

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5 Evidentiary Hearing
6 December 18, 2007
7 Jefferson City, Missouri
8 Volume 1

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

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17 CHERLYN D. VOSS, Presiding,
REGULATORY LAW JUDGE.

18

19 CONNIE MURRAY,
ROBERT M. CLAYTON III,
LINWARD "LIN" APPLING,
TERRY JARRETT,
20 COMMISSIONERS.

21

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1 P R O C E E D I N G S

2 (EXHIBIT NOS. 1 THROUGH 7 WERE MARKED FOR
3 IDENTIFICATION BY THE REPORTER.)

4 JUDGE VOSS: We're here today in the matter
5 of the application of The Empire District Electric Company
6 and Ozark Electric Cooperative for approval of a written
7 territorial agreement designating the boundaries of an
8 exclusive service area for Ozark within a tract of land in
9 Greene County, Missouri, and associated request for
10 approval of the transfer of facilities and change of
11 supplier, Commission Case No. EO-2008-0043.

12 We're going to begin now with entries of
13 appearance, beginning with Empire District Electric
14 Company.

15 MR. DUFFY: Gary W. Duffy, Brydon,
16 Swearngen & England, P.C., P.O. Box 456, 312 East Capitol
17 Avenue, Jefferson City, Missouri 65101, appearing for the
18 Empire District Electric Company.

19 JUDGE VOSS: Ozark Electric Cooperative?

20 MR. WIDGER: Judge, my name is Rod Widger.
21 I'm with the firm of Andereck, Evans, Milne, Widger &
22 Johnson. Our address is 1111 South Glenstone,
23 Springfield, Missouri 65804. I'm here representing Ozark
24 Electric Cooperative.

25 JUDGE VOSS: Staff of the Commission?

1 MR. WILLIAMS: Nathan Williams, Deputy
2 General Counsel, P.O. Box 360, Jefferson City, Missouri
3 65102.

4 JUDGE VOSS: Office of the Public Counsel?

5 MR. MILLS: Appearing on behalf of the
6 Office of the Public Counsel and the public, my name is
7 Lewis Mills. My address is P.O. Box 2230, Jefferson City,
8 Missouri 65102.

9 JUDGE VOSS: I'm going to deal with one
10 preliminary issue, and that was a request by Public
11 Counsel to accept a late-filed statement of position. I'm
12 assuming there are no objections to that filing?

13 (No response.)

14 JUDGE VOSS: Hearing none, that request is
15 granted. Are there any other pending motions that need to
16 be addressed before I get the Commissioners for opening
17 statements?

18 MR. WIDGER: Judge, not a pending matter,
19 but in regard to stipulations, I'd like to propose -- or
20 note that we did not file Stipulation of Facts in this
21 case. I would propose the entry of seven basic facts that
22 have been stipulated once before, just to get them in the
23 record. Those are the foundational things about the
24 status of our companies and our good standing, those sorts
25 of things.

1 JUDGE VOSS: Do you want those to be stated
2 by a witness?

3 MR. WIDGER: If the counsel present did not
4 object to any of these, we can do it by consent, I would
5 think.

6 JUDGE VOSS: Okay.

7 MR. WIDGER: Do you want me to propose
8 these facts?

9 JUDGE VOSS: The Commission may be
10 interested in knowing what those facts are before the
11 opening statements. So I think just wait a couple more
12 minutes.

13 MR. MILLS: Judge, may I ask a clarifying
14 question? Mr. Widger, are you talking about the ones that
15 are on page 6 of Mr. Prewitt's testimony?

16 MR. WIDGER: No. I'm referring to the
17 facts 1 through 7 that were filed in the previous case,
18 which were Empire is a Kansas corporation. Let me see.
19 Okay. Never mind. Let me see that.

20 MR. DUFFY: I was going to say, if we all
21 stipulate in the prepared testimony, then I think you'll
22 accomplish your purpose.

23 MR. WIDGER: Right. That was my oversight.
24 Thank you.

25 JUDGE VOSS: And it is my understanding

1 that there'll be no objections to the exhibits. I'll ask
2 one more time just for the record right before we accept
3 exhibits as the witnesses are presented. I'm assuming
4 they are going to authenticate the exhibits before they're
5 offered? I'm not sure how far Judge Dippell --

6 MR. DUFFY: I think what we've agreed to is
7 that no one has an objection to the prefiled testimony.
8 So just to make things simple, at this point I guess I
9 would suggest that the parties are in agreement that
10 Exhibits 1 through 5 should be received without objection
11 and see if anybody has a problem with that.

12 JUDGE VOSS: Are there any objections?

13 (No response.)

14 JUDGE VOSS: Then I will admit Exhibits 1
15 through 5.

16 (EXHIBIT NOS. 1 THROUGH 5 WERE RECEIVED
17 INTO EVIDENCE.)

18 JUDGE VOSS: Which would be the Application
19 and attachment of Empire, Exhibit 1, the direct testimony
20 of Michael E. Palmer, 2. Surrebuttal of Michael E. Palmer
21 is 3. Patrick Prewitt is 4, and Daniel Beck is Exhibit 5,
22 his rebuttal testimony. Is that correct?

23 MR. DUFFY: That's correct, your Honor.

24 JUDGE VOSS: Okay.

25 MR. WILLIAMS: Judge, Exhibit 7 are certain

1 tariff sheets from Empire's tariff that are currently on
2 file and effective with the Commission. I just ask the
3 Commission to take official notice of those particular
4 tariff sheets that are included in that exhibit.

5 MR. DUFFY: Your Honor, I'm not prepared to
6 agree to that at this point since we were just handed
7 these a few minutes ago. We haven't had the ability to
8 determine whether they are, in fact, actual copies.

9 JUDGE VOSS: Okay. Well, then, we'll
10 reserve ruling on those for this time. If they're truly
11 tariffs on file, it's something the Commission could take
12 notice of the actual filed tariffs then.

13 MR. DUFFY: I agree that the Commission can
14 take notice of the actual tariffs. What I'm saying is I
15 don't know that this copy that I've been handed is what
16 it's supposed to be.

17 MR. WILLIAMS: Judge, I erred, too. It
18 should be Exhibit 6, not Exhibit 7, that are the ones that
19 are currently in effect.

20 MR. DUFFY: And my reservation would be the
21 same for what's been marked as Exhibit 6.

22 JUDGE VOSS: I did understand your
23 comments, Mr. Duffy. I was just saying in any event you
24 don't have time to verify that, the Commission can still
25 take notice of those.

1 All right. I guess we're going to begin
2 with opening statements at this time. Let's begin with
3 Empire District Electric Company, Mr. Duffy.

4 MR. DUFFY: Good morning. I'm going to be
5 very brief. This case is about a 245-acre subdivision
6 south of the city of Republic, Missouri. It's called the
7 Lakes at Schuyler, I think is the right pronunciation,
8 Schuyler Ridge. If it seems like a little bit of deja vu,
9 it is. We were here just a year or so ago with a much
10 bigger territorial agreement covering about eight and a
11 half square miles south of the city of Republic. Under
12 that proposal, Empire was going to have about four and a
13 half square miles as its exclusive territory. Ozark
14 Electric Cooperative was going to have about four square
15 miles as its exclusive territory.

16 The City of Republic was happy with that,
17 and we presented that to the Commission, I believe, in an
18 application filed in July of 2006. In January of 2007 the
19 Commission said that it was not going to accept that
20 proposal because there was a request for variance filed by
21 the company that was an underlying condition. It made the
22 situation work because it allowed Empire to match the
23 policies of Ozark since the -- since the developer had
24 entered into a previous agreement with Ozark.

25 Anyway, you reached a decision in January

1 of 2007 that made that go away. So that left the parties
2 trying to figure out what to do with the situation. They
3 consulted with the City of Republic, with the developers,
4 and now we're back with a second try, which essentially
5 tries to put everybody back where they were before we
6 started down the path in the first place.

7 All this accomplishes -- all this
8 application accomplishes is to make that particular
9 245-acre subdivision the exclusive service territory of
10 Ozark Electric Cooperative. That was going to happen
11 under the original contract between Ozark and the
12 developer.

13 Empire in the interim had purchased
14 facilities from Ozark in that subdivision, had expanded,
15 because we had customers that had to be served. The other
16 two things that go with this application to make that
17 subdivision exclusive to Ozark are your permission to
18 allow us to sell those facilities to Ozark because that
19 makes sense under the circumstances, and then because we
20 have this what's called flipflop statutes for years and
21 years, that gets triggered because there are now customers
22 receiving service from Empire that need to be switched to
23 Ozark since Ozark would own the facilities and Ozark would
24 be serving that subdivision.

25 So it all kind of got wrapped up together

1 into this application. It's Empire's position that this
2 proceeding or that this application's in the public
3 interest. I think that my reading of the prepared
4 testimony doesn't indicate anyone who says that any aspect
5 of the general public is being harmed by this proposal.
6 At least I didn't see anybody that identified anyone who
7 would be harmed by it. So we think that by trying to put
8 everybody back where they were in early 2006 and letting
9 things happen going forward from there, we're trying to
10 act in the public interest. So thank you.

11 COMMISSIONER CLAYTON: Can I ask a real
12 quick question? Can you respond to Staff's concerns that
13 are raised? Is that possible to do that in the opening
14 just very briefly? I'm not asking for factual, but --

15 MR. DUFFY: The Staff -- I'm not sure I
16 really understood what the Staff's concerns were. We
17 tried to address that in the surrebuttal testimony of Mike
18 Palmer. There were some things that the Staff said that
19 we had trouble understanding why they were saying what
20 they were saying. Generally what -- we discounted, we
21 think, the basis for those concerns.

22 The one that's -- that struck me the most
23 was something that Ozark would probably want to talk about
24 more, and that's is a franchise necessary in a city
25 greater than 1,500 population? Our position is, hey,

1 Staff, you're asking the Commission to render a
2 declaratory judgment on some hypothetical facts because
3 the subdivision is not within the city limits of Republic
4 at this time.

5 Our information from the City of Republic
6 is that there are no current plans to annex it, other than
7 a general intention at some point in the future. There's
8 no proceeding underway to annex it. So you've got a rural
9 area that rural electric cooperatives are allowed to serve
10 that in this case all we're doing is saying, as far as
11 Empire's concerned, that territory is exclusive to Ozark,
12 which it would have been if we hadn't tried to come in and
13 change it with the previous attempt at a territorial
14 agreement.

15 Does that answer your question, or are
16 there other aspects to --

17 COMMISSIONER CLAYTON: I may come back to
18 you. I want to give Mr. Williams an opportunity to
19 state -- because reading through some of the materials,
20 I'm not clear either. I was just trying to get everybody
21 framed up. I'll just wait and listen to the other
22 parties. Thank you.

23 MR. DUFFY: Sure.

24 MR. WIDGER: Good morning. I too will be
25 brief. I concur with Mr. Duffy's remarks about this case,

1 and I'm going to go a little different direction and talk
2 a little bit about the law. I want to emphasize that
3 we're here today under a very good law, one that makes
4 sense to those who operate under it.

5 The territorial agreement law provides no
6 prescribed models for the scale or the situations that can
7 be addressed through territorial agreements. It does not
8 prescribe any particular burden of evidence. I think the
9 Commission should understand that anything that
10 competitors can agree with is presumptively in the best
11 interests of each as an arm's length transaction. The law
12 that we are under has to be viewed in light of the
13 problems that legislation was designed to fix.

14 In my view, this particular case that we're
15 presented today is a run of the mill case. If strained
16 arguments are used to stifle the intent of the law, then
17 we have to return to the Legislature for a fix.
18 There's nothing in this case that should drive that
19 result. A fair reading of the law that we're under, one
20 that's consistent with the intent of the law, shows that
21 this case does not propose legal or factual disputes that
22 should impede approval of the agreement.

23 The Commission should not be -- the
24 Commission should not be slowed, persuaded or dismayed by
25 novel efforts to rewrite the state of the law with new

1 interpretations or hidden meanings or to take up the
2 invitation to act as the Attorney General or act as the
3 Legislature or to act as the courts. So we urge
4 expeditious approval of this territorial agreement.

5 Judge or Commissioners, are there questions
6 maybe that I can answer that you were directing to
7 Mr. Duffy?

8 COMMISSIONER CLAYTON: Well, let me -- I
9 don't want to jump in front of other -- just help me
10 understand. If the Commission were to grant the
11 application, the joint application that's here before us,
12 but the customers at issue would be served by your client,
13 correct?

14 MR. WIDGER: That's correct.

15 COMMISSIONER CLAYTON: And right now that
16 area is not within the city limits of a corporation -- a
17 city, a town; is that correct?

18 MR. WIDGER: That's correct.

19 COMMISSIONER CLAYTON: Now, there's been
20 some discussion about the possibility of annexation that
21 is included in some of the filings here. If there is an
22 annexation, is there any question as to how service will
23 be provided to these customers in the event of an
24 annexation?

25 MR. WIDGER: No, there's not.

1 COMMISSIONER CLAYTON: I mean, can your
2 client continue serving them if an annexation occurs?

3 MR. WIDGER: We can. We submitted a
4 prehearing brief on this very subject last Friday, and
5 maybe you haven't had a chance to see that. I have a copy
6 here if you would like to take a look.

7 COMMISSIONER CLAYTON: I'm sure I've got it
8 in here.

9 MR. WIDGER: We have briefed that, and our
10 answer is that the -- the lack of -- in our brief, we go
11 back and talk about what does a franchise mean, what are
12 the powers of the corporations involved, and we urge the
13 conclusion that there is -- there is -- the cooperative
14 has full statutory power and franchise authority that's
15 granted by the Legislature that allow it to fully operate
16 under a territorial agreement regardless of annexation.

17 COMMISSIONER CLAYTON: Well, just assume
18 with me that let's say the Commission grants the
19 application. The customers within this subdivision are
20 served by Ozark. Next year the city and the citizens
21 decide that annexation is appropriate, the area is
22 included within the corporate boundaries of the
23 municipality. Does your client need to have a franchise
24 agreement according to state law to serve those customers?

25 MR. WIDGER: No. We have franchise

1 authority granted by the State Legislature, which is a
2 level above the City of Republic, that gives us the right
3 to use any streets, roads, public ways in the state.

4 COMMISSIONER CLAYTON: Even if it's within
5 a --

6 MR. WIDGER: I told my client we could
7 build lines in downtown St. Louis if we wanted to as far
8 as franchise is concerned. Now, the power to serve -- the
9 power to serve is a limitation imposed by the rural
10 service. Our view is that House Bill 813, which is the
11 one which created the territorial agreement law, also --
12 it's also the law which created the predominant power
13 exception. Both of those things were designed to fix
14 problems and to allow the cooperatives to serve in areas
15 they have not previously been allowed to serve. Those
16 were joined in one law.

17 COMMISSIONER CLAYTON: It's my
18 understanding, I think, and I suppose I want to be
19 corrected from the attorneys if I'm wrong, that I think
20 the practical effect is that you cannot go into a
21 municipality to provide new service, but you could be
22 annexed in if you're already the person serving those
23 customers; is that accurate?

24 MR. WIDGER: That's accurate.

25 COMMISSIONER CLAYTON: Okay.

1 MR. WIDGER: The law -- there have been
2 judicial decisions which have already determined that we
3 do not have an obligation to cease the existing services.
4 we simply cannot add after annexation, absent one of these
5 things, we were the predominant supplier or we can add via
6 the mechanisms of the territorial agreement.

7 COMMISSIONER CLAYTON: Okay. Thank you.

8 JUDGE VOSS: Commissioner Appling, do you
9 have any questions?

10 COMMISSIONER APPLING: No questions.

11 JUDGE VOSS: Commissioner Jarrett, do you
12 have any questions?

13 COMMISSIONER JARRETT: No questions.

14 JUDGE VOSS: I'm sure I don't have to
15 remind the parties that questions answered by attorneys
16 during opening statements are not testimony. They're not
17 sworn. They're just what they are, opening statements.
18 Okay. Let's go, I think, to Staff.

19 MR. WILLIAMS: If I might approach? I
20 brought with me copies of some statutes that I think are
21 pertinent to this case.

22 JUDGE VOSS: Can you step up to the
23 microphone a little bit? You may be just a little bit far
24 away from it.

25 MR. WILLIAMS: I brought with me copies of

1 some statutes that I believe are pertinent to this case,
2 and I'll get into those a little bit. I wanted to provide
3 copies to the Bench and to the attorneys.

4 MR. DUFFY: I hope we're not dealing with
5 Chapter 392 in this case.

6 JUDGE VOSS: 394. I have been reading too
7 many teleco statutes lately, sad to say.

8 MR. DUFFY: I don't know nothing about no
9 telephones.

10 JUDGE VOSS: I'm trying.

11 MR. WILLIAMS: Basically, Staff's position
12 in this case is that it does not expect the evidence will
13 show that this territorial agreement is not detrimental to
14 the public interest, and that change of moving electric
15 facilities from Empire to Ozark is not detrimental to the
16 public interest, and that changing suppliers from the
17 current people currently being served in the Lakes at
18 Schuyler Ridge from Empire to Ozark is in the public
19 interest for reason other than a rate differential because
20 the Staff anticipates the evidence is going to be lacking
21 on the impacts of all those events on the other customers
22 of Empire and on the public in general.

23 I want to add a little bit to what
24 Mr. Duffy said about what the factual background is in
25 this case. The developer of the Lakes of Schuyler Ridge

1 executed a development agreement with the City of
2 Republic, and as part of that development agreement, there
3 was an agreement to consent to annexation, which the
4 developer has since executed. So the City of Republic can
5 annex -- begin annexation proceedings on this particular
6 subdivision at any point of time, and it's always been
7 contemplated it would be annexed by the City of Republic.

8 One of Staff's concerns has been addressed
9 by Mr. Widger and was raised by Commissioner Clayton about
10 who gets to serve new customers assuming that Ozark has
11 not completed serving all of the customers -- residents,
12 those taking service or who would take electric service in
13 the subdivision before it is annexed by the City. The
14 Staff's concerns are strictly based on the plain language
15 of the statutes.

16 If you'd take a look at 394.312(2), it
17 addresses the ability in territorial agreements for the
18 municipality to confer upon electric cooperative the
19 ability to provide service within the municipality. In
20 this territorial agreement there is no participation by
21 the City of Republic. It's strictly between the two
22 electric suppliers.

