

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

In the matter of The Empire District Electric )  
Company of Joplin, Missouri for Authority to )  
File Tariffs Increasing Rates for Electric ) **File No. ER-2012-0345**  
Service Provided to Customers in the )  
Missouri Service Area of the Company. )

**STAFF’S POST-HEARING REPLY BRIEF**

**COMES NOW** the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”) and for its *Post-Hearing Reply Brief* states as follows:

1. The Commission has considered and rejected application of the “just and reasonable” standard to interim rate schedules after those schedules have been suspended.<sup>1</sup>

2. On page 8 of its *Initial Post-Hearing Brief*, Empire states “[i]n summary, Empire has costs it is not recovering, a decline in revenue due to the loss of customers, and does not have the opportunity to earn anywhere near its authorized rate of return. These facts demonstrate the Empire’s proposed rate is just and reasonable.”

3. Each of the preceding claims is false.

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<sup>1</sup> See the *Concurrence of Commissioner Jeff Davis to the “Order Further Suspending Interim Rate Tariff and Scheduling Evidentiary Hearing,” and Dissent Regarding Procedure and Standard*, filed October 19, 2009 in Case No. ER-2010-0036. While in that concurrence/dissent Commissioner Davis did state his belief that the act of tariff suspension transitioned the applicable standard for interim rates from “financial emergency or near emergency,” to “just and reasonable,” two things are conspicuously absent from that concurrence/dissent. The first, is discussion of what factors Commissioner Davis would have found to be relevant, as application of the “just and reasonable” standard requires consideration of “all relevant factors.” The second is discussion from Commissioner Davis’ of what would constitute justness and reasonableness in light of the extraordinary relief requested. Regardless of whether the concurrence/dissent had included these items, the interpretation advanced by Commissioner Davis, and resurrected here by Empire, failed to sway the majority of the Commission.

4. First, The Empire District Electric Company (“Empire”) admits that it is experiencing a profit, thus it is recovering all costs. Additionally, this Commission has already allowed Empire the relief of deferring the recording of costs associated with the May 22, 2011, Joplin-area tornado. Empire has been afforded earnings protection for the tornado-related capital costs it has incurred since May 2011 through the AAO granted to it by the Commission in File No. EU-2011-0387.<sup>2</sup>

5. Second, Empire has not experienced a decline in revenue. Empire has experienced approximately \$1.6 million more in revenues for the period July 2011 - July 2012 than would be expected in a normal year. For the months June 2011 – June 2012, Empire experienced approximately \$1.8 million more in revenues than would be expected.<sup>3</sup>

6. Finally, it follows that if Empire has greater-than-expected revenues, in spite of Joplin’s tornado, and is not at this time required to book its costs and expenses associated with Joplin’s tornado, that the Joplin tornado has not diminished Empire’s opportunity to earn a rate of return.

7. In this discussion and in several other places in its brief, Empire implies it has materially under earned during the period since the tornado by citing to its 2011 calendar year earned **rate of return**, 7.8%, and comparing it to its last authorized **return on equity** of 10.8%, set in Case No. ER-2008-0093. Such a comparison is entirely misleading, as it purports to compare the earned 2011 *rate of return* (weighted average return on both the Company’s debt and equity) to a four-year old *return on equity* value (return on equity only). Because the cost of equity is almost

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<sup>2</sup> Staff Exhibit 1, P 14.

<sup>3</sup> See Staff Exhibit 8, P 1 - 2; Staff Exhibit 4, P 5 L 1-10. The \$1.8 million figure in Exhibit 4 was the net amount based on data through June. The updated numbers provided in Exhibit 8 net to \$1.6 million.

always significantly higher than the cost of debt, it should not be surprising that Empire's earned *rate of return* is less than its stale authorized *return on equity* value. A less invalid approach would be to compare Empire's earned 2011 rate of return of 7.8% to its authorized rate of return set in Case No. ER-2008-0093, which was 8.91%<sup>4</sup>. Even that comparison, however, is problematic, as Empire's overall authorized rate of return of 8.91% was set several years ago in economic conditions quite unlike today's.<sup>5</sup>

8. Despite Empire's request that the Commission focus only on those portions of those issues it has presented, as discussed in *Staff's Initial Post-Hearing Brief*, the Commission cannot determine a rate to be "just and reasonable" without consideration of "all relevant factors."<sup>6</sup> Empire has not presented all relevant factors for the Commission's consideration; in fact, Empire fails to present even adequate evidence on the select factors it has presented.

9. Conclusively, Empire's Vice President and Chief Operating Officer, Kelly S. Walters, admitted at hearing that, "I would not say we're in an emergency financial situation right now."<sup>7</sup> Further, when asked about Empire's ability to provide safe and adequate service without receipt of an emergency rate increase, Ms. Walters stated that, "[w]ith what I know today, I believe we will provide safe and reliable service."<sup>8</sup>

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<sup>4</sup> Empire Exhibit 3, Walters Surrebuttal, P 4.

<sup>5</sup> A more valid comparison would be to compare actual earnings levels to the overall rate of return sought by Empire in its current permanent case of 8.32% (Empire Exhibit 4, Sager Direct, page 3). It is highly likely that Staff and other parties will later argue that a 8.32% rate of return value for Empire is entirely overstated.

<sup>6</sup> *In State ex rel Missouri Water Company v. Missouri Public Service Commission et al.*, 22 P.U.R.3d 254, 308 S.W.2d 704; *State ex rel. Laclede Gas Co. v. Pub. Serv. Commission*, 535 S.W.2d 561, 568 - 569 (Mo. App. 1976); *State ex rel. Utility Consumers' Council of Missouri, Inc. et al v. Public Service Commission of Missouri et al.*

<sup>7</sup> Transcript V 2, P 110 L 7 – 13.

<sup>8</sup> Transcript V 2, P 107 L 4 – 9.

10. Empire is not “facing extraordinary circumstances” and there is no “compelling reason to implement an interim rate increase.”<sup>9</sup>

**WHEREFORE**, the Staff submits this, its *Post-Hearing Reply Brief*.

Respectfully submitted,

**/s/ Sarah L. Kliethermes**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 1<sup>st</sup> day of October, 2012.

**/s/ Sarah L. Kliethermes**

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<sup>9</sup> See *Order Suspending Interim Rate Tariff* in File No. ER-2010-0036.