

Exhibit No. _____
Issue: Public Interest
Witness: Michael E. Palmer
Type of Exhibit: Surrebuttal
Sponsoring Party: Empire District
Case No. EO-2008-0043
Date prepared: December 6, 2007

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

SURREBUTTAL TESTIMONY OF MICHAEL E. PALMER

CASE NO. EO-2008-0043

DECEMBER 7, 2007

Empire Exhibit No. 3
Case No(s) EO-2008-0043
Date 12-18-07 Rptr KF

SURREBUTTAL TESTIMONY
OF
MICHAEL E. PALMER
THE EMPIRE DISTRICT ELECTRIC COMPANY
BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION
CASE NO. EO-2008-0043
DECEMBER 7, 2007

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. Michael E. Palmer, 602 Joplin Street, Joplin, Missouri 64802.

3 **Q. ARE YOU THE SAME MICHAEL E. PALMER THAT SUBMITTED DIRECT**
4 **TESTIMONY IN THIS PROCEEDING?**

5 A. Yes.

6 **Q. WHAT IS THE PURPOSE OF THIS SURREBUTTAL TESTIMONY?**

7 A. To respond to the prepared rebuttal testimony of Staff witness Dan Beck that was
8 submitted on Friday, November 9, 2007.

9 **Q. CAN YOU SUMMARIZE EMPIRE'S POSITION IN THIS CASE?**

10 A. Empire has been attempting since March of 2006 to bring about a practical solution to
11 problems on the south side of Republic, Missouri, that Empire did not create. We are still
12 doing that. This case is about whether Empire or Ozark Electric Cooperative is going to
13 be the retail electricity supplier in a 245 acre subdivision called The Lakes at Shuyler
14 Ridge. The practical solution in this situation is for the Commission to approve the
15 application so that Ozark Electric can become the only supplier.

1 Approval of the application will basically put everyone back in the same position
2 we were in two years ago, except that the threats of legal action between the developer
3 and the City of Republic will presumably disappear. Approval of the application will
4 mean that the developer and Ozark Electric will get the benefit of the deal they originally
5 struck in June of 2005 for Ozark to serve the subdivision. Approval of the application
6 will mean that the City of Republic can presumably go ahead with its annexation plans on
7 its own timetable without threats of legal action from the developer. Approval of the
8 application will mean that Empire will be reimbursed for its expenses for its construction
9 relating to the subdivision. Approval of the application will mean the customers in the
10 subdivision will not see any appreciable difference in the quality of electric service and
11 they will have to pay less in extension-related fees to Ozark than they would have to
12 Empire. In short, I do not see any detriment to the public interest in that resolution
13 because I do not see how anyone is harmed by the approval of the application.

14 Again, Empire did not create this problem. We also did not want to be part of the
15 problem. We wanted to be part of the solution. As I explained in my prepared direct
16 testimony, we were asked by the City of Republic in early 2006 to explore the possibility
17 of a territorial agreement with Ozark. This was when the City was threatened with legal
18 action regarding annexation of this subdivision and another one. We were happy to try to
19 help. In conjunction with all of the other parties, we presented a solution to the
20 Commission in the cases that were filed in July 2006 and decided in January of 2007.
21 That proposal would have brought certainty in terms of electrical suppliers to a large area
22 on the south side of Republic. Empire needed a variance from its tariff to make the
23 multi-party deal work as intended by the interested parties. The Commission chose not to

1 accept that proposal, even though we showed where the Commission has granted
2 variances of a similar nature for unregulated competition in the past. The terms of
3 Empire's tariff compared to the policy of Ozark means that the developer will have to
4 pay Empire up front a significant amount of money. The developer was only willing to
5 take service from Empire if that dollar impact was eliminated. The Commission's
6 decision in the previous cases was to not allow Empire to waive the tariff provisions, so
7 the developer does not want service from Empire under those conditions. Given the
8 situation, I do not see any practical way that Empire can be the supplier in The Lakes at
9 Shuyler Ridge unless it is the intent of the Commission that Empire supply it and drive
10 this developer into bankruptcy in the process. I can't imagine that would be the
11 Commission's intention, so it makes sense to let Ozark serve it as it had originally
12 planned to do. Ozark will make a much bigger investment in the subdivision than Empire
13 would have under its tariff, but that is something that Ozark's member/owners are willing
14 to do and believe is in their best interests in the long run.

