

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

In the Matter of the Tariff Filing of The)	
Empire District Electric Company to)	
Implement a General Rate Increase for)	Case No. ER-2004-0570
Retail Electric Service Provided to)	
Customers in its Missouri Service Area)	

STAFF'S RESPONSE TO NONUNANIMOUS STIPULATION AND AGREEMENT

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), and for its Response to Nonunanimous Stipulation And Agreement, respectfully states as follows:

1. On February 22, 2005, The Empire District Electric, Company (“Empire” or “Company”), the Office of the Public Counsel, Praxair, Inc., and Explorer Pipeline Company jointly filed a Nonunanimous Stipulation And Agreement Regarding Fuel And Purchased Power Expense (“Agreement”). In essence, the Agreement would establish an Interim Energy Charge (“IEC”) mechanism to provide the Company with an opportunity to recover its variable fuel and purchased power expense for a period of three years following a Commission Order of approval. The proposed floor and ceiling amounts for the IEC are \$125 million and \$135 million, respectively (total Company basis).

2. The Staff has the following three concerns regarding the Agreement.

a. While the ceiling amount of the IEC appears to provide adequate protection for Empire, the floor amount does not adequately protect customers. The Staff believes that in order to properly balance the protections afforded to both the Company and its customers, the floor amount should be reduced by \$5 million (total Company basis).

b. The Agreement provides for the possibility of an interim refund at the end of the first two years of the effective period of the IEC. Paragraph 1-d on page 4 of the

Agreement states, in pertinent part: “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.” It is not entirely clear what is meant by “the amount held subject to refund.” Technically, the entire amount collected under the IEC is subject to refund. If the quoted language refers to this amount, there will almost certainly be a sizeable refund at the end of year two. Indeed, given that the IEC is designed to recover \$8,249,246 on an annual basis, one would expect that, by the end of year two, Empire will have collected \$16,498,492, thereby creating a refund obligation of \$6,498,492.

Paragraph 1-h on page 8 of the Agreement identifies IEC-related data that would be included in Empire’s routine monthly reporting. Subdivision (2) thereof states: “The routine reports shall also specifically identify the revenues associated with the IEC Period and the status of the IEC mechanism in terms of the accrued refund obligation.” It seems almost certain that “the amount held subject to refund,” referenced in paragraph 1-d of the Agreement, is intended to mean “the accrued refund obligation,” which is to be reported pursuant to paragraph 1-h of the Agreement. In other words, if at the end of two years, the reported status of the IEC mechanism indicates that Empire’s customers are due a refund in excess of \$10 million, under the Agreement, the amount of that excess will be refunded to the customers.

Should the Commission decide to approve the Agreement, the Staff recommends that it condition its approval on a modification of the language of paragraph 1-d of the Agreement to make clear that the \$10 million is the amount of the refund obligation, as referenced in paragraph 1-h of the Agreement.

c. The Staff's third concern also relates to the amount, if any, to be refunded to customers at the end of the first two years of the IEC's effective period. Under the Agreement, Empire would be obligated to refund any amount in excess of \$10 million. Thus, Empire could find itself in the position of having to refund an amount less than the costs the Company would incur in processing the refund. Additionally, small refund amounts could round to zero cents per kilowatt-hour, and thus require that the entire refund go to "Project Help." (See paragraph 1-g of the Agreement.)

In order to address these presumably unintended consequences, the Staff recommends that any Commission Order approving the Agreement be conditioned on a modification of the language to include specification of the minimum amount in excess of \$10 million that is required to trigger a refund at the end of the second year of the IEC. The Staff further recommends that said minimum excess amount be set at \$1 million. Any excess amount less than \$1 million will thus be considered immaterial for purposes of a refund at the two-year mark of the IEC's period of effectiveness.

3. In an e-mail sent on the night of February 24, 2005, the Staff conveyed the above concerns to Empire and the other parties, along with an expression of its willingness to "sign on" if the Staff's concerns were satisfactorily addressed. Because of the late hour of the transmission, in all likelihood no one accessed the e-mail until February 25. To date, the Staff has not received any response from the parties. The Staff believes that the concerns expressed in sub-paragraphs b. and c. above, which are largely mechanical in nature, will prove acceptable (at least in principle) to the parties. With respect to the question of the appropriate floor amount for a Commission-ordered IEC, the Staff recognizes that while it believes that the proposed amount of \$125 million provides insufficient protection for Empire's customers, the attorneys

representing those customers have nevertheless signed on to the Agreement. Therefore, the Staff will not oppose the Agreement.

WHEREFORE, the Staff respectfully recommends, if the Commission decides to approve the Nonunanimous Stipulation And Agreement Regarding Fuel And Purchased Power Expense, filed in this case on February 22, 2005, that the Commission condition its approval on modifications to the Agreement as set out in paragraphs 2-b and 2-c hereinabove.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 1st day of March 2005.

/s/ Dennis L. Frey