

FILED

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

SEP 29 2006

Missouri Public  
Service Commission

In the matter of the Application of )  
The Empire District Electric Compa- )  
ny for authority to file tariffs )  
reflecting increased charges for ) ER-2004-0570  
electric service within its Mis- )  
souri service area )

NONUNANIMOUS STIPULATION AND AGREEMENT REGARDING FUEL AND  
PURCHASED POWER EXPENSE

COME NOW The Empire District Electric Company  
("Empire" or the "Company"); the Office of the Public Counsel  
("Public Counsel"); Praxair, Inc. ("Praxair") and Explorer  
Pipeline Company ("Explorer"), and respectfully state to the  
Missouri Public Service Commission ("Commission") that as a  
result of extensive negotiations, the undersigned parties  
("Parties"), have reached the stipulations and agreements  
contained herein in order to settle the certain issues identified  
below and identified in the Proposed List of Issues, List of  
Witnesses and Order of Cross-Examination, filed with the  
Commission in this docket on December 1, 2004:

1. The Parties agree that resolution of the fuel and  
purchased power expense issues in Case No. ER-2004-0570,  
(identified as issues 7. and 22(e) in the December 1, 2004  
filing), has been achieved as among themselves by an agreement to

Praxair Exhibit No. 117  
Case No(s). ER-2004-0315  
Date 2-12-06 Rptr KF

include in Empire's permanent rates for its electric operations, not subject to refund, a specific annual amount of the Company's Missouri jurisdictional fixed and variable fuel and purchased power costs, and to provide for recovery by the Company of an additional amount of its Missouri jurisdictional variable fuel and purchased power costs on an interim basis, subject to true-up and refund, said additional amount to be collected through an Interim Energy Charge ("IEC"). [The IEC shall be in effect for three (3) years as described herein. The three-year period during which the IEC is in effect is referred to as the "IEC Period." ]

- a. The specific annual amount of fixed and variable fuel and purchased power costs to be included in Empire's retail rates on a permanent basis for its Missouri jurisdictional electric operations (the Missouri jurisdictional portion of its total Company amount of \$125 million) is \$102,994,356 (\$24.68 per mWh) of which \$85,064,873 (\$21.975 per mWh) is variable cost. The additional specific annual amount of variable fuel and purchased power costs to be included in Empire's retail rates for its Missouri jurisdictional electric operations to be collected through the IEC on an interim basis, subject to refund (the Missouri jurisdictional portion of the total Company amount of \$10 million) is \$8,249,000 (.2131¢/kWh). The

calculations supporting the IEC are shown on Appendix A to this Nonunanimous Stipulation and Agreement. The actual agreed upon cents per kilowatt hour IEC for each customer class is shown and is calculated consistent with the method shown on Appendix B to this Nonunanimous Stipulation and Agreement.

- b. The amounts collected pursuant to the IEC are meant to include only the on-system Missouri retail variable costs accumulated in the FERC account numbers 501, 547 and 555 and will be updated in the true-up specified hereafter in this Agreement. Net revenues from capacity release and gas sales will be a credit to expenses in the true-up. The fixed costs in FERC account numbers 501, 547 and 555 will be recovered in permanent rates and will not be updated in the true-up. The amount subject to true-up and refund, referred to herein as the "IEC Amount," is explained in more detail herein and generally is designed to address the potential volatility in natural gas and wholesale electricity prices. This IEC Amount will be the basis of the IEC to be approved by the Commission. The agreed to IECs for each customer class are shown in Appendix B. The IEC will be collected on an interim basis and will be subject

to true-up and refund under the terms of this Agreement.

- c. The Parties agree that the IEC shall be set out on a separate tariff or rate schedule and expressed in \$/KWh. Each Empire rate schedule affected by the IEC will indicate that all of the charge collected pursuant to the IEC is subject to refund pursuant to the terms of this Agreement. Any such refund will be calculated and made to each customer, based on the amount of each customer's usage during the IEC Period, at a later date. [The IEC tariff or rate schedule will expire no later than 12:01 a.m. on the date that is three years after the original effective date of the revised tariff sheets authorized by the Commission in this case, Case No. ER-2004-0570, unless earlier terminated by order of the Commission.]
- d. During the IEC Period, Empire agrees to track and include in the reports specified in this Nonunanimous Stipulation and Agreement a statement as to the then-current amount collected pursuant to the IEC that it is holding subject to refund. After the IEC has been in effect for two (2) years, if the amount held subject to refund at that time exceeds \$10 million, Empire shall refund to its customers the amount in excess of \$10

million with interest. Any interest to be refunded shall be calculated in accordance with paragraph 1.f. herein. The refund will be made consistent with the provisions of paragraph 1.g. herein.

