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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Public Hearing
April 13, 2016
Joplin, Missouri
Volume III

In the Matter of The Empire) File No.
District Electric Company's) ER-2016-0023
Request For Authority To Implement)
A General Rate Increase For)
Electric Service)

KIM S. BURTON, Presiding,
REGULATORY LAW JUDGE

Daniel Y. Hall, Chairman,
Scott T. Rupp,
Maida J. Coleman,
COMMISSIONERS.

(Starting time of the proceedings: 6:00 p.m.)

REPORTED BY: KAREN VEST, Registered Professional
Reporter, Certified Realtime Reporter, and Certified
Court Reporter within and for the State of Missouri

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A P P E A R A N C E S

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1 * * * * *

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

3 IT IS HEREBY STIPULATED AND AGREED that
4 these proceedings may be taken in shorthand by Karen
5 Vest, RPR, CRR, a Registered Professional Reporter,
6 Certified Court Reporter, and Certified Realtime
7 Reporter in the state of Missouri, and afterwards
8 transcribed into typewriting.

9 (Whereupon, proceedings began at
10 6:00 p.m. on Wednesday,
11 April 13, 2016, with appearances
12 as noted.)

13 JUDGE BURTON: Good evening, everyone.
14 And let's go ahead and go on the record in the
15 matter of the Empire District Electric Company's
16 request for authority to implement a general rate
17 increase for electric service, File Number
18 ER-2016-0023.

19 The time is currently 6 o'clock in the
20 p.m., and today is April 13th, 2016. The commission
21 has set this time for a local public hearing here in
22 Joplin, Missouri.

23 My name is Kim Burton. I'm a
24 regulatory law judge with the Missouri Public
25 Service Commission.

1 We have five commissioners with the
2 public service commission, and before you are three
3 of them. And I will let them introduce themselves.
4 Chairman?

5 CHAIRMAN HALL: Good evening. My name
6 is Daniel Hall, chairman of the Missouri Public
7 Service Commission. Welcome, and in advance, thank
8 you for your testimony this evening.

9 The local public hearing process is a
10 critical factor, a critical part of the process that
11 is setting rates. We appreciate your interest, your
12 concern, and your testimony. Thank you.

13 JUDGE BURTON: Thank you, Chairman.

14 COMMISSIONER COLEMAN: I'm Commissioner
15 Maida Coleman. I thank you also for being here this
16 evening. We look forward to hearing your comments.

17 COMMISSIONER RUPP: I'm Commissioner
18 Scott Rupp. Also welcome. I want to hear your
19 comments.

20 Also -- we like to hear about obviously
21 the rate case that is pending. We also like to hear
22 comments about customer service or any interactions
23 you've had with the company and just overall
24 information of how well you think you're being
25 served.

1 JUDGE BURTON: Now I have a list of
2 individuals who previously identified that they
3 would like to provide testimony today.

4 At the end of this list I will give an
5 opportunity to anyone else who would like to come up
6 and offer their testimony as well.

7 Now at this time I will ask the parties
8 to enter their appearance for the record, and we'll
9 begin with the Empire District Electric Company.

10 MS. CARTER: Diana Carter with Brydon
11 Swearingin & England for the Empire District
12 Electric Company.

13 JUDGE BURTON: Thank you. On behalf of
14 the Office of the Public Counsel?

15 MS. MAYFIELD: Cydney Mayfield on
16 behalf of the Office of the Public Counsel, and I
17 have previously provided my information to the court
18 reporter.

19 JUDGE BURTON: Thank you. And on
20 behalf of the staff of the Missouri Public Service
21 Commission?

22 MR. WESTEN: Jacob Westen on behalf of
23 the Public Service Commission staff, PO Box 360,
24 Jefferson City, Missouri, 65102.

25 JUDGE BURTON: Is there counsel for any

1 other party present?

2 Seeing no hands, we'll go ahead and
3 proceed. I am going to call your name. I'll ask
4 that you please step forward and come down here to
5 the microphone, where I will swear you in.