15 **Q. WHAT WAS YOUR OVERALL REACTION TO THE TESTIMONY OF MR.**
16 **BECK?**

17 **A.** I personally found it confusing in several places. In particular, I did not see any place
18 where he clearly stated whether the Staff supported or opposed the application. He is
19 asked a question on page 2 at line 18 whether he thinks the application meets the
20 standards imposed by Missouri law. That is probably not a proper question to address to
21 an engineer. It probably is the ultimate question for the Commission. Besides that, I did
22 not see where he even gave a "yes" or "no" answer to that question. He indicates that he

1 and the Staff have some "issues" and "concerns." That may be, but I certainly did not see
2 where he presented a better resolution of the situation than what has been proposed.

3 **Q. DID EMPIRE ATTEMPT TO GET A BETTER UNDERSTANDING OF STAFF'S**
4 **POSITION?**

5 A. Yes. We emailed several data requests to Mr. Beck on the same day we received a copy
6 of his rebuttal testimony, the purpose of which was simply to find out the Staff's position
7 in this case, or if the Staff was unable to take a position, what sort of information it
8 needed to do that. A copy of those data requests and the responses are attached to this as
9 Schedule MEP-1.

10 **Q. SO YOU GOT A RESPONSE TO THOSE DATA REQUESTS?**

11 A. Yes, we did – twenty days after we sent the questions.

12 **Q. LET'S TURN TO MR. BECK'S REBUTTAL TESTIMONY. AT THE BOTTOM**
13 **OF PAGE 2 AND THE TOP OF PAGE 3, HE SAYS: "HOWEVER, EMPIRE'S**
14 **WITNESS ONLY STATES THAT 'IN THE FACE OF POSSIBLE ANNEXATION**
15 **OF THE DEVELOPMENT BY THE CITY, IT WILL PROVIDE CERTAINTY AS**
16 **TO THE ELECTRIC SUPPLIER IN THIS PARTICULAR SUBDIVISION." MR.**
17 **BECK THEN SAYS THAT HE DOES NOT THINK THAT THE PUBLIC**
18 **INTEREST IS LIMITED TO THE EXISTING AND NEW CUSTOMERS IN**
19 **THAT SUBDIVISION. WHAT IS YOUR REACTION TO THAT?**

20 A. The public interest certainly encompasses many aspects, and certainty of supplier is one
21 of them. I did not read Mr. Beck's testimony to dispute that certainty of supplier was a
22 benefit. My statement in my direct testimony did not intend to imply that certainty of
23 supplier in the subdivision was the only aspect to the public interest. I think it is the most

1 readily identifiable result of a territorial agreement where exclusive service territories are
2 assigned. It has been commonly cited in the territorial agreements where Empire is a
3 party.

4 **Q. MR. BECK ALSO TALKS ABOUT CERTAINTY OF SUPPLIER IN HIS**
5 **RESPONSE TO YOUR DATA REQUESTS. DO YOU HAVE ANY COMMENTS**
6 **ON THAT?**

7 **A.** In response to our data request no. 3, he indicates that he finds my testimony about
8 certainty of supplier "perplexing since annexation of this subdivision would eliminate
9 Ozark's ability to serve new customers in this subdivision and therefore Empire, which is
10 already serving the existing customers in the subdivision, would be the only electric
11 supplier that could serve new customers in the annexed subdivision. Therefore,
12 annexation would provide the certainty of a single supplier with or without the territorial
13 agreement."

14 I find Mr. Beck's comments here rather drastic and reckless since he is urging
15 someone who is not a party to take a course of action that it has so far chosen not to take.
16 He appears to be suggesting that the City of Republic ought to just go ahead and annex
17 the entire subdivision right now so it can achieve certainty of supplier. Based on my
18 contacts with the interested parties, the City is not particularly interested in taking a
19 course that would likely produce litigation over the annexation of this subdivision. The
20 developer is certainly aware that service from Empire under its tariff provisions would,
21 according to Mr. Beck, mean the developer will have to pay Empire about \$1,700,000 up
22 front, and it appears to me that would be a significant reason for the developer to try to
23 stop the annexation through litigation.

1 **Q. MR. BECK SAYS ON PAGE 3, STARTING ON LINE 3, THAT A**
2 **DETERMINATION OF THE PUBLIC INTEREST NEEDS TO INCLUDE THE**
3 **INTERESTS OF THE CUSTOMERS OF EMPIRE AND OZARK, AND THE**
4 **CITY OF REPUBLIC. DO YOU AGREE WITH THAT?**

5 **A. I agree with Mr. Beck that a determination of the public interest should include the effect**
6 **of the proposal on the customers of Empire and Ozark and also the City of Republic. I do**
7 **not agree that the list should end there. I certainly would include the interests of Ozark**
8 **Electric itself as a rural electric cooperative, Empire itself as a corporation, Empire's**
9 **shareholders, and the public as a whole.**

