

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

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

ANSWER

Comes now The Empire District Electric Company (hereinafter "Respondent" or "Empire"), by and through its counsel, and for its answer to the complaint, pursuant to 4 CSR 240-2.070(9), and the Notice of Complaint issued on September 9, 2008, respectfully states as follows:

1. Except as expressly admitted in this Answer, Respondent denies each and every other allegation contained in Complainant's Complaint. Respondent has utilized certain organizational headings in this Answer that were used by Complainant in the Complaint. Such use here is for organizational purposes only and shall not be construed as any admission on the part of Respondent.

2. Respondent admits that it is an "electrical corporation" and a "public utility" as defined in section 386.020 RSMo 2000, that it operates in Missouri and other states, and that it is subject to the jurisdiction of the Missouri Public Service Commission (hereinafter "Commission"). Empire admits that it has filed pleadings with the Commission stating that it is in the business of "providing electrical and water utility services in Missouri to customers in its service area." Empire states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph numbered 1 of the Complaint, and therefore denies same.

3. Respondent admits the allegations in paragraph numbered 2 of the Complaint.

4. Respondent admits the allegations in paragraph numbered 3 of the Complaint.

5. Respondent admits the allegations in paragraph numbered 4 of the Complaint.

6. Respondent assumes for the purposes of this Answer that the reference to "The Lakes at Shuyler Ridge" in paragraph numbered 5 of the Complaint refers to the tract of land by that name that was the subject of Commission Case No. EO-2008-0043. With that assumption, Empire states that it believes that The Lakes at Shuyler Ridge is a platted subdivision and Empire has not been notified that the contrary is true; Respondent believes based on information provided to it that at least one boundary line of that subdivision was at one time also a boundary line of the corporate limits of the City of Republic, Missouri, but Empire states that it has not performed any investigation into whether that subdivision has met all the requirements of the formal platting process for subdivisions, and Empire has not performed a land survey to determine the exact actual boundaries of the subdivision. At the time this Answer is being filed, Empire does not have specific knowledge as to whether all or part of The Lakes at Shuyler Ridge has been annexed into the City of Republic. Respondent states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph numbered 5 of the Complaint, and therefore denies same.

7. Empire admits that, in conjunction with certain applications that it filed with the Commission, it did acquire some facilities within The Lakes at Shuyler Ridge subdivision from Ozark Electric Cooperative (hereinafter "Ozark Electric"), and that it did install some facilities itself within The Lakes at Shuyler Ridge subdivision, and that together those facilities generally were designed to provide electrical service to future customers. As of the time this Answer is being filed, however, Empire states that all of the facilities it had previously owned or operated within The Lakes at Shuyler Ridge, with one exception, were transferred to Ozark Electric on or before July 22, 2008. One commercial account remains in service from Empire, but that is solely due to the fact that it is a meter serving a circulating pump in a retention pond at the far north side of the subdivision, and the pond is located a relatively long distance from Ozark Electric's existing distribution facilities. As soon as a means of having Ozark Electric serve that account can be

accomplished, at that time, Empire will not own or operate any facilities for the generation, transmission or distribution of electricity at retail within the boundaries of The Lakes at Shuyler Ridge subdivision. Empire denies the remaining allegations in paragraph numbered 6 of the Complaint.

8. Empire admits that it has rules and regulations for service and rate schedules on file with and approved by the Commission, and that the text of those may change from time to time with the approval of the Commission. Empire admits that it has now, and has in the past had, rate schedules designated as “SPL” and “PL”. Empire states that the contents of each version of each regulation and rate schedule speak for themselves and therefore are the best evidence of the content of each at relevant time periods, as opposed to any attempt to paraphrase or summarize them by the Complainant in paragraph numbered 7 of the Complaint. Empire denies the remaining allegations in paragraph numbered 7 of the Complaint.

9. Empire admits that it has rules and regulations for service and rate schedules on file with and approved by the Commission, and that the text of those may change from time to time with the approval of the Commission. Empire admits that it has now, and has in the past had, rate schedules designated as “SPL” and “PL”. Empire states that the contents of each version of each regulation and rate schedule speak for themselves and therefore are the best evidence of the content of each at relevant time periods, as opposed to any attempt by the Complainant to paraphrase or summarize them in paragraph numbered 8 of the Complaint. Empire denies the remaining allegations in paragraph numbered 8 of the Complaint.