6 You'll have your opportunity to provide
7 your testimony at that time or enter any exhibits
8 that you would like into the record.

9 I would ask that you please remain at
10 the podium or at the microphone after your testimony
11 is completed so that that way either myself or any
12 of the commissioners may ask you some questions or
13 the attorneys for any of the parties can ask you
14 questions as well.

15 At this time we will hear from Shanen
16 Givone.

17 THE WITNESS: Shanen Givone.

18 JUDGE BURTON: Givone.

19 THE WITNESS: Is it all right if I sit
20 and speak?

21 JUDGE BURTON: I would ask that you
22 stand up so that the parties can all see you.

23 THE WITNESS: Okay. If I start
24 standing and then if I sit down, I just don't have
25 the endurance for long standing.

1 JUDGE BURTON: Yeah, that would be
2 fine.

3 THE WITNESS: I'm sorry.

4 JUDGE BURTON: Could you please raise
5 your right hand?

6 THE WITNESS: Sure.

7 (A witness is called to the stand
8 and is placed under oath by Judge
9 Burton.)

10 JUDGE BURTON: Okay. Would you please
11 state and spell your name for the record.

12 THE WITNESS: Shanen Givone,
13 S-H-A-N-E-N, G-I-V-O-N-E.

14 JUDGE BURTON: Okay. Thank you.

15 * * * * *

16 SHANEN GIVONE,
17 of lawful age, having been called as a witness and
18 being first duly sworn, was examined and testified
19 as follows:

20 Operating a corporation comes with the
21 assumed corporate responsibility of keeping a
22 watchful eye on their byproducts and not harming
23 people, plants, and animals.

24 Empire District Electric Company has a
25 record of corporate irresponsibility. Since 1908

1 Empire has ravaged our lands while increasing the
2 profits and leaving a legacy of contaminated air,
3 water, and soil behind.

4 From the book -- from the book Poors
5 Manual of Public Utilities, 1915, it discusses
6 Empire Electric Company. Incorporated October 1909
7 in Kansas, acquired the Consolidated Light, Power,
8 and Ice Company and the Joplin Light, Power, and
9 Water Company, both of Joplin, Missouri, the Galena
10 Light and Power Company of Galena, Kansas, and 99.6
11 percent of the stock of the Spring River Power
12 Company of Galena, Kansas.

13 It owns entire capital stock of the
14 Webb City and Carterville Gas Company and Carthage
15 Gas Company and the Empire Electric Power and Supply
16 Company in Carthage, Missouri.

17 It also controls the natural gas
18 business of Webb City, Carterville, and Carthage.
19 It owns -- excuse me -- the Quapaw, Oklahoma, it
20 purchased -- excuse me -- it furnishes natural gas
21 for light, fuel, and power franchise and extends to
22 May 1925 natural gas privileges of selling natural
23 gas to Webb City and Carterville and the Quapaw in
24 Oklahoma.

25 So now we've got Oklahoma, Kansas, and

1 Missouri all being supplied by Empire Electric for
2 gas and the electric.

3 The national average for birth defects
4 is 300 per 10,000 births. In Missouri the national
5 average -- or excuse me, the birth defects are 591
6 per 10,000 births, almost double.

7 For Jasper County, birth defects are
8 673 per 10,000.

9 For Newton County, the birth defects
10 are 722 birth defects per 10,000 births.

11 And in Joplin specifically, the 755
12 birth defects per 10,000 births. And that is more
13 than double the national average as well.

14 These statistics come from the Missouri
15 Department of Health and Senior Citizens, and most
16 of them were gotten by the United Steel Workers
17 report of 2008.

18 With them owning so much of the stock
19 and/or the businesses from Webb City, Carterville,
20 Carl Junction, Carthage, Quapaw, Galena, it seems
21 that this is the beginning of the Tri-State Mining
22 District superfund site.

23 Yet Empire District was never fined for
24 environmental damages for mining coal and gas, as
25 were the other mining companies like Eagle Picher,

1 Doe Run, and Arsarco.

2 They had former gas manufacturing
3 plants in Chillicothe and Marshall that they wrote
4 in some legal paper that they were not going to have
5 to finish cleaning up.

