

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Prehearing Conference
8 October 27, 2009
9 Jefferson City, Missouri
Volume 1

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12 Tammie Lynn Powell,)
)
13 Complainant,)
)
14 v.) Case No. EC-2009-0449
)
15 The Empire District Electric)
Company,)
16)
Respondent.)

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DANIEL R.E. JORDAN, Presiding,
20 REGULATORY LAW JUDGE

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22 REPORTED BY:

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1 P R O C E E D I N G S

2 JUDGE JORDAN: The Missouri Public Service
3 Commission calls the Case No. EC-2009-0449, Tammie Lynn
4 Powell vs. The Empire District Electric Company. I am
5 Daniel Jordan, the Regulatory Law Judge assigned to this
6 case.

7 I will begin by taking appearances, and
8 I'll also want recitations of client representatives also
9 on the record. We'll start with Ms. Powell. Ms. Powell,
10 would you state your name for the court reporter and make
11 sure we get the spelling right, please.

12 MS. POWELL: Yes. It's Tammie Lynn Powell,
13 T-a-m-m-i-e, L-y-n-n, P-o-w-e-l-l.

14 JUDGE JORDAN: Thank you. Do you have
15 anyone else with you today, Ms. Powell?

16 MS. POWELL: No.

17 JUDGE JORDAN: Okay. For The Empire
18 District Electric Company?

19 MR. COOPER: Dean L. Cooper from the law
20 firm of Brydon, Swearngen & England, P.C., P.O. Box 456,
21 Jefferson City, Missouri 65102, appearing on behalf of the
22 Empire District Electric Company.

23 JUDGE JORDAN: And client representatives,
24 Mr. Cooper?

25 MR. COOPER: We also have on the line

1 Mr. Terry Oliver and Ms. Ann Butz.

2 JUDGE JORDAN: Thank you. And for the
3 Commission Staff?

4 MR. RITCHIE: For the Staff of the Missouri
5 Public Service Commission, Samuel D. Ritchie,
6 R-i-t-c-h-i-e, P.O. Box 360, Jefferson City, Missouri
7 65102, and I have Gay Fred with me from consumer services.

8 JUDGE JORDAN: Okay. And I'm going to ask
9 if there's anyone here from the Office of Public Counsel?
10 I don't see anyone, and I don't hear anyone. So we'll
11 begin with this conference.

12 This proceeding is going to be on the
13 record. We're going to discuss procedure, should we go to
14 hearing. We're going to talk -- we're going to reflect on
15 the substantive law that governs this action, and I hope
16 that we can discuss settling. We're not going to present
17 evidence today. This is just a prehearing conference.
18 We're going to talk about what we would talk about if we
19 were to go to hearing.

20 And when that's done, I'm going to leave
21 this line open so that the parties can discuss settlement
22 off the record outside of my presence, and the reason I'm
23 going to do that is so that the parties can speak freely
24 as to sensitive matters that they might not want me to
25 hear about just yet.

1 I will also remind the parties that the
2 Missouri Public Service Commission offers mediation
3 services. Should they be unable to settle this case but
4 would like to try a little further, the Commission will
5 appoint a mediator, someone other than me, to help the
6 parties work out various issues. In my experience, that's
7 been very helpful. Any questions so far?

8 MS. POWELL: No.

9 JUDGE JORDAN: Okay. And so not hearing
10 any, let's begin with the background of this action. It
11 is a formal complaint, which according to statute brings
12 to us just one issue really, which is whether the Empire
13 District Electric Company has been following or violating
14 the rules that govern it. And when I say rules, I mean a
15 few things. I mean statutes, but I also mean the
16 schedules on file with the Commission called tariffs that
17 govern how it will do business, and that includes the
18 setting of rates and the procedures for collection of
19 amounts due.

20 If we go to hearing, I will make a decision
21 on the record, and the record will consist of matters
22 entered into evidence. This is a -- this will be a formal
23 hearing governed by the law of evidence, relaxed a little
24 bit since there's no jury. I'm going to give you a
25 statute number that governs evidence, and that is in the

1 Revised Statutes of Missouri, Section 536.070. That is
2 536.070. Only according to the laws of evidence can
3 information come in for the Commission to make its
4 decision.

5 And when that hearing is concluded, I will
6 review the evidence and I will review any written
7 arguments, that is to say briefs that the parties wish to
8 submit, and then my job will be to recommend a decision to
9 the Commission itself. The Commission makes the final
10 decision here, not me.