23 And the other statute that Mr. Widger
24 referred to addressing the ability if you're a predominant
25 supplier and have a franchise is 394.080 sub 2, and

1 whenever it talks about a franchise in that context it
2 specifically says the city, town or village is granted to
3 the cooperative a franchise to supply electric energy
4 within the city, town or village. I submit to you that a
5 franchise can be more than just the right to use the
6 streets and rights of way to provide -- to render lines.
7 It also can entail actually supplying service to end
8 users, and that's something separate and apart.

9 I believe what Mr. Widger referred to as
10 the statutory grant was the right to use the rights of way
11 and the streets for running lines. That's something
12 separate and apart from providing service. That's another
13 concern of Staff's, because as the facts will show, Empire
14 is a predominant supplier in the City of Republic, and I
15 don't know how many cases I've heard where there's a
16 desire not to create a patchwork of electric suppliers
17 within the municipality because it causes issues with
18 regard to emergency response and how to get electricity
19 shut off if there's a need to, for example, make a live
20 wire that's down no longer conducting electricity.

21 I think that's all I have for the prepared
22 statement. I'd certainly be willing to entertain any
23 questions.

24 JUDGE VOSS: Commissioner Murray?

25 COMMISSIONER MURRAY: No questions. Thank

1 you.

2 COMMISSIONER CLAYTON: Mr. Williams, can I
3 just ask you some basic -- basically, Staff's opposition,
4 there's several concerns that it has, and help me
5 summarize these. First of all, I think Staff is stating
6 that you disagree with the reduction in the customers
7 shifting away from Empire because of the reduction in
8 load, that it's going to have an impact on the other
9 customers. Are you saying that?

10 MR. WILLIAMS: We're not saying that's
11 necessarily an issue. What we're saying is it hasn't been
12 addressed, so we don't know how that plays out in the
13 consideration of whether or not it's detrimental to the
14 public interest. Basically we're saying there's an
15 insufficiency of the -- we expect there will be an
16 insufficiency in the evidence presented. The Commission
17 won't have, I guess another way to put it, all relevant
18 factors that it should be looking at in making its
19 determination in this case.

20 COMMISSIONER CLAYTON: So rather than
21 saying that it is a detriment, you're saying just it's
22 been ignored, is what you're saying?

23 MR. WILLIAMS: Yes.

24 COMMISSIONER CLAYTON: And Staff's position
25 is that Empire should have included within its application

1 analysis suggesting that it's, all other things being
2 equal, in the public interest that without this analysis
3 the application is insufficient; is that correct?

4 MR. WILLIAMS: Basically. I mean, you've
5 got a situation where Empire added load by putting these
6 customers on, and now it's shedding load by -- asking to
7 shed load by getting rid of them, and it seems like if it
8 was in the public interest to have added those customers,
9 then it would not be now at this point to be in the public
10 interest to shed them, but that's just not addressed.

11 COMMISSIONER CLAYTON: There is some
12 information that discusses the financial arrangements
13 between the -- or among the developer, among Ozark and
14 Empire with regard to cost. Do you believe -- you still
15 believe that's insufficient in fully exploring this issue?

16 MR. WILLIAMS: I'm not quite sure what
17 you're getting at. My understanding is that the intention
18 is that Empire would repay to Ozark all of what it paid
19 to -- wait a minute.

20 Empire would receive from Ozark what it
21 paid Ozark initially plus what Empire believes is its cost
22 for installing the facilities less any monies that it's
23 received from the developer.

24 COMMISSIONER CLAYTON: Okay. So they
25 supposedly ignored that issue. What other -- not ignored,

1 but they didn't address it adequately. What other
2 considerations?

3 MR. WILLIAMS: Staff's not saying that it's
4 inadequately addressed.

5 COMMISSIONER CLAYTON: Well, I don't
6 understand Staff's position. Help me understand what
7 you're saying here. I read through -- I read through the
8 testimony. I've read through a number of the pleadings.
9 I don't understand what Staff is objecting to. And when I
10 ask the attorneys, they didn't know either.

11 MR. WILLIAMS: Staff's concern is that the
12 impacts on Empire's customers other than those within
13 Schuyler Ridge have not been addressed by anyone in this
14 case.

15 COMMISSIONER CLAYTON: Customers throughout
16 Empire's service territory?

17 MR. WILLIAMS: Yes.

18 COMMISSIONER CLAYTON: Are customers that
19 are adjacent to this development any different in Staff's
20 eyes to a customer that would be in Joplin? I mean,
21 they're all lumped in together, all customers outside of
22 this subdivision. And the reason I ask that question is
23 that we've had another case that involved a greater area,
24 and I don't know if there is a difference in treatment
25 among potential customers that may be around this

1 subdivision.

2 MR. WILLIAMS: It's not limited in the
3 geography. I don't believe it's limited in geography to
4 just those adjoining.

5 COMMISSIONER CLAYTON: Okay. All right.
6 Any other Staff concerns with the application?

7 MR. WILLIAMS: As I've said, the main Staff
8 concern is with the impacts on Empire's other customers,
9 and then there's this issue about creating a patchwork of
10 suppliers within the City of Republic and obligating and
11 adding to that.

12 COMMISSIONER CLAYTON: Okay. Can you just
13 identify for me what the map is going to look like in
14 terms of suppliers if we were to grant this application?
15 So you've got Ozark is going to have -- I assume Empire
16 serves all of Republic today.

17 MR. WILLIAMS: I do not know that. I just
18 know it's the predominant supplier. No. Empire has a
19 franchise and is primary provider of electric, the primary
20 provider of electric service in the City of Republic.

21 COMMISSIONER CLAYTON: In Republic. Okay.
22 So you're going to have Empire all around, and then Ozark
23 has -- would have this subdivision, and then do you know
24 what their geography of service would be outside of
25 Republic?

1 MR. WILLIAMS: No.

2 COMMISSIONER CLAYTON: Or are they just
3 going to be an island?

4 MR. WILLIAMS: As far as I know -- and the
5 other parties I'm sure know more than I -- the areas
6 surrounding the subdivision's undeveloped and either can
7 serve.

8 COMMISSIONER CLAYTON: Okay. Does Staff
9 have a standard that it looks to in terms of, you know, a
10 patchwork? Is there some precedent that -- or some
11 tradition that the Staff has followed on what is an
12 acceptable patchwork and what is not?

13 MR. WILLIAMS: No. I just know that in
14 typical cases in front of the Commission where there are
15 territorial agreements dealing with patchwork, it's to try
16 to minimize or eliminate those, and the reasons typically
17 given are that the effects on emergency response personnel
18 and the need to deenergize lines.

19 COMMISSIONER CLAYTON: Any other -- any
20 other Staff issues?

21 MR. WILLIAMS: No. I believe that
22 covers --

23 COMMISSIONER CLAYTON: That's it?

24 MR. WILLIAMS: -- Staff's issues.

25 COMMISSIONER CLAYTON: So lack of study on

1 impact of other customers and the potential for a
2 patchwork of providers are the two issues?

3 MR. WILLIAMS: Well, and there may already
4 be a patchwork. It would just be adding to it.

5 COMMISSIONER CLAYTON: So we don't know
6 what the existing patchwork is?

7 MR. WILLIAMS: I do not.

8 COMMISSIONER CLAYTON: But does Mr. Beck?
9 I assume we're going to hear from him?

10 MR. WILLIAMS: I would think that Empire
11 and Ozark would have some knowledge of that. The only
12 other thing I would point out, the parties are asking for
13 more than just being put back in similar positions to
14 where they were in March of 2006, or at least I believe
15 they are, because the territorial agreement would be a
16 change from where they were at that point in time.
17 Transferring facilities and transferring customers would
18 put them closer to where they were.

19 COMMISSIONER CLAYTON: Okay. Thank you,
20 Mr. Williams.

21 JUDGE VOSS: Commissioner Appling?

22 COMMISSIONER APPLING: Good morning,
23 Mr. Williams.

24 MR. WILLIAMS: Good morning, Commissioner.

25 COMMISSIONER APPLING: Do you have any

1 knowledge of any areas in your time that you've been with
2 the Commission where we've had territorial agreement
3 similar to the one that's been asked for by Ozark at the
4 present time?

5 MR. WILLIAMS: I've never seen one, and I
6 believe Staff have commented to me they've never seen one
7 where one supplier was getting exclusive territory and the
8 other was apparently getting nothing in terms of
9 territory.

10 COMMISSIONER APPLING: Okay. Thank you.

11 JUDGE VOSS: Commissioner Jarrett, do you
12 have any questions?

13 COMMISSIONER JARRETT: No questions.

14 JUDGE VOSS: I have one. This is basically
15 just to clarify an issue that I thought Staff had
16 regarding the public service -- public interest. It's
17 Staff's legal position that, as of today, the developer
18 owes Empire the tariffed rates for all the extensions that
19 Empire put in during this pendency period?

20 MR. WILLIAMS: Sure.

21 JUDGE VOSS: And there's something that
22 wasn't clear from the testimony, and I'll be asking
23 witnesses about this if the Commissioners don't, but what
24 is the sale price rate? Because it's my understanding
25 that the developer has not paid, and this is something the

1 witnesses may get into during the testimony, has not paid
2 the full tariffed rate yet to Empire for those extensions.

3 MR. WILLIAMS: If you're talking about what
4 would the developer owe Empire for the underground lines
5 and the --

6 JUDGE VOSS: Lighting.

7 MR. WILLIAMS: -- decorative lighting, my
8 understanding is it's on the order of \$1.7 million, but
9 I'm not sure if that's correct or not.

10 JUDGE VOSS: So if this is approved, I'm
11 not -- see, that's something I didn't get clear with the
12 testimony, which I'll be asking questions about later, is
13 what is Ozark paying Empire to buy the facilities back,
14 and are Empire's customers going to get what they would
15 under their tariff between what the developer paid and
16 what Ozark is offering?

17 MR. WILLIAMS: Well, I hate to speak for
18 the parties, but my understanding or position is that the
19 members of Ozark would be paying those costs as Ozark's
20 policy is, and Empire would just treat it as if they -- I
21 mean, they would get what they paid from -- actually, I'm
22 not sure.

23 JUDGE VOSS: Because I presume that those
24 rates are cost based in their tariff as all good tariffs
25 are. So if that's not what they're getting back, they're

1 getting back their costs, that was something that wasn't
2 clear in the testimony, that witnesses that's something
3 that I know I am interested in today.

4 MR. WILLIAMS: My understanding of Empire's
5 tariff was that the developer up front for the costs and
6 over a five year period has the opportunity to recoup
7 those costs from Empire depending on how the subdivision
8 actually builds out in terms of customers taking service.
9 My understanding with Ozark is that the cooperative pays
10 those costs up front and then collects it through charges
11 through its members who take service.

12 JUDGE VOSS: Thank you. Does anyone else
13 have any more questions? Once again, this is not
14 evidence. This is just opening statements and direction.
15 Public -- I think Public Counsel?

16 MR. MILLS: Judge, I'll be real brief.
17 Mr. Duffy and Mr. Widger basically covered the groundwork,
18 and I agree with everything they said in their opening
19 statements, but just to address a couple of things that
20 have come up in questions.

21 First, in terms of the impact on other
22 Empire customers of returning the very few customers being
23 served in Schuyler Ridge, it's my understanding that
24 there's only a handful of customers, 30ish. I don't think
25 that's going to have any noticeable impact on Empire's

1 other customers in terms of load.

2 With respect to the question of whether or
3 not this will establish a patchwork, it's kind of ironic
4 because the last time we were here the two companies came
5 in with a proposal that would have set out a territorial
6 agreement that covered about nine and a half square miles
7 and would have prevented any patchwork, but the Staff
8 opposed that, and so now the companies have come back just
9 to try to clean up and put together where -- what they can
10 in order to allow those customers that are currently
11 getting service to continue to get service, to allow the
12 developer to continue the development, and to as closely
13 as they can put people back to where they were before the
14 last application.

15 And in terms of whether or not the line
16 extension policies of either Empire and/or Ozark are cost
17 based, you know, when you talk about line extension
18 policies, really cost is only part of the issue. You also
19 have to figure in what the companies are anticipating in
20 terms of revenue from the added customers, what they're
21 looking at in terms of a payback period, what their cost
22 of capital is. So cost is really only one component of
23 figuring out how to do line extension policies.

24 But I think you're right, in terms of
25 Empire's, certainly, those line extension policies have

1 been found to be just and reasonable by the Commission.
2 So certainly you can presume that the cost portion was
3 cost based. And I think that's all I have to add at this
4 point. I'd be happy to answer questions.

5 MR. WILLIAMS: Judge, if I may? Mr. Mills
6 has said something that I think I need to respond to, and
7 that was that Staff opposed the territorial agreement in
8 the last case. That's not true. Staff opposed the
9 condition that was attached that a variance be granted.

10 MR. MILLS: And I think that is certainly a
11 more accurate way to put it. I apologize if I misstated
12 it.

13 JUDGE VOSS: Commissioner Murray, do you
14 have any questions?

15 COMMISSIONER MURRAY: No.

16 JUDGE VOSS: Commissioner Jarrett?

17 COMMISSIONER JARRETT: Yes. Mr. Mills, I
18 was wondering if you could address the approximately
19 1.7 million that the developer owes. I mean, who's going
20 to pay that?

21 MR. MILLS: Okay. And I think the record
22 does reflect that it is somewhere in the neighborhood of
23 1.7 million. First of all, if Empire were to have
24 collected that money at the time that it was billed, it's
25 my understanding that would have come in before the test

1 year in the current rate case, so that money would have
2 essentially flowed directly to Empire's shareholders. So
3 whether or not that's collected I don't think has any
4 direct impact on the rates the customers pay.

5 And second, it's my understanding from the
6 testimony that the developer simply doesn't have
7 \$1.7 million, and so that in any event, had Empire tried
8 to collect it, it would have been unable to do so, and
9 it's really from that perspective sort of a moot question.
10 Had Empire billed the customer for that, the developer
11 would have gone bankrupt, and I'm not sure what would have
12 happened then.

13 COMMISSIONER JARRETT: Thank you. No
14 further questions.

15 COMMISSIONER CLAYTON: Mr. Mills, who are
16 you -- which customers are you representing in this case?
17 I mean, I guess I'm -- and I'm not trying to make it a
18 trick question, but there have been allegations about
19 different treatment of different customers. Do you feel
20 as part of your charge that you are representing these
21 customers that would be subject to this territorial
22 agreement that would be lost to a coop?

23 MR. MILLS: Honestly, I don't think there's
24 any customers that will suffer a detriment from this. I
25 think I can clearly and without any conflict represent all

1 of the customers.

2 COMMISSIONER CLAYTON: So both sides of the
3 equation?

4 MR. MILLS: Yes.

5 COMMISSIONER CLAYTON: Okay. So from the
6 perspective of the customers that are subject to this
7 territorial agreement that would shift to the coop, even
8 though you would be losing them as your client in terms of
9 customers of an investor-owned utility, you are standing
10 in to represent them included in the overall public?

11 MR. MILLS: Yeah. And I don't -- and as
12 far as I know, there have been no objections from the
13 30-odd customers that are currently Empire customers that
14 are under the change of supplier portion of the
15 application being switched to Ozark.

16 COMMISSIONER CLAYTON: I'm not suggesting
17 that there are. I just want to know from which side of
18 the equation that you are arguing. It sounds like you're
19 kind of on both, but you're not separating them.

20 MR. MILLS: Yeah, because I -- I mean, I
21 don't really think that there is really an equation. I
22 think this is a positive outcome for all involved.

23 COMMISSIONER CLAYTON: Okay. Then can you
24 tell me whether there is any concern of whether these
25 customers that if we were to grant the application,

1 they're transferred to the cooperative and the City
2 annexes this area, is there any question in your mind
3 whether these customers will be able to continue to be
4 served by the cooperative under that arrangement?

5 MR. MILLS: No. I mean, I think that's the
6 whole purpose of the territorial agreement statute is that
7 you can resolve situations like that through a territorial
8 agreement.

9 COMMISSIONER CLAYTON: Okay. So you don't
10 see that there's any risk of electrical supply being shut
11 off to any customers that would come up because of this?

12 MR. MILLS: No.

13 COMMISSIONER CLAYTON: Okay. Thank you.

14 MR. WILLIAMS: Judge, if I might?

15 JUDGE VOSS: Any more questions from
16 Mr. Mills? Okay.

17 MR. WILLIAMS: And it's just in response to
18 what Commissioner Clayton was saying. The Staff's not
19 taking the position that any current customers being
20 served by a cooperative at the time of annexation would be
21 affected. I think the law's clear that they would
22 continue to receive service.

23 The question is, what happens if the City
24 annexes and there are -- not all of the customers in that
25 subdivision have taken service yet, who gets to serve post

1 annexation? That's the concern that Staff has, new
2 customers.

3 COMMISSIONER CLAYTON: And the agreement
4 doesn't address that, doesn't address that concern?

5 MR. WILLIAMS: Well, Staff's concern is
6 with the statutes and how they read, and it doesn't appear
7 to Staff that under the statutes that the cooperative
8 would have the right to add additional customers into that
9 subdivision post annexation.

10 COMMISSIONER CLAYTON: Well --

11 MR. WILLIAMS: Absent a territorial
12 agreement that involves the City.

13 COMMISSIONER CLAYTON: Mr. Mills, do you
14 have a position on that issue for new customers that would
15 potentially hook up within these areas?

16 MR. MILLS: It's somewhat speculative. I
17 think the situation that Mr. Williams is positing is one
18 in which the City annexes this particular development
19 before it's fully built out without some provision for
20 serving additional customers in that area, and I think if
21 the City were to do that, I would think they would either
22 have some arrangement where they can supply it through
23 municipal utility or they will have a territorial
24 agreement with Ozark that allows Ozark to continue serving
25 it.

1 I don't see -- I don't see why the City
2 would put themselves in a situation where they're annexing
3 a service territory in which nobody will be able to serve
4 new homes. You can create a situation, a hypothetical
5 situation where that would happen, but to me, it's
6 unlikely that anybody involved would want to put
7 themselves in that situation ,and it would take a positive
8 action, an affirmative action in the future on parties
9 that would be harming themselves to do that, and it seems
10 so farfetched that I don't know that we need to worry
11 about it in this case.

12 COMMISSIONER CLAYTON: If the Commission
13 were to grant the application, if, is that an issue that
14 the Commission should address as a concern or a condition?

