

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

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
v.)	Case No. EC-2009-0078
)	
The Empire District Electric Company,)	
)	
Respondent.)	

STAFF’S RESPONSE TO EMPIRE’S PROPOSED PROCEDURAL SCHEDULE

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) and for its Response to Empire’s Proposed Procedural states:

1. This case is the FOURTH in a series of cases spurred by Empire’s August 18, 2006 Application for Variance, Case No. EE-2007-0030, and Application for Approval of Territorial Agreement, Case No. EO-2007-0029. In those cases, Empire requested expedited treatment for Commission consideration of a variance request which would allow Empire to bill what Ozark Electrical Cooperative would bill, as opposed to what Empire’s lawful tariffs directed Empire to bill. While the case was pending, “a decision was made to proceed” by Empire and others, as Empire stated in paragraph 76 of its answer, as though a variance had already been granted.

2. The third case, which consisted of Empire’s request to “unwind” its actions taken during the pendency of the first two cases and thereafter, was docketed as Case No. EO-2008-0043. As Empire states in paragraph 76 of its Answer:

...[B]ecause that initial proposal was not accepted by the Commission, the parties then began the process of negotiations in an attempt to put everyone back into the positions they held prior to the proposal being made, while simultaneously

attempting to deal with the basic problem that had been initially raised by the City of multiple suppliers of electric service in the same area. These negotiations ultimately coalesced into another proposed territorial agreement that would allow Ozark Electric to exclusively serve The Lakes at Shuyler Ridge, along with Ozark Electric's agreement to buy out Empire's investment in the subdivision (which included all the facilities Empire had previously purchased from Ozark Electric). Because homes had been built in the subdivision by the developer and occupied by new customers in the intervening months while Commission approval was being sought, this new proposal also required the transfer of those customers who had come into existence while the previous cases had been pending. A request for approval of a new and different territorial agreement, the sale of certain Empire properties to Ozark Electric, and the transfer of customers (i.e., change of supplier) in the subdivision, was presented to the Commission for its approval in a joint application filed on August 15, 2007. This was approximately six months after the final disposition of the previous cases at the Commission. The Commission established a procedural schedule for that case on October 2, 2007, which called for hearings to commence on December 18, 2007. The Commission issued a report and order in Case No. EO-2008-0043 on March 4, 2008, effective March 14, 2008. That Report and Order was clarified in an order issued April 8, 2008, effective April 18, 2008. Those orders approved the proposed territorial agreement, the proposed transfer of customers, and the proposed transfer of facilities. It took eight months from the time that application was filed until there was a final resolution of that case.

3. Empire filed Compliance Tariffs on April 14, 2008. Those tariffs became effective for electric service rendered on or after May 14, 2008, in a May 2, 2008 Order. The case was closed May 15, 2008, and Staff filed its Complaint, docketed Case No. EC-2009-0078 on September 2, 2008.

4. As indicated in Appendix A to Staff's Complaint,¹ Empire began providing Permanent Service to facilities in The Lakes at Shuyler Ridge as early as December 21, 2006. February 28, 2007 is indicated as the date Empire began providing Permanent Service to 38 structures. Empire has an interest in delaying these proceedings is to allow it to argue the Statute of Limitations found at § 516.390 RSMo as a defense to a Commission-ordered suit for penalties in the circuit court.

¹ A redacted copy of Empire's Response to Staff Data Request 05 in Case No. EO-2008-0043. A copy is provided as Appendix B to this filing.

5. So that Empire does not garner the benefit of unduly delaying these proceedings the Staff urges the Commission adopt the following schedule:

Staff Direct: November 26, 2008

Other parties Rebuttal: January 9, 2009

All parties Surrebuttal: January 23, 2009

Issues List: January 28, 2009

Briefs: January 30, 2009

Hearing: February 4-5, 2009

6. For reference, please see attached, as Appendix A, the intervals Staff proposes for this case, as compared to Empire's last rate case, ER-2008-0043, and Empire's Requests for Variance and Territorial Agreements, which underlie the instant Complaint. Please see attached as Appendix B a redacted copy of Empire's Response to Staff Data Request 05 in Case No. EO-2008-0034, which indicates the dates Empire began providing service to structures in The Lakes at Shuyler Ridge in violation of its tariff.

WHEREFORE, the Staff moves the Commission to adopt the procedural schedule proposed by Staff.

Respectfully submitted,

/s/ Sarah Kliethermes
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 5th day of November, 2008.