10. Empire states that it believes that when the developer of The Lakes at Shuyler Ridge entered into an agreement with Ozark Electric for Ozark Electric to provide retail electric service to that subdivision, and when Empire acquired certain electrical facilities within that subdivision from Ozark Electric, the intent of the developer was that the use would be primarily residential, as opposed to agricultural, commercial, governmental or industrial. Some commercial use was anticipated. Respondent states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph numbered 9 of the Complaint, and therefore denies same.

11. Empire admits that when it installed underground electrical facilities and decorative street lighting facilities in The Lakes at Shuyler Ridge, its representatives were under the impression the developer intended the subdivision to be used primarily for residential purposes, although some commercial use was anticipated. Respondent states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph numbered 10 of the Complaint, and therefore denies same.

12. Empire denies the allegations in paragraph numbered 11 of the Complaint.

13. Empire denies the allegations in paragraph numbered 12 of the Complaint.

14. Empire admits that the Staff made a statement in its Post Hearing Reply Brief in Commission case EO-2008-0043, dated February 6, 2008, that Staff believed Empire had violated its tariff and that the Staff was “preparing a complaint. . .” Empire is not aware of any other instance or communication prior to the filing of the Complaint, in which Staff “apprised Empire” of Staff’s belief that Empire violated its tariff. Respondent states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph numbered 13 of the Complaint, and therefore denies same.

Count I

15. Empire adopts by reference and re-alleges the content of paragraphs numbered 1 through 14 of this Answer in response to the allegations in paragraph numbered 14 of the Complaint.

16. Empire admits that it has had tariff sheets numbered PSC Mo No. 5, Sec. 5, 3rd Revised Sheet No. 14; PSC Mo No. 5, Sec. 5, Original Sheet No. 17c; and PSC Mo No. 5, Sec. 5, Original Sheet No. 17d. According to Empire’s records, the Commission cancelled all those sheets on December 14, 2007. Empire admits that in general, these sheets referred to underground distribution systems. Empire states that the contents of each version of each rate schedule speak for themselves and therefore are the best evidence of the content of each at relevant time periods, as opposed to any attempt by the Complainant to paraphrase or summarize their content. Empire denies the remaining allegations in paragraph numbered 15 of the Complaint.

17. Empire states that the contents of each version of each rate schedule discussed by reference in paragraph numbered 16 of the Complaint speak for themselves and therefore are the best evidence of the content of each at relevant time periods, as opposed to any attempt by the Complainant to paraphrase or summarize their content. Empire denies the remaining allegations in paragraph numbered 16 of the Complaint.

18. Empire admits that it installed some underground electrical facilities in The Lakes at Shuyler Ridge subdivision, but further states that as of July 22, 2008, it had sold all of those facilities to Ozark Electric with the exception of the one installation referred to in paragraph 7 of this Answer, and that that one exception is a temporary situation. When that one temporary situation is resolved, Empire will no longer own any underground electrical facilities in The Lakes at Shuyler Ridge subdivision. Empire denies the remaining allegations in paragraph numbered 17 of the Complaint.

19. Empire admits that it received certain payments for lighting facilities but denies the remaining allegations in paragraph numbered 18 of the Complaint.

20. Empire admits that it purchased certain facilities that had been installed in The Lakes at Shuyler Ridge subdivision by Ozark Electric, as memorialized on an Ozark Electric invoice dated May 18, 2006, but further states that it sold and transferred all of those previously purchased facilities back to Ozark Electric on or before July 22, 2008. Empire denies the remaining allegations in paragraph numbered 19 of the Complaint.

21. Paragraph numbered 20 of the Complaint does not allege facts which the Respondent can either admit or deny, but instead states certain general and abstract legal conclusions which require no answer.

22. Empire denies the allegations contained in paragraph numbered 21 of the Complaint.

Count One A

23. Empire adopts by reference and re-alleges the content of paragraphs numbered 1 through 22 of this Answer in response to the allegations in paragraph numbered 22 of the Complaint.

