

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

CASE NO. ER-80-143

In the matter of the Empire District  
Electric Company of Joplin, Missouri,  
for authority to file tariffs increas-  
ing rates for service provided to  
customers in the Missouri service  
area of the company.

When the matters of agreement between the parties appear to be reasonable and  
proper and uncontradicted they should be accepted as an end to any expense  
of further litigation.

APPEARANCES: Robert L. Hawkins, Jr., Attorney at Law, James C. Swarengen,  
and W. R. England, III, Attorney at Law, Hawkins, Brydon  
and Swarengen, P.C., 312 East Capitol Avenue, Jefferson  
City, Missouri 65102, for Applicant, the Empire District  
Electric Company.

Daniel S. Ochstein, Assistant Public Counsel, P. O. Box 1216,  
Jefferson City, Missouri 65102, for the Office of the Public  
Counsel and the Public.

Steven Dottheim, Assistant General Counsel, Holly E. Peck,  
Assistant General Counsel, Treva J. Hearne, Assistant  
General Counsel, and William C. Harrelson, Assistant  
General Counsel, P. O. Box 360, Jefferson City, Missouri  
65102, for the Staff of the Missouri Public Service  
Commission.

REPORT AND ORDER

This case is before the Commission as a result of the filing, on  
November 9, 1979, by the Empire District Electric Company (Company) of revised  
tariffs designed to increase rates to its Missouri customers by approximately  
\$16,100,000 annually.

The tariffs were suspended, and after due notice to interested parties,  
the matter was set for hearing in the Commission's hearing room in Jefferson  
City, Missouri.

Findings of Fact

The Missouri Public Service Commission, having considered all of the  
competent and substantial evidence upon the whole record, makes the following  
findings of fact:

As a result of the prehearing conference, the parties announced that a  
stipulation in settlement of all issues in the case had been reached and tendered  
the agreement to the Commission for its consideration.

The Stipulation and Agreement entered into between the parties and  
offered in this matter as Exhibit 5, sets forth the pertinent facts and the  
procedural background of this case and is hereinafter set forth in its entirety.

#### STIPULATION AND AGREEMENT

The Empire District Electric Company (hereinafter the "Company") on November 9, 1979 submitted to the Missouri Public Service Commission (hereinafter the "Commission") revised electric rate schedules designed to increase the Company's jurisdictional electric revenues approximately \$16,100,000 annually not including franchise and gross receipts taxes. The Company gave the revised schedules an effective date of December 10, 1979. The Commission accepted the revised schedules for filing on November 14, 1979.

On November 27, 1979, the Commission suspended the revised schedules for 120 days beyond December 10, 1979, to April 8, 1980 and ordered the Company to file its prepared testimony, exhibits, and minimum filing requirements.

On December 12, 1979 the Office of the Public Counsel filed a Motion To Set Filing Dates For Prepared Testimony And Exhibits and therein requested the Commission to establish filing dates for prepared testimony and exhibits in such a manner as to allow the Staff of the Public Counsel thirty days to review the Commission Staff's prepared testimony and exhibits prior to the date that the Public Counsel is required to file prepared testimony and exhibits. On December 15, 1979, the Office of the General Counsel to the Commission filed a response to Public Counsel's Motion To Set Filing Dates For Prepared Testimony And Exhibits stating therein that the Public Counsel's filing date should be no more than fourteen days subsequent to the filing of the Commission Staff's prepared testimony and exhibits.

On January 7, 1980 the Public Counsel served a data request upon the company.

On January 17, 1980, the Company requested an extension of the filing deadline for its prepared testimony and exhibits, not including its depreciation study, from January 28, 1980, to February 11, 1980. The Company requested that the filing deadline for the depreciation study that it was claiming to be prepared in this proceeding be extended from January 28, 1980 to March 10, 1980.

