

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application)
Of the Empire District Electric)
Company for Authority to Issue)
And Sell Under Its AExisting)
Indenture of Mortgage and Deed)
Of Trust Dated as of September 1,)
1994, as Amended and Supplemented) Case No.
EF-2004-0109
Up to and Including \$200,000,000)
Principal Amount of Its First)
Mortgage Bonds in One or More)
Series and to, Among Other Things,))
Execute and Deliver a Supplemental))
Indenture or Indentures to Provide))
For the Terms of Said Bonds.)

PRE-CONFERENCE HEARING

TRANSCRIPT PROCEEDINGS

VOLUME 1

JUDGE KEVIN THOMPSON, Presiding

DEPUTY CHIEF REGULATORY LAW JUDGE

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Public Service Commission

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JUDGE KEVIN THOMPSON, Presiding
DEPUTY CHIEF REGULATORY LAW JUDGE

Thursday, September 18, 2003
10:00 a.m.
Public Service Commission
200 Madison Street
Jefferson City, MO

REPORTED BY: Monnie S. VanZant, CCR, CSR, RPR
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A P P E A R A N C E S

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I N D E X

WITNESS: GREGORY KNAPP	PAGE
Examination by Mr. Boudreau	6
Examination by Mr. Coffman	8

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
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- 16
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14 My name is Kevin Thompson. I am not the
15 judge assigned to preside over this case. I
16 am filling in for Judge Mills, who is
17 otherwise occupied.

21 MR. BOUDREAU: Very good. Let the
22 record reflect the appearance of Paul A.
23 Boudreau on behalf of the Empire District
24 Electric Company. My address is -- or I'm
25 with the law firm of Brydon, Swearengen &

1 England, Post Office Box 456, 312 East Capitol
2 Avenue, Jefferson City, Missouri.

3 JUDGE THOMPSON: Thank you, sir.
4 Staff?

5 MR. FREY: Thanks, Judge.
6 Representing the staff of the Missouri Public
7 Service Commission, Dennis L. Frey and Steve
8 Dottheim, P.O. Box 360, Jefferson City,
9 Missouri, 65101.

10 JUDGE THOMPSON: Thank you, Mr.
11 Frey. Public counsel?

12 MR. COFFMAN: Yes. Appearing on
13 behalf of the Office of Public Counsel, John
14 B. Coffman, P.O. Box 7800, Jefferson City,
15 Missouri, 65102.

16 JUDGE THOMPSON: Thank you. I have
17 here an application filed on August 25th, a
18 motion for expedited treatment filed
19 simultaneously, which requests that the
20 Commission issue its order granting the
21 requested authority no later than September
22 19th, which is set tomorrow.

23 MR. BOURDREAU: That's tomorrow.

24 JUDGE THOMPSON: That is tomorrow.
25 To be effective no later than September 30th.

1 I have staff's response filed, I think, the
2 29th perhaps?

3 MR. BOUDREAU: I believe that's
4 correct.

5 JUDGE THOMPSON: Telling me that
6 they -- they look with disfavor upon the
7 request for expedited treatment and explaining
8 that they can't possibly file their memo
9 before November 26th. Then there is a reply
10 filed by the company, I believe, September
11 5th, explaining that there is a treasury lock
12 forward transaction, a phrase pregnant with
13 meaning but absolutely obscure to someone like
14 me, which will expire by October 15th, and
15 that this creates an exigency requiring that
16 the Commission act in an expedited manner. So
17 why don't we begin by having someone explain
18 to me what a treasury lock forward transaction
19 is?

20 MR. BOUDREAU: That would probably
21 fall to me if -- if it -- if it's okay with
22 everybody.

23 JUDGE THOMPSON: Are we going to
24 have to take expert testimony on this?

25 MR. BOUDREAU: I may want to defer

1 to Mr. Knapp to explain in summary fashion, if
2 that's acceptable to everybody else. I don't
3 know if you need to swear him in or just for
4 information purposes your -- we can just have
5 Mr. Knapp explain the instrument.

6 JUDGE THOMPSON: Mr. Knapp, why
7 don't you come on up and sit in my witness
8 chair?

9 MR. KNAPP: Yes, sir.

10 JUDGE THOMPSON: State your name,
11 please.

12 MR. KNAPP: Gregory A. Knapp.

13 GREGORY A. KNAPP,
14 being first duly sworn to testify the truth, the whole
15 truth, and nothing but the truth, testified as follows:

16 JUDGE THOMPSON: Thank you. You may
17 inquire.

18 DIRECT EXAMINATION

19 BY MR. BOUDREAU:

20 Q Thank you. Mr. Knapp, would you please
21 explain for the benefit of the hearings
22 officer and actually for your own lawyer and
23 the other lawyers in the room what a treasury
24 lock forward instrument is in -- is in as
25 concise a way as you can?

