

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 14th day of
November, 2008.

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
v.)	<u>Case No. EC-2009-0078</u>
)	
The Empire District Electric Company,)	
)	
Respondent.)	

ORDER ADOPTING PROCEDURAL SCHEDULE

Issue Date: November 14, 2008

Effective Date: November 14, 2008

The Commission's Staff filed a complaint against The Empire District Electric Company on September 2, 2008. The complaint alleges that Empire failed to collect line extension and decorative street light charges from a real estate developer in violation of its tariffs, Commission Rules, and Missouri statutes. At the prehearing conference held on October 22, the presiding officer directed the parties to file a proposed procedural schedule. On November 3, Staff and Empire filed separate proposed procedural schedules, explaining that they have been unable to agree on a schedule.

Staff proposes that the Commission schedule the hearing for February 4-5, 2009. Empire complains that February hearing dates would not allow it sufficient time to conduct discovery and prepare for a hearing. In particular, Empire is concerned that Staff's

proposed procedural schedule would require it to prepare and file its rebuttal testimony by January 9, which would require Empire to conduct discovery, identify witnesses, contact third parties, and prepare its testimony during the holidays. Empire proposes the hearing be held May 4-6, with rebuttal testimony to be filed March 5.

Staff filed a response to Empire's proposed procedural schedule on November 5. In that response, Staff, for the first time, expressed a concern that any delay in the hearing could allow the two-year statute of limitations to expire on some of the violations described in Staff's complaint.¹

In its reply to Staff's response, filed on November 7, Empire explained that Staff had announced in a brief filed in another case on February 8, 2008, that it was preparing to file a complaint about this matter. Staff did not, however, file this complaint until seven months later, on September 2, 2008. Therefore, according to Empire, it would be unfair to force Empire to rush its preparation of a defense against Staff's complaint just because Staff was slow to file its complaint.

The Commission is aware of Staff's concern about the running of the two-year statute of limitations. However, Staff's theory is that Empire committed the alleged violations when it provided electric service to numerous structures in a subdivision in violation of its tariff, Commission regulations, and state statutes. According to Staff, Empire began providing electric service to the first of those structures on December 21, 2006, with 38 additional structures beginning to receive service on February 28, 2007. Empire began serving additional structures over the next several months, through October 18, 2007. Therefore, any delay beyond December 21, 2008, would cause some violations to slip

¹ Section 516.390 RSMo imposes a two-year limitation on penalty actions.

beyond the two-year statute of limitations. However, Staff contends that each day that each structure received service is a new and separate violation. As a result, the expiration of some violations would not preclude Staff from seeking penalties for later violations.

Staff's complaint contains multiple counts and alleges that Empire has committed thousands of violations for which Staff asks the Commission to assess financial penalties potentially totaling in excess of \$8 million. Staff does not allege that any violations are ongoing and there is no need to protect any Empire customer from immediate harm. Under the circumstances, the Commission will allow Empire sufficient time to prepare for a hearing.

Empire proposed a procedural schedule leading to the hearing beginning on May 4, 2009. Those dates are no longer available on the Commission's hearing calendar. Empire indicates it would not be available for a hearing in April because of a conflict for its counsel. The Commission does not want to push this hearing back into June, so instead, a hearing will be set in March. That should allow Empire sufficient time to prepare its defense, while being mindful of Staff's concerns about the running of the statute of limitations.

The parties shall comply with the following procedural requirements:

(A) Testimony shall be prefiled as defined in Commission Rule 4 CSR 240-2.130. All parties must comply with this rule, including the requirement that testimony be filed on line-numbered pages.

(B) The parties shall agree upon and Staff shall file a list of the issues to be heard, the witnesses to appear on each day of the hearing, the order in which they will be called, and the order of cross-examination for each witness. The list of issues should be detailed enough to inform the Commission of each issue that must be resolved. The Commission

will view any issue not contained in this list of issues as uncontested and not requiring resolution by the Commission.

(C) Each party shall file a simple and concise statement summarizing its position on each disputed issue.

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

(E) All parties shall bring an adequate number of copies of exhibits that they intend to offer into evidence at the hearing. 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 Presiding Judge, and all counsel.

THE COMMISSION ORDERS THAT:

1. The following procedural schedule is established:

Direct Testimony by Staff	–	November 26, 2008
Rebuttal Testimony by Empire & Public Counsel	–	January 30, 2009
Surrebuttal Testimony by All Parties	–	February 20, 2009
List of Issues, Statements of Position Order of Witnesses, Order of Cross-Examination, Order of Opening	–	February 27, 2009
Prehearing Briefs	–	March 6, 2009
Hearing	–	March 16, 17, & 18, 2009, beginning at 8:30 a.m.

2. The parties shall comply with the procedural requirements set forth in the body of this order.

3. The hearing shall be held at the Commission's office at the Governor Office Building, Room 310, 200 Madison Street, Jefferson City, Missouri. This building meets accessibility standards required by the Americans with Disabilities Act. If you need additional accommodations to participate in this hearing, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 before the hearing.

4. This order shall become effective immediately upon issuance.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton, Jarrett,
and Gunn, CC., concur.

Woodruff, Deputy Chief Regulatory Law Judge