

EXHIBIT NO.:
ISSUE: Public Interest
WITNESS: Michael E. Palmer
TYPE OF EXHIBIT: Direct Testimony
SPONSORING PARTY: Empire District
CASE NO: EO-2008-0043
DATE TESTIMONY PREPARED: October. 11, 2007

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

DIRECT TESTIMONY OF MICHAEL E. PALMER

CASE NO: EO-2008-0043

OCTOBER 12, 2007

Crank Exhibit No. 2
Case No(s) EO-2008-0043
Date 12-18-07 Rptr 45

DIRECT TESTIMONY
OF
MICHAEL E. PALMER
THE EMPIRE DISTRICT ELECTRIC COMPANY
BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION
CASE NO. EO-2008-0043

1 I. **INTRODUCTION**

2 Q. **PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. Michael E. Palmer, 602 Joplin Street, Joplin, Missouri 64802.

4 Q. **BY WHOM AND IN WHAT CAPACITY ARE YOU EMPLOYED?**

5 A. The Empire District Electric Company ("Empire") as Vice President – Commercial
6 Operations.

7 Q. **PLEASE BRIEFLY DESCRIBE YOUR PROFESSIONAL EXPERIENCE.**

8 A. I have worked for Empire for over 21 years in a variety of capacities.

9 Q. **HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE MISSOURI PUBLIC
10 SERVICE COMMISSION?**

11 A. Yes.

12 Q. **ON WHOSE BEHALF ARE YOU SPONSORING TESTIMONY IN THIS
13 PROCEEDING?**

14 A. The Empire District Electric Company.

15 Q. **WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

16 A. The purpose of my testimony is to provide evidence in support of the joint application
17 that was filed in this case on August 15, 2007, for approval of a territorial agreement

1 between Empire and Ozark Electric Cooperative ("Ozark"), and for approval of
2 transactions directly related to that agreement.

3 **Q. WOULD YOU PLEASE DESCRIBE THE FACTUAL BACKGROUND THAT**
4 **LED TO THE APPLICATION FILED IN AUGUST 2007?**

5 A. In March of 2006 I represented Empire at a meeting in the City of Republic, Missouri
6 ("City"). The meeting was initiated and hosted by representatives of the City.
7 Representatives of Ozark were there, along with representatives of some real estate
8 developers who were the process of developing residential tracts in areas south of the
9 present city limits. Empire has a franchise from the City and enjoys a very good
10 relationship with them. The City has plans to annex various areas around the City which
11 means Empire is entitled to serve new structures that come into existence after an
12 annexation. On the other hand, pre-existing structures continue to be served by the
13 supplier at the time of annexation. In some situations, this can lead to two different
14 electric suppliers in the same subdivision or along the same street. At the meeting in
15 March 2006, we were told there were issues between the City, the developers, and Ozark
16 regarding the timing of annexation and who the electric service provider would be in the
17 areas of these developments on the south side of the City. The City asked Ozark and
18 Empire to discuss a possible territorial agreement as a way to resolve the issues; we were
19 happy to help.

20 To make a long story very short, an agreement was reached after a substantial
21 amount of negotiation. It was submitted to the Commission for approval in a filing made
22 on July 18, 2006 and assigned Case Numbers EO-2007-0029 and EE-2007-0030. The
23 first of those two cases was a territorial agreement that purported to establish exclusive

1 service territories for both Empire and Ozark over about nine-and-a-half square miles on
2 the south side of Republic. Empire's proposed area was about four-and-a-half square
3 miles (2,880 acres) and was generally located on the southwest side. Ozark's area,
4 generally on the southeast side, was slightly smaller in size. The second case was a
5 request for a waiver by Empire to allow us to match the terms of an agreement that Ozark
6 had made with the developer of a subdivision encompassing about 245 of those 2,880
7 acres. This was sought so that Empire would be able to serve that subdivision, The Lakes
8 at Shuyler Ridge. Part of the underlying foundation of the territorial agreement was that
9 the developers would essentially not be harmed by the agreement. Ozark had previously
10 agreed with the developer to some contract terms that were more favorable to the
11 developer than Empire's tariff provisions approved by the Commission. Empire is not
12 permitted to deviate from the terms of its tariff, so Empire had to secure the permission of
13 the Commission before it could meet those terms, which is why the request for waiver
14 accompanied the territorial agreement.

