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March 6, 2001

Mr. Dale Hardy Roberts
Executive Secretary
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

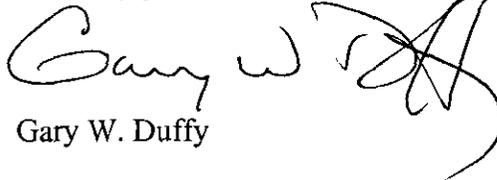
RE: Case No. ER-2001-452

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and eight copies of the Response of The Empire District Electric Company to Public Counsel's Motion to Remove Highly Confidential designations.

If you have any questions, please give me a call.

Sincerely yours,


Gary W. Duffy

Enclosures
cc w/encl:

Office of Public Counsel
Office of the General Counsel
Stuart W. Conrad

FILED²
MAR - 6 2001
Missouri Public
Service Commission

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

FILED²

MAR - 6 2001

Missouri Public
Service Commission

In the Matter of the Tariff Revisions of The)
Empire District Electric Company Designed)
To Increase Rates on an Interim Basis for)
Electric Service to Customers in its Missouri)
Service Area.)

Case No. ER-2001-452

**RESPONSE OF THE EMPIRE DISTRICT ELECTRIC COMPANY
TO PUBLIC COUNSEL'S MOTION TO REMOVE
HIGHLY CONFIDENTIAL DESIGNATIONS**

Comes now The Empire District Electric Company ("Empire"), by and through its counsel, and for its response to the Office of the Public Counsel's "Motion to Remove Highly Confidential Designations" received on February 27, 2001, respectfully states as follows:

1. Public Counsel's motion asks that the Highly Confidential (HC) designation Empire placed on certain material submitted in direct testimony accompanying this filing be "lifted and that those portions of prepared testimony be declassified and treated as 'Non-Proprietary.'" In other words, Public Counsel wants the Commission to order the material designated as HC to be public information. As this response will demonstrate, the factual premise of the Public Counsel's motion is erroneous and the result it seeks is unjustified, unduly harsh and inappropriate. The Public Counsel has reacted without considering the consequences or even contacting Empire to discuss the matter before filing the motion.

2. Empire agrees with the Public Counsel that the classification of information as confidential should be kept to a minimum. Empire attempts to exercise considerable restraint when it classifies certain material as confidential. As the direct testimony filed in this case

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clearly indicates, only certain limited financial information was so classified. There were two types of such information in the direct testimony. One type concerns data that pertains to year-end 2000. The other is projected financial information, namely *projected* earnings per share and return on common equity calculations. (Empire also classified the identities of some contractors for natural gas supply. Public Counsel's motion does not appear to directly address these matters. Empire believes that material needs to be kept highly confidential in order not to give advantages to other potential bidders in acquiring natural gas, the result of which could be higher gas prices for customers.)

3. The year-end 2000 financial data in the prepared testimony is not yet public information. Empire does not object to making that particular information in the testimony public after such year-end 2000 information is released to the general public. This public disclosure should take place when Empire files its Form 10-K with the Securities and Exchange Commission ("SEC") later this week. It will not be public information before that time. As noted previously, the Public Counsel has erroneously assumed that because Empire issued a press release which contains some summary information, *all* of the year-end information is available to the general public. In fact, the year-end data cited by Empire's witness in the direct testimony *cannot* be created using the information contained in the press release. Although Public Counsel attached the press release, Public Counsel did not show how that information can be used to calculate any of the information Empire classified as Highly Confidential. Therefore, the factual premise of Public Counsel's motion – that "some of this information is readily available to the public through published reports and on the Internet" – is false.