/s/ Sarah Kliethermes

APPENDIX A

Empire Rate Case, Case No. ER-2008-0043

		<u>Days</u>	<u>Days Since Initial Filing</u>
Empire's Direct Filing	10/1/07		
		144	
Non-Utility Direct Rev. Req.	2/22/08		144
		13	
Non-Utility Direct RD	3/7/08		157
		28	
Rebuttal	4/4/08		185
		21	
Surrebuttal	4/25/08		206
		7	
Issues List etc.	5/2/08		213
		4	
Briefs	5/6/08		217
		6	
Hearing	5/ 12-23 /08		223

Staff's Complaint Case No. EC-2009-0078

		<u>Days</u>	<u>Days Since Initial Filing</u>
Staff's Complaint	9/2/08		
		86	
Staff Direct	11/26/08		86
		44	
Rebuttal	1/9/09		130
		14	
Surrebuttal	1/23/09		144
		5	
Issue List	1/28/09		149
		2	
Briefs	1/30/09		151
		5	
Hearing	2/ 4-5 /2009		156

Empire Teritorial Agreement and Variance Request.
Consolidated Case Nos.
EE-2007-0030 & EO-2007-0029

		<u>Days</u>	<u>Days Since Initial Filing</u>
Empire's Initial Filing	7/18/06		
		118	
Stipulation of Facts	11/13/06		118
		7	
All Prefiled Testimony	11/20/06		125
		17	
Hearing	12/7/06		142

APPENDIX B

DR5 Response Oct 07.xls
Empire District Electric Customers at Shuyler Ridge
Current as of October 30, 2007

Occupant	Meter #	Address	Temp Date	Perm Date	Service Date	Structure Type	Rate
	29403242		NA	08/16/07	08/16/07	Pool House	CB
	A0623153		NA	07/02/07	07/02/07	Residence	RG
	A0622773		03/07/07	07/02/07	03/07/07	Residence	RG
	28501555		NA	07/23/07	07/23/07	Residence	RG
	A0622760		03/13/07	NA	03/13/07	Residence	RG
	90500390		05/31/07	09/27/07	05/31/07	Residence	RG
	90500420		05/31/07	10/16/07	05/31/07	Residence	RG
	A0722147		NA	10/16/07	10/16/07	Residence	RG
	90701359		09/27/07	NA	09/27/07	Residence	RG
	70321618		NA	07/02/07	07/02/07	Residence	RG
	A0622737		03/07/07	07/27/07	03/07/07	Residence	RG
	70421484		NA	07/02/07	07/02/07	Residence	RG
	29802776		NA	08/02/07	08/02/07	Residence	RG
	A0622740		03/07/07	06/28/07	03/07/07	Residence	RG
	A0622885		01/03/07	03/22/07	01/03/07	Residence	RG
	90602114		NA	06/01/07	06/01/07	Residence	RG
	A0622747		NA	04/17/07	04/17/07	Residence	RG
	A0622888		01/03/07	04/17/07	01/03/07	Residence	RG
	90602113		NA	05/18/07	05/18/07	Residence	RG
	A0622886		01/03/07	05/04/07	01/03/07	Residence	RG
	90602120		05/18/07	NA	05/18/07	Residence	RG
	A0622881		NA	02/27/07	02/27/07	Residence	RG
	90602115		NA	06/28/07	06/28/07	Residence	RG
	A0622779		02/26/07	06/15/07	02/26/07	Residence	RG
	90500534		04/11/07	08/16/07	04/11/07	Residence	RG
	A0622770		03/14/07	08/16/07	03/14/07	Residence	RG
	70422605		06/29/07	09/14/07	06/29/07	Residence	RG
	50100959		06/12/07	NA	06/12/07	Residence	RG
	A0721701		08/02/07	NA	08/02/07	Residence	RG

/s/Martin Penning
October 31, 2007

Shuyler Ridge Data Request Resonse
DR 0005 Spreadsheet

	90700592		07/09/07	10/02/07	07/09/07	Residence	RG
	60720046 No Meter		NA	04/26/07	04/26/07	Flag Pole Lights 8 HPS Cobra Lts	CB PL
	A0622769 No Meter		NA	02/28/07	02/28/07	Common Area 38 HPS Cobra Lts	CB PL
	90601505		NA	12/21/06	12/21/06	Circulating Pump	CB
	79903277		08/21/07	NA	08/21/07	Residence	RG
	A0622908		02/09/07	04/20/07	10/18/07	Residence	RG
	A0622775		03/07/07	06/15/07	09/14/07	Residence	RG
	A0622890		02/09/07	03/30/07	10/16/07	Residence	RG
	20720057		NA	04/19/07	09/28/07	Residence	RG