15 MR. MILLS: No, I don't think so. And I
16 think it's a hypothetical unlikely future scenario. I
17 think if you wanted to put those in your orders, you could
18 come up with some of those in almost any case you decide.

19 COMMISSIONER CLAYTON: I'm not sure if I
20 agree, but --

21 MR. WIDGER: Judge, I think the answer is
22 that if the cooperative engages in unlawful service,
23 Empire District has the lawful right to get an injunction
24 against our service, if -- that's established in case law.
25 If it is considered an ultra vires act, the Attorney

1 General can sue the coop and get it stopped.

2 But under this law, there has been no
3 allegation in any previous case that a territorial
4 agreement fails to give us the right to add new customers
5 after annexation. This is a novel argument presented by
6 Staff in this case. And the patchwork question, consider
7 what was going on before we get the territorial agreement
8 law. This was the answer to the patchwork question.

9 All of this is driven -- what makes sense
10 for Ozark to serve this 245 acres? Transmission lines.
11 The engineering aspects of this kind of get lost in these
12 proceedings, but the sensibilities that drives the
13 companies to these agreements includes the consideration
14 for power supply, who's got the closest transmission
15 lines, who's got the substations with capacity and all
16 that kind of thing. That's not here, but that's behind
17 the rationale that the companies take to approach this.

18 But the notion that this -- the territorial
19 agreement law does not create waiver for nonrural service
20 just stands House Bill 813 on its head. Here we are,
21 we're just 18 years, 19 years down the road and we're
22 rewriting legislation.

23 MR. DUFFY: Can I just jump in here to try
24 to close the loop? As I understand what's going on,
25 you're talking about a hypothetical situation. The

1 concern is the Commission approves this proposed
2 territorial agreement, Ozark serves the subdivision. At
3 some point the City of Republic annexes the subdivision,
4 and the concern is that somehow somebody is not going to
5 be able to get service at that point.

6 Well, let me kind of lay out a few
7 elemental facts. Empire's a party to this proposed
8 territorial agreement. Empire's saying that it will not
9 serve that subdivision, will not serve in that
10 subdivision. It's prohibited by that agreement from
11 serving. You're going to approve that agreement as a part
12 of this transaction. Your approval provides state action
13 to make that agreement viable and lawful.

14 Okay. So let's say that you approve the
15 agreement. Ozark starts serving the subdivision. The
16 City of Republic decides they're going to annex. All
17 right. Who's going to serve? Well, Empire's not going to
18 serve because Empire signed this agreement that said we're
19 not going to go into that subdivision. We're the only one
20 at this point that I know of, with a possible exception
21 I'll talk about later, that could serve. So if we're not
22 going to serve, then Ozark under the terms of the
23 agreement is going to serve everybody in that subdivision.

24 The only other possibility that I can think
25 of is City Utilities of Springfield has got operations in

1 this general area, and they might want to come in, but
2 again, the City of Republic then has something to say
3 about whether City Utilities of Springfield would be
4 coming into this area.

5 So I don't see what the big concern here is
6 because the party that would have the most interest in
7 dealing with something that they thought the coop was
8 doing that was illegal is saying, no, we're not going to
9 come into that subdivision. I hope that clarifies.

10 COMMISSIONER CLAYTON: There is no
11 municipal utility in Republic, the City of Republic,
12 correct?

13 MR. DUFFY: That's correct.

14 COMMISSIONER CLAYTON: Thank you.

15 JUDGE VOSS: Commissioner Murray?

16 COMMISSIONER MURRAY: There's one angle
17 here that I haven't seen in the testimony or haven't heard
18 anybody address, and that is the franchise that was
19 granted to Empire says to its successors and assigneds as
20 well. Would not Ozark be a successor to that franchise
21 agreement?

22 MR. DUFFY: Our position is no, that they
23 would not be a successor to that agreement. The agreement
24 continues in effect. Only if Empire were to sell out to
25 some other corporation would there be a successor or

1 assigned. The agreement does not attempt to transfer any
2 of Empire's franchise rights to anyone.

3 COMMISSIONER MURRAY: Okay. Not even for
4 the subdivision alone?

5 MR. DUFFY: No.

6 MR. WIDGER: And our position is, we have
7 sufficient franchise rights granted by the Legislature, so
8 we don't need the second layer of franchise.

9 COMMISSIONER MURRAY: All right. Thank
10 you.

11 JUDGE VOSS: Any more questions?

12 Okay. Did anyone need a quick break or
13 would we like to go ahead with the first witness?

14 MR. WILLIAMS: Because I didn't bring down
15 another copy of the testimony, I'd like a short one to go
16 upstairs and get it.

17 JUDGE VOSS: Okay. Let's take a ten-minute
18 break. At 10:10 we'll come back, and we'll begin with the
19 first witness.

20 (A BREAK WAS TAKEN.)

21 JUDGE VOSS: We're going to go back on the
22 record again and we're going to begin with the first
23 witness.

24 MR. DUFFY: Empire would call to the stand
25 Michael Palmer.

1 (Witness sworn.)

2 JUDGE VOSS: Mr. Duffy, your witness.

3 MICHAEL PALMER testified as follows:

4 DIRECT EXAMINATION BY MR. DUFFY:

5 Q. You have in front of you what's been
6 already admitted as, I believe, Exhibits 2 and 3,
7 identified as your direct testimony and your surrebuttal
8 testimony?

9 A. Yes.

10 Q. Do you have any corrections or additions to
11 either of those documents?

12 A. I do. I have one correction in my direct
13 testimony. That would be on page No. 3, line 1, where we
14 indicate that we have over about nine and a half square
15 miles. That should read eight and a half square miles.

16 Q. Do you have any other changes to either of
17 those documents?

18 A. No.

19 MR. DUFFY: Since these are already
20 admitted, with that change, I would tender this witness
21 for cross-examination.

22 JUDGE VOSS: Thank you. And I have, I
23 believe, Ozark would cross first. I'll remind the parties
24 that friendly cross is strongly discouraged. Okay. So I
25 believe Mr. Widger.

1 MR. WIDGER: I can't do unfriendly cross.
2 No questions.
3 JUDGE VOSS: Staff?
4 MR. WILLIAMS: Thank you, Judge.
5 CROSS-EXAMINATION BY MR. WILLIAMS:
6 Q. Mr. Palmer, has the City of Republic
7 participated in this case?
8 A. No.
9 Q. Does the City of Republic have a valuation
10 based tax on real estate located within the city?
11 A. I'm not certain.
12 Q. Has the developer of the Lakes at Schuyler
13 Ridge participated in this case?
14 A. No.
15 Q. Does Empire have a franchise with the City
16 of Republic?
17 A. Yes.
18 MR. WILLIAMS: May I approach?
19 JUDGE VOSS: Any objection, Mr. Duffy?
20 MR. DUFFY: No.
21 JUDGE VOSS: Go ahead.
22 BY MR. WILLIAMS:
23 Q. I'm going to hand you a copy of Exhibit
24 No. 5, and I've got it open to one of the attachments to
25 the back of that exhibit.

1 A. Okay.

2 JUDGE VOSS: Let the record reflect that

3 Exhibit 5 is the rebuttal testimony of Mr. Daniel Beck.

4 BY MR. WILLIAMS:

5 Q. And is the page I have that exhibit open to
6 the page following the affidavit of Daniel I. Beck?

7 A. Yes.

8 Q. And does that consist of several pages
9 relating to an ordinance of the City of Republic and
10 related documents?

11 A. Appears to be.

12 Q. Is that a true and accurate copy of
13 Empire's franchise with the City of Republic?

14 A. I would have to read completely through to
15 be certain, but it appears to be, yes, granted 1994.

16 Q. And following that franchise agreement is
17 there another document, a development agreement? Looks
18 like it consists of 14, 15 pages plus, I believe, five
19 exhibits.

20 MR. DUFFY: Your Honor, I'm going to object
21 to cross-examination of this witness about that document
22 unless some foundation is laid that this witness has some
23 knowledge concerning the contents or the origin of that
24 document because I don't believe that Empire's a party to
25 that document.

1 JUDGE VOSS: Could you --

2 MR. WILLIAMS: That's where I was heading
3 next, to find out if he has any knowledge about it.

4 BY MR. WILLIAMS:

5 Q. Did you have an opportunity to review that
6 document?

7 A. It appears to be the development -- a
8 development agreement.

9 Q. And have you seen that development
10 agreement before, or a copy of it?

11 A. I don't believe I have. I possibly did
12 back some time in the past couple years, but I don't
13 recall.

14 Q. All right. Let's go to your direct
15 testimony. That would be Exhibit No. 2, in particular on
16 page 2, and on that page you talk about a meeting in March
17 of 2006 that was initiated and hosted by representatives
18 of the City of Republic, do you not?

19 A. Yes.

20 Q. And do you not say at lines 14 through 17,
21 at the meeting in March 2006, we were told there were
22 issues between the City, the developers and Ozark
23 regarding the timing of annexation and who the electric
24 service provider would be in the areas of these
25 developments on the south side of the city?

1 A. Yes.

2 Q. Were the main issues at that meeting
3 compensation to be paid to fire protection districts
4 affected by annexation of land by the City of Republic and
5 state law that did not permit Ozark Electric Company --
6 Cooperative to serve new structures in the City of
7 Republic because the City of Republic had a population of
8 over 1,500?

9 A. That was part of the issues discussed, yes.

10 Q. Were those the main issues?

11 A. I don't know if I would characterize those
12 as more main than some of the others. Certainly the
13 agreement between the developer and Ozark Electric
14 Cooperative regarding the cost of services, the difference
15 in tariffs of the company, was a part of it.

16 The -- I think one of the issues, too, that
17 would have been pretty important, that the City thought
18 they had a consent to annex agreement with the developers
19 of the Lakes of Schuyler Ridge, and I think as they
20 researched that issue, they had that agreement with the
21 previous owner of the property that then sold that
22 property to the developers of the Lakes of Schuyler Ridge.

23 So I think the City had some concern about
24 this consent to annex not applying to the developers of
25 the Lakes of Schuyler Ridge, and from the City's

1 standpoint, that again is why we're pretty involved is to
2 try to help the City resolve the situation, that if they
3 made a move to annex this property, that the developer
4 might have a legal grounds to fight the City on that. So
5 they wanted to work something out to try to prevent any of
6 those issues from coming on.

7 And part of the -- part of the City's issue
8 was regarding the rural fire protection district, that
9 once the City annexes land, they have to make -- somebody
10 makes a payment to the rural fire protection district
11 based on the assessed valuation of the land at that time
12 the annexation occurs. So if the annexation occurs when
13 there is vacant land, it has a much lower assessed value
14 with a much lower payment, then, to the fire protection
15 district.

16 So there was kind of a sense of, hey, we
17 need to move forward with this annexation to keep that
18 payment lower and, you know, just help everybody out.

19 Q. Was there any issue with regard to who
20 would be making that payment ultimately?

21 A. I don't understand if that came from the
22 City made the payment or if the developer made that
23 payment. I don't know who made that.

24 Q. Are you familiar with the agreement between
25 Ozark and the developer for Ozark to provide electric

1 service in the Lakes of Schuyler Ridge?

2 A. I'm familiar there was an agreement in
3 place.

4 Q. Are you familiar with the agreement itself
5 or just the existence of it?

6 A. I think the existence of it and probably
7 some of the terms of it, namely the understanding that the
8 extension policy of Ozark Electric is different than the
9 extension policy of Empire and would have an initial lower
10 impact on the developer than Empire's tariffs.

11 Q. When did Empire acquire from Ozark Electric
12 facilities in the Lakes of Schuyler Ridge?

13 A. I would have to look and see what that date
14 was. I don't -- I can't think of that off the top of my
15 head.

16 MR. WILLIAMS: May I approach?

17 JUDGE VOSS: Fine.

18 BY MR. WILLIAMS:

19 Q. I've turned and provided you with a copy of
20 what's been marked as Exhibit 5. I've turned to a page
21 that has at the top of it Ozark Electric Cooperative and
22 indicates apparently that it's an invoice. Have you seen
23 that document before?

24 A. Yes.

25 Q. And I'll ask you again if you know when

1 Empire acquired from Ozark Electric facilities in the
2 Lakes of Schuyler Ridge?

3 A. This invoice date was May 18 of 2006.

4 Q. And that would be, if not the date, close
5 to the date?

6 A. Very close to it, I'd say.

7 Q. And how much did Empire pay for those
8 electric facilities to Ozark?

9 A. This invoice amount was \$177,921.74, and my
10 recollection, it was right in that -- right in that area.

11 Q. So it was that amount or something close to
12 it?

13 A. Yes.

14 Q. And is that document I've directed your
15 attention to correct and -- to the best of your knowledge,
16 information and belief?

17 A. Yes.

18 Q. At this time in total, do you know how much
19 Empire has spent on electric facilities in the Lakes of
20 Schuyler Ridge?

21 A. I think as of July this year, it was close
22 to \$800,000. The subdivision that we're currently talking
23 about is a phase of the total 245-acre development. This
24 is not the -- they're not currently building homes in the
25 entire 245-acre development. This is just a phase.

1 Q. How many phases are there?

2 A. I'm not sure. Initially I think they had
3 looked at two or three phases, and we have done some rough
4 numbers. If the development was fully done under Empire's
5 tariffs, we might be looking at 1.7 million at one point
6 that was just pretty hypothetical based on preliminary
7 plats of what the other phases might look like. There was
8 never any complete drawings done of those other phases
9 yet.

10 Q. And is this a residential subdivision?

11 A. Yes.

12 Q. And --

13 A. I say that. I think there may be some
14 areas that are designated for possible commercial
15 development. I'm not certain. I think there's possibly a
16 school development site listed in here, too.

17 Q. But it's at least principally residential?

18 A. Principally residential, yes.

19 Q. And the current phase, is that residential?

20 A. Yes.

21 Q. And how many lots are involved with that
22 phase?

23 A. I'm not certain. I know at this point
24 we're talking about approximately 30 homeowners that are
25 already in place in homes and maybe -- maybe another 15 or

1 20 under construction, but I don't know the total lot
2 number in this phase.

3 Q. Has Empire built out all the facilities it
4 would need other than service lines to serve the current
5 phase in that subdivision?

6 A. I don't know the answer to that. We may be
7 pretty close to having those things in place, but I'm not
8 certain.

9 Q. Wasn't it in the interest of all of
10 Empire's customers for Empire to provide electric service
11 to the Lakes of Schuyler Ridge when Empire acquired the
12 electric facilities Ozark had installed in the
13 subdivision?

14 A. At that time we thought the total package
15 proposed was in the best interest of all customers. That
16 did include the additional eight and a half square miles
17 of other territory that we were trying to encompass in a
18 territory agreement to prevent future issues like this one
19 we're trying to address today.

20 Q. At that time, that proposed territorial
21 agreement had not been approved, had it?

22 A. Correct.

23 Q. Am I to understand you correctly that
24 you're saying, based on what you anticipated events to be,
25 that you believed it was in the best interests of all

1 Empire's customers for Empire to provide electric service
2 in the Lakes of Schuyler Ridge when Empire acquired
3 electric facilities from Ozark that it had installed in
4 that subdivision?

5 A. Yes, and that was with the anticipation we
6 would be successful in the previous case, and since that
7 was not what occurred, we've come back with this plan and
8 believe it is in the best interests of Empire's customers,
9 stockholders and the public interest to proceed with this
10 territory agreement.

11 Q. Why?

12 A. I think one of the main issues that we are
13 concerned about, I know Ozark as well, I think the City of
14 Republic, but if the subdivision, 245 acres is fully
15 developed, that would be in the neighborhood I'm guessing
16 of 6 or 7 ,maybe even 800 homes. If it is half developed
17 and Ozark is serving portions of those phases of this
18 subdivision and annexation occurs, our understanding of
19 the law is then that Ozark cannot serve any new customers
20 in the subdivision unless we have a territory agreement in
21 place.

22 So if annexation occurs without the
23 territory agreement in place, we could have a situation
24 where partial blocks are developed, every other home could
25 be served by the cooperative, and then it would be

1 Empire's obligation at that point to serve the other lots
2 and homes that might be in between two or three houses.
3 And that really creates the patchwork problem that we're
4 trying to resolve and think this territory agreement will
5 ensure that we solve that problem.

6 We think the subdivision needs to be served
7 entirely by one company or the other, and I think it's
8 definitely in the public interest, Empire's, and the
9 developer's and the cooperative's to approve this
10 territory agreement and let us take away that future issue
11 of the annexation and patchwork service.

12 Q. Am I understanding you correctly to say
13 that your concern is with the granularity of the
14 patchwork, that it might be down at the lot level as
15 opposed to a subdivision or subdivision phase level?

16 A. Yes. Certainly the timing of when that
17 annexation occurs can make that become a real issue.

18 Q. On page 3 of your direct testimony, at
19 lines 21 to 23, in referring to the Commission's decision
20 not to grant Empire variances to allow it to charge the
21 developer of the Lakes at Schuyler Ridge for decorative
22 street lights and underground lines on the same terms
23 offered by Ozark, you state, that decision by the
24 Commission in December 2006 essentially put all the
25 parties back where they started in March of 2006, except

1 more houses have been built in the interim and electric
2 service facilities have been built to provide service to
3 them.

4 Did Empire own any electric service
5 facilities in the Lakes of Schuyler Ridge in March of
6 2006?

7 A. No.

8 Q. Did Empire own any electric service
9 facilities in the Lakes of Schuyler Ridge in December of
10 2006?

11 A. Yes, I think that's correct.

12 Q. Was Empire providing electric service to
13 customers in the Lakes of Schuyler Ridge in March of 2006?

14 A. No. I may be getting confused on my dates
15 here. Maybe not understanding your point of where you're
16 going with this.

17 Q. I'm just asking you questions --

18 A. Verifying the numbers.

19 Q. -- about what Empire was doing at a
20 particular date.

21 A. Okay.

22 Q. Was Empire providing electric service to
23 customers in the Lakes of Schuyler Ridge in December of
24 2006?

25 A. Again, that invoice date we looked at was

1 March -- or May of 2006. So I believe the answer is
2 correct, we were providing service in December.

3 Q. If Ozark and Empire are merely trying to
4 put the parties back in the positions they were in as of
5 March 2006 --

6 A. I think when we say --

7 Q. May I finish my question?

8 -- why are they seeking for the Commission
9 to approve a territorial agreement where Ozark would be
10 the electric service provider exclusive of Empire in the
11 Lakes of Schuyler Ridge?

