

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS
On-the-Record Proceeding
May 31, 2011
Jefferson City, Missouri
Volume 6

In The Matter Of The Empire District)
Electric Company Of Joplin, Missouri)
For Authority To File Tariffs Increasing) File No.
Rates For Electric Service Provided To) ER-2011-0004
Customers In The Missouri Service Area)
Of The Company)

HAROLD STEARLEY, Presiding
SENIOR REGULATORY LAW JUDGE
KEVIN D. GUNN, Chairman,
ROBERT M. CLAYTON, III,
JEFF DAVIS,
TERRY M. JARRETT,
KEVIN GUNN
ROBERT S. KENNEY,
COMMISSIONERS

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26

1 PROCEEDINGS.

2 JUDGE STEARLEY: All right. Good morning.
3 Today is Tuesday, May 31st, 2011, and the Commission has set
4 this time for an on-the-record proceeding in File Number
5 ER-2011-0004, which is captioned as In The Matter Of The
6 Empire District Electric Company Of Joplin, Missouri For
7 Authority To File Tariffs Increasing Rates For Electric
8 Service Provided To Customers In The Missouri Service Area Of
9 The Company.

10 My name is Harold Stearley, and I am the
11 regulatory law judge presiding over this matter today. And
12 we will begin by taking entries of appearance, starting with
13 Empire District Electric Company.

14 MS. CARTER: Diana Carter, Jim Swearngen,
15 Dean Cooper and Russ Mitten with Brydon, Swearngen & England
16 P.C. appearing for the Empire District Electric Company.

17 JUDGE STEARLEY: All right. Thank you,
18 Ms. Carter.

19 And for Kansas City Power & Light?

20 MR. DORITY: Thank you, Your Honor. Appearing
21 on behalf of intervenor Kansas City Power & Light Company,
22 let the record reflect the appearance of Larry W. Dority with
23 Fischer & Dority P.C. Our address is 101 Madison, Suite 400,
24 Jefferson City, Missouri 65101. Thank you.

25 JUDGE STEARLEY: Thank you, Mr. Dority.

1 For the Midwest Energy Users Association? We
2 will let the record reflect we have no appearance from MEUA
3 this morning.

4 For the City of Joplin, Missouri. And again,
5 we'll let the record reflect there's no appearance from
6 Joplin.

7 Missouri Department of Natural Resources?

8 MS. MANGELSDORF: Sarah Mangelsdorf and Mary
9 Ann Young appearing on behalf of Missouri Department of
10 Natural Resources.

11 JUDGE STEARLEY: Thank you, Ms. Mangelsdorf.

12 And for the Office of the Public Counsel?

13 MR. MILLS: On behalf of the Office of the
14 Public Counsel and the public, my name is Lewis Mills. My
15 address is P.O. Box 2230, Jefferson City, Missouri 65102.

16 JUDGE STEARLEY: Thank you, Mr. Mills.

17 And for the Staff of the Missouri Public
18 Service Commission?

19 MS. KLIETHERMES: Thank you, Judge. Sarah
20 Kliethermes for the Staff of the Missouri Public Service
21 Commission, 200 Madison Street, 65101.

22 JUDGE STEARLEY: Thank you, Ms. Kliethermes.

23 I need to advise you all, as I always do at
24 the start of these proceedings, to please turn off all
25 BlackBerries, cell phones, and other electronic devices that

1 may interfere with our webcasting and recording.

2 Would any of the parties like to make any
3 opening remarks? Okay. Hearing none. And I'm assuming
4 there's no preliminary matters. We have a stipulation and
5 agreement before the Commissioners, so I will open it up for
6 questions from the Commission.

7 COMMISSIONER GUNN: Judge, can we just see if
8 there's anybody other than Commissioner Clayton and
9 Commissioner Kenney on the phone?

10 JUDGE STEARLEY: Certainly. Is there anyone
11 else present on -- having called in on the phone bridge this
12 morning, other than Commissioner Kenney and Commissioner
13 Clayton?

