

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of The Empire )  
District Electric Company's )  
Tariff Revision Designed to )  
Increase Rates, on an Interim )  
Basis and Subject to Refund, )  
for Electric Service Provided )  
to Customers in the Missouri )  
Service Area of the Company. )

Case No. ER-97-82

FILED

NOV 20 1996

HEARING MEMORANDUM

MISSOURI  
PUBLIC SERVICE COMMISSION

**BACKGROUND**

On August 30, 1996, The Empire District Electric Company ("Empire") filed interim tariff sheets designed to increase revenues by \$4,018,071 annually through a surcharge, subject to refund pending a Commission decision in Empire's permanent rate case, Case No. ER-97-81. Simultaneous with the filing of the interim tariffs, Empire also filed the direct testimony of three witnesses.

Pursuant to the Commission's September 23, 1996 Suspension Order and Notice, the Office of the Public Counsel ("OPC") and Staff of the Public Service Commission ("Staff") filed, on November 1, 1996, the testimony of one and three witnesses respectively. On November 4, 1996, pursuant to an unopposed

request for extension of time to file, Intervenor ICI Explosives, Inc. and Praxair ("Intervenors") filed the testimony of one witness. Thereafter, on November 15, 1996, Empire filed the rebuttal testimony of one witness, and Staff filed the rebuttal testimony of four witnesses.

On November 18, 1996, all parties appeared for the Commission-ordered prehearing conference. The parties hereby submit this hearing memorandum pursuant to the aforementioned Suspension Order and Notice.

The testimony references and page numbers which locate the testimony of the witnesses on each issue are merely for the convenience of the Commission and the parties. That all of a witness' testimony is not identified as support for a particular issue shall not preclude the admission of said witness' testimony into evidence.

By signing this hearing memorandum, unless otherwise indicated, no party shall be deemed to have acquiesced in the positions or statements of any other party with respect to any issue or allegation of fact. The summary description of the issues as contained herein is solely for the convenience of the Commission and no party is necessarily bound by said description. All parties reserve the right to inquire into and establish a position

concerning any issue which is pertinent to the proceedings as a new issue based on matters which could not reasonably have been contemplated based on the filings and pleadings herein as of the date hereof. To the extent that any issues were settled during the prehearing conference or thereafter, all parties agree that, except as otherwise specifically stated herein, no party shall be bound in this or any other proceeding by any theory of rate making, rate design or cost of service which may have been used in arriving at such settlement or which would allegedly support such settlement.

#### **SETTLED ISSUES**

In the event the Commission orders an interim rate increase, Empire and Staff agree:

1. With the first electric bill on which the interim rate increase appears, Empire will notify and explain to its customers the existence and calculation of the interim rate. Such customer notification would be provided as a bill insert. Necessary information would include, at a minimum, the interim rate calculation method, the effective dates of the interim rate increase and the fact that the interim rate is subject to refund.
2. Inclusion of the interim rate amount as a separate item on each customer bill would require a programming change in the Empire's billing system. Empire can calculate the total amount of the interim rate charged per occupant account in the event and at the time a refund is applicable. Since a programming change would not be a cost effective process, Staff agrees that the interim rate amount should not be a separate item included on each bill submitted.

3. Empire currently requests and agrees to continue to request forwarding address information from customers discontinuing utility service. Such information is not always available in that some customers do not pay their last bill and/or do not leave a correct forwarding address in an attempt to avoid collection.
4. Empire agrees to place a notice message in a customer's final bill reminding them that they may be eligible for a refund pending a final, non-appealable order of the Commission in Case No. ER-97-81.
5. Empire agrees to place a notice of any refund and the refund process in applicable public newspapers. This notice will include a deadline for those customers who have left Empire's system to contact Empire regarding refunds. (This deadline is addressed in item 8 below).
6. For those customers who remain on Empire's system, Empire will calculate and credit individual refunds on customer's bills following the Commission's final, non-appealable report and order in Case No. ER-97-81. Refund credits will be applied within 60 days of such an order.
7. For those customers no longer receiving service from Empire, Empire will issue refund checks within 90 days after a final, non-appealable order of the Commission in Case No. ER-97-81.
8. Those customers which leave Empire's system and fail to provide Empire with forwarding information shall have 90 days from a final, non-appealable order of the Commission in Case No. ER-97-81 to contact Empire to obtain a refund. Any applicable refunds shall be credited against any outstanding account balance prior to Empire issuing refund checks.
9. Refund checks, as provided in items 7 and 8 above, shall be issued only to those customers with credits, net of outstanding account balance, in amounts of greater than \$1.00. Refunds in amounts less than \$1.00 and all unclaimed refunds will be allocated to Empire's Project Help program.