1 A Right. Okay. It -- this agreement -- this --
2 this arrangement is -- an arrangement whereby
3 the company entered into a contract with a
4 third party, another party, someone I'll call
5 a counter party, in this case, it is our
6 investment banker, to lock in an interest rate
7 that is tied to -- in the case of the one
8 we're talking about here, the 30-year treasury
9 notes.

10 JUDGE THOMPSON: So just like when I
11 go to refinance my house, and I want to lock
12 in my rate?

13 A Exactly.

14 JUDGE THOMPSON: Okay.

15 A We entered into an arrangement to enter into
16 this lock. The lock is for a certain amount
17 of money for a certain lengths of time. The
18 time frame that is part of this contract does
19 expire October 15th. So our interest rate
20 lock that we would have is good through the
21 15th of October. At that point, to the extent
22 we finance after that point, we're subject to
23 interest rate fluctuations from the point of
24 that lock to whatever the interest rate
25 happens to be.

1 JUDGE THOMPSON: Thank you. Thank
2 you, Mr. Boudreau. Mr. Frey?

3 MR. FREY: Yes, your Honor.

4 JUDGE THOMPSON: Any questions?

5 MR. FREY: I have no questions, your
6 Honor.

7 JUDGE THOMPSON: Mr. Coffman?

8 MR. COFFMAN: Yes.

9 EXAMINATION

10 BY MR. COFFMAN:

11 Q When did you enter into this agreement to lock
12 in an interest rate?

13 A In the middle of May.

14 Q Okay. And why didn't Empire District Electric
15 Company file its application back in May?

16 A We had some finance -- we actually entered
17 into two --

18 MR. BOUDREAU: I -- at this point, I
19 realize that Mr. Knapp's taken the stand to
20 explain what this is, but it is turning out to
21 be a hearing on the merits, I think.

22 JUDGE THOMPSON: I agree.

23 MR. BOUDREAU: And it may be unfair
24 to everybody in the room, not the least of
25 which is Mr. Frey, who on my representation I

1 don't think had all his folks down here. I
2 thought I was going to be late.

3 JUDGE THOMPSON: I understand. And
4 you're absolutely right. The only reason we
5 put Mr. Knapp up was so he could tell us what
6 a treasury lock forward transaction is. I
7 don't think it's -- it's fair to any of the
8 parties, and more particularly, I think the
9 Commissioners would be awfully hot if we went
10 ahead and entered into an evidentiary hearing
11 on whether or not this expedited motion ought
12 to be granted or not in their absence. So I'm
13 going to go ahead and shut down this line of
14 questioning, relevant and material as it is,
15 for another time if necessary.

16 MR. SWEARENGEN: Just as a
17 housekeeping matter, your Honor, perhaps
18 Mr. Knapp ought to say what his position is
19 with the Empire District Electric Company so
20 we do have that on the record.

21 JUDGE THOMPSON: Well, that's a good
22 point. Why don't you fill us in on what you
23 do for Empire?

24 MR. KNAPP: I am the vice president
25 of finance, chief financial at Empire.

1 JUDGE ATHOMPSON: Thank you. You
2 may step down. All we wanted was the
3 definition. And any other allegation,
4 innuendos or smears can be done just through
5 written pleadings as necessary to move this
6 thing along.

7 MR. BOUDREAU: Fair enough.

8 JUDGE THOMPSON: Okay. Now that we
9 know what that is and why it's important to
10 the company, it's obvious that nothing's going
11 to happen by tomorrow. I think the company
12 can see that that is case. So the question,
13 then, is when can something happen? I'm not
14 -- I don't know that anyone is actually
15 opposed to the transaction, that anyone's got
16 to the point where they're saying this is a
17 bad, bad thing for the rate payers or it's a
18 bad, bad thing for Missouri or what have you.
19 So I don't think we're in that position, at
20 least not yet. I think there has certainly
21 been some skepticism by staff and it appears
22 by public counsel as to the pace. Is that
23 fair, Mr. Coffman?

24 MR. COFFMAN: I'm simply curious.

25 JUDGE THOMPSON: Okay. You're

1 curious. Okay. I'm just reading that into
2 the questions that you sought to ask of Mr.
3 Knapp. So leaving all those issues of, gosh,
4 could you have filed this thing sooner, why
5 didn't you call staff and tell them this was
6 coming and all that kind of stuff, let's leave
7 all that aside. And, instead, what I'd like
8 to do is have you all open a -- a fruitful
9 discussion on just how quickly this thing can
10 happen, assuming that no one finds anything in
11 all these indentures and what have you to
12 raise a red flag. Okay?