11 But do bear in mind that this is a trial.
12 It is an evidentiary trial. The order of proof I
13 anticipate would be as follows: First Ms. Powell would
14 present her evidence, then the utility would get a chance
15 to respond, and then Staff would go last in the order of
16 proof.

17 Our reporter would prepare a written
18 transcript, which the parties can use to present -- to
19 prepare written argument, and that's how I make my
20 recommendation to the Commissioners.

21 Any questions about that -- about that
22 procedure as I've described it?

23 MS. POWELL: No.

24 JUDGE JORDAN: Okay. I don't hear any --
25 Ms. Powell says she doesn't have any questions. I don't

1 hear any questions from anyone else.

2 What I'm considering doing is issuing an
3 order at the close of this prehearing conference to tell
4 the parties why I should not set this matter for hearing,
5 and I would -- I'm contemplating making a response to that
6 due at the end of the week.

7 And the reason I would do that is because
8 this matter may not have to go to hearing. It is my
9 experience that parties can work out a better solution
10 than the Commission impose on them. The Commission is the
11 person in the room that knows the least about it, about
12 this case. The parties know much more what they want,
13 what they need, what their background is, and that's
14 why -- that is why the law generally encourages settlement
15 of matters.

16 But do bear in mind, I want to make this
17 clear to everyone, that if you want, you always have the
18 right to a hearing. I won't discourage anyone from going
19 to hearing or giving up what they need just to make peace.
20 You have the right to a hearing and we can do that.

21 So let me ask the parties, and I'll start
22 with the Complainant -- the Empire and Staff can also
23 chime in if they want -- can you give me an idea of where
24 we are on the possibilities for settlement on this case?
25 Who would like to start?

1 MR. COOPER: Well, you could -- I will,
2 your Honor, for the company. You can see from the
3 documents that have been filed in the case that Empire's
4 attempt has been -- well, it has started with the concept
5 that the meter in question did not register for
6 approximately ten months. Empire has computed estimated
7 usage and proposed to charge Ms. Powell for six of those
8 ten months, which I guess I would view as a settlement
9 attempt.

10 I believe Ms. Powell, and she obviously can
11 speak for herself, was not interested in that offer, and
12 I -- I don't know that there has been any other proposals
13 made other than the six months or zero.

14 JUDGE JORDAN: Let me make sure I
15 understand the background of this. We had a ten-month
16 period during which there was -- the meter was not
17 registering; is that correct?

18 MR. COOPER: That's correct.

19 JUDGE JORDAN: Okay. The bills -- there
20 were bills sent to her but they were only for the
21 connection fee and not for the energy consumed; is that
22 correct?

23 MR. COOPER: That's correct. Terry, do you
24 want to confirm that?

25 MR. OLIVER: That is correct.

1 JUDGE JORDAN: Okay. I appreciate that.
2 Now, you've sent out an estimate, not for the whole ten
3 months, but for six months?

4 MR. COOPER: For six months, essentially
5 the last six months of that ten-month period.

6 JUDGE JORDAN: And the estimate was based
7 on the previous year's usage; is that correct?

8 MR. COOPER: That's correct.

9 JUDGE JORDAN: Okay.

10 MR. COOPER: And I believe in Staff's
11 report, Staff indicates their belief that the weather was
12 similar for those two years.

13 JUDGE JORDAN: Right. I remember a mention
14 of heating degree days. Okay. And I take it it's the
15 company's position that this complies with its tariff and
16 all statutes and regulations?

17 MR. COOPER: It is. The company believes
18 it has the right to estimate a customer's usage when a
19 meter is not registering, such as this situation, and then
20 the Commission rule, I guess it's 4 CSR 240-13.025, allows
21 the company to go back for a period of up to 12 months,
22 and, of course, the company has offered to go back for
23 something less than that.

24 JUDGE JORDAN: Right. Ms. Powell, have
25 there been any offers of settlement other than what

1 Mr. Cooper has mentioned?

2 MS. POWELL: No, sir, there hasn't. And
3 for two months prior to this meter going out, I had called
4 Empire representatives at the Joplin office and I let them
5 know that there was something wrong with this meter that
6 was out here, and I was told it was checked. I was even
7 told not to call back or I'd have charges filed against
8 me.

9 They said they checked the meter, and I
10 told them, well, send somebody out again and let me show
11 you how I can shut my main breaker down and that meter
12 will still spin. There's obviously a problem.