## CONTESTED ISSUES

1. Should the Commission grant Empire an interim rate increase?

STAFF - No. The Commission should not grant Empire its requested interim increase which is based solely on a claimed increase in fuel and purchase power costs. The evidence in this case shows that Empire does not meet the Commission's traditional standard for granting interim relief, i.e., that the utility is in an emergency or near-emergency situation; in fact, Empire admits this in its prefiled testimony. In an effort to show "good cause" for its proposed interim increase, Empire claims it has earned an unreasonable return on equity for the twelve months ending June 1996. However, Empire's asserted return on equity for the twelve months ending June 1996 is based solely on unadjusted per book financial data, which is not a meaningful basis for consideration of rate changes.

Empire attempts to support its request by showing that current fuel costs are higher than the level built into rates in the settlement of its last rate case (Case No. ER-95-279); in so doing, Empire has violated the settlement agreement which stated that no party to the settlement agreed to any cost determination allegedly underlying the settlement. Further, in its quantification of its interim rate request, Empire has used the wrong natural gas prices

and purchase power costs, and has incorrectly compared an annual gas price to a one-time price. Additionally, the increase in purchase power prices, on which Empire's interim rate request is partially based, may be abnormally high because of the extremely cold weather in the first two months of 1996.

Finally, granting Empire its request would constitute single-issue rate making, as well as a violation of the test year concept used in Case No. ER-95-279. Empire's proposal should be rejected by the Commission.

**Witnesses** - Featherstone, Rebuttal, all; Winter, Direct, all; Broadwater, Direct, all; Oligschlaeger Direct, all; Oligschlaeger, Rebuttal, pp. 1-13.

**EMPIRE** - Yes. While Empire has not and does not claim that it meets what the other parties refer to as the traditional Commission "emergency" or "near-emergency" standard for interim rate relief in this case, the so-called "emergency" standard is not a binding or unchangeable rule. The Commission may grant interim rate relief in its discretion for good cause based on all of the facts and circumstances surrounding the request.

The evidence in this case will demonstrate good cause to justify the requested interim increase. Taking into account all relevant factors, Empire is currently experiencing a revenue

deficiency in excess of the \$4,018,071 requested by the interim filing and is also experiencing a return on equity far below a reasonable return for Empire or any electric utility. (Empire's June 30, 1996 ROE is 7.97%. It would take a \$6,400,000 rate increase to raise it to 11.25%). To simplify the process and enhance its chances for success in this case, Empire intentionally understated its interim request when compared to its actual revenue deficiency. Empire calculated the amount of its interim request based only on increased costs of purchased power and fuel and did not reflect other increased costs in its request. To make its calculation, Empire considered as a base the cost of purchased power and gas reflected in "runs" made by Empire and the Staff before the settlement was reached in Case No. ER-95-279. Empire had no knowledge of the actual purchased power or gas costs allegedly underlying the settlement and built into or used to develop the stipulated rates in that case from the Staff's point of view until the Staff filed its rebuttal testimony in this case. Empire does not claim that the Staff or any other party agreed to any cost determination underlying that settlement. The stipulation in that case does not bind any party in any other proceeding except as provided in the stipulation. In any event, fuel and purchased power costs are but only two of the elements which contribute to

Empire's current revenue deficiency based on a consideration of all relevant revenue requirement factors. Empire's request to recover only that part of its revenue deficiency attributable to increased purchased power and gas costs does not constitute single issue ratemaking. While there are no other significant factors to offset these costs, any other possible offsetting items in other components of the revenue requirement calculation are taken into account in Empire's common equity calculation which, as of June 30, 1996, shows a return on equity of 7.97%, which return would have been even lower had not Empire undertaken cost cutting measures.

