

**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 Service Provided to)
Customers in the Missouri Service Area of)
the Company.)

File No. ER-2012-0345

EMPIRE'S INITIAL POST-HEARING BRIEF

COMES NOW The Empire District Electric Company ("Empire" or "Company"), by and through counsel, and for its Initial Post-Hearing Brief in this matter, respectfully states as follows to the Missouri Public Service Commission (the "Commission"):

Introduction

The issue before the Commission is whether or not Empire's interim tariff, designed to generate approximately \$6.2 million on an annual basis, subject to refund, should be approved.

On July 6, 2012, Empire filed tariff sheets seeking to increase its gross annual electric revenues by approximately \$30.7 million, exclusive of taxes and fees. Included with that filing were tariff sheets with schedules designed to implement, on an interim basis, \$6.2 million of the \$30.7 million request.

Empire's request for interim rate relief is driven by the May 22, 2011 Joplin tornado. The tornado severely impacted Empire's operations, including the total destruction of a significant portion of the Company's facilities in and around Joplin, Missouri. The tornado also resulted in the loss of thousands of Empire's customers. The Commission has found that the Joplin tornado was the single deadliest tornado recorded, was rare because it caused damage unseen in the United States for 60 years, had a significant effect on the Joplin community, and resulted in extraordinary expenditures. (Report and Order, issued January 25, 2012, Case No.

GU-2011-0392, pp. 8, 14-15) Similarly, the Staff of the Commission (“Staff”) has characterized the event as a “catastrophic natural disaster.” (Staff Response in Opposition to Empire’s Interim Rate Request, filed in this case on July 20, 2012, p. 7)

Empire has invested over \$27 million to replace the electric infrastructure destroyed by the tornado. In addition, Empire has experienced and continues to experience a decline in revenue due to the loss of customers. While the restoration costs Empire has incurred are being deferred pursuant to an accounting authority order issued by the Commission in Case No. EU-2011-0387, these costs have yet to be reflected in rates. Moreover, the lower number of customers now being served is also not reflected in Empire’s rates. The annual revenue requirement associated with the tornado-related items is \$6.2 million. Consequently, the Company’s interim tariff is designed to recover this \$6.2 million consisting of the costs associated with the tornado and reflecting the lower number of customers, all on a going-forward basis.

Discussion and Argument

1. The Commission has the authority to grant Empire’s rate increase request.

There should be no issue regarding the Commission’s authority to grant interim rate relief in this matter. The Commission could have allowed the interim rate to take effect on the proposed effective date without suspension, as requested by Empire. The Commission has the power to “allow new rates to go into effect immediately or on a date sooner than that required for a full hearing as to what will constitute a fair and reasonable permanent rate. This indeed is the intended purpose of the file and suspend procedure. Simply by non-action, the Commission can permit a requested rate to go into effect.” *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561 (Mo.App. 1976).

Once suspended, however, as is the case here, RSMo. §393.150 controls. Subsection one of that statute provides that, “(w)henever there shall be filed with the commission by any gas corporation, electrical corporation, water corporation or sewer corporation any schedule stating a new rate . . . the commission shall have, and it is hereby given, authority . . . to enter upon a hearing concerning the propriety of such rate . . .” Subsection two of the statute then provides that “(a)t any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the gas corporation, electrical corporation, water corporation or sewer corporation, and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.” This statutory language is clear and unequivocal.

The statute allows for suspension of a tariff for up to 120 days, plus an additional six months, but the statute does not mandate or guaranty suspension for that length of time. As noted, to the contrary, §393.150.2 requires the Commission to decide the issue “as speedily as possible.” The statute also does not distinguish between “interim” or “permanent” rate increases, as the statute clearly provides that any rate increase request, after suspension of the tariff, places upon the utility the burden of demonstrating that the proposed rate is just and reasonable.

2. Empire has met its burden of demonstrating that its proposed rate increase, to be implemented on an interim basis and subject to refund, is just and reasonable.

Empire’s Electric Interim Rider INT, consisting of five tariff sheets, is designed to increase the Company’s gross annual electric revenues by \$6.2 million subject to refund, a just and reasonable interim increase under the circumstances presented. The interim request represents only about 21% of the Company’s overall revenue increase request of \$30.7 million.

