

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of	)	
Gayla Henderson for Change	)	File No. EO-2010-0070
of Electric Supplier.	)	

**RESPONDENT CITY OF CAMPBELL'S RESPONSE AND OPPOSITION TO
APPLICATION OF GAYLA HENDERSON FOR CHANGE OF ELECTRIC SUPPLIER**

COMES NOW Respondent City of Campbell, Missouri ("City of Campbell" or "City"), by and through its undersigned counsel, Thompson Coburn LLP, and hereby files its Response and Opposition to Application of Gayla Henderson ("Applicant") for Change of Electric Supplier ("Application"). In support of its Response and Opposition, City of Campbell states as follows:

Parties

1. City of Campbell is an incorporated Missouri city of the fourth class, located within the County of Dunklin, Missouri.
2. Applicant is an individual residing at 18259 Highway. 62, Campbell, Missouri.

Service on City of Campbell

3. Copies of all filings, pleadings, orders or other matters filed in or issued in this docket can and should be served on City of Campbell by serving on the following counsel for City of Campbell:

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Regulatory Compliance

4. City has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court that involve customer service or rates that have occurred within three years of the date of this Response and Opposition.

5. City has no annual report or assessment fees which are overdue this Commission.

Facts

6. On or about August 28, 2009, Applicant applied to this Commission for an order authorizing them to change their retail electrical energy supplier from the City of Campbell to Ozark Border Electrical Cooperative (“Ozark Border”).

7. Applicant’s Application requests a change of electrical energy supplier for the following reasons, among others: (a) Applicant lives outside the city limits of the City of Campbell; (b) Applicant contends the electrical service rates paid to the City of Campbell are too high; and (c) Applicant’s electrical rates paid to the City of Campbell have fluctuated over past months.

8. On or about August 31, 2009, this Commission issued a Notice of Request directing that any responses to Applicant’s Application should be filed no later than September 30, 2009.

9. On or about September 29, 2009, this Commission entered its Order granting City of Campbell an additional thirty days, up to and including October 30, 2009, in which to file its Response and Opposition to Applicant’s Application.

10. City of Campbell has owned and operated a municipal electrical utility supplying electrical power at retail to its customers for over sixty years.

11. City of Campbell has provided electrical service to the structure in which Applicant resides for over thirty years, and since before July 11, 1991. City of Campbell is currently the electrical service provider for Applicant.

12. City of Campbell has recently has undertaken efforts to exit the retail electrical supply business, including negotiation of the sale of its electrical distribution facilities and securing a replacement power supplier for City's customers. City has engaged in substantive discussions with potential purchasers for its electrical distribution facilities and business.

13. City of Campbell currently does not have in place a viable long-term electrical power supply contract. The lack of such a viable long-term electrical power supply contract means that the rates currently paid by City's customers are prone to fluctuation and are higher than they will be once City sells its distribution facilities and business to another electrical service provider. City anticipates that the electrical service rates paid by City of Campbell's current electrical service customers will be lower after service of such customers has been transferred to the purchaser of City's distribution facilities and business.

Reasons for City of Campbell's Opposition to Applicant's Application

14. City of Campbell respectfully opposes Applicant's Application for the following reasons, among others.

15. First, the fact that Applicant is located outside of the city limits of the City of Campbell does not present a compelling reason for a change of service provider to Ozark Border. City of Campbell is entitled to provide service to certain residents located outside its city limits, including Applicant, pursuant to R.S.Mo. § 386.800, in that City of Campbell has provided electrical service to the structure in which Applicant resides since before July 11, 1991. *See also* R.S.Mo. § 91.025(2) (permitting a municipality to continue serving customers outside its

municipal limits when service to the customer was lawfully commenced by the municipality); and *Assoc. Elec. Co-op., Inc. v. City of Springfield*, 793 S.W.2d 517, 521-24 (municipal electric system may serve customers outside municipality's city limits).

16. Second, an alleged rate differential or complaint regarding an electrical service rate that is allegedly too high, such as Applicant's complaint here, cannot constitute the basis for a change of electrical supplier. Under R.S.Mo. § 393.106(2), the Commission may order a change of electrical service supplier "for a reason *other than rate differential*." (emphasis added). See also R.S.Mo. § 91.025(2) (likewise stating that the Commission may order a change of electrical service supplier for a customer of a municipal system "for a reason *other than rate differential*." (emphasis added)). Therefore, Applicant's complaint regarding electrical service rates paid to City of Campbell cannot constitute a basis for granting Applicant's Application.