24. Empire denies the allegations contained in paragraph numbered 23 of the Complaint.

Count Two

25. Empire adopts by reference and re-alleges the content of paragraphs numbered 1 through 24 of this Answer in response to the allegations in paragraph numbered 24 of the Complaint.

26. Empire admits the existence of administrative rules of the Commission numbered 4 CSR 240-14.020 and 4 CSR 240-14.030 and admits that those rules deal with “promotional practices.” Empire denies the remaining allegations contained in paragraph numbered 25 of the Complaint.

27. Empire denies the allegations contained in paragraph numbered 26 of the Complaint.

28. Empire admits that the manner in which its temporary provision of service within The Lakes at Shuyler Ridge was established and then subsequently terminated differed from the manner in which it has normally provided service to residential subdivisions in the past, but denies the remaining allegations in paragraph numbered 27 of the Complaint.

29. Empire denies the allegations contained in paragraph numbered 28 of the Complaint.

Count Two (A)

30. Empire adopts by reference and re-alleges the content of paragraphs numbered 1 through 29 of this Answer in response to the allegations in paragraph numbered 29 of the Complaint.

31. Empire denies the allegations contained in paragraph numbered 30 of the Complaint.

Count Three

32. Empire adopts by reference and re-alleges the content of paragraphs numbered 1 through 31 of this Answer in response to the allegations in paragraph numbered 31 of the Complaint.

33. Paragraph numbered 32 of the Complaint does not allege facts that the Respondent can either admit or deny, but instead attempts to paraphrase or summarize the content of a Missouri statute and thus states legal conclusions that do not require an answer. Empire admits the existence of section 393.130, RSMo 2000, but denies the remaining allegations in paragraph numbered 32 of the Complaint.

34. Paragraph numbered 33 of the Complaint does not allege facts that the Respondent can either admit or deny, but instead attempts to make an abstract statement of law or legal conclusion which does not require an answer.

35. Empire denies the allegations contained in paragraph numbered 34 of the Complaint.

36. Empire denies the allegation in paragraph numbered 35 of the Complaint that it has failed to abide by its tariff. Empire denies the allegation in paragraph numbered 35 of the Complaint that it has granted an undue or unreasonable preference or advantage to the developer of The Lakes at Shuyler Ridge. Empire denies the remaining allegations in paragraph numbered 35 of the Complaint.

37. Empire denies there was a “failure to charge for the installation of underground distribution facilities and provided electrical service in The Lakes at Shuyler Ridge” as alleged in paragraph numbered 36 of the Complaint. Empire denies that it failed to charge in The Lakes at Shuyler Ridge in the same manner that it charges other similarly situated customers. Empire denies that there was a violation of section 393.130 RSMo as alleged in paragraph numbered 36 of the Complaint. Empire denies the remaining allegations in paragraph numbered 36 of the Complaint.

Count Three (A)

38. Empire adopts by reference and re-alleges the content of paragraphs numbered 1 through 37 of this Answer in response to the allegations in paragraph numbered 37 of the Complaint.

39. Empire denies the allegations contained in paragraph numbered 38 of the Complaint.

Count Four

40. Empire adopts by reference and re-alleges the content of paragraphs numbered 1 through 39 of this Answer in response to the allegations in paragraph numbered 39 of the Complaint.

41. The allegations in paragraph numbered 40 of the Complaint are an attempt by the Complainant to paraphrase or summarize the content of certain tariff sheets as opposed to the pleading of a specific fact. Empire admits that it has had tariff sheets numbered PSC Mo No. 5, Sec. 3, 5th Revised Sheet No. 1a; PSC Mo No. 5, Sec. 3, 16th

Revised Sheet No. 2; and PSC Mo No. 5, Sec. 3, 7th Revised Sheet No. 2a. According to Empire's records, the Commission cancelled all of these sheets on December 14, 2007. Empire admits that in general, those sheets referred to street and private lighting services. Empire states that the contents of each version of each rate schedule speak for themselves and therefore are the best evidence of the content of each at relevant time periods, as opposed to any attempt by the Complainant to paraphrase or summarize their content. Empire denies the remaining allegations in paragraph numbered 40 of the Complaint.