12 A. I think our concern is about the
13 developer's ability to pay under the terms of Empire's
14 tariffs and the patchwork issue. Certainly this area is
15 outside of the city limits of Republic today. Ozark
16 Electric Cooperative could make plans and serve additional
17 phases and even, you know, houses that are under
18 construction today. We don't think it's in the interest
19 to have duplicate facilities or have the fire protection
20 people and others not know, you know, this home's served
21 by who on which side of the street.

22 Q. Didn't those issues exist back in March of
23 2006?

24 A. Yes, they did, and I think that's why we're
25 referring to we're kind of back in -- the parties are in

1 the same position that we were when we started down this
2 path. Not meaning who owns the facilities, but we're back
3 in the same position of the same issues are on the table
4 still that need to be resolved.

5 Q. Doesn't the request for a territorial
6 agreement do something more than just put the parties back
7 in similar positions to where they were in March of 2006?

8 A. It puts us back in the same position with
9 the solution to the problems that we had in March of 2006.

10 Q. Well, in March of 2006, couldn't Empire
11 have provided service in the Lakes of Schuyler Ridge?

12 A. Yes. Not exclusively, though. If
13 annexation occurs, then we would be the exclusive provider
14 of new service in the Lakes of Schuyler Ridge.

15 Q. And if this territorial agreement is
16 approved, and assuming no annexation, would Empire be able
17 to provide service in the Lakes of Schuyler Ridge?

18 A. No.

19 Q. And isn't that a different situation now if
20 this is approved -- if the territorial agreement's
21 approved as opposed to the situation in March of 2006?

22 A. Yes.

23 Q. On page 3 of your surrebuttal testimony, at
24 lines 7 through 10 you state, given the situation, I do
25 not see any practical way that Empire can be the supplier

1 at the Lakes of Schuyler Ridge unless it is the intent of
2 the Commission that Empire supply it and drive the
3 developer into bankruptcy in the process.

4 Isn't Empire the electric supplier in the
5 Lakes of Schuyler Ridge now?

6 A. Yes.

7 Q. Is the developer in bankruptcy?

8 A. Not to my knowledge.

9 Q. If the Commission approves this
10 application, isn't Empire getting basically nothing in
11 return for giving up being the electric service provider
12 to the Lakes at Schuyler Ridge?

13 A. I think we're getting about \$900,000 of
14 what our facility expenses have been.

15 Q. You're getting reimbursed for your costs of
16 facilities you put into the subdivision?

17 A. Yes.

18 Q. Anything else?

19 A. No other territory, if that's the root of
20 the question.

21 Q. The question is, just what are you getting
22 in return? The only thing you've mentioned so far is
23 financial. That's it?

24 A. Yes.

25 Q. Do the Lakes at Schuyler Ridge and the City

1 of Republic have a common boundary?

2 A. I believe so.

3 Q. Who provides electric service in the City
4 of Republic where the city has a common boundary with the
5 Lakes of Schuyler Ridge?

6 A. I don't think I understand the question.

7 Q. Well, given that the subdivision and the
8 city have a common boundary on the city's side of that
9 boundary line, who's providing electric service?

10 A. Currently inside the city limits of
11 Republic, there are three electric suppliers. City
12 Utilities of Springfield, Missouri serves customers within
13 the corporate boundaries of the City of Republic, and also
14 Ozark Electric Cooperative serves customers within the
15 city boundaries of the City of Republic.

16 Q. And I'm asking for the territory within the
17 city that immediately is right next to that boundary line
18 with the subdivision of Schuyler Ridge subdivision, who's
19 the service provider there?

20 A. I believe that will be Empire right at that
21 spot.

22 Q. Is Empire the predominant electric supplier
23 in the City of Republic?

24 A. Yes.

25 Q. And how much of the territory of the City

1 of Republic does Empire serve on a percentage basis? And
2 you can give me a ballpark. I'm not trying to tie you
3 down to a real tight number here.

4 A. It will be a pretty big ballpark number
5 there. The City of Republic recently had an annexation
6 agreement with the City of Brookline, and I want to
7 believe that Brookline is now about one-third of the
8 territory of the City of Republic. And Brookline is
9 primarily served by City Utilities of Springfield. I
10 think there are some areas of Brookline that are served by
11 Ozark Electric Cooperative also.

12 Q. Okay. For the remaining two-thirds that
13 doesn't include Brookline, how much of that area roughly
14 does Empire serve on a percentage basis?

15 A. Probably 99.8 percent.

16 Q. And who would be the other service provider
17 or providers?

18 A. Ozark Electric Cooperative.

19 Q. And I -- did I understand you correctly
20 that the City of Republic has annexed what was formerly
21 Brookline and that's roughly one-third the size of the
22 current municipality?

23 A. Yes.

24 Q. When did that annexation occur?

25 A. I would say within the last year and a half

1 or two years probably.

2 Q. If Ozark provides electric service in the
3 Lakes of Schuyler Ridge and then the City of Republic
4 annexes the Lakes of Schuyler Ridge, won't that cause
5 confusion to emergency personnel who are responding to
6 crises where electric lines need to be deenergized as to
7 who to contact to get those lines deenergized?

8 A. I think the chances for confusion would be
9 less if the entire subdivision is served by one company.
10 There still may be chances for confusion, but I think
11 those exist today with areas now that are served by Ozark
12 Electric Cooperative, customers served by Ozark Electric
13 and customers served by City Utilities of Springfield, all
14 kind of in a pretty close proximity to each other.

15 I think the territorial agreement would
16 help resolve a great deal of that confusion and anxiety
17 that the emergency responders would have to deal with.

18 Q. Wouldn't that confusion be reduced or
19 eliminated if Empire remains the electric service supplier
20 in the Lakes at Schuyler Ridge?

21 A. I think if Empire was the server to entire
22 Greene County would be much less confusion for the
23 emergency responders but a very unlikely event to occur.

24 Q. That wasn't my question. My question is,
25 if Empire remains the service supplier in the Lakes at

1 Schuyler Ridge, wouldn't that further reduce the confusion
2 or eliminate it for emergency service responders?

3 A. I think again one company should serve the
4 subdivision. I think that would be less confusing.
5 Certainly the areas that adjoin the Lakes of Schuyler
6 Ridge to the south are still undeveloped and open for
7 competition in those areas. To the east of Schuyler Ridge
8 is also open to competition yet at this time. So at some
9 point there's going to be a boundary line, and I think we
10 are looking to have an organized effort to determine where
11 that boundary line is to ease the amount of confusion to
12 the emergency responders.

13 Q. Well, isn't the application in this case
14 for territorial agreement limited to 245 acres?

15 A. Yes.

16 Q. And I'm going to repeat my question again
17 and ask that you answer it. Wouldn't that potential for
18 confusion be reduced or eliminated with regard to
19 emergency responders as to who to contact to deenergize
20 lines within the Lakes of Schuyler Ridge if Empire remains
21 that service provider?

22 MR. DUFFY: Objection. He already answered
23 the question.

24 THE WITNESS: I might have some additional
25 comments on that if -- if that would help.

1 MR. DUFFY: I withdraw my objection.

2 THE WITNESS: Very well done. The -- let
3 me think carefully here the best way to -- to frame this
4 in a nonconfusing manner.

5 The current spot in time where we are is
6 Empire does not have the exclusive right to serve the
7 whole subdivision at this time. The subdivision is now
8 open to competition between Empire and the Cooperative.
9 Under that scenario, the likelihood of creating confusion
10 for emergency responders is greater.

11 Now, if Empire was the exclusive provider
12 of the Lakes of Schuyler Ridge subdivision today, the
13 answer to your question would be yes, it may be less
14 confusing for emergency responders, but that is not the
15 situation we're in today. It is open for competition, and
16 we're trying to solve that problem.

17 BY MR. WILLIAMS:

18 Q. In your surrebuttal testimony, beginning at
19 the last word on page 14 and continuing to the top of page
20 15, you talk about how by agreeing Ozark will be the
21 electric supplier in the Lakes of Schuyler Ridge, there
22 will be certainty for the customers, electricity suppliers
23 and emergency personnel as to who the supplier is in the
24 subdivision. If Empire remains the electric supplier in
25 the Lakes of Schuyler Ridge, won't there be certainty for

1 the customers' electricity suppliers and emergency
2 personnel as to who the supplier is in the subdivision?

3 A. If we are the exclusive provider of service
4 in that subdivision, yes. Again, that's not the situation
5 we're in today. We are not necessarily the exclusive
6 provider.

7 Q. Hasn't it been the plan that the City of
8 Republic annex the Lakes of Schuyler Ridge at some point
9 in time?

10 A. I think that would be their desire,
11 dependent on their view of what legal challenges might be
12 in their way to accomplish that.

13 Q. Do you know if the developer at the Lakes
14 of Schuyler Ridge ever executed a written consent to
15 annexation of the Lakes of Schuyler Ridge by the City of
16 Republic?

17 A. I don't know that they have.

18 Q. Once Ozark entered into an agreement to
19 supply electric service to the Lakes of Schuyler Ridge,
20 Empire was not obligated to provide electric service in
21 the Lakes of Schuyler Ridge, was it?

22 MR. DUFFY: Objection. I think that calls
23 for a legal conclusion and interpreting the contract.

24 JUDGE VOSS: Can you restate the question?

25 MR. WILLIAMS: All I asked was whether once

1 Ozark agreed to supply electric service to the Lakes of
2 Schuyler Ridge, was Empire obligated to provide electric
3 service in that subdivision?

4 THE WITNESS: I think if the developer sold
5 any --

6 JUDGE VOSS: Hold on. I think that the
7 witness can answer the question based on his opinion as
8 someone that is operating under this contract, but not as
9 a straight legal opinion. Does that satisfy you,
10 Mr. Duffy?

11 MR. DUFFY: Whether I'm satisfied or not's
12 irrelevant, your Honor.

13 JUDGE VOSS: Please proceed.

14 BY MR. WILLIAMS:

15 Q. Let me ask it a different way. I can make
16 it more generic. If another electric service provider
17 agrees to provide service, is Empire obligated to provide
18 electric service to that same customer?

19 MR. DUFFY: I think you're getting into
20 hypothetical legal questions here. If he wants to ask the
21 witness about a particular contract or particular fact
22 situation, he's going to have to develop a much more
23 detailed hypothetical.

24 JUDGE VOSS: Actually, I think the
25 hypothetical makes it more of a legal question. When

1 you're asking -- when you're asking him a question based
2 on a contract that he's operating under, to me, that's
3 less of a legal question, and he can answer as a layperson
4 who operates under that contract what his -- his
5 interpretation of it is.

6 MR. DUFFY: If he's asking -- are we
7 talking about the contract that I think Mr. Beck attached
8 to his testimony? Is that the contract we're talking
9 about?

10 MR. WILLIAMS: Yes.

11 MR. DUFFY: So is your question, given that
12 Ozark and that particular developer entered into that
13 contract, does this witness think that somehow that
14 contract obligates or doesn't obligate Empire to serve
15 that subdivision? Is that the question you're asking?

16 MR. WILLIAMS: My question is whether,
17 given that Ozark and the developer entered into the
18 contract that's attached to Mr. Beck's testimony for the
19 purchase of electric service in the Lakes of Schuyler
20 Ridge, does he believe that relieved Empire from the
21 obligation to provide any service in that subdivision?

22 JUDGE VOSS: And I'll point out that at one
23 point I remember the witness answered or stated that
24 without a territorial agreement, in fact, it was his
25 understanding that they would have to serve every other

1 home and it could result in a patchwork, so I think the
2 witness has already --

3 MR. DUFFY: But that assumed annexation.
4 And I'm not clear on Mr. Williams' question about whether
5 he's assuming annexation has taken place or not.

6 MR. WILLIAMS: No, no annexation.

7 JUDGE VOSS: If the witness feels qualified
8 to give a layperson's opinion, he may. However, if you
9 feel that you're being called upon to act as an
10 attorney --

11 THE WITNESS: Judge, I do have an opinion
12 on this.

13 JUDGE VOSS: As a layperson?

14 THE WITNESS: And it would be as a
15 layperson.

16 JUDGE VOSS: Please give your layperson's
17 nonlegal opinion. Thank you.

18 THE WITNESS: Empire has an obligation to
19 serve if requested to do so. The agreement is between the
20 developer and Ozark Electric Cooperative. If the
21 developer sold the lot to an individual, my view is if the
22 individual requested Empire to serve that lot, we would
23 have to figure out a way to get it done or seek Commission
24 approval not to do it.

25 BY MR. WILLIAMS:

1 Q. Did the developer of the Lakes of Schuyler
2 Ridge ever request Empire to provide electric service in
3 the Lakes of Schuyler Ridge?

4 A. I think at the very beginning of this
5 they -- they talked to our personnel about what the
6 extension costs of electric service would be into the
7 Lakes of Schuyler Ridge. I think at the same time they
8 were looking at what would the extension costs be of Ozark
9 Electric Cooperative to extend service.

10 Q. My question was whether they ever requested
11 Empire to provide the service.

12 A. I think at the point where we bought the
13 facilities back from Ozark, the developer requested us to
14 extend service to additional lots and homes and --

15 Q. Does the additional load on Empire's system
16 from providing electric service at the Lakes of Schuyler
17 Ridge benefit Empire's other customers?

18 A. At Empire we add typically between 1,600
19 and 3,200 new customers a year to our system. We think
20 the additional -- the addition of customers is beneficial
21 to help spread the cost across the -- cost of the plant
22 across the system, but we think 30 customers in this case
23 is not material to that question.

24 Q. Has Empire installed streetlights in the
25 Lakes of Schuyler Ridge that are not standard streetlights

1 as defined in Empire's tariff?

2 A. Yes.

3 Q. Has Empire installed underground
4 distribution facilities in the Lakes of Schuyler Ridge?

5 A. Yes.

6 Q. May I approach?

7 JUDGE VOSS: Yes. Go ahead.

8 BY MR. WILLIAMS:

9 Q. Handing you what's been marked as
10 Exhibit 7. I've handed you what's been marked for
11 identification as Exhibit No. 7. Would you take a moment
12 and look through that, the pages of that exhibit?

13 JUDGE VOSS: For the record, will you
14 explain what that exhibit is because I'm not sure it's
15 been stated on the record.

16 MR. WILLIAMS: We'll get there.

17 JUDGE VOSS: Okay.

18 THE WITNESS: Okay.

19 BY MR. WILLIAMS:

20 Q. And what is -- what's contained in Exhibit
21 No. 7?

22 A. Several sheets that indicate they are the
23 municipal streetlighting service schedule, SPL; private
24 lighting service schedule, PL, rules and regulations,
25 section 5, pages 17C, D and D -- rather, C and D.

1 Q. And have you seen those pages before?

2 A. I have not seen these pages before you
3 handed them to me today. They do appear to be what we
4 have on file with the Commission.

5 Q. Are those tariff sheets of Empire, whether
6 they're currently effective or not? Are those copies of
7 tariff sheets that Empire had on file with the Commission?
8 Do you know?

9 A. I mean, they appear to be, but if we'd have
10 had them a few days ago we could have really looked
11 carefully to make sure they are accurate as to what is
12 currently approved by the Commission.

13 Q. I think your answer is I don't know?

14 A. I'll go with that.

15 Q. I won't pursue it any further.

16 A. Are you familiar with Empire's tariff
17 provisions regarding underground distribution facilities
18 in residential subdivisions?

19 A. Yes.

20 Q. And under those tariff provisions, who
21 bears the cost of installation?

22 A. Initially the developer, and we have a
23 built-in rebate per lot. As each permanent meter is set,
24 dependent on the number of permanent meters set, at the
25 end of the development of the subdivision, the developer

1 may have not had any expense at that point or he may have
2 been out expense, depending on how quickly the lots sell.
3 We have this rebate underway for a five-year period.

4 Q. And for nonstandard streetlight
5 installations in, let's say, subdivisions in
6 unincorporated areas, are you familiar with how those are
7 treated under Empire's tariffs?

8 A. We do not have a municipal streetlighting
9 tariff in nonincorporated areas. That is under the
10 private lighting schedule.

11 Q. And I was trying to get in the situation as
12 to how streetlighting's treated in nonmunicipal areas.

13 A. As private lighting.

14 Q. And under private lighting, if the
15 streetlighting is what's -- would be nonstandard under
16 Empire's tariff, how are the costs of that lighting
17 treated, if you know?

18 A. There's an investment charge that is added
19 to the customers' bill each month to cover those
20 investments.

21 Q. So whoever requested that nonstandard light
22 would pay some additional amount?

23 A. Yes.

24 Q. Do you know how many residential customers
25 Empire is presently serving in the Lakes of Schuyler

1 Ridge?

2 A. My best estimate today is around 30.

3 Q. Which of them have consented to a change of
4 their electric supplier from Empire to Ozark?

5 A. My understanding is that all of them have.

6 MR. WILLIAMS: No further questions.

7 JUDGE VOSS: Mr. Mills, I accidentally
8 skipped you earlier.

9 MR. MILLS: That's okay.

10 JUDGE VOSS: Avoiding friendly cross, do
11 you have any questions?

12 MR. MILLS: I'll have just a few.

13 CROSS-EXAMINATION BY MR. MILLS:

14 Q. Mr. Palmer, are you in a position to
15 describe for the Commission the sort of infrastructure
16 support that Empire has for the Lakes of Schuyler Ridge
17 and what Ozark has in terms of substations, transmission
18 facilities, generation facilities?

19 A. Certainly my view of Empire's facilities
20 are -- I mean, we have adequate facilities in the City of
21 Republic to handle the subdivision. My understanding from
22 looking at maps and discussions with Ozark Electric, that
23 they have adequate facilities in the region also to handle
24 the subdivision.

25 MR. MILLS: That's all I have. Thank you.

1 JUDGE VOSS: Commissioner Murray, do you
2 have any questions?

3 COMMISSIONER MURRAY: Just very briefly.

4 QUESTIONS BY COMMISSIONER MURRAY:

5 Q. Good morning.

6 A. Good morning.

7 Q. If we approve this agreement, will Empire
8 be made whole for every investment it has made either
9 through purchasing assets or through infrastructure that's
10 been put in place?

11 A. Yes.

12 Q. Completely?

13 A. Yes.

14 COMMISSIONER MURRAY: All right. That's
15 all I have. Thank you.

16 JUDGE VOSS: Commissioner Clayton?

17 QUESTIONS BY COMMISSIONER CLAYTON:

18 Q. Does your testimony -- anywhere in your
19 testimony reflect any conversations or position of the
20 City of Republic in this case?