14 COMMISSIONER GUNN: I just have a quick
15 question for the parties. And it's kind of a little bit of a
16 touchy question because I don't know how much you can
17 represent for those, but I'd be interested to know that since
18 the city of Joplin is not here, how involved they've been
19 able to be in the wrapping up of the negotiations and just --
20 we don't have any objection from them on the -- on the
21 agreement, but I would just be interested to know what their
22 participation has been able to be like over the last -- in
23 the finalizing of the agreement.

24 MS. KLIETHERMES: The stipulation had been
25 largely finalized. I should say the terms had been largely

1 finalized as we filed the Friday prior to the tornado, which
2 I assume is what spurs your question. Nothing changed after
3 we reached the settlement in principle. And as would
4 typically be the case, there was not heavy involvement from
5 the city of Joplin in terms of drafting the final document,
6 if that answers your question.

7 COMMISSIONER GUNN: I wouldn't suspect it, but
8 they've had the opportunity to review and sign off -- this is
9 -- their assent to this isn't based upon preliminary
10 negotiations, but since the final drafted documents, they've
11 had the opportunity and the resources to review and sign off?

12 MS. KLIETHERMES: We've received communication
13 from city of Joplin last week.

14 COMMISSIONER GUNN: Okay. Everybody agree
15 with that characterization?

16 MS. CARTER: Yes, Judge. We had worked quite
17 a bit before the tornado hit on the actual terms, and Tim
18 Schwarz was the attorney for the city of Joplin and had been
19 much more involved prior to that. But once the terms were
20 finalized, he indicated the city of Joplin was good with
21 those terms and then there's been much less involvement, but
22 I don't think it's been required. I'm not sure it's actually
23 because of the tornado.

24 COMMISSIONER GUNN: And I obviously don't --
25 they don't need to be involved with the day-to-day drafting

1 and all the administerial stuff. I just want to make sure
2 that everyone's comfortable with the level of review that
3 they have been able to have. They've been able to have
4 someone take a look at it and their agreement has come since
5 -- or their assent has come since the tornadoes.

6 I am seeing a lot of head shaking around the
7 room, so we can let the record reflect that everybody agrees
8 the city of Joplin has had a chance to review sufficiently
9 and agreed post -- post-tornado.

10 MS. KLIETHERMES: Yes, I would agree with that
11 characterization.

12 COMMISSIONER GUNN: I don't think I have
13 anything else.

14 JUDGE STEARLEY: All right. Commissioner
15 Kenney, Commissioner Clayton, since you're on the phone and I
16 can't see if you're nodding or wanting to ask some questions,
17 I'm just going to directly ask you. Any questions for the
18 parties today?

19 COMMISSIONER CLAYTON: Thank you, Judge. This
20 is Robert Clayton. I don't have any questions. I appreciate
21 them being available for this hearing, but I don't have any
22 questions today. Thanks.

23 COMMISSIONER KENNEY: I have a few.

24 JUDGE STEARLEY: Please proceed.

25 COMMISSIONER KENNEY: Hello?

1 JUDGE STEARLEY: We can hear you loud and
2 clear, Commissioner Kenney.

3 COMMISSIONER KENNEY: Great. I just have a
4 few. It won't take too terribly long.

5 I have a question about paragraph 6, that
6 references the cost allocation manual. I just want to be
7 clear that the parties understand what their obligations are
8 with respect to submitting it to the Commission for approval
9 and what approval means.

10 And the reason I'm asking the question is
11 because we've had, in another context, a lot of consternation
12 surrounding another company's cost allocation manual. So I
13 want to be certain that the parties are comfortable with what
14 their obligations are with respect to submitting it for
15 approval and what they will be asking of the Commission when
16 they do that. And that's directed to whomever wants to
17 address it first.

18 MS. CARTER: I'm hoping Ms. Kliethermes or
19 perhaps other counsel for Staff. That was included at
20 Staff's request.

21 MS. KLIETHERMES: And that actually would have
22 been -- a different Staff attorney was more involved with
23 that. Mr. Cooper might be able to speak to that, if he
24 doesn't mind so doing.

