

**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)
retail electric service provided to customers)
in its Missouri service area)

Case No. ER-2004-0570

**STIPULATION AND AGREEMENT
AS TO CERTAIN ISSUES**

COME NOW The Empire District Electric Company (Empire or the Company); the Office of Public Counsel (Public Counsel); the Staff of the Missouri Public Service Commission (Staff); the Missouri Department of Natural Resources - Energy Center (except as to stipulation paragraphs 1-5); Praxair, Inc. and Explorer Pipeline Company, and respectfully state to the Missouri Public Service Commission ("Commission") that as a result of extensive negotiations, the undersigned parties ("Parties"), with the exception of intervenors Union Electric Company, d/b/a AmerenUE and Aquila, Inc. (who do not oppose the Stipulation and Agreement, as more fully described herein), have reached the stipulations and agreements contained herein in order to settle the certain issues identified below and in the Proposed List of Issues, List of Witnesses and Order of Cross-Examination, filed with the Commission on December 1, 2004:

1. **Issues Settled.** This Stipulation and Agreement is intended to settle the following issues identified in the Proposed List of Issues, List of Witnesses and Order of Cross-Examination, filed with the Commission on December 1, 2004:

- 4 (Energy Center Units 3 & 4 Construction Cost);
- 5 (Deferred tax balances);
- 8 (Payroll O&M Factor);
- 9 (Energy Center 3 & 4 O&M);
- 10 (Annual Generator Inspections);
- 11 (Tree Trimming);
- 12 (Rate Case Expense);
- 13 (Enron Legal Fees);
- 14 (Incentive Compensation);

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**Missouri Public
Service Commission**

Exhibit No. 9
Case No(s). EO-20050329
Date 6-23-05 Rptr KF

\$100,000 annually to fund an appliance and HVAC Rebate Program for Empire's residential customers. Empire agrees to work with representatives of the Department of Natural Resources - Energy Center and all other interested signatories to this Stipulation and Agreement to design a rebate program that will induce eligible-residential customers to purchase and install high efficiency electric appliances and/or heating and cooling equipment that have received the ENERGY STAR rating from the ENERGY STAR program sponsored by the United States Department of Energy and the United States Environmental Protection Agency.

9. **Commercial Energy Efficiency Audits.** The parties agree that Empire will expend no less than \$25,000 annually to fund 50% of the cost of technical energy efficiency audits for Empire's commercial customers, up to \$1,000 for a particular commercial customer, and provide incentives for installation of energy efficiency measures identified in the technical audit. The portion not paid for by Empire will be funded by those individual commercial customers receiving such audits. Empire agrees to work with representatives of the Department of Natural Resources - Energy Center and all other interested signatories to this Stipulation and Agreement to design this program.

10. **Wind Assessment.** The parties agree that Empire will make a one-time expenditure in an amount of no less than \$80,000, within a year of the effective date of the Order approving this Stipulation and Agreement, in order to perform an assessment of wind energy resources in or near its Missouri service territory at sites determined in concert with the Department of Natural Resources - Energy Center and other interested signatories. Empire will obtain access to two wind assessment locations in or near its service territory; and, Empire will contract with consulting meteorologists or the University of Missouri-Columbia Atmospheric Sciences Department to install wind measuring equipment and evaluate data collected at levels between 50 meters up to and including 100 meters above ground level for the ultimate purpose of producing site-specific measurements that can be used to quantify the wind resources in Southwest Missouri.

11. **Initiative Design, Implementation and Monitoring.** Empire will meet with Staff, Public Counsel, Department of Natural Resources - Energy Center, and any other interested signatories to this Stipulation and Agreement on a collaborative basis to determine the design, operational and administrative details of all of the above programs including but not limited to (1) the manner in which the funds will be handled and accounted for consistent with applicable federal and state guidelines, and (2) the data that will be collected to evaluate the

terms of this Stipulation and Agreement, the testimony of the following witnesses shall be received into evidence without the necessity of these witnesses taking the stand:

Witnesses And Testimony Respecting Department of Natural Resources – Energy Center Issues:

Ex.	Witness	Testimony	Pgs.	Issue	Date Pre-Filed
#99	Randolph	Direct		Low Inc.-Energy Efficiency	09-27-04
#100	Randolph	Rebuttal		Low Inc.-Energy Efficiency	11-04-04
#101	Randolph	Surrebuttal		Low Inc.-Energy Efficiency	11-24-04
#102	Anderson	Direct		Wind	09-27-04
#103	Anderson	Surrebuttal		Wind	11-24-04
#104	Wyse	Direct		Low Inc.-Energy Efficiency	09-27-04
#4	Palmer	Rebuttal		Low Inc.- Energy Eff.-Wind	11-04-04
#58	Mantle	Rebuttal	All	Low Inc.- Energy Eff.-Wind	11-04-04
#59	Mantle	Surrebuttal	All	Low Inc.- Energy Eff.-Wind	11-24-04
#88	Kind	Rebuttal		Low Inc.- Energy Eff.-Wind	11-04-04
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Settled Issues Listed In Paragraph 1 Above, Excluding Department of Natural Resources – Energy Center Issues:

Empire Witnesses And Testimony:

#3 Palmer Direct - All
#4 Palmer Rebuttal – All
#8HC/NP Mertens Direct – All
#109 Mertens Rebuttal – All
#110 Mertens Surrebuttal – All
#9 Walters Direct – All, but pp. 14-30
#10 Walters Rebuttal – All
#21 Vogl Direct – All
#22 Vogl Rebuttal – All
#23 Vogl Surrebuttal – All
#27 Eads Direct – All
#32 Williams Rebuttal – All
#33 Bauer Rebuttal – All

Staff Witnesses And Testimony:

#57 Mantle Direct – All
#65HC/NP McKiddy Direct – All
#66HC/NP McKiddy Surrebuttal – All
#53 Kiebel Direct – All
#39 Elliott Direct – All
#40 Elliott Surrebuttal – All
#34 Cassidy Direct – All (received into evidence during fuel and purchased power issue)
#35 Cassidy Surrebuttal – All (received into evidence during fuel and purchased power issue)
#71 Teel Direct – All (received into evidence during depreciation issue)
#72 Teel Rebuttal – All (received into evidence during depreciation issue)
#73 Teel Surrebuttal – All (received into evidence during depreciation issue)
#37 DeVore Direct - All
#38HC/NP DeVore Surrebuttal – All
#41 Gibbs Direct – All
#42 Gibbs Rebuttal – All

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 §536.080 RSMo 2000 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 Stipulation and Agreement had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this Stipulation and Agreement 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.

18. In the event the Commission unconditionally accepts the specific terms of this Stipulation and Agreement without modification, the signatories 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 respecting this Stipulation and Agreement issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters not explicitly addressed by this Stipulation and Agreement.

19. The Staff shall file suggestions or a memorandum in support of this Stipulation and Agreement. Each of the Parties shall be served with a copy of any such suggestions or memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's suggestions or memorandum, responsive suggestions of a responsive memorandum which shall also be served on all Parties. The contents of any suggestions or memorandum provided by any Party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.

20. The Staff also shall have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.



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**ATTORNEY FOR PRAXAIR, INC. AND
EXPLORER PIPELINE COMPANY**

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was, on this 22nd day of December, 2004, sent via electronic mail, U.S. Postage, or hand delivered, to all parties of record.



liability will be reduced at the same rate as the prepaid pension asset. This regulatory liability is a non-cash item and should be excluded from rate base in future years.

- 5) The Company will be allowed rate recovery for contributions made to the pension trust in excess of the FAS 87 expense for the following reasons: the minimum required contribution is greater than the FAS 87 expense level, avoidance of PBGC variable premiums, and avoidance of write-off of an existing prepaid pension asset (i.e. charge to other comprehensive income).
- 6) A regulatory asset or liability will be established on the Company's books to track the difference between the level of FAS 87 expense during the rate period and the level of pension expense built into rates for that period. If the FAS 87 expense during the period is more than the expense built into rates for the period, the Company will establish a regulatory asset. If the FAS 87 expense during the period is less than the expense built into rates for the period, the Company will establish a regulatory liability. If the FAS 87 expense becomes negative, a regulatory liability equal to the difference between the level of pension expense built into rates for that period and \$0 will be established. Since this is a cash item, the regulatory asset or liability will be included in rate base and amortized over 5 years at the next rate case.
- 7) Any prepaid pension asset other than the amount accumulated from August 15, 1994 through December 1, 2002, currently being amortized, will not be included in rate base in any future case. The regulatory assets/liabilities identified in this settlement will address the inclusion of any rate base amounts.