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Statute Violations
Witness: Daniel I. Beck
Sponsoring Party: PSC Staff
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MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

DIRECT TESTIMONY

OF

DANIEL I. BECK

THE EMPIRE DISTRICT ELECTRIC COMPANY

CASE NO. EC-2009-0078

**Jefferson City, Missouri
November 2008**

****Denotes Highly Confidential Information****

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CASE NO. EC-2009-0078

Q. Please state your name and business address.

A. Daniel I. Beck and my business address is Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri, 65102.

Q. By whom are you employed?

A. I am employed by the Staff of the Missouri Public Service Commission (“Staff”) as Supervisor of the Engineering Analysis Section, Energy Department, Utility Operations Division.

Q. Please summarize your educational background and work experience.

A. Schedule 1, which is attached to this testimony, is a summary of my credentials which includes a list of cases in which I have previously testified.

Q. What is the purpose of this direct testimony?

A. This testimony presents the Staff’s direct testimony in support of the Complaint filed against The Empire District Electric Company (“Empire” or “Company”) by the Staff on September 2, 2008.

EXECUTIVE SUMMARY

Q. Please provide a summary of your testimony.

A. This testimony describes the Staff's allegations regarding Empire and the development called The Lakes at Shuyler Ridge. The Staff maintains that Empire has

1 violated provisions of its Missouri Public Service Commission (Commission) approved
2 tariffs, the Commission's Rules regarding Utility Promotional Practices, and the Missouri
3 Revised Statutes regarding undue preference. These violations occurred when Empire did
4 not charge or collect from the developer of The Lakes at Shuyler Ridge the amounts
5 required for underground installations and decorative street lighting.

6 **HISTORY**

7 Q. Have Empire and The Lakes at Shuyler Ridge been an issue in any other cases
8 at the Commission?

9 A. Yes. Prior to the current Complaint Case, Case No. EC-2009-0078, Empire
10 and the development of The Lakes at Shuyler Ridge have been the primary issue in three
11 other cases: Case Nos. EO-2007-0029, EE-2007-0030 and EO-2008-0043. The record for
12 first two cases, which were consolidated, includes a Stipulation of Facts, testimony of four
13 (4) witnesses, a hearing and a Report and Order that was effective on February 9, 2007. The
14 record for the third case includes testimony from three witnesses, a hearing and a Report
15 and Order effective March 14, 2008. While these cases are the Staff's primary source of
16 information on this matter, much of the record in these cases addresses the two proposed
17 territorial agreements, the request for variance, the request for a change of suppliers, and the
18 request for authorization of the sale of electric facilities.

19 Q. Could you provide a brief description of the first two cases?

20 A. Yes. The first two cases were both filed on July 18, 2006, Case Nos. EO-
21 2007-0029 and EE-2007-0030 and were consolidated on October 11, 2006. Case No. EO-
22 2007-0029 was a Joint Application by Empire and Ozark Electric Cooperative (Ozark)
23 requesting approval of a territorial agreement between the two applicants. The second case,

1 Case No. EE-2007-0030, was an Application for Variance by Empire in which Empire
2 requested:

3 “an order from the Commission granting a variance from 4 CSR 240-020(1)(B)
4 and (D), and to the extent they may be construed to apply to this situation,
5 (1)(E) and (F), and a variance from the provisions of Empire’s electric rules
6 and regulations (PSC No. 5, Sec. 5, Sheets 17c and 17 d) and rate schedules
7 (SPL and PL) to permit Empire to meet but not exceed the terms offered by
8 Ozark with regard to the installation of electric service and decorative street
9 lighting within the boundaries of The Lakes at Shuyler Ridge”.