42. The allegations in paragraph numbered 41 of the Complaint are an attempt by the Complainant to paraphrase or summarize the content of certain tariff sheets as opposed to the pleading of a specific fact. Empire states that the contents of each version of each rate schedule speak for themselves and therefore are the best evidence of the content of each at relevant time periods, as opposed to any attempt by the Complainant to paraphrase or summarize their content. Empire denies the remaining allegations in paragraph numbered 41 of the Complaint.

43. Empire admits that the developer of The Lakes at Shuyler Ridge made a decision sometime in 2005 to utilize a style of street lighting in that subdivision that, according to Empire's tariffs, would not be considered as "standard." Further answering, Empire states that the decision of the developer to utilize such a type of street lighting was made based on Ozark Electric providing electrical service to the developer in The Lakes at Shuyler Woods, and that the decision by the developer was made prior to the time that Empire owned any facilities in The Lakes at Shuyler Ridge or had any quasi-contractual relationship with the developer. Empire denies the remaining allegations in paragraph numbered 42 of the Complaint.

44. Empire admits that it installed certain lighting facilities in The Lakes at Shuyler Ridge and that those facilities did not meet the definition of "standard" in Empire's tariff. Further answering, Empire states that it sold and transferred all of the lighting facilities it previously owned in The Lakes at Shuyler Ridge to Ozark Electric on or before July 22, 2008. Empire denies the remaining allegations in paragraph numbered 43 of the Complaint.

45. Empire states that the developer of The Lakes at Shuyler Ridge did not unconditionally agree to take electrical service at The Lakes at Shuyler Ridge from Empire pursuant to the terms of Empire's tariff. The developer's agreement to take service from Empire and to allow Empire to be on the developer's property was expressly conditioned on Empire receiving the waivers or variances that Empire sought from the Commission in Case No. EE-2007-0030. The developer only agreed to take service from Empire if the developer did not have to pay more for the facilities than the developer had agreed to pay to Ozark Electric. Since the Commission did not grant the waivers or variances sought by Empire in Case No. EE-2007-0030, the condition precedent to the developer's agreement to take service from Empire failed or did not occur, and therefore the process was started to return the developer to the status quo ante, being service from Ozark Electric, with that being accomplished on or before July 22, 2008, with the previously noted single temporary exception due to special circumstances. Empire denies the remaining allegations in paragraph numbered 44 of the Complaint.

46. Empire admits the existence of the document from which excerpts are cited in paragraph 45 of the Complaint. Empire denies the remaining allegations in paragraph numbered 45 of the Complaint.

47. Empire admits the existence of the document from which excerpts are cited in paragraph numbered 46 of the Complaint. Empire denies the remaining allegations in paragraph numbered 46 of the Complaint.

48. The allegations in paragraph numbered 47 of the Complaint do not plead specific facts but instead plead legal conclusions, to which an answer is not required.

Count Four (A)

49. Empire adopts by reference and re-alleges the content of paragraphs numbered 1 through 48 of this Answer in response to the allegations in paragraph numbered 48 of the Complaint.

50. The allegations in paragraph numbered 49 of the Complaint do not plead specific facts, but instead plead general legal conclusions, to which an answer is not required.

Count Five

51. Empire adopts by reference and re-alleges the content of paragraphs numbered 1 through 50 of this Answer in response to the allegations in paragraph numbered 50 of the Complaint.

52. The allegations in paragraph numbered 51 of the Complaint do not plead specific facts, but instead plead general legal conclusions, to which an answer is not required.

53. The allegations in paragraph numbered 52 of the Complaint do not plead specific facts, but instead plead general legal conclusions, to which an answer is not required.

54. The allegations in paragraph numbered 53 of the Complaint do not plead specific facts, but instead plead general legal conclusions, to which an answer is not required.

Count Five (A)

55. Empire adopts by reference and re-alleges the content of paragraphs numbered 1 through 54 of this Answer in response to the allegations in paragraph numbered 54 of the Complaint.

56. The allegations in paragraph numbered 55 of the Complaint do not plead specific facts, but instead plead general legal conclusions, to which an answer is not required.

Count Six

57. Empire adopts by reference and re-alleges the content of paragraphs numbered 1 through 56 of this Answer in response to the allegations in paragraph numbered 56 of the Complaint.

58. The allegations in paragraph numbered 57 of the Complaint do not plead specific facts, but instead plead general legal conclusions, to which an answer is not required.

