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June 1, 2004

EUGENE E. ANDERECK (1923-2004)
GREGORY C. STOCKARD (1904-1993)
PHIL HAUCK (1924-1991)

FILED³

JUN 01 2004

Missouri Public
Service Commission

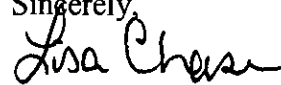
Secretary
Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Re: Surrebuttal Testimony
Ozark Border Electric Cooperative v City of Poplar Bluff
Case No. EC-2003-0452

Dear Secretary:

Enclosed for filing please find an original and eight copies of the Surrebuttal Testimony of Stanley Estes in the above referenced case.

If you have any questions, please contact me at the number listed above.

Sincerely,

Lisa C. Chase

LCC:lw

Encl.

CC: General Counsel, OPC
General Counsel, PSC
Stanley Estes
Dean Cooper
Mark Kennedy

WITNESS: STANLEY ESTES
TYPE OF EXHIBIT: SURREBUTTAL TESTIMONY
SPONSOR: OZARK BORDER ELECTRIC
COOPERATIVE
CASE NO. EC-2003-0452

FILED³

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MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EC-2003-0452

SURREBUTTAL TESTIMONY

OF

STANLEY ESTES

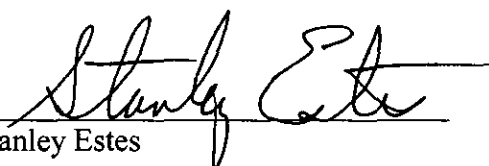
JEFFERSON CITY, MISSOURI

June 1, 2004

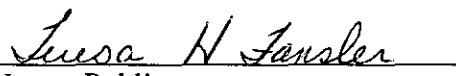
AFFIDAVIT OF STANLEY ESTES

STATE OF MISSOURI)
) ss.
COUNTY OF BUTLER)

Stanley Estes, of lawful age, on my oath states, that I have participated in the preparation of the foregoing testimony in question and answer form, consisting of 7 pages, to be presented in this case; that the answers in the foregoing testimony were given by me; that I have knowledge of the matters set forth in such answers; and that such matters are true to the best of my knowledge and belief.


Stanley Estes

Subscribed and sworn to before me this 28th day of May, 2004.


Notary Public

My Commission Expires: July 17, 2006

TERESA H. FANSLER
Notary Public-Notary Seal
STATE OF MISSOURI
Wayne County
My Commission Expires July 17, 2006

1 **Q. Are you the same Stanley Estes that prefiled direct testimony on behalf of Ozark**
2 **Border Electric Cooperative in this complaint proceeding?**

3 A. Yes.

4 **Q. After reading the testimony of Doug Bagby, do you find there are some points with**
5 **which you agree?**

6 A. Yes.

7 **Q. What are they?**

8 A. First, I agree with Mr. Bagby that the Territorial Agreement had been working well until
9 this notice issue arose in October of 2001. Second, I note that at page three, Mr. Bagby states
10 that the issue is whether written notice to the cooperative within sixty days after the effective
11 date of an annexation is essential or simply a guideline. I agree. Third, Mr. Bagby admits at page
12 four that the City failed to provide notice as required under the Territorial Agreement. In fact,
13 Mr. Bagby states "to completely comply with terms of the territorial agreement, the City should
14 have provided written notice and published notice in a newspaper for each of the 40 parcels
15 within sixty days of the effective date of each separate annexation." I agree. Fourth, although I
16 disagree with Mr. Bagby's statements at pages six and seven suggesting that the 60 day notice
17 provision was not necessary due to the zones set forth in the territorial agreement, I do agree that
18 the Cooperative insisted that the 60 day notice provision from section 386.800 RSMo be
19 incorporated in the Territorial Agreement as essential to the completion of the agreement
20 because the notice provision was as important to the Cooperative then as it is now.

21 **Q. Are there any additional matters in Mr. Bagby's testimony that you would like to**
22 **address?**

1 A. Yes. Those matters are: 1) negotiated zones did not provide notice of City's intent to
2 serve customers currently served by Ozark Border; 2) 60 day notice is important to Ozark Border
3 because it is what provides Ozark Border with notice of City's intent to serve the customers
4 being served by Ozark Border; and 3) City suggests they chose to do a 'bulk transfer' of all
5 affected customers rather than follow the terms of the Territorial Agreement forty separate times.

6 **Q. With respect to the first point pertaining to notice and the zones set forth in the**
7 **Territorial Agreement, what is your response?**

8 A. As an initial matter, I would point out that paragraph 1-B of the Territorial Agreement
9 states:

10 "This Agreement establishes three "Zones" (designated Zone 1, Zone 2, and Zone
11 3) as electric service areas or territories in which *the respective rights* of City and
12 Cooperative relative to the provision of retail electrical service to present and
13 future structures *have been agreed to* by City and Cooperative for a period of
14 twenty (20) years as provided in Paragraph 12 ("the Term")."

15
16 The emphasis was added by me. This agreement provides "respective rights" to the parties, not
17 just rights to the City upon annexation. The Zone designations did nothing to put the Cooperative
18 on notice of the City's intent to serve customers presently being served by the Cooperative.

19 Section 3 of the Territorial Agreement pertains to Attributes of Zone 1, and provides under
20 paragraph C that:

21 "Cooperative shall have the exclusive right to provide permanent electrical
22 service to all existing structures in Zone 1 which are receiving permanent service
23 from Cooperative on the Effective Date, except as specified in Paragraph 3-F or
24 Paragraph 4."