Empire's proposed Interim Rider INT is attached as Schedule WSK-4 to the Direct Testimony of W. Scott Keith (Empire Ex. 5).

At the evidentiary hearing in this matter, the following Empire testimony was admitted into evidence in this case for purposes of consideration of Empire's interim rate increase request:

- Empire Ex. 1 - Direct Testimony of Brad P. Beecher;
- Empire Ex. 2 - Direct Testimony of Kelly S. Walters;
- Empire Ex. 3 – Interim Surrebuttal Testimony of Kelly S. Walters;
- Empire Ex. 4 - Direct Testimony of Robert W. Sager;
- Empire Ex. 5 - Direct Testimony of Scott Keith; and
- Empire Ex. 6 - Direct Testimony of Joan E. Land (p. 1, lines 1-15; p. 9, line 15 – p. 10, line 10).

The direct testimony of Empire witness Beecher addresses how the tornado impacted Empire's operations, Empire's initial response to the tornado, the number of Empire customers lost due to the tornado, and Empire's restoration efforts. (Empire Ex. 1: pp. 5-9) Mr. Beecher's testimony also details the tornado's impact on Empire's financial condition. (Empire Ex. 1: pp. 9-13)

The direct testimony of Empire witness Kelly Walters sets forth the major cost drivers of Empire's entire rate case filing (Empire Ex. 2: pp. 3-4) and further explains the interim portion of Empire's rate increase request (Empire Ex. 2: pp. 6-12).

Through his direct testimony, Empire witness Scott Keith provides various schedules containing financial and other information, all of which support the Company's total proposed rate increase, describes Empire's overall Missouri revenue deficiency, and describes the details of Empire's proposed interim tariff (Rider INT). (Empire Ex. 5)

The direct testimony of Empire witness Robert Sager sets forth the Company's proposed capital structure (Empire Ex. 4: pp. 2-3), discusses Empire's authorized and earned returns on

equity (Ex. 4: p. 4), and provides evidence for the Commission regarding the financial impacts of the tornado (Ex. 4: pp. 4-7).

Through her Interim Surrebuttal Testimony (Empire Ex. 3), Ms. Walters provides additional evidence for the Commission regarding the interim rate issues raised by the Staff in connection with the Accounting Authority Order authorized for Empire in Commission Case No. EU-2011-0387; how Empire's interim request contrasts with an interim request made by Ameren Missouri; the positions taken by Staff and the witness for the Midwest Energy Users' Association ("MEUA") regarding interim relief and accumulated deferred income taxes; the Staff's characterization of Empire's interim relief and its relationship to unsold power and the tornado; Staff's contention that Empire has recovered all of its costs since the tornado; Staff's comments concerning single-issue ratemaking and Empire's interim request; Staff's comments concerning austerity measures taken as a result of the tornado, Staff's comments regarding Empire's fuel adjustment mechanism and interim relief; Staff's comments regarding the impact the tornado had on Empire's past and near-term sales, revenue levels and customer levels; and Staff's comments regarding Empire's dividend payout ratio.

The Commission has the authority and obligation to determine the portions of this evidence that are relevant to Empire's rate increase request.

As indicated, while Empire is requesting an overall increase in its Missouri retail electric rates of \$30.7 million, exclusive of applicable fees or taxes, the issue now before this Commission is the portion of Empire's rate case filing which requests that the financial impact of the May, 2011 tornado in the amount of \$6.2 million be implemented on an interim basis. (Empire Ex. 1, Beecher Direct: p. 4)

The significant and relevant facts supporting Empire's request for interim rate relief are:

- Empire has invested over \$27.6 million to replace the electric infrastructure destroyed by the tornado, with estimated carrying costs of approximately \$4.5 million (Empire Ex. 2 – Walters Direct: p. 10);
- Empire’s overall customer count in Missouri remains down by slightly over 1,400 customers (Empire Ex. 2 – Walters Direct: pp. 10-11);
- The interim rider is designed to recover the above two components of the revenue requirement associated with the May, 2011 tornado (Empire Ex. 2 – Walters Direct: p. 11);
- The Commission authorized 10.8% ROE for Empire in 2009 (Empire Ex. 4 – Sager Direct: p. 4);
- Empire’s earned rate of return, which takes all elements of Empire’s cost of service into account, was 7.8 percent as of June 30, 2012 (Trans. Vol. 2., p. 113, lines 18-25); and
- The money collected under the interim tariff would be subject to ratepayer refund with interest pending the Commission’s final determination in the “permanent” case (Empire Ex. 5 – Keith Direct: Sch. WSK-4).

