

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Prehearing Conference
8 October 14, 2008
9 Jefferson City, Missouri
Volume 1
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12 Daniel E. Brown,)
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13 Complainant,)
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14 v.) Case No. EC-2008-0384
)
15 Empire District Electric,)
)
16 Respondent.)
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19 HAROLD STEARLEY, Presiding,
20 REGULATORY LAW JUDGE
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23 REPORTED BY:
24 KELLENE K. FEDDERSEN, CSR, RPR, CCR
MIDWEST LITIGATION SERVICES
25

1 APPEARANCES:

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

8 FOR: Empire District Electric.

9 SARAH KLIETHERMES, Assistant General Counsel
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 ALSO PRESENT: Daniel E. Brown, Pro Se Complainant.

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

2 JUDGE STEARLEY: Good morning. Today is
3 Tuesday, October 14th, 2008, and we are here for a
4 prehearing conference in Daniel E. Brown vs. Empire
5 District Electric Company, Case No. EC-2008-0384. My name
6 is Harold Stearley, and I'm the presiding officer over
7 this matter. The court reporter this morning is Kellene
8 Feddersen.

9 And we will begin by taking oral entries of
10 appearance, starting with the Staff of the Missouri Public
11 Service Commission.

12 MS. KLIETHERMES: Thank you, Judge. For
13 the Staff, Sarah Kliethermes, Governor Office Building,
14 Suite 800, 200 Madison Street, Jefferson City, Missouri
15 65102.

16 JUDGE STEARLEY: Thank you,
17 Ms. Kliethermes. And for the Empire District Electric
18 Company?

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

24 JUDGE STEARLEY: Thank you, Mr. Cooper.
25 Mr. Brown, if you would please enter your appearance for

1 our record.

2 MR. BROWN: Yes, sir. My name is Daniel
3 Brown. I live at 9953 County Road 200, Carthage, Missouri
4 64836.

5 JUDGE STEARLEY: Thank, Mr. Brown.

6 MR. BROWN: You're welcome, sir.

7 JUDGE STEARLEY: We will let the record
8 reflect that no one is present for the Office of the
9 Public Counsel.

10 Let me go over a couple of preliminary
11 items with you-all and then you can tell me if there's any
12 preliminary matters I need to address before I conclude
13 the record portion of the prehearing conference.

14 Mr. Brown and I have exchanged some e-mails
15 in this matter in arranging this prehearing conference,
16 and I filed a notice of what we call ex parte contact,
17 meaning I had contact with one of the parties alone, but
18 it was only regarding those procedural issues.
19 Technically, according to our rules, I didn't need to
20 report that because no evidentiary hearing had been set in
21 this matter, but we try to keep all these matters
22 transparent. As I explained to Mr. Brown, we could only
23 discuss procedural matters and no substantive matters.

24 Mr. Brown has expressed a preference for
25 receiving notifications and, if possible, orders and other

1 filings by e-mail because that makes things simpler for
2 him. Our EFIS system only allows notifications of filings
3 to be sent by e-mail as opposed to the actual filing. I
4 have no objections to the parties e-mailing filings back
5 and forth amongst themselves or to me, but any future
6 e-mailings to me from any of the parties I would like them
7 to be carboned to all of the parties in this matter so
8 these are completely open and transparent.

9 So if the parties want after this
10 conference or whatever, they can send -- get their e-mail
11 addresses, send e-mails back and forth and make sure that
12 everyone has each other's e-mail address. Any future
13 e-mail correspondence with me should be between all of us
14 together so there's no just one-sided contact. Is that
15 understood, Mr. Brown?

16 MR. BROWN: Yes, sir, it is.

17 JUDGE STEARLEY: Okay. Now, with regard to
18 the current posture of the case, Mr. Brown, any time a
19 case is filed as a formal complaint, just so you're clear,
20 the Public Service Commission is not -- individuals file
21 complaints. They don't always understand the procedures
22 here. It's not like a Better Business Bureau type of
23 complaint where staff of an organization would pick up the
24 complaint and carry it forward for the person. The Staff
25 of the Commission serves as a neutral party in these

1 cases, and basically what you have is something similar to
2 a formal lawsuit that's in progress right now. So in
3 order to maintain that lawsuit, there has to be a viable
4 claim stated by the parties, and the relief that's
5 requested has to be relief that the Commission is granted.

6 Now, I'm assuming -- have you received all
7 the filings from the other parties in this case,
8 Mr. Brown?

9 MR. BROWN: I believe I have.

10 JUDGE STEARLEY: So you've received the
11 reports of Staff's investigations and you've received the
12 answer that Empire filed in this case, the answer to your
13 complaint?

14 MR. BROWN: Yes, sir, I have.

15 JUDGE STEARLEY: Okay. Both of those
16 parties have indicated that the relief you've requested is
17 not relief the Commission can grant. The Commission has
18 not made a decision on that, but when I leave you-all to
19 discuss the case amongst yourselves, I want you to
20 consider -- the Commission doesn't have to grant a hearing
21 in every case. I just want you to know up front, if they
22 find that relief has been requested that it cannot grant
23 or there's been failure to state a claim that the
24 Commission can actually rule upon, the case may end up
25 being dismissed.

1 So I'm not telling you that's what's going
2 to happen. I can't speak for the Commission, the five
3 Commissioners on how they would rule, but I just want you
4 to know as a matter of procedure. And from the filings
5 that came in from the other parties, they have indicated
6 that they believe the Commission cannot grant the relief
7 you've requested.

