

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

In the Matter of the Application of                     )  
Brandon Jessip for Change of Electric        )  
Supplier from Empire District Electric        )  
To New-Mac Electric                                )

**File No. EO-2017-0277**

**MOTION TO DISMISS**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), by and through the undersigned counsel, hereby files its *Motion to Dismiss* as follows:

1. On March 14, 2017, the applicant, Mr. Brandon Jessip, contacted the Commission regarding receiving permission from the PSC to have New-Mac Electric Cooperative, Inc. (“New-Mac”) supply service to a remodeled home that, at Mr. Jessip’s request, has not had service from The Empire District Electric Company (“Empire”) in over two years. The applicant spoke to Staff witness Dan Beck, who began an informal complaint/inquiry designated as C201701516.
2. On March 14, 2017, Staff witness Beck sent an inquiry to Empire to confirm the applicant’s description of the circumstances, as well as for answers to a few other inquiries.
3. On March 17, 2017, Empire responded to Mr. Beck’s inquiry, and stated:

On 1/13/15, Brandon called and requested the pole between the road and his meter be removed. Notes on the job drawn up by the engineer indicate that the home was to be demolished so we removed our pole, transformer and service line to accommodate the demo

Empire further stated:

Since we have served this structure in the past, we believe that we should continue to serve this structure. Empire's service is also closer to this property than New Mac's. According to our engineer, New Mac would need to set at least 2 poles and run at least a couple hundred feet of service line. Mr. Jessip also already has a partially completed meter loop on the side of the home that is closest to our transformer.

This property is not in the city limits and we do not have a territory agreement with New Mac.

4. As a result of this response, a formal application for change of supplier, including the same allegations made in the informal complaint/inquiry, was filed on April 20, 2017. The Commission filed an *Order Directing Notice, Adding Parties, and Directing Responses to Application*, which added Empire and New-Mac to the case, and directed those parties to file a response no later than May 25, 2017. Staff was also ordered to complete an investigation and file its recommendation no later than June 26, 2017. New-Mac filed its response on May 17, 2017, indicating it had sufficient ability to become Mr. Jessip's supplier if his application is approved. Empire filed its response on May 24, 2017, stating that power is not currently flowing to the property, but Empire is ready, willing, and able to provide safe and adequate electric service at just and reasonable rates, and should continue providing service under RSMo. 393.106.
5. Staff's review of the record shows that the applicant is currently not being served by Empire or New-Mac, that Empire has not served the applicant's property in over two years, and Empire does not currently have all of the permanent facilities on the applicant's property required to serve the structure, as the pole, transformer, and service line have been removed. It is

Staff's view that RSMo. 393.106 is inapplicable in this situation, and since no utility is providing electric service to the property; the applicant can choose his service provider without an order from the Commission. This view is supported by the Commission's previous holdings that

the Missouri anti-flip-flop statutes, Sections 393.106.2 and 394.315.2 RSMo, and the exceptions contained therein, are applicable only after an electric corporation or cooperative "commences" providing electric service to a facility.<sup>1</sup>

**WHEREFORE**, Staff prays the Commission dismiss this application and allow the Applicant to choose electric providers without an order from the Commission, or in the alternative, grant the applicant's request to use New-Mac to provide new electric service.

Respectfully submitted,

**/s/ Nicole Mers**

Nicole Mers  
Associate Counsel  
Missouri Bar No. 66766  
Attorney for the Staff of the  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65012  
(573) 751-6651 (Telephone)  
(573) 751-9285 (Fax)  
Nicole.mers@psc.mo.gov

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<sup>1</sup> *In the Matter of the Application of Wasatch Investments, LC, for Change of Electric Supplier*, Case No. 2008-0031, (*Order Granting Summary Determination and Dismissing Application*, issued May 29, 2008) p. 4

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 26<sup>th</sup> day of June 2017, to all counsel of record.

**/s/ Nicole Mers**

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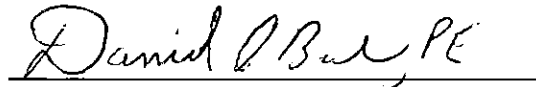
**File No. EO-2017-0277**

**AFFIDAVIT OF DANIEL I. BECK, PE**

State of Missouri       )  
                                      ) ss  
County of Cole         )

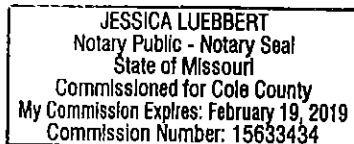
**COMES NOW** Daniel I. Beck, and on his oath declares that he is of sound mind and lawful age; that he contributed to the attached *Motion*; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

  
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Daniel I. Beck, PE

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 26<sup>th</sup> day of June, 2017.



  
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NOTARY PUBLIC