59. The allegations in paragraph numbered 58 of the Complaint do not plead specific facts, but instead plead general legal conclusions, to which an answer is not required.

60. The allegations in paragraph numbered 59 of the Complaint do not plead specific facts, but instead plead general legal conclusions, to which an answer is not required.

Count Six (A)

61. Empire adopts by reference and re-alleges the content of paragraphs numbered 1 through 60 of this Answer in response to the allegations in paragraph numbered 60 of the Complaint.

62. The allegations in paragraph numbered 61 of the Complaint do not plead specific facts, but instead plead general legal conclusions, to which an answer is not required.

Penalties

63. The allegations in paragraph numbered 62 of the Complaint do not plead specific facts, but instead plead general legal conclusions, to which an answer is not required.

64. The allegations in paragraph numbered 63 of the Complaint do not plead specific facts, but instead plead general legal conclusions, to which an answer is not required. Empire further denies that service has been continually provided since “such date” and any remaining factual allegations in paragraph numbered 63 of the Complaint.

65. The allegations in paragraph numbered 64 of the Complaint do not plead specific facts, but instead plead general legal conclusions, to which an answer is not required.

66. The allegations in paragraph numbered 65 of the Complaint do not plead specific facts, but instead plead general legal conclusions, to which an answer is not required. Empire further denies that “such lamps have been continually operated since such date” and any remaining factual allegations in paragraph numbered 65 of the Complaint.

67. Empire admits that the document shown in Appendix 1 as referenced in paragraph 66 of the Complaint was originally provided to Staff by Empire, although without the redactions the Staff has made. Empire denies any remaining allegations in paragraph numbered 66 of the Complaint.

68. The allegations in paragraph numbered 67 of the Complaint do not plead specific facts, but instead plead general legal conclusions, to which an answer is not required.

69. The allegations in paragraph numbered 68 of the Complaint do not plead specific facts, but instead plead general legal conclusions, to which an answer is not required.

Defenses of Fact and Law

70. In accordance with 4 CSR 240-2.070(8), pleading hypothetically, in the alternative and without admitting any of the allegations in the Complaint, Empire states the following defenses of fact and law:

71. Further answering and for its first affirmative defense, Empire states that the Complaint fails to state a claim upon which relief may be granted because the Complaint does not comply with 4 CSR 240-2.070(5)(C) in that the allegations are not cited in a clear and concise manner, and in particular, the Complaint does not put the Respondent on notice as to what specific provisions of tariffs, rules, or laws are alleged to have been violated, or the specific nature and length of each alleged violation, thus depriving Respondent of the reasonable ability to prepare defenses to such vague accusations.

72. Further answering and for its second affirmative defense, Empire states that even if a technical violation of a provision is found to exist, the Commission should exercise its discretion to not authorize the pursuit of penalties against Empire because Empire's involvement with The Lakes at Shuyler Ridge was as a good corporate citizen responding after being asked by the City of Republic, Missouri (hereinafter "the City"), to assist in solving a problem. Empire's actions were not motivated by bad faith, but instead were reasonable and focused on providing safe and adequate service to customers. Empire's involvement began when the City asked Empire and Ozark Electric in March 2006 to explore the possibilities of a territorial agreement for areas to the south of the City in order to prevent a hodge-podge of electric service providers. The City expressed concerns that multiple electric suppliers in the same area can be confusing in emergency response situations and can present other problems that the City wished to avoid as it intended to be annexing the subdivision and adjacent areas. Empire agreed to participate in the discussions in an attempt to help resolve these problems raised by the City. There

was a considerable amount of negotiation involving addressing the concerns of the real estate developers in that area. Those developers had threatened legal action related to annexations by the City. After consulting with the developers and the City, Empire and Ozark Electric presented a regional solution in the form of a proposed territorial agreement that would establish roughly equal and separate service territories for Empire and Ozark Electric covering approximately eight and half square miles, or about 2,880 acres. An application proposing that was filed with the Commission on July 18, 2006, and assigned Case No. EO-2007-0029. The City supported that as being in the public interest. That filing was accompanied by a filing seeking variances of Empire tariffs and Commission rules that related to one subdivision within that entire area, The Lakes at Shuyler Ridge, which encompassed about 245 of the 2,880 acres. That was assigned Case No. EO-2007-0030.

