

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY**

June 8, 2000

CASE NO: EA-2000-764

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

General Counsel
Missouri Public Service Commission
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Jefferson City, MO 65102

Paul A. Boudreau
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312 E. Capitol Avenue, PO Box 456
Jefferson City, MO 65102

Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 8th
day of June, 2000.

In the Matter of the Application of)	
The Empire District Electric Company for)	
an Order Authorizing it to Adopt its)	
Shareholders Rights Plan by Making a)	
Dividend Distribution to All Holders of)	
its Common Stock of Certain Rights,)	
Including, Among Other Things, the Right)	<u>Case No. EA-2000-764</u>
To Purchase Additional Shares of)	
Preference and Common Stock of the)	
Company, to Issue and Sell such Additional)	
Shares of Stock as may be Required by the)	
Exercise of Such Rights.)	

ORDER DENYING MOTION FOR EXPEDITED CONSIDERATION,
ESTABLISHING TIME FOR FILING OF RECOMMENDATION
AND CHANGING CASE NUMBER

The Empire District Electric Company (Empire) filed an Application on May 17, 2000, for a Commission order authorizing it to adopt a new shareholder rights plan and to implement that plan by making a dividend distribution to all holders of its common stock. Empire's existing shareholder rights plan expires on July 25, 2000. On May 19, Empire filed a Motion for Expedited Consideration, asking that the Commission issue an order approving its application no later than June 30, so as to ensure continuity with the existing shareholder rights plan. The Commission issued an order on May 22, directing the Staff of the Public Service Commission (Staff) to file a response to Empire's Motion for

Expedited Consideration on or before May 25. Staff filed its response on May 25.

In its Response, Staff objects to Empire's request that its Application be considered and approved before June 30. Staff points out that the need for expedited consideration of Empire's Application arose only because Empire chose to wait until May 17 to file its Application. The fact that its current shareholder rights plan will expire on July 25 has been known for years and therefore Empire could have filed its Application earlier. Staff states that it will need to closely investigate Empire's Application in light of Empire's pending application to merge with UtiliCorp United Inc. (UtiliCorp). Staff suggests that it might be able to prepare its recommendation by July 14, depending upon Empire's provision of timely responses to Staff's data requests.

On June 2, Empire filed a Reply to Staff's Response. Empire indicated that it did not file its application to extend its current shareholder rights plan earlier because it anticipated obtaining regulatory approval of its proposed merger with UtiliCorp before the expiration of the current shareholder rights plan. When it became apparent that such approval would not be obtained as early as hoped, Empire promptly filed its Application. Empire states that it believes that the extension of its shareholder rights plan is a routine matter that will not require extensive review by Staff. Empire emphasizes that it will fully cooperate with Staff's review by meeting with Staff and providing expeditious responses to any data requests submitted by Staff. Empire suggests that Staff file its recommendations by June 30, so that

Empire will have an opportunity to respond to those recommendations and the Commission can consider the Application before the current shareholder rights plan expires on July 25.

On June 6, the Commission issued a notice to Staff indicating that if it wished to respond to the reply filed by Empire it should do so no later than 3:00 p.m. on June 7. On June 7, Staff filed such a response.

4 CSR 240-2.080(17) provides that a Motion for Expedited Treatment shall set out with particularity the following:

- (A) The date by which the party desires the commission to act;
- (B) The harm that will be avoided, or the benefit that will accrue, including a statement of the negative effect, or that there will be no negative effect, on the party's customers or the general public, if the commission acts by the date desired by the party; and
- (C) That the pleading was filed as soon as it could have been or an explanation of why it was not.

The Commission is willing to expedite its consideration of applications when it is reasonable to do so. However, the Commission also has a duty to carefully consider applications brought before it. In order to fulfill its duty, the Commission must rely on Staff to analyze the application and provide a recommendation regarding the application. If Staff is to provide a reasoned and considered recommendation, it must be allowed sufficient time to examine the application.

