

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

SEP 18 1996

MISSOURI
PUBLIC SERVICE COMMISSION

In the matter of The Empire)
District Electric Company of)
Joplin, Missouri for authority)
to file interim tariffs)
increasing rates for electric)
service provided to customers)
in the Missouri service area)
of the Company.)

Case No. ER-97-82

MOTION TO DISMISS OR IN THE ALTERNATIVE
SUSPEND AND SET TESTIMONY DATE

Comes now the Staff of the Public Service Commission of the State of Missouri ("Staff"), and for its Motion to Dismiss or in the Alternative Suspend and Set Testimony Date of November 8, 1996, respectfully states as follows:

1. On August 30, 1996, The Empire District Electric Company ("Empire") submitted proposed tariff sheets designed to increase revenues on an interim basis, along with a Motion and Suggestions In Support thereof, testimony and minimum filing requirements. Empire requested that the interim tariff sheets be allowed to go into effect on the requested effective date of September 30, 1996 without suspension. Empire also filed on August 30, 1996 a request for permanent rate relief docketed as Case No. ER-97-81.

2. In its Suggestions In Support in its predecessor interim rate increase case, Case No. ER-97-43, Empire asserted that "the Commission has occasionally applied an 'emergency' standard to interim rate relief requests." Having been challenged on the

accuracy of that claim, Empire at page 5 of its instant Motion and Suggestions In Support now contends that "although there are Commission decisions which have utilized an emergency standard to review requests for interim rate relief, the Commission has many times granted interim rate relief in non-emergency situations where sufficient good cause has been demonstrated." The pleadings of the Office of the Public Counsel (Public Counsel) and the Staff in both Case No. ER-97-43 and in the instant proceeding show that this too is an inaccurate statement from Empire.

3. The full scope of what Empire is requesting should not be lost in the noise of Empire's request that the Commission should apply some criteria other than the Commission's "emergency standard." Empire is requesting that the interim tariffs which it filed on August 30, 1996 not be suspended, but be permitted to go into effect on September 30, 1996 without any evidentiary basis other than Empire's filing on August 30, 1996. Empire cites no history of the Missouri Commission ever having permitted this very thing to occur, i.e., interim relief authorized, without suspension of the proposed interim tariffs, on the basis of a non-emergency situation. Indeed, in the case of Re Gas Service, Case No. GR-83-207, 25 Mo.P.S.C.(N.S.) 633 (1983), the Commission stated that "[o]rdinarily an interim request results in an expedited hearing and a limited Staff audit." Id. at 637 (emphasis added). Obviously, even an expedited hearing and limited audit requires suspension of the tariffs.

4. Empire further argues at page 6 of its Motion and Suggestions In Support that "it is not necessary to apply an 'all relevant factors' analysis to the interim filing" on the basis that "[i]n the context of the permanent case, the Commission will set rates based upon a consideration of all relevant factors." At page 7 of Empire's Motion and Suggestions In Support, Empire cites State ex rel. Utility Consumer Council of Missouri v. Public Serv. Comm'n, 585 S.W.2d 41 (Mo. banc 1979) ("UCCM" case) as support for its request. Certain language on page 49 of the UCCM case, not noted by Empire for the Commission's attention, should not go unnoticed by the Commission:

. . . Even under the file and suspend method, by which a utility's rates may be increased without *requirement* of a public hearing, the commission must of course consider all relevant factors including all operating expenses and the utility's rate of return, in determining that no hearing is required and that the filed rate should not be suspended. See *State ex rel. Missouri Water Co. v. Public Service Comm'n*, 308 S.W.2d 704, 718-19, 720 (1957). However, a preference exists for the rate case method, at which those opposed to as well as those in sympathy with a proposed rate can present their views. See *State ex rel. Laclede Gas Co. v. Public Service Comm'n*, 535 S.W.2d at 574.

(Emphasis added).