On January 21, 1980, the Commission further suspended the revised schedules for an additional period of six (6) months from April 8, 1980 to October 8, 1980. The Commission also set February 20, 1980, as the date by which any proper party desiring to intervene and participate herein should file its application to intervene; March 4, 1980 as the date by which the Company was to file and serve its prepared testimony and exhibits upon any intervenor; June 6, 1980 as the date by which the Commission Staff (hereinafter the "Staff") was to file and serve its prepared testimony and exhibits; June 13, 1980 as the date by which each intervenor and Public Counsel was to file and serve their prepared testimony and exhibits; July 7, 1980 as the date for the prehearing conference to begin; and July 14, 1980 as the date for the hearing to begin.

On January 24, 1980, the Commission granted the Company an extension of the time for the filing of (1) its prepared testimony and exhibits, not including that in connection with its depreciation study, from January 28, 1980 to February 11, 1980 and (2) its prepared testimony and exhibits in connection with its depreciation study from January 28, 1980 to March 10, 1980.

On February 8, 1980, the Public Counsel filed a second data request upon the Company.

On February 11, 1980, the Company timely filed and served upon all parties of record its prepared testimony and exhibits excluding that in connection with its depreciation study.

On February 19, 1980, the Public Counsel filed and served interrogatories upon the Company. On March 4, 1980, the Public Counsel filed and served further interrogatories upon the Company.

On March 10, 1980, the Company timely filed and served upon all parties of record its prepared testimony and exhibits in respect to its depreciation study.

On May 22, 1980 the Company filed and served upon all parties of record the last of Company's response to Public Counsel's interrogatories.

On June 3, 1980 the Staff requested an extension of time for the filing of its prepared testimony and exhibits from June 6, 1980 to June 11, 1980. On June 4, 1980 in response to the Staff's Motion For Extension Of Time, the Commission granted the Staff an extension of time for the filing of its prepared testimony and exhibits from June 6, 1980 to June 11, 1980.

On June 11, 1980, the Staff timely filed and served upon all parties of record its prepared testimony and exhibits. On June 16, 1980, the Staff filed and served upon all parties of record a 36-page document that included the additional exhibits that Staff intended to reference in the "Fully Operational" issue with regard to Iatan, Unit 1.

On June 23, 1980 the Company filed and served upon all parties of record a request for copies of all of the Staff's work papers in connection with this proceeding.

On June 27, 1980, the Staff filed and served upon all parties of record Notice Of Taking Depositions And For Subpoena For The Production Of Documents, Subpoena For Witnesses And For The Production Of Documentary Evidence, certain Subpoenas For Witnesses, and authorization to serve such subpoenas. On July 1, 1980 the Staff filed and served upon all parties of record Subpoena For Witnesses And For The Production Of Documentary Evidence and certain Subpoenas For Witnesses all with signed Returns of Service.

On July 1, 1980, the Company filed and served upon all parties of record Notice of depositions of witnesses to be read into evidence in this proceeding.

Attached as Appendix I<sup>1</sup> is a copy of the Commission's Report and Order in Case No. ER-80-172, the Company's interim case, which authorized the Company to file revised interim tariffs designed to increase Missouri jurisdictional gross annual revenues \$7,023,737 exclusive of applicable gross receipts and franchise taxes, subject to refund together with nine percent (9%) simple interest on an annual basis pending the outcome of the Company's permanent case, which is this proceeding Case No. ER-80-143. The Commission's Report and Order in Case No. ER-80-172 ordered the revised interim tariffs, therein authorized to be filed, to become effective for service rendered on and after May 31, 1980.

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<sup>1</sup>The Commission's Report and Order in Case No. ER-80-172 is not attached as Appendix to this Order.

Commencing on July 7, 1980 and continuing through July 9, 1980 the Staff deposed witnesses named or identified in the Subpoena For Witnesses And For The Production of Documentary Evidence and certain Subpoenas For Witnesses. The Company and the Office of Public Counsel participated in the depositions.