25 MR. COOPER: Really?

1 COMMISSIONER KENNEY: I didn't hear the last
2 comment.

3 JUDGE STEARLEY: The parties are conferring at
4 the moment, Commissioner.

5 COMMISSIONER KENNEY: Oh, I gotcha. Thank
6 you.

7 MR. COOPER: Commissioner, this is Dean
8 Cooper. I was caught a little bit off guard by that question
9 because it was a provision, as Ms. Carter mentioned, was put
10 in at the request of Staff and my understanding is that it
11 was probably put in directly in response to the -- to the
12 situation that you had referred to.

13 My understanding would be that what this asks
14 the Company to do was to formally file an application with
15 its -- with its cost allocation manual, formally asking for
16 the Commission's approval of that manual. I think that's
17 probably a little bit different than that matter has
18 historically been handled.

19 COMMISSIONER KENNEY: Okay.

20 MR. COOPER: More commonly, those manuals have
21 been probably provided, would have been a more accurate
22 description of how they had been handled in the past. That
23 would be the Company's understanding, that it will be
24 formally requesting approval in this instance.

25 MS. KLIETHERMES: And I guess I would just

1 point out, Commissioner -- this is Sarah Kliethermes -- that
2 language was provided by Staff, drafted by our gas deputy, if
3 that addresses your concern a bit.

4 COMMISSIONER KENNEY: Well, I think so. And
5 I'm assuming that the application that the Company will file
6 asking for approval, there will be some guidance given on
7 what they want that approval to look like and Staff will
8 likely respond to the application and provide its input as
9 well?

10 MR. COOPER: I would think so, Commissioner.
11 You know, in my mind, again, I haven't done one of these
12 before because they have been handled a little bit
13 differently in the past, but in my mind, we would be citing
14 specifically to the affiliate transaction rule.

15 COMMISSIONER KENNEY: Sure.

16 MR. COOPER: Where there is a phrase about
17 Commission-approved CAM, and that would be the approval that
18 would be sought.

19 MS. KLIETHERMES: That's certainly my
20 understanding.

21 COMMISSIONER KENNEY: Okay. My next
22 question's with respect to the DSM programs and the advisory
23 group. So the customer programs collaborative is being
24 terminated and a new advisory group is being created, which
25 will not have voting rights. Did the prior collaborative

1 have voting rights, and what was the success of it, and why
2 are we moving to a non-voting rights group?

3 MS. CARTER: Commissioner, Scott Keith with
4 Empire should be able to answer that for you. That is
5 correct that we are switching from a group that has voting
6 rights to a group without voting rights, and Scott should be
7 able to give you some information on why.

8 MR. KEITH: Yes, the prior collaborative was a
9 result of the regulatory plan and it had specific voting
10 rights in it. It -- our experience during the, what, four or
11 five years it was in effect, is we really didn't have any
12 voting disputes. Everything was pretty much done
13 unanimously.

14 So this particular change was really brought
15 about -- the Staff and some of the other parties on the
16 collaborative were a little bit uncomfortable with the voting
17 collaborative because it conveyed some sort of approval of
18 the program, specifically. And they kind of wanted to get
19 away from that and just make it advisory and didn't want to
20 get involved in actually having a recorded vote where they
21 said, yes, this program is the way to go.

22 COMMISSIONER KENNEY: Anybody else want to add
23 anything to that? Staff?

24 MS. KLIETHERMES: I think I agree with what
25 Mr. Keith just said.

1 I would also point out that this -- a lot of
2 these matters were sort of T'd up in Empire's IRP filing,
3 which was just resolved a few weeks ago.

4 COMMISSIONER KENNEY: Okay. My last question
5 is with respect to the DSM amortizations that are referred to
6 in paragraph 13. Is that similar to what we've done in the
7 most recent rate case that we have with one of our other
8 electric utilities, with reducing the amortization period
9 from ten to six years for new programs going forward?

10 MS. CARTER: Yes, Commissioner, we believe
11 that was consistent with, I believe, the recent GMO Order.

12 COMMISSIONER KENNEY: Right. Okay.

13 All right. I don't have any other questions.
14 Thanks for your time and thanks for being available for
15 questions.

16 JUDGE STEARLEY: Any other questions from the
17 Commissioners?

18 COMMISSIONER DAVIS: Judge, I've just got a
19 few. I guess I want to follow-up on Commissioner Kenney's
20 question, and I guess this would be Mr. Cooper.

