

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5
6 Evidentiary Hearing
7 October 10, 2017
8 Jefferson City, Missouri
9 Volume 2
10
11
12 In The Matter of the)
Application of Brandon)
13 Jessip for Change of) File No. EO-2017-0277
Electric Supplier from)
14 Empire District Electric to)
New-Mac Electric.)
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17
18 MICHAEL BUSHMANN, Presiding
19 SENIOR REGULATORY LAW JUDGE
DANIEL Y. HALL, Chairman,
COMMISSIONERS
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24 REPORTED BY:
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1 P R O C E E D I N G S

2 (The hearing commenced at 9:18 a.m.)

3 JUDGE BUSHMANN: All right. Let's bring
4 this proceeding to order. We're on the record.

5 Good morning. Today is Tuesday,
6 October 10th, 2017. The Commission has set this
7 time for an evidentiary hearing in the matter of the
8 application of Brandon Jessip for change of electric
9 supplier from Empire District Electric to New-Mac
10 Electric, File No. E0 -- excuse me, EO-2017-0277.

11 Let's start with making entries of
12 appearance.

13 Mr. Jessip, on the telephone, am I
14 correct that you'll be representing yourself in this
15 matter today?

16 MR. JESSIP: That is correct.

17 JUDGE BUSHMANN: And appearance by the
18 Empire District Electric Company.

19 MS. CARTER: Diana Carter with Brydon,
20 Swearngen & England, appearing for the Empire
21 District Electric Company, and the court reporter
22 has my written entry with my contact information.

23 JUDGE BUSHMANN: Thank you.

24 For New-Mac Electric Cooperative,
25 Incorporated.

1 MS. RAY: Megan Ray with Andereck,
2 Evans, Widger, Lewis & Figg, and I believe the court
3 reporter has my information as well.

4 JUDGE BUSHMANN: Commission Staff.

5 MR. WILLIAMS: Nathan Williams, deputy
6 staff counsel, P.O. Box 360, Jefferson City,
7 Missouri, 65102.

8 JUDGE BUSHMANN: And I don't believe
9 there's anybody here from public counsel.

10 My name is Michael Bushmann. I'm the
11 regulatory law judge that will be presiding over the
12 hearing.

13 The issues in this hearing are: (1)
14 Whether Empire has the lawful right to continue to
15 serve any of the structures on the Jessip's property
16 on Nighthawk Road in Neosho, Missouri; and (2) If
17 so, is it in the public interest for a reason other
18 than a rate differential for those structures to be
19 served by New-Mac Electric Cooperative rather than
20 the Empire District Electric Company. And today's
21 hearing the parties will first present opening
22 statements.

23 And, Mr. Jessip, so you're aware, an
24 opening statement is not your testimony, but is just
25 a brief summary of what your evidence would show,

1 and you do have the option whether you want to make
2 an opening statement or not.

3 After the parties have made opening
4 statements, Mr. Jessip will provide his testimony,
5 followed by witnesses from Commission Staff and
6 Empire. Each party will have the right to ask
7 questions of the opposing party's witnesses.

8 Mr. Jessip, do you have any questions
9 about the procedures we're going to follow today?

10 MR. JESSIP: No, sir. Thank you.

11 JUDGE BUSHMANN: Very good.

12 Before we get started, I remind people
13 in the audience to, please, silence any mobile
14 devices you might have.

15 Do any attorneys need to premark any
16 exhibits at this point?

17 MS. CARTER: No, Judge.

18 JUDGE BUSHMANN: Very good. In that
19 case, we'll go ahead and move to opening statements.

20 Mr. Jessip, did you want to make an
21 opening statement this morning?

22 MR. JESSIP: I don't believe it's
23 necessary.

24 JUDGE BUSHMANN: Very good.

25 The next opening would be by Commission

1 Staff.

2 MR. WILLIAMS: Briefly.

3 Staff anticipates that in this case the
4 evidence will not show when Empire was serving this
5 property other than a brief period between September
6 of 2014 and January of 2015 when Empire did provide
7 electric service to something on the property.

8 Mr. Jessip has indicated that was a well, and Staff
9 believes that that service was really temporary in
10 nature; and therefore, Empire doesn't have the right
11 to continue to serve and that the structure that was
12 being served at least at this point is indefinite.
13 So, for those reasons Staff believes that Empire is
14 not going to be able to demonstrate that it has a
15 right to continue to serve on this property.

16 Barring that, in the event the
17 Commission believes that Empire was providing
18 permanent service to a structure on the property,
19 one or more structures, Staff believes that
20 Mr. Jessip under the circumstances here where the
21 property was abandoned when Mr. Jessip acquired it
22 in late 2013 or early 2014 was, in a -- the dwelling
23 on the premises was uninhabitable, and Mr. Jessip
24 initially decided to demolish the house on this plot
25 of ground and had Empire provide electric service to

1 provide electricity to a well for purposes of
2 watering some livestock. And because he was
3 disenchanted with Empire's responses to his
4 disbelief in the amount of the billings that he
5 received from Empire -- and it's not shown, at least
6 it's not known at this point that those -- that his
7 dislike of those billings was due to the rates that
8 was being -- were being charged. It apparently was
9 because he thought that the usage was excessive, and
10 he's expressed dissatisfaction with how Empire
11 responded to his dislike of the billings. And in
12 this instance both New-Mac and Empire have nearby
13 facilities that can readily be accessed to serve all
14 of the structures on Mr. Jessip's property. For
15 these reasons, it's staff's position that in the
16 event the Commission believes that a change of
17 supplier must be ordered, that Mr. Jessip has shown
18 that it should be done for a reason other than a
19 rate differential -- or the evidence will show that.

20 And Staff will have Mr. Dan Beck as a
21 witness who has been down to the property and
22 visited it on-site and can tell you -- provide
23 information about what structures are where and what
24 facilities are where currently on the property.

25 JUDGE BUSHMANN: Questions?

1 CHAIRMAN HALL: Yeah.

2 Good morning. You indicate that the
3 service that Empire -- or you believe that the
4 testimony will, will show that the electric service
5 that Empire was providing was, quote, temporary in
6 nature. What is the legal significance of
7 "temporary in nature"?

8 MR. WILLIAMS: To have the right to
9 continue to serve, you must be providing service
10 through a permanent structure -- to a structure and
11 it must be permanent service.

12 CHAIRMAN HALL: So, there's case law
13 that, that draws that distinction between -- or a
14 statutory basis for, for drawing that distinction?

15 MR. WILLIAMS: It's statutory and there
16 is some case law.

17 CHAIRMAN HALL: What is the statutory
18 cite that you're referring to?

19 MR. WILLIAMS: I believe it's 393.106 or
20 386. Let me get the right -- make sure I have the
21 right statutory cite. It's, yeah, 393.106.

22 CHAIRMAN HALL: Okay. Lead me to it,
23 please.

24 MR. WILLIAMS: Very first definition of
25 permanent service, "Electrical service provided

1 through facilities which have been permanently
2 installed on a structure and which are designed to
3 provide electric service for the structure's
4 anticipated needs for the indefinite future, as
5 contrasted with facilities installed temporarily to
6 provide electrical service during construction.
7 Service provided temporarily shall be at the risk of
8 the electrical supplier and shall not be
9 determinative of the rights of the provider or
10 recipient of permanent service."

11 And then if you look at subsection two,
12 not on the definitions, but, "Once an electrical
13 corporation or joint municipal utility commission,
14 or its predecessor in interest, lawfully commences
15 supplying retail electric energy to a structure
16 through permanent service facilities, it shall have
17 the right to continue serving such structure, and
18 other supplies of electrical energy shall not have
19 the right to provide service to the structure except
20 as might be otherwise permitted in the context of
21 municipal annexation, pursuant to 386.800 and
22 section 394.080, or pursuant to a territorial
23 agreement approved under section 394.312."

24 CHAIRMAN HALL: Okay. So, you believe
25 that the, the evidence will show that there was

1 service provided from what date to what date?

2 MR. WILLIAMS: I believe it will
3 September 8th of 2014 through January 12th of 2015,
4 and I believe that service was -- from what I know
5 at this point, I anticipate it will only be service
6 to a well. My understanding is there's a well house
7 on the property.

8 CHAIRMAN HALL: And, and there was only
9 one meter, correct?

10 MR. WILLIAMS: My understanding is
11 before Empire removed its facilities, it had a meter
12 on a pole and then lines ran from the pole to
13 different places on the property.