8 If you-all after your discussions today
9 haven't reached some type of settlement in this matter and
10 you would like to request a formal hearing, Mr. Brown, you
11 may do so. What I am asking the parties to do, though,
12 there are some facts that are obviously not in dispute in
13 this matter in terms of the outages that occurred with the
14 storm.

15 So if you-all provide the Commission with a
16 date for a proposed hearing, I'm going to ask you-all to
17 also file a stipulation as to the facts that you are in
18 agreement with. And I will instruct the Staff,
19 Ms. Kliethermes, to be the primary person to put that list
20 of undisputed facts together and file it with the
21 Commission. I'm not asking you to sign off on any things
22 you dispute, but only those things that are not in
23 dispute.

24 And I'd also like to point out that Staff
25 has in their report indicated there's another docket

1 that's open right now, which is an investigatory docket,
2 which has not been completed, and you-all can discuss that
3 amongst yourselves. And Mr. Brown, that may be something
4 you would want to be a part of or would maybe prefer to
5 have this case consolidated with that or something to that
6 effect. That may be another avenue for getting your
7 concerns addressed. So I'm just bringing that up, and
8 you-all can discuss that once I leave if that's something
9 that is a possible alternative here.

10 And now having thrown all that out there on
11 the table, is there anything that the parties would like
12 to address with me right now?

13 MR. COOPER: I don't know that it's
14 necessarily something that we need to address, but I guess
15 I will mention, you were talking about the possibility of
16 a hearing and a stipulation that you would at least ask
17 the parties to attempt to work out before a hearing. I
18 think because of the nature of the subject matter of this
19 case, the company's probably going to push for written
20 testimony in this matter, or at least we'll ask the
21 parties about written testimony.

22 While many times we've tried recently these
23 complaint cases, customer complaint cases live, I'm not
24 sure that the nature of these allegations are particularly
25 well suited for testifying and responding off the cuff

1 while people are sitting on the stand for the first time.
2 So it doesn't really require a response right now, but I
3 just want to mention that that's likely where the company
4 will be encouraging a procedural schedule to go.

5 JUDGE STEARLEY: All right. And Mr. Brown,
6 just so you know, it's customary practice in the
7 Commission cases, especially those involving sophisticated
8 parties who have legal counsel, it's frequent that we have
9 the initial round of what you would call direct testimony
10 in a case prefiled as written testimony. And then if we
11 have a hearing, the Commission doesn't have to ask all
12 those preliminary introductory type matters of the person
13 on the stand. Instead, that witness makes themselves
14 available for cross-examination.

15 And the parties, you'll be able to discuss
16 this amongst yourselves when I leave. Generally that
17 allows the parties to hand write out their testimony, and
18 then they verify that by signature and usually a notary
19 type signature that is, in fact, their testimony.

20 MR. BROWN: Okay.

21 JUDGE STEARLEY: That's what Mr. Cooper is
22 talking about.

23 MR. BROWN: Would that be something that
24 I'd receive a copy of their questions?

25 JUDGE STEARLEY: What you would receive is

1 a copy of their filed testimony. It would be in question
2 and answer format as if the attorney were asking their
3 witness specific questions, and it would all be in
4 writing.

5 MR. COOPER: On your version, you would
6 write your own questions and answers essentially.

7 MR. BROWN: Okay.

8 JUDGE STEARLEY: And while that might seem
9 awkward, it would sort of be a narrative in your sense,
10 too, similar to what you've actually filed in terms of
11 your complaint.

12 MR. BROWN: Okay.

13 JUDGE STEARLEY: Are there any other
14 matters anyone would like to bring up at this time?

15 MR. BROWN: Nothing on my part.

16 JUDGE STEARLEY: I believe the order in
17 which I set the prehearing conference where I directed the
18 parties that if there was a procedural schedule to be
19 filed, it would be filed one week from today by the 21st.
20 I'm not requiring necessarily that a procedural schedule
21 do be filed, but I would at least like a status report
22 from the parties one week from today on where you're at in
23 terms of your discussions and what your requests are in
24 terms of how you wish to proceed.

25 MR. BROWN: Okay.

1 JUDGE STEARLEY: Are there any other
2 matters we need to address in the on-the-record portion of
3 this conference?

4 MR. BROWN: Not from my side, sir.

5 JUDGE STEARLEY: All right. This phone
6 bridge is set up 'til ten o'clock. You-all are certainly
7 welcome to stay and use this room longer than that, but at
8 that point you would need to just use the phone to
9 reestablish contact with Mr. Brown. I will be up in my
10 office today if any of you need me for any reason, and as
11 I indicated earlier, for any future e-mail contacts,
12 please let's do that as a group with all the parties.

13 All right. Thank you very much. That will
14 conclude the on-the-record portion of the prehearing
15 conference, and I will leave the room and leave you-all to
16 your discussions.

17 WHEREUPON, the recorded portion of the
18 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, and Notary Public within and for the State of
8 Missouri, do hereby certify that I was personally present
9 at the proceedings had in the above-entitled cause at the
10 time and place set forth in the caption sheet thereof;
11 that I then and there took down in Stenotype the
12 proceedings had; and that the foregoing is a full, true
13 and correct transcript of such Stenotype notes so made at
14 such time and place.

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

17 _____
18 Kellene K. Feddersen, RPR, CSR, CCR
19 Notary Public (County of Cole)
20 My commission expires March 28, 2009.
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