13 The meter was one of the oldest meters I've
14 seen. Why they didn't just change it out at that point,
15 that way we knew it was there already, I don't understand
16 that. And if they were watching my meter so closely to
17 see if it was working correctly or not, the proof is in
18 the pudding.

19 Why did it take them ten months to realize
20 it wasn't working after I had -- and that's even after I
21 had called them for two months saying this meter is not
22 right, this meter needs changed. If it would have been
23 changed to begin with, this is just proper work ethics,
24 business ethics right there.

25 JUDGE JORDAN: Okay. Let me stop you

1 there, make sure I understand what you're saying. You're
2 saying that for two months before the disputed period,
3 your meter was billing you incorrectly, that it was
4 registering more energy use than you consumed; is that
5 correct? Do I understand that?

6 MS. POWELL: Yes, that's correct.

7 JUDGE JORDAN: Okay. Are you suggesting
8 that, whatever overbilling that might be, might constitute
9 a setoff to the estimated billing?

10 MS. POWELL: I believe what it constitutes
11 is that when a customer calls and says, look, I can flip
12 my main breaker off, which should stop the meter, and it's
13 still spinning, that it should be checked out, and I was
14 told it was checked. One time I was told it was checked
15 once. Another lady told me it had been checked twice.
16 How many times it was checked, I don't know.

17 But nonetheless, the point was I asked them
18 to send somebody out while I'm home so I could show them
19 that when I shut my breaker off, it still spins. They
20 refused to do that. It was obvious just by looking at the
21 meter that it was one of the older meters around.

22 Why it would have been so difficult to just
23 put a new meter in at some point during the two months
24 when I was complaining that this meter isn't any good, and
25 then the stress it caused me, worrying about it, and then

1 I was even told don't call back or I'd have charges
2 pressed against me. You know, I stressed every month that
3 I got a small bill just waiting, when are they going to
4 figure this out? You know, I had called them for two
5 months.

6 All the money they have coming in, you just
7 figure up just in the city limits of Joplin the money that
8 Empire District has coming in, why isn't any of that money
9 being put back out here on the upkeep and maintenance of
10 the electrical equipment?

11 JUDGE JORDAN: Okay. So it sounds to me
12 like what you're complaining about here is a service
13 issue, that they didn't replace your meter when they
14 should have. Have I got that right?

15 MS. POWELL: Yes, sir.

16 JUDGE JORDAN: All right. Okay. And that
17 you believe is a violation of the rules under which they
18 must operate?

19 MS. POWELL: I do believe that that should
20 be an ethical rule of business, that when there's
21 obviously a meter that's that old that somebody is
22 continually complaining about, to just replace it. They
23 replaced it eventually anyway. Why couldn't they have
24 just done it sooner? That way it would have been fair to
25 all parties.

1 JUDGE JORDAN: Okay.

2 MS. POWELL: If they would have listened to
3 me to begin with, I wouldn't be going through any of this
4 stress.

5 JUDGE JORDAN: All right. Is there
6 anything further or in addition that you want to tell us
7 about this service problem that seems to be the -- at the
8 heart of your complaint?

9 MS. POWELL: Well, I can tell you this.
10 Right after that ice storm in December of '07, everybody's
11 bill was sky high. Why, I don't understand. It was on
12 the news. It was even -- it's a fact. People's bills
13 were running double what it should have. And if there
14 wasn't even any electric for a whole week in most people's
15 homes the month it was billed, that the electric bills had
16 skyrocketed.

17 Is that -- was that actually customers'
18 usage or was that, hey, we're going to have to really
19 overcharge everybody this month to help pay for some of
20 the repairs? What was that?

21 JUDGE JORDAN: Okay. So this was after an
22 ice storm in 2007; is that correct?

23 MS. POWELL: Yes.

24 JUDGE JORDAN: End of 2007, was that about
25 right?

1 MS. POWELL: Yes.

2 JUDGE JORDAN: Now, are you saying that
3 you've suffered billing errors as a result of the events
4 that you described?

5 MS. POWELL: Yes.

6 JUDGE JORDAN: All right. And what else
7 would you like to tell -- to say about that just now?

8 MS. POWELL: Well, the only thing I really
9 have to say about it is Empire is a big, you know,
10 corporation, and for them, you know, to just turn their
11 backs on complaints about things rather than actually
12 checking into it the way it should be checked into and
13 correcting the problem should not be something that we
14 have to -- the customers have to stress about.

15 JUDGE JORDAN: Okay.

16 MS. POWELL: They're making plenty enough
17 money to keep the maintenance on the electrical equipment
18 up to date.

19 JUDGE JORDAN: Okay. Were there any other
20 incidents that you intended to raise in your complaint as
21 to service or billing or anything else?

22 MS. POWELL: Well, you know, when I called
23 to complain about this meter, I wasn't treated with the
24 respect I feel like I should have had. I am a human
25 being, and I'm here just like everybody else trying to get

1 through life. And when somebody calls the electric
2 company and says, look, I can shut my breaker off and it's
3 still spinning, you know, I was treated horribly,
4 horribly, and I didn't appreciate it.

5 I have always -- I'm just like everybody
6 else. I want to pay my bills. I like to be able to pay
7 them before they're even due. I struggle just like
8 everybody else in my neighborhood does. But I don't
9 appreciate being treated like an idiot.

10 JUDGE JORDAN: Okay. So that sounds like
11 another service-related issue to me. Was there any
12 other -- any other incidents that you wanted to bring up
13 in your complaint, or does that pretty much cover it?

14 MS. POWELL: Well, when the representative
15 came out here to change the meter, you know, he even
16 remarked on how old that meter was. And I even asked him,
17 I said, why did it take you guys this long to finally, you
18 know, figure out there's something wrong with this meter
19 when I had called for two months? He didn't have an
20 answer for that.

21 If this meter is being read every month and
22 being, you know, checked like they said it was because of
23 my complaint, then why did it take them that long? I
24 don't think they ever checked it to begin with. I believe
25 it stopped because of burnup because it was spinning -- it

1 was being overcharged somehow. There was some kind of an
2 electric charge that shouldn't have been there. I don't
3 know how electricity works, and I don't work for Empire,
4 but it doesn't take a brain surgeon to know, when you shut
5 your main breaker off, that that meter should stop.

6 JUDGE JORDAN: Okay. So your complaint is
7 of the -- of obsolete equipment, defective equipment, as
8 well as the charges on your -- of the estimated bill.
9 Anything else that you'd like to mention before I go over
10 to Staff?

11 MS. POWELL: No, not that I can think of
12 right at this moment.

13 JUDGE JORDAN: Okay. Thank you,
14 Ms. Powell. Staff is a neutral party here and assists the
15 Commission. Mr. Ritchie, do you know of any other
16 settlement -- any settlement offers that are in place,
17 that are on the table just now?

18 MR. RITCHIE: I am not aware of any others,
19 Judge.

20 JUDGE JORDAN: Okay. All right. Well, I
21 think that's about all I can do for the parties right now,
22 unless they have any questions for me. Okay. I'm not
23 hearing any questions.

24 MR. COOPER: Let me ask you this, your
25 Honor. How would you envision the hearing in this matter?

1 Would you envision it being a live hearing, no prefiled
2 testimony?

3 JUDGE JORDAN: Well, the parties can file
4 prefiled testimony if they want to, as far as I know.
5 Nothing stops them from doing that, the Commission's
6 regulations. But yeah, I would anticipate -- well, a
7 hearing means the presentation of evidence and the ability
8 to object to evidence and to cross-examine witnesses. So
9 yeah, I do anticipate a live presentation of witnesses.

10 MR. COOPER: Well, I guess as opposed to,
11 you know, prefiled direct testimony or something that
12 might be done in some of the Commission's cases.

13 JUDGE JORDAN: Right. Right.

14 MR. COOPER: And I guess my concern with
15 that to some extent is, it's not a proceeding where we
16 have a real clean petition that sets out exactly what is
17 going to be at issue. I've got witnesses that will be
18 three hours away or so. To the extent new things come up,
19 it's going to be hard to get the right service personnel
20 and those sort of people here unless we have a reasonably
21 well defined statement of what -- what the allegations are
22 going to be, and maybe we do after today.

23 Maybe if we're going to limit it to the
24 things we heard today, maybe we can deal with that and
25 have the appropriate personnel. But just the list that we

1 talked about today may require a number of people to be
2 presented to deal with those things.

3 MS. POWELL: Excuse me.

4 JUDGE JORDAN: Yes, Ms. Powell.

5 MS. POWELL: Like I said, the proof is in
6 the pudding. If they were watching this meter at all
7 after my complaint, it wouldn't have took them ten months
8 to realize that it wasn't moving, just like they should
9 have realized that it was spinning out of control when I
10 was calling. That right there is the proof to me.

11 And the phone calls I made to Empire
12 between January and -- the month of January and February
13 should have been recorded. And, you know, I welcome those
14 recordings because the way I was treated on that phone was
15 completely uncalled for.

16 JUDGE JORDAN: Okay.

17 MS. POWELL: Every time I called, I was a
18 little bit -- I was more mad, I was a little bit madder,
19 because I was being snubbed off and ignored.

20 JUDGE JORDAN: Okay. I'm going to first
21 address Mr. Cooper's question, which has a few topics, and
22 these will be important for you also. The first question
23 is, what issues are in the complaint? I think we've
24 nailed those down pretty well in this prehearing
25 conference. That's part of why I do what I do, to make

1 sure we all know what is at issue here, and we have the
2 service issues that have been described and also the
3 billing issue that's been described. Okay. So those are
4 the violations of tariff or statute at issue.

5 MS. POWELL: I would like to say one more
6 thing. Had they dealt with my phone calls appropriately
7 and changed the meter, like I say, I wouldn't be going
8 through any of this. And had I not called and tried to
9 tell the representatives at Empire that this meter needed
10 replaced, I could understand them wanting to bill me for
11 all that.

12 But when I called and called to the point I
13 was told not to call anymore, no, I do not feel like that
14 is fair for them to let this problem go on so long and
15 then come back and try to nail me with a big bunch of
16 money when I had tried to tell them to begin with.
17 It's their responsibility to maintain their equipment.

18 JUDGE JORDAN: Okay. And that's what --
19 that's what this proceeding is about. Now, as far as the
20 appearances of witnesses, and that would include you,
21 Ms. Powell, the Commission will take testimony by
22 telephone so as to spare witnesses the expense and time of
23 travel in an appropriate circumstance. Now, if anyone
24 objects to that, they can certainly do so, but that's what
25 I'm anticipating doing is taking testimony by telephone.

1 Any other questions about procedure,
2 Mr. Cooper?

3 MR. COOPER: No, your Honor.

4 JUDGE JORDAN: Okay. Ms. Powell, do you
5 have any questions about how I intend to conduct the
6 hearing?

7 MS. POWELL: No. I'll just play it by ear.

8 JUDGE JORDAN: All right. Well, I commend
9 to you again a review of the statute that I cited to you.
10 That's Section 536.070 in the Revised Statutes of
11 Missouri. There are other resources that can help you
12 prepare for hearing as well, and you will find those in
13 any law library or online. We have some information on
14 how you can prepare for your hearing.

15 Mr. Ritchie, any questions?

16 MR. RITCHIE: I don't believe so, your
17 Honor. Thank you.

18 JUDGE JORDAN: All right. Well, then what
19 I'm going to do now is I'm going to leave the room, but
20 I'm going to leave this line open so that the parties can
21 discuss their issues and give settlement a try, and if
22 you'd like, we can also move into mediation and try a
23 little harder with a little different device.

24 I'll be out of the room, so you may feel
25 free to speak freely about matters however sensitive they

1 may be. The law protects what you say here under terms of
2 confidentiality, so that anything you say no one can
3 really use against you unless they can prove it in some
4 other fashion. So feel free to discuss these issues
5 openly. I won't be around, so nothing that's said will
6 taint me or the recommendation I make to the Commission.

7 Any more questions before I leave the room?

8 MS. POWELL: No.

9 JUDGE JORDAN: Okay. Then Mr. Ritchie,
10 when you're done, can I leave this in your hands to hang
11 up when everybody is through with this line?

12 MR. RITCHIE: Of course.

13 JUDGE JORDAN: All right. Thank you very
14 much. And with that, we will go off the record.

15 WHEREUPON, the recorded portion of the
16 prehearing conference was concluded.

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)

5 I, Kellene K. Feddersen, Certified
6 Shorthand Reporter with the firm of Midwest Litigation
7 Services, do hereby certify that I was personally present
8 at the proceedings had in the above-entitled cause at the
9 time and place set forth in the caption sheet thereof;
10 that I then and there took down in Stenotype the
11 proceedings had; and that the foregoing is a full, true
12 and correct transcript of such Stenotype notes so made at
13 such time and place.

14 Given at my office in the City of
15 Jefferson, County of Cole, State of Missouri.

16 _____
17 Kellene K. Feddersen, RPR, CSR, CCR
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