

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of The Empire District Electric)
Company to increase rates for electric) Case No. ER-97-82
service to customers in its Missouri service area.)

FILED
AUG 30 1996
MISSOURI
PUBLIC SERVICE COMMISSION

MOTION AND SUGGESTIONS OF
THE EMPIRE DISTRICT ELECTRIC COMPANY
IN SUPPORT OF INTERIM RATE RELIEF AND
REQUEST FOR PROTECTIVE ORDER

Comes now The Empire District Electric Company, ("Empire") and for its Motion and Suggestions in Support of its Request for Interim Rate Relief, respectfully states as follows to the Missouri Public Service Commission ("Commission"):

Contemporaneously herewith, Empire is filing an interim rate sheet, the purpose of which is to allow Empire to put into place a surcharge which will increase its gross annual electric revenues by \$4,018,071, exclusive of applicable fees and taxes. The surcharge would be subject to refund pending a Commission decision on the general permanent electric rate increase request also filed this date, August 30, 1996. Empire is requesting that the Commission permit the interim rate sheet to go into effect on the requested effective date, September 30, 1996, without suspension. As explained below, the Commission has the discretion to grant interim rate relief for good cause shown and may simply allow the interim tariff to go into effect without suspending it for investigation.

I. THE COMMISSION HAS THE DISCRETION TO GRANT INTERIM RATE RELIEF FOR GOOD CAUSE SHOWN.

The Commission has the authority under the Missouri Public Service Commission Act (the "Act") to grant interim relief. *State ex rel. Laclede Gas Company v. Public Service Commission* 535 S.W. 2d 561, 567 (Mo. App. 1976). In the *Laclede* case, Laclede Gas Company requested interim rate relief and the Commission denied its request. On appeal, the Court of Appeals

held that it is up to the discretion of the Commission whether to grant or deny interim relief. The Court concluded that the right to grant interim rate relief was implied by §§ 393.140 and 393.150 RSMo even though the Act does not specifically give the Commission the right to do so. *Id.* at 565. The Court concluded that language in both §§ 393.140 and 393.150 "lead inexorably to the conclusion that the Commission does have discretionary powers to allow new rates to go into effect immediately or on a date sooner than that required for a full hearing as to what will constitute a fair and reasonable permanent rate." *Id.* at 566. The court stated that "it may be theoretically possible even in a purposely shortened interim rate hearing for the evidence to show beyond reasonable debate the applicant's rate structure has become unjustly low, without any emergency as defined by the Commission having yet resulted." *Id.* at 574.

Although the Commission has applied an "emergency" standard to interim rate relief requests, it has a history of granting interim rate relief in "non-emergency" situations as well. In *Re Missouri Power & Light Company*, 22 Mo. P.S.C. (N.S.) 257, 259 (1978), the Commission stated that a company is entitled to rates that "will provide an opportunity to earn a fair return on the value of its property and in addition permitted to attract the capital necessary to make improvements and maintain service at an adequate level." In that case, the utility at that time was only making a 1.2 percent return on equity. According to the Commission, this was an inadequate earnings level and though not an emergency in the sense that it could still provide service, Commission could still allow an increase in rates because good cause was shown and it was reasonable that the relief should be granted to the requesting utility.¹

¹ At least one other case indicated that there can be compelling circumstances which justify a departure from an emergency standard. *Re Arkansas Power & Light*, 28 Mo.

In a similar case that same year, Commission held that the financial integrity of another utility company would be harmed and safe and adequate service impaired without interim rate relief. The Commission granted interim relief because the utility was shown to face a severe cash flow problem in the following year. If the company could have postponed the need for additional funds, the Commission felt that it would have had to sacrifice a significant portion of its proposed construction budget, which the Commission found to be imprudent. In addition, the Commission stated that interim relief would allow the company access to internally generated funds through increased sales of common stock and long term debt. *Re Missouri Public Service Company*, 22 Mo. P.S.C. (N.S.) 427, 429-435 (1978).

