

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

In the Matter of The Empire District Electric)	
Company's Application for Certificate of Public)	
Convenience and Necessity and Approval of an)	Case No. EO-2005-0263
Experimental Regulatory Plan Related to)	
Generation Plant.)	

PUBLIC COUNSEL'S RESPONSE TO EMPIRE'S PROPOSED SCHEDULE

COMES NOW the Office of the Public Counsel and for its Response to Empire's Second Proposed Procedural Schedule states as follows:

1. The parties are continuing discussions with the hope of reaching a unanimous stipulation and agreement. While there is much that the parties agree on, there are still significant issues that have not been resolved. The parties are working to schedule further discussions later this week. Given the current state of those discussions, it appears that an agreement it will be filed no sooner than the middle of the week of July 11, 2005, and it could very well be later.
2. Public Counsel opposes the schedule proposed by Empire in the event that no agreement is reached.
3. Empire's proposed schedule would require the parties to break off discussions and begin working on a list of issues to be filed on July 11, 2005. Even if the parties were to immediately stop settlement discussions and begin working on a list of issues, it is unlikely that such a list could be developed in time to meet the deadline in Empire's proposed procedural schedule. And even if such a list was filed by July 11, it would be impossible to file a

comprehensive prehearing brief three days later and be ready for an evidentiary hearing a week after that.

4. Because the parties have been working diligently and in good faith to try to resolve all issues, and because Empire's direct testimony was only filed approximately two weeks ago, Public Counsel has not begun the kind of discovery that would be required in a contested case. If a hearing is scheduled, Public Counsel would need several months to conduct discovery and prepare testimony, whether the testimony is prefiled or live.

5. The driving factor behind the impossibly short schedule that Empire has proposed is the August 1, 2005 deadline for Empire to submit its financing plan to Kansas City Power & Light Company (KCPL). Rather than adopting a schedule (like the one Empire proposes) that deprives parties of their due process rights in order to attempt to meet this deadline¹, the Commission could order KCPL (a party to this case) to explain the importance of the August 1 date. Even a minimal extension of two or three months would allow the parties and the Commission to give this case the time it needs.

6. Because efforts have been devoted exclusively to negotiating in the hope of reaching a settlement, Public Counsel has not yet developed a concrete alternative to Empire's proposed schedule. However, if a hearing is necessary on all the issues raised by Empire's amended application, such hearing should be scheduled for October or later, not mid-July as Empire proposes.

¹ In addition to depriving Public Counsel and the other parties of their due process rights, Empire's proposed schedule would put the Commission under severe time constraints as well. Empire's schedule would allow the Commission only about a week to deliberate over issues worth several hundreds of millions of dollars and with far-reaching consequences for Missouri consumers and Missouri utilities.

WHEREFORE, Public Counsel respectfully requests that the Commission issue an order rejecting Empire's proposed procedural schedule, and setting a deadline of July 22, 2005, for other parties to propose more realistic schedules.

Respectfully submitted,

OFFICE OF THE Public Counsel

/s/ Lewis R. Mills, Jr.

By:_____

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 6th day of July 2005:

/s/ Lewis R. Mills, Jr.
