

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

In the matter of The Empire District Electric	)	
Company of Joplin, Missouri, for Authority to	)	
File Interim Tariffs Increasing Rates for	)	Case No. ER-97-82
Electric Service Provided to Customers in the	)	
Missouri Service Area of the Company.	)	

**INITIAL BRIEF OF  
THE EMPIRE DISTRICT ELECTRIC COMPANY**

**PROCEDURAL HISTORY**

On August 30, 1996, The Empire District Electric Company ("Empire" or "Company") filed with the Missouri Public Service Commission ("Commission") interim tariff sheets designed to increase the Company's annual electric revenues by \$4,018,071. Empire proposed that the interim increase be subject to refund pending the decision of the Commission in the Company's corresponding permanent electric rate case, Case No. ER-97-81, in which Empire seeks an increase in excess of \$23 million.

By its Suspension Order and Notice issued on September 23, 1996, the Commission suspended the interim tariff sheets to January 28, 1997 and established a procedural schedule. Thereafter, the Commission allowed ICI Explosives, Inc. ("ICI") and Praxair Inc. ("Praxair") to intervene in this proceeding. The hearing was held as scheduled on November 25 and 26, 1996. Evidence was presented and at the conclusion a briefing schedule was established.

**EMPIRE'S CASE**

By way of background, effective November 15, 1995, Empire received an increase of \$1.4 million in its Missouri jurisdictional electric revenues through an order issued by the Commission in

FILED  
DEC 31 1996  
MISSOURI  
PUBLIC SERVICE COMMISSION

Case No. ER-95-279. Less than eight months later, Empire found itself in a situation in which it was experiencing a revenue deficiency in excess of \$6 million, more than four times the amount of its 1995 award, and a return on average equity which had deteriorated to 7.97%, far below a reasonable return for any electric utility. (Ex. 3, p. 2, Tr. 112; Tr. 294)

In taking into account all relevant factors and assuming an 11.25% return on equity, Empire determined that as of June 30, 1996, it had a revenue deficiency in excess of \$6 million. Empire also recognized the fact that securing interim rate relief can be a difficult task. Therefore, in order to simplify the process and to enhance its chances of success, the Company calculated the amount of the interim rate relief which it would actually request based only on the increase in purchased power and fuel costs which had occurred since the last case. To get a handle on the order of magnitude of this amount, Empire took production cost computer model "runs" used in connection with its last rate case and applied current fuel and purchased power costs. (Ex. 5, p. 2)

With respect to fuel and purchased power, Empire has for some time been in a rather unique position in that it purchases about 34% of its energy requirements from power marketers and other utilities. This results in considerable fluctuation and uncertainty in the Company's operating costs as opposed to a situation which would exist if it owned sufficient generating facilities to meet its needs and those exact costs were reflected in rates. As a practical matter, what this means is that because of the increase in natural gas prices which took place since its last rate case, Empire is required to pay more for the gas burned in its own gas-fired generating units. In addition, these higher gas prices are also reflected in the price of purchased power which Empire must buy on the market. (Ex. 2, p. 2) These costs represent a 53% increase in natural gas prices and a 8% increase

in the price of purchased energy, price increases not reflected in Empire's rates which became effective November 15, 1995. (Ex. 5, p. 5)

By only asking for a portion of its revenue deficiency does not mean, however, that Empire is somehow engaging in unlawful "single issue" ratemaking. As indicated, in determining its \$6 million revenue deficiency, Empire took into account and considered all relevant factors including all expenses and all revenues. (Tr. 145) While the \$4 million requested interim amount<sup>1</sup> will help to improve Empire's 7.97% return on equity, it will not produce the 11.25% return which was the midpoint of the Staff's recommended range in the last case. (Tr. 267, 341) The point is, the 11.25% return represents and includes all other relevant factors in addition to fuel and purchased power. (Tr. 89)

