



customers. Application, January 29, 2010, ¶ 1 (Application, ¶ 1). Empire noted that it owns and operates an electric utility system located in contiguous portions of Kansas, Missouri, Oklahoma and Arkansas, with executive offices at 602 S. Joplin Avenue, Joplin, Missouri 64801. Application, ¶1. Empire holds a certificate from the State of Kansas confirming its right to conduct the business of an electric utility, pursuant to K.S.A. 66-101, *et seq.*, and has a duty and responsibility to provide and maintain an adequate supply of electric service for its existing and prospective customers located within its defined service area in Cherokee and Labette Counties, Kansas. Application, ¶ 1.

2. In addition to Empire's request to establish energy efficiency and demand response programs for its Kansas customers, Empire requests recovery of costs of the programs and of lost revenues through a Demand Side Management Cost Recovery Rider (Rider). Application, ¶¶ 8, 19. Applicant also requests necessary waivers of requirements set forth by the Commission in Docket Nos. 08-GIMX-441-GIV and 08-GIMX-442-GIV. Application, ¶¶ 23-24. Applicant also requests accounting authority to permit it to recognize lost revenues on a monthly basis and to defer actual program costs. Application, ¶ 26.

3. Empire proposed the Commission approve its requested energy efficiency and demand response programs on an expedited basis, in this case by April 15, 2010, or 76 days from the date of initial filing. Application, ¶ 25. Applicant asserted this effective date will allow time for air conditioner tuner-ups to be performed prior to the summer cooling season through the residential High Efficiency Central Air Conditioner Program, and will allow contracts to be signed for the Interruptible Program prior to June 1 for the 2010 contract year. Application, ¶¶ 10, 15, 25.

4. On February 11, 2010, the Commission issued an Order suspending Empire's Application pursuant to K.S.A. 66-117(c), and a Protective Order and Discovery Order.

5. The Citizens' Utility Ratepayer Board (CURB) and the Kansas City Power & Light Company (KCP&L) have each filed a Petition to Intervene. The Prehearing Officers designated in this Order will address these and any additional petitions to intervene.

6. On February 12, 2010, CURB filed motions urging the Commission to appoint a hearing officer, to schedule a prehearing conference, and to deny Empire's request for expedited approval of its Application in this docket, as described above in paragraph 3. CURB asserts the schedule proposed by Empire will not allow sufficient time to conduct discovery and for responses to Empire's Application. Motions of CURB, February 12, 2010, ¶ 3. Empire filed a response agreeing to withdraw its request for an expedited schedule. Response of The Empire District Electric Company to Motions of CURB, February 22, 2010, ¶ 4 (Response, ¶ 4). Empire stated that it is currently working with Staff, CURB and other intervenors on a schedule acceptable to all parties to submit to the Commission for approval. Response, ¶ 4.

7. The Commission has jurisdiction over Empire's Application under K.S.A. 66-117 and K.A.R. 82-1-231. Applicant filed information required by K.A.R. 82-1-231. In this Order, the Commission sets a scheduling conference and designates prehearing officers.

## **II. Scheduling Conference**

8. Having reviewed the Application, the Commission finds that a prehearing officer should be designated and a scheduling conference set to allow parties to present arguments, if any, regarding issues and to develop a procedural schedule to recommend to the Commission. In its Suspension Order issued February 11, 2010, the Commission suspended this Application for 240 days from its filing date of January 29, 2010, until the deadline of Monday, September 27,

2010. Suspension Order, February 11, 2010, ¶ 3. During the Scheduling Conference, parties shall be prepared to discuss deadlines for filing of testimony and briefs and possible dates for an evidentiary hearing with the Commission presiding.

