

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of The)
Empire District Electric Company for)
Authority to Sell and Transfer Part of its) Case No. EO-2009-0159
Works or System to the City of Monett,)
Missouri)

**REPLY OF THE EMPIRE DISTRICT ELECTRIC COMPANY TO STAFF'S
RESPONSE TO APPLICATION**

COMES NOW The Empire District Electric Company ("Empire" or the "Company") and for its reply to the Response to Application ("Response") filed by Staff on December 2, 2008, states the following:

1. Staff filed its Response primarily to seek authority to file its recommendation on January 23, 2009. In doing so, it offered a preliminary assessment of the Company's request. Empire advised Staff it had no objection to its proposal to file its recommendation on January 23rd. It does, however, have a concern about Staff's preliminary legal analysis as set forth in paragraphs 5 and 6 of the Response.

2. In paragraph 5, Staff states that Empire has properly submitted an application for a transfer of certain of its electric distribution assets to the City of Monett (the "City") as required by § 393.190.1, RSMo. In doing so, Empire fashioned its Application to conform to the Commission's rule governing such requests. See, 4 CSR 240-3.110. In paragraph 5 of the Application, Empire expressly stated that it currently provides electrical service to approximately 100 customers in the areas served by the facilities that the Company proposes to sell

to the City. It is not, therefore, correct to suggest that Empire has failed to note that certain of its existing customers will become customers of the City.¹

3. Staff offers the view in paragraph 6 of the Response that Empire's filing is deficient for failure to have submitted the Application in the form of a request for a change of electrical supplier. Assuming that Staff's conclusion that § 393.106, RSMo forms an independent basis of jurisdiction, a point that Empire disputes (See, ¶ 4, *infra.*), the fact remains that the Commission has jurisdiction to consider the Application in the form submitted. Consequently, the Commission has the authority to deal with the principal topic before it and any and all ancillary issues, including the fact that the sale of facilities will cause certain of Empire's customers to be served by a new electrical supplier. There is no deficiency in the Company's filing.

4. In any event, Empire respectfully disagrees with Staff's conclusion that § 393.106, RSMo is applicable in the circumstances. The statutory provision to which Staff directs the Commission's attention deals with the circumstance in which a customer or landowner seeks leave to change electric suppliers. That provision was put in place to limit a customer's ability to switch electric service suppliers solely based on which competing provider offers a more advantageous

¹ Staff correctly notes that there was an error in the legal description in the published notice affecting the parcel of property upon which the Heim Trailer Park is located. It should be noted, however, that the owner of that property had requested voluntary annexation in order to secure City services. In any event, the City has taken steps to remedy any perceived deficiency. On December 5, 2008, it adopted Ordinance No. 7908 bearing a corrected legal description and caused notice to be published in the Monett Times newspaper on December 11, 2008. A copy of Ordinance No. 7908 and a proof of publication are attached for the Commission's information.

rate. It does, however, allow for changes based on other factors such as quality of service. The last two clauses in the statute make the intent of the legislation obvious.

However, those customers who had canceled service with their previous supplier or had requested cancellation by May 1, 1991, shall be eligible to change suppliers as per previous procedures. No customer shall be allowed to change electric suppliers by disconnecting service between May 1, 1991 and July 11, 1991. (Emphasis added)

In footnote 1 of the Response, Staff's points to the term "affected party" as being universally inclusive but that fails to note that throughout the legislation are numerous references to the term "electrical supplier" or some variation of that phrase. Had the General Assembly intended that an applicant include an electrical supplier, it needed only to have said so.

5. The foregoing issue is one of only academic interest in any event. Practically speaking, the only incremental information of any consequence that otherwise would have been necessary had Empire referenced the change of supplier rule in addition to or in lieu of the sale of assets rule is the requirement to provide "a list of the names and addresses of all customers whose electrical supplier is proposed to be changed". See, 4 CSR 240-3.140(1)(l). Where this topic is concerned, Empire already has supplied Staff with a list of affected customers as of March of 2008 and has indicated a willingness to update the list and file it as may be necessary to the Commission's review of the Company's Application.

6. Staff's filing appears to suggest that the proper standard for approval of the Application is whether granting the relief requested "is in the

public interest”. Where this question is concerned, the Company’s Application asserts that “network reliability for customers in the annexed areas should not be harmed and may, in fact, be enhanced because those customers would be transferred to a City utility substation closer in proximity to the customers’ loads.”² Empire believes that the circumstances will demonstrate that the sale is in the public interest and, consequently, is not detrimental to the public interest so this distinction will be inconsequential in this case.

7. The Company believes the Staff’s fundamental concern as set forth in its Response is the adequacy of customer notice. Empire agrees that customer notice is a legitimate issue and that it is prepared to work with Staff and the City to address this consideration to the Commission’s satisfaction.

WHEREFORE, the Company maintains that the Application is not legally deficient and stands ready to address any customer notice considerations to the end of the transaction may be approved by the Commission.

Respectfully submitted,

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² See, ¶ 10.

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, e-mailed, or hand-delivered, on this 30th day of December, 2008, to:

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