Empire's Motion for Expedited Consideration clearly states the date by which it wants the Commission to take action. It does not, however, provide an explanation of why the Application was not filed sooner. It also does not explain the negative effect that may result from the failure of the Commission to act with the speed requested by Empire.

Empire's Reply to Staff's Response further explains the need for expedited consideration and attempts to offer a compromise between Empire's original request and the position of Staff.

Staff's June 7 response indicates that Staff and Empire fundamentally disagree about the nature of Empire's Application. Empire asserts that it is merely a routine extension of an existing program that can be approved by the Commission without an extensive evaluation. Staff is concerned that the Application may create public detriment in the context of current conditions, including the pending merger of Empire with UtiliCorp. Staff states that it must have sufficient time to properly evaluate the Application so that it may make an informed recommendation to the Commission.

Staff suggests that the Commission schedule an early prehearing conference at which Empire could provide Staff with the information, that Staff believes it needs to evaluate the Application. Staff states that it would tell Empire at the end of the early prehearing conference whether or not it will support the Application. If the Staff concludes that it cannot support the Application, then the parties would discuss a procedural schedule to bring this matter to a hearing.

It is not reasonable to expect Staff to prepare its recommendations so quickly as to permit an order regarding Empire's Application to be issued by June 30. Therefore, the Commission will deny Empire's Motion for Expedited Consideration. Nevertheless, the Commission would like to be able to act on Empire's Application before the expiration of the existing shareholder rights plan. Staff's suggestion that the Commission

schedule an early prehearing conference at which the parties can discuss the Application face to face is reasonable to the extent that it proposes a meeting between Staff and Empire. Indeed, Empire offered to meet with Staff in its response. However, there is no reason that the Commission needs to turn such a meeting into a formal prehearing conference. The parties can conduct a face-to-face meeting at anytime that is convenient to them without an order from the Commission. The Commission will accept the compromise date proposed in Empire's response by requiring Staff to submit its recommendation no later than June 30. Presumably, the parties will be able to arrange a meeting prior to that time. The June 30 date will permit the Commission to consider Empire's Application before the expiration of the current shareholder rights plan.

Staff's Response also suggests that this case should be denominated as an "EF" case rather than as an "EA" case. The system used by the Commission to denominate its cases has no impact on the handling of the case and is simply a method for the Commission to track the case. It appears that past cases dealing with the subject matter of this case have been referred to as "EF" cases. In order to be consistent with past practice, the name of this case will be changed to EF-2000-764 and all future pleadings filed in this case shall refer to EF-2000-764.

IT IS THEREFORE ORDERED:

1. That the Motion for Expedited Consideration filed by The Empire District Electric Company on May 19, 2000, is denied.
2. That no later than June 30, 2000, the Staff of the Public Service Commission shall file its recommendations regarding approval or

rejection of the Application filed by The Empire District Electric Company.

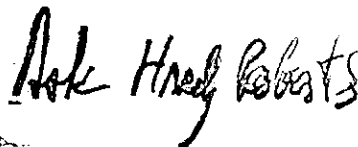
3. That the Office of the Public Counsel may file its recommendations regarding The Empire District Electric Company's Application no later than June 30, 2000.

4. That if The Empire District Electric Company wishes to respond to the recommendations of the Staff or of the Office of the Public Counsel, it may do so no later than July 7, 2000.

5. That the number of this case is changed to EF-2000-764.

6. That this order shall become effective on June 20, 2000.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, somewhat stylized font.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray, Schemenauer,
and Simmons, CC., concur

Woodruff, Regulatory Law Judge

FYI: To Be Issued By Delegation

AL/Sec'y: Woodruff / Bayre

5-30
Date Circulated

6-2
Return by 3 p.m.
10 am

EA-2000-764
CASE NO.

Lumpe, Chair

Drainer, Vice Chair

Murray, Commissioner

Schemenauer, Commissioner

Simmons, Commissioner

6-6 agenda date
5-0 AA Vote

**STATE OF MISSOURI
OFFICE OF THE PUBLIC SERVICE COMMISSION**

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 8th day of June 2000.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

