

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN
CHARLES E. SMARR

312 EAST CAPITOL AVENUE
P.O. BOX 456
JEFFERSON CITY, MISSOURI 65102-0456
TELEPHONE (573) 635-7166
FACSIMILE (573) 635-0427

DEAN L. COOPER
MARK G. ANDERSON
GREGORY C. MITCHELL
BRIAN T. MCCARTNEY
DIANA C. FARR
JANET E. WHEELER

OF COUNSEL
RICHARD T. CIOTTONE

August 16, 2004

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

FILED²
AUG 16 2004
Missouri Public
Service Commission

Re: Case No. ER-2004-0570

Dear Mr. Roberts:

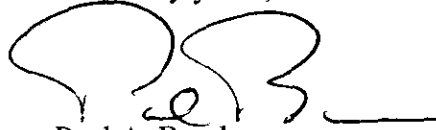
Enclosed for filing on behalf of The Empire District Electric Company, please find an original and eight (8) copies of a Filing of The Empire District Electric Company in the above referenced case.

A copy of this filing will be provided to all parties of record.

Please see that this filing is brought to the attention of the appropriate Commission personnel.

I thank you in advance for your cooperation in this matter.

Very truly yours,



Paul A. Boudreau

PAB/lar

Enclosure

cc: John Coffman
Denny Frey
Stuart Conrad
Brian McCartney
Tom Byrne
Ron Molteni

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

AUG 16 2004

Missouri Public
Service Commission

In the Matter of the tariff filing of The)
Empire District Electric Company)
to implement a general rate increase for)
retail electric service provided to customers)
in its Missouri service area)

Case No. ER-2004-0570

FILING OF THE EMPIRE DISTRICT ELECTRIC COMPANY

Comes now The Empire District Electric Company ("Empire"), by counsel, and for its filing in response to the Order Directing Filing Regarding Ex Parte Contact and Hearing Procedure ("Order Directing Filing") issued by the Missouri Public Service Commission ("Commission") in the captioned-matter on August 4, 2004, respectfully states as follows:

1. It is Empire's understanding that the July 26 and 27, 2004, On the Record Presentation was held for the purpose of determining whether or not the Commission should set a "full hearing" on Empire's Motion to Lift Suspension of IEC Tariff (the "Motion"). (Tr. 121-122) Subsequent to the Commission's Order Directing Filing, on August 11, 2004, the Commission issued its Order Denying Motion to Lift Suspension of IEC Tariff. That order, in essence, denied the relief requested by the Motion, thus rendering "moot" for purposes of this filing any issues concerning the hearing procedure that was followed in connection with the On the Record Presentation.

2. The record from the On the Record Presentation indicates that ex parte communications occurred involving the Administrative Law Judge ("ALJ"). The Public Counsel was afforded the opportunity to disclose his ex parte contacts with the ALJ through questions from the bench during the On the Record Presentation. (Tr. 292, 293) Counsel for Empire disclosed his ex parte contacts with the ALJ by letter addressed to the

Commission's Chief Administrative Law Judge and Secretary dated July 28, 2004, a copy of which is marked Appendix A, attached hereto and made a part hereof for all purposes. The involved ex parte communications dealt with procedural matters. Ex parte communications involving procedural matters are not prohibited according to 4 CSR 240-4.020(2), a point with which no party apparently disagrees. (Tr. 313-316, 358-359)

3. In view of the foregoing, Empire does not, by this filing, desire any specific relief from the Commission other than its request that the Commission, under the circumstances, reconsider the ruling of the ALJ directing counsel for Empire to testify as a witness in this case and undergo cross-examination and after said reconsideration to reverse said ruling.

WHEREFORE, Empire respectfully requests the relief requested in paragraph 3, supra.

Respectfully submitted,



Paul A. Boudreau #33155
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, Missouri 65102-0456
(573) 635-7166
(573) 634-7431 (fax)
E-mail: lrackers@brydonlaw.com

Charles Brent Stewart #34885
Jeffrey A. Keevil #33825
STEWART & KEEVIL L.L.C.
4603 John Garry Drive
Suite 11
Columbia, MO 65203
(573) 499-0635
(573) 499-0638 (fax)

ATTORNEYS FOR THE EMPIRE DISTRICT ELECTRIC COMPANY

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was, on this 16th day of August, 2004, sent via electronic mail, U.S. Postage, or hand delivered, to all parties of record.