10 **Q. STARTING ON PAGE 3 AND CARRYING THROUGH TO PAGE 6, MR. BECK**
11 **INCLUDES A BACKGROUND OF THIS CASE BY DISCUSSING THE**
12 **PREVIOUS CASES AND ADDING SOME ITEMS. DO YOU HAVE ANY**
13 **REACTION TO THAT DISCUSSION OF HISTORICAL EVENTS?**

14 **A. It strikes me as a brief outline of milestones. I did not see anything I thought was**
15 **factually incorrect.**

16 **Q. ON PAGE 7, MR. BECK TALKS ABOUT THE FRANCHISE THAT EMPIRE**
17 **HAS WITH THE CITY OF REPUBLIC AND HIS BELIEF THAT OZARK**
18 **ELECTRIC CANNOT ADD CUSTOMERS WITHIN THE CITY. DO YOU HAVE**
19 **ANY REACTION TO THAT DISCUSSION?**

20 **A. To my knowledge, Mr. Beck is not an attorney, so I do not know how much stake we**
21 **should put into what he is saying about his view of Missouri law. I am not an attorney**
22 **either, and I do not intend to testify as to what the law is. I think we are both operating**
23 **under the assumption that if Republic annexes the subdivision, that freezes the rights of**

1 Ozark in that it can continue to serve any customers it is serving at the time of the
2 annexation, but it cannot add any new customers. I do think, however, that Mr. Beck is
3 overlooking an important fact when he states, beginning at line 17, that "Staff is unaware
4 of any statute that would allow Ozark to add customers within the City of Republic at this
5 time." That statement by Mr. Beck implies, at least to me, that he may think that the
6 Shuyler Ridge subdivision is inside the city limits.

7 **Q. WHAT IMPORTANT FACT DO YOU THINK MR. BECK IS OVERLOOKING?**

8 A. The fact that the subdivision is not inside the city limits of Republic. It has not been
9 annexed. There are no pending annexation proceedings affecting the subdivision. The
10 City of Republic has made no formal announcements of when it intends to annex The
11 Lakes at Shuyler Ridge.

12 **Q. HOW DO YOU KNOW THAT?**

13 A. Empire checked with an official of the City of Republic on November 29, 2007, and
14 asked about the status of any annexation of that subdivision. We were told that no
15 annexation had occurred and none was in the process.

16 **Q. IS THAT FACT IMPORTANT?**

17 A. If the subdivision is not inside the limits of any Missouri city or town with a population
18 greater than 1,500, I believe I am correct in saying that it is, by definition, located in a
19 "rural area." So as far as Empire is concerned, my understanding is that Ozark Electric
20 has the authority under the laws governing rural electric cooperatives to serve the
21 subdivision since it is located in a rural area. Again, I am not a lawyer, but I have been
22 involved in a fair number of conflicts between Empire and rural electric cooperatives, and
23 I know that Empire has never challenged the right of a rural electric cooperative simply

1 to operate within a rural area. If the Commission approves the proposed agreement, and
2 the transfer takes place, then the City can proceed with annexation with the certainty that
3 Empire will not need to come into the subdivision and serve new customers in that
4 subdivision because that would be prohibited under the terms of the proposed agreement.

5 **Q. AT THE TOP OF PAGE 7, MR. BECK DISCUSSES WHETHER OZARK**
6 **ELECTRIC HAS A FRANCHISE FROM THE CITY OF REPUBLIC. WHAT IS**
7 **YOUR UNDERSTANDING OF WHAT A FRANCHISE IS?**

8 A. My understanding is that a franchise, in this situation, is the permission of a city given to
9 an electric supplier to put poles, wires, and other distribution facilities in public rights of
10 way inside a city.

11 **Q. DO YOU BELIEVE WHETHER OZARK HAS A FRANCHISE FROM THE CITY**
12 **SHOULD BE A DETERMINING FACTOR IN THIS PROCEEDING?**

13 A. Not at this time. Again, the subdivision is not located within the city limits. There is no
14 city-owned right of way in the subdivision. If it is not inside the city, I don't see how the
15 city would have any authority over it at this time.