17. Moreover, Applicant's complaint regarding allegedly high rates paid for electrical service provided by City of Campbell will be moot once the City's sale of its distribution facilities and business to another electrical service provider has been completed and approved by this Commission. As discussed above, City of Campbell currently does not have in place a viable long-term electrical power supply contract. As a result, City anticipates that the electrical service rates paid by City of Campbell's current electrical service customers will be lower after service of such customers has been transferred to the purchaser of City's system. City anticipates that Applicant's rates will decrease at such time as the sale has been completed and approved by this Commission.

18. The sale of City's distribution facilities will also render moot Applicant's complaint regarding fluctuating rates currently paid to City. As discussed above, City does not have in place a viable long-term electrical power supply contract. As a result, City has been

required to purchase electrical power to provide to its customers pursuant to short-term contracts, which are susceptible to sharp fluctuations in price. As a provider of electrical power as well as distributor, the purchaser of City's system likely will not be subject to such fluctuations in price. Therefore, Applicant and other current customers of City should enjoy stabilized rates once the sale of City's system is complete and has been approved by this Commission.

19. Ozark Border has similarly failed to state a basis upon which Applicant's Application should be granted. On or about October 2, 2009, Ozark Border filed its Response to Applicant's Application. On or about October 2, 2009, Ozark Border also filed its Reply to the Motion to Intervene in the current Application by Pemiscot. *See Exhibit A.*

20. Ozark Border's Reply contends that Applicant's Application should be granted because, among other reasons, Applicant is "within the territory previously assigned to Ozark Border Electrical cooperative by virtue of a Territorial Agreement entered into with Ameren UE and approved by the Missouri Public Service Commission on October 19, 1999." *Id.*, ¶ 4.

21. However, this October 19, 1999 Territorial Agreement between Ozark Border and Ameren UE does not apply to the present case. Most importantly, City was not a party to that Territorial Agreement. The Territorial Agreement between UE and Ozark approved in EO-99-599 was based upon an October 4, 1999 Stipulation and Agreement between Ameren UE, Ozark Border, Staff, Stoddard County Intervenors, Poplar Bluff, City of Malden and the Office of Public Counsel.

22. Paragraph 2 of that Stipulation specified the Territorial Agreement was only between Ameren UE and Ozark Border. Paragraph 29 of that Stipulation further specified that the exclusive service areas designated in the Revised Territorial Agreement were only exclusive as between Ameren UE and Ozark Border, and "*shall in no way affect or diminish the present or*

future rights and duties of Poplar Bluff and Malden, which are municipal electric suppliers, *or any other electric supplier not a party to the Revised Territorial Agreement.*” (emphasis added).

23. This stipulation is consistent with R.S.Mo. § 394.312(6), which states that Commission approval of a territorial agreement shall not affect or diminish in any way the rights of any supplier that is not a party to the agreement - - here, City of Campbell.

24. Moreover, Paragraph 31 of that Stipulation stated that Ozark Border agreed not to use the Revised Territorial Agreement, or Commission approval thereof, in any way to attempt to convince potential electric consumers to choose Ozark Border as their electrical supplier. Paragraphs 31- 35 set forth additional provisions with respect to Malden and Poplar Bluff specifying that approval of this Revised Territorial Agreement was not to impact these municipal electrical suppliers.

25. In presenting this Stipulation to the Commission at the October 8, 1999 hearing, the parties at Transcript Page 8 represented to the Commission that any other municipally owned electrical supplier is and shall be free to serve anywhere it may legally choose without regard to the revised territorial agreement boundaries.

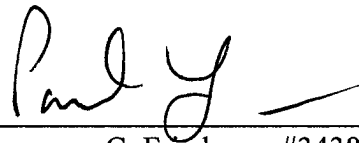
26. The Commission’s October 19, 1999 Report and Order in EO-99-599 approving the revised territorial agreement relied upon the above-referenced stipulation provisions, and made them part of the revised territorial agreement approved in that proceeding. No provision of the 1999 UE-Ozark Territorial Agreement addressed the electrical distribution facilities of City of Campbell, purported to set a purchase price for these facilities, identified these facilities as being included in any sale or exchange, or included any customers of City of Campbell as being exchanged.

27. For all of these reasons, Ozark Border's contention that any sale of City of Campbell's distribution facilities will require amendment of the October 19, 1999 Territorial Agreement between Ozark Border and Ameren UE is similarly without merit.