While in accordance with §393.150 the Commission must use the “just and reasonable” standard when suspension has occurred and a hearing is held, Empire is not obligated to demonstrate a “financial emergency” in order to obtain rate relief. Nonetheless, the circumstances behind the request clearly have their origin in an emergency. As noted, Empire’s interim rate request is driven by the tornado that hit Joplin on May 22, 2011. As a result of the tornado, Empire faced extraordinary circumstances. The tornado severely impacted Empire’s operations, including the total destruction of a significant part of the Company’s facilities in and

around Joplin. The tornado also resulted in the physical loss of thousands of Empire's customers. The costs incurred by Empire in connection with the tornado and the revenue losses the Company experienced as a result of the significantly lower number of customers served created a set of circumstances that can be fairly characterized as "extraordinary," "extreme," and of an "emergency" nature.

Fortunately, Empire and its shareholders were able to make financial and other sacrifices to ensure that the Company's customers were able to continue to receive safe and reliable service following the tornado. Empire's rates, however, no longer can be considered to be just and reasonable. That is because the costs incurred in connection with the tornado, which are being deferred pursuant to an accounting authority order ("AAO") issued by the Commission in Case No. EU-2011-0387, and the losses in terms of customers served, were not, and have yet to be, reflected in Empire's ongoing cost of service and revenue requirement.

Empire's proposed Interim Rider INT, designed to begin to mitigate the financial impacts from this extraordinary event, is just and reasonable, as demonstrated by the evidence adduced by Empire and admitted into the record. As indicated, it is designed to recover the two components of the ongoing revenue requirement associated with the tornado. First, the interim rate will allow Empire to begin to recover the restoration costs it has incurred, which will end the further deferral of those costs pursuant to the AAO. Second, the interim rate will also reflect the lower number of customers that Empire now has on a going-forward basis. Together, the revenue requirement associated with these two components is \$6.2 million per year.

Another important consideration in all of this is the fact that, as indicated, Empire is not earning its authorized return. In those cases over the last ten years where the Commission made findings concerning Empire's rate of return ("ROE"), the Commission authorized ROEs for

Empire of 11% in 2005, 10.9% in 2006, and 10.8% in 2009. However, Empire's highest earned return over the last ten years was only 8.4% -- and that occurred in 2006. (Empire Ex. 4 – Sager Direct: Sch. RWS-1). Currently, Empire is able to earn 7.8 percent. That is below what the Commission has authorized for any utility in recent years, and, possibly, is below every recommendation by any party in recent years.

In 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 return. These facts demonstrate that Empire's proposed rate is just and reasonable.

The interim request is for a \$6.2 million portion of the permanent request of \$30.7 million. The revenues collected will be subject to refund. Empire's customers will be protected. There are also potential benefits for Empire's customers. Stopping the deferral authorized by the AAO now means that fewer expenses will be deferred or added to capital, therefore reducing the asset base. A smaller asset base means less to earn on and, thus, lower associated rates for Empire's customers. All else being equal, granting the interim request will reduce the permanent revenue requirement associated with the deferral, thus lowering the overall cost to Empire's customers.

The Commission has a rate case before it. In accordance with §393.150, Empire's proposed Interim Rider INT meets the statutory "just and reasonable" standard and, therefore, should be approved by the Commission at this time.

WHEREFORE, Empire hereby submits the foregoing post-hearing brief in support of its request for rate relief in the amount of \$6.2 million, to be implemented through the proposed Rider INT, to remain in effect until the "permanent" rates to be authorized by the Commission in this case become effective, and to be subject to refund.

Respectfully submitted,

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ATTORNEYS FOR THE EMPIRE
DISTRICT ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via electronic mail on this 20th day of September, 2012, to all parties of record.

