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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Discovery Conference
December 5, 2012
Jefferson City, Missouri
Volume 4

In The Matter Of The Empire)
District Electric Company Of)
Joplin, Missouri for Authority)
To File Tariffs Increasing)
Rates For Electric Service) File No. ER-2012-0345
Provided To Customers In The)
Missouri Service Area Of The)
Company)

MICHAEL BUSHMANN, Presiding
REGULATORY LAW JUDGE

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1 P R O C E E D I N G S

2 JUDGE BUSHMANN: Today's date is December 5th,
3 2012, and it is 1:30 p.m. The Commission has set this
4 time for a Discovery Conference in the case captioned In
5 The Matter Of The Empire District Electric Company Of
6 Joplin, Missouri For Authority To File Tariffs Increasing
7 Rates For Electric Service Provided To Customers In The
8 Missouri Service Area Of The Company, File No.
9 ER-2102-0345.

10 I'm Michael Bushmann, the Presiding Officer. Why
11 don't we begin by making entries of appearance.

12 For the Empire District Electric Company.

13 MS. CARTER: Diane Carter with Brydon, Swearngen,
14 & England. The address is on my written entry.

15 JUDGE BUSHMANN: Thank you.

16 For Commission Staff.

17 MS. KLIETHERMES: Thank you, Judge. Sarah
18 Kliethermes of and for Commission Staff. Address has been
19 provided.

20 JUDGE BUSHMANN: Office of Public Counsel.

21 (No response.)

22 JUDGE BUSHMANN: Midwest Energy Users Association.

23 MR. CONRAD: That would be me, Stu Conrad, Kansas
24 City, and I think we have earlier provided the Reporter
25 with address information.

1 JUDGE BUSHMANN: Okay. Missouri Department of
2 Natural Resources.

3 (No response.)

4 JUDGE BUSHMANN: Midwest Energy Consumers Group.

5 (No response.)

6 JUDGE BUSHMANN: And Missouri Gas Energy.

7 MR. JACOBS: Todd Jacobs on behalf of the Missouri
8 Gas Energy.

9 JUDGE BUSHMANN: Is there anyone else on the phone
10 who hasn't identified themselves?

11 (No response.)

12 JUDGE BUSHMANN: I don't hear any.

13 My understanding was that we do have an issue
14 today, something relating to the provision of work papers.
15 And I don't know which parties are involved, but whoever
16 is having a problem, can you describe what that is?

17 MR. CONRAD: Sure. Judge Bushmann, this is Stu
18 Conrad. This pertains to an email that I got on December
19 4 on behalf of Staff, which appeared to indicate that
20 revenue requirement work papers, direct testimony/cash
21 director requirement work papers are being made available
22 through the EFIS system, and their citations for
23 assertions about cutting costs and time and burning
24 multiple CDs and all of that.

25 As I read the procedural order which was entered

1 in this case -- I want to say back in December, I don't
2 have precise date; I could get that -- but I'm looking at
3 page 4 of that which directs parties to comply with the
4 following additional procedural requirements, and then B
5 says the work papers that were prepared in the course of
6 developing witness's testimony should not be filed with
7 the Commission but should be submitted to each party
8 within two business days following the filing of testimony
9 without further request. And then that goes on to talk
10 about HC and proprietary information and suggests that, if
11 parties aren't interested in receiving work papers, they
12 should let counsel know.

13 The problem that I have is this approach of now
14 filing work papers in EFIS is not compliant with that
15 provision. It also causes folks, who are outside the
16 Commission and its environs and thus are not on the
17 Commission's internet with respect to EFIS, considerable
18 problems. I am authorized, I think, to get into EFIS.
19 So, what would be necessary here would be for me to
20 download all of this stuff, burn it to CDs, and then send
21 that to consultant. The apparent idea that consultants
22 have access to EFIS at the same level that attorneys and,
23 certainly, Staff members do within the confines of the
24 Commission is just not correct.

25 The second problem that I have with this is this

1 is far read and what I can see is a Commission order which
2 directs parties to comply. As far as I'm aware, there has
3 not been any request in advance by Staff to do this. It
4 was simply announced, and I could -- if we had the time to
5 go back and turn the clock back to the procedural
6 conference that we had back here, this certainly could be
7 something that could be discussed, but it creates the same
8 problems for us that I mentioned.

9 But if that's to be the rules now, I should
10 probably set up an ftp site where we could post our work
11 papers and require parties to access the website, and that
12 would save me a whole lot of time. I sent out a bunch of
13 CDs yesterday, Staff CDs included; and, in my humble view,
14 I guess that complies with submitting to each party. What
15 Staff's doing is not compliant, and unilaterally deciding
16 that we're going to do it another way that is without
17 regard to the convenience of the other parties is,
18 frankly, not acceptable.

19 Now, that's not the traditional discovery dispute
20 that you have, but here we are, and I felt the need to
21 raise this to the RLJ and, through him, I guess, on the
22 record to the Commission, that, in my view, Staff is not
23 complying with this. I would like an order directing them
24 to comply and send me the CDs.

