of this Guaranty Agreement ("Guaranty") is July 23, 2002 [date of amendment], and the parties are as follows:

Name	Street Address, City, State, Zip of Residence or Registered Agent Address in Missouri	SSN or Tax ID #
C. J. Patch, III, Individually	5310 GREENHURST LN SPRING, TX 77379	034-30-6785
[ <u>PATRICIA H. PATCH</u> ], Individually [spouse's name]	5310 GREENHURST LN SPRING, TX 77379	021-34-5101
Patch, Inc., a [ <u>TEXAS</u> ] corporation [state of incorporation]	3663 N. Sam Houston Pkwy East SUITE 300 Houston, TX 77052	760513353
Patch Construction, L.L.C., a [ <u>TEXAS</u> ] limited liability company [state of organization]	7285 PEPPERHILL PKWY N. CHARLESTON, SC 29418	760655399

**[GUARANTORS] (Collectively)**

The Empire District Electric Company, a Kansas corporation  
602 Joplin St  
Joplin MO 64801  
**[HOLDER]**

**1. AGREEMENT TO GUARANTEE.**

- A. To induce HOLDER to enter into an amendment to that certain Engineering, Procurement and Construction Agreement dated February 15, 2002 (the "Agreement"), GUARANTORS, jointly and severally, absolutely and unconditionally, promise to perform in accordance with the Obligations (as hereinafter defined) under this Guaranty, the Agreement, and the Amendment and to pay and guarantee prompt remittance of all payments to be made by Contractor under the Agreement and the Amendment to any third party supplier of labor, materials and services, or any other payment due by Contractor under the Agreement and the Amendment. Upon full performance by GUARANTORS of all of their respective obligations hereunder, this Guaranty, the Agreement, and the Amendment shall terminate.
- B. The term "Obligations" shall mean: (i) the obligations of GUARANTORS under this Guaranty; (ii) the obligations of GUARANTORS under the Agreement or under the Amendment; (iii) all existing and future indebtedness, liabilities, and obligations of GUARANTORS to HOLDER.
- C. GUARANTORS, jointly and severally, absolutely and unconditionally, guarantee and promise unto HOLDER that they will faithfully perform and fulfill all of their covenants under the Agreement and the Amendment and the Obligations at the time and in the manner provided for therein.
- D. GUARANTORS, jointly and severally, absolutely and unconditionally, further promise and guarantee prompt payment when due of all attorney fees, including paralegal fees, and all other costs and expenses incurred by HOLDER in enforcing HOLDER's rights under this Guaranty, the Agreement, and the Amendment.

2. **PRIMARY LIABILITY.** GUARANTORS are primarily liable under this Guaranty; regardless of whether or not HOLDER pursues any of its remedies under the Agreement or the Amendment or against any other surety, guarantor or endorser under said Agreement or Amendment.