14 CHAIRMAN HALL: To a well, to a barn,
15 and to a house; is that...?

16 MR. WILLIAMS: I believe that is
17 correct, but Mr. Jessip should be able to testify to
18 that.

19 CHAIRMAN HALL: Do you believe that the
20 Commission has the authority to, to, to order
21 New-Mac to provide service?

22 MR. WILLIAMS: I think it has the
23 authority to permit New-Mac to, to authorize it to.
24 I don't know that they have the authority to require
25 New-Mac to, but it's my understanding that New-Mac

1 will if the Commission says that a change of
2 supplier is appropriate in the circumstance. We can
3 certainly ask New-Mac and so...

4 CHAIRMAN HALL: And what is Staff's
5 position as to why, why it would be in the public
6 interest to, to authorize a change in service
7 provider if the -- if the Commission were to
8 determine that the flip-flop statute is, is
9 applicable?

10 MR. WILLIAMS: Basically, in the
11 circumstance, at this present point in time there
12 are no facilities being used by either New-Mac or
13 Empire to serve any of the structures on the
14 property. So, it's Staff's view that given the
15 burdens that are imposed on the real estate,
16 30 acres that Mr. Jessip has, Empire has easements,
17 New-Mac has easements. In fact, it's my
18 understanding that if you look at the east edge of
19 the property line, that is an Empire line, and then
20 if you go basically to the center of the property
21 and run from the north to the south, there's a
22 New-Mac line that runs there. So, the 30 acres of
23 land already has both providers taking easements
24 across it. So, in the Staff's view, at this point
25 in time it's almost like new service and that it

1 would be in the public interest to allow Mr. Jessip
2 to choose a supplier, particularly whenever he's
3 disenchanted with Empire from past interactions.

4 CHAIRMAN HALL: And does Empire have a
5 defined service territory?

6 MR. WILLIAMS: Yes.

7 CHAIRMAN HALL: And so, is this property
8 within that service territory, in that defined
9 service territory?

10 MR. WILLIAMS: Yes.

11 CHAIRMAN HALL: Is that relevant?

12 MR. WILLIAMS: Yes.

13 CHAIRMAN HALL: How so?

14 MR. WILLIAMS: It authorizes Empire to
15 serve the property, and the Commission has authority
16 over Empire as to the terms and conditions of rates
17 at which it provides that service.

18 CHAIRMAN HALL: Why is it not
19 dispositive?

20 MR. WILLIAMS: Because New-Mac also has
21 a right to serve.

22 CHAIRMAN HALL: They have a right to
23 serve within Empire's service territory?

24 MR. WILLIAMS: Correct.

25 CHAIRMAN HALL: Explain.

1 MR. WILLIAMS: Cooperatives and -- in
2 Missouri, unlike some other states, cooperatives and
3 investor-owned utilities may have overlapping
4 service areas unless they've done something like a
5 territorial agreement where they've defined
6 boundaries between them. There are places in
7 Missouri where you can be served by more than one
8 provider potentially.

9 CHAIRMAN HALL: Okay. Thank you.

10 JUDGE BUSHMANN: Opening by New-Mac.

11 MS. RAY: New-Mac anticipates the
12 evidence will show that the residential building at
13 issue in this case is a structure as defined by
14 statute and that the service Empire previously
15 provided to the structure was, in fact, permanent
16 service. And New-Mac's position is also that
17 because Empire once provided permanent service to
18 this structure, the anti-flip-flop law does apply in
19 this case and that New-Mac is prohibited from
20 serving the structure absent a finding by the Public
21 Service Commission for the basis that is in the
22 public interest for reasons other than a rate
23 differential.

24 We anticipate the evidence will show
25 that Empire served the structure as early as

1 January 1st of 1980 through permanent service.

2 If the Commission is inclined to order
3 New-Mac to serve the structure, New-Mac is ready,
4 willing, and able to serve the structure, but
5 New-Mac requests that the Commission issue a finding
6 that the anti-flip-flop law does apply in this case,
7 and if you order New-Mac to serve, we request that
8 it's for reasons in the public interest and other
9 than for a rate differential.

10 JUDGE BUSHMANN: Questions?

11 CHAIRMAN HALL: Good morning.

12 MS. RAY: Morning.

13 CHAIRMAN HALL: So, New-Mac is, is
14 prepared to provide service if the -- if the
15 Commission issues an order authorizing it to do so?

16 MS. RAY: That's correct. We actually
17 have a line existing on Mr. Jessip's property
18 currently.

19 CHAIRMAN HALL: How far away from the
20 structure is that?

21 MS. RAY: My understanding is what would
22 be required to serve Mr. Jessip's structure is a few
23 hundred feet of line being extended to his residence
24 and also the installation of a pole and some
25 guy-wires.

1 CHAIRMAN HALL: And do you have a
2 witness for this hearing?

3 MS. RAY: I do not.

4 CHAIRMAN HALL: What is your basis for
5 believing that service was provided as early as
6 1980?

7 MS. RAY: Some of the prefiled testimony
8 from Empire's witness provided documentation and
9 testimony to that effect.

10 CHAIRMAN HALL: Okay. Why -- this is
11 going to be an odd question, but I don't know how to
12 frame it in a way that's not. Why are you taking
13 the position you're taking here? Is it -- is it
14 just a principled basis that this is -- this is the
15 co-op's view of the law and the law must be
16 followed, or is there something? I'm trying to
17 figure out what, what your objective here is.

18 MS. RAY: Sure. No. You're correct.

19 The only protection electric
20 cooperatives have on their service territory,
21 essentially absent a territorial agreement, is this
22 anti-flip-flop law. The only way that we know we
23 can invest in providing service to a facility and
24 we'll always be able to provide that service is
25 through the anti-flip-flop law. If that didn't

1 exist, we could make an investment in providing
2 service to structures and the customer could decide
3 the next -- the next day that they're not happy with
4 us for some reason and switch to a different utility
5 and we've invested all of that into that facility.

6 CHAIRMAN HALL: Okay. That makes sense.
7 Thank you.

8 MS. RAY: Thank you.

9 JUDGE BUSHMANN: Thank you.

10 Opening by Empire.

11 MS. CARTER: Thank you.

12 Chairman, you were asking questions
13 right then about why New-Mac was taking the position
14 it is in this case, and New-Mac and Empire are
15 taking the same position in this case on the statute
16 and for the same reasons. It is very important for
17 the regulated utilities, as well as the cooperatives
18 that the statute be enforced. All of the electric
19 providers, they can't be put in the position of
20 installing facilities if a customer can just decide
21 they don't like their provider and then make a
22 change, which is what the situation is here.

23 Empire's records go back to 1980,
24 January 1 of 1980. Empire knows that it has been
25 serving the property as of January 1, 1980. Because

1 the records do not go back prior to that, Empire
2 does not have documentation of exactly when service
3 started, but Empire knows that service was being
4 provided as of January 1, 1980, and continued
5 through 2010 to the home that is on this property.

6 The statute is clear and unam -- excuse
7 me, unambiguous. There is -- there is no question
8 on it. The terms are quite clear. Empire's
9 statement of position, the entire statute is set
10 forth on page 2, and then on page 3 of our statement
11 of position it breaks down the statute in a table
12 with then the corresponding uncontroverted facts
13 that show that that portion of the statute has been
14 satisfied.

15 There is no dispute that Empire is an
16 electric corporation and a public utility, which is
17 the first step in the statute. There is no evidence
18 that will be presented contrary to Empire's
19 testimony that it was providing permanent electric
20 service as far back as 1980.

21 As structure is defined in the statute
22 and as well as permanent service, and both are
23 clearly met by the facts in this case, and
24 Mr. Williams read from the statute on how permanent
25 service is defined. In this case it was not for

1 construction. Electric service was provided to a
2 home for decades and then after the home was no
3 longer being used, the Jessip's asked for power to
4 be turned back on to the property and use the
5 electric service, metered at the home, in order to
6 run a well on the property. That also is a
7 structure, a well according to the definition of a
8 structure. The home is a structure under the
9 statute. There should not be a question that the
10 statute applies in this case. It's clear on its
11 terms -- excuse me, on its face and there's no
12 evidence to counter the prefiled testimony of Empire
13 that Empire had been providing service to this
14 property for decades.