16 **Q. COULD A FRANCHISE BECOME IMPORTANT IF THE SUBDIVISION IS**
17 **ANNEXED AFTER THE COMMISSION APPROVES THE SUBDIVISION AS**
18 **THE EXCLUSIVE SERVICE TERRITORY OF OZARK, AS PROPOSED IN THE**
19 **TERRITORIAL AGREEMENT THAT IS THE SUBJECT OF THIS CASE?**

20 A. I wouldn't want to speculate on whether it may be important or not. I do think, though,
21 that in general a franchise and its contents are really a matter between Ozark and the City
22 of Republic. While franchises are things that are important when PSC-regulated utilities
23 come before the PSC seeking a certificate of public convenience and necessity, it is my

1 understanding that the Commission does not have the authority to grant certificates of
2 public convenience and necessity to rural electric cooperatives. In other words, I think
3 the Staff is getting into areas and raising "concerns" that have no basis given the facts at
4 this time. In any event, the City of Republic is aware of this proceeding, and chose not to
5 intervene.

6 **Q. ON PAGES 8 AND 9, MR. BECK DISCUSSES A DEVELOPMENT**
7 **AGREEMENT BETWEEN THE CITY AND THE DEVELOPER OF THE**
8 **SUBDIVISION AND MR. BECK MAKES SOME COMMENTS ABOUT**
9 **WHETHER THE DEVELOPER SHOULD HAVE BEEN AWARE OF**
10 **PROVISIONS IN THE AGREEMENT REGARDING ANNEXATION. DO YOU**
11 **HAVE ANY COMMENT ON MR. BECK'S DISCUSSION?**

12 **A.** Yes. I do not see the point in Mr. Beck trying to speculate about what the developer may
13 or may not have known regarding the contents of the development agreement. I do not
14 see how that has any bearing on whether Ozark Electric should obtain the right to supply
15 the subdivision with electricity. I do know that I was in the same room with the
16 developers and representatives of the City in March of 2006 and, unless the developers
17 were doing a really good job of acting and intentionally misleading everyone about what
18 they knew, prior to that moment they had very little understanding of how the law
19 governing utilities and annexation works in this state. I also observed that the developers
20 were not happy about the situation at all and I believe they threatened legal action against
21 the City if annexation were pursued. Again, that is why we all proposed the solution
22 presented to the Commission in the previous cases.

1 **Q. ON PAGES 10 THROUGH 12, MR. BECK MAKES SOME FACTUAL**
2 **ASSERTIONS ABOUT WHAT OZARK AND EMPIRE HAVE DONE IN THE**
3 **SUBDIVISION UP TO THIS POINT. DO YOU HAVE ANY REACTION TO HIS**
4 **COMMENTS?**

5 **A.** Yes. It is an accurate statement that Ozark originally installed facilities in the
6 subdivision. It is also accurate that Ozark sold those facilities to Empire and that Empire
7 then started installing additional facilities. That was in accordance with the proposed
8 territorial agreement and variance that was submitted to the Commission on July 18,
9 2006, because Empire would have been the sole electrical supplier to the subdivision if
10 the Commission had approved the applications. We did not enter into a "pristine"
11 situation. Development had already commenced. We expected the Commission to
12 approve the applications and saw this as a means of avoiding a lot of expensive problems
13 later if Ozark had continued to install facilities, only to have it become Empire's territory
14 when the applications were approved. This is due to the fact that Empire and Ozark
15 operate at different distribution voltages, and therefore the transformers and some other
16 equipment are not interchangeable. So Mr. Beck is correct that the current customers in
17 the subdivision are Empire's customers.

18 **Q. DID EMPIRE SEEK THE COMMISSION'S PERMISSION TO PURCHASE**
19 **THOSE FACILITIES FROM OZARK?**

20 **A.** No. It is my understanding that there is no provision in Missouri law that would have
21 required Empire to obtain permission to buy those electrical facilities.

22 **Q. THEN WHY IS EMPIRE SEEKING TO OBTAIN THE COMMISSION'S**
23 **PERMISSION TO SELL THE FACILITIES BACK TO OZARK?**

1 A. As explained in the application in this case, with the passage of time and the addition of
2 customers, the facilities have become "used and useful" in serving the public. Empire is
3 required to seek the Commission's permission if it wants to sell any of its facilities that
4 are used and useful. Also, there is a separate provision that requires PSC approval if a
5 change of suppliers is involved.

6 **Q. ON PAGE 3 OF HIS REBUTTAL TESTIMONY, MR. BECK SAYS HE DOES**
7 **NOT THINK THAT EMPIRE HAS COLLECTED THE FEES FROM THE**
8 **DEVELOPER THAT WOULD BE OWED EMPIRE UNDER THE TERMS OF**
9 **EMPIRE'S TARIFF. A SIMILAR STATEMENT APPEARS ON PAGE 12. CAN**
10 **YOU DESCRIBE WHAT HAS HAPPENED AND WHAT EMPIRE'S POSITION**
11 **IS?**

12 A. Yes. If the Commission had approved the applications submitted to it on July 16, 2006,
13 in Case Nos. EO-2007-0029 and EE-2007-0030, payments from the developer to Empire
14 under Empire's tariff, to the extent they exceeded what Ozark Electric and the developer
15 had agreed to, would have been waived, so they would not be an issue.