3. **NO OTHER CONDITIONS.** The liability of GUARANTORS is not conditioned on the signing of this Guaranty by any other person and further is not subject to any condition not expressly set forth herein.
4. **EVENTS OF DEFAULT.** GUARANTORS shall be in default upon the occurrence of any of the following events, circumstances or conditions:
- A. Failure by any person or entity obligated to make payment on behalf of Contractor under the Agreement or the Amendment.
  - B. A default or breach under any of the terms of this Guaranty, the Agreement or the Amendment.
  - C. The reasonable determination by HOLDER that any warranty, covenant, representation or statement made herein or in the Agreement or Amendment to induce HOLDER to enter into this Guaranty, the Agreement, and the Amendment, and all other documents executed in conjunction therewith, if any, and to accept this Guaranty, prove to be false when made or furnished.
  - D. Entry of a decree or order for relief by a court having jurisdiction of the premises in respect of any of GUARANTORS, or any guarantor or surety of them, in any involuntary case under Federal Bankruptcy Laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or similar law, or the appointing of a receiver, a liquidator, assignee, custodian or other similar official of GUARANTORS or any guarantor or surety of them, or for a substantial part of their property, or the ordering or winding up liquidation of affairs and the continuance of any such decree or order unstayed in effect for a period of sixty (60) days.
  - E. Commencement by any of GUARANTORS or by any guarantor or surety of them of a voluntary case under Federal Bankruptcy Laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or similar law, or the consent by any of them to the appointment of or taking into possession by a receiver, a liquidator, assignee, custodian or other similar official of GUARANTORS or any guarantor or surety of them, or for a substantial part of their property, or the making by them or by any guarantor or surety of them of any assignment for the benefit of creditors, or the failure of any of them generally to pay their debts as such debts become due or the taking of any action by any of them or any guarantor or surety of them in furtherance of any of the foregoing.
  - F. Dissolution, termination of existence, or business failure of PATCH CONSTRUCTION, L.L.C. or PATCH, INC.
  - G. If any guaranty of the Agreement or the Amendment shall at any time, for any reason, cease to be in full force and effect or shall be declared to be null and void by a court of competent jurisdiction, or if the validity or enforceability thereof shall be contested or denied by any party thereto, or if any party thereto shall deny that he, she or it has any further liability or obligation thereunder, or if any party thereto shall fail to comply with or observe any of the terms, provisions or conditions contained in any such guaranty.
  - H. A transfer of a substantial part of any of GUARANTORS' money, property, or business interests, except in the ordinary course of business.
5. **REMEDIES ON DEFAULT.** At the option of HOLDER, all or any part of the Obligations under this Guaranty, the Agreement, or the Amendment, shall become immediately due and payable without notice or demand, upon the occurrence of an Event of Default or at any time thereafter. In addition, upon the occurrence of any Event of Default, HOLDER, at its option, may immediately invoke any or all other remedies provided in this Guaranty, the Agreement, or the Amendment, or any other instrument evidencing the Obligations, and any documents securing or otherwise relating to the Obligations. All rights and remedies are cumulative and not exclusive and HOLDER is entitled to all remedies provided by law or equity, whether or not expressly set forth.
6. **WAIVER AND CONSENT BY GUARANTORS AND OTHER SIGNERS.** Regarding this Guaranty, the Agreement, and the Amendment, to the extent not prohibited by law, GUARANTORS and any other signers:
- A. Consent to any waiver granted by HOLDER and agree that any delay or lack of diligence in the enforcement of the Obligations or any failure to file a claim or otherwise protect any of the Obligations in no way affects or impairs GUARANTORS' liability.
  - B. Waive notice of acceptance hereof, notice of any action taken or omitted by HOLDER in reliance thereon, any requirement that HOLDER give notice of default or asserting any other right of HOLDER hereunder.
  - C. Waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

- D. Consent to any renewals and extensions agreed to by HOLDER, regardless of the number of such renewals or extensions;
- E. Consent to HOLDER's release of any endorser, guarantor, surety, accommodation or any other co-signer.

7. **BANKRUPTCY.**

- A. If a bankruptcy petition should at any time be filed by or against the GUARANTORS, the maturity of the Obligations, so far as GUARANTORS' liability is concerned, shall be accelerated and the Obligations shall be immediately payable by GUARANTORS.
- B. GUARANTORS acknowledge and agree that this Guaranty shall remain in full force and effect at all times, notwithstanding any action or undertakings by or against HOLDER in connection with any obligation in any proceeding in the U.S. Bankruptcy Courts, including without limitation, election of remedies or imposition of any status upon claims by HOLDER, pursuant to the U.S. Bankruptcy Code, as amended.
- C. In the event that any payment under this Guaranty is deemed, by final order of a court of competent jurisdiction, to have been a voidable preference under the bankruptcy or insolvency laws of the United States or otherwise, then GUARANTORS' obligation shall remain as an obligation to HOLDER and shall not be considered as having been extinguished.

8. **RELIANCE BY HOLDER.** GUARANTORS acknowledge that HOLDER is relying on this Guaranty in entering into the Agreement and Amendment and that GUARANTORS have signed this Guaranty to induce HOLDER to enter into said Agreement and Amendment.

9. **JOINT AND SEVERAL.** GUARANTORS and all other guarantors, endorsers, co-signers, and sureties shall be jointly and severally liable under this Guaranty, the Agreement, and the Amendment. This Guaranty shall be in addition to any other guaranty or other security for the Obligations of HOLDER under the Agreement and the Amendment, which shall not be prejudiced or rendered unenforceable by the invalidity of any such other guaranty or security.