21 I mean, what -- what affiliate transactions
22 are we really talking about? Is this about Empire electric
23 and Empire gas buying natural gas? Is there some other
24 affiliate transactions that I'm not aware of?

25 MR. COOPER: Well, I think the most obvious

1 transactions that you would have in this case are the fact
2 that Empire's electric and gas operations are separate
3 corporate entities. So many, many transactions will flow
4 back and forth between the electric and gas company and a lot
5 of those, I would think, would be corporate support in
6 nature. But at a minimum, you're going to have to deal with
7 that crossing of corporate -- corporate lines.

8 COMMISSIONER DAVIS: And the same thing with
9 the water properties?

10 MR. COOPER: Well, the water properties, I
11 think, are actually owned by the electric company, so.

12 COMMISSIONER DAVIS: Okay.

13 MR. COOPER: So that is the same corporate
14 entity as the electric operation.

15 JUDGE STEARLEY: Okay. Ms. Walters, do you
16 have anything to add to that?

17 MS. WALTERS: The only thing additional would
18 be our fiber company, which provides fiber services to
19 Empire, as well as sells services to others in the area.

20 COMMISSIONER DAVIS: And having read the
21 stipulation, I didn't see anything in the stip and I don't
22 think I saw anything in the attachments. There's no clause
23 prohibiting Empire from filing another rate case in the
24 future, is there?

25 MS. CARTER: That is not addressed in any way

1 in this stipulation.

2 COMMISSIONER DAVIS: Okay. Everybody concur
3 with that? Everybody's shaking their head yes.

4 Ms. Carter, how do the Iatan 2 depreciation
5 rates for Empire compare to that of KCP&L, et cetera? Are
6 they the same? Ms. Walters is shaking her head yes.

7 MS. WALTERS: Yes, I believe they're the
8 same -- no.

9 COMMISSIONER DAVIS: No?

10 MS. CARTER: Ms. Kliethermes may be making an
11 indication otherwise.

12 MS. KLIETHERMES: I think there are probably
13 small differences. The cutoff date for the amortizations are
14 different.

15 MS. WALTERS: So the method is consistent.

16 MS. KLIETHERMES: The method is consistent.
17 There may be, you know, decimal hundredths differences.

18 COMMISSIONER DAVIS: Okay. All right. And I
19 guess this would go back to Ms. Walters. So Empire is still
20 using its existing depreciation rates for all of its other
21 plants, correct?

22 MS. WALTERS: That's correct.

23 COMMISSIONER DAVIS: And is that the -- the
24 mass property approach for those plants, that Staff --

25 MS. WALTERS: I believe that's correct.

1 COMMISSIONER DAVIS: Okay. So you don't have
2 any decommissioning accounts for any of your coal plants, do
3 you?

4 MS. WALTERS: No.

5 COMMISSIONER DAVIS: Think it might be a good
6 idea to have some?

7 MS. WALTERS: Well, I'm not sure how to
8 respond to that.

9 MS. CARTER: That has not come up as a part of
10 settling this case.

11 COMMISSIONER DAVIS: And I understand it has
12 not come up as a part of settling this case, but Ms. Walters,
13 I would ask: Are you aware that other utilities around the
14 country are now setting up decommissioning accounts for some
15 of their older coal plant units?

16 MS. WALTERS: We have people in the
17 depreciation area more experienced than I that look into
18 that. I am not as familiar, but yes, I understand those
19 things are happening.

20 COMMISSIONER DAVIS: Well, I'm looking at
21 Mr. Oligschlaeger here. Mr. Oligschlaeger, should they have
22 a decommissioning account for their -- for their older coal
23 units?

24 MR. OLIGSCHLAEGER: We look -- Judge, we
25 looked at the sufficiency of their reserves as part of our

1 audit work in this case and we believe at this time those
2 reserves are sufficient. If you want more detail, probably
3 Mr. Gilbert or Mr. Robinett would be the person to talk to.