25
26 In the Territorial Agreement, the parties specified that the Cooperative is entitled to continue to
27 serve customers in zone 1 that it was serving at the time the Territorial Agreement was entered
28 into. The setting forth of zones alone did not put the Cooperative on notice of the City's intent to
29 serve customers that were receiving permanent service from the Cooperative. The only

1 exceptions to the Cooperative continuing to serve its customers are found in Paragraph 3-F
2 (when a structure is intentionally demolished on or after the Effective Date) and Paragraph 4.
3 Paragraph 4 contains the notice provision in dispute in this matter.

4 **Q. What is your response with respect to the second point pertaining to the importance**
5 **of the notice provision to Ozark Border Electric Cooperative?**

6 A. The notice provision was and is important to the Cooperative because it is the
7 only point at which the Cooperative becomes informed of the City's intent to serve
8 customers currently served by the Cooperative. This Territorial Agreement specifically
9 contemplates that the Cooperative will continue to serve its customers, even after an
10 annexation in Zone 1, until 1) a structure is intentionally demolished, or 2) the
11 Cooperative receives written notice within sixty days of annexation from the City of its
12 intent to serve such customers. Section 4.B. states:

13 "If the City annexes a parcel or parcels located within Zone 1, the City shall,
14 within sixty (60) days after the effective date of annexation, 1) provide the notice
15 by publication in a newspaper of general circulation, and 2) provide written
16 notice to Cooperative of City's intent to include any structure served by
17 Cooperative within the annexed area into the City's service territory, as provided
18 in Section 386.800, RSMo. 1994."
19

20 The notice provision is directly incorporated from section 386.800, RSMo. This
21 provision is important to Ozark Border because the Cooperative recognizes, as did the
22 Missouri Legislature, the importance of notice and finality following annexations so that
23 electric service providers can engage in their long term planning and development
24 without unanticipated disruptions caused by Cities that decide at some indefinite future
25 point in time (i.e. up to three years after annexation as in this case) to serve structures
26 that are being served by the Cooperative.
27

1 **Q. Do you have any response to Mr. Bagby's statement at page 3 that "[f]or**
2 **practicality and efficiency, the City intended to do a bulk transfer of all affected customers**
3 **after all the voluntary annexations were completed rather than go through the steps with**
4 **Ozark Border forty separate times."**

5 **A. Yes. The City acknowledged that it conducted forty (40) separate annexations from**
6 **November of 1997 through July of 2001, and that the City put the Cooperative on notice of its**
7 **intent to transfer these customers pursuant to a letter dated October 12, 2001. I can appreciate**
8 **the City's concern with practicality and efficiency. However, the effect of the City waiting to do**
9 **a 'bulk transfer' for its own administrative ease has the effect of transferring the administrative**
10 **burden of these annexations from the City to the Cooperative. Under both the Territorial**
11 **Agreement and the Statute, the fair and reasonable compensation paid to the Cooperative is**
12 **based on gross revenues less gross receipt taxes received by the Cooperative for the twelve-**
13 **month period preceding the City's approval for negotiations with the Cooperative, which**
14 **approval must be provided within six months following each annexation. Thus, the Cooperative**
15 **must be able to calculate revenues received from the annexed customer starting at a point in time**
16 **that falls within six months of each annexation. Such data is readily available and these**
17 **calculations are not a problem when the City provides notice of its intent to serve the Customer**
18 **to the Cooperative within 60 days of the annexation. However, when the City attempts to do a**
19 **bulk transfer for customers annexed up to almost four years prior to the City's notice of intent,**
20 **such data is not readily available, and these calculations do become more of an administrative**
21 **burden on the Cooperative because it now has to invest time and resources into retrieving such**
22 **data on which the calculations are to be based. In this respect, not following the terms of the**

1 territorial agreement shifts the administrative costs from the City (who chose to do individual
2 annexations) to the Cooperative.

3 **Q. Do you have anything further to say about the City's suggestions that, although it**
4 **did not agree with the notice provision and the dispute resolution provision, it just accepted**
5 **the notice and dispute resolution provisions to finalize the Territorial Agreement?**

6 A. Yes. Mr. Bagby states at page seven of his testimony: "Since we already have a territorial
7 agreement, the procedure in section 386.800 would not apply, *absent the provision being put*
8 *specifically into the agreement.*" The notice provision of section 386.800 RSMo was *specifically*
9 *put into the agreement*, and is the Paragraph 4.B notice provision in dispute in this proceeding.
10 Furthermore, Mr. Bagby admits that he knew this provision was important to the Cooperative.
11 Again, he stated in his testimony at page seven that "I do recall that they insisted those
12 provisions be included in the territorial agreement." The City cannot now say the notice
13 provision is simply a guideline, when they know it was an essential provision to Ozark Border's
14 final approval of the Territorial Agreement. The Commission should issue an Order directing
15 that the City is bound by the sixty day notice requirement in paragraph 4(B) of the Territorial
16 Agreement.

17 **Q. On what basis do you believe the Commission has authority to determine this**
18 **matter?**

19 A. Both parties agreed in paragraph 15 of the Territorial Agreement that this is how disputes
20 would be resolved, and, although I am not an attorney, I also understand the Commission has
21 statutory authority to determine this matter pursuant to section 386.800.8 RSMo.

22 **Q. Does this conclude your testimony?**

23 A. Yes.