

In the Matter of:

THE REQUEST OF THE EMPIRE DISTRICT ELECTRIC COMPANY d/b/a LIBERTY, etc.

ER-2021-0312, VOL. I

June 23, 2021



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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

June 23, 2021

Jefferson City, Missouri

Volume 1

In the Matter of:

The Request of the Empire)
District Electric Company)
d/b/a Liberty for Authority)
to File Tariffs Increasing) File No. ER-2021-0312
Rates for Electric Service)
Provided to Customers in its)
Missouri Service Area)

JOHN CLARK, Presiding
REGULATORY LAW JUDGE

REPORTED BY:
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TIGER COURT REPORTING, LLC

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PROCEEDINGS

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2 JUDGE CLARK: Okay. Let's go on the
3 record. Today's date is June 23rd of 2021, and I
4 have 2:00 p.m. as the time right now. We're in
5 Room 310 of the Governor Office Building and the
6 Commission has set aside this time for a prehearing
7 conference in the case captioned as In the Matter of
8 the Request of the Empire District Electric Company
9 doing business as Liberty for authority to File
10 Tariffs Increasing Rates for Electric Service
11 Provided to Customers in its Missouri Service Area,
12 File No. ER-2021-0312.

13 My name's John Clark. I'm the regulatory
14 law judge in this matter and I'm going to begin by
15 asking the attorneys to enter their appearance for
16 the record starting with Empire District Electric
17 Company doing business as Liberty.

18 MS. CARTER: Good afternoon. Diana
19 Carter, in-house counsel with the Empire District
20 Electric Company and also Dean Cooper from Brydon,
21 Swearngen and England, and we gave our addresses to
22 the court reporter.

23 JUDGE CLARK: Thank you so much. For the
24 commission staff.

25 MS. MERS: For staff, Nicole Mers and

1 Casi Aslin and we have provided our information to
2 the court reporter.

3 JUDGE CLARK: Thank you. For the Office
4 of the Public Counsel.

5 MR. WILLIAMS: Nathan Williams appearing
6 on behalf of the Office of the Public Counsel and the
7 public and I also have provided my information to the
8 court reporter.

9 JUDGE CLARK: Thank you, Mr. Williams.
10 Mr. Woodsmall from Midwest Energy Consumers Group
11 indicated that he would be unable to attend today,
12 but that he would get in touch with you all. I
13 believe you all should have received that email.

14 Are there any -- I can see other
15 attorneys. If you'll go ahead and just introduce
16 yourself for the record and let me know who you're
17 representing.

18 MR. OPITZ: Tim Opitz on behalf of Renew
19 Missouri Advocates.

20 MR. FISCHER: And also James Fischer on
21 behalf of Evergy Metro, Inc. doing business as Evergy
22 Missouri Metro and Evergy Missouri West doing
23 business as Evergy Missouri West.

24 JUDGE CLARK: Thank you. Anyone I
25 haven't called?

1 MR. HEALY: Douglas Healy on behalf of
2 City of Ozark.

3 JUDGE CLARK: Thank you, Mr. Healy.

4 MR. JARRETT: And Terry Jarrett on behalf
5 of the Empire retirees.

6 JUDGE CLARK: Thank you, Mr. Jarrett.
7 Which brings me to my next point. Interventions.
8 I'm going to go ahead and do some of these on the
9 record right now. Are there any objections to
10 allowing the Empire District Retired Members and
11 Spouses Association to intervene? I hear no
12 objections. They will be granted intervention.

13 Are there any objections to allowing
14 Renew Missouri to intervene in this case? I see no
15 objections. Intervention is granted to Renew
16 Missouri.

17 Any objections to the Empire District
18 Electric SERP Retirees intervention? I see none.
19 They will be granted intervention.

20 Any objection to the City of Ozark
21 Missouri's intervention? I see none. They will be
22 granted intervention.

23 The Office of Public Counsel has opposed
24 the intervention of Evergy. I thought if I had
25 somebody from Evergy here, which I do, I'd give you

1 an opportunity to respond to that.