25 JUDGE BUSHMANN: Ms. Kliethermes, you want to

1 respond?

2 MS. KLIETHERMES: I wasn't directly involved in
3 the decision to go to this. My understanding that this
4 was gone to is because particularly for the revenue
5 requirement director papers, that with the weather
6 normalization and the fuel run. I believe those are the
7 two, if I understand correctly, where they were each over
8 18 megabytes, so this would be a matter of, I'm not sure
9 how many CDs, but several.

10 That said, we understand Mr. Conrad's concerns,
11 and I think that, you know, our IT Department, I know, has
12 been working on this all morning. If there is a way to
13 either set up a cloud page or, if that wouldn't work, to
14 actually do the CDs, I don't know if the files are of a
15 nature that they can be broken into multiple CDs. I think
16 that was also part of the concern.

17 JUDGE BUSHMANN: So, there's some technological
18 issues.

19 MS. KLIETHERMES: There's some technological
20 issues, but I do understand Mr. Conrad's concerns, and I
21 know our IT Department has been working with our Staff
22 Counsel's office court staff, and I think Staff counsel's
23 office court staff has also been in contact with personnel
24 locators at Brydon Swearngen and Empire itself with
25 similar concerns.

1 JUDGE BUSHMANN: Okay. The provision that Mr.
2 Conrad refers to does make a distinction between filing
3 with the Commission and submitting to a matter which, to
4 me, that's different. So, he makes a point there. So, if
5 there was -- I don't think that's the same as just filing
6 them in EFIS, according to the language of the order.

7 So, if there is a way that we can provide that to
8 the parties, I think that would be compliant with the
9 order other than just filing them in EFIS.

10 MR. CONRAD: I -- I don't disagree with that. Not
11 to put too fine of a point on this, but just because this
12 becomes an issue, that is not as easily resolved as I
13 think it could be. I think that these items are not
14 actually filed in EFIS. They're a submission.

15 JUDGE BUSHMANN: An EFIS submission.

16 MR. CONRAD: Yes. There's different submissions
17 in efis.

18 JUDGE BUSHMANN: Okay.

19 MR. CONRAD: There's a submission as well as the
20 filing system.

21 JUDGE BUSHMANN: So, you're talking about the
22 submission system?

23 MR. CONRAD: Yes.

24 JUDGE BUSHMANN: Okay.

25 MS. KLIETHERMES: And, again, I think that barring

1 technological issues that are, frankly, well over my head,
2 I think that we're endeavoring to get CDs or some other --
3 Mr. Conrad had mentioned in an earlier phone discussion,
4 it sounded to me, Stu, like you were talking about
5 something with a cloud site. I don't know if that's what
6 you're referencing or not.

7 MR. CONRAD: Let's make that assumption. Without
8 regard, for example, to the language, placing something in
9 the cloud, whatever the cloud is, is to me making it
10 available to the parties. That's not submitting. So, my
11 point still remains.

12 But, set that -- set the language issue aside for
13 a moment. Let's assume you put it on the cloud and
14 there's something like, as you characterize it, you know,
15 so 18 megabytes. What am I supposed to do with it? Am I
16 supposed to download the 18 megabytes? How do I get it to
17 my consultants? Do I email it to them? Is it easier for
18 me to do that than for Staff to do?

19 MS. KLIETHERMES: I think those are the
20 discussions that IT is interested to have with you, Stu --
21 or Mr. Conrad. Frankly, I don't understand the
22 technological things. My Computer science ended in about
23 1998.

24 MR. CONRAD: Well, I appreciate that, Counsel. I
25 may have added myself, but that's also the point.

1 MR. BUSHMANN: I don't understand, also, I guess,
2 what the limitations are as far as the size and the nature
3 of the material and how that can be transmitted to a
4 party. I assume that's too big for email?

5 MS. KLIETHERMES: By far.

6 MS. CARTER: And, Stu, just for our knowledge,
7 we've been having the same issues.

8 MR. CONRAD: Who is speaking?

9 MS. CARTER: This is Diane Carter at Brydon
10 Swaengen.

11 MR. CONRAD: Okay.

12 MS. CARTER: Although I can check with Angela,
13 Empire is not able to because of how it is in EFIS and
14 it's just the attorneys. So, we've been having the same
15 issues today, and they've certainly been trying here at
16 the Commission and I don't know what area that is, units,
17 I guess you call them now, as opposed to departments.

18 MS. KLIETHERMES: I truly don't know. My
19 knowledge of that also ended in 1988.

20 MS. CARTER: They have been trying very hard with
21 Angela at Empire to try to make this easier on everybody.

22 JUDGE BUSHMANN: Also sounds like we don't have
23 enough information, at least at this point, to resolve it
24 other than my understanding is Staff is going to work on
25 resolving it. Is that correct?

