

Exhibit No.:  
Issues:      Tariff Variances  
              Territorial Agreement  
Witness:     Daniel I. Beck  
Sponsoring Party:   MO PSC Staff  
Type of Exhibit:   Direct/Rebuttal Testimony  
Case Nos.:    EO-2007-0029 & EE-2007-0030  
Date Testimony Prepared:   November 20, 2006

**MISSOURI PUBLIC SERVICE COMMISSION**

**UTILITY OPERATIONS DIVISION**

**DIRECT/REBUTTAL TESTIMONY**

**OF**

**DANIEL I. BECK**

**THE EMPIRE DISTRICT ELECTRIC COMPANY**

**AND**

**OZARK ELECTRIC COOPERATIVE**

**CASE NOS. EO-2007-0029**

**AND**

**EE-2007-0030**

**Jefferson City, Missouri  
November 2006**

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE 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 Exclusive )  
Service Areas for Each within Two Tracts )  
of Land in Greene County and Christian )  
County, Missouri )

Case No. EO-2007-0029

In the Matter of the Application of the )  
Empire District Electric Company for a )  
Waiver of the Provisions of its Tariff and )  
4 CSR 240-14.020 with Regard to The )  
Lakes at Shuyler Ridge Subdivision in )  
Conjunction with a Proposed First )  
Territorial Agreement with Ozark Electric )  
Cooperative. )

Case No. EE-2007-0030

**AFFIDAVIT OF DANIEL I. BECK**

STATE OF MISSOURI     )  
                                      ) ss  
COUNTY OF COLE     )

Daniel I. Beck, of lawful age, on his oath states: that he has participated in the preparation of the following Direct/Rebuttal Testimony in question and answer form, consisting of 11 pages of Direct/Rebuttal Testimony to be presented in the above case, that the answers in the following Direct/Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.

  
Daniel I. Beck

Subscribed and sworn to before me this 20<sup>th</sup> day of November, 2006.



SUSAN L. SUNDERMEYER  
My Commission Expires  
September 21, 2010  
Callaway County  
Commission #06942086

  
Notary Public

My commission expires 9-21-10

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**AND**

**EE-2007-0030**

Q. Please state your name and business address.

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

Q. What is your present position with the Missouri Public Service Commission (MOPSC or Commission)?

A. I am employed by the Commission as the Supervisor of the Engineering Analysis Section, Energy Department, Utility Operations Division.

Q. Would you please review your educational background and work experience?

A. 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

1 my duties include weather normalization, annualization, tariff review, cost-of-service and rate  
2 design. Since June 2001, I have been in the Engineering Analysis Section of the Energy  
3 Department, which was created by combining the Gas and Electric Departments. I am a  
4 Registered Professional Engineer in the State of Missouri. My registration number is E-  
5 26953.

6 **Executive Summary**

7 Q. Summarily, what is the Staff's position with regard to the variances Empire is  
8 seeking?

9 A. Since Empire is seeking these variances so that one, and only one, developer—  
10 the developer of The Lakes at Shuyler Ridge subdivision—can avoid \$332,449.74 in tariffed  
11 service installation fees and \$152,600.00 for decorative street lighting (which Empire's tariff  
12 would require be borne by the developer), I believe it would be discriminatory to grant the  
13 variances. Empire has not requested, nor has the Commission granted, variances from  
14 Commission rule or Empire's tariff for service installation fees of any other developer for the  
15 last ten years, and, to my knowledge, the Commission has never granted a variance to Empire  
16 to allow Empire, and not the developer, to bear the costs of decorative street lights.

17 Q. Didn't the Applicants state that the variance requests are interdependent with  
18 the territorial agreement?

19 A. Yes. This aspect of these consolidated cases also concerns the Staff. My  
20 understanding is that the developer avoiding \$485,049.74 in costs is required as part of this  
21 territorial agreement. I do not know of any other territorial agreement that was contingent  
22 upon a discount given to another party. The only financial arrangements that I am aware of  
23 that have been associated with territorial agreements are payments from one party to the

1 agreement to another for the transfer of facilities used to serve customers being transferred.

