

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

In the Matter of The Empire District Electric)
Company of Joplin, Missouri for Authority to File)
Tariffs Increasing Rates for Electric Service)
Provided to Customers in the Missouri Service)
Area of the Company)

File No. ER-2010-0130

**CONCURRING OPINION OF
COMMISSIONER TERRY M. JARRETT**

I concur in the result of the Order Approving Unanimous Stipulation and Agreement. However, I once again find myself at odds with the Commission's failure to follow Missouri law regarding the required contents of a Commission Order approving a stipulation and agreement. While I applaud the parties for negotiating a settlement and saving the time and expense of holding weeks of evidentiary hearings, that does not excuse the Commission's failure to issue a legally sufficient order.

I wrote at length on this issue in my concurring opinions in File Nos. ER-2009-0089, ER-2009-0090, and HR-2009-0092, and I will not repeat that discussion here. However, I will briefly set out the law concerning the approval of stipulations by an administrative body.

Section 536.090 allows the Commission to issue decisions in contested cases when they are disposed of by stipulation without separately stating findings of fact and conclusions of law. Nevertheless, this does not relieve the Commission of its statutory duty to evaluate the facts and make a conclusion that the agreement provides for just and reasonable rates, provides for safe and adequate service, and is in the public interest. The signatories to the agreement may believe that it does, but the Commission must decide if this is so based upon the factual record. Missouri Courts, interpreting Section 386.420, have held that in contested cases (proceedings in which

legal rights, duties or privileges of specific parties are required by law to be determined after hearing¹) the Commission must include findings of fact in its written report.² Merely adopting a stipulation and agreement is insufficient and does not satisfy the competent and substantial evidence standard embodied in the Missouri Constitution, Article V, Section 18.³ Consequently, the law requires the Commission to include separately stated findings of fact and conclusions of law supporting its decision in this matter.

The Commission in its Order not only ignores this law, it misstates the law. On page 3 of the Order, it states, absent citation to any legal authority: “Consequently, because the case is being disposed of by stipulation and agreed settlement, the Commission need not make findings of fact or conclusions of law.” (Emphasis mine). That statement is not the law in Missouri. Accordingly, I believe that the Order is legally deficient.

Because deciding whether rates are just and reasonable is a *conclusion of law*, the Commission must independently and impartially review the facts of any case, including one where a proposed stipulation and agreement has been submitted for approval. I do not believe that the Order in this case shows that the Commission made such an independent and impartial review. I am not implying that such an independent and impartial review did not take place; in fact, this Commissioner did perform an independent and impartial review of the facts in this case. Based upon my review, I have made an independent conclusion that the proposed

¹ Section 536.010(2), RSMo 2000.

² Section 386.420, RSMo 2000; *State ex rel. Monsanto Co. v. Public Serv. Comm'n of Missouri*, 716 S.W.2d 791, 794-795 (Mo. banc 1986); *State ex rel. Rice v. Public Serv. Comm'n*, 359 Mo. 109, 220 S.W.2d 61, 65 (Mo. banc 1949); *State ex rel. Fischer v. Public Serv. Comm'n*, 645 S.W.2d 39, 42-43 (Mo. App. 1982). The competent and substantial evidence standard of Article V, Section 18; however, does not apply to administrative cases in which a hearing is not required by law. *State ex rel. Public Counsel v. Public Serv. Comm'n*, 210 S.W.3d 344, 354-355 (Mo. App. 2006), abrogating holdings in *State ex rel. Coffman v. Public Serv. Comm'n*, 121 S.W.3d 534 (Mo. App. 2003) and *State ex rel. Acting Pub. Counsel Coffman v. Pub. Serv. Comm'n*, 150 S.W.3d 92, 101 (Mo. App. 2004) where the court of appeals had decided findings of fact were required in non-contested cases.

³ *Id.*

agreement does provide just and reasonable rates that are in the public interest, while ensuring safe and adequate service.

Therefore, despite my serious concerns about the form of the Order, I concur.

Respectfully Submitted,



Terry M. Jarrett, Commissioner

Dated in Jefferson City, Missouri,
this 19th day of May, 2010.