6 We have several of those located
7 throughout the Jasper County, and so it would seem
8 to reason that Empire owned those also.

9 Seemingly as this public utility
10 company Empire was enmeshed in these three states,
11 the tri-states, it was advantageous to the leaders
12 of these three states to keep their harms quiet.

13 The confidentiality agreement was
14 signed by our governor, Jay Nixon, who was the
15 acting Attorney General of Missouri at the time.
16 Confidentiality agreement for the Tri-State Mining
17 District natural resource restoration
18 intergovernmental partnership.

19 Introduction. This agreement is by and
20 between the State of Kansas, the State of Missouri,
21 the State of Oklahoma, the Eastern Shawnee Tribe of
22 Oklahoma, the Miami Tribe of Oklahoma, the Modoc
23 Tribe of Oklahoma, the Ottawa Tribe of Oklahoma, the
24 Peoria Tribe of Indians of Oklahoma, the Quapaw
25 Tribe of Oklahoma, the Seneca-Cayuga Tribe of

1 Oklahoma, the Wyandotte Tribe of Oklahoma, and the
2 U.S. Department of the Interior, herein referred to
3 the Department, and including the U.S. Fish and
4 Wildlife Service and Bureau of Indian Affairs, et
5 cetera, et cetera.

6 The authorities. Pursuant to all of
7 these different regulations, including these other
8 sections, the natural -- excuse me, the National
9 Oil and Hazardous Substances Pollution Contingency
10 Plan, 40 CFR Part 300, surface water quality
11 standards of Kansas administrative regulations, and
12 applicable tribal authorities. I'm abbreviating
13 most of this.

14 Trustees for natural resources may
15 recover damages for injury to, destruction of, or
16 loss of natural resources resulting from the release
17 of a hazardous substance or the discharge of oil.

18 Such damage awards must be used to
19 restore, replace, rehabilitate, or acquire the
20 equivalent of the injured natural resources.
21 There's absolutely nothing said in this about
22 citizens that may have been harmed.

23 The purpose. The partners agree that
24 the free and open exchange of information, sharing
25 of ideas and opinions with other partners is crucial

1 to achieving each partner's common and individual
2 goals.

3 The partners also recognize that all
4 written or verbal communications related to the
5 assessment and recovery of damages for injury to
6 natural resources or recovery of damages being
7 undertaken in anticipation of litigation.

8 This agreement is intended to provide
9 for the protection and maintenance of
10 confidentiality by, between, and among the
11 partners. So none of us were ever made aware of any
12 of this.

13 And it was signed by the Attorney
14 General of Missouri, which was Jeremiah W. Jay
15 Nixon, and the Assistant Attorney General of Kansas,
16 Shelley A. Woods, the Department of Interior. I
17 mean all of these people that are supposed to be
18 protecting us, including Stephen Mahfood, Director
19 of the Department of Natural Resources.

20 The State of Arkansas did not sign
21 this, nor did the Cherokee Nation, both being
22 affected by the toxins emitted here but not
23 contributing to the damages by coal, manufactured
24 gas, or oil.

25 That confidentiality agreement occurred

1 in 1999, and at about the same time the EPA's Carol
2 Browner and Dennis Grams were stonewalling and they
3 would not release the 303(d) impaired waters of
4 Missouri.

5 It got so backlogged that the Sierra
6 Club and the United Canoe Association -- I may have
7 gotten that wrong -- sued the EPA and Carol Browner
8 and Dennis Grams from the EPA so that they would
9 have to list those waters that were impaired.

10 These three states and the Quapaw
11 Tribe, possibly the other tribes listed, through
12 Empire are all profiting from our illnesses and
13 impaired children.

14 And now Empire wants to ask for
15 increases in the utility bills again as the citizens
16 struggle to care for themselves, their parents, or
17 their children living with chronic health issues,
18 and this is unthinkable.