15 The question then is whether the change
16 of supplier is in the public interest, and the issue
17 we have here is that basically it comes down to
18 Mr. Jessip doesn't like Empire. There's no issues
19 about service quality, disruption, damages, the
20 things the Commission has looked at in the past that
21 would justify a change of supplier aren't present
22 here. In Empire's position statement on pages 7 and
23 8 it sets forth the factors that the Commission used
24 previously and then addresses what the testimony in
25 this case is regarding each of those factors. The

1 only thing here is Mr. Jessip's preference, and it
2 is Empire's position that legally that does not
3 serve the public interest to order a change of
4 supplier based solely on customer's preference.

5 Empire's witness is Patsy Mulvaney and
6 she's been with Empire for almost 15 years. It will
7 be 15 years at the end of this year. And she has
8 provided testimony regarding the service provided to
9 the property and the only call that the Jessip's
10 have with Empire regarding their service, which was
11 simply a question about bills and then the Jessip's
12 decided to terminate service.

13 Empire removed facilities from the
14 property at the direction of the Jessip's. Empire
15 did not make a decision to abandon service to this
16 property. They were told to remove their facilities
17 by the Jessip's and, so, they removed just the drop
18 wire. Testimony in this case will show that
19 Empire's drop pole is located very close to the
20 home, the structure that we're talking about, and
21 that all that needs to be done is approximately 70
22 feet of service line would need to be rehung in
23 order for service to again be provided to the
24 property by Empire.

25 That's all I have.

1 JUDGE BUSHMANN: Questions?

2 CHAIRMAN HALL: No. No questions.

3 Thank you.

4 MS. CARTER: Thank you.

5 JUDGE BUSHMANN: Thank you.

6 Let's now go to witness testimony. And
7 the first witness will be Mr. Jessip.

8 BRANDON JESSIP,
9 having been called as a witness herein, having been
10 first duly sworn, was examined and testified as
11 follows:

12 DIRECT EXAMINATION

13 BY JUDGE BUSHMANN

14 Q. Would you, please, state your name and
15 spell your name.

16 A. Brandon Jessip. B-R-A-N-D-O-N.
17 J-E-S-S-I-P.

18 Q. Where do you currently reside?

19 A. 11728 Palm Road in Neosho, Missouri.

20 Q. How long have you lived at that address?

21 A. Fifteen years.

22 Q. Do you have a copy of the information
23 that you submitted to the Commission on August 23rd,
24 2017?

25 A. Yes, sir, I do.

1 Q. And am I correct that there was a
2 one-page letter that you submitted; is that correct?

3 A. Yes, sir.

4 Q. That document has been marked as Exhibit
5 1. Did you prepare that document?

6 A. I did.

7 Q. Was it your intention for this to be
8 submitted as your direct testimony in the case?

9 A. Yes, sir.

10 Q. Do you have any corrections you need to
11 make to that testimony?

12 A. There's one thing that, that I would
13 like to clarify.

14 Q. Is it just a correction to the wording
15 of the document or is it something you want to
16 explain later?

17 A. I can explain it later.

18 Q. Okay. Is the -- is the testimony, the
19 words on that document correct?

20 A. Yes, sir.

21 Q. And do you swear or affirm that the
22 information contained in Exhibit 1 is true and
23 correct according to your best knowledge and belief?

24 A. Yes, sir.

25

1 (Jessip's Exhibit 1 was offered into
2 evidence.)

3 JUDGE BUSHMANN: Are there any
4 objections to the receipt of Exhibit 1?

5 MS. CARTER: No objection.

6 JUDGE BUSHMANN: Hearing none. Exhibit
7 1 is received into the record as the direct
8 testimony of Brandon Jessip.

9 (Jessip's Exhibit 1 was received into
10 evidence.)

11 **Q. (By Judge Bushmann) Mr. Jessip, also at**
12 **the same time that you submitted Exhibit 1, did you**
13 **also submit several photographs?**

14 A. I did.

15 **Q. Those photographs have been marked as**
16 **Exhibits 2 through 8, and do you have a -- have**
17 **those available?**

18 A. I do.

19 **Q. Do you recognize those photographs?**

20 A. I do.

21 **Q. Who took those photographs?**

22 A. I did.

23 **Q. And could you, please, describe what**
24 **those photographs show?**

25 A. I believe they show my attempt to tear

1 down the property as I made clear when I asked
2 Empire to remove their service so I could safely do
3 so. It was after I'd began demolishing that it was
4 recommended to me by contractors to try to save the
5 structure. So, I honored my initial request and I'm
6 just trying to show in good faith that this, this
7 property has not been livable since I've owned it.

8 **Q. When you say property, can you tell me**
9 **what address that property is?**

10 A. The 11728 Palm Road -- I'm sorry. 7082
11 Nighthawk Road.

12 **Q. And that is the property that is at**
13 **dispute in this hearing today?**

14 A. Yes, sir.

15 **Q. Are Exhibits 2 through 8 true and**
16 **accurate representations of the property as you've**
17 **described?**

18 A. Yes, sir.

19 **Q. Was it your intention to offer those**
20 **exhibits as evidence in this case?**

21 A. Yes, sir.

22 (Jessip's Exhibits 2 through 8 were
23 offered into evidence.)

24 JUDGE BUSHMANN: Are there any
25 objections to the receipt of Exhibits 2 through 8?

1 Hearing none. They're received into the
2 record.

3 (Jessip's Exhibits 2 through 8 were
4 received into evidence.)

5 JUDGE BUSHMANN: So, the first
6 cross-examination would be by Commission Staff.

7 MR. WILLIAMS: Thank you, Judge.

8 CROSS-EXAMINATION

9 BY MR. WILLIAMS

10 **Q. Mr. Jessip, do you know anything about**
11 **the property at 7082 Nighthawk Road, Neosho,**
12 **Missouri, before you acquired it in late 2013 or**
13 **early 2014?**

14 A. Yes, sir. I was currently working for
15 my father-in-law who owns a 30-acre parcel right
16 across the street from it, and my wife and I had
17 plans to buy it as soon as it came on the market for
18 several years, I would -- I would guess five years
19 at the least.

20 **Q. So, you've --**

21 A. And that, that entire time it was
22 abandoned.

23 **Q. So, the first time you took notice at**
24 **least of the property was approximately 2008?**

25 A. Yeah, that sounds fair.

1 **Q. And what structures were on the property**
2 **at that time?**

3 A. There was the, the house as shown in the
4 pictures. It wasn't -- it hadn't been demolished
5 yet. It was still in a non-livable state. There's
6 a well house directly behind it. I'd say within
7 5 feet of center from the back wall of the home.
8 There's also a large barn and some livestock
9 structures, some lean-tos and sheds that aren't in
10 great shape.

11 **Q. Did you go on the property and actually**
12 **inspect the house and well house, barn, and**
13 **livestock at that time? You indicated the house was**
14 **uninhabitable.**

15 A. Yeah. We actually had permission to
16 take hay from the property and, so, we were over
17 there to keep coyotes and things down. So, we
18 had -- we had several times gone on the property.
19 We're also -- we also know the neighbors that
20 previously lived in the house and why they left.

21 **Q. How is it that you know why they left?**

22 A. They told me. There's also -- there's
23 also evidence to the fact. I mean, it's -- they
24 left because the septic tank was actually under an
25 addition to the home and that septic tank overflowed

1 underneath the home and that that's what rendered it
2 initially uninhabitable.

3 Q. Do you have a copy of Mr. Beck's
4 testimony that's been marked as Exhibit 100?

5 A. I'm not looking at it right now, but I
6 do have a copy of it.

7 Q. Can you get it out and look at it? It's
8 schedule --

9 A. I sure --

10 Q. -- DB-R2.

11 A. Okay.

12 Q. Do you recognize that?

13 A. I've read it, yes.

14 Q. Are you looking at Schedule DB-R2?

15 A. I'm looking at Mr. Beck's direct
16 testimony. The rebuttal testimony --

17 Q. It would be --

18 A. -- is that what you're referring to?

19 Q. I'm referring to schedules at the end of
20 it. It's a Google Map overhead view.

21 A. Oh, yeah. Okay.

22 Q. You're looking at Schedule DB-R2?

23 A. Yes. That's the property in question,
24 the center.

25 Q. Can you describe on that exhibit

1 **approximately where the boundary lines of the**
2 **property are?**

3 A. Yeah. There's actually two parcels in
4 my 30 acres. There's a 10-acre stretch that starts
5 just to -- just to the north of the trailers along
6 Nighthawk Road and then it's all the way -- it would
7 be due west I believe. Yeah, due west to the tree
8 line there and then all the way to the road in the
9 corner.

