

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND

PROFESSIONAL CORPORATION

312 EAST CAPITOL AVENUE

P.O. BOX 456

JEFFERSON CITY, MISSOURI 65102-0456

TELEPHONE (573) 635-7166

FACSIMILE (573) 636-6450 or 635-0427

E-MAIL: PAULB@BRYDONLAW.COM

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN
CHARLES E. SMARR
DEAN COOPER

MARK G. ANDERSON
TIMOTHY T. STEWART
GREGORY C. MITCHELL
RACHEL M. CRAIG
BRIAN T. MCCARTNEY
DALE T. SMITH

OF COUNSEL
RICHARD T. CIOTTONE

June 20, 2000

FILED²

JUN 20 2000

Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

**Re: In the Matter of the Application of The Empire District Electric Company
Case No. EF-98-120**

Dear Mr. Roberts:

On behalf of The Empire District Electric Company, I deliver herewith an original and eight (8) copies of The Empire District Electric Company's Response to Staff Recommendation and Request for Leave to Late-File to be filed with the Commission. A copy is also being hand-delivered to The Office of the Public Counsel and the Commission's General Counsel this date.

I have also enclosed an extra copy of the Response, which I request that you stamp "Filed" and return to the person delivering same to you.

Thank you for your attention in this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By


Paul A. Boudreau

PAB/aw

Enclosures

cc: The Office of Public Counsel
General Counsel's Office

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

JUN 20 2000

Missouri Public
Service Commission

In the Matter of the Application of The Empire)
Empire District Electric Company for Authority)
to Issue and Sell Under Its Existing Indenture of)
Mortgage and Deed of Trust Dated as of)
September 1, 1994, as Amended and)
Supplemented, Up to and Including \$80,000,000)
Principal Amount of Its First Among Other Things,)
Execute and Deliver a Supplemental Indenture or)
Indentures to Provide for the Terms of Said Bonds.)

Case No. EF-98-120

**THE EMPIRE DISTRICT ELECTRIC COMPANY'S RESPONSE TO STAFF
RECOMMENDATION AND REQUEST FOR LEAVE TO LATE-FILE**

COMES NOW The Empire District Electric Company ("Empire"), and for its Response to Staff Recommendation and Request for Leave to Late-File, states as follows:

1. On or about June 15, 2000, Staff filed its Staff Recommendation and Request for Leave to Late-File in the referenced case in compliance with the Missouri Public Service Commission's ("Commission") April 7, 2000 *Order Directing Filing*. Empire supports Staff's Recommendation in part. Empire supports Staff's Recommendation to the extent that it recommends that the Commission keep this case open until the earlier of March 27, 2001, or the date of the closing of the Empire-UtiliCorp United Inc. merger. However, Empire does not support that portion of Staff's Recommendation which suggests that the existing financing authorization may be canceled in the event the Commission decides to close the case.

2. The Commission's March 17, 1998, *Order Approving Financing* ("Order") is a final and unappealable Order of this Commission. The Order does not provide for a time period within which the authority to mortgage or encumber Empire's properties will expire. The Order is conclusive and not subject to collateral attack. § 386.550 RSMo. 1994.

3. Moreover, any party bringing a timely challenge to the Order (which has not occurred here) is required by law to prove by "clear and satisfactory evidence" that the Commission's

determination in this case is unlawful or unreasonable. *See*, § 386.430 RSMo. 1994. Staff's Recommendation provides no factual basis to support its suggestion that the existing mortgage authorization be canceled should the Commission choose to close the case.

4. Empire restates its position articulated in its April 5, 2000, Status Report to the Commission that this case may be closed, *provided that* the existing authorization to mortgage Empire's properties to secure bonded indebtedness is not amended, revoked or rescinded.

5. Empire suggests that the Commission adopt its Staff's Recommendation, but only in part; that is, to keep this case open until the earlier of March 27, 2001, or the date of the closing of the Empire-UtiliCorp United Inc. merger. The Staff's Recommendation, that Empire's financing authority under the Commission's Order be canceled if the case is closed, should not be adopted by the Commission because there is no statutory authority for such an action.

WHEREFORE, Empire supports Staff's Recommendation that this case be kept open until the earlier of March 27, 2001, or the close of the Empire-UtiliCorp United Inc. merger, provided that Empire's existing lawful authority to mortgage its property to secure additional series of first mortgage bonds under its valid SEC shelf registration is not amended, revoked or rescinded.

Respectfully submitted,



Paul A. Boudreau #33155
BRYDON, SWEARENGEN & ENGLAND P.C.
P.O. Box 456
Jefferson City, MO 65102-0456
Telephone: (573) 635-7166
Facsimile: (573) 635-0427
E-Mail: Paulb@brydonlaw.com

Attorneys for The Empire District Electric Company

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 20th day of June, 2000, to:

Missouri Public Service Commission
General Counsel's Office
Truman State Office Building
Room 530
P.O. Box 360
Jefferson City, MO 65102

Office of the Public Counsel
Truman State Office Building
Room 250
P.O. Box 7800
Jefferson City, MO 65102-7800



A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a smaller 'e' and a horizontal line extending to the right. The signature is positioned above a solid horizontal line.