19 In the now expired MDNR permit given to
20 the Asbury location of the Empire District Electric
21 Company, on page 38 it states that -- this is under
22 the Title 4 acid rain permit for the Asbury power
23 plant -- these units have never burned coal and are
24 therefore not subject to the Nitrogen Oxide
25 Emissions Reduction Program of the acid rain

1 program.

2 Their permit also mentions that they
3 use coal, so they were aware of it but at some point
4 they forgot it by the time they got to page 38.

5 It also states there are no plant-wide
6 emission limitations that apply to this facility.
7 Seemingly there is no oversight for our exposure to
8 the dirty Missouri coal and Wyoming coal blend
9 coming out of Empire Asbury.

10 Asbury -- according to Empire
11 Electric's web page, Asbury was designed as a
12 mine-mouth plant to burn coal from the Empire mine
13 located just north of the plant.

14 And then it goes on to talk about how
15 large their generating units are, et cetera.

16 JUDGE BURTON: Ms. Givone, I'm just
17 going to interrupt you real quick.

18 THE WITNESS: Yes.

19 JUDGE BURTON: You're still testifying,
20 but I see you are reviewing and perhaps reading some
21 documents. Would you like to have that admitted
22 into the record?

23 THE WITNESS: Yes, I would.

24 JUDGE BURTON: Okay. If you want, we
25 can have that presented to me and I can mark that

1 and see if there are any objections from any of the
2 parties.

3 And that way it will be admitted for
4 review by all of the commissioners and the parties.

5 THE WITNESS: Okay.

6 JUDGE BURTON: Okay.

7 THE WITNESS: Thank you.

8 JUDGE BURTON: All right. I'm going to
9 mark these pages, and let me just go ahead and count
10 them briefly, so bear with me.

11 THE WITNESS: I've got them numbered
12 also.

13 JUDGE BURTON: Oh. Completely through?
14 There's 34 pages.

15 THE WITNESS: Yes.

16 JUDGE BURTON: I'm going to mark this
17 as LPH -- Exhibit LPH 1.

18 (Whereupon, Exhibit LPH 1 was
19 marked for identification by Judge
20 Burton.)

21 JUDGE BURTON: Would counsel for any of
22 the parties like to review this real quick?

23 MS. MAYFIELD: No, thank you.

24 JUDGE BURTON: Are there any objections
25 to the admission of LPH 1?

1 MS. CARTER: No objection.

2 MR. WESTEN: No objection.

3 MS. MAYFIELD: No objection.

4 JUDGE BURTON: Hearing no objection,
5 Exhibit LPH 1 is admitted into the record.

6 THE WITNESS: Okay. Thank you.

7 JUDGE BURTON: Are there any questions
8 for Ms. --

9 THE WITNESS: Sorry. Did anyone have
10 any questions?

11 COMMISSIONER RUPP: No.

12 COMMISSIONER HALL: No questions.

13 JUDGE BURTON: Thank you very much for
14 your time.

15 (End of witness testimony.)

16 JUDGE BURTON: Next on the list the
17 commission has Travis Creswell.

18 THE WITNESS: Yes. Yeah.

19 (A witness is called to the stand
20 and is placed under oath by Judge
21 Burton.)

22 JUDGE BURTON: Would you please state
23 and spell your name for the record.

24 THE WITNESS: I will. My name is
25 Travis -- Travis Creswell, T-R-A-V-I-S,

1 C-R-E-S-W-E-L-L.

2 JUDGE BURTON: Thank you.

3 THE WITNESS: Yes.

4 * * * * *

5 TRAVIS CRESWELL,

6 of lawful age, having been called as a witness and
7 being first duly sworn, was examined and testified
8 as follows:

9 All right. I'm an industrial engineer
10 and a certified energy manager. I own a company
11 here in Joplin called Ozark Energy Services.

12 For about the -- just over 20 years
13 we've been doing energy efficiency stuff here in
14 Joplin, Missouri, and the area, probably throughout
15 the four states.