10 Q. I'm not sure that it shows up very well
11 **where the trailers are on this map. Can you**
12 **identify them --**

13 A. Okay.

14 Q. -- **better than that?**

15 A. There, there is several houses on --
16 there's a house on Nighthawk Road across on the east
17 side toward the bottom of the picture with the brown
18 roof. That's actually my in-law's home. Right
19 across the road there are several trailers and
20 there's a tree line that is pretty distinct that
21 runs along the fence. That is the southern boundary
22 of my property. It goes all the way down to another
23 tree line that's also clear that runs back to the
24 road that forms the western boundary. The northern
25 and eastern boundaries are Foliage Road and

1 Nighthawk Road respectively.

2 **Q. Where is the house -- or the structures**
3 **that are in question in this case, the house in**
4 **particular?**

5 A. The house is actually in the northeast
6 corner just to the south. You can see there's a
7 white structure, gray structure, and then there's
8 also a pond in, in the back. The house is the white
9 roof structure.

10 **Q. And where is the barn?**

11 A. The barn is the gray roof structure, and
12 the well house is actually obstructed by the oak
13 trees behind the house, but it's, it's directly to
14 underneath of the trees.

15 **Q. And when Empire had facilities on the**
16 **property, where were they located relative to**
17 **Nighthawk Road and the house?**

18 A. They were -- they were in the easement
19 along Nighthawk Road.

20 **Q. And what facilities did Empire have**
21 **there at the time you acquired the property?**

22 A. They had, I believe, a transformer and
23 they had a cable, what I believe is called a drop
24 wire that came in up to a telephone pole in the
25 yard. It was located in between the house and the

1 barn.

2 Q. And what structures did Empire remove at
3 your request?

4 A. That drop wire, they pulled the
5 telephone pole that was in the yard and left it and
6 then they took their transformer.

7 Q. Now, where does Empire have facilities
8 on your property currently?

9 A. They just have their service line that
10 runs along Nighthawk Road is my understanding.

11 Q. What's your understanding --

12 A. There's lines that run along Foliage
13 Road.

14 Q. Does New-Mac have any lines on your
15 property at Nighthawk Road?

16 A. Actually, the New-Mac's line runs
17 directly behind the house through the center of the
18 property. So, just behind the pond there are three
19 trees up against Foliage Road. They have a service
20 line that runs directly across my property from
21 north to south.

22 Q. Other than when you requested that
23 Empire turn on service in -- well, first of all,
24 when did you request that Empire turn on service to
25 your property at Nighthawk Road?

1 A. I agreed with the testimony provided
2 that it was September.

3 **Q. September of when?**

4 A. Off the top of my head, I believe we --
5 I believe we agreed to September of 2014. Is that
6 correct?

7 **Q. And when --**

8 A. Might have been 2013.

9 **Q. When did you ask that it be terminated?**

10 A. In January of the following year.

11 **Q. Do you have a copy of the rebuttal**
12 **testimony of Patsy J. Mulvaney with you?**

13 A. Is that the Staff's positions?

14 **Q. No. It would be Empire witness**
15 **testimony.**

16 A. I'm familiar with it. I'm pulling it up
17 now.

18 **Q. Have you seen the exhibits to that**
19 **testimony? It's Exhibits PJM-1.**

20 A. Have that now. Yes, I'm looking at it
21 now.

22 **Q. Have you seen those exhibits before?**
23 **It's listed as -- or designated as Exhibit PJM-1,**
24 **but it's actually a series of bills. Looks like**
25 **there are five of them.**

1 A. I'm sorry. I'm not -- that's not on --
2 that's not on this particular testimony, but I am
3 familiar with the bills, yes.

4 Q. Do you or do you not have Exhibit PJM-1
5 in front of you?

6 A. I do not.

7 Q. Okay. You say you are familiar with the
8 bills. Do you recall the amounts that were billed
9 on them?

10 A. Yeah. They were in the neighborhood of
11 60 to \$100.

12 MR. WILLIAMS: Do we want to go into
13 in-camera on this about the bills or not? I'm
14 trying to get him to identify them, of course.

15 JUDGE BUSHMANN: I was waiting until
16 Mrs. Mulvaney was going to be discussing this and
17 offering this entire exhibit, which the entire
18 exhibit has been listed as confidential because it
19 contains customer-specific information. However,
20 the information similar to that is already included
21 in the record under Mr. Jessip's testimony. I don't
22 see anything particularly harmful or sensitive in
23 this testimony. So, I am going to be changing the
24 designation from confidential to public. So, I
25 don't think that we need to go in-camera to discuss

1 the exhibits.

2 MR. WILLIAMS: I'll ask Mr. Jessip.

3 Q. (By Mr. Williams) Mr. Jessip, do you
4 have any issue with me identifying the amounts on
5 the bills and asking you if you recall them and
6 whether they're true and correct to your best
7 information and belief?

8 A. I have no trouble with that, no.

9 Q. Okay. One of the bills included in
10 Exhibit PJM-1 shows a mail date of September 18th of
11 2014 and shows a total amount due of \$1.26. Is that
12 true and correct?

13 A. I would assume so, yes.

14 Q. There's another bill dated or that shows
15 a mail date of October 21st of 2014 that shows an
16 amount -- total amount due of 12.66; is that
17 correct?

18 A. That sounds right.

19 Q. And there's another one that shows a
20 mailing date of November 18th of 2014 in the total
21 amount of 25.49?

22 A. Uh-huh.

23 Q. Does that amount sound correct?

24 A. That sounds correct.

25 Q. There's another one dated December 17th

1 of 2014 in the total amount of 63.77. Does that
2 sound correct?

3 A. That sounds correct.

4 Q. And then there's a -- and another bill
5 dated January 13th of 2015 and the total amount is
6 75.14. Does that sound correct?

7 A. Yes, sir.

8 Q. Are those bills that you received for
9 services provided to 7082 Nighthawk Road, Neosho,
10 Missouri?

11 A. Yes, sir.

12 Q. And did you pay those bills?

13 A. I did.

14 Q. Did you get -- did you have any issues
15 with Empire's service during that period of time?

16 MS. CARTER: I would object to --

17 A. No, I did not.

18 MS. CARTER: I would object to
19 cross-examination questions being used to create
20 direct testimony from Mr. Jessip, unless Empire
21 would then also have an opportunity to respond to,
22 to new testimony that would constitute direct
23 testimony in the case. And I certainly understand
24 that this is a pro se litigant and that the rules
25 are not -- are not particularly clear to pro se

1 litigants regarding the need for prefiled testimony.
2 I would just ask, then, that Empire be given the
3 opportunity to provide rebuttal testimony if
4 necessary in response to new direct testimony.

5 JUDGE BUSHMANN: Well, I think if I just
6 caution counsel to avoid friendly cross, then
7 hopefully that would take care of the problem.

8 MR. WILLIAMS: Judge, I'm just trying to
9 get some facts out into the record so the Commission
10 has a full record upon which to make a decision.

11 JUDGE BUSHMANN: Go ahead.

12 Q. (By Mr. Williams) Mr. Jessip, why did
13 you terminate service at -- from Empire at 7082
14 Nighthawk Road?

15 A. Well, we originally had turned the --
16 turned the power on with an expectation that we were
17 just going to run a well and that, that the bills
18 wouldn't approach the 60, \$75 mark. I had a
19 discussion with Empire about the amounts of those
20 bills and when they basically told me that there was
21 nothing that they could do and it was my problem, we
22 didn't need the service to begin with and it wasn't
23 in our budget to maintain it, so we turned it off.

24 Q. And for what purposes were you using the
25 service at 7082 Nighthawk Road that you were

1 **receiving from Empire during that period of time?**

2 A. All I was wanting to do is water about
3 18 chickens and in the future some cows that I never
4 got.

5 **Q. To which structures on the property was**
6 **electric service being provided at that time, if you**
7 **know?**

8 A. Well, there was the weatherhead on their
9 well that went into a meter loop on the house and it
10 also serviced the barn, the gray structure in the
11 photo, and also it went to my well.

12 **Q. Where did you actually use electricity**
13 **during that period of time?**

14 A. Just at the well.

15 **Q. Mr. Jessip, I'm going to go back to**
16 **Schedule DB-R2. Is that a true and accurate**
17 **depiction of the location of the barn, the house,**
18 **and you described where the well is on that property**
19 **and the location or general overview of the property**
20 **at 7082 Nighthawk Road?**

21 A. Yes.

22 MR. WILLIAMS: Judge, at this time I'd
23 offer Schedule DB-R2.

24 JUDGE BUSHMANN: Why don't we wait until
25 Mr. Beck. It's part of his testimony, isn't it?

1 MR. WILLIAMS: Well, Mr. Jessip's
2 identified it as true and accurate representation of
3 the property. That's all it's...