The Staff's evidence in this proceeding supports Empire's request. In response to Empire's filing, the Staff undertook what it sometimes refers to as a "per book analysis" to determine whether or not Empire met the so-called "emergency" standard for interim rate relief. (Tr. 44) The Staff took a very conservative approach and made several adjustments to Empire's June 30, 1996 books and records. The Staff's analysis with its various adjustments and consideration of all relevant factors showed that Empire is experiencing a revenue deficiency in the range of \$3,186,644 to \$5,540,379. (Ex. 15, Schedule H) While Empire does not necessarily agree with the method, computations or adjustments used in the development of the Staff's revenue requirement, the critical fact is that the \$4 million which Empire's interim tariffs are designed to recover falls within the Staff's revenue deficiency range.

---

<sup>1</sup> The \$4 million interim amount represents a 2% increase for an average residential customer using 700 Kwh per month.

The Staff will undoubtedly argue that its analysis does not justify the \$4 million increase for a variety of reasons including the notion that it is not the product of a "full audit." This however should not distract from the value of the Staff's review. First, given the fact that an interim request by its very nature calls for an immediate, abbreviated and expedited process, something less than a "full" audit should be expected. (Tr. 122, 124) Second, historically even the Staff has not allowed the lack of a full, thorough and comprehensive audit on its part to prevent it from recommending a rate adjustment. (Tr. 343) The fact is that the Staff's revenue requirement calculation was designed to test the reasonableness of Empire's request for interim rate relief and to this extent the Staff was successful as the test clearly demonstrates that the amount of the request is reasonable. (Tr. 121)

#### CONTESTED ISSUE 1: SHOULD AN INTERIM INCREASE BE GRANTED?

Given that the evidence of both Empire and the Staff demonstrates that a revenue deficiency does exist and that the amount of Empire's request is reasonable, the first issue which is before the Commission in accordance with the Hearing Memorandum is the question of whether or not any increase should be granted.

The parties have attempted to address this issue by reference to the standards which the Commission has used in past interim cases. In this regard, Empire has previously supplied the Commission with detailed pleadings which show that the Commission has very broad discretion to grant interim rate relief. The so-called "emergency" standard used frequently by the Commission and relied on by the other parties as a basis for a denial of Empire's request is not an absolute which must be applied in all circumstances. *State ex rel Laclede Gas Company v. Public Service Commission*, 535 S.W.2d 561 (Mo. App. 1976) stands for the proposition that it is up to the discretion of the

Commission whether to grant or deny interim rate relief in any given instance. The Commission has exercised this discretion by applying a less than emergency standard in granting interim relief. In *Missouri Power & Light Company*, 22 Mo. P.S.C. (N.S.) 257,259 (1978), the Commission found that the utility was only making a 1.2 percent return on equity which was an inadequate earnings level, even though not an “emergency” in the sense that the utility could still provide service. The Commission, in that case, allowed an interim increase because good cause was shown and it was reasonable that the relief should be granted to the requesting utility. Also, in a case involving Grand River Mutual Telephone Company, the Commission granted interim rate relief on a non-emergency basis to allow the utility to make improvements in telephone service. *See, Order Granting Interim Rates*, (Mo. P.S.C. Case No. TR-83-273 January 31, 1983). In 1991, the Commission allowed interim rates to go into effect to ensure that a water utility would continue to provide water service where certain extenuating circumstances forced additional costs onto the company that could only be alleviated by interim relief. *See, Re Raytown Water Company*, 1 Mo. P.S.C. 3d 184 (1991). In at least one other case, the Commission has indicated that there can be compelling circumstances which justify a departure from an emergency standard. *See, Re Arkansas Power & Light*, 28 Mo. P.S.C. (N.S.) 143, 148 (1986).

The concept that the Commission is free to exercise its discretion and apply a less than emergency standard and is not necessarily bound by standards adopted in its prior decisions has been upheld by the courts. *State ex rel Churchill Truck Lines, Inc., v. Public Service Commission*, 734 S.W. 2d 587, 592-93 (Mo. App. 1987). The Missouri Court of Appeals has held that “the Public Service Commission can use a new equation or change methods from case to case depending on the

facts.” *State ex rel. Arkansas Power & Light Company v. Public Service Commission*, 736 S.W.2d 457, 462 (Mo. App. 1987).