WHEREFORE, for all of the reasons stated herein, Respondent City of Campbell respectfully requests that the Commission enter its Order denying Applicant's Request for Change of Electrical Service Provider, determining that City of Campbell is the proper electrical supplier for Applicant, and granting such other and further relief as the Commission deems just and proper under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been mailed, first class mail postage prepaid, this 30th day of October, 2009 to:

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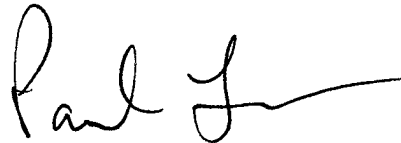
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BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of the Application of	)	
Gayla Henderson For	)	Case No. EO-2010-0070
Change of Electric Supplier	)	

**REPLY OF OZARK BORDER ELECTRIC COOPERATIVE TO
MOTION OF PEMISCOT-DUNKLIN ELECTRIC COOPERATIVE TO INTERVENE**

COMES NOW Ozark Border Electric Cooperative, by and through counsel, and for its Reply to Pemiscot-Dunklin Electric Cooperative's Motion To Intervene, states the following:

1. On August 28, 2009, Gayla Henderson filed a verified Application For Change of Electric Supplier from the City of Campbell to Ozark Border Electric Cooperative.
2. On August 31, 2009, the Commission issued its Order Directing Ozark Border to respond on or before September 30, 2009 to the Application for Change of Electric Supplier and also ordered the City of Campbell to respond by that same date.
3. Without the direction of the Public Service Commission, the Pemiscot-Dunklin Cooperative has moved to intervene in this matter for the purpose of challenging the Application For Change of Electric Supplier, claiming that it has been in negotiations with the City of Campbell for the purpose of purchasing the City of Campbell municipal utilities system.
4. It is the position of Ozark Border that because the Applicant resides outside the City of Campbell, she is within the territory previously assigned to Ozark Border Electric Cooperative by virtue of a Territorial Agreement entered into with AmerenUE and approved by the Missouri Public Service Commission on October 19, 1999. The terms of the Territorial Agreement are public information contained in a Missouri PSC docket file.

5. The Territorial Agreement between Ozark Border and AmerenUE provided that Ozark Border would have a portion of Dunklin County as its exclusive service area and that portion of Dunklin County encompassed the City of Campbell, Missouri. The City of Campbell has operated its own municipal utility system distributing electricity to its customers until it recently announced that it was desirous of selling its municipal utility system.

6. The proposed sale of the City of Campbell municipal utilities system to Pemiscot-Dunklin will result in a duplication of services and a violation of the terms of the Territorial Agreement previously approved by the Commission, in that it will require the construction of an additional substation at a cost of approximately Two Million Dollars (\$2,000,000.00) when Ozark Border has already built a substation in that area capable of serving the City of Campbell and in anticipation of serving the area around the City of Campbell at the time that the Territorial Agreement was entered into with Ameren Union Electric.

7. Moreover, Ozark Border and the City of Campbell had also entered into negotiations regarding the sale of the municipal utility to Ozark Border, and it is the position of Ozark Border that an agreement was reached regarding the sale, but thereafter the municipal utility, on its own, entered into private negotiations at a hastily called meeting on the following Saturday with Pemiscot-Dunklin to subvert, breach and contravene its agreement to sell to Ozark Border.

8. Any sale of the municipal utility to Pemiscot-Dunklin Electric Cooperative will require Ozark Border and Ameren Union Electric to amend the Territorial Agreement of October 19, 1999, for which Ozark Border gave considerable value in that Ozark Border gave up highly profitable territory around a high development area around Dexter, Missouri

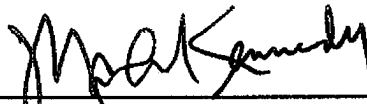
in order to obtain the Dunklin County territory, including the City of Campbell, Missouri.

9. As a result of the foregoing, Pemiscot-Dunklin has no standing to intervene in this matter, as it is a matter among the Applicant, who has requested a change to Ozark Border Electric Cooperative, the City of Campbell, and Ozark Border. Not only does Pemiscot-Dunklin lack a Territorial Agreement to serve the area occupied by the Applicant for a change of electric supplier, but in addition, such service by Pemiscot-Dunklin will violate the terms of Ozark Border's Territorial Agreement, and will result in an expensive duplication of services already built in the area.

WHEREFORE, Ozark Border Electric Cooperative prays the Commission to deny the Application of Pemiscot-Dunklin to Intervene and to go forward with approving the Application For Change of Electric Supplier of Gayla Henderson which is currently before the Commission.

Respectfully submitted,

KENNEDY, KENNEDY, ROBBINS & YARBRO, LC



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ATTORNEY FOR OZARK BORDER ELECTRIC COOP.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was mailed via first class mail on the following parties this 2nd day of October, 2009 to:

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