4 JUDGE BUSHMANN: Why don't we wait and
5 offer it all at one time.

6 MR. WILLIAMS: Your preference.

7 Q. (By Mr. Williams) Mr. Jessip, I believe
8 you had testified that there was no service to the
9 property before you acquired it for at least five
10 years; is that correct? No electric service?

11 A. I can testify -- I can testify that
12 nobody lived there.

13 Q. Do you know if --

14 A. Whether or not they had -- whether or
15 not they had an agreement with Empire to have
16 service, I don't know. I can't speak to that, but
17 nobody lived there for at least five years.

18 Q. But you don't know if Empire had -- was
19 providing service to any of the structures on the
20 property or not?

21 A. I can't imagine why they would be. I
22 mean, the property has been abandoned and it was
23 bank owned. So, I mean, if they -- if they
24 testified that they had service in 2010, I would
25 contest that just because there was nobody there to

1 use it or to have a contract with them, but I
2 can't -- I can't speak to that fact. I know that no
3 one lived on the property for at least five years.

4 **Q. And when you say five years, you mean**
5 **prior to whenever you acquired it in early 2014?**

6 **A. Yes, sir.**

7 **MR. WILLIAMS:** Judge, I think I've asked
8 all I would like to of this witness at this time.

9 **JUDGE BUSHMANN:** Cross by New-Mac.

10 **MS. RAY:** Mr. Jessip, this is --

11 **JUDGE BUSHMANN:** Be sure and turn your
12 microphone on.

13 **CROSS-EXAMINATION**

14 **BY MS. RAY**

15 **Q. Mr. Jessip, this is Megan Ray. I'm**
16 **attorney for New-Mac.**

17 **Are you able to hear me?**

18 **A. I can.**

19 **Q. Okay. Great. I just have a few**
20 **questions for you.**

21 **You stated in your prefiled direct**
22 **testimony that at points in the past you fully**
23 **intended to demolish the structure on your property;**
24 **is that right?**

25 **A. That is correct. My, my wife and I**

1 bought the property for the sole purpose of building
2 a house toward the center of the property. We never
3 intended on remodeling or maintaining the structure
4 that exists now.

5 **Q. And is it correct that you did not**
6 **actually demolish the structure?**

7 A. Short of -- short of knocking down the
8 four walls and the roof, we've done all but; but
9 yes, there is still a standing structure.

10 **Q. And so, at all points during your**
11 **ownership of this property there was at least four**
12 **walls and a roof of this structure existing on your**
13 **property?**

14 A. Well, not at all points. I, I recently
15 paid a contractor about \$3,000 to put two new walls
16 up as they were completely destroyed by termites.

17 **Q. Is the roof that's existing on your**
18 **residential structure now, parts of that, were those**
19 **existing prior to when you purchased the structure?**

20 A. Yes. The roof is, is the same roof.

21 **Q. And I assume the roof has always been**
22 **supported by walls, whether two or four, is that**
23 **right, since you've owned the property?**

24 A. Yeah. Two-and-a-half is fair.

25 **Q. And instead of actually demolishing the**

1 **entire structure, you actually began repairing it;**
2 **is that right?**

3 A. I'm sorry. What was the question?

4 **Q. Instead of actually demolishing the**
5 **residential structure on your property, you actually**
6 **began remodeling it or repairing it; is that right?**

7 A. Actually, no. What happened was as I
8 was demolishing, I began getting advice to try and
9 save the structure, the roof is in good shape, and
10 as they began to make those recommendations we
11 started to consider saving the structure, yes. At
12 which point I wanted to engage a contractor to help
13 me put it back together and I reached out to newt --
14 I'm sorry, New-Mac to set up service and that's what
15 got this ball rolling.

16 **Q. Do you know when this residential**
17 **structure was initially constructed?**

18 A. I do not know exactly when it was
19 originally constructed, but I know that at some
20 point about ten years ago it suffered a catastrophic
21 fire and it was remodeled, which is what caused the
22 issue of it was actually remodeled and new structure
23 was built out over the existing septic tank.

24 **Q. You acknowledge that Empire has served**
25 **this structure through permanent service in the**

1 past; is that correct?

2 A. Yeah, I'm sure they have.

3 Q. And at one point when they served the
4 structure, you were the customer of Empire; is that
5 right?

6 A. Yeah, that short -- that brief period of
7 time I was, yes.

8 Q. And is it your also -- your
9 understanding also that at some point prior to your
10 ownership of the structure, it was also served by
11 New-Mac -- I'm sorry, it was served by Empire --

12 A. Yes, I do understand that.

13 Q. To your knowledge, has any utility other
14 than Empire ever provided electric service to this
15 structure?

16 A. No.

17 MS. RAY: That's all the questions I
18 have.

19 JUDGE BUSHMANN: Cross by Empire.

20 MS. CARTER: Thank you.

21 CROSS-EXAMINATION

22 BY MS. CARTER

23 Q. Mr. Jessip, this is Diana Carter. I
24 have a few questions for you on behalf of the Empire
25 District Electric Company.

1 A few minutes ago Mr. Williams asked you
2 about the bills that are attached to Ms. Mulvaney's
3 testimony. Do you still have those there with you?

4 A. Yes, ma'am.

5 Q. What equipment, if you know, was used by
6 Empire to provide electric service at that time?

7 A. As I previously stated, there was a
8 transformer out by the road and some cabling.

9 Q. And where was the meter at that time
10 when you were receiving service?

11 A. I believe the meter -- there was --
12 there's actually two meter boxes and if I recall,
13 the, the meter was on the telephone pole that
14 existed in between the two structures.

15 Q. Was there a meter on the house on the
16 property?

17 A. There, there's a meter -- if my memory
18 serves me correctly, there was a meter box on the
19 house itself, but it was -- it was idol. It wasn't
20 used. That was only there because the drop cables
21 went from the telephone pole to each individual
22 structure. So, it was part of the weatherhead, but
23 the meter itself was on a telephone pole.

24 Q. So, a drop wire went right to the home
25 that was on the property?

1 A. That's correct. Well, it went from the
2 transformer to a telephone pole in the yard and then
3 it went from the telephone pole to the house.

4 **Q. And at the time you received service**
5 **from Empire, was that in order for you to do**
6 **temporary construction on the property?**

7 A. No, ma'am. At that time I was planning
8 on tearing the house down. The only reason I had
9 service turned on was the well itself to, to water
10 livestock.

11 **Q. And when was the well created?**

12 A. To the best of my knowledge, it's been
13 there as long as the house has.

14 **Q. More than ten years?**

15 A. I'm sure.

16 **Q. You also testified earlier that you**
17 **spoke with a tenant who used to live in the house**
18 **that is currently on the property; is that correct?**

19 A. Yes, ma'am. The, the neighbors that
20 lived in that house are actually friends of the
21 family. When they -- they sold it to a different
22 couple. So, the, the previous tenants we knew and
23 have spoken with.

24 **Q. What are the names of those tenants that**
25 **you're speaking of?**

1 A. Well, she is married now, but her maiden
2 name was the Busker's. I don't know their first
3 name. The, the property owners were the parents of
4 my friends.

5 **Q. When did they live in the house?**

6 A. Well, they lived there for probably 25
7 years.

8 **Q. And it's the house that is still on the**
9 **property?**

10 A. Yes, ma'am.

11 **Q. And did they receive electric service**
12 **from Empire?**

13 A. You know, I wasn't privy. I've never
14 really asked them that question, but given the
15 nature of what I've learned in the last six months,
16 I would guess so, yeah.

17 **Q. I sent you by email, when we learned you**
18 **weren't going to be able to appear in person at the**
19 **hearing, I sent you two pictures. Do you have**
20 **those?**

21 A. Yes, ma'am. I do.

22 **Q. The first one shows the north side of**
23 **the house on the property. I think I'm going to**
24 **have you describe it. I just want to make sure**
25 **we're looking at the same one.**

1 A. Okay.

2 Q. And it's been marked Exhibit 208, but
3 could you describe for us what you see in the first
4 picture?

5 A. Sure. That is the existing home,
6 structure on the house or on the property. What
7 else would you like to know? There's -- that's the
8 north side of the house. What you're looking at
9 right there is actually Empire's pole in front of --
10 in the first picture.