Yet again in *Re Kansas City Power & Light*, 23 Mo. P.S.C. (N.S.) 413 (1980), the Commission granted interim rate relief to a utility because the utility's rates were insufficient to allow it to operate at a reasonable profit, which in turn inhibited investors and increased the possibility that the utility would not be able to provide safe and adequate service. *Id.* at 418. Because of a \$12,000,000 increase in operating expenses, the company's rate of return fell below the authorized rate of return established in its most recent rate case. The Commission stated that "[i]n the past, Company has financed its operating expenses by acquiring external funds. However, the aforementioned drop in earnings has foreclosed conventional capital markets to the Company." *Id.* at 416. Due to the lack of resources available to the company to recover for the increase in operating expenses, the Commission granted interim relief to the company on a non-emergency basis, stating that because of increasing operational costs, the company showed a lack of financial flexibility. *Id.*

P.S.C. (N.S.) 143, 148 (1986).

at 416 thru 418.

In another 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. The company was allowed interim relief pending a determination on permanent rate increase proposal. The Commission approved a stipulation submitted by the parties which included a refund of the additional charges with interest if the permanent rate increase was lower than the interim rate. *See, Order Granting Interim Rates*, (Mo. P.S.C. Case No. TR-83-273 January 31, 1983).

As recently as 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. In this case, the utility had contracted with the City of Kansas City to purchase water for the utility's customers. The contract gave Kansas City the right to reduce water supply during peak use periods. This forced the utility company to construct an additional storage facility but it was unable to secure a loan for the amount necessary for the construction of the facility. Since the company could not get funds from other sources, the Commission concluded that interim relief would help alleviate the possibility of inadequate service within the next two (2) years of operations. *Re Raytown Water Company*, 1 Mo. P.S.C. 3d 184 (1991).

The concept that the Commission is free to exercise its discretion and apply a less than emergency standard as it 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." The Court further concluded that there was no per se requirement that the Commission must use the same formula in successive cases. *State ex rel. Arkansas Power & Light Company v. Public Service Commission*, 736 S.W. 2d 457, 462 (Mo. App. 1987). As indicated previously, the Commission has acknowledged this general principle in connection with interim requests. In *Re Arkansas Power & Light Company*, 28 Mo. P.S.C. (N.S.) 143, 148 (1986), the Commission concluded that compelling reasons may justify departure from its emergency standard.

In summary, although there are Commission decisions which have utilized an emergency standard to review requests for interim rate relief, the Commission has many times granted interim rate relief in non-emergency situations where sufficient good cause has been demonstrated. Thus, the Commission has the discretion under the Act to grant Empire's request for interim rate relief based on its unique and compelling circumstances.

II. THERE IS GOOD CAUSE TO GRANT EMPIRE'S REQUEST FOR INTERIM RATE RELIEF.

Simultaneously herewith, Empire is filing the verified direct testimony of Robert B. Fancher, Myron W. McKinney, and Virgil E. Brill in support of the request for interim rate relief. This testimony explains that Empire is requesting a \$4,018,071 increase to be spread equally across its existing rate structure on a surcharge basis. Testimony of these witnesses explains why the rate relief is urgently needed. Specifically, due to unexpected increases in natural gas and purchased energy costs, Empire had only a 7.97% return on equity as of June 30, 1996. Empire is in a unique position in that it is purchasing about 34% of its energy requirements. Natural gas prices have

increased 53% above the prices used in Case No. ER-95-279, Empire's 1995 rate case. The cost of purchased power has increased 8% since that time. Empire has taken extraordinary measures to cut costs substantially during this period. Nonetheless, its financial statements show a return on equity of 7.97%. Clearly Empire has demonstrated good cause for the Commission to permit the interim rates to become effective subject to refund.

III. THE GRANT OF EMPIRE'S INTERIM RATE RELIEF REQUEST DOES NOT CONSTITUTE SINGLE-ISSUE RATE MAKING.

Authorizing Empire's interim tariff does not constitute single-issue rate making for several reasons.