2 In this case no customers are being transferred from one utility to the other.

3 **Other Topics Raised by Applications**

4 Q. Your summary did not address many of the topics raised by the Application.

5 Those topics included:

6 Retail electric service providers in cities with populations greater than 1,500;

7 A meeting between Empire, Ozark, the City of Republic and two developers;

8 Possible litigation;

9 Development Agreements between the City and developers;

10 Ozark's policies;

11 Agreements between the developer and Ozark; and

12 The cost/benefit analysis performed by Empire.

13 Why didn't you address these areas in your summary?

14 A. In my opinion these other topics tend to confuse the real issue: whether the  
15 Commission should, or can, grant the requested variances and, therefore, whether the  
16 Commission should, or can, approve the territorial agreement. However, since this is the only  
17 round of testimony, I do address these other topics in this testimony.

18 Q. What is your understanding of who can provide retail electric service in cities  
19 with populations greater than 1,500?

20 A. It is my understanding that Missouri state statutes generally limit rural electric  
21 cooperatives from providing electric service within the corporate boundaries of any city, town  
22 or village that has a population in excess of fifteen hundred inhabitants, and have done so for  
23 some time.

1 Q. What is your understanding of Ozark's Underground Line extension policy?

2 A. Ozark's Board Policy 402, Underground Line Extension was attached to the  
3 Variance Application. Based on a review of this policy, the standard practice to serve a  
4 subdivision would be to extend underground lines at no cost to the developer.

5 Q. What is your understanding of Ozark's street lighting policies?

6 A. It is my understanding Ozark will only contribute up to \$1,500 per street light.

7 Q. What do you know about development agreements between the City of  
8 Republic and the developer of Lakes at Shuyler Ridge?

9 A. Nothing, except the references to them found in the applications and in the  
10 territorial agreement.

11 Q. Is there anything you can say about those references?

12 A. An agreement between Ozark and the developer of Lakes at Shuyler Ridge  
13 subdivision titled, "Agreement for the Purchase of Electric Power and Energy" includes the  
14 following description of the development agreement between the developer and the City of  
15 Republic:

16 "[The development agreement] grants the City the right to govern the timing  
17 of voluntary municipal annexation of the development tract."

18  
19 This description appears to give the City complete control of the timing of annexation  
20 of The Lakes at Shuyler Ridge Subdivision.

21 Q. What do you know about the "Agreement for the Purchase of Electric Power  
22 and Energy" between Ozark and the developer?

23 A. It is an agreement, dated September 15, 2005, setting out the terms upon which  
24 Ozark will supply electrical service to The Lakes at Shuyler Ridge subdivision.

1 Q. Are there any provisions in that agreement to which you wish to draw to the  
2 Commission's attention?

3 A. Yes, the last sentence in paragraph 1, which provides:

4 "Relocation of Cooperative facilities now existing on the above described  
5 property and installation of additional Cooperative facilities shall be without  
6 cost to Developer and its purchaser/tenants; provided, however, that  
7 Cooperative's rate schedules, street lighting policy, line extension policy, and  
8 underground construction policy **shall be applied in the same manner as for**  
9 **other members with the same or similar service requirements."**  
10 (Emphasis added).  
11

12 Q. What is the significance of the last clause, which you emphasized?

13 A. There Ozark makes it clear Ozark does not want to discriminate between its  
14 members. If the Commission grants Empire's variance requests and Empire made a similar  
15 statement, it would have to say something like:

16 "Empire's rate schedules, street lighting policy, line extension policy, and  
17 underground construction policy shall be applied in the same manner for as for  
18 other [customers] with the same or similar service requirements **excluding**  
19 **customers in The Lakes at Shuyler Ridge subdivision who shall receive**  
20 **special treatment."**  
21

22 Q. If the developer of The Lakes at Shuyler Ridge subdivision arranged for  
23 electrical service from Ozark before Ozark and Empire entered into a territorial agreement,  
24 why is that subdivision being included in the territory that Empire will serve and not Ozark?

25 A. It is the Staff's understanding that the territorial agreement and variance  
26 requests are the result of a compromise that attempts to address the concerns that various  
27 parties had. The parties with concerns include the developer, the City, Ozark and Empire.  
28 The Application refers to possible litigation and it is Staff's understanding that the litigation  
29 would be between the developer and the City regarding the effects on Ozark's ability to serve  
30 new customer in the subdivision after annexation occurs. The developer would like to take



1 advantage of Ozark's Extension Policy and Ozark, like most utilities would like to serve new  
2 customers. Empire's franchise agreement with the City of Republic expires in 2014 and it is  
3 logical that Empire would want to assist with the City. The problem is that this territorial  
4 agreement and intertwined variances were created and made without the participation of any  
5 representative of Empire's current customers, customers who may ultimately bear the costs  
6 the developer would bear under Empire's tariff.