4. As noted previously, there was another category of information, namely *projected* financial data. Empire has never released projected financial information in any public

documents, except to the extent that such information (e.g. construction expenditures) is mandated under SEC rules. Therefore, the Commission-ordered declassification of the projected information in the prepared testimony would be unprecedented, and would force Empire to make disclosure to the public of such information in a filing with the SEC on Form 8-K and by issuing a press release on or before the time such information becomes declassified. The purpose of filing the projected information in the direct testimony was to demonstrate for the Commission the need for interim rate relief. The purpose was *not* to make a general disclosure of projected data to the public and the projections were not prepared with the possibility of public disclosure in mind. The Commission recognized that the information concerning projected earnings and projected return "is at issue" and said it would issue a protective order. Additionally, the Staff of the Commission has recognized that data given to rating agencies contains confidential information (projections) and has always treated such information as confidential. They have recognized that the SEC rules governing the dissemination of information would result in the requirement to provide that information to the public as a whole. The views of the SEC may be summarized by its Regulation FD, II.A. where it says "we have become increasingly concerned about the selective disclosure of material information by issuers. As reflected in recent publicized reports, many issuers are disclosing important non-public information, such as advance warning of earnings results, to securities analysts or selected institutional investors or both, before making full disclosure of the same information to the general public." It should be noted that Regulation FD also provides that information such as the projections can be given in proceedings such as this matter without the need for public disclosure if that information is not to be used in connection with the purchase or sale of securities and there exists an obligation to keep it confidential.

5. The protective order categories are simply examples rather than exclusive definitions. The information classified by Empire is documentation related to work produced by an internal auditor of Empire, and thus can come under the Highly Confidential classification. The information also comes under the example of “confidential or private ... financial and business information” which is the “Proprietary” (“P”) classification. As far as the Office of the Public Counsel is concerned, the distinction between HC and P may not have much significance, since Public Counsel is not subject to several of the provisions in the protective order which make a distinction between those categories. The distinction between HC and P does have significance with regard to other parties to a proceeding, since the HC designation does not allow *employees* of an intervenor to review the material. As far as Empire is concerned, the financial information it classified in the direct testimony should be restricted to the smallest dissemination possible, in conjunction with the approach of the SEC, and therefore the HC classification is justified, if for no other reason than to reduce the number of people having access to the material.

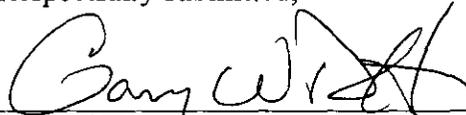
6. Empire has therefore demonstrated that the information it designated as Highly Confidential in the prepared testimony is, at a minimum, private, non-public financial and business information. Therefore, the information should not be “declassified” into public information as Public Counsel requests in its motion. The material should continue to retain the HC designation. If any “declassification” occurs at all, it should only be changed to Proprietary status.

7. The potential harm which can occur with the public disclosure of projected information is significant. Any person who relies on that information in connection with a decision involving the purchase or sale of Empire’s securities can sue Empire on allegations that the projections were (with the benefit of hindsight) wrong or misleading. Projections are

difficult to make and, of necessity, involve assumptions and best estimates. Even if Empire were to list all of the assumptions and estimates, and warn the reader not to rely upon them, a suit can still be brought. All Empire has is a defense that it prepared the projections to the best of its ability and told the reader that the projections were not to be relied on. The cost of litigation, including counsel fees and the time and inherent distraction of Empire's officers and other employees, as well as potential liability, is significant. That is why Empire does not, and does not want to, release the projections to the public. While the potential harm to Empire is real, the benefit to the rate payers is illusory at best. Again, Empire's use of this information was for the very limited purpose of this proceeding. Empire has not made any public disclosure of any of the classified information. Therefore, the unwarranted declassification of this information would significantly increase the risk and cost to Empire. It should not be the goal of either Public Counsel or the Commission to cause that to happen when there is no compelling reason to do so.

WHEREFORE, Empire requests that the Commission dismiss Public Counsel's "Motion to Remove Highly Confidential Designations." No justification has been made to make any of the information public at this time. Nevertheless, if any designation changes are ordered by the Commission, the material should still be protected from public disclosure and should at least be treated as Proprietary under the protective order.

Respectfully submitted,



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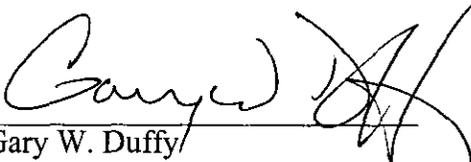
Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing was either hand delivered or sent by first class mail, postage prepaid, this 6th day of March, 2001, to the following counsel of record:

Dennis L. Frey, Associate General Counsel
Missouri Public Service Commission
Governor State Office Building
Jefferson City, Missouri

John B. Coffman, Deputy Public Counsel
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