

**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     )     Case No. ER-97-82  
to customers in the Missouri service area of the Company.     )

**REPLY BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL**

**I. INTRODUCTION**

This brief will respond to the initial brief of Empire District Electric Company (EDE). It will not address the initial briefs filed by the Staff of the Public Service Commission (Commission) or intervenors ICI and Praxair. Most of the points raised in EDE's initial brief were adequately addressed in the other three parties' initial briefs, and will not be gone over again here. This brief will generally follow the order of EDE's initial brief.

**II. ARGUMENT**

At pages 1-2 of its initial brief, EDE laments the fact that the increase awarded in Case No. ER-95-279 was not enough to (according to EDE's calculations) prevent an earnings deficiency less than eight months later. The Commission should not forget that EDE made a (one hopes) calculated business decision to settle the case for those rates. EDE should not now be allowed to make its ratepayers pay for what EDE now believes to have been a bad decision.

**FILED**  
JAN 10 1997

**PUBLIC SERVICE COMMISSION**

At pages 2-3 of its initial brief, EDE offers percentage calculations of the increase in natural gas and purchased power prices. These percentages are misleading at best. Since there is no known or agreed upon level of these prices, there is no way to calculate "price increases." Similarly, the claim that these price increases are not included in rates assumes that the claimant has some knowledge of what level is included in rates. There is simply no way of knowing what this level is, and thus this claim is also misleading.

EDE next claims that it is not engaging in single issue ratemaking even though it has asked for an increase calculated on a single issue. Its saving grace, as it sees it, is that it could justify a greater increase, based on some other factors. The simple fact is, however, that the case EDE has presented is not based on some other factors, but is based on a calculation of increases in fuel and purchased power prices.

EDE, in the last paragraph of page 3, discusses the "development of Staff's revenue requirement." It should not escape the Commission's notice that its Staff has vehemently and consistently denied that it has developed a revenue requirement. (Tr. 264, 285, 332). EDE carries its discussion of what it believes the staff's evidence demonstrates onto page 4, where it again refers to the Staff's calculation of a "revenue requirement" and what this calculation was designed to show. The Staff's analysis was conducted solely to determine a Missouri jurisdictional return on equity for the purpose of testing whether EDE was in an emergency situation. It does not mean what EDE claims it means.

EDE, in its section titled "Contested Issue 1," discusses a number of cases which have been discussed a number of times in pleadings filed in this case (Public Counsel addressed every case cited in EDE's initial brief in its Motion to Dismiss, or in the Alternative, to Suspend filed in

this case on September 10, 1996) as well as in Case Number ER-97-43 (EDE's interim increase request dismissed several months ago). EDE does not cite to any new cases. This brief will respond only summarily to the claims made in EDE's initial brief since the Commission has already heard so much about these cases.

The case on which EDE's claim for a good cause standard most heavily relies is *Missouri Power and Light Company*, 22 Mo. P.S.C. (N.S.) 257 (1978). As has been pointed out numerous times, in that case the utility was only earning a 1.2 percent return on equity, and the Commission made a specific finding that "[f]urther deterioration would preclude the Company from selling mortgage bonds." (*Id.*, at 258). Although the Commission used the phrase "good cause," in that instance the "good cause" was a near emergency.

EDE also cites *Re: Arkansas Power and Light*, 28 Mo. P.S.C. (N.S.) 143 (1980) for the proposition that there can be compelling circumstances which justify departure from the emergency standard. The Commission in that case clearly stated: "The Commission is of the opinion that adherence to the emergency or near-emergency standard should properly be continued." (*Id.*, at 147).

EDE also discusses *Re: Raytown Water Company*, 1 Mo. P.S.C. 3d 184 (1991), but fails to note that in that case the Commission explicitly confirmed the emergency standard and explicitly found that an emergency did exist. (*Id.*, at 186). The Grand River Mutual Telephone case mentioned by EDE should be seen as an unexplained and unexplainable anomaly. There certainly is no explanation in the record of that case of why the Commission did not find whether an emergency existed or even mention the appropriate standard for the granting of interim relief.

Throughout its initial brief, EDE urges the Commission to adopt a good cause standard, and repeatedly claims that it meets such a standard. However, nowhere in its brief does EDE define this standard. The Commission should not accept EDE's barren claim that it meets a good cause standard. The Commission should require some specific criteria that would allow it to apply a good cause standard in a consistent manner. The standard should be one that balances a utility's asserted need for rate relief with the lack of a complete audit and a fully developed record. Such a standard begins to sound a lot like the Commission's emergency standard.

At page 6 of its initial brief, EDE makes the blanket statement that "the Commission has the authority to grant interim relief absent an emergency." The Commission itself is not sure that its authority is so great. In *In re Union Electric Company*, 18 Mo. P.S.C. (N.S.) 440 (1974), the Commission stated the extent of its authority:

Therefore, although the Commission is of the opinion that it has the authority to grant interim rate increases, **that authority may only be exercised where a showing has been made that a deteriorating financial situation exists which constitutes a threat to a company's ability to render adequate service.** (*Id.*, at 446; emphasis added).

EDE cites a list of cases from other jurisdictions concerning the standards those jurisdictions use in determining whether to grant interim relief. EDE's reliance on these cases is misplaced. First, when applying those standards to EDE's current situation, it is clear that EDE fails to meet any of them. Second, the standards used in other states are not binding upon this Commission. Finally, the authorizing statutes in those states are different than Missouri's, and thus the authority of the utility regulators is different.

Public Counsel finds little to respond to in the last two sections of EDE's brief. However, it should be noted that EDE's modification of its refund proposal suffers from most of the same flaws as its original proposal. That is, it attempts to equate an interim increase based upon data

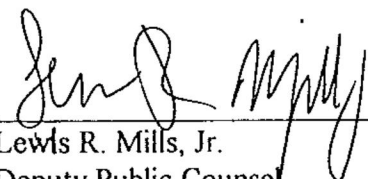
from one period of time with a permanent increase based on a totally different period of time. All the modification does is move the two periods a little closer together and explicitly exclude one piece of new plant. It does not fix the "apples to oranges" comparison; it simply compares the apples to tangerines instead of oranges.

### **III. CONCLUSION**

The Commission should dismiss this case because Empire has failed to meet the Commission's standard for interim relief. Even if the Commission were to entertain the idea of promulgating a new standard for interim relief, Empire has failed to give the Commission any evidence on the record, or any reasoning in the initial brief, from which it can create such a standard.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By:   
Lewis R. Mills, Jr. (#35275)  
Deputy Public Counsel  
P. O. Box 7800  
Jefferson City, MO 65102  
(573) 751-1304

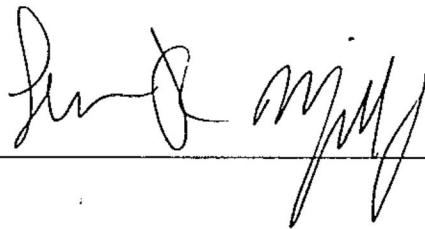
**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 10th day of January, 1997:

David Woodsmall  
Deputy General Counsel  
Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

James C. Swearengen  
Brydon, Swearengen & England  
P. O. Box 456  
Jefferson City, MO 65102

Stuart W. Conrad  
Finnegan, Conrad & Peterson  
1209 Penntower Office Center  
3100 Broadway  
Kansas City, MO 64111



A handwritten signature in cursive script, appearing to read "Stuart W. Conrad", is written over a horizontal line.