13 I can tell you that I think assuming that
14 everything else is in order that this is a
15 reasonable kind of transaction that utility --
16 utility companies enter into and it's a
17 reasonable amount and the purposes are
18 sensible. All those things being equal, I
19 think the Commissioners would look kindly upon
20 the idea of, well, let' grab a good rate
21 because, after all, the -- the rate payers
22 will pay less, will they not, to pay back this
23 money? So I think you will find that the
24 Commission is perhaps not going to be
25 disfavorable to the idea of acting as quickly

1 as reasonably possible. But, of course, that
2 is the operative term. What is reasonably
3 possible? I have no idea what staff has to do
4 to review one of these things. I have no idea
5 what you guys do to review one of these
6 things. I don't know how quickly it could be
7 done. I realize have you lots and lots and
8 lots of other work to do and I could, you
9 know, give you a list of other things I have
10 to do, too..

11 MR.FREY: Judge, thank you. It
12 probably is something of an over-statement to
13 suggest at this point that the staff doesn't
14 have substantive concerns with the
15 application, at least at this point. It's not
16 strictly a matter of how fast can we can do
17 this. We -- we did attempt to indicate
18 concern, for example, about the interest rates
19 ceiling --

20 JUDGE THOMPSON: I saw that.

21 MR. FREY: -- in the pleading.

22 JUDGE THOMPSON: Okay.

23 MR. FREY: And as you've noted and
24 as -- and has come out at this point, we were
25 blind-sided as we indicated to the pleading.

1 And then we found out later about this
2 derivative instrument. And so this raises a
3 number of other questions that we have in
4 connection with this application. So it -- it
5 isn't strictly a matter of going through a
6 routine exercise and just trying to find a way
7 to get to the end of the road. We have some
8 serious inquiry, I think, that we're going to
9 have to do. And also discussions with the
10 company, perhaps today, to help move this
11 process forward.

12 JUDGE THOMPSON: Okay. Well, I
13 think that's all very reasonable, and I
14 understand those things. Nonetheless, is
15 there -- is there any possibility that staff
16 could come up with a memorandum or file a
17 pleading opposing the transaction if, in fact,
18 that's what staff decides is the right thing
19 to do sooner than Thanksgiving?

20 MR. FREY: Well, that provides
21 another opportunity, I guess, to perhaps
22 correct at least an implication that your
23 comments may have made. I think you said
24 earlier that the staff indicated it was not
25 possible to file a recommendation in this case

1 before November 26th.

2 JUDGE THOMPSON: Uh-huh.

3 MR. FREY: I believe we said no
4 later than November 26th. I don't think we
5 meant to foreclose the possibility of getting
6 it done sooner than at the time.

7 JUDGE THOMPSON: The staff indicated
8 a range and that was the end point of the
9 range.

10 MR. FREY: I don't think we
11 indicated a range. We just simply said that
12 we would file no later than November 26th.
13 But didn't -- again, did not --

14 JUDGE THOMPSON: Well, excuse me.
15 As a judge, it's been my experience when a
16 lawyer tells me he's going to get me something
17 more later than X, I sure don't get it before
18 X, do I?

19 MR. FREY: Fair point.

20 JUDGE THOMPSON: That's just
21 speaking from my position, but I hold out the
22 possibility that that could happen. It could
23 happen. What I want to know is how quickly --
24 what would be the early side of that range
25 that staff could perhaps act by?

1 MR. FREY: Again, your Honor, I
2 don't know that there's an early side. And
3 perhaps this would be -- it would be
4 appropriate to allow Mr. Schallenberg (ph.) to
5 speak on this issue if that's agreeable to --
6 to everyone.

7 JUDGE THOMPSON: Well, then
8 somebody's going to want to cross-examine him
9 and get him to say stuff, and the
10 Commissioners aren't here to listen to all
11 that. So I'll --

12 MR. FREY: Then I'll have to consult
13 with my client.

14 JUDGE THOMPSON: I'll let you do
15 that off the record. Okay? What we're going
16 to do we're going to finish up the recorded
17 portion of this. We're going to go off the
18 record, let you guys discuss whatever you want
19 to in here without myself being present. I
20 will just tell you what Judge Mills told me to
21 tell you, which is that if you can't find a
22 date, he's going to pick one. And it's not
23 going to be as late as the one staff suggested
24 and it's not going to be as early as the one
25 the company suggested. It's going to be

1 somewhere in between. And he doesn't much
2 care who is more irritated by it. Okay? So I
3 suggest that you talk talk among yourselves
4 and come up with a date that you can live with
5 or else Judge Mills is going to find a date
6 that you'll have to live with. All right.
7 Anything further?

8 MR. BOUDREAU: No.

9 JUDGE THOMPSON: Thank you very
10 much. Nice to see you all this morning. The
11 recorded portion is now adjourned.