

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 16th day
of November, 2007.

In the Matter of The Empire District Electric)	
Company of Joplin, Missouri for Authority)	
to File Tariffs Increasing Rates for Electric)	<u>Case No. ER-2008-0093</u>
Service Provided to Customers in the Missouri)	Tariff File No. YE-2008-0205
Service Area of the Company.)	

**ORDER CONCERNING TEST YEAR AND TRUE-UP
AND ADOPTING PROCEDURAL SCHEDULE**

Issue Date: November 16, 2007

Effective Date: November 16, 2007

On October 1, 2007, The Empire District Electric Company submitted to the Missouri Public Service Commission certain proposed tariff sheets to implement a general rate increase for retail electric service to customers in its Missouri service area. On October 3, 2007, the Commission suspended the proposed tariff sheets until August 28, 2008, and directed the parties to file a pleading on or before October 31, 2007, indicating concurrence in Empire's true-up and test year recommendations or recommending alternatives thereto. The Commission's Staff, the Office of the Public Counsel and the Missouri Department of Natural Resources (DNR) each filed responses.

In its October 3rd order, the Commission also directed the parties to file a proposed procedural schedule. On November 13, 2007, the parties filed a Jointly Proposed Procedural Schedule and Request for Other Procedural Items. In addition to proposing the procedural schedule for this case, the recommendation set out certain

agreements the parties reached at the early prehearing conference and asked the Commission to reflect those agreements in its order setting the procedural schedule.

The Test Year

Empire, Staff, Public Counsel and DNR each filed recommendations regarding the proper test year to be utilized in this case. Empire recommended that the Commission establish the 12 months ending June 30, 2007, as the test year. Staff, Public Counsel and DNR concurred in Empire's test year recommendation and no other party took a position on the issue. The Commission shall establish the test year as recommended by Empire.

True-up

In its suspension order, the Commission reserved the dates of June 9-June 10, 2008, for a possible true-up hearing. Empire initially requested that the Commission order that the test year data be updated utilizing a true-up audit with an ending date of December 31, 2007. In its response, Staff argued that a true-up audit should not be necessary in this case because Staff's and other non-Empire parties' direct testimony filings will reflect all material events affecting Empire's revenue requirement through December 31, 2007. Accordingly, Staff proposed utilizing the test year ending June 30, 2007, with a test year update period ending December 31, 2007. Staff further noted that it does not believe a true-up will be necessary in this case if its test year and update recommendation is adopted.

At the November 5, 2007 prehearing conference every party, including Empire, stated that they support the update recommendation proposed by Staff. The Commission finds the update recommendation proposed by Staff, and supported by all parties, to be reasonable and it shall be adopted in this case. The Commission shall order a test year

update utilizing the update period ending December 31, 2007, and cancel the true-up hearing.

The Procedural Schedule

The Commission has reviewed the parties' proposed procedural schedule and finds it to be acceptable, with two modifications. First, the proposed procedural schedule calls for the parties to file "Statements of Position" on May 7, 2007. The Commission finds prehearing briefs to be more helpful in preparing for an evidentiary hearing. Accordingly, the Commission will order the parties to file prehearing briefs instead of filing "Statements of Position." Second, the Commission will require prehearing briefs to be filed on or before May 6, 2007, to allow the Commission sufficient time review to them prior to the start of the hearing on May 12. No page limit will be placed upon prehearing briefs. Since the proposed procedural schedule does not contain dates for filing posthearing briefs, the Commission will establish the date or dates for filing posthearing briefs at the close of the evidentiary hearing.

The Commission finds that the following conditions should be applied to the schedule:

(A) The parties' procedural agreements a. through g. and i., set out on pages 2 and 3 of the Joint Proposed Procedural Schedule, are adopted.

(B) Having multiple exhibits with identical numbers, even if those exhibits have different prefixes, could lead to confusion during the evidentiary hearing. Accordingly, the Commission will not adopt procedural agreement h. proposed by the parties. The parties shall pre-mark the exhibits that they wish to offer into evidence. Exhibit numbers are assigned in the following manner:

The Empire District Electric Company	Exhibit Nos. 001-199
Commission Staff	Exhibit Nos. 200-399
Office of the Public Counsel	Exhibit Nos. 400-499
Explorer Pipeline & Praxair, Inc.	Exhibit Nos. 500-599
General Mills, Inc.	Exhibit Nos. 600-699
Missouri Department of Natural Resources	Exhibit Nos. 700-799

If any party requires additional exhibit numbers it may add a 1 to the beginning of its assigned numbers. Thus, for example, if Party No. 1 has exhibits in addition to exhibit number 199, its next exhibit numbers would be 1000, 1001, 1002, etc.

Highly confidential or proprietary exhibits and their public counterparts shall have the same exhibit number with the appropriate letter designation (e.g., Exhibit 1HC and 1NP).

(C) The Commission shall require the prefiling of testimony as defined in 4 CSR 240-2.130. All parties shall comply with this rule, including the requirement that testimony be filed on line-numbered pages. The practice of prefiling testimony is designed to give parties notice of the claims, contentions and evidence in issue and to avoid unnecessary objections and delays caused by allegations of unfair surprise at the hearing.

