

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

In the Matter of the Application of The)
Empire District Electric Company for)
Authority to Sell and Transfer Part of its)
Works or System to the City of Monett,)
Missouri.)

Case No. EO-2009-0159

STAFF RECOMMENDATION

COMES NOW the Staff of the Public Service Commission of Missouri (Staff) and for its Recommendation, states as follows:

1. On October 28, 2008, The Empire District Electric Company (Empire) filed an application seeking Commission approval to sell and transfer a portion of its works and system to the City of Monett used to serve ratepaying customers of Empire.

2. In Staff's initial Response to Application filed December 2, 2008, the Staff identified some concerns regarding Empire's application. Empire states in its Application that it seeks Commission approval for transfer of assets pursuant to Section 393.190.2¹. However, implicit in its application is Empire's request to change the supplier of electrical service from existing Empire customers to the City of Monett. Section 393.106.2 properly sets forth the Commission's jurisdiction and standard for approval in change of supplier applications.

3. According to the application, Empire serves about 100 customers in the two areas previously annexed by the city of Monett. Affected customers first received notice of a proposed

¹ All statutory references are to RSMo 2000, unless otherwise noted.

impending change in electrical utility service by publication in The Monett Times on August 31, 2007. That notice expressed the City of Monett's intent to acquire Empire's facilities in the newly annexed areas as provided by Section 386.800 RSMo. 2000. Because the City of Monett never consummated that acquisition, and due to the lapse of time, Empire cannot now avail itself of that statute. In addition, the annexed area described in the first notice contained an error. Staff discussed these concerns with Empire in its November 25, 2008 meeting.

4. On December 30, 2008, Empire filed its Reply to Staff's Response to Application. In that pleading, Empire filed an affidavit of corrected legal notice regarding the annexation of the two areas published by the City of Monett on December 11, 2008. Empire also separately provided Staff with a list of customer names and addresses in the two annexed areas as of March 2008.

5. However, in its Reply, Empire disputed Staff's construction of Sect. 393.106.2 RSMo that includes electrical suppliers as "affected parties" under the statute, which states in pertinent part "...The public service commission, *upon application made by an affected party*, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential..." *emphasis added*)

6. Staff cited in its Surreply the Commission's December 30, 2008 *Order Approving Application For Change of Supplier* in Case No. EO-2009-0181, a case initiated by Empire whereby the Commission concluded that its jurisdiction under Section 393.106.2 includes electrical suppliers as "affected parties."

7. No parties have filed for intervention in this case.

8. Accordingly, and though the above point of dispute is not dispositive of Staff's recommendation in this matter, the Staff has approached this application as a request for change

in electrical supplier and has evaluated Empire's application pursuant to the standard set forth under Sect. 393.106.2 and applicable Commission rule 4 CSR 240-3.140. With regard to Empire's proposed transfer of system works to the City of Monett, the Staff's recommendation considers such transfer of facilities to be incident to the change in electric supplier because those system facilities are needed for the City to serve customers in the annexed areas.

9. In its Application, Empire requests the Commission exclude from its Certificate of Public Convenience and Necessity (CCN) the annexed areas. Staff believes this unnecessary. Both annexed areas of the city of Monett are located in Lawrence County. Even though Empire had been granted a CCN to serve Lawrence County, the Commission does not regulate municipal utilities serving within the boundaries of the municipality. Because municipal utilities are authorized to serve customers within their boundaries (Chapter 91, RSMo), a Commission order approving the change of supplier of customers in the two annexed areas makes it unnecessary for the Commission to take up the issue of modifying Empire's CCN.

10. For the reasons explained in detail in Staff's Memorandum, attached hereto as Appendix A and incorporated by reference, the Staff has determined the change in electric supplier from Empire to the City of Monett is in the public interest and is for reasons other than a rate differential.

WHEREFORE, for the above stated reasons, the Staff respectfully requests the Commission grant the requested change in electric supplier subject to the conditions stated in Staff's Memorandum.

Respectfully submitted,

/s/ Robert S. Berlin

Robert S. Berlin

Senior Counsel

Missouri Bar No. 51709

Attorney for the Staff of the
Missouri Public Service Commission

P. O. Box 360

Jefferson City, MO 65102

(573) 526-7779 (Telephone)

(573) 751-9285 (Fax)

email: bob.berlin@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 26th day of January 2009.

/s/ Robert S. Berlin