16 If the Commission approves this application, the same result will occur because
17 Ozark will become the supplier for the subdivision and none of those fees will be due to
18 Empire because Empire will not be serving customers in the subdivision. It is only in this
19 interim period that the developer technically owes substantial amounts to Empire under
20 the terms of Empire's tariff. Empire approached the developer about this after the
21 Commission's decision on January 30, 2007, and requested payment of the amounts due
22 under the tariff. The developer indicated to us that he did not have the money to meet the
23 tariff's complete requirements, and could not borrow the money to pay Empire even if he

1 wanted to. This obviously was one of the factors leading to Empire's position in this case
2 to attempt, as Mr. Beck notes in his testimony, to try to put everyone back to where they
3 were before the previous attempt at a territorial agreement.

4 Empire has collected relatively small amounts from the developer and the
5 homeowner's association. If this application is approved, those amounts will be credited
6 to Ozark and thus will reduce the amount Ozark is required to pay.

7 **Q. HAS EMPIRE ATTEMPTED TO COLLECT THE AMOUNT OWED FROM THE**
8 **DEVELOPER?**

9 A. As I said, we have collected a relatively small amount and have requested the remainder.
10 We have been told that the developer cannot pay it. We are currently deferring further
11 steps until we get a resolution of this proceeding because, if this application is approved,
12 the developer will not owe Empire anything under the tariff. Empire will no longer be
13 involved in the subdivision. The subdivision will be served by Ozark Electric and it will
14 pay Empire for Empire's investment. So it makes no sense for Empire to attempt
15 collection efforts at this time when we expect that the money will ultimately not be owed
16 to us.

17 **Q. ON PAGE 13 OF HIS REBUTTAL TESTIMONY, MR. BECK LISTS THE**
18 **DEVELOPER AS ONE OF THE PARTIES THAT HE THINKS HAS AN**
19 **INTEREST IN THIS CASE. DO YOU AGREE?**

20 A. Certainly. The developer only agreed to go along with the 2006 proposed territorial
21 agreement if he would be held harmless from the effect of Empire's tariff regarding
22 subdivision development. We made clear at the meeting in March 2006 that Empire
23 would only be able to match Ozark Electric's provisions if we obtained the variance from

1 the Commission. That is why we asked for the variance. That was its sole purpose.
2 Since the Commission determined it would not grant the variance, I think the developer
3 should be entitled to go back to his previous situation with Ozark Electric, and that will
4 be the result if this current application is approved. So I believe approval of the
5 application is in the interest of the developer and Ozark Electric. I also believe it is in the
6 interest of Empire, Empire's customers, and Empire's shareholders because approval
7 means Empire will be reimbursed for its expenses and Empire will not have to pursue
8 probably unpleasant legal remedies against the developer who also was just trying to
9 solve a problem.

10 **Q. WHAT WILL EMPIRE DO IF THE COMMISSION DECLINES TO APPROVE**
11 **THE AGREEMENT PRESENTED IN THIS CASE?**

12 A. Well, I don't think I would have any comment on that until I saw the order and
13 understood what the situation was. It is not our intent to harm the developer and we have
14 made a corporate decision that we do not wish to serve that subdivision. If Empire were
15 placed in the position of being the supplier there though, we would be obligated to
16 enforce the terms of the tariff.

17 **Q. ON PAGE 13, MR. BECK SAYS THAT THE CITY OF REPUBLIC APPEARS TO**
18 **BE SUPPORTIVE OF THE CURRENT CASE. DO YOU AGREE?**

19 A. The City was a part of the discussions leading up to the current application, so I would
20 agree.

21 **Q. ON PAGE 13, MR. BECK SAYS THAT THE CUSTOMERS IN THE**
22 **SUBDIVISION WOULD SAVE A SIGNIFICANT AMOUNT OF MONEY IF**
23 **THEY COULD AVOID EMPIRE'S EXTENSION FEES. DO YOU AGREE?**

1 A. Yes. Ozark's policies do not require as great a contribution from the customers as
2 Empire's tariff does. So in that respect, I think the proposal in this case is in the best
3 interests of the existing customers in the subdivision.

