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August 31, 2006

FILED<sup>4</sup>

AUG 31 2006

Public Service Commission  
Governor Hotel  
200 Madison Street  
Jefferson City, MO 65102

Missouri Public  
Service Commission

RE: *In the matter of Empire District Electric Company's Application for Authority to File Tariffs Increasing Electric Rates for the Service Provided to Customers; Case No. ER-2006-0315*

Dear Sir/Madam:

Enclosed for filing please find an original and 9 copies of Missouri Department of Natural Resources' Pre-Hearing Brief in the above-styled matter. Please stamp "filed" on the extra copy for my files. Thank you.

Sincerely,

JEREMIAH W. (JAY) NIXON  
Attorney General

SHELLEY A. WOODS  
Assistant Attorney General

SAW:mg  
Enclosure  
c: Counsel of Record

FILED<sup>4</sup>

AUG 31 2006

**STATE OF MISSOURI**  
**PUBLIC SERVICE COMMISSION**

Missouri Public  
Service Commission

In the Matter of Empire District Electric Company's     )  
Application for Authority to File Tariffs Increasing     )  
Electric Rates for the Service Provided                     )     Case No. ER-2006-0315  
to Customers   )

**MISSOURI DEPARTMENT OF**  
**NATURAL RESOURCES**  
**PRE-HEARING BRIEF**

Pursuant to the Commission's Order, the Missouri Department of Natural Resources (MDNR) submits this pre-hearing brief in the above-styled case. As directed by the Commission, the MDNR is structuring this brief to address the List of Issues filed by Staff August 28, 2006.

Issue No. 1. Return on Common Equity. What return on common equity should be used for determining Empire's rate of return?

The MDNR does not have a position on Issue No. 1.

Issue No. 2. Capital Structure. What capital structure should be used for determining Empire's rate of return?

(1) Should the unamortized expenses and discounts be reduced from the total principal amount of long-term debt and trust preferred stock outstanding for determining Empire's capital structure for ratemaking purposes?

The MDNR does not have a position on Issue No. 2.

Issue No. 3. Off-system Sales. What amount should be included in Empire's

revenue requirement for off-system sales?

The MDNR does not have a position on Issue No. 3.

Issue No. 4. Regulatory Plan Amortizations. Should Empire's revenue requirement include regulatory plan amortizations? If so, (i) how should Empire's off-balance sheet obligations be valued for purposes of the amortizations and (ii) should the amortized amount be subject to an income tax gross-up?

The MDNR does not have a position on Issue No. 4.

Issue No. 5. Fuel and Purchased Power Expense. What is the appropriate level of on-system fuel and purchased power expense Empire should be allowed to recover in rates?

The MDNR does not have a position on Issue No. 5.

Issue No. 6. Fuel and Purchased Power Expense Recovery Method. What method should be used for recovery by Empire of its fuel and purchased power expense?

alternatively,

IEC Continuation. Should the Commission continue to enforce the 3-year term of the Interim Energy Clause that was approved by the Commission in Case No. ER-2004-0570?

(1) Is the Commission barred from terminating the Interim Energy Clause by Section 386.266.8?

(2) Relying upon the four corners of the Stipulation and Agreement, are the

terms of the IEC ambiguous?

(3) In the event that the Stipulation and Agreement is found to be ambiguous, does Empire's actions demonstrate its belief that it was bound to a 3-year term?

(i) What is the practical construction that Empire has given to the agreement?

(ii) What is the burden of proof of ambiguity and on whom does it rest?

(iii) What is the significance of a burden of proof?

(4) Has Empire properly applied to terminate the Interim Energy Clause approved by the Commission in Case No. ER-2004-0570?

(5) What standard should the Commission apply in deciding whether to prematurely terminate the IEC?

(6) What would be the extent of Empire's financial harm if it were bound to the remaining term of the IEC?

(i) What is the comparative financial harm that would be experienced by the ratepayers if the Stipulation and Agreement were prematurely terminated?

(7) In the event that Empire is permitted to prematurely terminate the Interim Energy Clause, what amount of revenues collected by Empire under the IEC should be refunded to customers?

The MDNR does not have a position on Issue No. 6.

Issue No. 7. Gain from unwinding forward natural gas contract. Should Empire's gain from unwinding a forward natural gas contract during the test year offset test year fuel and purchased power expense? If so, should the entire gain be an offset in the test year, or should it be amortized and only a portion of the gain be applied as an offset in the test year?

The MDNR does not have a position on Issue No. 7.

Issue No. 8. Incentive Compensation. Are all the costs of Empire's incentive compensation plan an expense Empire should recover from Empire's ratepayers? If not, what costs should be recovered?

The MDNR does not have a position on Issue No. 8.

Issue No. 9. Low-Income Assistance Program. Should Empire's Experimental Low-Income Program (ELIP) be continued with changes? If so, what should those changes be, should the Customer Program Collaborative (CPC0 determine those changes and have oversight responsibility respecting the program, and how should the cost of the program be included in Empire's cost-of-service for collection from ratepayers? What should be done with unspent ELIP funds?

The MDNR has no position on this issue.

Issue No. 10. Unspent Funding of Current Energy Efficiency and Affordability Programs. What should be done with the unspent funds from the current energy

efficiency and low-income weatherization programs. What should be the amortization amount respecting the demand-site management (DSM) regulatory account?

The parties believe they have settled this issue and anticipate filing a Joint Stipulation and Agreement shortly. However, the MDNR is reserving its right to supplement this pre-hearing brief prior to the hearing should that become necessary.

Issue No. 11. Rate Design/Cost-of-Service. How should any revenue increase for Empire that results from this case be implemented in rates?

(1) A sub-issue. What level of revenue credits should be recognized for purposes of allocating any revenue requirement increase?

The MDNR does not have a position on this issue.

WHEREFORE, the MDNR submits this as its pre-hearing brief in the above-styled case.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, by United States mail, this 31st day of August, 2006, to:

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