In summary, although it is clear that over the last twenty years the Commission has utilized an emergency standard to review requests for interim rate relief, the Commission has also granted interim rate relief in non-emergency situations during this time where sufficient good cause has been demonstrated.

Empire respectfully submits that the Commission should continue to reserve to itself the right to consider each interim request on its own merits and the peculiar facts and circumstances of each case rather than being hide-bound to an “emergency” standard first established by a previous Commission back in the 1970’s. Even the Staff concedes that there is nothing to prohibit the Commission from abandoning the so-called emergency standard in this case and exercising its discretion to approve the request upon some other grounds. (Tr. 340-341) This would appear to be the direction in which the Commission is moving as Chief Administrative Law Judge Roberts announced at the opening of the hearing that “... unless there is a situation where the Commission is simply without jurisdiction, the Commission will usually proceed to hearing on the merits and exercise on its discretion and make a decision thereafter.” (Tr. 13) Empire is appreciative of the fact that the Commission has given it this opportunity.

Given that the Commission has the authority to grant interim relief absent an emergency, the question arises as to what standard should it apply in considering Empire’s request in this case? Other jurisdictions may provide some guidance. For example, in Michigan, the standard for granting interim rate relief requires the utility to establish a “revenue deficiency” of some significance and to show that its rates are unjust and unreasonable. *See. Re Michigan Consolidated Gas Company*, 53

PUR 4th 627 (1983). Hawaii requires a showing that the relief is necessary as well as just and reasonable and interim relief in that jurisdiction is granted after the procedural requirements by law have been completed. Hawaii also grants something called "temporary relief" which is authorized upon a showing of "probable entitlement" and "financial need" without going through a complete rate case. *See. Re Maui Electric Company, Ltd.* 59 PUR 4th 160 (1984). Texas requires a showing of good cause. *See. Gulf States Utilities Company et al v. Texas Public Utility Commission*, 128 PUR 4th 441 (1991). Vermont grants temporary relief in a "pressing situation" meaning "some financial need which is out of the ordinary and demands immediate correction." *See, Re Green Mountain Power Corp.*, 455 A.2d 823 (1983). Indiana grants interim rate relief in non-emergency situations provided that the circumstances which make the interim rate relief necessary were brought about by factors outside the control of the utility. *See. Indiana-American Water Company*, 88 PUR 4th 43 (1987).

In essence, all of these decisions represent, to one degree or another, a "good cause" approach or standard consistent with this Commission's own decision in the Missouri Power & Light case, and this is the approach Empire would urge the Commission to continue to follow. In applying the good cause standards, Empire also urges the Commission to take a "global" view of the Company and its situation and consider such factors as how Empire has historically conducted its operations; how its rates compare with respect to the rates charged by other regulated electric utilities; when Empire obtained its last rate increase and the impact of that rate increase on the Company's operations. (Tr. 94-96)

The evidence in this case demonstrates good cause to justify the requested interim increase. As indicated, 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. On June 30, 1996 its return on equity was 7.97%, far below a reasonable return for Empire or any electric utility. Recognizing that of necessity the urgency of an interim request contemplates something less than a full audit, to simplify the process, Empire intentionally understated its request when compared to its actual revenue deficiency and determined the amount of its interim request based only on increased costs of purchased power and fuel. While Empire's other increased costs are reflected in its extremely low 7.97% return on equity, they are not reflected in the amount of its requested increase. To calculate the amount of its interim request, 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. Although fuel and purchased power costs are but only two of the elements which contribute to Empire's current revenue deficiency, the Company'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. There is nothing in the law or Commission rule or practice which suggests that a utility must ask to recover all of its costs. Furthermore, in this case there are no other significant factors to offset these costs and in any event, possible offsetting items in other components of the revenue requirement calculation are taken into account in Empire's common equity return which, as indicated, is only 7.97% as of June 30, 1996.