4 COMMISSIONER DAVIS: Okay. All right. Thank
5 you.

6 Mr. Mills, the -- the change in voting rights
7 that Commissioner Kenney referenced earlier, I just want to
8 make sure you feel confident that Mr. Kind isn't going to get
9 trampled on, as some other utilities may have wanted to in
10 the past?

11 MR. MILLS: I feel confident that Mr. Kind can
12 handle himself.

13 COMMISSIONER DAVIS: Well, I think he handled
14 himself before, but I think there seemed to be some movement
15 in some other cases where -- where maybe they just wanted to
16 cut his voting rights out.

17 MR. MILLS: I think that the relationship with
18 Empire has been less contentious, so I don't see an issue
19 here.

20 COMMISSIONER DAVIS: Okay. I don't believe
21 that I have any more questions.

22 I have been listening to radio station KZRG
23 over the Internet. They've been very complimentary of
24 Empire's efforts in the storm restoration and everything
25 after the storm so far. Ms. Walters, is there anything else

1 that you want to add in that regard?

2 MS. WALTERS: As far as the storm restoration,
3 you know, we sent out a press release this morning saying we
4 think we have the majority of the customers on and we're
5 really proud of that, and we really appreciate everyone's
6 assistance. Thank you.

7 COMMISSIONER DAVIS: Judge, I don't have any
8 further questions.

9 JUDGE STEARLEY: All right. Commissioner
10 Jarrett, do you have any questions?

11 COMMISSIONER JARRETT: Yes, thank you, Judge.

12 I just wanted to ask one thing about paragraph
13 6, affiliate transactions. Is the gas company a party to the
14 agreement?

15 MS. CARTER: Is not.

16 COMMISSIONER JARRETT: Okay. And then I did
17 want to ask one question. Of course, you know, the
18 devastation in Joplin is terrible and all of that speaks for
19 itself, and I know Empire has lost a lot of customers and
20 will probably not get a lot of those customers back ever or
21 it will be months. So Empire's revenue outlook, obviously,
22 has changed. And I just want to ask all of the parties,
23 given that, is this stipulation still in the public interest?

24 MS. KLIETHERMES: Staff believes it is.

25 MS. CARTER: At this time, Commissioner, there

1 will need to be things done in the near future, but we've
2 considered that and Staff was good and all the parties have
3 been very good about talking with Empire about the storm and
4 how that might effect this rate case and the settlement, and
5 I think we all came to the same page that at this time, this
6 is the right thing to do at this moment and I'll be hearing
7 from Empire again soon.

8 COMMISSIONER JARRETT: Okay. Everybody agree
9 with that? Okay. Everybody seems to be nodding okay, so the
10 record will reflect that everybody agrees with Ms. Carter.

11 I don't have any further questions. Thank
12 you, all. I appreciate you getting together and settling
13 this case. It's always good when we can resolve issues
14 without going to a full hearing, so thanks.

15 MS. CARTER: And Judge, in that regard, if
16 Mr. Dority could maybe make KCP&L's position on the stip more
17 formal, since they hadn't done anything in writing?

18 COMMISSIONER JARRETT: Certainly.

19 MR. DORITY: Yes. Thank you. Judge Stearley,
20 I believe that Mr. Steiner has communicated to you via e-mail
21 KCP&L's position, but I would like to clarify on the record
22 that Kansas City Power & Light Company does not object to the
23 global agreement that was filed on Friday, for the record.
24 Thank you.

25 JUDGE STEARLEY: Thank you, Mr. Dority.

1 Additional questions?

2 COMMISSIONER DAVIS: No. No questions, Judge.

3 JUDGE STEARLEY: Commissioner Kenney,
4 Commissioner Clayton, do you have any additional questions?

5 COMMISSIONER KENNEY: No, thank you.

6 COMMISSIONER CLAYTON: No questions from the
7 bench.

8 JUDGE STEARLEY: I have a couple quick ones,
9 and it could be that I'm just not getting through all this
10 clearly, but is there a provision in the stip for rate
11 design, for how the new rates are going to be implemented?