11 Q. And that's what I was going to ask.
12 That's an Empire pole right there in front of the
13 house?

14 A. Yes, ma'am.

15 Q. And when did the home -- when did the
16 structure on the property look like it does in this
17 picture?

18 A. It's looked about the same for, I would
19 say, three months. Well, I started -- I actually
20 started demolishing it in January and throughout the
21 spring is when we had to -- we had to -- we had to
22 build those, those two temporary walls. There's
23 another one on the other side. Once we decided to
24 save the structure -- because if, if we hadn't have
25 built those walls, the roof would have collapsed.

1 **Q. The, the wall, the short wall on the**
2 **right side of the picture as you're looking at it,**
3 **can you tell us what we see on that outer wall?**

4 A. The, the north side or the east side?

5 **Q. The north side.**

6 A. Okay. I think I know what you're
7 talking about. You're wanting to establish if
8 the -- if that's where the meter -- there was a
9 weatherhead on the north side just the other side of
10 the door. That would be -- that would be where my
11 primary electric service was. Is that what you were
12 asking?

13 **Q. Yes, yes.**

14 **And so, that's what we see there in the**
15 **middle of the outer wall is the --**

16 A. Yeah.

17 **Q. -- is the meter box from Empire?**

18 A. It's the rem -- it's the remnants of the
19 primary electric line that went into the house.

20 **Q. And the pole we see to the right of the**
21 **driveway, that's Empire's pole, correct?**

22 A. Yes, ma'am.

23 **Q. And what street is that we see running**
24 **in front?**

25 A. That's, that's Nighthawk Road.

1 **Q. This picture that's been marked Exhibit**
2 **208, does that accurately depict the condition of**
3 **the property from this angle?**

4 A. Yes.

5 MS. CARTER: Would move for the
6 admission of Exhibit 208.

7 (Empire's Exhibit 208 was offered into
8 evidence.)

9 JUDGE BUSHMANN: Are there any
10 objections?

11 Hearing none. 208 is received into the
12 record.

13 (Empire's Exhibit 208 was received into
14 evidence.)

15 **Q. (By Ms. Carter) And then, Mr. Jessip,**
16 **the next picture I e-mailed you today, could you**
17 **tell me what we see in that picture?**

18 A. I believe you're pointing out the --
19 that that's New-Mac's line in the back. There's a
20 telephone pole that's jutting out toward the center
21 of the photo. That is New-Mac's service line.

22 **Q. As far as you know, is that the closest**
23 **pole from New-Mac to the home?**

24 A. No. Well, it may be the closest, but
25 there's a pond in between that and there. What I do

1 know is that in order for Empire to reestablish
2 service, they would have to set a pole in order to
3 recreate what they had, and New-Mac has told me that
4 they would need to set another -- at least one pole.
5 So, just, just for the sake of what you're trying to
6 establish here, Empire's service is technically
7 closer by, by about 50 to 75 feet.

8 Q. The picture, the second picture I sent
9 you has been marked Exhibit 209. When did the
10 property look like it does in Exhibit 209? What
11 time period?

12 A. This would be early spring.

13 Q. Ask that exhibit --

14 A. I only --

15 Q. Oh, I'm sorry. Go ahead, Mr. Jessip.

16 A. I only go over there one time. So, I'm,
17 I'm pretty sure this is, like, the beginning of
18 March.

19 MS. CARTER: I would move for the
20 admission of Exhibit 209.

21 (Empire's Exhibit 209 was offered into
22 evidence.)

23 JUDGE BUSHMANN: Any objections?

24 Hearing none. Exhibit 209 is received
25 into the record.

1 (Empire's Exhibit 209 was received into
2 evidence.)

3 Q. (By Ms. Carter) Mr. Jessip, you stated
4 that there had been a fire, you believed, about ten
5 years ago on the home --

6 A. Yes, ma'am.

7 Q. -- on the property?

8 A. Yes, ma'am.

9 Q. Is that -- is that before or after the
10 tenants were living there that you told us about
11 earlier?

12 A. It was during that time that they lived
13 there. The, the, the structure used to be a
14 two-story home and, yeah, at that time after it
15 burned, that's when this roof was built --

16 Q. And they lived --

17 A. -- which is why it's in such good
18 condition.

19 Q. They lived in the home and received
20 utility service both before and after the fire; is
21 that correct?

22 A. Yes, ma'am. I'm sure that's the case.

23 MS. CARTER: That's all the questions I
24 have.

25 JUDGE BUSHMANN: Thank you.

1 Commissioner questions?

2 CHAIRMAN HALL: Yeah, maybe a few.

3 Good morning. My name is Daniel Hall.

4 I'm the chairman of the Missouri Public Service
5 Commission. I'm going to ask you a few questions.

6 And I must say, first of all, I
7 appreciate how you've conducted yourself thus far
8 answering questions fairly, clearly and, and, and I
9 appreciate that.

10 My first question for you is could you
11 explain to me why, why you do not want Empire to
12 provide electric service to this property?

13 THE WITNESS: Well, that's, that's
14 something that I wanted to clarify. Diana and
15 Empire have tried to establish that I do not like
16 Empire. While I'm frustrated with Empire, the
17 reason I'm frustrated with them is because they're
18 cause -- they've, they've made this huge fuss. To
19 me the practical, the practical implications of my
20 switching service has nothing to do with the public
21 record, has nothing -- I mean, personally I have no
22 interest in that. I am frustrated because they
23 wouldn't just -- they wouldn't just do the right
24 thing and transfer my service.

25 The reason I don't want to use Empire is

1 originally -- and we still have plans. We're going
2 to be building a house on this property in the
3 not-too-distant future toward the center of the
4 property, at which point New-Mac is going to be my
5 service provider and I would really just as soon
6 have one service provider on the property. So,
7 there's a lot of practical reasons why I would just
8 as soon go with New-Mac.

9 And again, I just wanted to establish
10 that I don't have any personal animosity towards
11 Empire other than the fact that I feel like any
12 other person, any other situation to just shut off
13 your power for two-and-a-half years is unrealistic.
14 It's not practical for the average person to shut
15 their power off just for the sole purpose of
16 switching electric providers. So, again, I was
17 insulted.

18 Does that answer your question? I'm
19 sorry.

20 CHAIRMAN HALL: Sure. No. That's,
21 that's helpful.

22 So, I mean, my, my understanding as well
23 is that one of the reasons why you were frustrated
24 with, with the service being provided by Empire was
25 the, the fact that the, the bills seemed higher than

1 they should be; is that correct?

2 THE WITNESS: That's true. When we

3 first turned on -- turned everything on, our plan

4 was to just run the well and at the time I only had

5 18 chickens. So, once or twice a week I would go

6 fill up a 5-gallon bucket of water. And, you know,

7 I didn't mind -- didn't mind the first couple of

8 bills, but when I got a \$60 bill, you know, I called

9 up and I was like what's going on, you know, why is

10 this so high? And, and the lady that I spoke with

11 basically told me that that's what I used. I said

12 that's impossible. You know, I have the -- I had

13 everything shut off at the breaker. I mean, even,

14 even the well itself I would shut off at the breaker

15 when I wasn't using it. And so, I said this is

16 ridiculous. And she basically told me that I must

17 have a leak on my property and that it was my

18 responsibility to fix it. I'm like no. So, I, I

19 let it go, I paid the bill. The next bill was

20 higher and, yeah, I started getting really

21 frustrated and, and I didn't have any other

22 alternatives. As I stated before, I had -- I didn't

23 need the well. Like, it wasn't something that --

24 you know, it wasn't feeding my kids or anything like

25 that. So, it made more sense to shut power off than

1 to maintain \$75 in payments every month or to hire
2 an electrician for thousands of dollars to come over
3 and fix a house I had no intentions of keeping.

4 CHAIRMAN HALL: So, you, you inquired of
5 Empire sometime between the \$25 bill and the \$63
6 bill? No.

7 THE WITNESS: Yes, sir.

8 CHAIRMAN HALL: And I'm sorry. You, you
9 inquired of Empire after you received the \$63 bill?

10 THE WITNESS: Yeah. Once, once the
11 bills started getting a little higher than -- you
12 know, the \$20 range was where we were thinking we
13 would land because there's, there's, obviously,
14 fees, but once it started getting north of that, I
15 started asking questions.