- e. Subsequent to the expiration of the IEC, an IEC Audit will commence in which the Parties will have the opportunity to audit the actual variable fuel and purchased power costs of serving Empire's native load and collected through the IEC, excluding fixed costs and the costs of fuel and purchased power for interchange (off-system) sales. The Parties shall thereafter present their findings, conclusions and recommendations to the Commission. Subsequently, if the Commission determines that all or a portion of the revenue collected by Empire pursuant to the IEC exceeds Empire's actual and prudently incurred variable costs for fuel and purchased power (as recorded in the FERC accounts 501, 547 and 555) on a Missouri retail basis during the IEC Period, Empire will refund any excess up to the IEC Amount then held by Empire recognizing that an earlier refund may have been made pursuant to paragraph 1.d. herein, with interest as provided in paragraph 1.f. herein. For the true-up, Empire's true-up

variable fuel and purchased power costs will be based on actual delivered coal costs, oil costs and natural gas costs, excluding fixed natural gas reservation charges, and actual purchased power costs, excluding purchased power demand charges. The true-up will further exclude fixed costs charged to Accounts 501, 547 and 555 relating to fixed fuel components included in the permanent rates and to fuel and purchased power for interchange (off-system) sales.

- f. The interest rate to be used for purposes of any refund required under paragraph 1.e. herein shall be the same as the prime rate of interest on the day the IEC has been in effect for two (2) years as found in the Money Rates section of the Wall Street Journal. The interest rate to be used for purposes of any refund required under paragraph iii herein shall be the same as the prime rate of interest on the day the IEC has been in effect for three (3) years (the end of the IEC Period) as found in the Money Rates section of the Wall Street Journal. In either event, interest shall be calculated on any amounts to be refunded as follows:

Interest = ([total amount to be refunded divided by 2] x [interest rate divided by 12] x [the

number of months from the date the IEC was implemented through the expiration date or the calculation date {if the \$10 million over-collection exists}. Following the expiration or collection date, additional interest will accrue as follows: ([total amount to be refunded] x [interest rate divided by 12] x [the number of months from the expiration or collection date through the date of the Commission's order authorizing the refund])

- g. All Empire Missouri retail electric customers taking service at any time during the IEC Period are potentially eligible to receive a refund upon the expiration of the IEC, including interest and all applicable taxes and fees, consistent with the terms and conditions of this Agreement.

Generally, any such refund will appear as a one-time credit on the customer's bill, except that a refund in an amount exceeding \$1,000.00 may be issued by check when specifically requested in advance by the customer, and in cases where a customer is no longer a customer, in the billing month in which bill credits appear on the bills of remaining customers. In that instance, Empire will mail to the last known address of such former customer a check for the amount of the refund owed

that former customer. No such checks will be issued to a customer for a refund amount of less than \$3.00. Empire may set off the amount of any refund owed a particular current or former customer under this Agreement against any amount owed Empire by that current or former customer. After the bill credits have been made and checks issued, any amount of the total refund plus interest that may remain in Empire's possession six months after the end of the application of the bill credits, due to the inability to locate a former customer or otherwise, shall be donated by the Company promptly to the program administered by the American Red Cross referred to as "Project Help".

h. During the IEC Period, Empire shall provide the Parties with the Company's routine monthly revenue and sales reports, which reports shall include the following data:

- (1) actual kWh sales for each Missouri retail rate code by calendar month, and
- (2) the revenues from kWh sales, exclusive of taxes, for each Missouri retail rate code by calendar month.

The routine reports shall also specifically identify the revenues associated with the IEC



opportunities and transactions. In this report, Empire shall provide information showing the amount of natural gas capacity that was available for its own use, the amount used, the amount available for capacity release; and for each amount of capacity released, the party to whom the capacity was released, the price of the release, and its duration, together with any other relevant information related to the transaction.

Furthermore, Empire will provide copies of all screens showing the capacity release transaction postings on the natural gas pipeline's electronic bulletin board. This quarterly report shall also provide information showing the total amount of off-system natural gas sales; and for each off-system sale, the party to whom the off-system natural gas sale was made, the price of the sale, and its duration, together with any other relevant information related to the transaction. Any revenues collected by Empire due to the release of unused natural gas capacity or net revenues from off-system sales of natural gas during the duration of the Agreement will be used to offset the calculation of the cost of the fuel and purchased power supplied to the Company's ratepayers on a dollar-for-dollar basis.

2. In addition to the rate changes described above, Praxair's monthly credit for interruptible demand, which was increased by \$100,000 per year through October 2006 in Case No. ER-2001-299, shall be extended through October 2008. This credit extension will be reflected on Empire's tariff P.S.C. MO No. 5, Sec. 2, Sheet No. 9b by striking the first five lines describing 5 year contracts for years 1994 through 1998 and adding the following provisions under the sentence stating:

``The following monthly credit on demand reduction per kW of contracted interruptible demand for substation metered Customers will be applied'':

For 5 year contract October 2001 to October 2006	\$4.86
For 1 year contract from October 2006 to October 2007	\$4.86
For 1 year contract from October 2007 to October 2008	\$4.86

For the purposes of determining Empire's revenue requirement during the period \$4.86 per kW credit is in effect, Empire agrees that it will calculate Praxair's revenue as if the credit is \$3.76 per kW. The effect of this extension of Praxair's interruptible credit and Empire's agreement concerning the determination of revenue requirement will be to reduce the revenues collected by Empire by \$100,000 per year, which \$100,000 will not affect the rates of Empire's other Missouri retail customers or be recovered from Empire's other Missouri retail ratepayers.