16 Ironically, the reason I'm in this
17 business is because of Empire. In the mid '90s I
18 used to pester them all the time about what the rate
19 was and how this worked and whatnot. And they said,
20 "Hey, why don't you come do energy audits and stuff
21 for us."

22 So for about two years I worked for
23 them. I helped them build a -- a lineal pay program
24 and -- yeah, that was a good time. So I learned all
25 kinds of stuff, they sent me to all sorts of

1 schools, and all that kind of thing.

2 Deregulation went away and then that
3 program wasn't -- wasn't a deal that was good to
4 have. So anyway, that's a little bit of my
5 background.

6 So to kind of get on to my testimony
7 here -- am I doing that good at all?

8 COMMISSIONER RUPP: You're good.

9 THE WITNESS: Okay. So according to
10 the most recent IRP, Empire District intends to
11 cease offering DSM programs.

12 I will point out that this will
13 substantially decrease energy efficiency in this
14 area, and I speak particularly from a business and
15 publics and schools and churches.

16 I'm not -- I'm not talking about
17 residential. I'm not familiar with that stuff. I
18 only do the C & I stuff.

19 Right or wrong, businesses, they
20 will -- they would just -- without rebates, they've
21 got other places to spend their money.

22 They're looking for -- it takes rebates
23 to get most energy efficiency projects into the
24 financial threshold that they will consider
25 feasible, is what it boils down to. They're

1 looking for two-year paybacks and stuff like that,
2 so.

3 I point out that my company and others
4 like my company will -- will probably see a
5 substantial enough drop in business that we will --
6 we will certainly be laying off employees. That's
7 for sure.

8 The -- in fact, we will actually
9 challenge our existence in our current -- in our
10 current state is what it would boil down to.

11 So businesses that could be lowering
12 their electric bill by leveraging their money with
13 the Empire rebate program are already telling me
14 that they're going to likely sit on their capital
15 and just see what happens.

16 And that's related to a second thing
17 that two weeks ago or within the last few weeks the
18 C & I program for 2016 ran out of -- ran out of
19 funding, or I should say it fully reached its
20 budget, which is great, probably likely due to the
21 recent implementation of many projects.

22 We helped spend a fair amount of that,
23 but that means that there will be no more rebates
24 approved for 2016.

25 That being said, now we're in kind of a

1 no man's land of are our rebates going to come back
2 in 2016, do we sit and wait, what's the cost of
3 waiting during that time.

4 And we're getting -- we're getting
5 mixed feedback from our potential customers who, are
6 they going to wait. So we don't know, we don't know
7 what they're going to do.

8 I will point out that the other
9 utilities in the state continue to offer C & I
10 programs, and in fact typically from what I can tell
11 their budgets are normally much greater than
12 Empire's. So it would help energy efficiency if
13 their budget was actually larger than it is.

14 Most of my customers, some of my
15 customers have locations in other parts of the state
16 and other -- and other states. They're -- they have
17 much more aggressive programs in that state.

18 So that would be -- it would be nice to
19 see if this program could get even -- even more
20 aggressive, and that of course would be bigger
21 rebates would be one way to do it.

22 Empire customers still want to invest
23 in energy efficiency, but it's going to be a real
24 problem for the rest of this year with the
25 uncertainty of 2016 and 2017 and -- and beyond.

1 I'm confident that energy efficiency is
2 the cheapest thing Empire can do with its
3 ratepayers' money. It's good for jobs and it's good
4 for the area and environment.

5 And I realize that that's not part of
6 what the PSC looks for. They're looking for Empire
7 to offer the least cost energy.

8 So it would be nice if there was
9 something in the decision matrix in future rules
10 that considered the jobs in the area, environmental
11 impacts. I know the uncertainty of coal regulation
12 has got a lot of people curious about what's going
13 to happen.

14 Empire has always been really good to
15 work with. Part of what I wanted to say too is that
16 they are a valued community partner. By eliminating
17 this program, it's not good for the community that
18 they continue to serve.

19 You know, part of what they do is
20 economic development. This is not economic --
21 eliminating such programs is not economic
22 development.