As indicated in the last sentence in the quote above from the UCCM case, the preference for the rate case method, the permanent rate case method, appears in the very case where Commission authority for interim rate relief was validated, State ex rel. Laclede Gas Co. v. Public Serv. Comm'n, 535 S.W.2d 561 (1976):

Laclede seemingly realizes the inconclusiveness of the proof offered by it in this interim rate proceeding, and

it attempts to flesh out its proof by making reference to evidence submitted and findings made in the permanent rate proceeding Rather than helping Laclede, this reference simply emphasizes the desirability of leaving the whole question of just and reasonable rate [sic] (unless imperative facts require the contrary) to the permanent rate proceeding in which all the facts can be developed more deliberately with full opportunity for an auditing of financial figures and a mature consideration by the Commission of all factors and all interests.

It may be theoretically possible even in a purposefully shortened interim rate hearing for the evidence to show beyond reasonable debate that the applicant's rate structure has become unjustly low, without any emergency as defined by the Commission having as yet resulted. Although some future applicant on some extraordinary fact situation may be able to succeed in so proving, Laclede has singularly failed in this case to carry the very heavy burden of proof necessary to do so.

Id. at 574; emphasis added.

5. In State ex rel. Fischer v. Public Service Commission, 670 S.W.2d 24 (Mo.App. 1984), the Western District Court of Appeals in discussing interim rate increases stated:

the Commission's authority to grant an interim rate increase is necessarily implied from the statutory authority granted to enable it to deal with a company in which immediate rate relief is required to maintain the economic life of the company so that it might continue to serve the public.

Id. at 26; emphasis added.

6. In 1983, the Commission noted that "[t]he Commission has traditionally granted interim relief **only** in response to emergency or near emergency circumstances." Re Gas Service Company, Case No. GR-83-207, 25 Mo.P.S.C.(N.S.) 633, 637 (1983) (emphasis added). In fact the emergency standard was first enunciated in a nascent form

in 1949 in Re Southwestern Bell Telephone Company, Case No. 11,634, 2 Mo.P.S.C.(N.S.) 131 (1949), but evolved into a more detailed articulation and has been applied in a long line of cases. See Re Sho-Me Power Corporation, Case No. 17,381 (1972); Re Union Electric Company, Case No. 17,965 (1974); Re Laclede Gas Company, Case No. 18,021 (1974); Re Missouri Public Service Company, Case No. 18,502 (1975); Re St. Joseph Light & Power Company, Case No. ER-77-93 (1977); Re Missouri Public Service Company, Case No. ER-79-59 (1978); Re Kansas City Power & Light Company, Case No. ER-80-204 (1980); Re Kansas City Power & Light Company, Case No. ER-81-42 (1981); Re Missouri Public Service Company, Case No. ER-81-154 (1981); Re The Empire District Electric Company, Case No. ER-81-229 (1981); Re Missouri Power & Light Company, Case Nos. GR-81-355 and ER-81-356 (1981); and Re Sho-Me Power Corporation, Case No. ER-83-20 (1982).

7. Indeed, even the cases cited by Empire in its Motion and Suggestions In Support actually involve emergency or near emergency circumstances, rather than a departure from the traditional emergency standard, as shown on the face of Empire's filing.

8. In one of the cases cited above, Re Missouri Public Service Company, Case No. 18,502, 20 Mo.P.S.C.(N.S.) 244 (1975), the Commission stated

Therefore, it is incumbent upon the Company to demonstrate conclusively that an emergency does exist. The Company must show that (1) it needs additional funds immediately, (2) that the need cannot be postponed, and (3) that no other alternatives exist to meet the need but rate relief.