10. **GENERAL PROVISIONS.**

- A. **FINANCIAL STATEMENTS.** Until such time as the Obligations and payments due under the Agreement and the Amendment are performed and paid in full, GUARANTORS shall furnish HOLDER with such audited and unaudited balance sheets, income statements and financial statements as HOLDER may from time to time request, all of which financial statements shall be certified by GUARANTORS or GUARANTORS' accountants to be true, correct and complete.
- B. **TIME IS OF THE ESSENCE.** Time is of the essence in GUARANTORS' performance of all duties and Obligations imposed by this Guaranty.
- C. **NO WAIVER BY HOLDER OR GUARANTORS.** HOLDER's course of dealing, or HOLDER's forbearance from, or delay in, the exercise of any of HOLDER's rights, remedies, privileges or right to insist upon GUARANTORS' strict performance of any provisions contained in this Guaranty, the Agreement, or the Amendment, shall not be construed as a waiver by HOLDER, unless any such waiver is in writing and is signed by HOLDER.
- D. **AMENDMENT.** The provisions contained in this Guaranty may not be amended, except through a written amendment which is signed by HOLDER and GUARANTORS.
- E. **INTEGRATION CLAUSE.** This Guaranty and the Amendment to the Agreement, executed concurrently herewith, represent the entire understanding of the parties hereto as to the Obligations, whether prior, contemporaneous or subsequent, and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.
- F. **GOVERNING LAW.** This Guaranty shall be governed by the laws of the State of Missouri, regardless of that state's conflict of laws provisions, and provided that such laws are not otherwise preempted by federal laws and regulations.
- G. **FORUM AND VENUE.** In the event of litigation pertaining to this Guaranty, the exclusive forum, venue and place of jurisdiction shall be in the State of Missouri, County of Jasper, unless otherwise required by law.
- H. **SUCCESSORS AND LIABILITY OF GUARANTORS.** This Guaranty shall inure to the benefit of and bind the heirs, personal representatives, successors, assigns of the parties and subsequent holders of the Obligations and the Holder;

provided however, that GUARANTORS may not assign, transfer or delegate any of its rights or Obligations under this Guaranty.

- I. **NUMBER AND GENDER.** Whenever used, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.
- J. **DEFINITIONS.** The terms used in this Guaranty, if not defined herein, shall have their meanings as defined in the other documents executed contemporaneously, or in conjunction, with this Guaranty.
- K. **PARAGRAPH HEADINGS.** The headings at the beginning of any paragraph, or any subparagraph, in this Guaranty Agreement are for convenience only and shall not be dispositive in interpreting or construing this Guaranty Agreement.
- L. **IF HELD UNENFORCEABLE.** If any provision of this Guaranty shall be held unenforceable or void, then such provision to the extent not otherwise limited by law shall be severable from the remaining provisions and shall in no way affect the enforceability of the remaining provisions nor the validity of this Guaranty. This Guaranty is valid despite the genuineness, validity or enforceability of any documents executed in conjunction with the transaction described in Section 2 hereof.
- M. **NO LEGAL EXISTENCE.** If for any reason PATCH CONSTRUCTION, L.L.C. or PATCH, INC. has no legal existence or is under no legal obligation to discharge any of its responsibility undertaken in the Agreement or purported to be undertaken by it or on its behalf, this Guaranty shall nevertheless be binding on GUARANTORS to the same extent as if GUARANTORS at all times had been principal parties obligated to perform under the terms and conditions of the Guaranty and the Agreement.

ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE. TO PROTECT YOU (GUARANTORS) AND US (HOLDERS) FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

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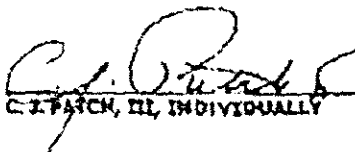
JUL-22-2002 MON 34:50 PM PATCH INC. TX  
01/21/02 10:30 FAX 1 417 519 2129

ENERGY CENTER

FAX NO. 2818472400

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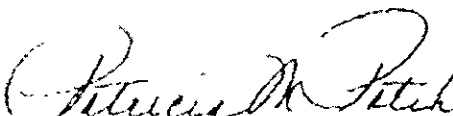
IN WITNESS WHEREOF, the undersigned have executed this instrument, upon proper authority, as of the date first above written.

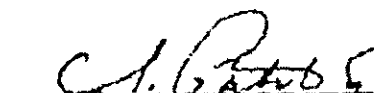
  
C.J. PATCH, III, INDIVIDUALLY 07/22/02

  
Patricia H. Patch INDIVIDUALLY, HIS WIFE 7/22/02


ATTEST:

PATCH, INC.

  
SIGNATURE OF SECRETARY  
PATRICIA H. PATCH  
PRINTED NAME

  
SIGNATURE OF PRESIDENT  
C.J. PATCH III  
PRINTED NAME

PATCH CONSTRUCTION, L.L.C.

  
SIGNATURE OF MANAGING MEMBER  
C.J. PATCH III  
PRINTED NAME

GUARANTORS

COLLECTOR'S SIGNATURE AND DATE  
PAGE 1 OF 1