3. In addition to the one dollar (\$1) per kW distribution substation credit specified in the Nonunanimous Stipulation and Agreement Regarding Rate Design filed in this case on December 16, 2004, Explorer will be eligible for an additional credit of thirty cents (30¢) per kW demand that is available to those

customers who qualify for the distribution substation credit and are also metered at transmission voltage. Using annualized test year demands for the applicable meters involved this would mean that under this provision Explorer would receive a credit of approximately \$45,000 per year. Said additional credit will be in effect for a three year period from the effective date of the revised tariffs which are implemented as a result of the Commission's decision in this rate case, Case No. ER-2004-0570.

For purposes of determining Empire's revenue requirement during the three year period the credit is in effect, Empire agrees that it will calculate Explorer's revenue as if the credit is zero. The effect of this credit will be to reduce the revenues collected by Empire by approximately \$45,000 per year, which amount will not affect the rates of Empire's other Missouri retail customers or be recovered from Empire's other Missouri retail ratepayers.

(4.) In consideration of the implementation of the IEC in this case and the agreement of the Parties to waive their respective rights to judicial review or to otherwise challenge a Commission order in this case authorizing and approving the subject IEC, for the duration of the IEC approved in this case Empire agrees to forego any right it may have to request the use of, or to use, any other procedure or remedy, available under current Missouri statute or subsequently enacted Missouri statute, in the form of a fuel adjustment clause, a natural gas cost recovery mechanism, or other energy related adjustment mechanism

to which the Company would otherwise be entitled. Empire also agrees not to request an Accounting Authority Order or other regulatory mechanism to accumulate and or recover any amount of variable fuel and purchased power cost that exceeds the IEC ceiling.

5. This Nonunanimous Stipulation and Agreement is being entered into solely for the purpose of settling the identified issues in this case. Except as expressly specified herein, none of the Parties 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 method, and none of the signatories shall be prejudiced or bound in any manner by the terms of this Nonunanimous Stipulation and Agreement in any other proceeding, or in this proceeding should the Commission not approve this Nonunanimous Stipulation and Agreement unconditionally and without modification.

6. This Nonunanimous Stipulation and Agreement has resulted from extensive negotiations among the Parties and the terms hereof are interdependent. If the Commission does not approve this Nonunanimous Stipulation and Agreement unconditionally and without modification, then this Nonunanimous Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof, except as expressly specified herein.

7. If the Commission does not unconditionally approve this

Nonunanimous Stipulation and Agreement and without modification, and notwithstanding its provision that it shall become void therein, neither this Nonunanimous Stipulation and 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 party has for a decision in accordance with Section 536.080 RSMo 2004 or Article V, Section 18 of the Missouri Constitution, and the Parties shall retain all procedural and due process rights as fully as though this Nonunanimous Stipulation and Agreement had not been presented for approval. Any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this Nonunanimous Stipulation and Agreement, other than the testimony and other evidence received by the Commission during the hearing in this case, 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.

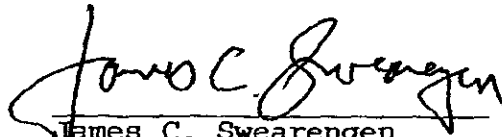
8. In the event the Commission unconditionally accepts the specific terms of this Nonunanimous Stipulation and Agreement without modification, the Parties waive their respective rights to present oral argument and written briefs pursuant to §536.080.1 RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2 RSMo 2000; their respective rights to seek rehearing, pursuant to §386.500 RSMo 2000; and their respective rights to judicial

review pursuant to §386.510 RSMo 2000. This waiver applies only to a Commission Order, or that portion of a Commission Order, issued in this case, Case No. ER-2004-0570, respecting this Nonunanimous Stipulation and Agreement and only to the issues that are resolved by this Nonunanimous Stipulation and Agreement.

9. The Parties will provide any information requested by the Commission to aid in its understanding of this Nonunanimous Stipulation and Agreement. Each party to this case shall be served with a copy of any such information prior to its submittal to the Commission.

WHEREFORE, for the foregoing reasons, the Parties respectfully request that the Commission issue its Order approving all of the specific terms and conditions of this Nonunanimous Stipulation and Agreement.

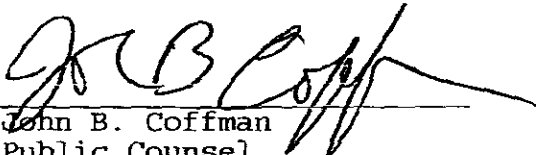
Respectfully submitted,



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Certificate of Service

The undersigned certifies that a copy of the foregoing was, on this 22<sup>ND</sup> of February, 2005, sent via electronic mail, U.S. Postage, or hand-delivered, to all parties of record.

A handwritten signature in cursive script, reading "James C. Swearingen", is written over a horizontal line.