

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 22nd day
of April, 2009.

Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
v.)	<u>File No. EC-2009-0288</u>
)	
The Empire District Electric Company,)	
)	
Respondent.)	

**ORDER GRANTING MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM
UPON WHICH RELIEF CAN BE GRANTED**

Issue Date April 22, 2009

Effective Date: May 2, 2009

The Staff of the Missouri Public Service Commission filed a complaint against The Empire District Electric Company alleging that the company violated Missouri law¹ by selling rights to fixed-price forward physical gas contracts without prior Commission approval. For its relief, among other things, Staff requests that the Commission find that Empire's sale of its rights under the contracts is void and authorize the General Counsel's Office to seek penalties against Empire for violating the law. Empire responded by filing a motion to dismiss Staff's complaint for failure to state a claim upon which relief can be granted. Also, the Missouri Energy Development Association filed an amicus curiae brief, which the Commission will consider in making this determination.

¹ Section 393.190.1 RSMo, 2000.

Staff's Complaint

Staff complains that Empire sold rights to future contracts in violation of Section 393.190, which states:

No . . . electrical corporation . . . shall hereafter sell . . . the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public . . . without having first secured from the commission an order authorizing it so to do.

Staff asserts that Empire's rights under the gas contracts are part of Empire's "works or system" necessary or useful in the performance of supplying electricity to the public.

Empire's Motion to Dismiss

Empire argues that Section 393.190.1 does not apply to the sale of rights under a contract for the future purchase and delivery of natural gas. Therefore, Staff has failed to state a claim for which relief can be granted.

Discussion

The Commission agrees with Empire. Futures contracts are not contemplated under Section 303.190.1. Section 1.090 states that:

Words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

"Works" and "system", taken for the plain or ordinary and usual sense, do not include "rights to contracts for the purchase of gas." There is no relief for Staff's claim that Empire has sold rights to futures contracts. Staff's complaint must therefore be dismissed.

THE COMMISSION ORDERS THAT:

1. The Staff of the Commission's complaint against The Empire District Electric Company shall be dismissed.

2. This order shall become effective on May 2, 2009.
3. This case shall be closed on May 3, 2009.

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)

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

Jones, Senior Regulatory Law Judge