

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

The Staff of the Missouri Public	)	
Service Commission,	)	
	)	
Complainant	)	
vs.	)	Case No. EC-2009-0078
	)	
The Empire District Electric Company,	)	
Respondent.	)	

**RESPONDENT’S PROPOSED PROCEDURAL SCHEDULE**

Comes now The Empire District Electric Company (“Empire”), by and through its counsel, and in response to the order issued on October 29, 2008, respectfully states as follows:

1. Representatives of the Staff and Empire have exchanged proposals for the procedural schedule in this case over the past few days but have not been able to agree on all of the pertinent dates. Therefore, Empire is proposing what it believes is a more reasonable schedule.
2. The issue between Staff and Empire on this topic appears to be that Staff thinks Empire should be forced to prepare its rebuttal testimony in a short period of time over the Thanksgiving and Christmas holidays in order for there to be a hearing in late January or early February. Empire firmly believes that it will need more time than the Staff is willing to consent to in order to address what may be a very data-intensive and complex proceeding. Furthermore, there does not appear to be any objective reason why a hearing must be held in late January or early February, as Empire is led to believe the Staff will argue, as opposed to one in early May 2009, which is what Empire is proposing.
3. Empire is simply requesting a reasonable period of time in which to be able to react to what the Staff may allege in its direct testimony, perform discovery on that, and prepare its rebuttal testimony. At this time, Empire has no knowledge of how many direct

witnesses the Staff may present or the scope of the factual allegations that may be contained in such testimony. Staff has requested potentially voluminous customer information from Empire dating back to January 1, 2004. Data requests to date also indicate Staff may seek to involve or make factual allegations about real estate developers and the City of Republic that may require a response or may be contested, or both. These are not parties over which Empire has any control or can necessarily produce prepared testimony from in an expedited and holiday-filled time frame.

4. Empire believes some perspective must be brought to bear on this issue. Staff made a statement in its Post Hearing Reply Brief in Commission case EO-2008-0043, dated February 6, 2008, that Staff believed Empire had violated its tariff in regard to the subdivision at issue in this case, and that the Staff was “preparing a complaint. . .” Staff did not file that referenced complaint until September 2, 2008, some *seven months* after it publicly said it was preparing it.

5. The Complaint filed by Staff is confusing in many aspects. Literally thousands of violations are alleged, but essential facts that are necessary to understand the aspects of these claimed violations have not been divulged. Empire has served discovery on the Staff in an attempt to understand more clearly what Staff is alleging. The response to that discovery is not yet due.

6. The Staff had the advantage of picking the time to file its complaint, knowing full well the events already scheduled on the Commission’s hearing calendar. Staff apparently was not in a great hurry to prepare the complaint, taking approximately seven months for that task. The Staff also had the advantage of picking the date on which it would file its direct testimony for the procedural schedule since Empire indicated to Staff in the prehearing Staff should pick a date that was convenient to Staff. The Staff picked Wednesday, November 26, 2008, which is the day before Thanksgiving. The most recent Staff proposal Empire has seen calls for Empire to file its rebuttal on January 9, 2009. Depending on what are considered “working days” in the holiday period encompassing Thanksgiving, Hanukkah, Christmas, and New Years Day, this gives Empire less than 30 working days to prepare its rebuttal testimony.

7. Because of prior scheduled commitments during the holiday period on behalf of Empire employees and its counsel, imposing an unreasonably short schedule on Empire

to respond with its only permitted prepared testimony essentially deprives Empire of due process. This is because it unnecessarily and arbitrarily constrains Empire's ability to do adequate discovery and preparation of its case in defense of the complaint. Empire will undoubtedly need to do discovery related to what Staff files in direct testimony. The extremely constrained time frame Empire believes will be proposed by Staff is simply not sufficient.

8. Empire is not proposing to unreasonably delay the prosecution of this case since the hearing dates Empire proposes are only about 90 days after those Empire believes the Staff will be proposing. That is less than half the time the Staff took to prepare the Complaint. Empire's proposal also reflects the avoidance of a previously-scheduled event involving Empire's counsel in the first half of April, 2009. This is Empire's proposal, incorporating the date on which Staff has said it wants to file its direct testimony:

Staff direct	November 26, 2008
Empire/OPC rebuttal	March 5, 2009
surrebuttal	March 26, 2009
Issue list/list of witnesses and order of cross	April 2, 2009
Prehearing briefs	April 23, 2009
Hearing	May 4, 5, and 6, 2009

9. At the time this pleading was prepared, there were no previously scheduled hearings for May 4, 5 and 6, 2009, while the calendar for April 2009 appears congested. Empire also believes that three days should be scheduled instead of two due to the potential for several witnesses and a large amount of data that may be under consideration.

10. The Staff's apparent desire to constrain Empire's response time in this case is in stark contrast to the very leisurely pace the Staff took in preparing its complaint for filing. This is not a rate case where the Commission is required by statute to issue an order within a certain period of time. Empire no longer has any customers in the affected subdivision. No customer of Empire is complaining about lack of service, or that Empire

owes it money. In short, there is no objective or compelling reason why a hearing in this case must be held in January or February as sought by Staff.

WHEREFORE, Empire requests that the Commission issue an order adopting the procedural schedule it proposes above.

Respectfully submitted,

***/s/ Gary W. Duffy***

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ATTORNEYS FOR THE EMPIRE DISTRICT  
ELECTRIC COMPANY

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was served by electronic mail this 3rd day of November, 2008, on:

Office of the General Counsel  
Missouri Public Service Commission  
Governor State Office Building  
Jefferson City, Missouri

Office of the Public Counsel  
Governor State Office Building  
Jefferson City, Missouri

***/s/ Gary W. Duffy***

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Gary W. Duffy