16 CHAIRMAN HALL: So, you, you intend to
17 build a house in the middle of the property; is that
18 correct?

19 THE WITNESS: Yes, sir. That's been
20 a -- been a plan for, for as long as I've had my eye
21 on the property. As I mentioned before, my, my
22 in-laws own a 30-acre parcel right next door and
23 they also own a house -- or are building a house in
24 the center of that property.

25 CHAIRMAN HALL: But you -- but you do

1 intend to need service at the -- at the current
2 location?

3 THE WITNESS: Yeah. Shortly after I
4 began demolishing the house, I was told that I could
5 probably save that structure. We own a house in
6 Neosho now and it, it could have sped up plans or
7 changed plans, but the reason that I -- the reason
8 that I'm asking for change of service is that we may
9 turn this into some kind of an investment property
10 or we may live there for a short period of time.
11 Again, all those decisions were made, you know,
12 right around March, February of this year after I
13 began demolishing the house.

14 CHAIRMAN HALL: Okay. I have no further
15 questions. Thank you.

16 JUDGE BUSHMANN: Recross based on
17 commissioner questions. Commission Staff?

18 MR. WILLIAMS: No.

19 JUDGE BUSHMANN: New-Mac?

20 MS. RAY: None.

21 JUDGE BUSHMANN: Empire?

22 MS. CARTER: No questions. Thank you.

23 JUDGE BUSHMANN: Mr. Jessip, is there
24 anything further that you wanted to add or explain
25 that is based on questions either from the attorneys

1 or from the Chairman?

2 THE WITNESS: No, not at this time.

3 JUDGE BUSHMANN: Very good. Thank you
4 for your testimony, sir. You're, you're now
5 completed.

6 The next witness would be Staff,
7 Mr. Beck.

8 DANIEL BECK,
9 having been called as a witness herein, having been
10 first duly sworn, was examined and testified as
11 follows:

12 JUDGE BUSHMANN: Please be seated.

13 DIRECT EXAMINATION

14 BY MR. WILLIAMS

15 Q. What is your name?

16 A. Daniel I. Beck.

17 Q. By whom are you employed and in what
18 capacity?

19 A. I'm employed by the Missouri Public
20 Service commission Staff and I am the manager of
21 engineering analysis.

22 Q. Did you prepare in written form rebuttal
23 testimony that was prefiled on September 7th, 2017,
24 and that has been marked for identification as
25 Exhibit No. 100?

1 A. Yes, I did.

2 **Q. Is Exhibit 100 your testimony in this**
3 **case or would you have changes that you would make**
4 **for it to be your testimony here today?**

5 A. It is my testimony.

6 MR. WILLIAMS: With that I'll offer
7 Exhibit 100.

8 (Staff's Exhibit 100 was offered into
9 evidence.)

10 JUDGE BUSHMANN: Any objections?

11 Hearing none. Exhibit 100 is received
12 into the record.

13 (Staff's Exhibit 100 was received into
14 evidence.)

15 MR. WILLIAMS: I tender the witness for
16 examination.

17 JUDGE BUSHMANN: Mr. Jessip, do you have
18 any questions that you would like to ask Mr. Beck?

19 MR. JESSIP: No, I don't.

20 JUDGE BUSHMANN: Cross-examination by
21 New-Mac.

22 CROSS-EXAMINATION

23 BY MS. RAY

24 **Q. Mr. Beck, you have seen some photographs**
25 **of Mr. Jessip's house; is that right?**

1 A. Yes, I have, and I've, I've been on the
2 site also.

3 Q. Okay. When I refer to the meter base
4 and weatherhead that's on his structure, do you know
5 what I'm speaking of?

6 A. I do. That would be on the north side
7 of the structure that you're -- what you're
8 referring to.

9 Q. And does the meter base and weatherhead
10 demonstrate what would normally be considered a
11 permanent facility?

12 A. Well, the, the meter base and
13 weatherhead are, are, are required -- well, is a
14 very typical setup to provide electricity to a home
15 or any business or property, but just so happens
16 that, that, for example, on my farm we have a meter
17 base and weatherhead located next to our shed and
18 then we have a meter pole that is separate from
19 that. And so, that -- but that was the scenario
20 that I understood Mr. Jessip described and I find
21 that to be a plausible description of how he was
22 receiving service. I can't say how he was receiving
23 service because, you know, literally the, the
24 structures have been removed two-and-a-half years
25 ago.

1 **Q. When temporary service is established by**
2 **an electric utility, does that temporary service**
3 **usually include a meter base and a weatherhead**
4 **attached to the outside wall of an existing**
5 **structure?**

6 A. The most common form of temporary
7 service is to, you know, have a meter base with some
8 sort of temporary pole type of setup. That's the
9 most common form that I -- that I've seen.

10 **Q. So, it would be unusual to have a**
11 **temporary service established by connecting a meter**
12 **base and weatherhead to the outside structure -- to**
13 **the outside wall of an existing structure; is that**
14 **correct?**

15 A. That, that would be correct.

16 **Q. Is it your understanding that this meter**
17 **base and weatherhead exists on the structure because**
18 **Empire previously provided service to the structure?**

19 A. No, I don't think it has anything to do
20 with whether Empire did or didn't serve. I think
21 it, it is there as a possible way to get electricity
22 into the home regardless of who serves or, or how
23 that electricity is received.

24 **Q. Is it your understanding that Empire did**
25 **provide service to this structure previously?**

1 A. That's my understanding.

2 **Q. Is it also your understanding that this**
3 **service was through what we would call permanent**
4 **service under the statute?**

5 A. I'm an engineer, not a lawyer, but it
6 seems that it was a permanent structure and
7 everything was permanently hooked up like you
8 would -- you would normally expect that to -- that
9 to be.

10 MS. RAY: Thank you. That's all the
11 questions I have.

12 JUDGE BUSHMANN: Cross by Empire?

13 MS. CARTER: Yes. Thank you.

14 CROSS-EXAMINATION

15 BY MS. CARTER

16 **Q. Mr. Beck, I'm going to hand you what's**
17 **been marked Exhibits 201 through 207.**

18 MS. CARTER: Judge, did you give the
19 Chairman our pack?

20 JUDGE BUSHMANN: Yes.

21 **Q. (By Ms. Carter) Have you had a chance to**
22 **look at those?**

23 A. Yes, I -- yes, I have.

24 **Q. And can you tell us what those items**
25 **are, Exhibits 201 through 207?**

1 A. They are seven data requests that were
2 sent to Staff from the company and then, then also
3 my response to those seven data requests.

4 **Q. And that was going to be my next**
5 **question. You personally answered all seven of**
6 **those questions?**

7 A. Yes.

8 **Q. And if I asked you those same questions**
9 **as contained in those data requests today, would**
10 **your answers be substantially the same?**

11 A. Yes.

12 MS. CARTER: I ask for Exhibits 201
13 through 207 to be admitted into evidence.

14 (Empire's Exhibits 201 through 207 were
15 offered into evidence.)

16 JUDGE BUSHMANN: Any objections?

17 Hearing none. Those exhibits are
18 received.

19 (Empire's Exhibits 201 through 207 were
20 received into evidence.)

21 MS. CARTER: And that's all the
22 questions I have for Mr. Beck. Thank you.

23 JUDGE BUSHMANN: Any commissioner
24 questions?

25 CHAIRMAN HALL: Maybe just a couple.

1 Good morning.

2 THE WITNESS: Good morning.

3 CHAIRMAN HALL: Do you have any reason
4 to believe that Empire was not providing service to
5 the property as far back as January of 1980?

6 THE WITNESS: I have no way to verify
7 whether they were and weren't, but I -- you know,
8 it, it certainly, when you look at the structure,
9 the property in general, you see that there's older
10 buildings and, you know, they're going to need --
11 well, for most people, you would need electric
12 service to, to live there, even to -- even to
13 operate the, the barn and that type of thing, and
14 the wires were there. Clearly the wires looked
15 older, you know, the wires going in. When I say
16 wires, I do want to say that the house, I literally
17 did not see a single wire in the house. They've all
18 been removed. So, there is no wiring in the house.
19 There is no wiring connecting the house to any
20 services, but, but, but for the barn and for the
21 well the, the, the old overhead wires are just
22 laying on the ground right there. So, there is --
23 you know, there is these older wires that look like
24 they've been there for, in this case, that would be
25 37 years and that wouldn't surprise me.

1 CHAIRMAN HALL: If, if Mr. Jessip were
2 to build a house in the middle of, of this property
3 and request service from, from the co-op, is it your
4 understanding that, that the co-op could provide
5 that service without an order from the Commission?