21 A. I don't believe so.

22 Q. Do you know, is there any reflection in
23 Empire's case associated with what the City of Republic
24 would want or not want? Are there any affidavits as part
25 of your application, any other documents?

1 A. I did not -- I'm not aware if the City of
2 Republic has sent a letter to the Commission in this case.
3 I know they had stated their intentions to do so if
4 necessary.

5 Q. They had?

6 A. Did they?

7 Q. I'm asking.

8 A. I don't know.

9 Q. You don't know. Okay.

10 COMMISSIONER CLAYTON: I don't think I have
11 any questions of this witness.

12 QUESTIONS BY JUDGE VOSS:

13 Q. Most of my things have been covered. I did
14 want to check the numbers. Assuming the developer paid
15 the tariffed rates for the services installed, is that the
16 amount that's reflected in the application where you have
17 all the mathematical equations and you reference
18 approximately \$425 per home connected?

19 A. Yes.

20 Q. Does that amount reflect the actual cost of
21 putting in the facilities in this instance?

22 A. Yes.

23 Q. Does it reflect your tariffed rates?

24 A. I don't understand.

25 Q. Are the amounts based on tariffed rates?

1 A. I don't think the cost of the facilities is
2 based on a tariffed rate. I believe that is our
3 construction cost expenses.

4 Q. In this particular instance?

5 A. Yes.

6 JUDGE VOSS: Any other questions from the
7 Bench?

8 COMMISSIONER APPLING: None from me.

9 JUDGE VOSS: Any recross based on questions
10 from the Bench?

11 MR. WILLIAMS: If I might?

12 JUDGE VOSS: Staff.

13 RE CROSS-EXAMINATION BY MR. WILLIAMS:

14 Q. With regard to the payments that the
15 develop -- or the decorative streetlighting and the
16 underground costs that Empire incurred, under its tariff,
17 the developer normally would have paid those costs before
18 installation; is that not correct?

19 A. Yes.

20 Q. And if Empire is selling the facilities
21 back to Ozark plus the facilities it installed, is it
22 going to get repaid for those costs associated with the
23 underground lines and the decorative streetlights that
24 under Empire's tariff the developer was supposed to pay up
25 front?

1 about whether when we're talking about a tariff rate that
2 says -- in this case, I don't think there's a tariff that
3 says the developer shall pay X number of dollars and
4 cents. It's just -- it's a language, I think.

5 So there's -- my understanding is, and
6 Mr. Palmer can correct me if I'm wrong, there's no what I
7 would call a tariffed rate. There's no dollars and cents
8 set out in the tariff in particular. When we're talking
9 about the cost, we're talking about the actual costs, that
10 the tariff may say, well, the actual costs need to be
11 paid. So maybe that's the basis for the distinction.
12 Maybe Mr. Palmer can help clarify that.

13 MR. WILLIAMS: And if it helps anyone, when
14 I was asking my questions, I was talking about the actual
15 costs incurred, not any kind of a pricing under a tariff.

16 JUDGE VOSS: I just want to make sure that
17 we were all speaking the same language, if somebody speaks
18 costs and tariffs in the same sentence --

19 THE WITNESS: My belief, the price we have
20 quoted and agreed to with Ozark Electric Cooperative at
21 the end of the day, if this is approved, Empire will be
22 out zero dollars for any effort that we have extended, any
23 work that we have done in the Lakes of Schuyler Ridge.

24 JUDGE VOSS: Redirect?

25 REDIRECT EXAMINATION BY MR. DUFFY:

1 Q. I just want to explore one thing. You were
2 asked several questions by Mr. Williams about the status
3 of the world in March of 2006, and correct me if I'm
4 wrong, but in March of 2006, the developer of the Lakes of
5 Schuyler Ridge had a contract with Ozark Electric
6 Cooperative where Ozark Electric Cooperative was going to
7 provide the electric service in that subdivision; is that
8 right?

9 A. I believe so, yes.

10 Q. Given that, is Empire -- does Empire have
11 any theory or do they have a practice where they would go
12 into a subdivision and try to serve customers where the
13 developer's already agreed to be served by somebody else?

14 A. No.

15 MR. DUFFY: That's all I have.

16 JUDGE VOSS: I think you may step down.
17 Would Ozark like to call their witness?

18 MR. WIDGER: Yes. We call Pat Prewitt.

19 What's the possibility of a five-minute break?

20 MR. WILLIAMS: I'm not breaking.

21 MR. DUFFY: Your Honor, can we just have a
22 five-minute break while we are changing witnesses?

23 JUDGE VOSS: That's fine. We'll take a
24 break 'til quarter after.

25 (A BREAK WAS TAKEN.)

1 JUDGE VOSS: Let's go back on the record,
2 and we'll begin with Ozark calling their first witness,
3 only witness.

4 MR. WIDGER: Yes. Call Patrick Prewitt.
5 (Witness sworn.)

6 JUDGE VOSS: You may proceed.

7 PATRICK PREWITT testified as follows:

8 DIRECT EXAMINATION BY MR. WIDGER:

9 Q. Mr. Prewitt, do you have in front of you a
10 copy of Exhibit 4?

11 A. Yes.

12 Q. Does that represent your prefiled direct
13 testimony in this case?

14 A. Yes, it does.

15 Q. If the same questions were asked of you
16 today, do you have any corrections or changes that you
17 need to make?

18 A. I do not.

19 MR. WIDGER: At this time, since it's been
20 entered into evidence, we'll tender the witness for
21 cross-examination.

22 JUDGE VOSS: Again with the reminder that
23 we try to discourage friendly cross, Empire?

24 MR. DUFFY: No questions, your Honor.

25 JUDGE VOSS: Public Counsel?

1 MR. MILLS: Just one.

2 CROSS-EXAMINATION BY MR. MILLS:

3 Q. And it's the same question I asked of
4 Mr. Palmer. Can you describe from your perspective the
5 infrastructure that Ozark has and any understanding you
6 may have of Empire's that's in place to serve the Lakes of
7 Schuyler Ridge?

8 A. We do have facilities in place adequate to
9 service this development. We have substations to the
10 north and also to the south and transmission line that
11 runs near this property.

12 Q. Sufficient to serve both as it's built now
13 and as it's anticipated to be completely built out?

14 A. That would be true.

15 MR. MILLS: That's all the questions I
16 have. Thank you.

17 JUDGE VOSS: Staff?

18 CROSS-EXAMINATION BY MR. WILLIAMS:

19 Q. Good morning, Mr. Prewitt.

20 A. Good morning.

21 Q. Has the City of Republic participated in
22 this case?

23 A. Not that I know of, no.

24 Q. Do you know if the City of Republic has a
25 valuation based tax on real estate located within the

1 city?

2 A. I do not know that, no.

3 Q. Has the developer of the Lakes of Schuyler
4 Ridge participated in this case?

5 A. Yes.

6 Q. How?

7 A. He is the developer.

8 Q. No. Has he participated in these
9 proceedings?

10 A. Oh, no.

11 Q. Does Ozark have a franchise with the City
12 of Republic?

13 A. We do not.

14 Q. Are you familiar with the agreement between
15 Ozark and Schuyler Ridge, LLC, that's dated September 15,
16 2005?

17 A. I do have some recollection of that, yes.

18 MR. WILLIAMS: May I approach?

19 JUDGE VOSS: You may.

20 BY MR. WILLIAMS:

21 Q. I'm handing you what is Exhibit 5 in this
22 proceeding, and it's turned over to the page that has at
23 the top agreement for the purchase of electric power and
24 energy. Would you take a look at that document?

25 A. Okay.

1 Q. Have you had an opportunity to review it?

2 A. Portions of it, yes.

3 Q. Enough that you're familiar with it?

4 A. Vaguely familiar, yes. Go ahead.

5 Q. Well, do you know if it's a true and
6 accurate copy of the agreement that Ozark entered into
7 with the developer of the Lakes of Schuyler Ridge on or
8 about September of 2005?

9 A. I do believe that's correct.

10 Q. I'm going to turn your attention to your
11 direct testimony at page 4. On line 52 you state, we --
12 with regard to or referring to Ozark competing with Empire
13 for the provisioning of electric service, you state, we
14 cannot agree to compete, do you not?

15 A. We cannot agree not to compete.

16 MR. WIDGER: He said --

17 MR. WILLIAMS: Did I misstate it?

18 THE WITNESS: Yes.

19 BY MR. WILLIAMS:

20 Q. So you state there, we cannot agree to not
21 compete?

22 A. That's correct.

23 Q. Isn't the territorial agreement in this
24 case that you're asking the Commission to approve an
25 agreement between Ozark and Empire not to compete in the

1 Lakes of Schuyler Ridge?

2 A. Yes.

3 Q. On page 5 of your direct testimony at
4 lines 90 to 92, you make statements about Ozark being
5 restored to its role as the service provider free to plan
6 for sufficient service to the entire development without
7 fear of having its investment stranded by municipal
8 annexation with reference to the application in this
9 case.

10 How does the proposed territorial agreement
11 address Ozark's fear of having its investment stranded by
12 municipal annexation?

13 A. Well, the possibility exists that we could
14 serve a portion of it and then Empire could possibly serve
15 a portion of it, but we -- this gives us an opportunity
16 through territorial agreement to make plans adequate to
17 service the entire development.

18 Q. That sounds to me like you're responding
19 with a discussion between -- of the impact between Empire
20 and Ozark. My question is Ozark's fear of having its
21 investment stranded by municipal annexation in particular.

22 A. Yes. That would be without the territorial
23 agreement. At some point in time without the territorial
24 agreement, we could be frozen on a number -- on the new
25 customers that we could connect, and we would have

1 investment in there. And in an underground type
2 development, you try to put in enough underground
3 facilities to service an entire area, because it's more
4 difficult to go back and replace things like with larger
5 conductor wires and such as that. So you try to plan up
6 front to serve as much as you can so you don't have to go
7 back later and replace facilities. And if we were
8 planning to serve a development this size, it would
9 require a much larger conductor and different situations.

10 Q. How does that relate to municipal
11 annexation?

12 A. Well, it would relate to it from the
13 standpoint, we could begin installing facilities within
14 the development adequate to service the entire development
15 and then we could be frozen by annexation.

16 Q. What do you mean by frozen by annexation?

17 A. Well, we couldn't connect any more new
18 customers, and then we would have --

19 Q. And how does the territorial agreement
20 address that?

21 A. Well, it's my understanding the territorial
22 agreement then would allow us to service the entire
23 development.

24 Q. Even post annexation?

25 A. Correct.

1 Q. Does Ozark presently have any electric
2 facility in the Lakes of Schuyler Ridge?

3 A. We do not.

4 Q. Does Ozark presently provide any electric
5 service to any structures in the Lakes of Schuyler Ridge?

6 A. Best of my knowledge, no.

7 Q. Did you attend a meeting in March of 2006
8 that was initiated and hosted by representatives of the
9 City of Republic regarding development about the City of
10 Republic, including the Lakes of Schuyler Ridge?

11 A. Yes, I did.

12 Q. Were the main issues at that meeting
13 compensation to be paid to fire protection districts
14 affected by annexation of land by the City of Republic and
15 state law that did not permit Ozark to serve new
16 structures in the City of Republic because the City of
17 Republic has a population of over 1,500?

18 A. Would you restate that, please?

19 Q. Were there two main issues at that meeting,
20 one of which was compensation that was to be paid to fire
21 protection districts regarding land annexed by the City of
22 Republic, and state law that does not permit Ozark to
23 serve new structures in the City of Republic because the
24 City of Republic has a population of over 1,500?

25 A. I don't recall exactly, no.

1 Q. You don't recall if those were issues at
2 all that were discussed?

3 A. I believe it was, but I don't understand
4 that part of the law.

5 Q. When did Empire acquire from Ozark Electric
6 facilities in the Lakes of Schuyler Ridge?

7 A. I do not know. I think in Mr. Palmer's
8 earlier testimony, he indicated the proper date.

9 Q. Sometime in May of 2006 perhaps?

10 A. That sounds correct.

11 Q. Do you know how much Empire paid Ozark for
12 those facilities?

13 A. I think it's on the document you reviewed
14 earlier. I believe it's in the 170 to \$200,000 range, the
15 best that I can recall.

16 Q. Do you have any familiarity with the
17 invoicing for that transaction?

18 A. I think I've seen it recently -- or not
19 recently, but it's been some time back.

20 MR. WILLIAMS: May I approach?

21 JUDGE VOSS: Yes, you may.

22 BY MR. WILLIAMS:

23 Q. I've put before you a page from Exhibit 5
24 that has at the top Ozark Electric Cooperative, Inc.
25 invoice. Have you had an opportunity to review that

1 document?

2 A. Yes.

3 Q. Do you have any reason to believe that
4 document, that copy is not a true and accurate copy of the
5 original?

6 A. I believe it is the original.

7 Q. And does it reflect that the price paid by
8 Empire for the facilities it acquired in the Lakes of
9 Schuyler Ridge from Ozark was on the order of \$178,000?

10 A. That would be correct.

11 Q. Wasn't it in the interest of all of Ozark's
12 members for Ozark to provide electric service in the Lakes
13 of Schuyler Ridge when Empire acquired the electric
14 facilities Ozark had installed in the subdivision?

15 A. Yes, it would be, but it was the agreement
16 at the time of the original attempt to receive territorial
17 agreement, and this would be given to Empire in order to
18 affect that as a -- into the development, or excuse me,
19 into the agreement for the territorial agreement. We
20 agreed to give that up in order to create the territory.

21 Q. Why was it in the interest of Ozark's
22 members for Ozark to provide electric service in the Lakes
23 of Schuyler Ridge when Empire acquired those facilities
24 from Ozark?

25 A. Well, it's always to our advantage to

1 improve our density, meter density. A development such as
2 the Lakes of Schuyler Ridge creates a situation where we
3 have much greater density than our system density, so it
4 improves that for our members.

5 Q. And why was it in Ozark's members' interest
6 to sell the electric facilities Ozark had installed in the
7 Lakes of Schuyler Ridge to Empire?

8 A. Well, that was in the original agreement,
9 the first attempt. They would get so many square miles of
10 territory, and then we would receive -- I believe it was a
11 total of eight and a half total, and we would receive like
12 four miles of territory that would be ours to service, and
13 that would make it possible for us to do the engineering
14 studies and the planning necessary to serve that
15 particular area.

16 Q. And in this application you're asking for
17 the Commission to, I guess, put Ozark in the position of
18 being the electric service provider in the Lakes of
19 Schuyler Ridge, are you not?

20 A. Yes.

21 Q. Why is it in the interest of all of Ozark's
22 members for the Commission to do that?

23 A. Well, again, it improves our meter density.
24 Currently we average about six meters per mile of line,
25 and I don't have the calculation on this development, but

1 it much exceeds six meters per mile of investment.

2 Q. And how does increased meter density
3 benefit Ozark's members?

4 A. Well, you invest so much money, let's say,
5 in a mile of line, and the more customers you have on that
6 mile of line, it increases your ability to recover that
7 investment.

8 Q. So when you're talking about meter density,
9 you're talking about number of customers or billing
10 points?

11 A. That's correct.

12 Q. Did the Commission's decision in December
13 of 2006 to not grant Empire variances to allow it to
14 charge the developer of the Lakes of Schuyler Ridge for
15 decorative streetlights and underground lines on the same
16 terms as offered by Ozark essentially put all the parties
17 back where they started in March of 2006, except more
18 houses had been built in the interim and electric service
19 facilities had been built to provide service to them?

20 A. I believe your statement's correct.

21 Q. Did Ozark own any electric service
22 facilities in the Lakes of Schuyler Ridge in March of
23 2006?

24 A. No, I don't believe so.

25 Q. Did Ozark own any electric service facility

1 in the Lakes of Schuyler Ridge in December of 2006?

2 A. No, we did not.

3 Q. Was Ozark providing electric service in the
4 Lakes of Schuyler Ridge in March of 2006?

5 A. I do not believe we were, no.

6 Q. Was Ozark providing electric service in the
7 Lakes of Schuyler Ridge in December of 2006?

8 A. No.

9 Q. Did Ozark own any electric service facility
10 in the Lakes of Schuyler Ridge in May of 2006?

11 A. Prior to the sale, we had facilities, yes.

12 Q. And that was the sale on or about May 18th
13 of 2006?

14 A. Yes.

15 Q. Was Ozark providing electric service in the
16 Lakes of Schuyler Ridge on or before May 18, 2006?

17 A. No.

18 Q. Ozark and Empire are trying to put the
19 parties back in the position they were in as of March of
20 2006. Why are they asking the Commission to approve a
21 territorial agreement where Ozark would be the electric
22 service provider exclusive of Empire in the Lakes of
23 Schuyler Ridge?

24 A. Well, partially so we can do our
25 engineering planning and make investments necessary to

1 provide service to the entire development.

2 Q. There wasn't a territorial agreement in
3 March of 2006, was there?

4 A. No. But it's my understanding that was
5 rural area at that time.

6 Q. Both Ozark and Empire could have provided
7 service in the Lakes of Schuyler Ridge in March of 2006,
8 could they not?

9 A. Correct.

10 Q. And if the Commission approves this
11 application, then between Ozark and Empire only Ozark
12 would be able to provide electric service in the Lakes of
13 Schuyler Ridge, correct?

14 A. Yes.

15 Q. What is Empire getting in return for giving
16 up being the electric service provider to the Lakes of
17 Schuyler Ridge if this Commission approves the joint
18 application in this case?

19 A. What are they receiving?

20 Q. Yes.

21 A. They will be fully reimbursed for their
22 expenses of Schuyler Ridge.

23 Q. Are they getting anything else?

24 A. Well, it also gives them the chance and
25 provides them with opportunity to make engineering

1 planning for other areas exclusive of that particular
2 area.

3 Q. Is there some reason they wouldn't be able
4 to do that otherwise, to your knowledge?

5 A. Well, if they -- no.

6 Q. Do the Lakes of Schuyler Ridge and the City
7 of Republic have a common boundary?

8 A. I do not know.

9 Q. Do you know who provides electric service
10 in the City of Republic nearest -- within the city limits
11 nearest the Lakes of Schuyler Ridge?