2 MR. FISCHER: Thank you, Judge. We had
3 intended to file a written response, but I can
4 certainly respond on the record. Evergy has filed a
5 timely application to participate in this case, and
6 they participated in previous Empire cases over the
7 years. They're principally interested in the
8 renewable energy policies, wind facilities that I
9 think Empire is suggesting be put in the rate base in
10 this case and any regulatory policies that may be
11 coming out of this case that could affect Evergy and
12 its wind and other renewable facilities in the
13 future.

14 That's their interest, and they would
15 like to participate. They certainly don't have a
16 major concern about schedule or anything like that,
17 but they just want to be a participant so they can
18 influence the regulatory decision in that regard.

19 JUDGE CLARK: Okay. I think the
20 complaint, as I understood it, is not really just
21 that we don't know what your interest is, although
22 that is one of the complaints, but really just that
23 the application was deficient on its face.

24 MR. FISCHER: Well, I would, I guess,
25 dispute that. The -- the application indicates that

1 we would be accepting I think the procedural
2 schedule. Let's see. No, that was the other one.
3 I'm sorry.

4 We would be participating and attempting
5 to build a record and promote the public interest in
6 that regard by participating and adding to the record
7 as we've done in the past in such Empire cases or
8 other utility cases. And I think that, to the extent
9 we didn't address public interest, that would be the
10 public interest, that we would participate in the
11 case and help the development of the record.

12 JUDGE CLARK: Okay. Why don't you go
13 ahead and file your written response and I'll go
14 ahead and put this before the Commission.

15 MR. FISCHER: Okay. Sounds good. And
16 with your permission I'd just like to sit here today
17 and participate.

18 JUDGE CLARK: I think that's fine. Any
19 objection to that by anybody? I see none.

20 Okay. It was brought up that I did not
21 post a call-in number for this, and the reason why is
22 because this is the first one of these and I really
23 kind of want to see everybody as much as I can. I
24 will for future prehearing and discovery conferences
25 allow participation as much as possible via call-in

1 numbers. So I'll make arrangements for that in the
2 future.

3 Given internal discussions that have been
4 had recently regarding the way the judges in
5 particular handle certain procedures, I wanted to try
6 and make things a little bit easier for all the
7 parties involved in this rate case as much as
8 possible. So the tariff currently has been suspended
9 and I want to give you an idea, set some kind of
10 outward parameters for the timeline of this case, and
11 hopefully that'll make it easier for you to do a
12 procedural schedule. And it is a tight timeline and
13 I apologize for that. There's nothing I can really
14 do about that. There's intervening holidays as well
15 as some already-set hearings.

16 But the tariff is suspended until
17 April 25th, 2022, and that means that the latest
18 an order can go to agenda in this case is
19 April 13th, 2022. Now, given my experience in the
20 last Empire rate case, I'm going to need at least a
21 month minimum of solid writing time, which is
22 probably going to include a few all nighters. Also,
23 if the last rate case was any indication, I suspect
24 that in order to digest the post-hearing memo and
25 reach decisions regarding each of the potential

1 issues in this case, could take as many as three
2 agendas. So I'm setting that up. And unfortunately
3 that, to my mind, puts any final briefs in this case
4 due no later than March 11th, 2022.

5 So what I'm actually thinking of right
6 now is an evidentiary hearing would need to be in
7 early to mid-February of 2022. And I'll caution you
8 right now that a case is currently already set for
9 hearing on February 14th to the 18th that I currently
10 don't see going anywhere. Does anybody need me to
11 repeat any of those dates? Okay.

12 Hopefully that will give you some
13 parameters to work within. I'd like to do, just out
14 of an abundance of caution, I'd like to do monthly
15 discovery conferences. Now, obviously we can cancel
16 those if there's no discovery issues; I'll do the
17 standard two-day thing, but I would like to check in
18 with people and deal with discovery issues before
19 they get out of hand.

20 Now, one of the things that's been
21 expressed is that these discovery conferences have
22 typically been where perfunctory to being given an
23 opportunity to file a motion to compel with the
24 commission. And the Commission has wanted to be more
25 hands-on with these discovery issues, but that's not

1 particularly helpful to the parties. So what I'm
2 going to try to do to the best of my ability is rule
3 on the things that I feel I can safely rule on, which
4 is generally going to be matters of relevance or
5 similar such things, or if it's something that I
6 believe needs to go to the commission, I'm going to
7 at least try and give the parties an idea of what I'm
8 going to be recommending to the commission. There's
9 no guarantee that's what they'll do, but that might
10 be helpful to the parties.