In exercising its discretion and in taking a "global" or "big picture" view, the Commission should also consider the following facts with respect to the Company:

- Empire has the lowest average rates of any regulated electric utility in the state. (Tr. 352)



- Empire has taken steps to reduce costs. (Ex. 2, pp. 3-4)
- 85% of Empire's business is in Missouri and this is where the Company is experiencing its growth. (Ex. 2, p. 5) (Tr. 116; Tr. 147)
- Empire's average rates in its other states are higher than they are in Missouri. (Tr. 116)
- Empire is recovering its increased fuel and purchased power costs in Oklahoma and Arkansas through automatic adjustment clauses. (Ex. 2, p. 5)
- The gas costs used in Empire's last case are not reflective of the current market. (Ex. 5, p. 31-41)
- Empire's June 30, 1996 return on equity is 7.97% even though it was awarded a rate increase only 7½ months earlier. (Ex. 2, p. 2; Ex. 3, p. 3)

#### CONTESTED ISSUE 2: RATE DESIGN

Empire proposes that the \$4,018,071 interim increase be spread equally on a KWH surcharge basis. Empire, however, would be willing to consider other approaches. Likewise, the Office of the Public Counsel ("OPC") has indicated that it would not object to spreading any interim increase on a kilo-watt hour basis. (Ex. 1, p. 10)

While the Staff has proposed a cost based alternative rate design for any interim increase authorized, the Staff witness on this subject stated on cross-examination that his recommendation would change if as a result of this case the Commission found a revenue deficiency without relating the deficiency to any specific element or elements of cost of service. (Tr. 232)

ICI and Praxair support an equal percentage approach for purposes of spreading the increase to the extent that all costs and revenue changes are a basis for any such increase. (Ex. 1, p. 11)

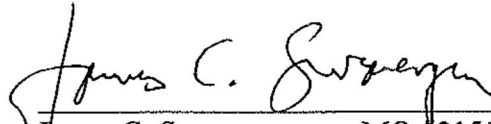
### CONTESTED ISSUE 3: REFUND PARAMETERS AND TARIFF ITEMS

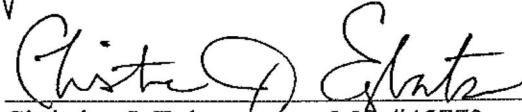
In its filing, Empire proposed to refund, with five percent annual simple interest, the amount, if any, by which the interim revenues exceed the aggregate revenues which would have been received as a result of Empire's permanent electric rate case, Case No. ER-97-81. The five percent rate of interest is proposed because it is consistent with the customer deposit rate of interest which Empire is proposing in the permanent case. Recognizing, however, that the interim case is based on a test year ending June 30, 1996 and that the permanent case will be based on a test year ending September 30, 1996, with isolated adjustments, including consideration of State Line Unit II, through May 31, 1997, Empire is willing to modify its refund proposal as follows: Empire will base the requirement for a refund on a comparison of the interim increase authorized to the revenue requirement as of September 30, 1996, absent any isolated adjustments through May 31, 1997, as decided by the Commission in Case No. ER-97-81. This will have the effect of removing from consideration any revenue requirement which might be associated with State Line Unit II, or with any other items which are beyond the September 30, 1996 test year ordered in Case No. ER-97-81.

Finally, at pages 3 and 4 of the Hearing Memorandum Exhibit 1, Empire has agreed to various matters in the event the Commission orders an interim increase.

CONCLUSION

In view of the foregoing, Empire respectfully urges the Commission to approve the requested interim increase.


  
James C. Swearengen MO #21510

  
Christine J. Egbarts MO #45773  
BRYDON, SWEARENGEN & ENGLAND P.C.  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, Missouri 65102  
Phone: 573-635-7166  
Fax: 573-634-7431

Attorneys for The Empire District Electric Company

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing document was mailed, U.S. Mail, postage prepaid, or hand-delivered, this 31st day of December, 1996 to all parties of record.

  
Christine J. Egbarts