12 A. I would say Empire does, yes.

13 Q. And who is the predominant electric service
14 supplier in the City of Republic?

15 A. Empire would be.

16 Q. Won't it cause confusion to emergency
17 personnel responding to crises where electric lines need
18 to be deenergized as to who to contact to get those lines
19 deenergized if Ozark provides the electric service in the
20 Lakes of Schuyler Ridge and then the City annexes the
21 subdivision?

22 A. No, I believe it will improve the
23 situation.

24 Q. How so?

25 A. They will know that we are the exclusive

1 provider of service within the Lakes of Schuyler Ridge.

2 Q. Is it your understanding that the City of
3 Republic and the developer of the Lakes of Schuyler Ridge
4 have long intended that the Lakes of Schuyler Ridge be
5 annexed by the City of Republic at some point in time?

6 A. Not to my knowledge, I do not know that.

7 Q. What is Ozark's policy regarding
8 undergrounding lines in new subdivisions?

9 A. We do not charge fees for that.

10 Q. How do you recover your costs?

11 A. Through the billing of such.

12 Q. And for decorative streetlighting, how do
13 you recover your costs for those?

14 A. We have a small fee we charge per lot,
15 \$2.50 for streetlighting.

16 Q. Is that on a monthly basis?

17 A. That's correct.

18 MR. WILLIAMS: No further questions.

19 JUDGE VOSS: Commissioner Murray, do you
20 have any questions?

21 COMMISSIONER MURRAY: Yes, briefly. Thank
22 you.

23 QUESTIONS BY COMMISSIONER MURRAY:

24 Q. Good morning

25 A. Good morning.

1 Q. Has Ozark contacted the City regarding
2 franchising if and when they do annex?

3 A. No, we have not contacted them concerning
4 that.

5 Q. Has there been any contact with the City at
6 all regarding whether there would be any opposition to
7 Ozark's serving customers in this particular subdivision?

8 A. I believe originally there was no
9 opposition from the City of Republic to do this.

10 Q. And how do you know that?

11 A. The original proceedings back last year in
12 January.

13 Q. And is that because there was no objection
14 or is that because there was some indication that the City
15 was in agreement?

16 A. I believe at that time all parties,
17 including the City of Republic, were in agreement with
18 doing the territorial agreement.

19 Q. And in terms of the developer, the
20 developer is not a party to this case, correct?

21 A. Correct.

22 Q. And is there any reason that the developer
23 would not have participated in some manner, to your
24 knowledge?

25 A. I'm not sure what your question is. I'm

1 sorry.

2 COMMISSIONER MURRAY: I think I'm going to
3 leave it at that. Thank you.

4 JUDGE VOSS: Commissioner Appling?

5 COMMISSIONER APPLING: I have no questions
6 at this point.

7 QUESTIONS BY JUDGE VOSS:

8 Q. I just have a couple. Commissioner Murray
9 got most of what I had. In response to some questions
10 from Staff, you mentioned that the benefit that Empire
11 will receive -- would receive under the territorial
12 agreement is full reimbursements of their out-of-pocket
13 costs for the facilities that they've put into the
14 subdivision to this point?

15 A. Yes.

16 Q. And I know in the prefiled testimony, I
17 cannot remember now if it was yours or Mr. Palmer's
18 testimony, but one of the parties mentioned there was
19 understanding that the developer would not or could not
20 pay the actual costs. Is that your understanding?

21 A. That's my understanding.

22 Q. So do you have reason to believe that
23 Empire would not be fully reimbursed for the facilities
24 absent the territorial agreement?

25 A. Reimbursed from us?

1 Q. From anyone. I mean, if they do not sell
2 the facilities to you and get reimbursed for their costs,
3 based on the testimony of the other parties that was
4 admitted without objection, you have this developer saying
5 he can't pay. Am I making sense?

6 A. Well, I'm maybe not understanding, but --

7 Q. Well, it's an odd situation without the
8 developer here, but all the parties admitted into evidence
9 the testimony that included statements that the developer
10 had told them or that it could not pay?

11 A. Right. Correct.

12 Q. You don't have an answer?

13 A. I don't have an answer, no.

14 JUDGE VOSS: I guess I don't have any
15 further questions, then. Are there any redirect based
16 on -- I mean, excuse me, recross based on questions from
17 the Bench?

18 MR. WILLIAMS: Yes, Judge, and I think I
19 may be able to get at what you were trying to question
20 him.

21 RE CROSS-EXAMINATION BY MR. WILLIAMS:

22 Q. But first I want to ask a question in
23 response to some questions by Commissioner Murray
24 regarding the City of Republic, you talked about the City
25 of -- and what its position might be in this case, you

1 based your response, I think, on the City of Republic's
2 position in the last case?

3 A. Uh-huh.

4 Q. My question to you is, wasn't the
5 territorial agreement in this case very much different
6 than the territorial agreement that's involved in this
7 case?

8 A. Yes. It's a much smaller area.

9 Q. The one in the last case involved two
10 areas, one of four square miles and the other about four
11 and a half square miles, did it not?

12 A. Yes, it did.

13 Q. And this one just involves 245 acres?

14 A. Yes.

15 Q. And regarding the payments for
16 streetlighting, is it your understanding that if this
17 agreement's approved, Ozark will pay to Empire all of the
18 costs that Empire has incurred in putting in
19 streetlighting and underground lines as well as whatever
20 other costs it may have incurred for this facility?

21 A. That's correct.

22 Q. And would Ozark then seek repayment of
23 those costs from the developer or would it recover those
24 costs in some other fashion?

25 A. That would only be through rates we would

1 recover those costs.

2 Q. So it would be your members who would bear
3 those costs?

4 A. That's correct.

5 Q. Would it be the members who are receiving
6 service from those facilities, in other words, members
7 within the Lakes of Schuyler Ridge?

8 A. Yes.

9 MR. WILLIAMS: No further questions.

10 JUDGE VOSS: Redirect?

11 MR. WIDGER: Thank you.

12 MR. DUFFY: I've got a question.

13 JUDGE VOSS: I'm sorry.

14 RE-CROSS-EXAMINATION BY MR. DUFFY:

15 Q. It wouldn't only be the customers within
16 the Lakes of Schuyler Ridge that would be paying, that
17 would be all your customers?

18 A. Well, that's true, Mr. Duffy. We spread
19 that across our entire system of 30-some-odd-thousand
20 members.

21 MR. DUFFY: I just want to clarify that.

22 JUDGE VOSS: I'm going to have an
23 additional point of clarification I thought was assumed
24 until you said that. Is this -- this would be a similar
25 situation if Ozark had retained control of the area and

1 had put the facilities in themselves; is that correct?

2 THE WITNESS: Yes, it is.

3 JUDGE VOSS: Any other redirect based on
4 additional question from the Bench?

5 MR. WILLIAMS: I don't have any further
6 recross.

7 JUDGE VOSS: Okay. Redirect?

8 MR. WIDGER: Thank you.

9 REDIRECT EXAMINATION BY MR. WIDGER:

10 Q. Pat, there's been reference to a meeting in
11 2006. Was there another meeting with the City and the
12 parties and the developer prior to coming to agreement on
13 this second territorial agreement?

14 MR. WILLIAMS: I'm going to object to that
15 as vague, only because I don't know who the parties are.

16 MR. WIDGER: Let me rephrase that.

17 BY MR. WIDGER:

18 Q. Pat, did the City participate in a meeting
19 that led to the development of this amended territorial
20 agreement?

21 A. I don't believe so. Not that I know of.

22 Q. All right. Do you have recollection of a
23 meeting in the city facilities hosted by city personnel
24 with city refreshments and Empire and Ozark present at
25 which we agreed that we would go for a territorial

1 agreement only for Schuyler Ridge?

2 A. Yes.

3 Q. Did the City verbally participate in those
4 discussions?

5 A. Yes, they did.

6 Q. Were they aware that we were going to come
7 back to the Commission with a territorial agreement that
8 proposed only exclusive territory for the Lakes of
9 Schuyler Ridge?

10 A. Yes.

11 Q. Did they express any reservation or did
12 they express that they would prefer that you not do that?

13 A. No, they did not.

14 Q. Did they express that they would be happy
15 if you would proceed to do that?

16 A. Yes. In fact, they said they would advise
17 us to. They were not in opposition to it at all.

18 Q. Is it -- in regard to the developer, was he
19 present at that meeting?

20 A. I don't recall.

21 Q. Okay. Is it fair to say that the
22 developer's interests and that of Ozark Electric pretty
23 much coincide in this particular hearing?

24 A. Yes.

25 Q. Regarding your testimony that you could not

1 agree to not compete, is it your recollection that House
2 Bill 813 included a statutory change which specifically
3 excluded territorial agreements from the provisions of
4 Missouri's anti-trust law?

5 A. Yes.

6 Q. And if I referred you to Section 416.041,
7 would that make any -- do you recall that or was that just
8 part of the laws?

9 A. I believe it's part of the law.

10 Q. Are you aware of any contract that Empire
11 District has with the developer?

12 A. No.

13 Q. Are you aware that they do not have a
14 contract with the developer?

15 A. No.

16 Q. In May of 2006, when you sold Ozark
17 facilities to Empire, did they have a contract with the
18 developer?

19 A. I do not know.

20 Q. Is it your -- is it your recollection that
21 the only investments in that property at that time in May
22 of 2006 was investment that was made by Ozark Electric?

23 A. That would be correct.

24 Q. Now, there have been questions that relate
25 to Empire District continuing to serve the Lakes of

1 Schuyler Ridge. Do you have an opinion that, upon failure
2 of the former proposed territorial agreement, Empire
3 District is obligated to restore those facilities back to
4 Ozark Electric?

5 A. Say that one more time.

6 Q. All right. The transfer of facilities to
7 Empire District, was that in anticipation of approval of
8 the territorial agreement?

9 A. Yes.

10 Q. Would unwinding that arrangement include an
11 obligation for Empire District to return facilities back
12 to you?

13 A. Yes.

14 MR. WIDGER: That's all my redirect. Thank
15 you.

16 JUDGE VOSS: That was quite a bit of
17 redirect, so I might offer a round of recross. Anyone
18 have any recross? Any more questions from the Bench?

19 Great. Mr. Prewitt, you're excused.

20 Since it's about 10 'til noon, I'm assuming
21 there'll probably be a significant -- at least a fairly
22 significant amount of time cross-examining Mr. Beck. Take
23 a break now, come back?

24 MR. WIDGER: Actually, it may be very
25 little.

1 MR. MILLS: I'll leave it to the Bench and
2 the parties from out of town, but I don't have a whole lot
3 of questions for Mr. Beck.

4 MR. WIDGER: We'd probably prefer to
5 proceed.

6 MR. DUFFY: I would vote in favor of
7 proceeding at this point.

8 JUDGE VOSS: All right. Let's proceed.
9 Staff, call your witness.

10 MR. WILLIAMS: Dan Beck.

11 (Witness sworn.)

12 JUDGE VOSS: You may proceed.

13 DANIEL I. BECK testified as follows:

14 DIRECT EXAMINATION BY MR. WILLIAMS:

15 Q. Please state your name.

16 A. Daniel I. Beck.

17 Q. Is Exhibit -- what's been marked as
18 Exhibit 5, which on the cover indicates it's the rebuttal
19 testimony of Daniel I. Beck, your testimony in this
20 proceeding?

21 A. Yes, it is.

22 Q. Do you have any changes to Exhibit 5?

23 A. No, I do not.

24 MR. WILLIAMS: Staff offers the witness for
25 examination.

1 JUDGE VOSS: Public Counsel?

2 MR. MILLS: Just briefly.

3 CROSS-EXAMINATION BY MR. MILLS:

4 Q. Mr. Beck, absent the territorial agreement
5 under consideration today, would Empire have the
6 obligation to serve in Schuyler Ridge?

7 A. Yes.

8 Q. And if this agreement is approved, will
9 Empire be relieved of that obligation?

10 A. If by -- by approval of this, I think that
11 does relieve them of that obligation.

12 Q. And being relieved of that obligation,
13 would that make planning for infrastructure buildout
14 easier and more certain for Empire District Electric?

15 A. For that -- for that 245-acre tract or --

16 Q. For that area, if they know that they don't
17 have to serve that 245-acre tract.

18 A. I think it actually complicates their
19 situation in that area, because it will now have a
20 245-acre tract in the middle of an area where they have a
21 lot of service already, so --

22 Q. Let's talk a little bit about that area.
23 In the last cases, I think those were 0029 and 0030, do
24 you recall those two combined cases?

25 A. Yes.

1 Q. Were you a witness in those cases?

2 A. Yes, I was.

3 Q. In those cases the Staff opposed the
4 variance that was a part of the EE case; is that correct?

5 A. That's correct.

6 Q. And did you understand that the territorial
7 agreement was contingent on that waiver?

8 A. That -- that's the way it was presented,
9 yes.

10 Q. Okay. So that the Staff knew that if you
11 won the waiver issue, that the territorial agreement would
12 not go through; is that correct?

13 A. I guess that's correct.

14 Q. Now, in this case, does Staff oppose the
15 territorial agreement that's part of the application?

16 A. Yes, because we do not believe that it's
17 met the burden of proof.

18 Q. Does Staff oppose the customer swap that's
19 part of the agreement?

20 A. I think again, these are sort of tied, the
21 same situation as before.

22 Q. Okay. And similarly with the sale of
23 facilities as part of the agreement?

24 A. Yes. Those three things really seem to be
25 tied together once again.

1 Q. And Staff opposes all three?

2 A. Yes.

3 Q. How does Staff suggest that the situation
4 in Republic and particularly in Schuyler Ridge be
5 resolved? What would you like to see happen?

6 A. Probably, you know, my first preference if
7 I'm, you know, wishing for the moon, I guess, would have
8 been that the territorial agreement, the one that was
9 proposed in the last case went through because it took
10 care of a very large area, eight and a half square miles
11 of area. It provided territory for both companies.
12 Empire is fairly prevalent in the outlying areas around
13 Schuyler Ridge and so, therefore, they seem to be in a
14 pretty good position there.

15 My cursory tour of that area was, is that I
16 saw more coop facilities on the other, I believe it was
17 four square miles. So it seemed like the coop was in a
18 position there to serve that area well. Seemed to make
19 real sense. That would be my personal preference.

20 Q. Okay. Do you recall in the 0029 and 0030
21 cases whether any party other than Staff opposed the
22 relief sought in those two cases?

23 A. I don't recall any other party, no.

24 Q. So but for Staff's opposition to the waiver
25 in that case, that territorial agreement would have been

1 consummated?

2 A. That's my understanding, yes.

3 MR. MILLS: I don't have any further
4 questions.

5 JUDGE VOSS: Ozark?

6 MR. WIDGER: Thank you.

7 CROSS-EXAMINATION BY MR. WIDGER:

8 Q. You have your testimony in front of you
9 with your exhibits?

10 A. Yes, I do.

11 Q. Would you turn in your testimony to the
12 contract that Empire has with the developer?

13 A. Excuse me. I'm sorry. What was the --
14 I've got my pages all organized.

15 Q. Would you look through your material and
16 find the contract that Empire District has entered into
17 with this developer?

18 A. I don't have that document.

19 Q. Do you know if one exists?

20 A. I don't.

21 Q. So you testified here in cross-examination
22 that, absent the territorial agreement, Empire would have
23 an obligation to serve. What's the basis of an obligation
24 to serve if it does not have an agreement with the
25 developer?

1 A. The obligation to serve is the fact that
2 they have a service territory, and that if a customer
3 within that service territory requests service, they have
4 that obligation.

5 Q. Okay. So it's dependant upon there being a
6 customer request?

7 A. Yes, and the service territory.

8 Q. And in this case -- and that's basically
9 the Republic utility obligation?

10 A. Uh-huh.

11 Q. And in this case, the key critical customer
12 we're talking about is the developer, right?

13 A. Well, I think testimony earlier was it was
14 discussed that -- that the developer is the obvious
15 customer, but also an individual could request even inside
16 that subdivision to be served by Empire and Empire would
17 have that obligation.

18 Q. Do you understand that this development
19 we're talking about involves undeveloped farmland?

20 A. Well, I was at the facility in, I believe,
21 November of 2006, and what we're talking about is what was
22 undeveloped farmland, but it was obviously -- there were
23 streets and lights and underground --

24 Q. Sure.

25 A. Yeah. Okay.

1 Q. And that's the stuff that's being put in by
2 Empire right now?

3 A. And at that time was already put in by the
4 coop, and then there's --

5 Q. But back to the obligation to serve.

6 A. Yes.

7 Q. The obligation to serve is a hypothetical
8 obligation that would -- would arise and would come into
9 being if someone requested service under Empire's utility
10 obligation?

11 A. I'm hesitating on the word hypothetical. I
12 mean, it's a real thing that's out there, but it does --
13 it is contingent upon that request.

14 Q. I'm sorry. I was not aware that there were
15 any customers who had been refused service by Empire. Am
16 I mistaken?

17 A. I'm sorry. I don't understand the
18 question.

19 Q. Well, you're saying it's not hypothetical.
20 I'm saying, well, then, if it's not hypothetical, maybe I
21 missed something. Are there some real customers,
22 nonhypothetical customers who have been refused service by
23 Empire District?

24 A. In Schuyler Ridge?

25 Q. Yes, in the Lakes of Schuyler Ridge.

1 A. Not that I'm aware of.

2 Q. In regard to the benefit of planning
3 certainty, are you willing to yield to the -- the planners
4 and engineers at Empire and yield to their opinion on
5 whether or not it makes planning more certain?

6 A. Which -- which planners would that be that
7 you're talking about? I'm not aware of any that --

8 Q. Let me go back. The question was asked
9 whether -- to this sense. The question was asked to you
10 by Mr. Mills whether this territorial agreement which
11 allocated Lakes of Schuyler Ridge to Ozark Electric would
12 give Empire District any more planning certainty for the
13 overall area, and your answer was that it would complicate
14 it.

15 A. Okay.

16 Q. Okay. I'm just curious as to whether or
17 not your opinion is as important as the opinion of the
18 engineers and the folks actually operating the systems at
19 Empire District.

20 A. And my question is, am I missing something
21 that there's some opinions out there that I should be
22 reviewing? I'd be happy to do that.

23 Q. Well, my question is, on what basis can you
24 sit here in Jeff City and say that would make it more
25 complicated for Empire District down at the City of

1 Republic?

2 A. My bases is my tour of that area and my
3 knowledge of basic transmission and distribution planning,
4 and the way that things are happening right now, Empire
5 has extended facilities into that area to serve Schuyler
6 Ridge, but also that those same facilities would be
7 available to serve other areas. How that's going to be
8 affected once you have a 245-acre facility -- or area in
9 the middle that you can no longer use as part of your
10 service area, that -- that's going to complicate things.