**Witnesses** - McKinney, Brill, and Fancher.

**OPC** - No. Empire has not demonstrated that it faces an emergency or near emergency, and has not demonstrated good cause for the granting of interim relief. Furthermore, the interim request constitutes single issue ratemaking.

**ICI / Praxair** - No. Empire has not shown and does not claim to show that it has met the emergency standard for granting interim rate relief in Missouri. Empire's claims are, by its own admission, based solely on claimed increases in fuel and purchased power costs. Empire fails to consider all relevant factors in its filing, and this case is thus indistinguishable from that presented

by the former fuel adjustment clause held unlawful in Missouri as single issue ratemaking.

In rebuttal Empire alludes to a consideration of all relevant factors. ICI and Praxair oppose this contention. Even in regard to fuel and purchased power Empire has failed to make a showing that the claimed costs were either prudently incurred or reasonable. Empire chose poorly and failed to take advantage of recognized opportunities to reduce its fuel costs. Failure to take advantage of such opportunities does not create a basis for rate relief.

Moreover, Empire argues for an historic test year in this case, while advocating an extraordinary and inconsistent approach in ER-97-81. It is inappropriate to pick and choose standards so as to increase the revenues collected from ratepayers.

Since ICI and Praxair believe that Empire has not shown justification for an interim increase, the question of an amount for such an increase is not an issue that should be reached by the Commission. Solely for the purposes of this hearing memo, however, if it is assumed that Empire could make a showing sufficient to justify interim relief, the amount of such relief should be only such as would address the "emergency" circumstance. Since Empire has failed to show the existence of any "emergency," it has

correspondingly failed to show an amount sufficient to address such non-existent "emergency."

In any event, the increase must be considered only if it is based on a consideration of all relevant factors.

**Witnesses** - Johnstone.

## **2. Rate design**

**STAFF** - If an interim increase is granted (which Staff opposes), Empire's proposal to spread such interim increase equally on a cents per kilowatt-hour surcharge basis should be rejected, and Staff's cost-based alternative adopted.

**Witness** - Watkins, Rebuttal, all.

**EMPIRE** - Empire requests that the \$4,018,071 interim increase be spread equally on a Kwh surcharge basis, but would consider other approaches.

**Witness** - Fancher.

**OPC** - Although Public Counsel opposes an interim rate increase, if the Commission should allow it, Public Counsel would not object to spreading such an increase on a kilowatt-hour basis.

**ICI / Praxair** - Since ICI and Praxair believe that Empire has not shown justification for an interim increase, the question of how such an increase should be designed is not an issue that should

be reached by the Commission. Solely for the purposes of this hearing memo, however, if it is assumed that Empire could make a showing sufficient to justify interim relief, and had shown an appropriate amount which would address the claimed "emergency," and if it is also assumed that the basis of such emergency is an increase in fuel and purchased power costs, then any increase should be spread on a cost-causation basis.

In any event, Empire's proposed equal cents per kilowatt-hour surcharge should be rejected. ICI and Praxair would, in such circumstance, recommend an equal percentage increase based on the theory that the increase can be based only on a consideration of all relevant factors, not just fuel and purchased power. Moreover, there is no showing that the increase in sales volumes is not sufficient in itself during the test year to compensate for fuel costs. A revenue shortfall due solely to fuel and purchased power cost changes can only be reached based on a consideration of just the fuel and purchased power costs, an unlawful proposition. There is no showing of a lawful cost basis and therefore no basis to spread the increase. ICI and Praxair support the equal percentage approach to the extent that all cost and revenue changes are used as a basis for any increase.