4 Q. ON PAGE 14, MR. BECK SAYS SINCE OZARK IS A MEMBER-OWNED
5 COOPERATIVE, THE INTERESTS OF OZARK AND ITS CUSTOMERS
6 SHOULD BE ONE IN THE SAME. DO YOU AGREE?

7 A. Generally. I know that if the member/customers do not agree with the management of
8 the cooperative, they have the ability to change the board of directors.

9 Q. ON PAGE 14, AT LINES 3 AND 4, MR. BECK SAYS EMPIRE HAS A
10 RESPONSIBILITY TO ACT IN THE BEST INTEREST OF ITS
11 SHAREHOLDERS AND THEREFORE THE SHAREHOLDERS ARE
12 REPRESENTED IN THIS CASE. DO YOU AGREE WITH THAT?

13 A. It is not the way I would have phrased it. Empire takes the interests of both its
14 shareholders and its customers very seriously and tries to act in the best interests of both.

15 I will discuss the interests of the customers in this situation later. I believe we are
16 acting in the best interest of the shareholders in this situation. We were doing that when
17 we tried to help address the concerns brought to our attention by the City of Republic in
18 March of 2006 regarding annexation of relatively large subdivisions on the south part of
19 the city. The City wanted to avoid situations where it would be annexing subdivisions
20 that contained some customers of rural electric cooperatives, and then would have new
21 electric customers being served by Empire as the franchised supplier after annexation.
22 The City wanted a more orderly process to avoid multiple suppliers in the same area, and
23 that is why it said it wanted a territorial agreement between Empire and Ozark. I believe

1 we were acting in the best interest of our shareholders when we presented such a
2 proposed agreement to the Commission in July of 2006, and that we are also doing so
3 here in agreeing that Ozark will be the supplier in this subdivision. In that way, there will
4 be certainty for the customers, electricity suppliers, and emergency personnel as to who
5 the supplier is in the subdivision.

6 **Q. BEGINNING ON LINE 6 ON PAGE 14, MR. BECK DISCUSSES HIS VIEW OF**
7 **THE INTERESTS OF EMPIRE'S CUSTOMERS IN THIS MATTER. WHAT IS**
8 **YOUR REACTION TO THAT DISCUSSION?**

9 **A.** This is where I want to reiterate that I found parts of his testimony confusing.

10 I see where he says on lines 13 and 14 that the concerns about "undue preference"
11 would go away if Ozark were the supplier. I agree, as I have said earlier, that if Ozark is
12 the supplier in the subdivision, the application of Empire's tariff becomes moot since
13 Empire will not be the supplier. As I understand it, the Commission concluded it would
14 have been an undue preference for it to grant the application for variance in Case Nos.
15 EO-2007-0029 and EE-2007-0030. So I do not think any "undue preference" has
16 occurred or will occur. If the application in this case is approved, the developer will not
17 owe Empire anything under Empire's tariff because we will no longer be dealing with the
18 developer.

19 I also see his comments starting on line 15 of page 14 where he talks about
20 Empire's addition of new generation facilities and rate increases. He strongly implies
21 that it is not in the best interest of Empire's customers for Empire to serve *new*
22 customers, such as those represented by the homes built and to be built in The Lakes at

1 Shuyler Ridge. I have great difficulty both understanding and agreeing with his thought
2 process here.

3 **Q. WHAT ARE MR. BECK'S WORDS ON PAGE 14 THAT RAISE A CONCERN?**

4 A. The specific wording is: "Given these price increases, one has to wonder if additional the
5 addition [sic] of load that would be added from The Lakes at Shuyler Ridge benefits all
6 of Empire's customers."

7 **Q. PLEASE EXPLAIN.**

8 A. It sounds to me that Mr. Beck is saying that adding additional customers does not benefit
9 Empire's existing customers. If we assume just for the sake of argument that Mr. Beck is
10 correct and that serving new load in this subdivision is not in the best interest of Empire's
11 existing customers, then it seems to me that Mr. Beck should be supporting this
12 application.

13 Let me put it another way to demonstrate why I am confused about the Staff's
14 reasoning. Mr. Beck appears to be saying in his rebuttal that it is in the best interest of
15 Empire's existing customers that Empire *not* serve Shuyler Ridge. Well, that is what will
16 happen if the application is approved. We will not serve those customers. So it would
17 seem logical to me that Mr. Beck should want to achieve the outcome that he says is in
18 the best interests of Empire's existing customers and thus he should support the
19 application. But when we asked Mr. Beck in a data request if he agreed that that
20 application was in the public interest, he said "No." See Schedule MEP-1. So I am
21 confused as to why, if we are achieving the result he indicates would be good, he says he
22 does not support the application.

