



CIVIL PROCEDURE FORM NO. 8-A(2)

IN THE _____ JUDICIAL CIRCUIT, _____ COUNTY, MISSOURI

FILED
October 29, 2020
Data Center
Missouri Public
Service Commission

Judge or Division:	Public Service Commission Case Number: ER-2019-0374	
Plaintiff/Petitioner: The Empire District Electric Company, Appellant,	Appellate Number:	<input type="checkbox"/> Filing as an Indigent
	Date of Judgment/Decree/Order: (ATTACH A COPY) Issued July 23, 2020, with an effective date of August 2, 2020, followed by an Order of clarification issued August 5 and with an effective date of August 15, 2020	Court Reporter:
vs.	Date Post Trial Motion Filed: July 31, 2020	<input type="checkbox"/> Sound Recording Equipment
Defendant/Respondent: Public Service Commission of the State of Missouri	Date Ruled Upon: October 14, 2020	The Record on Appeal will consist of: ____ Legal File only or <input checked="" type="checkbox"/> Legal File and Transcript

(Date File Stamp)

Notice of Appeal to Missouri Court of Appeals - Civil

District: Western Eastern Southern

Notice is given that <u>The Empire District Electric Company</u> appeals from the judgment/decree/order entered in this action on July 23, 2020, as clarified by Order dated August 5, 2020, with an effective date of August 15, 2020.	
Appellant's Name (If multiple, list all or attach additional pages) The Empire District Electric Company	Respondent's Name (If multiple, list all or attach additional pages) Public Service Commission of the State of Missouri
Address 620 S. Joplin Avenue Joplin, MO 64801	Address 200 Madison Street PO Box 360 Jefferson City, MO 65102-0360
Appellant's Attorney/Bar Number (If multiple, list all or attach additional pages) Erwin O. Switzer, #29653 MO Dawn M. Johnson, #41991 MO Diana C. Carter, MBE #50527	Respondent's Attorney/Bar Number (If multiple, list all or attach additional pages) Shelley Brueggemann, Mo. Bar No. 52173 Jennifer Heintz, Mo. Bar No. 57128
Address Erwin O. Switzer and Dawn M. Johnson: Greensfelder, Hemker & Gale, P.C.: 10 South Broadway, Suite 2000 St. Louis, Missouri 63102 Diana C. Carter: 428 E. Capitol Ave., Suite 303 Jefferson City, Missouri 65101	Address 200 Madison Street PO Box 360 Jefferson City, MO 65102-0360
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Brief Description of Case (May be completed on a separate page)

The Empire District Electric Company requests to generally increase its retail electric service rates in Missouri.

Issues Expected To Be Raised On Appeal (May be completed on a separate page. Appellant is not bound by this list.)

1. The Commission's Order is unlawful, unreasonable, unjust, arbitrary, and an abuse of discretion because it determined a 9.25 percent return on equity ("ROE") for the setting of rates in this case without considering the extremely low equity percentage in the capital structure used to determine Empire's rate of return, which precludes Empire from receiving a return commensurate with returns received on investments in other enterprises having corresponding risks.
2. The Commission's Order is unlawful, unreasonable, unjust, arbitrary, and an abuse of discretion because it used an adjusted, hypothetical capital structure that ignored Empire's actual capital structure in favor of Liberty Utilities Co.'s ("Liberty") capital structure. The total effect of using an adjusted, hypothetical capital structure in conjunction with the 9.25 percent ROE is unjust and unreasonable.
3. The Commission's Order is unreasonable, unjust, arbitrary, and an abuse of discretion in using the capital structure of its parent Liberty to set rates for Empire because the Commission failed to determine whether the ROE recommended by Staff and the Office of Public Counsel ("OPC") for Empire (9.25 percent) should be adjusted to account for Liberty's capital structure, which had a much higher percentage of debt than Empire's capital structure. Specifically, the Order failed to account for or refer to the fact that OPC's ROE expert witness testified that because Liberty's capital structure had a much higher percentage of debt than Empire's capital structure, the ROE for that type of capital structure if used to set rates would be 25 basis points higher than what OPC was recommending for Empire.

Docket Fee Information

The docket fee in the amount of \$70.00 is being tendered with this notice of appeal.

No docket fee is being tendered because:

- a docket fee is not required by law pursuant to _____ (cite specific statute or other authority).
- a motion to prosecute the appeal in forma pauperis has been or will be filed.
- a docket fee in the amount of \$70.00 cannot be tendered at this time but will be submitted at a later date or this appeal will be subject to dismissal pursuant to Rule 84.08(a).

Signature of Attorney or Appellant

/s/ Erwin O. Switzer
/s/ Dawn M. Johnson

Date

October 29, 2020

Certificate of Service on Persons other than Registered Users of the Missouri eFiling System

I certify that on October 29, 2020 (date), a copy of the foregoing was sent to the following by facsimile, hand-delivery, electronic mail or U.S. mail postage prepaid to their last known addresses.

See attached service list.

/s/ Erwin O. Switzer

/s/ Dawn M. Johnson

Attorneys for Appellant

Directions to Clerk

Transmit a copy of the notice of appeal and all attached documents to the clerk of the Court of Appeals and to any person other than registered users of the eFiling system in a manner prescribed by Rule 43.01. Clerk shall then fill in the memorandum below. See Rule 81.08(j). Forward the docket fee to the Department of Revenue as required by statute.

Memorandum of the Clerk

I have this day served a copy of this notice by regular mail registered mail certified mail facsimile transmission to each of the following persons at the address stated below. If served by facsimile, include the time and date of transmission and the telephone number to which the document was transmitted.

I have transmitted a copy of the notice of appeal to the clerk of the Court of Appeals, _____ District.

- Docket fee in the amount of \$70.00 was received by this clerk on _____ (date) which will be disbursed as required by statute.
- No docket fee was received.

Date

Clerk

Additional Parties and Attorneys

List every party involved in the case not listed on page 1, indicate the position of the party in the circuit court (e.g. plaintiff, defendant, intervenor) and in the Court of Appeals (e.g. appellant or respondent) and the name of the attorney of record, if any, for each party. Attach additional pages to identify all parties and attorneys if necessary.

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