First, Empire's request for interim relief is simply a part of its request for permanent rate relief. In the context of the permanent case, the Commission will set rates based upon a consideration of all relevant factors. Thus, it is not necessary to apply an "all relevant factors" analysis to the interim filing. It is enough that the permanent tariff filing undergo the Commission's customary full scrutiny before revised permanent rates are authorized. If it turns out that the interim rates were excessive, a refund will be made.

Second, in the context of the interim filing, the Commission has in fact been presented with evidence of all relevant factors through the testimony of Robert B. Fancher which compares actual net operating income to budgeted income (Schedule RBF-1), financial data for the twelve months pending June 30, 1996 and June 30, 1995 (Schedule RBF-2) and a common equity computation showing a return on equity of 7.97% (Schedule RBF-3). This financial information gives the Commission a comprehensive review of Empire's current financial situation taking into account all sources of income and expense. The Commission clearly has before it sufficient information with

which it can determine whether to authorize interim relief.

Third, as recently as the spring of 1995, the Commission and its Staff had the opportunity to complete a complete and thorough audit of Empire's books in approving Empire's current permanent rates for its electric operations in Case No. ER-95-279 and this fact should give the Commission some comfort in considering the present interim request. Since that time, as indicated, the alarming erosion in Empire's earnings level which has occurred can be attributed to two principal causes: increases in the cost of natural gas and purchased power. The end result is that Empire is not earning anywhere near a reasonable rate of return on its utility plant dedicated to the public service.

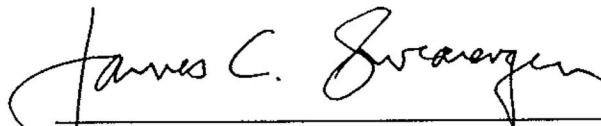
IV. THE COMMISSION MAY ALLOW THE INTERIM RATES TO GO INTO EFFECT WITHOUT SUSPENSION.

The *Laclede* case cited in the prior section also makes it clear that the Commission has the power to allow revised rates to go into effect without suspending them pending further investigation. The Missouri Court of Appeals held that "simply by non-action the Commission can permit a requested rate to go into effect". The Court found this to be authorized by § 393.150 RSMo which states that "whenever there should be filed with the Commission by any... electrical corporation...any schedule stating a new rate or charge...the Commission may...suspend operation of such schedule and defer the use of such rate...." (emphasis added). The Commission's authority to do so was affirmed in *State ex rel. Utility Consumers Council of Missouri v. Public Service Commission*, 585 S.W. 2d 41, 49 (Mo. banc 1979). There is no good reason to suspend the interim tariff. A delay in the implementation of the requested rate relief will be the same as a denial. Empire needs the

additional revenue immediately to recover those costs which have so dramatically escalated since the Commission's rate order in Case No. ER-95-279, only nine months ago. The amount of the interim rate relief is a result of a simple calculation explained in Empire's testimony. The calculation and supporting detail have been supplied to the Commission Staff and can be verified quickly. No audit, review or testimony is necessary to determine its correctness. A full review of all relevant data will be undertaken in connection with the permanent case and the interim rates will subject to refund. Consequently, there is no just reason to suspend the interim tariff. On the contrary, it should be permitted to take effect on September 30, 1996, the requested effective date.

WHEREFORE, Empire moves that the Commission allow the interim tariff sheets filed this date to go into effect on September 30, 1996, the requested effective date, without suspension; issue its standard protective order containing a highly confidential classification in this docket; and for such other relief as may be appropriate under the circumstances.

Respectfully submitted,

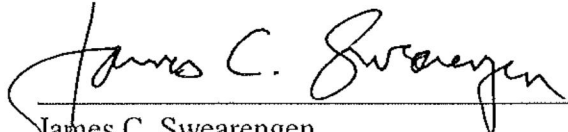


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 30th day of August, 1996, to the Office of the Public Counsel.


James C. Swearingen