73. Further answering, Empire states that at the time it was contacted by the City, Ozark Electric had already begun construction of facilities in the subdivision because the developer of The Lakes at Shuyler Ridge had previously signed an agreement to take electric service from Ozark Electric. There was also the allegation by the City, discussed at the meeting in March 2006, that the developer had signed an agreement accepting voluntary annexation of the subdivision into the City. So in March 2006, Ozark Electric was faced with the prospect of investing large sums of money in the electrical distribution infrastructure in that subdivision, only to see its ability to use that infrastructure put at risk because of annexation. That was because as soon as the subdivision, or individual pieces of it, were annexed into the City, Ozark Electric would lose the legal ability to connect new customers in the annexed areas due to state law restricting the operation of rural electric cooperatives in non-rural areas. In this situation, because the City's population was greater than 1,500, annexation would trigger those provisions. So while Ozark Electric might be able to serve the first few houses that were constructed there before annexation, annexation would mean Empire could be the only supplier allowed by state law to serve new customers after the date of annexation since Empire was and is the franchised electric supplier within the corporate limits of the City. And the mixture of service providers between Ozark Electric and Empire in the subdivision would create the hodge-podge of suppliers that the City was actively trying to avoid.

74. Further answering, and for its third affirmative defense, Empire states that during the discussions leading up to the filing of the initial territorial agreement proposal, the developer of The Lakes at Shuyler Ridge indicated to Empire and Ozark Electric that it was indifferent as to which one served the subdivision under the proposed territorial agreement, with one important exception. Ozark Electric's policies for investment in subdivision infrastructure differ from those Empire is required to follow. Ozark Electric's policies call for it to invest substantially more than Empire would under its policies, meaning the developer would have to invest less money with Ozark Electric than it would with Empire. Not surprisingly, the developer was not willing to have Empire serve the subdivision unless Empire was allowed to meet the terms that had been offered by Ozark Electric. "The business relationship between a utility and its customers is rooted in contract." ***National Food Stores, Inc. v. Union Electric Company***, 494 S.W.2d 379, 381 (Mo. App. 1973). Logically and electrically, it made sense under the proposed territorial agreement for Empire to serve the subdivision, since it was adjacent to the City where Empire was already serving as the franchised supplier. Ozark Electric was also willing to give up its contractual right to serve that subdivision in order to obtain the exclusive right to serve in other areas where Empire was also authorized to serve. Representatives of Empire made it clear to the group assembled for the discussions in March 2006 that Empire could only match the Ozark policies if the Commission gave it permission to do so. There was no opposition voiced to that proposal.

75. Further answering, 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. Empire had a reasonable expectation that the request would be granted because the Commission in the past on several occasions had granted waivers

or variances in situations where an electrical corporation had asked permission to match the terms that a rural electric cooperative was proposing to a prospective customer.

76. Further answering, Empire states that Empire and Ozark made a decision for Empire to purchase the work in progress that Ozark Electric had made in The Lakes at Shuyler Ridge for engineering and otherwise practical reasons. One was that the developer was actively pursuing development of the subdivision and would not have agreed, or could not afford, to simply halt construction on the development while everyone waited for at least several months for the Commission to act on the applications. Another was that since Ozark Electric operates at a different distribution primary voltage than Empire, the distribution transformers that Ozark Electric was installing or planning to install were not compatible with Empire's system, so if Empire did nothing and Ozark Electric kept on its pace with the installation, then all the Ozark Electric transformers would have had to have been removed and replaced with Empire transformers if the Commission approved the applications. So a decision was made to proceed in order to minimize delays for the developer and minimize the wasted effort and investment that was anticipated if a purchase were not made.

77. A hearing was held by the Commission on these cases on December 7, 2006, almost five months after the application was filed. A Report and Order was issued on January 30, 2007, effective February 9, 2007. As the Commission knows, while it apparently found merit in the proposed territorial agreement, it did not agree to grant the variances, so the entire proposal failed. It took almost seven months from the time the applications were filed until there was a final disposition of the cases.