23 A couple more notes here. I find the
24 rebate program representatives to be very
25 responsive. Any questions are normally answered

1 within a day or two.

2 What I do have a problem with or what I
3 would like to point out is that the turnaround time
4 on the approvals can get into the months, and
5 sometimes that's after I've been bugging for like
6 every week where's this at, where's this at.

7 I understand that the last probably
8 four or five months with the explosion of LED, that
9 has caused this -- you know, they have -- probably
10 haven't been able to add -- they haven't been able
11 to add people to the program, so those people are
12 just probably doing the best they can, but I can
13 certainly say that.

14 Two more things. With the rebate
15 program, one of the things that I would like to see
16 you consider is it doesn't make a dissertation
17 between off peak and peak power.

18 There's certain energy conservation
19 measures you can do that if you're not careful, for
20 example LED parking lot lighting may or may not do
21 anything for your -- your final utility bill because
22 you're not saving your peak power.

23 I'm afraid that that ends up giving the
24 rebate program a black eye. They can point out
25 that, oh, look how ineffective this is. Well, no,

1 if it was structured differently, it could be more
2 effective.

3 And I did look at the rates carefully
4 before, their proposed rates. One of the things I
5 normally testify on is the increase in the base
6 rate.

7 I see they've asked for a very small
8 increase, but I would like to point out that at the
9 end of the day it's not -- it's not hard to figure
10 out that most utilities are looking to get the bulk,
11 and this is going to happen over a 5- and 10-year,
12 15-year period. They're going to look for the bulk
13 of their rate increases in the base charts.

14 It makes perfect sense. They have very
15 high fixed costs, and it's difficult for them to
16 recoup them with the variable costs.

17 I don't know how to help them with
18 that, but I will point out that if you -- if this --
19 if that goes unchecked, 15 years from now the bulk
20 of your utility bill is your base rate.

21 Your desire to conserve will be very
22 low because you're not -- what you're going to do is
23 not going to really affect your final electric bill,
24 so.

25 I think that's all I have.

1 JUDGE BURTON: Thank you very much,
2 Mr. Creswell.

3 THE WITNESS: You're welcome.

4 JUDGE BURTON: Any questions from the
5 commission?

6 COMMISSIONER RUPP: No.

7 CHAIRMAN HALL: No questions. Thank
8 you for your testimony.

9 JUDGE BURTON: Thank you very much,
10 sir.

11 (End of witness testimony.)

12 JUDGE BURTON: Are there any other
13 individuals who would like to offer their testimony
14 for the commission and for the record?

15 Okay. Seeing no hands, that will
16 conclude the testimony part of this hearing.

17 I just want to let everyone know that
18 the evidence you're hearing on Empire's request for
19 general rate increase is scheduled to occur on May
20 31st through June 10th, and that will be in
21 Jefferson City, Missouri, at the office of -- or at
22 the Public Service Commission's main office at the
23 governor's office.

24 You can obviously come to Jefferson
25 City and attend, or you can also observe by going

1 online where it will be streaming live from the
2 commission website.

3 If you have additional comments that
4 you would like to add later on, you can also go to
5 the commission's website and add public comments
6 through the website there.

7 Thank you everyone for your time, and I
8 hope you have a very pleasant evening. We're off
9 the record.

10 (Whereupon, the proceedings were
11 concluded at 6:26 p.m. on
12 Wednesday, April 13, 2016.)

13 (Exhibit LPH 1 was left in the
14 custody of the court reporter and
15 will accompany the original
16 transcript upon completion.)

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E X H I B I T S

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EXHIBITS

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CERTIFICATE OF REPORTER

I, Karen Vest, Registered Professional Reporter, Certified Realtime Reporter, and Certified Court Reporter within and for the State of Missouri, do hereby certify that I was personally present at the taking of the proceedings as set forth in the caption sheet hereof; that I then and there took down in stenotype the proceedings had at said time; and that the foregoing is a full, true, and accurate transcription of such stenotype notes so made at such time and place, all to the best of my skill and ability.

Karen Vest, RPR, CRR,
Missouri CCR No. 846

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