11 Q. Let's go back. Do you understand that
12 Empire is presently performing the obligations that Ozark
13 Electric undertook by contract with the developer?

14 A. I mean, I'm not sure that Empire was
15 following that contract, if that's what you're saying,
16 that basically they are serving customers.

17 Q. Right. And how did they -- how did they
18 come into the relationship where they would serve
19 customers in Lakes of Schuyler Ridge?

20 A. I assume, although I have never seen any
21 documents, that the customers requested service.

22 Q. Would you agree that as a -- as a part of
23 the presentation of the prior territorial agreement, that
24 in anticipation of approval of that territorial agreement,
25 Ozark Electric voluntarily sold its installed facilities

1 to the Empire District?

2 A. That's -- yes, and now those facilities
3 weren't everything needed to serve the customers, but they
4 were a portion of that.

5 Q. So the work the Empire District is doing
6 now is extending the work that Ozark Electric started?

7 A. Yes.

8 Q. And in so doing, Empire District is
9 fulfilling a service obligation, maybe not down to the
10 pricing, et cetera, but is fulfilling its service
11 obligation that was first undertaken by Ozark Electric?

12 A. I mean, they are serving the same group of
13 customers or the same land and lots, you know. For
14 example, the distribution system configuration is slightly
15 different. They use a different type of transformer. So
16 it's not the exact same.

17 Q. Right. And I'm not talking about the
18 mechanics of and the nomenclature of the pieces of the
19 system.

20 A. Okay.

21 Q. But the obligation of putting the system in
22 was taken over from Ozark Electric; is that correct?

23 A. That's my understanding, yes.

24 Q. Now, do you understand that upon the
25 failure of the first territorial agreement, that to unwind

1 that relationship, Empire District is required to transfer
2 facilities back and to let Ozark resume its service at the
3 Lakes of Schuyler Ridge?

4 A. I've never seen that, no. That was not my
5 understanding, but --

6 Q. Well, then, is the law finders keepers,
7 losers weepers, or what does it mean?

8 A. I'm sorry. Which law? Which law is it
9 that --

10 Q. If Empire has no direct obligation,
11 Empire's obligation was borrowed from Ozark Electric, and
12 it was a basis and it was an assumption going into the
13 territorial agreement the first time that be approved, and
14 when that failed, do you not see that Empire District is
15 obligated to restore Ozark Electric to its position as the
16 service supplier in the Lakes of Schuyler Ridge, right
17 now, today?

18 A. It would seem to me that the terms you're
19 talking about would have been written into the territorial
20 agreement if that was -- and the variance request if that
21 was necessary. I don't remember any language that talked
22 about borrowing that -- that responsibility and returning
23 those facilities and returning -- and when I say returning
24 facilities, we're talking about now there's approximately
25 300 percent more investment facilities than there was at

1 the time of that original sale.

2 Q. I see. And, for, but for the first
3 territorial agreement, would Empire District have those
4 facilities invested there or would it be Ozark's
5 investment?

6 MR. WILLIAMS: I'm going to object to that
7 as calling for speculation.

8 JUDGE VOSS: I'm not sure where he was
9 going with it either.

10 MR. WIDGER: I can withdraw it. But it's
11 very important here that Staff seems to think that Empire
12 has something here that it's entitled to have and it can
13 keep forever, when, in fact, Ozark Electric can sue Empire
14 District right now for return of the facilities because of
15 failure of consideration out of the first deal. So we'll
16 just let that go.

17 BY MR. WIDGER:

18 Q. Couple other things, picky things. Sorry.
19 In your -- in the cross-examination with Mr. Mills, you
20 indicated that Staff opposes this territorial agreement
21 because it does not meet the burden of proof. Is that --
22 do you recall saying that?

23 A. Yes.

24 Q. Okay. What's -- what's your source? What
25 did you refer to as the source or the rule for

1 establishing the parameters of that burden of proof?

2 A. Well, the -- the ultimate source I guess is
3 conversations with counsel, but, you know, the documents
4 that also exist out there, there are statutes, and then
5 ultimately the kind of working documents that I'll refer
6 to, I guess, is the actual rules of the Commission.

7 Q. All right. And in answer to another
8 question in which you were asked what would you like to
9 see happen out there, you expressed a preference that the
10 old territorial agreement be revived essentially, but
11 without the waiver that was required by Empire District;
12 is that correct?

13 A. That's correct.

14 Q. Is it Staff's prerogative to make the
15 parties bring agreements -- bring the agreements here that
16 Staff wants to see?

17 A. No. I was just simply ask -- answering a
18 question.

19 Q. In your testimony, when we talk about the
20 relative benefit to the various people, is it basically
21 true that you do see some benefit in this territorial
22 agreement for Ozark Electric; is that correct?

23 A. I think more -- my testimony really was, is
24 that I view Ozark as a member-owned cooperative as -- as
25 representing their -- their customer -- customers'

1 interest and, therefore, just by the participation it's
2 almost kind of proof that that's -- that the coop
3 benefits.

4 Q. So it's presumptively good for the members
5 of the coop?

6 A. That was kind of the way I viewed it, yes.

7 Q. And is there benefit for the City of
8 Republic?

9 A. The best I can -- by reading the other
10 testimony, I've never had a conversation with the City
11 about it, but -- but is that their hope is to avoid the
12 possible threat of litigation, and so I guess that would
13 be a benefit to them.

14 Q. And also it might allow them to proceed
15 with uncontested annexation of additional areas. Would
16 that be a benefit?

17 A. The litigation I was referring to actually
18 was litigation about annexation, so, yes, it's part of the
19 same subject.

20 Q. And so is this agreement in benefit of the
21 developer?

22 A. It appears that he's got a significant
23 financial interest that would work out well in his favor
24 to be served by the coop.

25 Q. And is it to the benefit of the future

1 inhabitants of the Lakes of Schuyler Ridge that the whole
2 subdivision be served by one supplier?

3 A. I'm not sure the customers would notice,
4 but I think it works out well to have a subdivision or at
5 least a phase of a subdivision served by a single
6 supplier.

7 Q. And that allows all of the customers to
8 have the same services experience, you don't have an
9 outage while your neighbor has lights on, et cetera; is
10 that true?

11 A. I certainly couldn't agree with that
12 statement given the week that we've just had, because
13 people call in all the time saying my neighbor's got power
14 and I don't. But, you know, but that -- I'm sorry.
15 That's just the reality of a distribution system is -- is
16 that it isn't that a single subdivision is either on or
17 off, and -- but at the same time, I think that, you know,
18 that having neighbors with the same supplier discussing
19 things like bills, for example, it works out well that
20 they have that discussion and there's a commonality there.

21 Q. And isn't it true that -- that when
22 neighbors are served by a diverse system of substations
23 and transmission lines and distribution lines, they can
24 have experiences that are different, one can be out, one
25 can be on?

1 A. That is true, but then again, I'll take it
2 down to a personal level. My mom had electricity and her
3 neighbor did not. They are served by the same coop. You
4 know, the -- the neighbor was out for three days. Mom was
5 not. So -- in this most recent ice storm, so it doesn't
6 hold that that -- you know, I mean it's really kind of a
7 personal thing to consumers these days, so I'm really
8 hesitant on this one.

9 Q. Let's just bring it a little closer. In
10 some of these micro-territorial agreements such as between
11 White River Electric at Branson and Empire, isn't it
12 possible that people on one street could have lights on
13 with Ozark Electric -- or with Empire and people on
14 another street be off who are on White River?

15 A. That's certainly possible.

16 Q. And that's because they're served by two
17 different systems?

18 A. That would be one of the factors.

19 Q. So the question I started off with was the
20 benefit to the ultimate inhabitants of Lakes of Schuyler
21 Ridge. Were we in agreement that a single supplier would
22 be a benefit to those persons?

23 A. I think that's the best -- the best way.

24 Q. Now, have you been able to find any benefit
25 at all for the Empire District Electric Company?

1 A. When you say the company, are you referring
2 to the company and the shareholders and that type of thing
3 or -- just so I'm -- just so I'm clear about --

4 MR. WILLIAMS: I want to object to it as
5 vague. I don't know what -- with regard to what? You
6 just said any benefit for Empire. With regard to what?

7 MR. WIDGER: Well, that's the whole point,
8 see. Seems like the only --

9 MR. WILLIAMS: Are you talking about the
10 territorial agreement, the application or something else?

11 BY MR. WIDGER:

12 Q. The problem with this territorial agreement
13 from Staff's viewpoint has been that it's not good enough
14 for Empire District. So what -- are there any benefits at
15 all that can conceivably be derived by the company, its
16 shareholders, its customers by approval of this
17 territorial agreement?

18 A. You said company.

19 Q. Its shareholders.

20 A. Shareholders.

21 Q. Its customers.

22 A. And customers. I'm trying to think real
23 hard about any possible benefits.

24 Q. Let me suggest --

25 A. The one benefit that was stated by Empire

1 was -- let me not misquote here. In the face of possible
2 annexation of the development by the City, it will provide
3 certainty as to the electric supplier in this particular
4 subdivision. And that particular reason why it is in the
5 public interest I was confounded by because when it's
6 prefaced by the fact that it's in the face of possible
7 annexation, the annexation kind of clears up the supply
8 situation instead of confusing it. So that -- that answer
9 confused me.

10 Q. Right, and maybe that goes back to our
11 prior discussion, because you and I have opposing views on
12 Empire's right to be there at all right now. If you'll --
13 you'll take kind of -- see my view, that right now Empire
14 is fulfilling Ozark's work.

15 A. And I've never heard that argument up until
16 this very morning and afternoon, and, you know, it's quite
17 frankly why Staff put in rebuttal testimony looking for a
18 real explanation of what is in the public interest for the
19 various groups, and that's what we tried to do in
20 rebuttal. And I'm sorry if I didn't ask that question
21 well enough to get that accomplished.

22 Q. Let's look at some other possibilities. Is
23 it in Empire's benefit to avoid duplication of facilities?

24 A. When you say Empire, I hesitate because
25 then I try to think of shareholders versus the customers,

1 and, you know, it's actually unclear to me. There could
2 be a situation where you could duplicate facilities but it
3 be in shareholders' best interests or even be in the
4 customers' best interests. So I don't think I can just
5 say without any specifics that it's a given.

6 Q. When Empire District brings its business
7 before the Commission, do you generally look at it from
8 the standpoint of the shareholders or the ultimate
9 ratepayers?

10 A. Staff is trying to look at both of those
11 groups as well as any other interests that may be there.
12 It doesn't necessarily -- isn't necessarily limited to
13 just Empire or just their customers.

14 Q. Who is most immediately impacted by
15 duplication of facilities, is it the person who lives in
16 an area or the shareholder elsewhere?

17 A. From an engineering standpoint, I guess I
18 would say that duplication of facilities in a specific
19 area most impacts those closest to it. They may or may
20 not be customers of the utility, but I think it starts to
21 have an impact on them if there is -- is excessive
22 facilities being built in.

23 Q. Can you agree with me that one of the
24 rationales for the territorial agreement law is to prevent
25 unnecessary duplication of facilities?

1 A. I'm sorry. I wasn't involved in the law
2 writing. I can't really say what that is. But I will
3 state that -- that I will agree with you that as a
4 practical matter that has been one of the real
5 considerations when you're talking about approving a
6 territorial agreement.

7 Q. So if the Legislature thought that
8 avoidance of duplication was a good idea, can you agree
9 that it's also a good idea and a benefit for Empire
10 District Electric Company?

11 A. All things being equal, yes.

12 Q. Okay. All right. We're talking about
13 benefits to Empire District. What about this: Would it
14 be a benefit for the Empire District to do this to
15 maintain a good relationship with the City of Republic, to
16 help the City of Republic solve a problem? Would that be
17 a benefit to have that good relationship with the City of
18 Republic?

19 A. I would -- I've honestly, with these now
20 three cases involved around this, struggled with how to
21 quantify good relationships with the City. I just really
22 honestly can't come up with a way to quantify that or
23 weigh that in. I've never considered that or seen that
24 considered as part of any other territorial agreement, but
25 I understand that that's -- that's what Empire, one of

1 Empire's goals has been stated, and I can't argue that
2 that isn't one of their goals.

3 Q. I'm sure -- we understand that you cannot
4 apply engineering analysis to matters of relationship, but
5 can you agree that politically, emotionally, whatever,
6 good relationships with the City are a good idea and a
7 benefit to the company?

8 A. As long as you still meet the other
9 obligations, things like enforcing your tariffs, that type
10 of thing, yes.

11 Q. Is it a benefit to the Empire District to
12 have good relationships with Ozark Electric?

13 A. Generally, I think it serves everyone well
14 when utilities cooperate as best they can.

15 Q. Can you see that this territorial agreement
16 may have anything to do with enhancing that relationship
17 and that be a benefit to the Empire District?

18 A. It -- it would probably have some benefit.

19 Q. Can you see that this agreement may enhance
20 Empire District's relationship with developers, and they
21 didn't get this particular subdivision, but it may have
22 enhanced their relationship with other developers?

23 A. I really don't see how that would play out,
24 but --

25 Q. Okay.

1 A. I'm sorry.

2 Q. All right. If this territorial agreement
3 helps the Empire District to avoid litigation, would that
4 be a benefit to the Empire District?

5 A. Again, the idea that Empire and
6 litigation -- being involved in litigation is new to me.
7 I really don't even have a -- I mean, there's always the
8 possibility of litigation on anything, I guess, so I just
9 really don't have any way to judge that, the relevance of
10 that.

11 Q. So the -- the standard we're looking at is
12 the territorial agreement must in total not be detrimental
13 to the public interest, and we've talked here, we've seen
14 benefit to the developer, benefit to the City, benefit to
15 Ozark. We've discussed the possibilities of benefit to
16 the Empire District. Is it your sense still that there is
17 a detriment that overcomes all those benefits that we've
18 discussed?

19 A. Well, first let me make sure that I'm on
20 the same page as you. You said the not detrimental
21 standard, but isn't this a package of three items, and
22 isn't -- isn't there also one of those items that has
23 the -- that has the higher standard to it? I mean, again,
24 I'm an engineer, but it's my understanding that --

25 Q. Well, I'm not sure.

1 A. -- that the --

2 Q. The change of supplier standard is for
3 reason other than rate differential and the public
4 interest.

5 A. Yeah, in the public interest.

6 Q. And the territorial agreement is that it
7 has to be in total not detrimental to public interest, and
8 I think the sale of facilities standard was that it not be
9 detrimental to Empire's.

10 A. Yeah.

11 Q. Okay. So are you saying that it's the
12 standard related to switch of customers, which is an
13 integral part of this, that raises the most problem?

14 A. I -- that's the most stringent standard
15 that's out there, and this is a package deal, just like
16 the previous case was a package deal, is the way I've been
17 considering this.

18 Q. And that's your judgment call?

19 A. No, not as an engineer, it's not my
20 judgment call at all. It's just -- it's just that's my
21 understanding.

22 MR. WIDGER: No further questions.

23 JUDGE VOSS: Empire?

24 MR. DUFFY: I have a proposal to toss out
25 to the parties and the Commission. We talked about and

1 there seems to be some concern about what position the
2 City of Republic has in regard to this proceeding. My
3 proposal would be that the parties agree, with the
4 Commission's consent, that we hold the record open for a
5 reasonable period of time, that a representative of Ozark
6 or Empire both contact the City and ask if they would be
7 willing to submit a letter on City letterhead that says,
8 yes, we're in support of this agreement, no, we're not,
9 just so that the record -- there would be some indication
10 in the record as to the official position of the City.

11 Would the parties be interested and the
12 Commission in having something like that or not?

13 JUDGE VOSS: Would the parties object to
14 that? Is there any party that would have a problem with
15 allowing the City to file a statement of their position?
16 I think it would only be beneficial to have --

17 MR. WIDGER: I think it's a good idea, but
18 I mean -- and that's fine. I'm not disagreeing with it,
19 but right now the City does not have a direct -- it has an
20 interest that might arise in that land, but it hasn't
21 annexed the land yet.

22 MR. DUFFY: Well, I'm just -- what I'm
23 doing is I'm trying -- I'm trying to solidify the
24 testimony you elicited from Mr. Prewitt that there was a
25 meeting, the City said they were in favor of this, and

1 just to get something in writing from them that indicates
2 that.

3 MR. WIDGER: That's fine.

4 MR. DUFFY: I don't know what a reasonable
5 period of time would be, but I'm going to suggest sometime
6 in the next 30 days or something like that, given the
7 holidays.

8 MR. WILLIAMS: Judge, Staff certainly
9 wouldn't oppose that. I don't know that it's necessary.
10 I think a lot of the evidence in this case technically is
11 hearsay anyway.

12 JUDGE VOSS: Although it has not been
13 objected to, so it's in evidence.

14 MR. DUFFY: I'm not hearing any opposition,
15 so what I'll do is I'll ask Empire's representatives to
16 contact the City immediately when we get back and find out
17 if the City, in fact, wants to do something. If they want
18 to, we'll get it filed as quickly as possible. If they
19 don't, we'll file something indicating that we've made the
20 contact and the City doesn't want to, so it's not left
21 hanging open.

22 JUDGE VOSS: I think Commissioner Clayton
23 had a question or comment.

24 COMMISSIONER CLAYTON: I think -- I think
25 knowing that if there is a position I think would be

1 helpful. I think it would complete the record in this
2 case. And although there is not a direct impact right
3 now, it seems to be an issue that could potentially come
4 up in the future, and trying to deal with future problems,
5 and since the nature of this case is an agreement, I think
6 it would be helpful to know if there is an objection for
7 future activities. So I think that would be helpful.

8 I don't -- I don't know what the most
9 appropriate way of submission. I know we've requested
10 affidavits in the past or statements of some sort of
11 position. I don't know if they're willing to do that.
12 But I think knowing where they stand would be helpful in
13 trying to avoid future problems, if the Commission does
14 approve this. Certainly.

15 MR. DUFFY: At this point I would simply
16 suggest that we maybe reserve a late-filed exhibit number,
17 and that Empire would take the obligation on itself to
18 file this letter, if there is one, from the City as a
19 late-filed exhibit or indicate that it's not going to
20 happen.