78. Further answering, Empire states that because 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.

79. Further answering, Empire states that with Commission approval of that application, the process could then begin to physically accomplish the transfer of service from Empire to Ozark Electric in the subdivision. Empire and Ozark Electric personnel met and conferred on the safest and most practical means to accomplish these transfers, and they were accomplished in carefully planned stages due to electrical safety and customer service quality concerns. That process generally ended on July 22, 2008, with the exception of the previously described single commercial account that will be transferred as soon as arrangements can be made for Ozark Electric to serve it.

80. Further answering, Empire states that Empire and Ozark Electric therefore successfully accomplished the task of substantially putting the original parties back into the positions they were in prior to the first attempt at a territorial agreement. In other words, the developer, in accordance with its agreement to go along with and not oppose the first proposal if it did not have to pay the installation and prepayment amounts specified in Empire's tariff that were not required by Ozark Electric, obtained the benefit of its bargain. The developer and Ozark Electric were able to have the benefit of their original bargain for Ozark Electric to serve The Lakes at Shuyler Woods. The City accomplished at least part

of what it wanted to accomplish because, at least as far as The Lakes at Shuyler Woods is concerned, there is only one electric supplier, so the potential for confusion by emergency responders is minimized in that location. Empire did give up its right to serve in the subdivision if annexation took place but Empire fully recouped its investment in facilities in The Lakes at Shuyler Ridge through the agreement of Ozark Electric to pay Empire for that.

81. Further answering, Empire states that throughout its involvement with The Lakes at Shuyler Ridge from early 2006 until the middle of 2008, Empire never overcharged any customer in that subdivision for service, never failed to provide adequate service, and never experienced a customer complaint about its service. Empire believes that no customer anywhere on its system suffered any quantifiable detriment from Empire's honest and responsible attempts to resolve the public interest concerns initially raised by the City and Empire's attempts to respond to the decisions made by the Commission in a timely and reasonable manner while also giving deference to the interests of other involved parties, including affected customers. Empire did not challenge the decisions made by the Commission. To Empire's knowledge, no customer is complaining to the Commission about what transpired at The Lakes at Shuyler Ridge.

82. Further answering, Empire states that this was a unique and previously un-experienced circumstance for Empire. Empire's tariff does not address the situation of acquiring already-installed facilities from another supplier and the statutes do not require prior Commission approval for the acquisition of such electrical facilities that are already located within Empire's service territory. Empire sought Commission approval for things where the statutes required it. Empire had no other customers that were in the same factual situation as the developer in this instance, so Empire did not either extend a preference to or create a disadvantage for the developer or those who were purchasers of property from the developer. Empire honored the conditions the developer initially established as a condition precedent to the developer becoming the customer of Empire in The Lakes at Shuyler Ridge. Empire did not take any actions to force the developer or any other customer in The Lakes at Shuyler Ridge to do anything that person did not voluntarily agree to do. Empire's actions were designed ultimately to benefit the customers and the interests of the City and to inconvenience the least amount of people.

Empire did not take unilateral actions throughout this process, but sought the advice and cooperation of the other parties before acting, so the process of negotiation and drafting of contracts acceptable to all parties consumed certain periods of time, along with time necessary for the Commission to consider the proposals made to it. Because the developer never agreed to unconditionally take service from Empire, it would have been legally inappropriate and morally wrong for Empire to force the developer to make the installation charges and prepayments described in the Complaint. Because the developer never legally became the unconditional customer of Empire since the condition precedent established by the developer was never satisfied, the installation charges and prepayments described in the Complaint and alleged as being required were never legally required to be collected by Empire.

WHEREFORE, having fully answered and set forth its affirmative defenses in fact and in law, Respondent respectfully requests that the Commission issue its order:

- (a) Dismissing the Complaint and,
- (b) Granting such further relief as the Commission deems appropriate.

Respectfully submitted,

/s/ Gary W. Duffy

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ATTORNEYS FOR THE EMPIRE DISTRICT

ELECTRIC COMPANY

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was served by electronic mail this 9th day of October, 2008, on:

Office of the General Counsel
Missouri Public Service Commission
Governor State Office Building
Jefferson City, Missouri

Office of the Public Counsel
Governor State Office Building
Jefferson City, Missouri

/s/ Gary W. Duffy

Gary W. Duffy