

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

<b>In the Matter of the Application of</b>	)	
<b>Brandon Jessip for Change of Electric</b>	)	<b>File No. EO-2017-0277</b>
<b>Supplier from Empire District Electric</b>	)	
<b>to New-Mac Electric Cooperative, Inc.</b>	)	

**POST-HEARING BRIEF OF NEW-MAC ELECTRIC COOPERATIVE, INC.**

COMES NOW New-Mac Electric Cooperative, Inc., (New-Mac) by and through its undersigned counsel, and for its post-hearing brief respectfully states the following:

**INTRODUCTION**

Brandon Jessip, a customer of Empire District Electric (Empire), has requested that the Missouri Public Service Commission (Commission) allow him to switch electrical providers so that he can be served by New-Mac. If the facts demonstrate that permanent service was commenced by Empire to Mr. Jessip’s residential structure, Mr. Jessip bears the burden of presenting evidence that this request for change of supplier is in the public interest for reasons other than a rate differential. RSMo. 393.106. Staff’s position in this case is that even if Empire once provided permanent service to Mr. Jessip’s residential structure, the passage of time when Mr. Jessip’s residential structure received no electrical service from any supplier makes the anti-flip flop law inapplicable. (Staff’s Motion to Dismiss, June 26, 2017; Exhibit No. 100, Rebuttal Testimony of Daniel I. Beck, September 7, 2017, 1:23-2:15.) New-Mac and Empire disagree with Staff’s position and assert that the anti-flip flop law does apply in this case and further assert that the only way in which the Commission can grant Mr. Jessip’s requested relief is if it finds the relief to be in the public interest for reasons other than a rate differential (Empire’s Suggestions in Opposition to Staff’s Motion to Dismiss, July 6, 2017; New-Mac’s Concurrence with Empire’s Suggestions in Opposition to Staff’s Motion to Dismiss, July 13, 2017). New-Mac takes no position on whether

Mr. Jessip has met this burden. New-Mac respectfully requests the Commission enter its Order in a manner that preserves and upholds the anti-flip flop law.

## **FACTS**

The only facts relevant to New-Mac's position herein are that a presently-existing residential structure on Mr. Jessip's property was previously provided permanent electric service by Empire. (Evidentiary Hearing Transcript, October 10, 2017, 36:15-37:6, 37:22-38:10, 43:5-11, 46:5-24, 47:24-48:2, 48:3-16, 56:3-22, 75:16-75:22, 76:6-9). Additional facts may be asserted by other parties regarding the public interest standard, but New-Mac has taken no position throughout this case on whether Mr. Jessip has met his burden and respectfully leaves the presentation of those facts to the other parties and leaves the determination of whether the burden has been met to the Commission.

## **ARGUMENT**

### **1. Empire's continuing right to serve Mr. Jessip's structure**

In this case, the facts demonstrate that Empire previously provided permanent service to Mr. Jessip's residential structure. (Exhibit No. 200, Rebuttal Testimony of Patsy J. Mulvaney, 2:9-3:9; Evidentiary Hearing Transcript, October 10, 2017, 43:5-11, 46:5-24, 47:24-48:2, 48:3-16, 75:16-75:22, 76:6-9). Staff's position in this case is that even if Empire once provided permanent service to Mr. Jessip's residential structure, the passage of time when Mr. Jessip's residential structure received no electrical service from any supplier makes the anti-flip flop law found at Section 393.106, RSMo. inapplicable. (Staff's Motion to Dismiss, June 26, 2017; Exhibit No. 100, Rebuttal Testimony of Daniel I. Beck, September 7, 2017, 1:23-2:15). New-Mac and Empire disagree with Staff's position. (Empire's Suggestions in Opposition to Staff's Motion to Dismiss, July 6, 2017;

New-Mac's Concurrence with Empire's Suggestions in Opposition to Staff's Motion to Dismiss, July 13, 2017). This position taken by Staff urges the Commission to dismiss this case and effectually allow Mr. Jessip to freely choose his electrical provider without deference to the anti-flip flop law and thus without regard to his burden of proof that this request is in the public interest for reasons other than a rate differential.

There is no dispute that the building in this case is a "structure" as defined in Section 393.106(2), RSMo. and no evidence suggests that the service once provided by Empire was anything but "permanent service" as defined in Section 393.106(1). In fact, Daniel I. Beck admitted that the meter box and weather head presently existing on Mr. Jessip's residential structure is indicative that permanent service once existed to that structure. (Evidentiary Hearing Transcript, October 10, 2017, 65:1-66:9). There is no dispute that Empire has been the only supplier to this structure. (Evidentiary Hearing Transcript, October 10, 2017, 48:13-16, 65:24-66:1). Because Empire once provided "permanent service" to a presently existing "structure" on Mr. Jessip's property, all other electric suppliers are prohibited from serving this structure absent an Order of the Commission that such change "is in the public interest for a reason other than a rate differential." Section 393.106.2, RSMo.

There is no ambiguity in the anti-flip flop law regarding whether a period of service interruption bypasses the law requiring a Commission determination of public interest. It is clear that facts supporting a period of interrupted service now have no influence on a case for a change of electrical suppliers. Prior to 1991, Missouri law allowed a customer to change electrical suppliers if the customer had not received service from another supplier within the last sixty days. (RSMo. § 393.106, 1986). In 1991, the legislature removed the provision allowing customers to change suppliers after sixty days without service. The law now states that customers may only change

electrical suppliers, once permanent service has been commenced to a particular structure, upon an Order from the Commission finding a change of supplier is in the public interest for reasons other than a rate differential. No waiting period presently exists in Missouri law as a means to bypass the Commission's absolute authority over change of suppliers.

The fact that the legislature abrogated this sixty day period and specified the only avenue a change of supplier could be accomplished is through a Commission determination that a public interest standard has been satisfied is evidence that the legislature intended that customers could no longer disconnect service and request a new provider after a period of time without service, regardless of the length of time without service. The legislature intentionally discarded the law allowing a waiting period and knowingly supplanted it with a public interest standard. This deliberate and unambiguous legislative intent should not be disregarded in this case or in any change of supplier case.

New-Mac urges the Commission to enter its Order, regardless of the outcome, in a manner preserving the anti-flip flop law and finding that permanent service was commenced to Mr. Jessip's residential structure by Empire and that no passage of time avoids the requirements of the anti-flip flop law; further, that the Commission enters its Order either granting the relief requested by Mr. Jessip on the basis that it is in the public interest for reasons other than a rate differential, or denying the requested relief on the basis that it is not in the public interest.

## **2. Burden of proof**

New-Mac takes no position on whether Mr. Jessip has met his burden of proving that the requested change of supplier is in the public interest.

**CONCLUSION**

WHEREFORE, New-Mac respectfully requests that the Commission either grant Mr. Jessip's request to change electric service providers if it finds that this request is in the public interest for reasons other than a rate differential or that it deny Mr. Jessip's request to change electric service providers if it finds that the request is not in the public interest for reasons other than a rate differential.

Respectfully submitted,

**ANDERECK, EVANS, WIDGER,  
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**CERTIFICATE OF SERVICE**

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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 October 27, 2017.

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/s/ Megan E. Ray