*A. Designating Prehearing Officers*

9. Although the Commission will conduct the evidentiary hearing in this docket, the Commission designates a prehearing officer to conduct any prehearing conferences that might be needed in this proceeding and to address any matters that are appropriately considered in a prehearing conference, including all items listed in the Kansas Administrative Procedure Act (KAPA) at K.S.A. 77-517(b). These items include, for example, conversion of the proceeding to another type; exploration of settlement possibilities; preparation of stipulations; clarification of issues; rulings on identity and limitation of the number of witnesses; objections to proffers of evidence; determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form, and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person; order of presentation of evidence and cross-examination; rulings regarding issuance of subpoenas; discovery orders and protective orders; and such other matters as will promote the orderly and prompt conduct of the hearing. The Commission designates Melissa Doeblin, Advisory Counsel, telephone number 785-271-3186, email address [m.doeblin@kcc.ks.gov](mailto:m.doeblin@kcc.ks.gov); and Martha Coffman, Advisory Counsel, telephone number 785-271-3105, email address [m.coffman@kcc.ks.gov](mailto:m.coffman@kcc.ks.gov); 1500 SW Arrowhead Road, Topeka, KS 66604-4027, to act as Prehearing Officers in this proceeding. K.S.A. 2009 Supp. 77-514; K.S.A. 77-516; K.S.A. 2009 Supp. 77-551. The Commission, as it deems necessary, may designate other staff members to serve in this capacity.

*B. Notice of Prehearing Scheduling Conference*

10. Having concluded that a prehearing conference is needed to discuss scheduling, the Commission sets a Scheduling Conference for March 1, 2010, beginning at 9:00 a.m. and concluding by 10:30 a.m., in the Third Floor Hearing Room of the Commission's offices, 1500 SW Arrowhead Road, Topeka, KS 66604-4027. Counsel representing Empire, Staff, CURB and KCP&L have agreed to waive the 10-day notice requirement of K.S.A. 77-518(a). This Scheduling Conference will focus on issues that relate to development of a procedural schedule for this docket. Parties should be prepared to discuss discovery procedures and any other prehearing issues that will promote the orderly and prompt conduct of this proceeding. K.S.A. 77-517; K.A.R. 82-1-222. Any party who fails to attend or participate in the prehearing conference, hearing or other stage of this proceeding may be held in default under the KAPA. K.S.A. 77-516(c)(8); K.S.A. 77-520. At the prehearing conference, this proceeding, without further notice, may be converted into a conference hearing or a summary proceeding for disposition of the matter as provided by the KAPA. K.S.A. 77-516(c)(7).

### **III. Agency Attorneys of Record**

11. The attorneys designated to appear on behalf of the agency in this proceeding are Terri Pemberton, telephone number 785-271-3119, email address [t.pemberton@kcc.ks.gov](mailto:t.pemberton@kcc.ks.gov); and Dana Bradbury, telephone number 785-271-3196, email address [d.bradbury@kcc.ks.gov](mailto:d.bradbury@kcc.ks.gov), 1500 SW Arrowhead Road, Topeka, KS 66604-4027. K.S.A. 2009 Supp. 77-518(c)(2); K.S.A. 77-516(c)(2).

### **IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. The Commission appoints Melissa Doebelin and Martha Coffman to act as Prehearing Officers and directs parties to attend the Scheduling Conference on March 1, 2010, beginning at 9:00 a.m. and concluding by 10:30 a.m., in the Third Floor Hearing Room of the

Commission's offices, 1500 SW Arrowhead Road, Topeka, KS 66604-4027, as described above in paragraphs 9 and 10.

B. This is a procedural order and constitutes nonfinal agency action. K.S.A. 77-607(b)(2). Parties have 15 days, plus three days if service of this Order is by mail, from the date of service of this Order in which to petition the Commission for reconsideration. K.S.A. 66-118b; K.S.A. 2009 Supp. 77-529(a)(1).

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

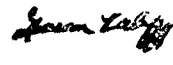
Wright, Chairman; Harkins, Com.

**FEB 24 2010**

Dated: \_\_\_\_\_

**ORDERED MAILED**

**FEB 25 2010**

 **EXECUTIVE  
DIRECTOR**

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Susan K. Duffy  
Executive Director

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