### **3. Refund parameters and tariff items**

**STAFF** - If an interim increase is granted (which Staff opposes), Staff recommends that the increase be made refundable based upon the same factors which the interim increase was based, i.e., on the purchase power and natural gas cost values resulting from Empire's permanent rate case, Case No. ER-97-81. In addition, the interest rate on the refundable amount should be set at 9%, the currently tariffed customer deposit interest rate, rather than the 5% proposed by Empire. Finally, Empire should be ordered to implement the refund provisions agreed to herein under "Settled Issues".

**Witnesses** - Sochinski, Rebuttal, all; Oligschlaeger, Rebuttal, pp. 13-15.

**EMPIRE** - The interim case is a rate case in which all relevant revenue requirement factors are considered based on current financial conditions. The corresponding permanent case is a rate case in which all relevant revenue requirement factors will be considered based on financial conditions as of a later date. Because rates established in both cases will be based on a consideration of all relevant revenue requirement factors, any refund should also be based on the same criteria. To make a refund based on only two elements of cost, i.e. gas and purchased power, would constitute single issue ratemaking. Consequently, Empire



proposes to refund, with 5% annual simple interest, the amount, if any, by which the interim revenues exceed the aggregate revenues which would have been received as a result of Empire's permanent electric rate case.

**Witness** - Fancher.

OPC - Although Public Counsel opposes an interim rate increase, if the Commission should allow it, any refund should be calculated in the same manner that the Commission calculated the increase. Interest should be set at 9% and the refund provisions should be designed to make refunds to the same customers who paid the interim increase.

ICI / Praxair - Since ICI and Praxair believe that Empire has not shown justification for an interim increase, the question of how such an increase should be designed and structured so as to be appropriately subject to refund is not an issue that should be reached by the Commission. Solely for the purposes of this hearing memo, however, if it is assumed that Empire could make a showing sufficient to justify interim relief, and had shown an appropriate amount which would address the claimed "emergency," and if it is assumed that any increase was spread on a cost-causation basis, then the increase should be made refundable on the same cost

factors on which the interim increase was hypothesized to be based. It should not be based on aggregate revenue levels, as claimed by Empire, since other factors, including new plant-in-service may produce needs for revenue wholly unconnected with any asserted basis for the interim increase. Finally, ICI and Praxair agree with the Staff and Public Counsel that refundable amounts should be calculated based upon a 9% interest rate.

**ORDER OF WITNESSES/ORDER OF CROSS EXAMINATION**

EMPIRE:           McKinney  
                  Fancher  
                  Brill

          Cross:     Staff, Intervenors, OPC

INTERVENORS:   Johnstone

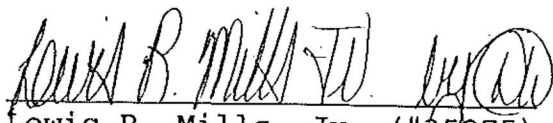
          Cross:     Staff, OPC, Empire

OPC:             Trippensee

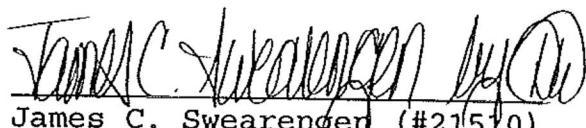
          Cross:     Staff, Intervenors, Empire

STAFF:           Featherstone  
                  Watkins  
                  Sochinski  
                  Winter  
                  Broadwater  
                  Oligschlaeger

          Cross:     Intervenors, OPC, Empire


  
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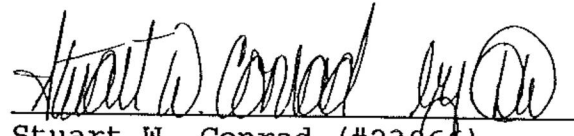
  
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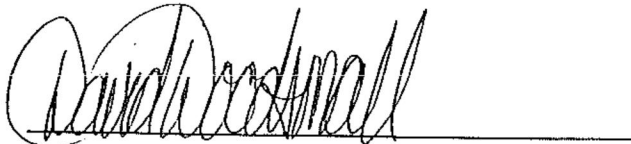
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#### CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 20th day of November, 1996.



Service List

Case No. ER-97-82

Revised: November 20, 1996

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