

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

In the Matter of the Application of The)
Empire District electric Company for)
Authority to Sell and Transfer Part of its)
Works or System to the City of Monett,)
Missouri.)

Case No. EO-2009-0159

RESPONSE TO APPLICATION

COMES NOW the Staff of the Public Service Commission of Missouri (“Staff”) and for its response to the application filed by The Empire District Electric Company (“Empire”) on October 28, 2008, states as follows:

1. Empire’s application seeks Commission approval to sell and transfer a portion of its works and system to the City of Monett used to serve ratepaying customers of Empire. On October 29, 2008, the Commission issued its *Order Directing Notice and Order Directing Filing*. The Commission issued a *Second Notice and Order Directing Filing* on November 6, 2008 correcting its first Order by directing notice to be sent to the Lawrence county commission. In its orders, the Commission set a deadline of November 18, 2008 for interested parties to apply for intervention and for any interested persons to file any requests for an evidentiary hearing or for a local public hearing. The Commission also directed its Staff to file either a recommendation or a preliminary response regarding approval of the application not later than December 2, 2008.

2. Empire filed its *Notice of Reservation of Rights* on November 18, 2008 to preserve the Company's due process rights by conditionally reserving the right to an evidentiary hearing should there be any unresolved issues when Staff files its recommendation.

3. No parties have applied for intervention and no parties have requested an evidentiary hearing or a public hearing on this matter.

4. On November 25, 2008, Staff and counsel for Empire met to discuss this matter and to set a date for Staff to file its recommendation regarding approval of Empire's application. Before the Staff files its recommendation, the Staff intends to meet with representatives of the City of Monett and Empire and to conduct an on-site visit of the annexed areas and the system works that are a part of this application.

5. Empire's application asks the Commission for transfer of assets pursuant to Section 393.190.1. However, implicit in its application is Empire's request to change the supplier of electrical service from existing Empire customers to the City of Monett. According to the application, Empire serves about 100 customers in the two areas annexed by the city of Monett. Affected customers last received notice of a proposed impending change in electrical utility service by publication in *The Monett Times* on August 31, 2007. That notice expressed the City of Monett's intent to acquire Empire's facilities in the newly annexed areas as provided by Section 386.800 RSMo. 2000. The City of Monett never consummated that acquisition, and due to the lapse of time cannot now avail itself of that statute. In addition, the annexed area described in that notice appears to be in error and is being investigated. (See handwritten change to notice in Application Appendix 5).

6. In the Staff's view the application is deficient (1) because it does not satisfy the requirements of the Commission rule for change of electrical supplier, 4 CSR 240-3.140, and (2)

because Empire has not addressed the statutes applicable to changing electrical suppliers, Sections 91.025 and 393.106.2, RSMo. 2000, which set the standard for the Commission to approve a change of electrical suppliers from an electrical corporation to a municipality¹.

7. Recognizing the press of coordinating work schedules during the holiday season so this on-site visit can take place and to allow sufficient time for Empire to address the change in supplier issue and for Staff to prepare its recommendation, the Staff proposes to file its recommendation not later January 23, 2009. Counsel for Empire has no objection to this date.

WHEREFORE, for the above stated reasons the Staff respectfully requests the Commission accept its Response and to approve Staff's proposed filing date for its recommendation regarding approval of this application to not later than January 23, 2009.

Respectfully submitted,

/s/ Robert S. Berlin

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¹ Section 393.106.2 states in pertinent part "...The public service commission, *upon application made by an affected party*, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential..." (*emphasis added*)

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 2nd day of December 2008.

/s/ Robert S. Berlin