12 MS. KLIETHERMES: Judge, that's accommodated
13 by the filing of the specimen tariffs. And on that note, I
14 would just like to point out that the average residential
15 rate during the summer months, given some certain changes
16 that were made in rate design, will actually reduce by
17 approximately \$.40 a month.

18 JUDGE STEARLEY: Could you briefly describe
19 how rate design is going to be implemented? Is it just equal
20 percentage increases across the board or were there special
21 provisions?

22 MS. KLIETHERMES: The residential class
23 received an equal percentage rate increase to all elements
24 except the customer charge. There was a \$.01 increase in the
25 second winter rate block offset by revenue neutral reduction

1 in the uniform rate for the summer first block, summer second
2 block, and winter first block.

3 The small commercial CB and SH class increase
4 was allocated on an equal percentage increase to all rate
5 elements except for the customer charge. And a \$.01 increase
6 in the winter second block rate offset by a revenue neutral
7 reduction in the uniform rate for the summer first block,
8 summer second block, and winter first block.

9 The industrial GP and TEB class increase was
10 allocated as an equal percentage increase to all rate
11 elements except for rate class GP and TEB. There shall be a
12 \$.01 increase in the winter first 150 hours use of meter
13 demand block rate, offset by a revenue neutral reduction in
14 the summer first 150 hours use of meter demand block rate.

15 And for all other classes, the increase will
16 be distributed as an equal percentage increase to all rate
17 elements.

18 And if you want that put in any kind of
19 language other than that, I defer to Mr. Beck.

20 JUDGE STEARLEY: That's quite acceptable. I
21 just wanted that specifically in the record, and I appreciate
22 you going through that.

23 One other question: I know this was a
24 black-box settlement. Was there a rate base amount agreed to
25 by the parties regarding the Iatan plant?

1 MS. KLIETHERMES: There was not.

2 JUDGE STEARLEY: Okay. Is that a matter that
3 the Commission may expect to have litigated in the future?

4 MS. KLIETHERMES: That is a matter potentially
5 subject to litigation in the future.

6 JUDGE STEARLEY: All right. Okay. Also, I
7 noticed the signatories have not objected to an effective
8 date of new tariffs being June 15th; is that correct? And no
9 other party has objected to that? And along with that, no
10 one has objected to the fuel adjustment clause going into
11 effect on June 15th as well; is that correct?

12 MR. MILLS: That's correct, Your Honor. It's
13 mentioned in paragraph 3. My office and -- I'm not speaking
14 for them, but the agreement speaks for them -- the MEUA feels
15 the fuel adjustment clause, in any other circumstance than
16 what's going on in Joplin right now, needs to be taken effect
17 on the first of the month. In these particular
18 circumstances, we're not objecting to it taking effect on the
19 15th.

20 JUDGE STEARLEY: All right. Thank you,
21 Mr. Mills.

22 COMMISSIONER DAVIS: Judge, are we still at
23 the same one ninety-five, five?

24 MS. KLIETHERMES: Yes.

25 JUDGE STEARLEY: All right. I don't have any

1 further questions for the parties. Are there any other
2 questions from the bench this morning?

3 All right. I do plan to have an order on
4 agenda tomorrow for the Commissioners' review, and so the
5 Commissioners will be potentially acting very quickly on
6 this. We are going to expedite the transcripts so that they
7 will be available tomorrow morning as well.

8 Are there any other matters we need to take up
9 at this time? Well, hearing none, we will go ahead and
10 adjourn this proceeding, and I thank you all for appearing
11 this morning.

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CERTIFICATE OF REPORTER

STATE OF MISSOURI)

) ss:

COUNTY OF GASCONADE)

I, JENNIFER L. LEIBACH, Registered Professional Reporter, Certified Court Reporter, CCR #1108, and Certified Realtime Reporter, the officer before whom the foregoing matter was taken, do hereby certify that the witness/es whose testimony appears in the foregoing matter was duly sworn; that the testimony of said witness/es 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 matter 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.

Court Reporter