1 Furthermore, his position here appears to also be inconsistent with his comment in
2 the data request response to the effect that the City of Republic ought to go ahead and try
3 to annex the entire subdivision just so Empire will serve all the customers for the sake of
4 certainty of supplier. That result doesn't seem to match with his comment casting doubt
5 about whether Empire ought to be seeking to serve new customers.

6 Having said all of that, I also cannot agree with what appears to be his underlying
7 premise, which is that Empire should attempt to avoid adding any new customers because
8 that means it will need new generation and new generation will result in higher costs for
9 existing customers. I think this is way too simplistic an approach to a complex situation
10 that completely transcends this application.

11 The historical charts that I have seen generally show a lowering of prices for
12 electricity in the 1950's and 1960's due to increased efficiencies and economies of scale.
13 Costs for electricity have generally been going up since the 1970's due to inflation and
14 regulatory requirements and the need for new generation to meet demands. Should
15 Empire have stopped adding new customers in 1978 because costs were going up? I
16 don't think so. Should Proctor and Gamble or Toyota stop making new products because
17 their prices have been going up? The debate about growth versus no-growth has many
18 facets. Empire is like many other electric suppliers, including Ozark Electric, in that it
19 not only experiences growth from new customers, it experiences growth in usage from its
20 existing customers. Households nationwide use more kilowatt-hours than they used to.
21 Existing power plants over time become obsolete and are replaced with new ones. New
22 power plants can cost more than old ones. We have to meet the demands of our
23 customers. I could probably go on and on about this topic for hours, but my point is that

1 it is a debate that will not be resolved in this proceeding. With a few exceptions, we all
2 pay out more dollars for goods and services than we used to.

3 We have also been dancing around the fact that as long as Empire is faced with
4 unregulated competition, that is, suppliers that are not regulated by the Commission as to
5 the terms by which they will serve developers, these type situations can occur. That also
6 is the topic of a debate that cannot be resolved in this proceeding.

7 **Q. ON PAGE 15, MR. BECK NOTES WHAT HE SAYS IS A SHARP CONTRAST IN**
8 **YOUR TESTIMONY IN THIS CASE FROM THE PREVIOUS CASE**
9 **REGARDING THE FACT THAT EMPIRE RECEIVES NO EXCLUSIVE**
10 **TERRITORY AS A RESULT OF THIS APPLICATION. WHAT IS YOUR**
11 **REACTION TO THAT COMMENT?**

12 **A.** I would say that an agreement generally reflects the interests and the bargaining power of
13 the parties to the agreement. The proposal made in the previous cases made a lot of sense
14 to those participating in the negotiations. It reflected the consensus of several parties. It
15 served the goal described by the City of Republic for some uniformity of supplier by
16 area. I believe it had long-term benefits for the interested parties and that is why it
17 received the support it did. We were required to present it to the Commission and the
18 Commission did not accept it. So we have to respect the Commission's decision in those
19 cases and deal with the consequences of that. Obviously, this current proposal was not
20 our first choice.

21 The application in this case reflects the negotiations that went on between the
22 parties subsequent to the Commission's decision. It is true that Empire does not obtain
23 any exclusive territory as a result of this proposed agreement. However, Empire does not

1 give up the right to compete with Ozark anywhere other than The Lakes at Shuyler
2 Ridge, which encompasses approximately 245 acres, and Empire gets reimbursed for its
3 investment in the subdivision.

4 I also find it confusing that Mr. Beck is apparently criticizing Empire here
5 because it does not obtain some exclusive new territory in this proposal. I find that to be
6 in conflict with his indication on page 14 that it is not in the interests of Empire's existing
7 customers for Empire to be adding new load in the form of new customers. I also find it
8 to be in conflict with the position he took in the previous cases that Empire getting the
9 exclusive right to serve about 4.5 square miles south of the City of Republic was in the
10 public interest since the Staff supported that aspect of that filing. Empire stood to gain
11 significantly more load in the remaining 4.5 square miles over time than what would be
12 in The Lakes at Shuyler Ridge.

13 **Q. MR. BECK SAYS ON PAGE 15 THAT EMPIRE SHOULD BETTER EXPLAIN**
14 **THE PUBLIC INTEREST ASPECTS OF THIS APPLICATION IN ITS**
15 **SURREBUTTAL TESTIMONY. WHAT IS YOUR REACTION TO THAT?**

16 **A.** I think that in the process of going through his rebuttal testimony and discussing the
17 issues he raises, we have done that. I think we are in agreement with Mr. Beck and have
18 shown that the proposed solution is in the best interest of the developer and the existing
19 customers in the subdivision for several reasons. At least I understand Mr. Beck's
20 testimony to reach that conclusion.