11 So hopefully discovery issues will be
12 handled a little bit better that way. Is there
13 anybody opposed to doing it that way or thinks that's
14 a bad idea?

15 Next on my list is motions for expedited
16 treatment. Nobody in this room has really been an
17 offender on this front. However, for the duration of
18 this case what I would like to see is if anybody
19 files a motion for expedited treatment, I would like
20 them to be available for an immediate phone
21 conference that day so that I can ascertain what the
22 problem is and why the motion could not have been
23 filed earlier. So that means if you file a motion
24 for expedited treatment on a Friday and then take off
25 for the Lake or somewhere, you stand very little

1 chance of having your motion for expedited treatment
2 addressed at the next agenda. So bear that in mind.

3 Procedural issues. I think generally the
4 commission and the judges have communicated with the
5 parties and the commission staff via orders. And
6 again, from the last -- I think there was -- I think
7 in the last Empire case there was some confusion at
8 times as to where myself or the Commission were
9 coming from in regard to certain procedural issues as
10 well as what some of the parties were trying to
11 accomplish and there seemed to be a mismatch with
12 that. And so I kind of want to remind everybody that
13 in regards to procedural issues, if there's something
14 that I'm doing that is unclear or is hampering things
15 that are going on, I would rather know than not know.

16 And I would remind you that ex parte
17 rules generally do not apply to purely procedural
18 matters. So I'm happy to discuss procedural matters
19 that would not be covered under any of the ex parte
20 rules or as long as there's nothing substantive. I
21 don't think I'm exactly clear on that, but what I'm
22 trying to do with these last few things is address
23 some of the concerns that I've received in the past
24 in regard to communication and to try to be a little
25 bit more transparent so that what it doesn't feel

1 like is that I am exerting some sort of top-down
2 pressure on any of the parties to do anything in
3 particular. At the same time, as much as possible
4 once the schedule is established, I'd like to stick
5 to it.

6 Now, I anticipate some hiccups with this.
7 I can't remember off the top of my head, I've read
8 through the testimony that's been filed so far, but
9 it's been about -- it's been a while. Has a test
10 year been proposed?

11 MR. WILLIAMS: Yes.

12 JUDGE CLARK: What's the proposed test
13 year right now? What test year was put forth in
14 testimony?

15 MR. WILLIAMS: September of last year.
16 Or --

17 MS. McMELLEN: September 30th, 2021.

18 JUDGE CLARK: One year from
19 September 30th, 2020?

20 MS. CARTER: Yes. Is the main test year.

21 MS. McMELLEN: That's the end date --

22 MS. CARTER: Yeah.

23 MS. McMELLEN: -- of September 30 --

24 MS. CARTER: Yes. And then we proposed
25 an update period.

1 JUDGE CLARK: That's obviously in
2 testimony; that's not any kind of an official filing
3 on that. I assume parties are going to get together
4 and request a test year.

5 MR. WILLIAMS: Oh, we'll discuss it, I'm
6 sure.

7 JUDGE CLARK: I can imagine. And Asbury
8 once again is going to be an issue. I believe there
9 was an AAO ordered in the last case. Is that
10 correct?

11 MR. WILLIAMS: Yes.

12 MS. CARTER: Yes.

13 JUDGE CLARK: Okay. So that's been
14 tracked for this.

15 MS. CARTER: Yes, Judge.

16 MR. WILLIAMS: Asbury is also an issue on
17 appeal.

18 JUDGE CLARK: Yes, but that is not this
19 case.

20 MR. WILLIAMS: Correct.

21 JUDGE CLARK: Are there any questions at
22 this point? Everybody looks so sad. I don't know
23 why that is. Are there any other issues or matters
24 that need to be addressed by the commission at this
25 time? Okay. I hear none, and so we'll go off the

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(Off the record.)

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CERTIFICATE

I, Shelley L. Mayer, a Certified Court Reporter, CCR No. 679, the officer before whom the foregoing transcript of proceedings was taken, do hereby certify that the testimony was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this transcript of proceedings was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Shelley L. Bartels, CCR

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