

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

FILED
JAN 17 1997
MISSOURI
PUBLIC SERVICE COMMISSION

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

MOTION TO STRIKE

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and for its Motion to Strike portions of the Reply Brief of The Empire District Electric Company ("Empire") states as follows:

1. Pursuant to the Commission's Notice issued December 11, 1996, Empire filed its Reply Brief in the above captioned matter on January 10, 1997.
2. As Staff has previously indicated, Empire has attempted to divert Staff's single-issue ratemaking concerns by reference to an all relevant factors analysis. Although never mentioned in testimony, Empire claimed in its Initial Brief that such an analysis reveals a \$6 million revenue deficiency. As such, Empire's claims that it is permissible for its \$4 million interim request to be based upon a single issue in that it is less than the actual revenue deficiency. Based upon the utter lack of support for Empire's claimed \$6 million revenue deficiency in the record of this case, Staff filed its Motion To Strike portions of Empire's Initial Brief on January 7, 1997.
3. On pages 3 and 4 of its Reply Brief, Empire reiterates its claim of the existence of an all relevant factors analysis. However, Empire, obviously waiting until its Reply Brief, finally

provides a semblance of support for its calculation of the \$6 million revenue deficiency. As is detailed below, Empire's \$6 million revenue deficiency calculation is nothing more than a second single issue ratemaking request.

4. As was indicated in the previous Motion To Strike, Empire's reliance upon information not contained in the record denied all parties the opportunity to cross examine Empire's witnesses on the legitimacy of such a calculation. Furthermore, Empire's decision to wait until Reply Brief to justify its calculation prevented the parties from pointing out the obvious flaws contained within Empire's calculation. Specifically, Staff was precluded from pointing out for the Commission's attention that Empire's \$6 million revenue deficiency calculation, because it is based solely upon its claimed return on equity, suffers from several significant shortcomings. Most notable, Empire's claimed all relevant factors analysis: (1) is based upon total company operations, rather than Missouri jurisdictional operations (Tr. 129); (2) fails to remove water utility operations (Tr. 262); (3) fails to annualize for Empire's last rate increase (Tr. 50); (4) fails to annualize for Empire's recent reorganization (Tr. 50); (5) fails to normalize for weather (Tr. 171); (6) fails to normalize for the effects of the wind storm experienced in the spring of 1996; (7) fails to normalize increased purchased power as a result of the abnormally long outage at Asbury (Tr. 128); (8) fails to normalize for reduced output at the hydroelectric facility (Tr. 163-164); and (9) fails to recognize the \$767,000 reduction in O&M costs (Tr. 88, 96).

5. Furthermore, Empire's claimed analysis is not an all relevant factors calculation. Empire claims that "all elements of cost" are included within Empire's return on equity calculation. Staff agrees with Empire's claim. However, the fundamental problem is that all costs are contained within Empire's return on equity. As the Commission is well aware, Commission Orders and Staff

audits routinely make adjustments to remove items from a company's cost of service that are inappropriate for inclusion in rates. Empire's reliance upon return on equity fails to adjust for such inappropriate costs. Stated more succinctly, consideration of return on equity, in and of itself, fails to consider all relevant factors.

As the Staff has pointed out in its Initial Brief, Section 393.270.4 of the Revised Missouri Statutes 1994 states that the Commission, in determining the price to be charged for electricity,

[M]ay consider all relevant factors which in its judgment have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard, among other things, to a reasonable average return upon the value of the property actually used in the public service . . .

(Emphasis added). In 1957, the Missouri Supreme Court had the opportunity to interpret this provision.

"Due regard" to one factor, "among other things", simply requires consideration of that factor. It is not preclusive of other relevant factors. Indeed, the phrase "among other things" clearly denotes that "proper determination" of such charges is to be based upon *all* relevant factors.

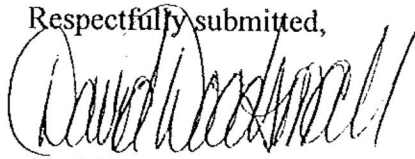
State ex rel. Missouri Water Company v. Public Service Commission, 308 S.W.2d 704, 718-719 (Mo. 1957) (citing to New York Telephone Co. v. Public Service Commission, 309 N.Y. 569; 132 N.E.2d 847, 850 (1956)).

Clearly, the General Assembly as well as the Courts envisioned that utility rates would be based upon a consideration of reasonable average return, but also required that such rates be based upon "other things". Empire's claim that these "other things" are encompassed within its return on equity is faulty and unlawful. In actuality, Empire's case is nothing more than attempting to validate one single-issue ratemaking calculation, the interim fuel based request, with another single-issue

ratemaking calculation based solely upon return on equity. The Commission should not be tricked by Empire's ratemaking sleight of hand.

WHEREFORE, the Staff respectfully requests the Commission issue an Order striking those portions of Empire's Reply brief, on page 3, paragraph beginning "As previously explained and continuing through the entirety of page 4, as not supported by the record in this proceeding.

Respectfully submitted,



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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 17th day of January, 1997.



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