1 MS. KLIETHERMES: As I understood it, we are
2 working right now to whichever Mr. Conrad or another
3 party's preference would be, either to provide the
4 information on CDs or to establish a cloud site.

5 We do have concerns since there is some highly
6 confidential information about how we would secure a cloud
7 site. And that kind of, I think, also goes to Mr.
8 Conrad's concern of, in theory, the consultants could have
9 direct access to a cloud site, but how can we -- there's a
10 lot of questions that I don't have an answer to right now.

11 MR. CONRAD: Well, I just point out, the standard
12 CD holds roughly four gigabytes -- no. Strike that. It
13 holds about 850 megabytes. So, I can understand how that
14 might be a problem. But a DVD, digital -- whatever that
15 stands for -- DVD -- I'm looking at one, have it in my
16 hand -- 8.5 gigabytes.

17 Now, if you have 18 megabytes, I can understand
18 how that might not fit on one DVD but, unless you're going
19 beyond 8.5 gigabytes as to work papers, it will fit on one
20 DVD.

21 MS. KLIETHERMES: I will pass that along to Mr.
22 Enhower (ph).

23 MR. CONRAD: I think those numbers are out there.
24 I don't know that you have to be a guru.

25 MS. KLIETHERMES: And I'm not confident on the

1 number of megabytes that I stated.

2 MR. CONRAD: Uh-huh.

3 MS. KLIETHERMES: I know they are very large. I'm
4 not confident on how large they are, but there's two
5 particular sets of files that are far in excess of what
6 we've had in prior cases.

7 MR. CONRAD: Well, Judge, meanwhile, the clock
8 ticks.

9 JUDGE BUSHMANN: Is there a time table on when you
10 think that this might be figured out from the
11 technological side?

12 MS. KLIETHERMES: Um, well, Mr. Conrad, without
13 putting you on a spot, I think would your preference be
14 for a cloud type option or for a CD type option?

15 MR. CONRAD: Well, I think I would actually prefer
16 the DVD or CDs or DVDs as the case may be. We can deal
17 with -- I've got capability here in this small one-horse
18 19th Century law office dealing with DVDs. I'm surprised
19 Staff doesn't.

20 MS. KLIETHERMES: I'm confident there are people
21 on Staff who do. You're not talking with one of them, but
22 I suspect we would be able -- I can't promise a time
23 frame, but I would hope we could get that done either
24 today or tomorrow.

25 JUDGE BUSHMANN: Well, Mr. Conrad, if --

1 MR. CONRAD: Well, today or tomorrow's fine,
2 Judge. It's just if this drags on for several days, then
3 --

4 MS. KLIETHERMES: Mr. Conrad, if this drags on for
5 several days, I will put this on a jump drive and visit my
6 brother in Kansas City this weekend.

7 JUDGE BUSHMANN: Well, it sounds like Staff's
8 making good faith attempts to resolve this --

9 MR. CONRAD: And I don't question that.

10 JUDGE BUSHMANN: -- so I don't think there is
11 anything right this minute that we can do other than just
12 to say that Staff's going to work on resolving this in the
13 next couple of days, and that, if for some reason it
14 doesn't get resolved satisfactorily within a couple of
15 days, you're free to maybe set up a telephone conference
16 with me and then we can kind of go from there at that
17 point.

18 Does that satisfy you at least for the time being?

19 MS. CARTER: That does.

20 MR. CONRAD: That does. I guess the only thing
21 beyond that would be just, to just -- I don't know --
22 admonish is too strong a word, but it may be strongly
23 suggested to Staff that they not unilaterally decide
24 they're going to employ some different method than what's
25 in variance with the agreed-upon procedures have been

1 without, at a minimum, contacting the other parties and
2 saying, Can we work this out. Here's the problem with it.

3 JUDGE BUSHMANN: That sounds like this is an issue
4 that affects other cases, too, although I'm not making
5 policy here.

6 MR. CONRAD: Sure.

7 JUDGE BUSHMANN: So, at least for the purposes of
8 this case, we can probably get this resolved it sounds
9 like. And, if not, then we'll figure something out in a
10 few days. All right.

11 Is there anything else that needs to be taken up?

12 MR. CONRAD: That's all I had, Judge.

13 JUDGE BUSHMANN: Anything else, Ms. Carter?

14 MS. CARTER: No. Thank you.

15 JUDGE BUSHMANN: Ms. Kliethermes.

16 MS. KLIETHERMES: No.

17 I would note there's a handful of items that were
18 noted in the Staff report that we were waiting on some
19 information from Empire, but as far as I can tell, they're
20 making every effort to get us that information.

21 JUDGE BUSHMANN: Okay. In that case, I guess
22 that's all I we need to do today. We're off the record.

23 MR. CONRAD: Thank you, Judge.

24 JUDGE BUSHMANN: Thanks.

25 MR. JACOBS: Thank you very much.

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(Adjournment.)

(Whereupon, the record ended at 1:48 p.m.)

* * * * *

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