

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

In the matter of The Empire District Electric )  
Company for the Issuance of an Accounting )  
Authority Order Relating to its Electrical )  
Operations and for a Contingent Waiver of the )  
Notice Requirement of 4 CSR 240-4.020(2) )

**File No. EU-2011-0387**

**STIPULATION AND AGREEMENT**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), The Empire District Electric Company, (“Empire”), the Office of the Public Counsel (“Public Counsel”), Praxair Inc., and Explorer Pipeline Company and for their *Stipulation and Agreement* respectfully state as follows to the Missouri Public Service Commission (“Commission”):

1. The signatories have reached agreement as to resolution of this matter on the terms contained in this document.
2. The signatories request that the Commission enter an order that includes the following:
  - a. Authorizes Empire to defer actual incremental Operations & Maintenance expenses associated with repair, restoration, and rebuild activities associated with the May 22, 2011, tornado, and depreciation and carrying charges equal to its ongoing Allowance for Funds Used During Construction rates associated with tornado-related capital expenditures, to Account 182.3, Other Regulatory Assets. This deferral shall not include any difference in charges applicable under Empire’s currently effective tariff and any modified tariff that reduces or limits the charges applicable to its customers or developers in connection with restoring or establishing service.

- b. Nothing in the Commission's order shall be considered a finding by the Commission of the reasonableness of the costs and/or expenditures deferred, and the Commission reserves the right to consider the ratemaking treatment to be afforded all deferred costs and/or expenditures, including the recovery of carrying costs, if any.
- c. Any insurance claim proceeds or government payments or credits applicable to incremental operation and maintenance expense or capital expenditures shall be used to offset the total amount of costs to be deferred.
- d. If Empire has not filed an electric general rate case in Missouri by June 1, 2013, then Empire shall write off without rate recovery any deferrals it has already booked.
- e. If Empire files an electric general rate case in Missouri by June 1, 2013, then Empire shall ratably amortize to Account 182.3 over a ten-year (120-month) period any deferrals it has already booked, beginning on the earlier of:
  - 1) the effective date of new rates implemented in its next general rate increase case or rate complaint case; or
  - 2) June 1, 2013.
- f. Empire shall maintain detailed supporting records, work papers, invoices and other documents to support the amount of costs deferred under this AAO, including any related deferred taxes recorded as a result of the cost deferral. Such records shall include controls in place to ensure all expenditures were reasonable and necessary, detailing food and lodging costs, labor and material costs, procedures and verification for expense versus capitalization determinations,

and determination of incremental levels of such costs versus normal ongoing levels of costs. Such records shall be made available for review by Staff, Public Counsel, and other intervenors, pursuant to 4 CSR 240-2.085 and Section 386.480.

3. Empire agrees to work with parties as the end of the amortization period approaches to develop a mechanism that ensures Empire does not over or under recover the deferred amounts.

4. Contemporaneously with the filing of this Stipulation and Agreement, Empire will file a pleading in this docket withdrawing, without prejudice, that portion of its application that seeks authority to defer the lost fixed cost components of Empire's rates.

5. General provisions:

Contingent Waiver of Rights

This Agreement is being entered into solely for the purpose of settling the issues in this case. Unless otherwise explicitly provided herein, none of the signatories shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any method of cost determination or cost allocation or revenue-related methodology. Except as explicitly provided herein, none of the signatories shall be prejudiced or bound in any manner by the terms of this Agreement in this or any other proceeding regardless of whether this Agreement is approved.

This Agreement has resulted from extensive negotiations among the parties, and the terms hereof are interdependent. If the Commission does not approve this Agreement unconditionally and without modification, then this Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof.

If the Commission does not approve this Agreement without condition or modification, and notwithstanding the provision herein that it shall become void, (1) neither this Agreement nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any signatory has for a decision in accordance with RSMo. §536.080 or Article V, Section 18 of the Missouri Constitution, and (2) the signatories shall retain all procedural and due process rights as fully as though this Agreement had not been presented for approval, and any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this Agreement shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

In the event the Commission accepts the specific terms of this Agreement without condition or modification, the signatories waive their respective rights to present oral argument and written briefs pursuant to RSMo. §536.080.1, their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2, their respective rights to seek rehearing pursuant to §536.500, and their respective rights to judicial

review pursuant to §386.510. This waiver applies only to a Commission order approving this Agreement without condition or modification issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding nor any matters not explicitly addressed by this Agreement.

Right to Disclose

The Staff may file suggestions or a memorandum in support of this Agreement. Each of the parties shall be served with a copy of any such suggestions or memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's suggestions or memorandum, responsive suggestions or a responsive memorandum, which shall also be served on all parties. The contents of any suggestions or memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories, whether or not the Commission approves and adopts this Agreement.

**WHEREFORE**, the Signatories respectfully submit this *Stipulation and Agreement* and respectfully request that the Commission enter an order as described in paragraph 2.

Respectfully submitted,

**THE EMPIRE DISTRICT ELECTRIC COMPANY**

/s/ James C. Swearngen

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**THE STAFF OF THE**

**MISSOURI PUBLIC SERVICE COMMISSION**

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**PRAXAIR, INC AND**

**EXPLORER PIPELINE COMPANY**

/s/ Stuart W. Conrad

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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 15<sup>th</sup> day of November, 2011.

**/s/ Sarah Kliethermes**