6 THE WITNESS: Yes, that's my
7 understanding.

8 CHAIRMAN HALL: Okay. Thank you. I
9 have -- I have no further questions.

10 JUDGE BUSHMANN: Any recross based on
11 commissioner questions?

12 Redirect by Staff?

13 MR. WILLIAMS: Thank you.

14 REDIRECT EXAMINATION

15 BY MR. WILLIAMS

16 Q. Mr. Beck, do you recall whenever you
17 were asked your understanding about Empire providing
18 service previously to the property at Nighthawk
19 Road?

20 A. Yes.

21 Q. What's the basis of your understanding?

22 A. Really just the, the reading of the, the
23 testimony that, that discussed that, but, you know,
24 I don't -- I haven't seen any specific records, and
25 then -- and then the realization that, that there is

1 old wires leading to the well head and to the barn
2 that, that are -- have been there for a long time.

3 Q. Is your only personal knowledge based
4 upon seeing the property itself, the current
5 physical condition?

6 A. And then just what I read in the
7 company's testimony.

8 Q. All you observed yourself personally,
9 though, was physically --

10 A. That's correct.

11 Q. So, you wouldn't know the dates of which
12 that service was provided, if it was?

13 A. No. No, I would not.

14 MR. WILLIAMS: No further questions.

15 JUDGE BUSHMANN: Thank you, Mr. Beck.
16 You may step down.

17 I think we're ready for Empire's
18 witness.

19 CHAIRMAN HALL: Can we take a short
20 break?

21 JUDGE BUSHMANN: Before we do that, why
22 don't we take a short break. We'll be in recess for
23 approximately ten minutes.

24 (A short recess was taken.)

25 JUDGE BUSHMANN: Okay. Let's go back on

1 the record.

2 We're ready for Ms. Mulvaney from the
3 Empire witness.

4 PATSY MULVANEY,
5 having been called as a witness herein, having been
6 first duly sworn, was examined and testified as
7 follows:

8 JUDGE BUSHMANN: You may proceed.

9 DIRECT EXAMINATION

10 BY MS. CARTER

11 Q. If you will, please, state your name.

12 A. Patsy J. Mulvaney.

13 Q. What is your title at the Empire
14 District Electric Company?

15 A. Director of customer service.

16 Q. Did you prepare certain testimony in
17 question-and-answer form that was prefiled in this
18 case?

19 A. I did.

20 Q. And is that your rebuttal testimony
21 that's been marked Exhibit 200?

22 A. Yes.

23 Q. Do you have any changes to make to that
24 testimony?

25 A. I do have one change. It's on page 5,

1 line two. That account package log dated on there
2 as 1/13/2014 should show 1/13/2015.

3 Q. With that date change in the second line
4 on page 5, if I asked you the same questions, would
5 your answers be substantially the same?

6 A. Yes.

7 MS. CARTER: Move for the admission of
8 Exhibit 200 and offer Ms. Mulvaney for
9 cross-examination.

10 (Empire's Exhibit 200 was offered into
11 evidence.)

12 MR. WILLIAMS: Judge, I'd like to object
13 and it's to part of an answer on page 2 at lines 18
14 through 20. There's no foundation to show that
15 Ms. Mulvaney has any knowledge to support that
16 statement.

17 JUDGE BUSHMANN: Where are you again?

18 MR. WILLIAMS: Page 2, line 18 through
19 20.

20 JUDGE BUSHMANN: What's your response,
21 Ms. Carter?

22 MS. CARTER: We could ask a question to
23 provide further foundation other than that she is
24 the director of customer service with access to
25 Empire's records would verify testimony.

1 JUDGE BUSHMANN: I'll allow you to ask a
2 couple questions if you want to take care of that
3 issue.

4 Q. (By Ms. Carter) Ms. Mulvaney, do you
5 have your testimony there in front of you?

6 A. Yes.

7 Q. And do you see lines 18 through 20, that
8 answer on page 2?

9 A. Yes.

10 Q. What is the basis for that answer?

11 A. The answer that Empire provided service
12 to the property from January the 1st, 1980, until
13 August the 25th, 2010. That was the information
14 that's in our customer information system.

15 Q. Did you personally search the customer
16 information system?

17 A. I did.

18 Q. And what does it show regarding that
19 time period?

20 A. It shows what customers were at that
21 address and the time of service that we provided to
22 them at that time.

23 Q. Did you also see bills for that time
24 period?

25 A. Yes.

1 Q. The dates that are shown on line 19, did
2 you -- is it your testimony -- I'm not sure how to
3 phrase that. I'm sorry. Are you the one who came
4 with -- came up with those dates for when service
5 was provided?

6 A. It's information that's in our system.
7 So, that's what I documented was that information.

8 Q. And that was, was based on your personal
9 view of Empire's electronic records?

10 A. Yes.

11 Q. And how about with regard to the
12 resident at the time requesting that service be
13 turned off, what is the basis for that statement?

14 A. We have a service order that shows that
15 that customer at that time called in and asked the
16 service be turned off.

17 JUDGE BUSHMANN: Anything further?

18 MR. WILLIAMS: Judge, she still hasn't
19 established the reliability of the records, and it's
20 hearsay.

21 JUDGE BUSHMANN: I'm going to overrule.
22 It will go to weight, not to admissibility.

23 Any other objections to Exhibit 200?

24 Hearing none. Exhibit 200 is received
25 into the record.

1 (Empire's Exhibit 200 was received into
2 evidence.)

3 JUDGE BUSHMANN: First cross-examination
4 will be by New-Mac.

5 CROSS-EXAMINATION

6 BY MS. RAY

7 Q. Is it your testimony that Empire began
8 providing service to this property located on
9 Nighthawk Road sometime in 1980?

10 A. Yes.

11 Q. And is it also your testimony that
12 Empire provided service to this property located on
13 Nighthawk Road at points after which Mr. Jessip
14 purchased the property?

15 A. Yes.

16 Q. Did Empire provide electric service to
17 the property on Nighthawk Road in 2014?

18 A. Yes.

19 Q. And is it correct that Empire provided
20 electric service to the property in 2014, which
21 included the residential structure on that property?

22 A. We did provide service to the property.

23 Q. And is it your belief that the
24 residential structure was provided with service by
25 Empire?

1 A. Yes.

2 MR. WILLIAMS: Judge, I object to her
3 testifying to her belief. It's irrelevant.

4 JUDGE BUSHMANN: Rephrase the question.

5 MS. RAY: Sure.

6 **Q. (By Ms. Ray) Do your records indicate**
7 **that the residential structure on Nighthawk Road was**
8 **served by Empire in 2014?**

9 A. Yes.

10 MS. RAY: That's all the questions I
11 have.

12 JUDGE BUSHMANN: Cross by Staff?

13 MR. WILLIAMS: No questions.

14 JUDGE BUSHMANN: Mr. Jessip, do you have
15 any questions that you would like to ask
16 Ms. Mulvaney?

17 MR. JESSIP: No, sir, I don't.

18 JUDGE BUSHMANN: Any commissioner
19 questions?

20 CHAIRMAN HALL: I have no questions.
21 Thank you.

22 JUDGE BUSHMANN: Redirect?

23 MS. CARTER: No. Thank you, Judge.

24 JUDGE BUSHMANN: Ms. Mulvaney, that
25 completes your testimony. You may step down.

1 I don't believe there's any other
2 evidence today that needs to be brought forward.
3 Initial briefs will be due no later than October
4 27th, with reply briefs due by November 15th. And
5 I've been told the transcript should be available on
6 Friday, October 13th.

7 Is there anything else that the parties
8 need to address at this point?

9 Hearing none. We're off the record and
10 adjourned.

11 (The hearing adjourned at 10:57 a.m.)

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1 CERTIFICATE OF REPORTER

2

3 I, Amanda N. Farrar, a Certified Court
4 Reporter for the State of Missouri, do hereby
5 certify that the witnesses whose testimony appears
6 in the foregoing transcript were duly sworn; the
7 testimony of said witnesses was taken by me to the
8 best of my ability and thereafter reduced to
9 typewriting by me; that I am neither counsel for,
10 related to, nor employed by any of the parties to
11 the action in which this hearing was taken, and
12 further that I am not a relative or employee of any
13 attorney or counsel employed by the parties thereto,
14 nor financially or otherwise interested in the
15 outcome of the action.

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Certified Court Reporter

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