7 Q. Are you aware of any other agreement between Ozark and the developer of  
8 The Lakes at Shuyler Ridge subdivision?

9 A. Yes. They entered into an agreement called a "Memorandum Letter of  
10 Understanding" dated January 27, 2006, and last signed by a party on February 2, 2006. This  
11 agreement specifically deals with Phase One of The Lakes at Shuyler Ridge subdivision and  
12 the trenching associated with that phase.

13 Q. What do you know about the meeting between Empire, Ozark, the City of  
14 Republic and two developers that occurred on March 23, 2006?

15 A. Only what appears in the applications filed in these cases, which comports with  
16 statements made by Empire employees during teleconferences I had with them. To my  
17 knowledge no Commission Staff or representative from the Office of the Public Counsel  
18 attended.

19 Q. In paragraph 6 of its application for variances, Empire states: "Generally  
20 speaking, the meeting revealed sharply opposing interests as to the timing of annexation of the  
21 developments by the City due to several aspects of state law." Do you have any information  
22 that would shed light on the "sharply opposing interests"?

1           A.     Based on discussions with Empire employees, it is my understanding the City  
2 of Republic wants to annex The Lakes at Shuyler Ridge subdivision right away. It is my  
3 understanding that one factor that makes early annexation attractive to the City of Republic is  
4 a state statute that requires the City of Republic to pay a sum of money to the volunteer fire  
5 department/district serving the area to be annexed based on the assessed value of the annexed  
6 property at the time of annexation. Obviously, the assessed value of The Lakes at Shuyler  
7 Ridge subdivision would be lower before development has taken place and houses are built.  
8 In contrast, it is in the developer's interest to delay the annexation until after all the houses  
9 have been built so that he can take advantage of the "Agreement for the Purchase of Electric  
10 Power and Energy" he has with Ozark that has more favorable terms for installation of  
11 facilities, including decorative street lights, than Empire's tariff.

12           Q.     Do you know whether the development agreement between the City of  
13 Republic and the developer of The Lakes at Shuyler Ridge subdivision has any impact on the  
14 timing of the annexation of the subdivision?

15           A.     While I have not seen the agreement, based on statements made by Empire and  
16 Ozark, including the applications, it is my understanding the City of Republic may voluntarily  
17 annex The Lakes at Shuyler Ridge subdivision at any time it chooses.

18           Q.     Do you know why a developer might give up control of when his development  
19 would be annexed by a municipality?

20           A.     Based on my experience and understanding of issues related to development  
21 and annexation for other municipalities, a developer is often concerned about many utility  
22 services and public services. The City of Republic provides both water and sewer services  
23 through its department of public works. Since it is costly to permit, build, and operate a water

1 and/or sewer plant to serve individual homes or subdivisions, developers often choose to take  
2 advantage of municipal water and sewer services, if they can. In return, cities often require  
3 agreements regarding the timing of annexation. Sewer services alone can easily result in  
4 installation costs of \$10,000 per home for a single dwelling design like a septic tank.

5 **Quantifying the Cost of the Variance**

6 Q. What would the developer of The Lakes at Shuyler Ridge subdivision be  
7 required to pay under Empire's current tariff for the provision of electrical service?

8 A. The developer would incur the following costs:

- 9 a) All estimated installation costs in advance (\$1,717,492.74)  
10 b) Refund equal to construction allowance per lot, currently \$2679, if  
11 installed within 60 months of completion of extension (\$1,385,043.00)  
12 c) All costs to install street lighting (\$163,500.00)  
13 d) Total cost after refund of \$495,949.74  
14

15 Q. If the Commission grants the variances requested here, what costs would the  
16 developer pay?

17 A. The following costs:

- 18 a) No installation costs  
19 b) \$100.00 per street light or \$10,900.00  
20

21 Q. Assuming Empire is the service provider whether or not the variances are  
22 granted, what is the economic effect to the developer of The Lakes at Shuyler Ridge  
23 subdivision if the Commission grants the variances?

24 A. The developer pays \$485,049.74 less, does not have to pay for installation in  
25 advance, and does not risk forfeiting all or part of the refunds available for a limited time.