On July 10, 1980, representatives of the Company, Staff and the Office of Public Counsel commenced a prehearing conference at the Commission's Offices in Jefferson City, Missouri. As a result of the prehearing conference, the undersigned parties stipulate and agree as follows:

1. That the interim rates approved by the Commission in Case No. ER-80-172 and designed to increase Missouri jurisdictional gross annual electric revenues by \$7,023,737, exclusive of gross receipts and franchise taxes, above the permanent tariffs that were effective for service rendered prior to May 31, 1980 be made permanent.
2. That these revised permanent tariffs shall become effective for service rendered on and after August 8, 1980.
3. That the permanent increase in gross annual revenues of \$7,023,737 shall be distributed to and within the various rate schedules for service rendered on and after August 8, 1980 by applying half the increase on a percentage basis and half on a cents per KWH basis.
4. That effective January 1, 1981 the Company shall accrue depreciation expense using the annual depreciation accrual rates set forth in Schedule 3 of Staff witness John O. Richey's prefiled exhibits.
5. That the portion of the Company's base rate levels which in Case No. ER-80-103 became effective for bills rendered on and after October 1, 1979 and was (1) attributable to includable (for fuel adjustment clause purposes) fuel cost increases during the period January 1, 1979 through May 31, 1979 and (2) designed to comply with the decision of the Supreme Court of Missouri in State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission, 585 S.W.2d 41 (Mo. Banc 1979) was audited by Staff and found to be proper. Therefore, that portion of the Company's base rate levels effective for bills rendered on and after October 1, 1979 which was attributable to includable (for fuel adjustment clause purposes) fuel cost increases during the period January 1, 1979 through May 31, 1979 should not be subject to refund and Case No. ER-80-103 should be dismissed by the Commission.
6. That this Stipulation and Agreement represents a negotiated dollar settlement for the sole purpose of disposing of Case No. ER-80-143 and Case No. ER-80-172 and none of the parties to this Stipulation and Agreement shall be prejudiced by or bound by the terms of this Stipulation and Agreement in any future proceeding or in this proceeding, in the event that the Commission does not approve this Stipulation and Agreement in its entirety.
7. That none of the parties to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any ratemaking principle or any method of cost of service determination, or cost allocation underlying any of the rates provided for in this Stipulation and Agreement.
8. That this Stipulation and Agreement is intentionally silent respecting rate of return and rate base.
9. That the Company agrees to install demand meters by November 1, 1980 for the purpose of determining allocations among

jurisdictions in the Company's next rate case. The Company will report to the Commission each month after November, 1980 as to the coincident peak demand by jurisdictions during the previous month.

10. That the prefiled testimony and exhibits sponsored by Company witnesses Richard C. Allen, Robert L. Lamb, Byron Mueller, Eugene P. Brigham, W. R. Chaney, and Donald T. McPhee, shall be received in evidence without the necessity of these witnesses taking the stand. That the prefiled testimony and exhibits sponsored by staff witnesses Roy M. Boles, Jr., Russell W. Trippensee, Wess A. Henderson, Marilyn K. Smart, William J. Cochran, James A. Tracy, John O. Richey, and Eric H. Kostbade shall be received in evidence without the necessity of these witnesses taking the stand.

11. That the depositions of Paul Stewart, Stanton Preston, Kenton T. Davidson, Francis S. Nelson, Gerald Burrows, Arnold L. Samuels, Carl Higgs, Edward R. Sonnenberg, James Krumm, Gerald Larson, Robert G. Smith, Michael Wayne Costello, Gary Erickson, and Daniel J. Kramer shall be received in evidence without the necessity of these witnesses taking the stand.

12. That in the event the Commission accepts the specific terms of this Stipulation and Agreement the parties waive their rights to cross-examine the witnesses named in the foregoing paragraphs with respect to their testimony and exhibits.

13. That in the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties waive their rights to present oral argument and written briefs pursuant to Section 536.010(1), their rights pertaining to the reading of the transcript by the Commission pursuant to Section 536.080(3), and their rights to judicial review pursuant to Section 386.510, RSMo 1978.