(D) The parties shall agree on and file a joint list of issues to be determined herein by the Commission. Staff shall be responsible for actually drafting and filing the list of issues and the other parties shall cooperate with Staff in the development thereof. As requested by the parties in procedural agreement j., the requirements for issue format set forth in 4 CSR 240-2.080(21) are waived. However, the parties will be required to file a single, all-inclusive, list of issues. Further, prerequisite questions or sub-issues that must

be answered or addressed before or as a part of any listed issue must be set out as enumerated sub-issues under that issue. Any issue, or sub-issue, not included in the issues list will be presumed to not require determination by the Commission.

(E) Each party shall file a list of the witnesses to appear on each day of the hearing and the order in which they shall be called. The parties shall establish the order of cross-examination and file a joint pleading indicating the same.

(F) Each party shall file a statement of its position on each disputed issue, including a summary of the factual and legal points relied on by the party. Such statement shall be simple and concise, shall follow the issues set out in the issues list, and shall not contain argument about why the party believes its position to be the correct one. Each statement of position shall include, for each issue upon which a party intends to adduce evidence, the names of each witness offering testimony on that issue and a specific reference to the pages of the prefiled testimony containing that evidence.

(G) Because much of the evidence will have been filed before the hearing, the Commission will require prehearing briefs that address all the issues in dispute and all the relevant prefiled testimony. Posthearing briefs will generally just need to update the prehearing briefs for new evidence adduced at the hearing, if any.

(H) All pleadings and briefs shall be filed in accordance with 4 CSR 240-2.080. The briefs to be submitted by the parties shall follow the same list of issues as filed in the case. The briefs must set forth and cite the proper portions of the record concerning the unresolved issues that are to be decided by the Commission.

(I) Each party shall prepare a list of its premarked exhibits and submit a copy of that list to each other party and to the regulatory law judge (cherlyn.voss@psc.mo.gov) as set out below. The lists need not be formally filed in the case file.

(J) All parties are required to bring an adequate number of copies of exhibits that they intend to offer into evidence at the hearing. If an exhibit has been prefiled, only one copy of the exhibit is necessary for the court reporter. If an exhibit has not been prefiled, the party offering it must bring, in addition to the copy for the court reporter, copies for the five Commissioners, the Regulatory Law Judge, and all counsel.

(K) Any party wishing to object to the admission into evidence of any prefiled testimony shall file its objection in writing as set out below.

(L) The parties are encouraged to raise appropriate and timely objections to live testimony as it is presented at the hearing.

(M) The parties are encouraged to keep control of witness testimony by raising appropriate objections to narrative and nonresponsive answers.

(N) The hearing transcript will be expedited to be available **no later than the fifth working day after the close of the evidence**. If any party seeks to expedite the filing of the transcript further, such request shall be tendered in writing to the Presiding Judge at least five days prior to the date of the hearing.

(O) Each party may prepare and file proposed findings of fact and conclusions of law, including citations to prefiled testimony and other evidence, to be filed during the posthearing briefing schedule.

(P) In the event that the parties reach a settlement of all of the issues, such settlement shall not be grounds for a continuance of the hearing unless the agreement is

final, has been submitted to the Commission in writing, and there are no objections to the agreement.

Local Public Hearings

The suspension order also required the parties to file recommendations as to the dates, times, and locations of local public hearings. The parties included dates for conducting local public hearings in their joint procedural filing. However, the parties did not suggest any specific times or locations for the local public hearings. The Commission will attempt to accommodate the parties' requests and shall set public hearings, and provide specific details as to the date, time, and venue in a later order.

IT IS ORDERED THAT:

1. The test year in this matter shall be the 12 months ending June 30, 2007, with an update period ending December 31, 2007.

2. The procedural schedule is adopted as follows:

Direct Testimony–Revenue Requirement – February 22, 2008
Non-Empire Parties

Direct Testimony – Rate Design – March 7, 2008
Non-Empire Parties

Local Public Hearings** – March 12, 13 2008

Settlement Conference – March 17-21, 2008

Preliminary List of Issues – March 21, 2008
(circulated to all parties – not filed)

Rebuttal Testimony - All Parties – April 4, 2008
Revenue Requirement and Rate Design

** The Commission intends to schedule local public hearings in Joplin and Reeds Spring, Missouri, which are the same locations that were used during Empire's last two rate proceedings, Commission Case Nos. ER-2006-0315 and ER-2004-0570.

Surrebuttal Testimony - All Parties Revenue Requirement and Rate Design	–	April 25, 2008
Issues List/ Reconciliation Order of Issues, List of Witnesses, Order of Witnesses, and Order of Witness Cross-Examination	–	May 2, 2008
Prehearing Briefs	–	May 6, 2008
Hearing	–	May 12-23, 2008 8:30 a.m. (first day)

3. The evidentiary hearing will be held at the Commission's offices in the Governor Office Building, 200 Madison Street, Room 310, Jefferson City, Missouri, a facility which meets the accessibility standards of the Americans with Disabilities Act (ADA). Any person who needs additional accommodations to participate in the hearing should call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 prior to the hearing.

4. The true-up hearing currently scheduled for June 9-10, 2008, is canceled.
5. The parties are directed to comply with the conditions set out in this order.
6. This order shall become effective on November 16, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton,
Appling, and Jarrett, CC., Concur.

Voss, Regulatory Law Judge