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January 29, 2004

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

FILED

JAN 29 2004

Re: Direct Testimony of Stanley Estes
Case No. EC-2003-0452

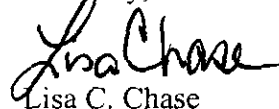
**Missouri Public
Service Commission**

Dear Secretary:

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

Thank you for seeing this filed.

Sincerely,


Lisa C. Chase

LCC:lw

Encl.

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

FILED

JAN 29 2004

MISSOURI PUBLIC SERVICE COMMISSION ~~Missouri Public Service Commission~~

CASE NO. EC-2003-0452

DIRECT TESTIMONY

OF

STANLEY ESTES

JEFFERSON CITY, MISSOURI

January 30, 2004

Q. Please state your name?

A. Stanley Estes.

Q. By whom are you employed?

A. Ozark Border Electric Cooperative.

Q. What is your job title?

A. General Manager

Q. What are your job duties?

A. I manage the day to day operations of the Cooperative.

Q. How big is Ozark Border Electric Cooperative?

A. the Cooperative serves 36,000 member consumers and serve in parts of 11 counties.

Q. With regards to this complaint case, are you authorized to provide testimony in this matter?

A. Yes.

Q. What is the basis of the complaint filed by Ozark Border Electric Cooperative?

A. Ozark Border has a territorial agreement with the City of Poplar Bluff which was entered into on August 22, 1997 and approved by the Public Service Commission in Case No. EO-98-143, on December 31, 1997, and an issue of customer purchase after an annexation has arisen.

Q. What do you mean an issue has arisen.

A. The territorial agreement has a provision that is identical to Section 386.800 with regards to newly annexed areas. The City of Poplar Bluff is supposed to notify Ozark Border within 60 days of an annexation that the City is willing to purchase the newly annexed customers from the Cooperative.

Q. What does the territorial agreement provision actually say?

A. Paragraph 4b states as follows:

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

Q. Did Ozark Border get notice for some of the annexations?

A. No. There are approximately 41 customers that were voluntarily annexed in the City limits of Poplar Bluff that the Cooperative did not get actual notice of, and Poplar Bluff is now wanting the Cooperative to sell these customers anyway.

Q. As you understand the territorial agreement with Poplar Bluff, is the Cooperative required to sell these customers to Poplar Bluff?

A. No. As I stated earlier, the territorial agreement has an actual notice requirement. The Cooperative did not receive notice of the voluntary annexation within the 60 days period that would trigger the provision that would have the Cooperative sell the annexed customers to the City of Poplar Bluff.

Q. How do you know that the City of Poplar Bluff wants to purchase these customers?

A. The City approached the Cooperative and notified me that it wanted to purchase the 41 customers.

Q. Was this notification within the time frame as set out in the territorial agreement?

A. No. In some cases the annexations were over 2 years old.

Q. Is this where the disagreement between the Cooperative and Poplar Bluff has arose?

A. Yes, the City believes that the Territorial Agreement provision for notice is not actual notice, but that constructive notice is sufficient to trigger the sale provision.

Q. Do you agree with the City's position?

A. No, that is why we are at the Commission now. The Territorial Agreement has a provision that any disagreements between the parties will be resolved by an informal opinion of the Commission.

Q. Is that what you are asking the Commission to do?

A. Yes. Ozark Border is asking the Commission to determine the meaning of paragraph 4B of the Territorial Agreement. As stated earlier, Ozark Border believes that there is an actual notice requirement for each annexation and each customer that the City of Poplar Bluff wants to purchase. However, the City has taken the position that constructive notice of the annexations is sufficient to trigger the sale provision of the Territorial Agreement.

Q. Do you think that the City of Poplar Bluff knows that there is an actual notice requirement?

A. Yes. In discussions with City representatives it was admitted that there was a mistake made in that no notice was given within 60 days after the effective date of various annexations.

Q. Then why do you think that the City of Poplar Bluff is taking the position that constructive notice is sufficient to trigger paragraph 4b of the Territorial Agreement.

A. As I understand the City's position, the City made commitments to the annexed customers to serve them with municipal services, including electric service. This commitment has made the City take a position with the notice provision of paragraph 4b of the Territorial Agreement that they know is inconsistent with the requirement that actual notice is to be given within 60 days of the annexation to trigger the sale provision.

Q. In negotiating the Territorial Agreement what was the consideration for including paragraph 4 in the Agreement?

A. Because the Territorial Agreement has 3 zones that cover the exclusive service provider for each zone, with zone 1 being the City's exclusive service area, consideration was given to areas that are outside the city limits, but would be annexed into the City in the future. To cover those future annexations it was decided to include language from Section 386.800 on how the City can buy the annexed customers.

Q. Did you alter any of the language of Section 386.800 when you included it in the Territorial Agreement?

A. Yes. The only alteration was that it is not discretionary to sell as provided in Section 386.800, but makes it mandatory to sell the customers.

Q. Does Section 386.800 have an actual notice requirement?

A. Based on my understanding of Section 386.800, it does have an actual notice requirement.

Q. Is the actual notice requirement contained in Section 386.800 the same requirement contained in the Territorial Agreement?

A. Yes, the notice is the same.

Q. Why was the notice provision of Section 386.800 included in the Territorial Agreement?

A. It was included in the Territorial Agreement to establish a process and procedure that has certainty in establishing a deadline by which changes in the service territory may occur. This certainty enables the parties to make long-term plans and development of infrastructure which includes providing proper maintenance. Without a deadline on when the City can purchase customers after an annexation leaves the Cooperative in an awkward position. Not knowing if and when the City is going to exercise its right to purchase the customers would unduly burden the Cooperative.

Q. How would it unduly burden the Cooperative?

A. Once an area is annexed, if the 60 day notice isn't followed, the Cooperative is required to maintain the facilities. Long-term planning takes into consideration providing the necessary power and energy to these same customers after an annexation. If there was no time limit placed on the notice provision, the Cooperative would be placed in the precarious position of having its long-term planning subject to change based on the whims of when the City wanted to exercise the option to purchase.

Q. The City contends that the Territorial Agreement contemplates that the annexed areas in zone 1 be served by the City and that the Cooperative is not harmed by failure to receive actual notice within the 60 day time frame.

A. While the City may believe that there is no harm, no foul, in not providing the 60 days notice, the City's position ignores the express language of the Territorial Agreement. Such position ignores the fact that the Cooperative has a right to rely on the contracts it enters into.

If you ignore this provision of the Agreement, then what other provisions could be ignored? That is a major concern of the Cooperative, because if you can't rely on the express language of the Territorial Agreement, then the Agreement is meaningless.

Q. What are you asking the Commission to do?

A. The Cooperative is asking the Commission to find that the notice provision in paragraph 4B requires actual notice of the requested purchase within 60 days of the annexation. In the alternative, if the Commission finds that constructive notice is sufficient to trigger the sale provision as argued by the City, then it is Ozark Border's position that the Territorial Agreement is either 1) no longer in the public interest as it does not establish with certainty the exclusive service areas of Ozark Border Electric Cooperative, or 2) that the Agreement is no longer in the

public interest and/or is void as there was an apparent failure of the parties to have a “meeting of the minds” with respect to the 60 day notice provision in paragraph 4(B) of the Territorial Agreement with respect to whether said provision was a substantive provision that was to be strictly adhered to, or a procedure provision that need not be adhered to.

Q. Does this conclude your testimony?

A. Yes.

