

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 8th day of
April, 2008.

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

**ORDER DENYING APPLICATION FOR REHEARING AND MOTION
TO MODIFY, BUT CLARIFYING REPORT AND ORDER**

Issue Date: April 8, 2008

Effective Date: April 18, 2008

Syllabus: This order denies the application for rehearing and grants in part the motion to modify filed by The Empire District Electric Company. It also provides some clarification in response to Empire's application and motion.

On March 4, 2008, the Commission issued a Report and Order approving the proposed territorial agreement between Empire and Ozark Electric Co-operative, authorizing a change of supplier for approximately 32 structures, and authorizing a transfer of assets that had been sought in conjunction therewith. On March 13, 2008, Empire filed an Application for Rehearing and Motion to Modify.

The Commission shall grant a rehearing if in its judgment there is sufficient reason to do so.¹ The arguments raised by Empire either restate the arguments that were

¹ Section 386.500, RSMo 2000.

previously presented to the Commission and rejected, or are contrary to the clear findings of fact and conclusions of law found in the Report and Order. In the judgment of the Commission, Empire has failed to establish sufficient reason to grant its application for rehearing or motion to modify. However, the Commission finds that some of Empire's concerns regarding the interpretation of specific language contained in the Report and Order require clarification of that language.

First, the last sentence in Findings of Fact paragraph 9 on page 6 reads, "That agreement called for the Developer to pay Ozark significantly less than Empire's tariffed rates to install street lighting and install service extensions to units in Shuyler Ridge." Empire argues this language implies it was a party to the agreement between the Developer and Ozark, and that its tariff is referenced in the agreement. The language in question however, simply notes that the rates the Developer was to pay Ozark under the agreement are significantly less than Empire's tariffed rates. It does not constitute a finding that Empire was a party to the agreement or that Empire's tariff was referenced therein.

Second, Finding of Fact paragraph 12, on page 7 of the Report and Order states: "Under the territorial agreement resulting from the March 2006 meeting, the Developer only agreed to take service from Empire if it received the same installation rates it had contracted to receive from Ozark." Empire contends that the inclusion of the phrase "under the territorial agreement" implies the Developer was a party to that agreement. However, it was not the Commission's intent to imply that the Developer was a party to the territorial agreement. The language in question meant that at the March 2006 meeting the Developer advised Empire and Ozark that it would not take service from Empire, irrespective of any agreement between Empire and Ozark, unless it received those services at the same rates it had contracted to receive such services from Ozark.

Third, Empire expressed concern that the Commission's use of the phrase "approximately thirty-two structures" in ORDERED paragraph 2 of the Report and Order could be construed as applying only to a certain number of structures rather than all of the structures located within The Lakes at Shuyler Ridge at the time the physical service transfers occur. Although the Commission believes its grant of authority is clear, the Commission clarifies that the language contained in ORDERED paragraph 2 of the Report and Order authorized the change in electric supplier from Empire to Ozark for all of the structures located within The Lakes at Shuyler Ridge at the time the physical service transfers occur.

Finally, Empire expressed concern that language used by the Commission in discussions of Empire's tariff could be construed as the Commission having made certain conclusions or findings, and thereby prejudged certain facts that may be presented to the Commission in a future complaint proceeding. The Commission made no finding in its Report and Order that should be taken as establishing any fact for purposes of any future proceeding, including a complaint. As the Commission stated in the Report and Order such matters are not appropriately before the Commission in this case, but are properly addressed in a complaint proceeding.

IT IS ORDERED THAT:

1. The Application for Rehearing and Motion to Modify filed by The Empire District Electric Company on March 13, 2008, is denied.
2. The Commission's March 4, 2008 Report and Order is clarified as set out in the body of this order.

3. This order shall become effective on April 18, 2008.
4. This case may be closed on April 19, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is positioned above the printed name.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton,
and Jarrett, CC., concur.

Voss, Regulatory Law Judge