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6 TRANSCRIPT OF PROCEEDINGS
7 Hearing
8 December 6, 2004
9 Jefferson City, Missouri
Volume 7

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12 In the Matter of the Tariff Filing)
of The Empire District Electric)
13 Company to Implement a General) Case No. ER-2004-0570
Rate Increase for Retail Electric)
14 Service Provided to Customers in)
Its Missouri Service Area)

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17 KEVIN A. THOMPSON, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.

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1 JUDGE THOMPSON: Good morning. We are here
2 in the matter of the tariff filing of the Empire District
3 Electric Company to implement a general rate increase for
4 retail electric service provided to customers in its
5 Missouri service area. This is Case No. ER-2004-0570. My
6 name is Kevin Thompson. I'm the Regulatory Law Judge
7 assigned to preside over this hearing.

8 At this time we'll take oral entries of
9 appearance. Why don't we begin with the company.

10 MR. COOPER: Dean L. Cooper, James C.
11 Swearngen and William R. England, III from the law firm
12 of Brydon, Swearngen & England, P.C., P.O. Box 456,
13 Jefferson City, Missouri 65102, appearing on behalf of the
14 Empire District Electric Company.

15 JUDGE THOMPSON: Thank you.

16 MR. STEWART: Charles Brent Stewart and
17 Jeffrey Allen Keevil, the law firm of Stewart & Keevil,
18 LLC, 4603 John Garry Drive, Suite 11, Columbia, Missouri
19 65203, also appearing on behalf of Empire District
20 Electric Company.

21 JUDGE THOMPSON: Thank you. Just go ahead
22 and remain seated but speak into your microphones, if you
23 would, so that our listeners across the world can hear you
24 give your entry of appearance. Let's go to the Public
25 Counsel at this time.

1 MR. COFFMAN: John B. Coffman, appearing on
2 behalf of the Office of the Public Counsel and the
3 ratepaying public, P.O. Box 2230, Jefferson City, Missouri
4 65102.

5 JUDGE THOMPSON: Thank you. Mr. Molteni?

6 MR. MOLTENI: Ronald Molteni, Assistant
7 Attorney General, P.O. Box 899, Jefferson City, Missouri
8 65102, appearing on behalf of the Missouri Department of
9 Natural Resources Energy Center.

10 JUDGE THOMPSON: Thank you. Mr. Conrad?

11 MR. CONRAD: Stuart W. Conrad, law firm of
12 Finnegan, Conrad & Peterson, Suite 1209, 3100 Broadway,
13 Kansas City, Missouri 64111, appearing on behalf of
14 intervenors Explorer Pipeline Company and Praxair, Inc.

15 JUDGE THOMPSON: Thank you, Mr. Conrad.
16 Mr. McCartney?

17 MR. MCCARTNEY: Good morning. Brian T.
18 McCartney appearing today on behalf of Aquilla. My
19 address is 312 East Capitol Avenue, Jefferson City,
20 Missouri 65102.

21 JUDGE THOMPSON: Thank you. Mr. Frey?

22 MR. FREY: Thank you, your Honor.
23 Representing the Staff of the Missouri Public Service
24 Commission, Steve Dottheim, Thomas R. Schwarz, Keith
25 Krueger, David Meyer, Mary Weston, Nathan Williams and

1 Dennis L. Frey, Post Office Box 360, Jefferson City,
2 Missouri 65102.

3 JUDGE THOMPSON: Is there anyone here for
4 AmerenUE? Very well.

5 It's my understanding that a number of
6 issues have settled over the weekend. What I'd like to do
7 is go through the numerical list of issues that Staff
8 filed and have you tell me which ones are settled and
9 which ones are still live. Issue No. 1 is capital
10 structure. Is that settled, Mr. Frey?

11 MR. FREY: Yes, your Honor. Oh, I'm sorry.
12 No. I thought you were reading them in the order in which
13 we're going to try them. I'm sorry. No, that has not
14 settled.

15 JUDGE THOMPSON: See, now I crossed through
16 that 1 and I have to draw a new 1 on my memo. Maybe we've
17 saved a lot of time here. Let's try to get it right here.

18 Issue No. 2, return on equity. Mr. Frey,
19 is that settled?

20 MR. FREY: No, your Honor.

21 JUDGE THOMPSON: Very good. No. 3 is
22 embedded cost of debt.

23 MR. FREY: Yes. No, it has not settled.
24 I'm sorry. All of these rate of return issues have not
25 settled.

1 JUDGE THOMPSON: We're going to go through
2 them one by one, because I'm a methodical kind of person
3 and I'm well able to make mistakes. So I want to make
4 sure I know on each issue whether it's settled or not
5 settled. So what I'll do is I'll read you a summary of
6 the issue and you tell me settled or not settled. Okay?

7 Let's try No. 4. Energy Center Units 3 and
8 4 construction cost.

9 MR. FREY: Yes, that's settled.

10 JUDGE THOMPSON: Thank you. Deferred tax
11 balances, A, post retirement benefits other than pensions.

12 MR. FREY: Both settled. I'm sorry. A and
13 B is settled.

14 JUDGE THOMPSON: Now I'm going to start
15 making mistakes. No. 6, depreciation.

16 MR. FREY: Not settled.

17 JUDGE THOMPSON: Not settled, no part of
18 it? Because we've got an A, life span application to
19 production accounts. Is that settled?

20 MR. FREY: No.

21 JUDGE THOMPSON: B, whole life or remaining
22 life.

23 MR. FREY: No.

24 JUDGE THOMPSON: C, cost of removal of net
25 salvage.

1 MR. FREY: No.

2 JUDGE THOMPSON: Okay. No. 7, fuel and
3 purchased power interim energy charge.

4 MR. FREY: Hasn't been settled.

5 JUDGE THOMPSON: A, gas price to be used.

6 MR. FREY: No.

7 JUDGE THOMPSON: B, may the Commission
8 lawfully order an IEC absent a unanimous stipulation &
9 agreement?

10 MR. FREY: No.

11 JUDGE THOMPSON: C, if yes to A -- not
12 settled, right?

13 MR. FREY: I'm sorry.

14 JUDGE THOMPSON: That's okay. It's not
15 settled, right?

16 MR. FREY: Yes to B, not settled.

17 JUDGE THOMPSON: 8, payroll O&M factor.

18 MR. FREY: Yes, that's settled.

19 JUDGE THOMPSON: No. 9, Energy Center 3 and
20 4 O&M.

21 MR. FREY: Yes.

22 JUDGE THOMPSON: No. 10, annual inspections
23 of generators.

24 MR. FREY: Yes.

25 JUDGE THOMPSON: No. 11, tree trimming.

1 MR. FREY: Yes.

2 JUDGE THOMPSON: 12, rate case expense.

3 MR. FREY: Yes.

4 JUDGE THOMPSON: 13, Enron-related legal

5 fees.

6 MR. FREY: Yes.

7 JUDGE THOMPSON: 14, incentive

8 compensation.

9 MR. FREY: Yes.

10 JUDGE THOMPSON: 15A and B.

11 MR. FREY: Yes.

12 JUDGE THOMPSON: Yes to both, right?

13 MR. FREY: Yes.

14 MR. FREY: Okay. 16, low-income customer

15 weatherization assistance programs.

16 MR. FREY: Yes.

17 JUDGE THOMPSON: 17, energy efficiency

18 programs.

19 MR. FREY: Yes.

20 JUDGE THOMPSON: 18, wind energy

21 assessment.

22 MR. FREY: Yes.

23 JUDGE THOMPSON: 19, pensions.

24 MR. FREY: Yes.

25 JUDGE THOMPSON: 20, late payment charge.

1 MR. FREY: Yes.

2 JUDGE THOMPSON: 21, appropriate allocation
3 of increase in revenues to customer classes.

4 MR. FREY: Yes.

5 JUDGE THOMPSON: Does that include also --
6 let's see. There's an A. Does that include A?

7 MR. FREY: Yes.

8 JUDGE THOMPSON: Yes maybe or yes some?

9 MR. FREY: Well, I think the best way to
10 say this is that the only thing that has not settled is
11 Issue E under 22, which relates to the IEC, rate design
12 for the IEC.

13 MR. CONRAD: Just to clarify, Judge, there
14 has been a settlement, hasn't been drafted up, but there
15 has been a settlement of what I would call the rate design
16 in the permanent case, as distinguished from how, if there
17 were to be any kind of an interim fuel cost recovery
18 mechanism, how that would be designed. Those two things
19 are separate.

20 JUDGE THOMPSON: Very well. So there's a
21 rate design under an IEC issue that remains?

22 MR. CONRAD: That is correct.

23 MR. COFFMAN: And I think it would be
24 helpful to add that the issue, of course, there is
25 assuming an IEC were legal and were it to be approved. I

1 mean, the IEC rate design is hanging out there because the
2 legality and appropriateness of an IEC is still open.

3 JUDGE THOMPSON: Thank you, John. Okay.
4 Turning now to the schedule, it's my understanding we're
5 going to start tomorrow after lunch. Is that correct?

6 MR. FREY: Yes, your Honor.

7 JUDGE THOMPSON: And that we're going to do
8 small opening statements in front of each issue, as was
9 done by Judge Woodruff in a recent MGE rate case; is that
10 correct?

11 MR. FREY: Yes.

12 JUDGE THOMPSON: Is there any kind of time
13 limitation then on how that's going to be done?

14 MR. FREY: We haven't suggested one.

15 MR. CONRAD: Since it was my idea, I had
16 suggested five minutes.

17 JUDGE THOMPSON: Okay. Is five minutes
18 adequate? Anybody really upset with five minutes?

19 MR. CONRAD: I'm not saying if somebody
20 went five minutes and ten seconds that they should be --

21 JUDGE THOMPSON: I understand.

22 MR. CONRAD: Try to keep them brief.

23 JUDGE THOMPSON: Say about five minutes,
24 how's that? This is government work.

25 MR. COFFMAN: I would hope that essentially

1 equal time would be given to all parties.

2 JUDGE THOMPSON: Absolutely, Mr. Coffman.

3 Okay. So who are we going to start with
4 Tuesday at, say, one o'clock? What's the issue going to
5 be? I assume the order of opening is going to be the same
6 that was going to obtain otherwise; is that correct?

7 MR. FREY: Yes, your Honor.

8 JUDGE THOMPSON: Okay.

9 MR. FREY: I believe we will begin with
10 Mr. Beecher from company on Tuesday following opening
11 statements, which would commence at one o'clock.

12 JUDGE THOMPSON: Okay.

13 MR. COFFMAN: With the fuel issues.

14 MR. FREY: Right. You can find the order
15 issue listed on the -- on Thursday, December 9th. We can
16 talk about the order of witnesses on that basis.

17 JUDGE THOMPSON: So it's the same order?

18 MR. COOPER: With one exception.

19 JUDGE THOMPSON: What's your exception?

20 MR. COOPER: Well, actually, two possible
21 exceptions. First, Ms. Tietjen who's listed there first
22 will not be available 'til Wednesday morning. So if we
23 would finish with Mr. Beecher Tuesday afternoon, we would
24 not be able to go ahead with Ms. Tietjen until Wednesday
25 morning. She's traveling from out of town.

1 I believe that Mr. Overcast is actually
2 listed as the witness for IEC rate design, and so he also
3 is coming from far away. IEC rate design under this
4 schedule, I think he's listed here in error, and we need
5 to establish with Mr. Overcast what his availability is.

6 JUDGE THOMPSON: In other words, you do not
7 believe he's even going to be a witness under the fuel
8 issue?

9 MR. COOPER: Only to the extent we decide
10 to go ahead and take IEC rate design at the same time as
11 the fuel issue.

12 JUDGE THOMPSON: Aren't they separate
13 issues?

14 MR. COOPER: They have been listed as
15 separate issues, yes.

16 MR. FREY: But if possible, I think the
17 plan would be to try them in connection with each other.

18 JUDGE THOMPSON: I'm happy to try them any
19 way you'd like, but what I need to have for the
20 Commissioners is a schedule that tells them what witness
21 they can anticipate hearing from each day so they can read
22 the filed testimony of that witness in preparation for the
23 searching and difficult questions that they will then pose
24 that witness when they get that opportunity.

25 So that's what I need to have is an idea of

1 who will be up here when so that I can give this to the
2 five Commissioners. Okay? And if I don't give them that,
3 I will be in the doghouse. So that's why I am attempting
4 to get that from you.

5 So we're going to do Mr. Beecher, and then
6 what, Cassidy, Choe? How do you pronounce that name?

7 MR. FREY: I believe it's Choe.

8 JUDGE THOMPSON: Excuse me?

9 MR. FREY: Choe.

10 JUDGE THOMPSON: Okay. Cassidy, Choe,
11 Bender, Watkins, Busch and Brubaker, is that what we're
12 looking at for Tuesday?

13 MR. FREY: No. Mr. Brubaker will --
14 Mr. Conrad can speak to this, but his availability, he
15 won't be available 'til Thursday, is my understanding.

16 JUDGE THOMPSON: Okay. Mr. Conrad, what
17 time Thursday do you expect him?

18 MR. CONRAD: I would hope I can have him
19 here to begin the morning, sir.

20 JUDGE THOMPSON: Okay. Very well. So
21 we'll expect Tietjen Wednesday morning and Brubaker
22 Thursday morning, right?

23 MR. FREY: Right. And we're still trying
24 to hone in on Overcast, Mr. Overcast's availability.

25 MR. COOPER: Which is what I spoke to

1 Mr. Gipson about. He tells me this morning he has heard
2 from Mr. Overcast and he could be available Thursday. So
3 if we wanted to follow fuel IEC with the IEC rate design
4 issue, we could do that.

5 JUDGE THOMPSON: All right. Let's say we
6 take up IEC rate design as the next issue. Who exactly
7 are the witnesses? Overcast, but what about Walters and
8 Eichman?

9 MR. COOPER: I believe it's only Overcast
10 on the IEC rate design.

11 JUDGE THOMPSON: Okay. Then for Staff, I
12 have three listed here, Hu, Pyatte and Watkins. Will we
13 hear from all three?

14 MR. FREY: I believe we'll just hear from
15 Mr. Watkins on that.

16 JUDGE THOMPSON: Very well. And I have
17 Ms. Meisenheimer here for Public Counsel. Is that
18 correct?

19 MR. COFFMAN: Ms. Meisenheimer did not
20 address any rate design or any potential interim energy
21 charge. Seeing as we believe it's illegal, I wouldn't
22 plan on offering Ms. Meisenheimer, and I don't believe
23 that she has addressed that issue at all.

24 JUDGE THOMPSON: Thank you. Then
25 Mr. Brubaker again on that issue. Very well.

1 Okay. So after those two issues, what do
2 we have left? What about capital structure and those
3 things?

4 MR. FREY: Those are scheduled -- that
5 along with depreciation is currently scheduled for week
6 two, your Honor.

7 JUDGE THOMPSON: So we'll just leave that
8 for week two?

9 MR. FREY: As I understand it, there is a
10 problem with the availability of company witnesses prior
11 to that, and that's the plan at this time.

12 JUDGE THOMPSON: Okay. So this week, then,
13 we'll just take up fuel and IEC rate design; is that
14 correct?

15 MR. FREY: Yes.

16 JUDGE THOMPSON: We'll take this up
17 starting Tuesday after lunch, and I assume you'll give
18 combined opening statements on both those issues or do you
19 want to do a new opening statement on IEC rate design when
20 we get to that? Either way you want to do it is fine with
21 me. Maybe you should do separate opening statements
22 because it helps to tee it up for the Commissioners.

23 MR. CONRAD: I would kind of think that
24 might make more sense just because of how it's -- how it's
25 been done, because while there is obviously, Judge,

1 considerable interrelationship between those issues, it
2 is -- they are nonetheless really separate issues.

3 JUDGE THOMPSON: I understand.

4 MR. CONRAD: One is a projection and the
5 other is more of a methodology.

6 JUDGE THOMPSON: So why don't we do that.
7 We'll do separate opening statements before each of those
8 issues, and we'll just plan to start Tuesday afternoon and
9 take however much time this week as it takes to get
10 through those two issues. We may find that it takes all
11 the available time. And then next Monday, then, we will
12 start with capital structure and rate of return, right,
13 just as is, in fact, on the schedule here?

14 MR. FREY: Yes.

15 JUDGE THOMPSON: Okay. And then follow
16 that with depreciation?

17 MR. FREY: Right.

18 JUDGE THOMPSON: And that's it.

19 MR. FREY: Friday -- as long as we can try
20 IEC rate design at some other time, Friday will be open,
21 the 17th.

22 JUDGE THOMPSON: Right. Frankly, I mean, I
23 think having pared away many issues, there's much more of
24 a likelihood we'll actually finish the hearing during the
25 allotted time. I will say for myself, I saw no way in the

1 world we'd get through all of these issues in just two
2 weeks, given the searching and difficult questions you're
3 going to get from the Commissioners on each witness. So I
4 think we're then in agreement; is that correct?

5 Now, what about exhibits pertaining to
6 witnesses for settled issues, are we going to mark those,
7 too, or are we going to discard that testimony?

8 MR. COFFMAN: It was my assumption we would
9 mark them.

10 MR. MOLTENI: Judge, my preference would be
11 to mark them because they'll be part of the overall record
12 of the case, and the settlements relate, I'm sure, to the
13 give and take in the testimony.

14 JUDGE THOMPSON: My next question was going
15 to be, then, are you going to ask the Commission to
16 receive that testimony into the record? I'm seeing many
17 heads nodding yes.

18 MR. COOPER: Let's file the stipulation
19 first.

20 MR. CONRAD: Well, if you -- by your leave,
21 I would suggest that at some point in this proceeding
22 before we break that we do get numbers for those -- for
23 those exhibits, whether they're subsequently offered or
24 not. Whether you want to actually mark them and give them
25 to the reporter at this time, that's entirely your call,

1 Judge.

2 JUDGE THOMPSON: That's fine.

3 MR. CONRAD: But Mr. Cooper raises a good
4 point. It could be that as we do these stipulations,
5 which are going to be what we're going to be working on
6 hopefully through the balance of today and tomorrow
7 morning, that those stipulations would then be able to
8 refer to numbered exhibits, and the parties would then
9 agree that they would become part of the record pursuant
10 to the stipulation. That's perhaps a cleaner way to do it
11 than to go through all of the -- and I say faldederal, but I
12 don't mean it in a derogatory sense.

13 JUDGE THOMPSON: I understand.

14 MR. CONRAD: I'd offer one other comment,
15 fully expecting to go down in flames on this, but hope
16 springs eternal. After having -- first of all, to be
17 clear, my clients have not put evidence in on the rate of
18 return issues and, frankly, I guess, the capital
19 structure. At least let me focus on rate of return.

20 Typically -- not to take anyone's fire
21 away, but typically that does not result in any of the
22 witnesses doing meltdown or recant from the stand.
23 Dr. Murry or whoever the company has, I believe
24 Vander Weide is another one, both of those folks have been
25 doing this for a number of years. I doubt that anybody is

1 going to persuade anybody else as to the voracity or the
2 lack thereof of their particular view.

3 My thought would be, and it's just a
4 proposal, to save time would be maybe to just mark that
5 and simply put that in the record and everybody just waive
6 cross on it, and perhaps accompany it with a sheet that
7 says this is the highest number that's been testified to
8 and this is the lowest number that has been testified to
9 and simply hand that sheath of papers to the Commission.
10 I'll offer that as a proposal fully expecting it won't go
11 anywhere, but as I say, hope springs eternal.

12 JUDGE THOMPSON: Well, I think you've got
13 the rest of the week during your discussions to bat
14 Mr. Conrad's proposal around. I think that would
15 certainly be acceptable to the Commission with the proviso
16 that the witnesses would have to be physically present for
17 Commissioner questions even if there's not going to be
18 cross-examination.

19 Why don't we go ahead and start marking
20 exhibits, then.

21 MR. COFFMAN: Your Honor, if I may make
22 just one other minor point, and that is a scheduling
23 conflict that Empire and I have been discussing for a
24 while and have yet to work out.

25 I have an administrative conflict on Monday

12 JUDGE THOMPSON: I appreciate the heads up.
13 Let's wait and see what develops.

15 MR. FREY: Your Honor, for the record, I'd
16 just remind you about AmerenUE. You might want to make a
17 comment for the record. I believe that the attorney has
18 been excused for AmerenUE in this case.

22 JUDGE THOMPSON: I don't recall excusing
23 him, but gosh, it's been a busy few days. Okay. Are we
24 ready to mark exhibits now?

1 one clarifying question. With the issues that have been
2 settled, will the Commissioners still want the witnesses
3 to take the stand so that the Commissioners might have
4 questions on them or not, or can we excuse those
5 witnesses?

6 JUDGE THOMPSON: Typically if there are
7 Commissioner questions where there is a settlement, a
8 Stipulation & Agreement, then we do a different sort of
9 thing, an on-the-record presentation so that the
10 Commissioners can ask their questions, and I don't know --
11 that's not always necessary because there are not always
12 questions, you see.

13 MR. MOLTENI: Correct.

14 JUDGE THOMPSON: So at this point I really
15 can't answer your question, other than to say that if the
16 Commissioners indicate to me that they're going to have
17 questions of any of those witnesses on any of the settled
18 issues, then I'll let you know and we'll go ahead and
19 schedule an opportunity for the witnesses to come in and
20 be questioned.

21 MR. MOLTENI: Thank you so much.

22 JUDGE THOMPSON: Okay. Are we ready to
23 mark exhibits? Why don't we start with company's exhibits
24 since you've got the burden.

25 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

1 (EXHIBIT NOS. 1 THROUGH 110 WERE MARKED FOR
2 IDENTIFICATION BY THE REPORTER.)

3 MR. McCARTNEY: Aquila has intervened
4 solely to address the depreciation issue and I'd ask --

5 JUDGE THOMPSON: You only want to be here
6 for depreciation?

7 MR. McCARTNEY: Yes.

8 JUDGE THOMPSON: Sure. Fine with me.
9 We're not going to give you a phone call when we start
10 depreciation. All right. If you want to be here only
11 for -- you don't even have any issues left, do you?

12 MR. MOLteni: Your Honor, once the DNR
13 issue is finally settled with a signed document, I'd ask
14 that -- and the Commissioners have -- if they indicate
15 that they have no questions, that DNR be excused from all
16 the other proceedings.

17 JUDGE THOMPSON: You're excused.
18 Mr. Conrad?

19 MR. CONRAD: I was going to object to
20 Mr. Molteni. That's okay.

21 JUDGE THOMPSON: Okay. If there's nothing
22 Further, we'll go ahead and adjourn for the day and I'll
23 see you-all tomorrow at 1 p.m. Thank you.

24

25

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