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BRYDON, SWEARENGEN & ENGLAND

PROFESSIONAL CORPORATION

312 EAST CAPITOL AVENUE

P.O. BOX 456

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MARK G. ANDERSON
BRIAN T. MCCARTNEY
GREGORY C. MITCHELL
DIANA C. FARR
JANET E. WHEELER

OF COUNSEL
RICHARD T. CIOTONE

July 28, 2004

FILED²

AUG 16 2004

Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Chief Administrative Law Judge and Secretary
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

**Re: The Empire District Electric Company
Case No. ER-2004-0570**

Dear Mr. Roberts:

During the portion of the on-the-record presentation which took place in the referenced case yesterday afternoon, questions arose as to how I determined the purpose of this proceeding and how ALJ Thompson may have learned that The Empire District Electric Company ("Empire"), this firm's client, intended to have company personnel available to make a presentation during this proceeding. This letter will serve to explain what I know about these circumstances.

On June 17, 2004, the Missouri Public Service Commission ("Commission") issued its Order Setting On-the-Record Presentation in the referenced matter and scheduled said proceeding for July 26, 2004. The Order stated in part that "[t]he parties shall be prepared to be present legal and factual arguments in support of their positions on Empire's Motion to Lift the Suspension of the IEC Rider Tariff and to respond to questions from the bench." (emphasis added) I interpreted this language as a directive to be prepared to present not only legal arguments by counsel in support of the Motion, but also information from fact witnesses concerning the underlying circumstances surrounding the request. My interpretation as to the purpose of this proceeding was bolstered by and consistent with the Commission's discussion about this case at its agenda meeting on June 17, 2004, at which time interest was expressed in hearing about Empire's hedging practices. Consequently, it was decided to have the company's President and Chief Executive Officer, Bill Gipson and

its Vice President - Energy Supply, Brad Beecher available on July 26, for a factual presentation.

Empire originally had requested implementation of the IEC by June 15, 2004, the start of its summer cooling season. While appreciative of the opportunity to make a presentation, Empire had hoped that this could occur earlier than July 26. I therefore considered the possibility of filing a pleading with the Commission on behalf of Empire asking for an earlier presentation date.

To that end, on or about June 22, 2004, I telephoned ALJ Thompson to inquire if the July 26, 2004, date was the first opportunity which the Commission had for the on-the-record presentation, or if an earlier date might be available. ALJ Thompson replied that according to the Commission's calendar, July 26, 2004, was the first available date. He also indicated that if an earlier date became available, the on-the-record presentation might be moved up on the Commission's own motion. I then indicated to ALJ Thompson that if that was contemplated, could I please be advised, as Empire planned to have Mr. Gipson and Mr. Beecher make presentations on July 26, as I thought this would be helpful in laying out the factual background for Empire's request, and I wanted to make sure that they would be available on any earlier date which the Commission might establish. ALJ Thompson said that he would advise me if that occurred. Subsequently, I believe I contacted ALJ Thompson on or about July 9 to confirm there would not be an earlier presentation date. Empire made no request to change the presentation date and it was not changed.

The inquiries concerning the presentation date and expression of intention to have fact witnesses available did not in any fashion deal with the merits of the cause. No relief was requested by Empire or granted by the Commission. Furthermore, the inquiries occurred only after the Commission issued its Order establishing the on-the-record presentation which Order contained the direction to be prepared to present both legal and factual arguments.

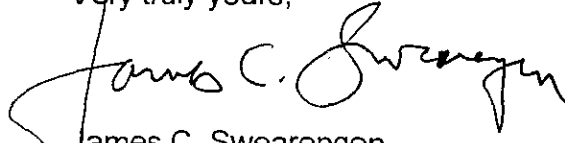
In my view, these inquiries, dealing with purely procedural matters, were clearly not prohibited ex-parte communications. In this regard, I refer the Commission to its rule 4 CSR 240-4.020, "Conduct During Proceedings" and, specifically, subsection (2) that states, in pertinent part, that "no attorney shall communicate, or cause another to communicate, **as to the merits of the cause** with any commissioner or examiner." (emphasis added) This language clearly contemplates that discussions with an ALJ bearing on procedural matters are not prohibited, a fact confirmed yesterday by Mr. Coffman, the Public Counsel, when he stated that he also had contacted ALJ Thompson about the procedure to be employed at Monday's hearing. Further, Mr. Conrad, attorney for Praxair, in a response to a question from Commissioner Clayton, stated that procedural discussions with the ALJ assigned to a case are not communications prohibited by rule or practice.

I am of the opinion that there was no inappropriate conduct on my part or on the part of ALJ Thompson in connection with these matters. I heard nothing further from ALJ

Mr. Dale Hardy Roberts
July 28, 2004
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Thank you.

Very truly yours,



James C. Swearengen

JCS/lar

cc: Commissioners
Stuart Conrad
Shelley Woods
John Coffman
Denny Frey
Brian McCartney
Tom Byrne
ALJ Thompson