21 JUDGE VOSS: And what was the time frame
22 that you were thinking about, 30 days?

23 MR. DUFFY: Sometime in the next 30 days.
24 But like I said, since we haven't talked to the City about
25 this, I don't know how fast they can act on it.

1 JUDGE VOSS: Okay. For now let's wait for
2 30 days on that late-filed exhibit, and because it's going
3 to be an exhibit that is going to be entered into the
4 record, I'm going to give any party two days after it is
5 filed to object to it, two business days following the
6 objections to that exhibit being admitted into evidence.
7 If no objections are filed within that two business day
8 window, I'll admit it into evidence. Does that sound
9 reasonable to everyone?

10 MR. DUFFY: So if I understand correctly,
11 it's two days from when the exhibit's filed, not two days
12 from 30 days?

13 JUDGE VOSS: No, from when the exhibit is
14 filed.

15 MR. MILLS: Judge, can I have just one
16 second?

17 Do you want to shorten the time that's
18 provided in the rule from ten days to two days? Is that
19 your intention?

20 JUDGE VOSS: Well, this won't be a
21 pleading.

22 MR. MILLS: The Commission has a rule on
23 late-filed exhibits that allows ten days for objections to
24 be filed. I'm just asking whether you're shortening that
25 to two days.

1 JUDGE VOSS: Well, I was going to mainly
2 because it we're waiting 30 days it's delaying the
3 proceedings. If no one has an objection to delaying the
4 proceedings for a minimum of 40 days, or potentially 40
5 days before --

6 MR. MILLS: I don't anticipate that I'll
7 have an objection, but two days, it seems pretty short to
8 even look at it.

9 JUDGE VOSS: It is short.

10 MR. DUFFY: Would you take five?

11 MR. MILLS: Five would be fine.

12 JUDGE VOSS: Well, the only thing I was
13 thinking is with the briefing schedules, I'm assuming that
14 any late-filed exhibit would want to be in and in the
15 record prior to Briefs being due, and I was trying not to
16 drag this out to next year.

17 MR. DUFFY: I share Mr. Mills' concern. I
18 think maybe five days would be more reasonable than two.

19 MR. WILLIAMS: I have another proposal. We
20 could leave it with the rule and the parties could agree
21 if they don't have an objection to file something saying
22 that and that could very well shorten things up
23 considerably.

24 JUDGE VOSS: So leave it at ten. That
25 sounds fine.

1 MR. DUFFY: That works, too.

2 JUDGE VOSS: That will be late-filed
3 Exhibit 8. Leave that open.

4 While we're talking about late-filed
5 exhibits, there was a reference to the sale -- the sale
6 agreement and potentially failure of consideration under
7 that agreement. To my knowledge, that agreement's not in
8 the record anywhere, if you're trying to argue that a
9 benefit to the utility is that they will avoid potential
10 lawsuits for failure of consideration and you're asking
11 witnesses about that and that agreement's not even in the
12 record.

13 MR. WIDGER: I'm not referring to any
14 particular document, but obviously when one party says I
15 will sell this to you and the other says I will buy it
16 from you, in anticipation of Empire being the ultimate
17 provider, you know, there's agreement. I'm not referring
18 to any piece of paper.

19 JUDGE VOSS: Well, assuming that when the
20 sale occurred somebody signed something that says we're
21 giving you these facilities for X dollars, which would be
22 in the four corners doctrine, my understanding is that
23 would be the contract of sale for this facility. If
24 there's something else out there and you're asking
25 witnesses about it, lay witnesses about it, that was just

1 something that interested me.

2 MR. DUFFY: Okay. If we've hammered out
3 the proposal about something from the City of Republic,
4 then I guess it's my turn to ask cross-examination
5 questions, and my response is I have no questions at this
6 time.

7 JUDGE VOSS: Okay. Questions from the
8 Bench, Commissioner Murray?

9 COMMISSIONER MURRAY: Yes. Mr. Mills asked
10 all of the questions I was going to ask. So thank you.

11 JUDGE VOSS: Commissioner Appling?

12 COMMISSIONER CLAYTON: You can go.

13 COMMISSIONER APPLING: I'm always willing
14 to take the bait.

15 QUESTIONS BY COMMISSIONER APPLING:

16 Q. Anyway, Mr. Beck, let me ask you a
17 question. What were your druthers in this case? You
18 mentioned the moon. Do you remember that question?

19 A. Yes.

20 Q. If we approved this territorial agreement
21 and you was able to plug the moon back in, what would that
22 be?

23 A. Again, that was that we have a very large
24 area that we'd be dealing with in a territorial agreement,
25 eight and a half square miles. To give you kind of a

1 rough ballpark, this is a little less than a half a square
2 mile that we're talking about here. So -- and the other
3 thing that the eight and a half square mile area would
4 have done was, both the coop and the company would have
5 gotten service territory, where this is simply excluding
6 one party from an area but doing nothing else. They're
7 not getting a similar piece of property in return or
8 anything like that that's going to be their exclusive
9 territory.

10 So those would be -- that would be my
11 perfect world, but as was pointed out, that that's --
12 that's not what's being proposed here, but I just --
13 trying to answer the question as best I can.

14 COMMISSIONER APPLING: Thank you, sir.

15 JUDGE VOSS: Commissioner Clayton?

16 THE WITNESS: There's hardly any trees on
17 this property. I just want to state that up front.

18 QUESTIONS BY COMMISSIONER CLAYTON:

19 Q. Tell me about their vegetation management,
20 Mr. Beck. That's what I want to know.

21 A. And yes, it's an underground facility

22 Q. Is it underground?

23 A. Except for the main distribution line
24 coming in to the property, but -- yes it is.

25 Q. Did it stay on in the recent ice storm?

1 A. I certainly can say that I didn't hear
2 specifically from any customers, but I don't have any
3 knowledge one way or the other.

4 Q. But you don't know?

5 A. I do not.

6 Q. I didn't hear to the contrary. Okay. I
7 understand. Mr. Beck, I want to ask you just a couple of
8 general questions. Are you aware of -- of all of the
9 electrical providers in this region of the state? When I
10 say the region of the state, I mean within, say, a 50-mile
11 radius of the City of Republic.

12 A. Generally, yes.

13 Q. How many providers are there?

14 A. Well, the obvious kind of larger
15 providers --

16 Q. You've got Empire?

17 A. Yeah.

18 Q. You've got Ozark Cooperative?

19 A. Yeah. City --

20 Q. Anyone else?

21 A. City Utilities is right there close.

22 Q. Okay. That's within 50 -- within --

23 A. Yeah. This is basically -- what we're
24 talking about here is south of Republic, and just think of
25 City Utilities as being just north of Republic.

1 Q. Is Republic south of Springfield?

2 A. Yeah, kind of south and just a little west,
3 I believe, I would call it, too.

4 Q. How far is the -- is Republic from the city
5 of Springfield?

6 A. Approximately half a dozen miles at most,
7 something like that. That's just going off the top of my
8 head, but it was --

9 Q. And City Utilities, their service would
10 stop at the corporate boundaries of Springfield?

11 A. They have the right to serve outside the
12 city in certain situations.

13 Q. I know they do, but do you know in terms of
14 the vector towards Republic does -- in that part of the
15 region, does City Utilities -- City Utilities service stop
16 at the corporate boundary of Springfield?

17 A. Well, I'm sorry, I don't have a lot of
18 specific knowledge, but there was discussion this morning
19 about Brookline and serving Brookline, which is outside of
20 the city limits of --

21 Q. Towards Republic?

22 A. Towards Republic.

23 Q. What I'm trying to get at is, how many
24 providers are there between Springfield to Republic, in
25 that direction?

1 A. Basically, those are the three --

2 Q. Okay.

3 A. -- suppliers.

4 Q. That's it. How about south of Republic,
5 how many electric suppliers are there?

6 A. If you go far enough south, you know, you
7 can find other coops and that type of thing, but
8 realistically, Ozark is the member cooperative that would
9 be serving that area.

10 Q. Okay. Are you aware of their level of
11 service that they provide to their customers?

12 A. I don't have a lot of specific knowledge,
13 but I --

14 Q. Do you have any knowledge? Let me ask you
15 that way. Do you know whether they provide a quality
16 product to their customers or not?

17 A. I guess in -- in being a regulator, if we
18 don't hear about it, that's usually good news, but that's
19 the best I can tell you.

20 Q. Well, you guys are speaking in negatives.
21 It's very frustrating figuring out what you're saying. So
22 you're not aware one way or the other of the type of
23 service that Ozark would provide to their customers?

24 A. No, but I don't ever remember having a
25 customer complaint, and I do deal with those.

1 Q. So you don't know whether they provide
2 excellent service and you don't know whether they provide
3 bad service?

4 A. Not on an overall basis, I --

5 Q. So basically you don't know what level of
6 service that they're offering?

7 A. That's true.

8 COMMISSIONER CLAYTON: Okay. I don't think
9 I have any other questions for this witness. Thank you,
10 Mr. Beck.

11 QUESTIONS BY JUDGE VOSS:

12 Q. I just had one really. I think everybody
13 else has covered everything, and this is general, and in
14 testimony that was admitted without objection, Mr. Palmer
15 indicated that the developer wasn't able to pay for
16 facilities that Empire's already put into the subdivision.
17 Assuming that's true, would you consider it a benefit if
18 Empire's going to recoup its costs from Ozark, would that
19 be a benefit to Empire from this -- from the proposed
20 territorial agreement?

21 A. I guess it would be a benefit, if I could
22 explain, though.

23 Q. Please do.

24 A. The part that's frustrating about that is
25 the fact that the tariffs require the collection of those

1 fees prior to installing services, and so, you know, it's
2 kind of -- because of what happened now, there's this
3 possible benefit. It seems like someone chose to do
4 something different than the tariff said and now you get
5 to claim it as a benefit. Seems odd to me. But given
6 that qualification, yes, I think that could be viewed as a
7 benefit.

8 JUDGE VOSS: No further questions from me.
9 Any other questions from the Bench? Okay. Recross?

10 MR. MILLS: Just a couple of follow-ups.

11 RECROSS-EXAMINATION BY MR. MILLS:

12 Q. You were asked some questions about
13 benefits, and you were asked a question from Commissioner
14 Appling about if the Commission did approve the
15 application. If the Commission approves the application
16 as it's filed, who do you believe would suffer a
17 detriment, if anybody? When I say who, I mean individual
18 customers, companies, shareholders, cities, the whole
19 universe of people possibly, that people and entities
20 possibly affected, who would suffer a detriment?

21 A. I don't think the record is clear enough
22 that I can point to anyone that clearly will suffer a
23 detriment.

24 Q. Okay. You use -- you used the qualifier
25 clearly in there. Who do you think might probably suffer

1 a detriment?

2 A. No one comes to mind.

3 MR. MILLS: That's all I have. Thanks.

4 JUDGE VOSS: Ozark?

5 MR. WIDGER: No questions.

6 JUDGE VOSS: Empire?

7 MR. DUFFY: No questions.

8 JUDGE VOSS: Redirect?

9 MR. WILLIAMS: A few questions.

10 REDIRECT EXAMINATION BY MR. WILLIAMS:

11 Q. In response to questions by Mr. Mills
12 regarding the last case which involved a variance, a
13 variance request and a territorial agreement that involved
14 eight and a half square miles of territory, basically he
15 asked you whether the Commission would have -- the only
16 reason the Commission disapproved that agreement was
17 because of Staff's opposition. My question is, does the
18 Commission always adopt the Staff's position in a case?

19 A. No. And I thought about that afterwards,
20 and -- and ultimately the Commission makes its decisions
21 not based on who the witnesses are, but based on the
22 record, and I feel kind of bad about the way I stated
23 that.

24 Q. And doesn't the Commission independently --
25 couldn't the Commission have independently, and perhaps it

1 did, have considered the issue that Staff raised
2 regardless of whether Staff raised it?

3 A. That's certainly possible.

4 Q. Mr. Widger asked you a lot of questions
5 about why Empire's serving in the Lakes of Schuyler Ridge.
6 What's your understanding of what would cause Empire to
7 have to provide service in the Lakes of Schuyler Ridge?

8 A. Customer request and the fact that they
9 already have that area as part of their service area.

10 Q. And what would be the basis for Ozark
11 providing service in the Lakes of Schuyler Ridge?

12 A. I think again, a customer request I think
13 would initiate their responsibility.

14 Q. Empire has tariffs, does it not, that
15 govern the relationship between its customers and the
16 company?

17 A. Yes.

18 Q. And how are those relationships governed
19 when it's a cooperative and the customer? It can be Ozark
20 specific if you'd like.

21 A. They have tariffs also, but they're not
22 approved by the Commission, or they just really have their
23 own internal policies.

24 Q. You were asked by Mr. Widger about the
25 applicant's not having met their burden of proof in your

1 view. What is it that you view to be lacking?

2 A. I think that they just needed to clearly
3 state the various public entities and what the -- why it
4 was in the public interest for those entities. I don't
5 believe the record shows that.

6 Q. And in your experience, on what basis do
7 developers choose whether they take electric service from
8 a regulated utility or cooperative, in this case Empire
9 and Ozark?

10 A. I think they choose a lot of things. I
11 think economics is a primary consideration, but I don't
12 think it's the only thing, but that would be my primary
13 reason, and typically that means that the service provider
14 that's already close to that area is likely to be the one
15 that provides that service.

16 Q. Just for clarification, what did you mean
17 by economics?

18 A. The cost to install the facilities and the
19 things related to that, those costs, those facilities.

20 Q. Whose costs?

21 A. The developer's costs.

22 MR. WILLIAMS: No further questions.

23 JUDGE VOSS: Okay. Any questions from the
24 Bench? I don't see any other questions from the Bench, so
25 I would assume, Mr. Beck, you may step down.

1 MR. WILLIAMS: Judge, I would like to
2 request the Commission to take notice of page 868 of the
3 Official Manual of the State of Missouri, which shows that
4 the City of Republic as of the 2000 census had a
5 population of 8,438.

6 JUDGE VOSS: And what year was that?

7 MR. WILLIAMS: The Official Manual, the
8 year is 2005 through 2006.

9 JUDGE VOSS: Are there any objections to
10 that?

11 MR. MILLS: I'll just note for the record
12 that there is a new one out, I believe, newer official
13 record.

14 MR. WILLIAMS: But that won't show the 2000
15 census count.

16 MR. WIDGER: Let me just state that we will
17 stipulate and agree that this is a nonrural area.
18 However, that status is based on 2000 census, so I'm very
19 sure that it was over 1,500 people in the year 2000. The
20 census according to law that is -- okay. No problem.

21 JUDGE VOSS: Take note of that. Anything
22 else before I -- okay. Late-filed Exhibit 8, do we want
23 to designate who would file that? Ozark or Empire?

24 MR. DUFFY: Empire will undertake the
25 responsibility to contact the City of Ozark, determine if

1 they are willing to file -- if they're willing to provide
2 us with a letter. If they are, we would file it as
3 late-filed Exhibit 8 as soon as we get it. What did I
4 say? I'm sorry. City of Republic.

5 JUDGE VOSS: Okay. We're going to
6 initially set 30 days for that. What do you want to do
7 with briefing schedule?

8 MR. DUFFY: What kind of a briefing
9 schedule do the parties anticipate? It would seem to me
10 that the Staff is a proponent of a legal argument that we
11 haven't seen in a brief yet. So I think that maybe at
12 minimum there ought to be simultaneous Initial Briefs and
13 then simultaneous Reply Briefs so we have an opportunity
14 to respond to Staff's Brief. But I'm not wedded to any
15 particular time frame.

16 JUDGE VOSS: I'm assuming that people,
17 assuming the City provides it and it's not objected to,
18 would want to reference any letter from the City in those
19 Briefs. Then the briefing schedule needs to be protracted
20 out far enough that they can be in there, assuming that's
21 even an issue for the parties.

22 MR. DUFFY: I would -- just speaking for
23 myself, I would imagine that we'd want to avoid the
24 upcoming holidays, but an Initial Brief, simultaneous
25 Initial Brief, say, 30 days from now would not be

1 objectionable to me because I would certainly hope we'd be
2 able to get indication from the City before then what, if
3 anything, they're going to want to submit. It may be 20
4 days after that for replies, but I'm certainly willing to
5 work with all the parties. I'm just throwing that out.

6 JUDGE VOSS: Do the parties have an
7 objection to that, with the understanding that if the
8 City's letter is still pending, someone, the Commission
9 would entertain a motion to extend that?

10 MR. MILLS: When do we anticipate having
11 transcripts?

12 JUDGE VOSS: I assume two weeks. I would
13 ask the court reporter, two weeks?

14 THE REPORTER: That would be fine.

15 MR. MILLS: So then, roughly two weeks
16 after that would be when Briefs are due. That's okay with
17 me.

18 JUDGE VOSS: All right. Then I will make
19 Initial Briefs due approximately 30 days, and then Reply
20 Briefs 20 days thereafter, and if there is a problem with
21 the letter from the City and it gets in under the wire at
22 the last minute and people want to reference it in their
23 Brief, then I'll entertain motions for a short extension
24 to allow that to happen.

25 MR. WILLIAMS: Judge, are you planing to

1 issue a formal order that sets specific days?

2 JUDGE VOSS: Well, I was making this notice
3 now, but I was going to issue a notice setting those dates
4 today. Is there anything else we need to address before
5 we go off the record? Oh, by the way, Mr. Beck, you're
6 excused in case --

7 THE WITNESS: Waiting for an opportunity to
8 escape.

9 JUDGE VOSS: Is there anything else we need
10 to address before we go off the record? Hearing none,
11 this concludes the on the record presentation. Thank you.

12 WHEREUPON, the hearing of this case was
13 concluded.

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)

5 I, Kellene K. Feddersen, Certified
6 Shorthand Reporter with the firm of Midwest Litigation
7 Services, and Notary Public within and for the State of
8 Missouri, do hereby certify that I was personally present
9 at the proceedings had in the above-entitled cause at the
10 time and place set forth in the caption sheet thereof;
11 that I then and there took down in Stenotype the
12 proceedings had; and that the foregoing is a full, true
13 and correct transcript of such Stenotype notes so made at
14 such time and place.

15 Given at my office in the City of
16 Jefferson, County of Cole, State of Missouri.

17 Kellene K. Feddersen, RPR, CSR, CCR
18 Notary Public (County of Cole)
19 My commission expires March 28, 2009.
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