26 Q. If the Commission grants the variances and the developer doesn't pay the  
27 \$485,049.74, who does?

A. Empire's shareholders, customers or both, will pay all or part of them, depending on the extent the costs are included in Empire's rate base in its next rate case. However, those who would benefit the most from the installation of services and the decorative street lighting in The Lakes at Shuyler Ridge subdivision are the developer and customer in that subdivision, but they would be required to pay very little of the associated costs.

## Fairness and Competition

Q. Do you believe it would be fair for Empire's shareholders, customers or both to bear the costs of installing service and decorative street lights in The Lakes at Shuyler Ridge subdivision?

A. No, a basic principle of rate making is that the cost causer should pay the costs he caused. Empire's tariff follows this principle with regard to installation of service lines and decorative street lights and treats each similarly situated customer similarly.

Q. Are the basic facts here unique?

A. I believe they are not. While all of Missouri's electric utilities have experienced growth in their customer base over the years, Empire's service territory includes one of the highest growth areas in the state, the Branson area. In addition, Empire has experienced significant growth in areas about Springfield, areas in and about Ozark, Republic and Joplin, Missouri. Commonly there are at least two electrical service providers available to customers in these areas—Empire and an electrical cooperative. In addition to Ozark, White River Valley Electric Cooperative serves the Branson area and Barton County Electric Cooperative serves the Joplin area. Competing with the electric cooperatives is almost a daily occurrence for Empire. Although I have no specific numbers, discussions with Empire

1 confirmed that it has competed with the cooperatives for developments many times in the last  
2 ten years and, due to the cooperative's policies, Empire is not always able to compete  
3 effectively.

4 Q. Wouldn't the competition that Empire faces justify approval of the variances?

5 A. No. As I just stated, Empire faces competition on an almost daily basis.  
6 Empire's tariffs have been crafted in this competitive environment and, over the years,  
7 changes have been made to the tariffs that have allowed Empire to compete more effectively.  
8 An important factor to consider is that while changes to tariffs do alter the terms of services at  
9 a point in time, changes in tariffs insure that all customers that are similarly situated receive  
10 the same rates and services.

11 Q. Have you been to The Lakes at Shuyler Ridge subdivision?

12 A. Yes. I visited the subdivision on October 28, 2006. Schedule 1 contains  
13 several photographs that show the connections to existing overhead lines, the installed street  
14 lights and the work completed on Phase I in general.

15 Q. Do the photographs in Schedule 1 fairly and accurately depict what you saw at  
16 The Lakes at Shuyler Ridge subdivision on October 28, 2006?

17 A. Yes. The first photograph on Schedule 1-1 shows the transition from overhead  
18 lines to underground. This location is actually several hundred feet from the area where the  
19 other photographs were taken and where lots are laid out. The second photograph shows  
20 streets with curbs, sidewalks, decorative light poles, transformers, a fire hydrant and the  
21 preparation work that has taken place in general. The first photograph on Schedule 1-2 shows  
22 a close up view of a light pole, various other light poles in the distance, streets with curbs,  
23 sidewalks, a fire hydrant and the preparation work that has taken place in general. The last

1 | photograph is another view of the same light pole which includes a view of the light fixture.

2 | Although I would describe the general terrain around this area as rolling hills, the area that  
3 | makes up Phase 1 of The Lakes at Shuyler Ridge subdivision is fairly flat.

4 |       Q.     Earlier, you mentioned that Empire has not requested a variance from its line  
5 | extension policy in over ten years. Has Empire's situation changed since those previous  
6 | variances were granted in the early 1990's.?

7 |       A.     Yes. Empire has added a significant amount of new generation capacity since  
8 | the early 1990's. In addition, Empire's Regulatory Plan lays out Empire's plans to add two  
9 | new base and intermediate generation units in the next 5 years. The effect of this new  
10 | generation is that rates have risen. In the early 1990's a residential customer with 1000 kWh  
11 | usage would have an annual bill of \$672.38. Today, the same customer would pay \$1000.56  
12 | and Empire is currently requesting another rate increase. Given these price increases, one has  
13 | to wonder if the addition of load benefits all customers and Empire's lack of variance requests  
14 | for over 10 years seems to reflect similar concerns.

15 |       Q.     Do you have any further testimony at this time?

16 |       A.     No.



