

**In the Matter of the Application of )  
Brandon Jessip for Change of Electric ) File No. EO-2017-0277  
Supplier from Empire District Electric )  
to New-Mac Electric )**

COMES NOW New-Mac Electric Cooperative, Inc., (“New-Mac”) and submits its position concurring with the Suggestions of Empire District Electric Company (“Empire”) in Opposition to Staff’s Motion to Dismiss the Application of Brandon Jessip:

1. New-Mac agrees with Empire's argument regarding the ordinary standards for summary dismissal of a claim.
2. New-Mac agrees with Empire that the disposition proposed by Staff mis-interprets the meaning and intent of RSMo. §§ 393.106.2 and 394.315.2, as well as § 91.025 pertaining to municipal suppliers.
3. New-Mac respectfully suggests that, under these statutes, the continuing inherent first right of Empire to serve Mr. Jessip is co-extensive with the life of the structure that is or was served by Empire. If Mr. Jessip were to follow through with his initial plans, this structure would be removed and New-Mac would be eligible to compete to serve a new structure. For so long as service is contemplated at the existing structure, the right and privilege of providing it with electric service

resides in Empire based on the fact that it once lawfully commenced supplying retail electric energy to the structure.

4. In the interests of utility efficiency and reduction of utility duplication, Empire's right may be disturbed only on a showing that a change of supplier is "in the public interest for a reason other than rate differential." Until such finding of fact by the Commission, New-Mac is barred from providing service to this structure.
5. For purposes of the law, removal of Empire facilities is no more consequential than an ordinary service disconnection. Staff's creation of a new standard for change of supplier based on a period of interrupted service is not new but is actually a return to a legislatively discarded old standard. Prior to 1991 these statutes provided for customer choice of supplier if the customer sustained a sixty (60) day period without service. (RSMo. § 393.106, 1986) The Staff standard would create even more utility uncertainty than the old law in as much as the Staff suggests no specific measure for a service gap that would earn the right to seek competitive electric service.

WHEREFORE, New-Mac respectfully requests that the Commission deny Staff's Motion to Dismiss and that Mr. Jessip's application be processed under the legal standard set forth in Section 393.106 RSMo.

Respectfully submitted,

**ANDERECK, EVANS, WIDGER,  
LEWIS & FIGG L.L.C.**

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ATTORNEYS FOR NEW-MAC  
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## **CERTIFICATE OF SERVICE**

The undersigned certifies that a complete copy of the foregoing instrument was served upon:

The undersigned certifies that a complete copy of the foregoing instrument was served upon:

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By e-mail and/or enclosing same in envelopes addressed to the attorneys of record of said parties at their business addresses as disclosed in the pleadings of record therein, with first class postage fully prepaid, and by depositing said envelope in a U.S. Post Office mail box in Springfield, Missouri, on July 13, 2017.

/s/ Megan E. Ray