

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

November 5, 2007  
Jefferson City, Missouri  
Volume 1

In the Matter of the Empire                    )  
District Electric Company of                    )  
Joplin, Missouri for Authority to                )  
File Tariffs Increasing Rates for                ) Case No. ER-2008-0093  
Electric Service Provided to                    ) Tariff File No.  
Customers in the Missouri Service                ) YE-2006-0205  
Area of the Company                                )

CHERLYN D. VOSS, Presiding,  
REGULATORY LAW JUDGE.

REPORTED BY:

KELLENE K. FEDDERSEN, CSR, RPR, CCR  
MIDWEST LITIGATION SERVICES

1 APPEARANCES:

2 JAMES C. SWEARENGEN, Attorney at Law  
3 DEAN L. COOPER, Attorney at Law  
4 Brydon, Swearengen & England, P.C.  
5 312 East Capitol  
6 P.O. Box 456  
7 Jefferson City, MO 65102-0456  
8 (573) 635-7166

9 FOR: The Empire District Electric  
10 Company.

11 SHELLEY WOODS, Assistant Attorney General  
12 P.O. Box 899  
13 Supreme Court Building  
14 Jefferson City, MO 65102  
15 (573) 751-3321

16 FOR: Missouri Department of Natural  
17 Resources.

18 STUART CONRAD, Attorney at Law  
19 Finnegan, Conrad & Peterson  
20 3100 Broadway  
21 1209 Penntower Officer Center  
22 Kansas City, MO 64111  
23 (816) 753-1122

24 DAVID WOODSMALL, Attorney at Law  
25 Finnegan, Conrad & Peterson  
428 East Capitol, Suite 300  
Jefferson City, MO 65101  
(573) 635-2700

FOR: Praxair, Inc.  
Explorer Pipeline.

JAMES DEUTSCH, Attorney at Law  
Blitz, Bardgett & Deutsch  
308 East High Street, Suite 301  
Jefferson City, MO 65101-3237  
(573) 634-2500

FOR: General Mills, Inc.

24

25

1 LEWIS R. MILLS, JR., Public Counsel  
2 P.O. Box 2230  
3 200 Madison Street, Suite 650  
4 Jefferson City, MO 65102-2230  
5 (573) 751-4857

6 FOR: Office of the Public Counsel  
7 and the Public.

8 STEVEN DOTTHEIM, Chief Deputy General Counsel  
9 STEVE REED, Litigation Attorney  
10 P.O. Box 360  
11 200 Madison Street  
12 Jefferson City, MO 65102  
13 (573) 751-3234

14 FOR: Staff of the Missouri Public  
15 Service Commission.

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

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

2 JUDGE VOSS: Good morning. We're here for  
3 a prehearing conference in Commission Case ER-2008-0093,  
4 in the matter of the Empire District Electric Company of  
5 Joplin, Missouri for authority to file tariffs increasing  
6 rates for electric service provided to customers in the  
7 Missouri service area of the company, tariff file  
8 No. YE-2006-0205.

9 I'm Cherlyn Voss. I'm the Regulatory Law  
10 Judge assigned to this case. I'll be presiding over this  
11 prehearing this morning. We're going to begin with  
12 entries of appearance. We're going to begin with Empire.

13 MR. COOPER: Dean L. Cooper and James C.  
14 Swearengen, law firm of Brydon, Swearengen & England,  
15 P.C., P.O. Box 456, Jefferson City, Missouri 65102,  
16 appearing on behalf of the Empire District Electric  
17 Company.

18 JUDGE VOSS: General Mills?

19 MR. DEUTSCH: Jim Deutsch with the law firm  
20 of Blitz, Bardgett & Deutsch here in Jefferson City,  
21 308 East High Street, Suite 301, Jefferson City, Missouri,  
22 appearing on behalf of General Mills.

23 JUDGE VOSS: Thank you. Praxair and  
24 Explorer Pipeline?

25 MR. CONRAD: On behalf of Praxair and

1 Explorer Pipeline, Stu Conrad and David Woodsmall. My  
2 office address in Kansas City is 3100 Broadway, Suite 1209  
3 Kansas City, Missouri 64111. I can't remember David's  
4 address, but the court reporter indicates that she has it,  
5 so I wanted to be sure he was entered. Thank you.

6 JUDGE VOSS: The Missouri Department of  
7 Natural Resources?

8 MS. WOODS: Shelley Woods, Assistant  
9 Attorney General, Post Office Box 899, Jefferson City,  
10 Missouri 65102, appearing on behalf of the Missouri  
11 Department of Natural Resources.

12 JUDGE VOSS: Commission Staff?

13 JUDGE REED: Steve Reed and Steve Dottheim  
14 for the Staff, P.O. Box 360, Jefferson City, Missouri  
15 65102.

16 JUDGE VOSS: Office of Public Counsel?

17 MR. MILLS: On behalf of Office of the  
18 Public Counsel and the Public, Lewis Mills. My address is  
19 Post Office Box 2230, Jefferson City, Missouri 65102.

20 JUDGE VOSS: Thank you. The primary  
21 purpose of the prehearing is to get the parties together  
22 and discuss any discovery issues and to work out a  
23 procedural schedule. Accordingly, in the order setting  
24 this prehearing conference, the procedural schedule  
25 proposal is due November 13th. If anyone has a problem

1 with that, you can request an extension, but with the  
2 holidays it's probably better to get it done before than  
3 after is my thought.

4 And I also want to state, Mr. Conrad, I  
5 know that Praxair and Explorer weren't officially parties  
6 when the test year true-up recommendations were filed.  
7 Did you have any position on that?

8 MR. CONRAD: We would -- if it's  
9 appropriate to do so through this forum, we would indicate  
10 that we're supportive of the Staff's recommendation.

11 JUDGE VOSS: And that also brings up my  
12 next point, because Staff's proposal was filed after the  
13 company's, and no one had a chance to address it. Do any  
14 of the parties have a position on the difference, which  
15 they prefer between Staff's proposal and the company?  
16 Let's see. I'll start with Empire. Do you have an  
17 objection to Staff's proposal?

18 MR. SWEARENGEN: We're okay with the  
19 Staff's proposal in terms of the schedule.

20 JUDGE VOSS: So which would be updating as  
21 opposed to a true-up?

22 MR. SWEARENGEN: Right.

23 JUDGE VOSS: General Mills?

24 MR. DEUTSCH: No objection.

25 JUDGE VOSS: Okay. Let's see. Department

1 of Natural Resources?

2 MS. WOODS: We don't have a problem with  
3 either proposal.

4 JUDGE VOSS: Commission Staff? I guess you  
5 like your own proposal, I would assume. Public Counsel?

6 MR. MILLS: We're okay with the Staff  
7 proposal as well.

8 JUDGE VOSS: That's what happens when you  
9 go straight down a list.

10 All right. Are there any additional issues  
11 that I need to address before I go off the record?

12 MR. CONRAD: I hesitate to bring it up,  
13 but --

14 MR. SWEARENGEN: Please don't, then.

15 MR. CONRAD: -- since we're on the record,  
16 there seems to be some lack of unanimity on the Ninth  
17 Floor with respect to what that stipulation means. I'd  
18 like to get that clarified so I don't have to go through  
19 the rigmarole each time.

20 I have no idea what Empire's intents are,  
21 nor do I desire to know that. I will await notice as  
22 everybody else does. But I would like to know if there  
23 are other cases that are filed within the parameters of  
24 that stipulation, whether we're going to have to go  
25 through that gyration again.

1 JUDGE VOSS: We're hopefully going to get a  
2 final resolution, but with various Commissioners out of  
3 the office and an inability to get something on agenda in  
4 time to have a final decision in clarity with intervention  
5 before this prehearing conference, that wasn't possible.  
6 So it will come at a later date, but I assure you before  
7 the end of this case you'll know for the next case.

8 MR. CONRAD: Okay.

9 JUDGE VOSS: With the Commissioners, I'm  
10 not going to make any further guarantee on a timeline.

11 MR. CONRAD: Yeah. Perhaps they would --  
12 if the language there isn't sufficiently specific to  
13 achieve that, perhaps they'd like to suggest for my  
14 benefit as a draftsman some other language that would  
15 achieve it. Apparently what we did, we apparently  
16 achieved both -- well, two of the regulatory law judges  
17 with intent. They seemed to understand the intent. We  
18 did not. I was curious who's wrong.

19 JUDGE VOSS: One of the judges is the one  
20 who has directed me to take this action. Whether that  
21 language is in perpetuity or for the next case or whether  
22 it's even legal to bystep through a regulation the  
23 Commission rule --

24 MR. CONRAD: If it's not legal to do that,  
25 I'd sure like to know that.

1                   JUDGE VOSS: There's additional issues to  
2 address, but I wanted to be sure that interventions were  
3 addressed and that everyone that should be a party is a  
4 party and yet there was sufficient time for different  
5 groups to debate both the legal and technical aspects of  
6 that language.

7                   MR. CONRAD: Okay. When will that debate  
8 occur?

9                   JUDGE VOSS: Well, there have been many  
10 filings. If you would like me to set a timeline for  
11 filing positions on the issue or maybe even -- that may be  
12 even something we can take with the case if you'd like.

13                  MR. CONRAD: Particularly I pick up the  
14 verbiage that the Commission could not interpret a  
15 stipulation. I was kind of interested in pursuing what  
16 the thinking was on that. If the Commission cannot  
17 interpret a stipulation, then I guess some of the -- some  
18 of the judges across the way are also wrong because they  
19 have a tendency to kick those things back over here and  
20 say, well, you tell us what it means.

21                  So if the Commission is without authority  
22 to interpret its own orders and stipulations that are  
23 presented before it, I'd like to know that.

24                  JUDGE VOSS: It's not the order. It's the  
25 stipulation. And the Commission cannot interpret

1 contracts. That's for the courts.

2 MR. CONRAD: Well, since the stipulation is  
3 a contract, your Honor --

4 JUDGE VOSS: There are court cases that say  
5 a stipulation is a contract, and this Commission cannot  
6 interpret contracts unless expressly granted by statute,  
7 such as interconnection agreements. There's a specific  
8 statutory provision that gives the Commission authority to  
9 interpret an interconnection agreement.

10 If this is an issue you'd like to tee up in  
11 the case, it might be very appropriate to do so. And  
12 there's also the fact that a Commission decision is not --  
13 does not have precedential value on the standing or the  
14 sitting commission let alone future commissions, which is  
15 also a question.

16 MR. CONRAD: Okay. So okay, so we're  
17 throwing it out further, that a Commission decision has no  
18 precedential value. Does it have any binding effect on  
19 anyone, including the parties to that particular case and  
20 the Commission itself?

21 JUDGE VOSS: I'm not going to speak to that  
22 issue right now. That's the reason we're going to address  
23 it upstairs. We're going to get a unified decision.

24 MR. CONRAD: I see. Well, then I go back  
25 to my initial question, which is when is that? When's

1   that going to be explored? Because I don't -- I don't  
2   have the sense that there is anyone other than your Honor  
3   that has any lack of clarity with respect to that  
4   stipulation. So perhaps we need to get a brief from you  
5   as to what your thinking of it is.

6                   JUDGE VOSS: I know there is apparently  
7   from your party's perspective the impression that that  
8   language automatically made you a party to the case, which  
9   is the way you were speaking, and I don't know that anyone  
10   sees that interpretation of the language. It may be  
11   something ultimately they look at and decide.

12                  But I think the language from my  
13   standpoint, which isn't the Commission, so I can only give  
14   you my standpoint at this point because I have not been  
15   able to bring it up to the full Commission and get a  
16   single decision. So nothing I say here is anything but my  
17   opinion at this point. The only thing I can say for  
18   certain is that there is disagreement and it needs to be  
19   looked at in more depth.

20                  MR. CONRAD: Well, I quoted that language a  
21   couple of times. Each of the signatory parties, of which  
22   I take it there's no dispute that we are, shall be  
23   considered as having sought intervenor status in any rate  
24   case or rate filing without the necessity of filing an  
25   application to intervene.

1                   So I guess I'm still a little bit confused  
2 as to how that could be more specific, but --

3                   JUDGE VOSS: Well, seeking intervention is  
4 not being granted intervention. Again, that's my take on  
5 it only, and I don't really want to get into this  
6 conversation with you now.

7                   MR. CONRAD: I quote again, shall be  
8 considered as having sought intervenor status. So without  
9 the necessity of filing application to intervene. So  
10 whether it might take an order, then, as it did in the  
11 KCPL case and in the prior Empire case, it seems like that  
12 should come about.

13                   I just want to -- I want to find out what  
14 the rules are. It's helpful when we play the game to know  
15 what the rules are in advance. And if the rules are going  
16 to change midstream, then I guess I'd like to know that,  
17 too, because that kind of makes it difficult to deal with  
18 infield fly rules.

19                   JUDGE VOSS: The reason we handled  
20 intervention as we did in this case is because there was a  
21 difference of opinion, and I wanted to make sure every  
22 appropriate party was in the case at the earliest  
23 opportunity because this is going to take some time to  
24 sort out. And it may be something that the parties are  
25 interested in it. If you're interested, I think it can be

1 taken up as part of the case so you can brief it, or if  
2 you want to file another pleading, I think your other  
3 pleading was very detailed. No one else responded. But  
4 do you feel that you've adequately presented your position  
5 in the filings you've already had or do you want an  
6 opportunity to file something else?

7 MR. CONRAD: Well, I'm still getting to the  
8 point here of just feeling that we're belaboring this, but  
9 I'm getting the sense that the only dispute is not among  
10 the parties but some interpretation or lack thereof on the  
11 Ninth Floor. It's difficult for me to tilt at windmills  
12 until somebody tells me what their problem is.

13 So if we could have that insight as to what  
14 the Ninth Floor thinks is unclear, and which two of the  
15 law judges apparently didn't have a problem with and you  
16 do, what it is that's unclear.

17 JUDGE VOSS: One of the two law judges that  
18 you're referring to is the Chief Law Judge, and she is --

19 MR. CONRAD: And her order was submitted  
20 along with our material.

21 JUDGE VOSS: And I'm not going to address  
22 this anymore. I have said that I can't speak for the  
23 Commission at this point. It's something that there's a  
24 difference upstairs, and --

25 MR. CONRAD: Well, that's apparent, at

1 least between three RLJs at this point.

2 JUDGE VOSS: Cully's the Chief RLJ. If she  
3 had a position on this, it would be the position I would  
4 take unless told otherwise by the Commission. And that's  
5 the end of the discussion on that. But I will promise  
6 that we will get it addressed before another intervention  
7 issue comes up in an Empire case so that you will know  
8 with certainty where you stand.

9 Are there any other questions outside of  
10 this issue that anyone has?

11 MR. MILLS: I don't dare now. I said I  
12 don't dare now. No. I don't have a comment. I'm sorry.

13 JUDGE VOSS: Hearing none, we're going to  
14 end this prehearing conference. If you guys need me, I'm  
15 upstairs.

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

18

19

20

21

22

23

24

25

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

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

4 I, Kellene K. Feddersen, Certified  
5 Shorthand Reporter with the firm of Midwest Litigation  
6 Services, and Notary Public within and for the State of  
7 Missouri, 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  
18 Notary Public (County of Cole)  
My commission expires March 28, 2009.

19

20

21

22

23

24

25