15 Prepared testimony was filed and on December 7, 2006, the Commission held a
16 hearing on those consolidated cases. The Commission issued a Report and Order on
17 January 30, 2007, in which it concluded that Empire's request to match the contract terms
18 between the developer and Ozark would be an "undue preference" and denied the waiver.
19 Because the territorial agreement was contingent upon the waiver request being granted,
20 it was not approved.

21 That decision by the Commission in December 2006 essentially put all of the
22 parties back where they started in March of 2006, except more houses had been built in
23 the interim and electric service facilities had been built to provide service to them.

1 Discussions were held on how to proceed in light of the Commission's decision. Those
2 discussions resulted in the territorial agreement and accompanying requests for relief
3 being presented in this case.

4 **Q. COULD YOU BRIEFLY SUMMARIZE THE MAJOR COMPONENTS OF THE**
5 **APPLICATION IN THIS CASE?**

6 A. The parties are trying to put everyone back in the place they were in before the previous
7 attempt at a territorial agreement. Basically, that means that if this application is
8 approved, Ozark will be the exclusive electric service provider in the 245-acre
9 subdivision known as The Lakes at Shuyler Ridge, and Ozark and the developer will
10 presumably be able to carry out the terms of their original agreement. A complicating
11 factor is that Empire owns the electric facilities presently serving customers in The Lakes
12 at Shuyler Ridge. It is my understanding that Empire needs the Commission's approval
13 before it can sell those facilities to Ozark. It is also my understanding that before the
14 customers Empire is presently serving in that subdivision can legally receive electric
15 service from Ozark, the Commission must order a change of supplier. That is why the
16 application is structured the way it is. Empire needs Commission permission to sell the
17 facilities and change the supplier so Ozark can serve the customers in The Lakes at
18 Shuyler Ridge.

19 **Q. HAVE OZARK AND EMPIRE AGREED TO A PRICE FOR THE FACILITIES?**

20 A. We do not have an exact figure at this time because it is a moving target. We have
21 arrived at a price for the facilities that are already in place, but houses continue to be built
22 and they need electric service so they can be occupied. We do not know when the
23 Commission will grant its approval in this case, so we do not know at this time exactly

1 how many service lines will be included in the sale. Therefore, we have agreed to a set
2 price for each one that is added. In general, it is my understanding that the overall price
3 reflects the original cost of the distribution facilities being used to serve this particular
4 subdivision. In other words, there is no profit being built into the sale price. It reflects
5 what the facilities cost. Not everything involved will be sold since Empire will be
6 removing its transformers because they are not compatible with Ozark's system, and
7 putting them to use in other parts of Empire's system.

8 **Q. DO YOU THINK TERRITORIAL AGREEMENTS IN GENERAL ARE IN THE**
9 **PUBLIC INTEREST?**

10 A. Generally, I believe they are. I also think that because the Missouri legislature passed a
11 law in 1988 specifically allowing territorial agreements, the legislature also considers
12 them to be in the public interest.

13 **Q. DO YOU THINK THIS PROPOSED TERRITORIAL AGREEMENT IS IN THE**
14 **PUBLIC INTEREST?**

15 A. Yes. In the face of possible annexation of the development by the City, it will provide
16 certainty as to the electric supplier in this particular subdivision.

17 **Q. DOES THIS CONCLUDE YOUR PREPARED TESTIMONY IN THIS**
18 **PROCEEDING?**

19 A. At this time, yes.

STATE OF MISSOURI)
) ss
COUNTY OF JASPER)

Michael E. Palmer

Patricia A. Apple
Notary Public

Patricia A. Settle
Notary Public - Notary Seal
State of Missouri
County of Jasper
Expires February 09, 2006