10
11 On November 20, 2006 Direct/Rebuttal testimony was filed by Daniel I. Beck of the
12 Staff; Christopher J. Coulter, Assistant City Administrator of the City of Republic; Patrick
13 Prewitt, Assistant Manager of Ozark Electric Cooperative; Michael E. Palmer, Vice-
14 President of Commercial Operations for Empire; and Martin O. Penning, Director of
15 Commercial Operations – Eastern Division for Empire. A Stipulation of Facts was filed on
16 November 22, 2006 by the parties to the case. A hearing and oral arguments took place on
17 December 7, 2006. The Commission issued its Report and Order for these consolidated
18 cases on January 30, 2007 and that Report and Order was effective on February 9, 2007.
19 The Commission’s Report and Order including the following:

20 “The requested waiver of the provision of Chapter 14 of the Commission’s
21 rules is denied”.

22
23 Q. Could you provide a brief description of the third case?

24 A. Yes. The third case was Case No. EO-2008-0043. This case was an
25 Application by Empire and Ozark to make The Lakes at Shuyler Ridge the exclusive service
26 territory of Ozark, to change suppliers for at least twenty-one structures that were receiving
27 permanent service from Empire and approximately 11 structures that were receiving
28 temporary service, and to approve the sale of electric facilities from Empire to Ozark.
29 Direct testimony was filed on October 12, 2007 by Patrick Prewitt, Assistant Manager of

1 Ozark Electric Cooperative and Michael E. Palmer, Vice-President of Commercial
2 Operations for Empire. Rebuttal testimony was filed by Daniel I. Beck of the Staff on
3 November 9, 2007. A hearing was held on December 18, 2007, and the Commission issued
4 its Report and Order on March 4, 2008 with an effective date of March 14, 2008. The
5 Commission's Report and Order approved the requested territorial agreement, approved the
6 change of supplier for approximately thirty-two structures, and authorized Empire to sell
7 certain electrical facilities to Ozark.

8 Q. Was Empire serving any customers in The Lakes at Shuyler Ridge when it
9 filed the first two cases?

10 A. No, not to my knowledge. However, Empire's tariffs sheets, PSC No. 5, Sec.
11 5, Sheets 17c and 17d , regarding Primary and Secondary Distribution Facilities to
12 Residential Subdivision includes the following:

13 "The developer will make full payment of these estimated charges in advance
14 of any construction by the company."
15

16 Therefore, it is clear that Empire violated its tariffs by performing construction before
17 it received full payment for the estimated cost to serve the subdivision.

18 Q. Did Empire purchase some facilities from Ozark?

19 A. Yes. Empire did receive an invoice from Ozark dated May 18, 2006 and
20 purchased \$177,921.74 in facilities from Ozark but Empire also had to perform additional
21 construction to serve The Lakes at Shuyler Ridge. In fact, its Application in Case No. EO-
22 2008-0043 includes an itemized list of expenses that starts with the \$177,921.74 purchase
23 and then goes on to list several pages of expenses totaling \$801,119.61 for The Lakes at
24 Shuyler Ridge or an additional \$623,197.87 in investment by Empire.

1 Q. Do you believe that Empire was aware of its tariff provisions regarding
2 advance payments by a developer?

3 A. Yes. Empire made significant changes to its extension policy back in the year
4 2002. It is my understanding that the Staff and Empire had numerous conversations
5 regarding this extension policy at that time. From time to time, the Staff receives questions
6 or concerns regarding the extension policies of electric utilities, including Empire, and the
7 Staff typically contacts the company to discuss these questions or concerns. In addition, the
8 Company's Application for Variance in Case No. EE-2007-0030 clearly states Empire's
9 understanding of the extension policy by requesting a variance from those provisions of its
10 tariffs.

11 Q. Empire also requested a variance from rates schedules SPL and PL. What is
12 the significance of this request?

13 A. These rate schedules are for the Municipal Street Lighting Service and Private
14 Lighting Service. Empire's Application for Variance in Case No. EE-2007-0030 explains
15 that the developer would be required to pay \$60,800.00 for the decorative street lighting for
16 Phase I of The Lakes at Shuyler Ridge based on the application of rate schedule PL.
17 Clearly, Empire was also aware of its tariff provisions regarding decorative street lighting.

18 **THE VIOLATIONS**

19 Q. Did Empire require the Developer of the Lakes at Shuyler Ridge to prepay, in
20 full, an estimate of the cost of installation of underground distribution facilities and non-
21 standard street lighting as required in Empire's electric rules and regulations (PSC No. 5,
22 Sec. 5, Sheets 17c and 17 d) and rate schedule (PL)?

Direct Testimony of
Daniel I. Beck

1 A. No. In its response to Staff DR 61, Empire indicated the only payments it
2 received were:

- 3 • ** _____
4 _____
5 _____
6
7 • _____
8 _____
9 _____ **.
10

11 Q. Did any other entity make prepayment of the costs associated with the
12 development of The Lakes at Shuyler Ridge Subdivision?

13 A. No. In response to Staff DR 64, Empire stated that “Other than the two
14 payments documented in Empire’s response to DR60, neither the developer of The Lakes at
15 Shuyler Ridge nor any other entity prepaid Empire for the cost of installation of electrical
16 facilities in that subdivision....”

17 Q. Does Staff DR 60 request information relating to prepayments?

18 A. No. Staff DR 60 requests information regarding asset breakdown by accounts.
19 Staff DR 61 does request information relating to prepayments.

20 Q. What are the total prepayments for installed facilities that Empire collected in
21 connection with The Lakes at Shuyler Ridge?

22 A. ** _____ **

23 Q. What was the amount actually expended by Empire in installing facilities in
24 The Lakes at Shuyler Ridge (excluding costs associated with actually providing service)?

25 A. Empire’s response to Staff DR 61 indicates that amount to be
26 ** _____ **.

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1 Q. At the time of the filing of the Application in Case No. EE-2007-0030, what
2 was Empire's estimate (including the cost to Empire to purchase certain existing Ozark
3 facilities already installed in Phase I of The Lakes at Shuyler Ridge subdivision) to extend
4 service to Phase I?

5 A. \$591,772.74.

6 Q. Did Empire require other customers to prepay an estimate of the cost for the
7 installation of non-standard street lighting?

8 A. Yes. In response to Staff DR 76, Empire has stated:

9 With the possible exception of The Lakes at Shuyler Ridge subdivision,
10 Empire is not aware of any customer from 2004-2008 who requested the
11 installation of non-standard street lighting facilities and who was not required
12 to pay the cost of those facilities.
13

14 Q. Did Empire require other customers to prepay an estimate of the cost for the
15 installation of underground facilities?

16 A. Yes. In response to Staff DR 74, Empire has stated:

17 With the possible exception of The Lakes at Shuyler Ridge subdivision,
18 Empire is not aware of any customer from 2004-2008 who requested the
19 installation of underground distribution facilities and who was not required to
20 prepay an estimate of the cost of those facilities.
21

22 Q. Please explain the Staff's alleged violations and the computation of the number
23 of violations which were included in the Staff's Complaint.

24 A. The best way to explain the violations is to first explain that the Staff alleges
25 that Empire's actions violated not only its tariff provisions but also the Commission rules
26 and the Missouri Revised Statutes. The specific tariffs, rules and statutes are discussed in the
27 Complaint. Next it is important to understand that Empire's Application for Variance
28 included what it termed as "two specific aspects to Empire's request". These aspects are the

1 subdivision underground extension provisions and the street lighting facilities provisions.
2 The Staff agrees that these are separate aspects of the facilities at The Lakes at Shuyler
3 Ridge and has defined the violations to reflect this. Finally, the Staff determined that the
4 failure to charge the fees required is a violation for each installation and that failure to
5 collect the charges is a violation for each installation and each day in violation.

6 Q. So how many categories of violations would result from the description that
7 you just gave?

8 A. Twelve (12). The Staff's Complaint referred to these as twelve (12) Counts.
9 Specifically, the Staff designated the Counts as follows: I, I(A), II, II(A), III, III(A), IV,
10 IV(A), V, V(A), VI, and VI(A). Counts that include the designation "I" and "IV" refer to
11 violations of tariffs; counts that include the designation "II" and "V" refer to violations of
12 rules; counts that include the designation "III" and "VI" refer to violations of statutes.
13 Likewise, counts that include the designation "(A)" indicate that a charge was not collected
14 and counts that do not have the designation "(A)" indicate a failure to charge for an
15 installation. Finally, counts with the designation of "I", "II" and "III" refer to charges
16 associated with the underground line extension, while the counts with the designation of
17 "IV", "V" and "VI" refer to charges associated with the decorative street lighting.

18 Q. Would you please list the various counts and give a brief description of each?

19 A. Yes.

20 Count I – The Company violated its Commission approved tariffs by not charging the
21 developer of The Lakes at Shuyler Ridge the amounts required by Empire's Tariff for
22 installation of underground facilities;

1 Count I(A) – The Company violated its Commission approved tariffs by not collecting
2 from the developer of The Lakes at Shuyler Ridge the amounts required by Empire’s Tariff
3 for installation of underground facilities;

4 Count II – The Company violated Chapter 14 of the Commission’s Rules regarding
5 promotional practices including 4 CSR 240-14.020, “Prohibited Promotional Practices” and
6 4 CSR 240-14.030, “Promotional Practice Standards” by not charging the developer of The
7 Lakes at Shuyler Ridge the amounts required by Empire’s Tariff for installation of
8 underground facilities;

9 Count II(A) – The Company violated Chapter 14 of the Commission’s Rules regarding
10 promotional practices including 4 CSR 240-14.020, “Prohibited Promotional Practices” and
11 4 CSR 240-14.030, “Promotional Practice Standards” by not collecting from the developer
12 of The Lakes at Shuyler Ridge the amounts required by Empire’s Tariff for installation of
13 underground facilities;

14 Count III – The Company violated Section 393.130 RSMo, which requires utilities not
15 to extend undue preference in the provision of service, by not charging the developer of The
16 Lakes at Shuyler Ridge the amounts required by Empire’s Tariff for installation of
17 underground facilities;

18 Count III(A) - The Company violated Section 393.130 RSMo, which requires utilities
19 not to extend undue preference in the provision of service, by not collecting from the
20 developer of The Lakes at Shuyler Ridge the amounts required by Empire’s Tariff for
21 installation of underground facilities;

1 Count IV – The Company violated its Commission approved tariffs by not charging
2 the developer of The Lakes at Shuyler Ridge the amounts required by Empire’s Tariff for
3 installation of decorative street lighting;

4 Count IV(A) – The Company violated its Commission approved tariffs by not
5 collecting from the developer of The Lakes at Shuyler Ridge the amounts required by
6 Empire’s Tariff for installation of decorative street lighting;

7 Count V – The Company violated Chapter 14 of the Commission’s Rules regarding
8 promotional practices including 4 CSR 240-14.020, “Prohibited Promotional Practices” and
9 4 CSR 240-14.030, “Promotional Practice Standards” by not charging the developer of The
10 Lakes at Shuyler Ridge the amounts required by Empire’s Tariff for installation of
11 decorative street lighting;

12 Count V(A) – The Company violated Chapter 14 of the Commission’s Rules
13 regarding promotional practices including 4 CSR 240-14.020, “Prohibited Promotional
14 Practices” and 4 CSR 240-14.030, “Promotional Practice Standards” by not collecting from
15 the developer of The Lakes at Shuyler Ridge the amounts required by Empire’s Tariff for
16 installation of decorative street lighting;

17 Count VI – The Company violated Section 393.130 RSMo, which requires utilities not
18 to extend undue preference in the provision of service, by not charging the developer of The
19 Lakes at Shuyler Ridge the amounts required by Empire’s Tariff for installation of
20 decorative street lighting;

21 Count VI(A) – The Company violated Section 393.130 RSMo, which requires utilities
22 not to extend undue preference in the provision of service, by not collecting from the

1 developer of The Lakes at Shuyler Ridge the amounts required by Empire's Tariff for
2 installation of decorative street lighting.

3 Q. So, since there are twelve (12) categories of counts listed in the Complaint,
4 does it also follow that there are twelve violations?

5 A. No. As I mentioned earlier, some counts are associated with underground line
6 extensions while others are based on decorative street lighting. Appendix 1 to the
7 Complaint shows the list of the 36 customers, of which 34 are residential customers, that are
8 associated with the underground line extension violations. Empire, in its response to a Staff
9 Data Request in Case No. EO-2008-0043, acknowledged it was providing "permanent
10 service" to these customers, as of October 30, 2007. In addition, since these customers
11 began receiving service on different dates, the number of days in violation for the failure to
12 collect varies from customer to customer but averages approximately 288 days in violation
13 per underground line extension. Likewise, Appendix 1 to the Complaint shows that forty-
14 six (46) decorative street lights were installed, as of October 30, 2007. Thirty-eight (38) of
15 the lights began service on February 28, 2007 and eight (8) began service on April 26, 2007.
16 The resulting days in violation would be 381 days and 324 days, respectively for each
17 decorative street light.

18 Q. Do facilities installed by Empire after October 30, 2007 also constitute
19 violations?

20 A. Yes, the Complaint specifically refers to any additional facilities installed after
21 October 30, 2007 as additional violations of the applicable counts.

22 Q. Does this conclude your Direct Testimony?

23 A. Yes.

Daniel I. Beck, P.E.

Supervisor of the Engineering Analysis Section of the Energy Department
Utility Operations Division

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

I graduated with a Bachelor of Science Degree in Industrial Engineering from the University of Missouri at Columbia. Upon graduation, I was employed by the Navy Plant Representative Office in St. Louis, Missouri as an Industrial Engineer. I began my employment at the Commission in November, 1987, in the Research and Planning Department of the Utility Division (later renamed the Economic Analysis Department of the Policy and Planning Division) where my duties consisted of weather normalization, load forecasting, integrated resource planning, cost-of-service and rate design. In December, 1997, I was transferred to the Tariffs/Rate Design Section of the Commission's Gas Department where my duties include weather normalization, annualization, tariff review, cost-of-service and rate design. Since June 2001, I have been in the Engineering Analysis Section of the Energy Department, which was created by combining the Gas and Electric Departments. I became the Supervisor of the Engineering Analysis Section, Energy Department, Utility Operations Division in November 2005.

I am a Registered Professional Engineer in the State of Missouri. My registration number is E-26953.

**List of Cases in which prepared testimony was presented by:
DANIEL I. BECK**

<u>Company Name</u>	<u>Case No.</u>
Union Electric Company	EO-87-175
The Empire District Electric Company	EO-91-74
Missouri Public Service	ER-93-37
St. Joseph Power & Light Company	ER-93-41
The Empire District Electric Company	ER-94-174
Union Electric Company	EM-96-149
Laclede Gas Company	GR-96-193
Missouri Gas Energy	GR-96-285
Kansas City Power & Light Company	ET-97-113
Associated Natural Gas Company	GR-97-272
Union Electric Company	GR-97-393
Missouri Gas Energy	GR-98-140
Missouri Gas Energy	GT-98-237
Ozark Natural Gas Company, Inc.	GA-98-227
Laclede Gas Company	GR-98-374
St. Joseph Power & Light Company	GR-99-246
Laclede Gas Company	GR-99-315
Utilicorp United Inc. & St. Joseph Light & Power Co.	EM-2000-292
Union Electric Company d/b/a AmerenUE	GR-2000-512
Missouri Gas Energy	GR-2001-292
Laclede Gas Company	GR-2001-629
Union Electric Company d/b/a AmerenUE	GT-2002-70
Laclede Gas Company	GR-2001-629
Laclede Gas Company	GR-2002-356
Union Electric Company d/b/a AmerenUE	GR-2003-0517
Missouri Gas Energy	GR-2004-0209
Atmos Energy Corporation	GR-2006-0387
Missouri Gas Energy	GR-2006-0422
Union Electric Company d/b/a AmerenUE	GR-2007-0003
The Empire District Electric Company	EO-2007-0029/EE-2007-0030
Laclede Gas Company	GR-2007-0208
The Empire District Electric Company	EO-2008-0043
Missouri Gas Utility, Inc.	GR-2008-0060
The Empire District Electric Company	ER-2008-0093