

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

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

STAFF’S MOTION FOR DETERMINATION ON THE PLEADINGS

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) and for its Motion for Determination on the Pleadings 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.

2. As described by Empire in paragraph 75 of its Answer:

Empire states that it therefore sought permission from the Commission to meet the terms of Ozark Electric’s subdivision policies in this particular situation, and filed the application for variances in Case No. EE-2007-0029 at the same time as the application for approval of the 2,880 acre proposed territorial agreement. Empire stated in the filing that the two filings were interdependent. This was because (a) Empire did not need the variances if it was not going to serve the subdivision, and (b) Empire would not be able to serve the subdivision and meet the terms of the developer’s conditional agreement to take service from Empire without obtaining both the variances and the territorial agreement.

3. 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.

4. 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.

5. 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.

6. As Empire acknowledged in its Answer in this docket, Empire installed facilities at less-than-tariff rates, and operated facilities that had been installed at less-than-tariff rates. As indicated in Appendix A to Staff's Complaint (a redacted copy of Empire's Response to Staff Data Request 05 in Case No. EO-2008-0043), Empire began providing Permanent Service to facilities in The Lakes at Shuyler Ridge as early as December 21, 2006.

7. For reference, please see attached, as Appendix A, 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. In paragraph 67 of its answer, Empire acknowledges providing this document to Staff, unredacted.

WHEREFORE, the Staff moves the Commission to make a determination on the pleadings pursuant to **4 CSR 240-2.117(2)** and to direct its General Counsel to pursue penalties against Empire in the circuit courts of this state, in such an amount as it finds just and reasonable.

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

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 |

/s/Martin Penning
October 31, 2007