14. That the agreements in this Stipulation and Agreement have resulted from extensive negotiations among the signatory parties and are interdependent. In the event that the Commission does not approve and adopt this Stipulation and Agreement in total, and in the event the tariffs agreed to herein do not become effective for service rendered on and after August 8, 1980, the parties agree that this Stipulation and Agreement shall be void and no party shall be bound by any of the agreements or provisions hereof.

Respectfully submitted,

/s/ James C. Swearingen

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/s/ Daniel S. Ochstein

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The proposed Stipulation makes effective, on a permanent basis, the rate increase in the amount of \$7,023,737, exclusive of sales receipts and franchise taxes authorized in the Company's interim case 22-50-172.

The Commission is of the opinion that the proposed Stipulation is reasonable and proper and should be accepted as an equitable disposition of the issues presented in this matter.

### Conclusions

The Missouri Public Service Commission has arrived at the following conclusions:

1. The tariffs which are the subject matter of this proceeding, were suspended pursuant to authority vested in this Commission by virtue of Section 393.150, RSMo 1978, and the burden of proof to show that the proposed increased rates are just and reasonable shall be upon the Company.
2. The Commission, after notice and hearing, may order a change in any rate, charge or rental, and it may determine and prescribe the lawful rate, charge or rental and the lawful regulation or practice affecting such rate, charge or rental thereafter to be observed.
3. The Commission may consider all facts which in its judgment have any bearing upon the proper determination of the price to be charged, with due regard, among other things, to a reasonable average return on capital actually expended and to the necessity of making reservations out of income for surplus and contingencies. In so doing, the Commission shall consider the fair value of the property and its proper relationship to all other facts that have a material bearing on the establishment of fair and just rates.

For ratemaking purposes, the Commission may accept a Stipulation and Agreement of any contested matter submitted by the parties. The Commission is of the opinion that when the matters of agreement between the parties appear to be reasonable and proper and uncontradicted they should be accepted as an end to any expense of further litigation.

Since the Stipulation appears to be reasonable and proper it is hereby received in evidence as disposition of all matters herein presented. Pursuant to the terms of the Stipulation, the Company's evidence which has been marked and offered as Exhibits 1, 2, 3, 4 and 6 are hereby received in evidence. Also pursuant to the terms of the Stipulation, found herein to be reasonable, the evidence of the Commission Staff, previously marked and offered as Exhibits 7 through 11 are hereby received in evidence.

Also pursuant to the terms of the Stipulation, the Depositions of witnesses Stewart, Preston, Davidson, Nelson, Burrows, Samuels, Higgs, Krumm, Larson, Smith, Costello, Erickson and Kramer identified as Exhibits 14 through 27 are hereby received in evidence.

It is, therefore,

ORDERED: 1. That the revised tariffs herein suspended be, and they are, hereby disallowed and the Empire District Electric Company is authorized to file in lieu thereof, for approval by the Commission, revised tariffs designed to increase rates for electric service, in the Company's Missouri service area, in the amount of \$7,023,737 on an annual basis exclusive of applicable gross receipts and franchise taxes.

ORDERED: 2. That the increase in gross annual revenues, herein authorized, shall be distributed to and within the various rate schedules for service by applying one-half of the increase on a percentage basis and one-half of the increase on a cents per kilowatt hour basis and may be effective for service rendered on and after August 8, 1980.

ORDERED: 3. That on and after January 1, 1981, Empire District Electric Company shall accrue depreciation expense using the annual depreciation accrual rates set forth in Schedule 3 of Staff Witness John O. Richey's prefiled testimony received in evidence in this matter as Exhibit 9.

ORDERED: 4. That this Report and Order shall become effective on the 8th day of August, 1980.

BY THE COMMISSION

*D. Michael Hearst*

D. Michael Hearst  
Secretary

(S E A L)

McCartney, Frass, Dority and  
Bryant, CC., Concur.  
Slavin, Chm., Absent.

Dated at Jefferson City, Missouri,  
this 29th day of July, 1980.