21 I have to believe that the proposal is in the best interest of Ozark Electric since it
22 is supporting the application. I saw no testimony from Mr. Beck to the contrary.

1 I think we have to presume that the City of Republic believes the proposal is in its
2 best interest since it participated in the negotiations, is aware of the agreement, and did
3 not intervene in opposition. It achieves the result the City wanted of uniformity of
4 supplier. I saw no testimony from Mr. Beck to the contrary on that, either. Mr. Beck has
5 raised some concerns, which I have discussed, regarding a franchise between Ozark and
6 the City. I am sure Ozark Electric will want to address that, too.

7 I think we have demonstrated that the proposal is in the interest of Empire's
8 customers and shareholders, given the situation in which we find ourselves with the
9 rejection of the earlier proposal, since it basically puts us back to where we were before
10 we met with the other parties in March of 2006.

11 More importantly, I did not find any place in Mr. Beck's rebuttal testimony where
12 he clearly concludes that anyone is going to be *harmed* by the Commission approving
13 this proposed agreement. If he agrees that there are parties that will be benefited, and is
14 unable to identify any segment of the general population that is going to be harmed by
15 this proposal, it tells me that it is in the public interest.

16 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

17 **A.** At this time, it does.

SCHEDULE MEP-1

STAFF RESPONSE TO EMPIRE DATA REQUESTS

This is a data request from The Empire District Electric Company to Dan Beck in Case No. EO-2008-0043. The request relates to the Rebuttal Testimony of Dan Beck filed on November 9, 2007. Please email your response to duffy@brydonlaw.com.

1. Do you, as the representative of the Staff in this proceeding, agree that the territorial agreement proposed by the parties in this case is in the public interest?

Answer: No, based on the information that Staff has received to date. However, Staff expects that the surrebuttal testimony in this case, which has not yet been filed, should provide additional information that would be relevant to determining the public interest.

2. If your answer to question 1 is in the affirmative, please state the reasons why you believe it is in the public interest.

Answer: See response to 3.

3. If your answer to question 1 is in the negative, please state the reasons why you believe it is not in the public interest.

Answer: While I believe that my entire Rebuttal Testimony lays out my reasoning in this case, I would specifically refer to line 7, page 13 to line 20, page 15 of my Rebuttal Testimony.

In addition, Empire's witness Michael E. Palmer's Direct Testimony, Page 5, lines 13-16, points to certainty of the electric supplier in the face of possible annexation as the reason that this is in the public interest. Staff finds this logic perplexing since annexation of this subdivision would eliminate Ozark's ability to serve new customers in this subdivision and therefore Empire, which is already serving the existing customers in this subdivision, would be the only electric supplier that could serve new customers in the annexed subdivision. Therefore the annexation would provide the certainty of a single supplier with or without the territorial agreement.

4. If your answer to question 1 is neither in the affirmative or the negative, please state the reasons why you are unable to take a position either in support of or in opposition to the proposed territorial agreement.

Answer: See response to 3.

5. If you have taken a position in your prepared rebuttal testimony that you either support or oppose the proposed territorial agreement, please provide a reference to the page and line number where that position statement appears.

Answer: While I believe that my entire Rebuttal Testimony lays out my reasoning in this case and the questions and answers on line 7, page 13 to line 20, page 15 of my Rebuttal Testimony provides more specifics, I would point to lines 6-7, page 14 which states "I do not believe the Applicants have put forth an argument that explains why this Application is in the interest of Empire's customers." However, I would also point to the question and answer at lines 21-23, page 15 of my Rebuttal Testimony where I express my opinion that Empire should better explain the public interest aspects of this Application in its Surrebuttal testimony.

6. If you are unable at this time to take a position either in favor of or in opposition to the proposed territorial agreement, please indicate what specific information in the way of facts or data you need in order to be able to take such a position. Please indicate what steps you have taken since this case was filed to obtain this particular information, and specifically when you requested the information, and from whom.

Answer: See response to 1 and 3.

AFFIDAVIT OF MICHAEL E. PALMER

STATE OF MISSOURI)
) ss
COUNTY OF JASPER)

On the 7th day of December, 2007, before me appeared Michael E. Palmer, to me personally known, who, being by me first duly sworn, states that he is the Vice President – Commercial Operations of The Empire District Electric Company and acknowledges that he has read the above and foregoing document and believes that the statements therein are true and correct to the best of his information, knowledge and belief.


Michael E. Palmer

Subscribed and sworn to before me this 7th day of December, 2007.


Notary Public

My commission expires:

