

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

In the Matter of the Application of The Empire)	
District Electric Company and Ozark Electric)	
Cooperative for Approval of a Written Territorial)	
Agreement Designating the Boundaries of an)	
Exclusive Service Area for Ozark within a Tract of)	Case No. EO-2008-0043
Land in Greene County, Missouri and Associated)	
Requests for Approval of a Transfer of Facilities and)	
Change of Supplier.)	

STAFF’S STATEMENTS OF POSITION

COMES NOW the Staff of the Missouri Public Service Commission and, as ordered by the Commission, submits the following Statements of Position:

BRIEF STATEMENT OF THE CASE

BACKGROUND

In July 2006, in Case No. EE-2007-0030, The Empire District Electric Company sought from the Commission variances that would grant to Empire authority to treat service to the newly developing subdivision, The Lakes at Shuyler Ridge (about 517 lots on 245 acres), differently than similarly situated developments. At the same time, in Case No. EO-2007-0029, Empire and Ozark Electric Cooperative jointly requested the Commission to approve a territorial agreement between Empire and Ozark where Empire would be the electric provider exclusive of Ozark in an area of about 4.5 square miles, including The Lakes at Shuyler Ridge, and Ozark would be the electric provider exclusive of Empire in an area of about 4.0 square miles, including a different developing subdivision, but only if the Commission granted the relief Empire requested in Case No. EE-2007-0030. Both exclusive territories were in unincorporated areas of Greene and Christian Counties near Republic, Missouri. On January 30, 2007, the Commission issued its *Report and Order* in those cases, which had been consolidated, denying the requests on the

basis the requested variances “constitute[d] an undue preference for developers of a single subdivision.”

THIS CASE

Now Empire is providing electric service in The Lakes at Shuyler Ridge and in this case, Case No. EO-2008-0043, Empire and Ozark are jointly requesting the Commission (1) approve a territorial agreement between Empire and Ozark where Ozark would become the electric provider exclusive of Empire in The Lakes at Shuyler Ridge, (2) authorize Empire to sell to Ozark Empire’s facilities in The Lakes at Shuyler Ridge and (3) authorize Ozark to begin providing electric service to the structures to which Empire is providing electric service in The Lakes at Shuyler Ridge.

POSITION STATEMENTS

1. The Empire District Electric Company and Ozark Electric Cooperative seek approval of a territorial agreement that would allow Ozark Electric Cooperative to provide electric service in The Lakes at Shuyler Ridge subdivision exclusive of The Empire District Electric Company. Is that territorial agreement in the public interest?

Staff Position: As Ozark Electric Cooperative states in its position statement the applicable standard is “not detrimental in the public interest” as stated in section 394.312.4, RSMo. 2000, not “in the public interest” as stated in section 394.312.1 RSMo. 2000. It is the Staff’s position the evidence in this case will not show this territorial agreement is not detrimental to the public interest. The public interest to be considered includes not only the interests of the developer of The Lakes at Shuyler Ridge subdivision, Empire’s shareholders, Ozark’s members, and the City of Republic, but also the interests of existing customers with

structures in The Lakes at Shuyler Ridge subdivision, Empire's other customers and the public at large.

2. As proposed, is the related sale to Ozark Electric Cooperative of facilities The Empire District Electric Company is using to provide electric service to customers in The Lakes at Shuyler Ridge subdivision not detrimental to the public interest?

Staff Position: No. It is the Staff's position that the evidence in this case will not show sale to Ozark Electric Cooperative of facilities The Empire District Electric Company is using to provide electric service to customers in The Lakes at Shuyler Ridge subdivision not detrimental to the public interest.

3. For structures being provided with electric service in The Lakes at Shuyler Ridge subdivision prior to the proposed transfer of facilities to Ozark, is changing the supplier of electric service from The Empire District Electric Company to Ozark Electric Cooperative in the public interest for a reason other than a rate differential?

Staff Position: No. It is the Staff's position that the evidence in this case will not show, for structures being provided with electric service in The Lakes at Shuyler Ridge subdivision prior to the proposed transfer of facilities to Ozark, changing the supplier of electric service from The Empire District Electric Company to Ozark Electric Cooperative will be in the public interest for a reason other than a rate differential.

4. Can a rural electric cooperative lawfully add service to new structures in an area annexed by a city with inhabitants of over 1,500 when it does not have a franchise with that city, but it does have a territorial agreement with an electrical corporation regulated by the Public Service Commission which gives the rural electric cooperative exclusivity with respect to that electrical corporation in the provision of electric service in that area annexed by the city?

Staff Position: No. Generally, an electric cooperative only has power “to generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply, and dispose of electric energy in **rural areas . . .**” (emphasis added). 394.080.1(4), RSMo. 2000. A rural area is “any area of the United States not included within the boundaries of any city, town or village having a population in excess of fifteen hundred inhabitants.” Section 394.020(3) RSMo 2000. An exception to this general rule exist where the cooperative was the predominant supplier of retail electric energy within the municipality when any official United States Census Bureau declares the population of the municipality to exceed fifteen hundred inhabitants and the municipality has granted the cooperative a franchise to supply electric energy within the municipality. Section 394.080.2, RSMo. 2000.

A. If the rural electric cooperative does have a franchise with the city, does that change the result?

Staff Position: No, unless the rural electric cooperative was also the predominant supplier of retail electric energy within the municipality when any official United States Census Bureau declared the population of the municipality to exceed fifteen hundred inhabitants.

WHEREFORE, the Staff submits the above statements for its positions on the issues presented to the Commission for decision in this case.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 14th day of December 2007.

/s/ Nathan Williams