

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

In the Matter of The Empire District Electric	)	
Company of Joplin, Missouri Tariffs Increasing	)	<b><u>Case No. ER-2012-0345</u></b>
Rates for Electric Service Provided to Customers	)	Tariff File No. YE-2012-0231
in the Missouri Service Area of the Company	)	

**MOTION TO REJECT INTERIM TARIFF**

COMES NOW the Office of the Public Counsel and for its Motion to Reject Interim Tariff states as follows:

1. On July 6, 2012, The Empire District Electric Company submitted a tariff designed to implement an increase of approximately \$30 million for electric service. The tariff bears an effective date of August 5. A separate tariff also submitted on July 6 would implement an interim rate adjustment that would increase rates by approximately \$6 million. The interim rate adjustment tariff also carries an August 5 effective date. With the interim tariffs, Empire filed a “Motion Requesting Interim Rate Filing to Take Effect Without Suspension and By Operation of Law” (Empire Motion). For the reasons detailed in the accompanying Suggestions in Support, the Commission should reject the interim tariffs and deny the Empire Motion.

2. The Commission should reject the interim tariffs because Empire has failed to even allege sufficient cause to grant an interim increase. As demonstrated in the accompanying Suggestions, the Commission does not have authority to award an interim rate increase to simply boost a utility’s profits. The Commission’s authority with regard to awarding an interim rate increase is limited to the implied authority necessary to carry out its explicit authority, and that implied authority only extends to protecting a utility from serious financial harm or circumstances that threaten its ability to provide safe and adequate service.

3. Even if the Commission determines that its implied authority extends beyond an ability to grant interim rate relief to allow a utility to avoid or remedy an emergency situation, Empire has not alleged sufficient grounds for the Commission to consider granting interim relief. The Commission should closely examine all of the direct testimony – all of Empire’s case in chief – to see whether an interim rate increase is warranted. As established in the accompanying Suggestions, the Commission should decide that Empire’s case in chief does not prove a need for interim rate relief under any plausible standard, and that should be the end of the story. There is no need to suspend the tariffs, allow Empire additional opportunities to attempt to prove what it failed to prove in its case in chief, and force all the parties to divert their resources away from the issues presented by the request for permanent rate relief (not to mention all the other pending rate increase requests). While the Commission is always reluctant to make difficult decisions early in a case if it can avoid doing so by having the parties go through extensive proceedings,<sup>1</sup> the Commission should not require the parties to devote their resources to addressing this interim rate increase request unless the Commission believes that the direct testimony of the Empire witnesses establishes a need for interim rate relief.

4. While the Commission is not bound by its prior decisions, the Commission’s past decisions on interim rate relief have been based on policy considerations and legal analysis that are applicable to the instant case. As discussed in the Suggestions, the Commission has never granted interim relief on grounds as flimsy as those alleged by Empire in this case. The Commission did itself and all participants in the regulatory process a disservice in Case No. ER-2010-0036 by neither clearly affirming the “emergency or near-emergency” standard nor clearly articulating a new standard. As a result of that decision, Empire believed the Commission left

---

<sup>1</sup> See, e.g., Case No. EU-2012-0027.

the door open for a request for interim relief based on: 1) exactly the same type of plant investments that the Commission found inadequate to warrant interim relief in Case EC-2010-0036; and 2) lost revenues from a weather event that took place over a year ago. The Commission should decisively reject the interim rate increase request.

WHEREFORE, Public Counsel respectfully requests that the Commission reject Tariff File No. YE-2012-0231.

Respectfully submitted,

OFFICE OF THE Public Counsel

**/s/ Lewis R. Mills, Jr.**

By: \_\_\_\_\_

Lewis R. Mills, Jr. (#35275)

Public Counsel

P O Box 2230

Jefferson City, MO 65102

(573) 751-1304

(573) 751-5562 FAX

[lewis.mills@ded.mo.gov](mailto:lewis.mills@ded.mo.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed to the parties of record this 20th day of July 2012.

**/s/ Lewis R. Mills, Jr.**

---