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## Missouri Public Service Commission

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October 5, 1999

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Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

FILED<sup>2</sup>

OCT 5 1999

Missouri Public  
Service Commission

**RE: Case No. EA-99-172 - Empire District Electric Company**

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of the **STAFF'S REPLY BRIEF**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

David J. Stueven  
Assistant General Counsel  
(573) 751-6726  
(573) 751-9285 (Fax)

DJS/wf  
Enclosure  
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>

OCT 5 1999

Missouri Public  
Service Commission

In the Matter of the Application of the )  
Empire District Electric Company for a )  
Certificate of Public Convenience and )  
Necessity Authorizing it to Construct, )  
Install, Own, Operate, Control, Manage, )  
and Maintain an Electric Transmission )  
and Distribution System to Provide )  
Electric Service in an Area in Greene )  
County, Missouri. )

Case No. EA-99-172

**STAFF'S REPLY BRIEF**

**COMES NOW** the Staff of the Missouri Public Service Commission ("Staff"), and for its Reply Brief, states to the Missouri Public Service Commission ("Commission") as follows:

The briefs filed by the various parties to this case raised only one issue that was not previously addressed in Staff's Initial Brief: whether the City of Springfield would have to obtain a franchise to serve within the city limits of Strafford and Willard. Staff sufficiently addressed all other issues raised by the parties in its Initial Brief, and Staff does not see the need to reiterate the same arguments found therein. As such, Staff will only address the additional issue in its Reply Brief.

**Requirement of a Franchise**

The City of Springfield, through the Board of Public Utilities ("CU"), states that it can lawfully serve the areas in question "even without a franchise from Strafford and/or Willard, even if at some undetermined future point in time either area was annexed by the respective city." (Initial Brief of the City of Springfield, Missouri, Through the Board of Public Utilities

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("CU Brief") at p. 5). CU seems to rely on the statutory language that authorizes it to serve within the former Springfield Gas and Electric Company service territory.<sup>1</sup>

CU states in its brief "...that City Utilities can lawfully serve the entire territory of the former Springfield Gas and Electric Company...which was acquired by City Utilities in the early 1940's..." (CU Brief at p. 4). While Staff concurs that the statute does allow CU the opportunity to provide service in the former Springfield Gas and Electric company territory, the statute does not authorize CU to utilize a city's right-of-way without obtaining a franchise from that city. Further, CU offers no other authority, statutory or otherwise, that would allow it to utilize a city's right-of-way without obtaining a franchise from that city.

If CU could provide service without using the city's right-of-way, it could be argued that CU would be able to provide service to new customers. However, doing so would require the use of private rights-of-way and easements, which CU apparently criticizes in its brief. (CU Brief at page 12, footnote 3). Further, providing service in this manner would not appear to be an efficient utilization of utility resources. Empire is required by its tariff to only make reasonable extensions of its facilities to provide service to new customers. If Empire does not follow its tariff or if it makes unreasonable investments in facilities, the Commission can exclude those investments, and any return on those investments, from Empire's rates. CU has no such incentive to ensure that its extensions are reasonable.

While CU has attempted to assuage any fears the Commission may have concerning the availability of service for new customers in annexed areas, CU's argument that it can serve without a franchise is not supported and still leaves a serious question concerning the availability of service in the event that the proposed service areas are annexed by Strafford and Willard. If there is no franchised provider authorized to provide new service within newly annexed territory,

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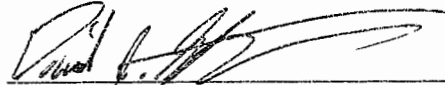
<sup>1</sup> RSMo 386.800

there is a possibility that new customers would not be able to obtain service within these newly annexed areas.

**WHEREFORE**, the Staff respectfully requests that the Commission issue an order granting Empire's Application, consistent with the terms of the Non-Unanimous Stipulation and Agreement filed by the Cooperatives, the Staff, and Empire.

Respectfully submitted,

DANA K. JOYCE  
General Counsel

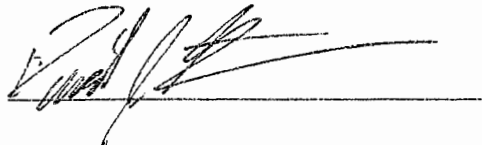


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#### Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list on this 5th day of October 1999.



**Service List for**  
**Case No. EA-99-172**  
**Revised: October 5, 1999**

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