Id. at 250. Furthermore, as recently as 1994, in Re The Raytown Water Company, Case No. WR-94-300, 3 Mo.P.S.C.3d 18 (1994), in its Report and Order dated April 29, 1994, the Commission held that

The Commission has been found to have the authority to approve interim rate requests under the appropriate circumstances. *State ex rel. Laclede Gas Company v. PSC*, 535 S.W.2d 561, 567 (Mo.App. 1976). The Commission has found in this case that the evidence of the financial condition of the company is sufficiently serious to warrant approval of an interim rate increase to cover the increased costs of wholesale water from its supplier. Based upon this evidence, the Commission concludes that Raytown is unable to arrange short term borrowing to ensure that its customers receive safe and adequate service during the interim period before permanent rates are established in Case No. WR-94-211, and therefore an emergency situation exists.

Id. at 21; emphasis added.

9. There is a 1981 interim rate increase case involving Empire, which Empire failed to mention in its Suggestions In Support in its recently dismissed predecessor interim rate increase case, Case No. ER-97-43, and which Empire chose not to cite in its Motion and Suggestions In Support in its instant interim rate increase filing. The Commission concluded in that 1981 Empire case as follows:

For many years the Commission has granted interim relief in response to emergency or near emergency circumstances, since of necessity such relief requires the Commission to make a determination without the benefit of a thorough Staff audit. Accordingly, the Commission has exercised caution in the granting of this extraordinary remedy.

A mere showing that a company's return is below its previously authorized rate of return has never prompted the Commission to grant interim relief. . . .

In its brief the Company mainly relies on its fear of a bond derating, the desire to include rate base additions and the desire to recover fuel costs as the primary justifications for interim relief.

The Company has been unable to show that its alleged fear of a bond derating is likely to occur. Such assertion is rather subjective and speculative. . . .

With respect to rate base additions and fuel costs, the Company is seeking to include those items in its permanent case. The Commission is of the opinion that a determination of the Company's rate base and fuel costs should be left to the permanent proceedings where all relevant factors will be considered together during the course of a full hearing.

There is no showing by the Company that its financial integrity will be threatened or that its ability to render safe and adequate service will be threatened should the Commission deny its request. Further, the Company has shown no other exigent circumstances that would merit interim relief.

Based on the foregoing, the Commission concludes that the tariffs herein suspended should be disallowed and that no tariffs should be filed in lieu thereof.

Re The Empire District Electric Company, Case No. ER-81-229, 24

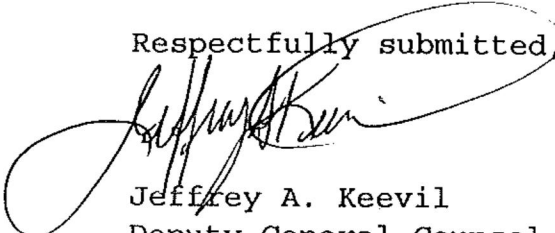
Mo.P.S.C.(N.S.) 376, 379 (1981) (emphasis added).

10. As clearly demonstrated by the foregoing, the Commission has applied the emergency standard consistently. Empire's filing seems to recognize on its face that Empire does not meet the Commission's emergency standard; therefore, this case should be dismissed. As also shown by the foregoing cases, including the Empire case quoted above, the Commission has suspended interim relief tariffs, and in the event that the Commission does not dismiss the instant proceeding Staff submits that the Commission should suspend the instant tariffs to permit Staff to perform at least an abbreviated review of Empire's alleged need for interim rate relief (and whether Empire meets the Commission's enunciated criteria therefor) and prepare testimony addressing Empire's filing. In an effort to expedite this proceeding as much as possible while at the same time allowing Staff a reasonable opportunity to review this filing and prepare its case, Staff requests that it be given until November 8, 1996, to file its testimony herein.

WHEREFORE, Staff respectfully requests that the Commission issue its Order dismissing this proceeding. In the alternative, Staff respectfully requests that the Commission issue an Order which (1) suspends the tariffs filed herein by Empire, (2) allows

Staff until November 8, 1996, to file testimony herein, and (3) makes such additional rulings as the Commission deems necessary.

Respectfully submitted,




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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 18th day of September, 1996.



Service List
Case No. ER-97-82
Revised: September 18, 1996

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