

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

FILED

AUG 11 1999

Missouri Public
Service Commission

In the Matter of the Application of Union)
Electric Company d/b/a AmerenUE and)
Ozark Border Electric Cooperative for)
Approval of a Written Territorial)
Agreement Designating the Boundaries of)
Each Electric Service Supplier within)
Portions of Bollinger, Butler, Carter,)
Dunklin, Iron, Madison, New Madrid,)
Reynolds, Ripley, Stoddard and Wayne)
Counties, Authorizing the sale, Transfer,)
and Assignment of Certain Electric)
Distribution Facilities, Easements and)
Other Rights, Generally Constituting the)
Applicants' Electric Utility Business)
Associated with its Customers Transferred)
Pursuant to the Territorial Agreement.)

Case No. EO-99-599

**MOTION TO RECONSIDER PROCEDURAL SCHEDULE
AND REQUEST FOR EXPEDITED CONSIDERATION**

COME NOW the undersigned parties to this proceeding, and for their Motion to Reconsider Procedural Schedule, respectfully state as follows:

1. On June 16, 1999, Union Electric Company d/b/a AmerenUE ("AmerenUE"), a regulated utility, and Ozark Border Electric Cooperative, Inc. ("Cooperative"), hereinafter collectively known as "the Applicants," filed a Joint Application requesting, *inter alia*, that the Missouri Public Service Commission ("Commission"): approve a Territorial Agreement between the Applicants, and grant the Applicants the authority, pursuant to the terms of said Territorial Agreement, to change electric service providers for certain customers, and to transfer certain property.

2. On July 9, 1999, the Office of the Public Counsel ("Public Counsel") filed a Request for Local Public Hearing in Dexter, Missouri.

3. On July 13th, the City of Poplar Bluff, Missouri ("Poplar Bluff"), in response to an Order and Notice issued by the Commission on June 24, 1999, timely filed its Application to Intervene, Objection to Portions of Proposed Territorial Agreement, and Request for Show Cause Order.

4. On July 16, 1999, the parties filed an abbreviated Proposed Procedural Schedule in this docket, suggesting that a pre-hearing conference be scheduled in advance of an evidentiary hearing proposed for August 23, 1999.

5. On August 3, 1999, the Commission issued its Order Scheduling Local Hearing, setting the local hearing for August 19, 1999 (6:00 P.M.) at the Dexter High School auditorium, 1101 West Grant, Dexter, Missouri.

6. On August 4, 1999, the parties filed the following Revised Proposed Procedural Schedule:

Direct Testimony by Applicants	August 9, 1999
Local Public Hearing	August 19, 1999
Rebuttal Testimony (all parties except Applicants)	August 27, 1999
Statement of Issues	September 2, 1999
Surrebuttal/Cross-Surrebuttal (all parties)	September 9, 1999
Statement of Positions on the Issues (all parties)	September 13, 1999
Evidentiary Hearing	September 17, 1999

7. On August 10, 1999, the Commission issued an Order, which, *inter alia*, granted Poplar Bluff intervention in this docket, denied Poplar Bluff's motion for a show cause order, and established the following Procedural Schedule:

Direct Testimony by Applicants	August 9, 1999 (3:00 PM)
Local Public Hearing	August 19, 1999 (6:00 PM)
Rebuttal Testimony (all parties except Applicants)	August 16, 1999 (3:00 PM)
Statement of Issues	August 19, 1999 (3:00 PM)
Surrebuttal/Cross-Surrebuttal (all parties)	August 19, 1999 (3:00 PM)
Statement of Positions on the Issues (all parties)	August 20, 1999 (3:00 PM)
Evidentiary Hearing	August 23, 1999 (9:00 AM)

8. The parties to this docket are in agreement that the procedural schedule set by the Commission fails to accommodate recent developments in this case and therefore should be modified. In requesting that the Commission reconsider the established schedule, the parties offer the following rationale.

9. The Commission's Order setting the local public hearing for August 19, 1999 prompted the parties to propose on August 4th a more protracted procedural schedule. In cases where a local public hearing has been ordered, Public Counsel, as a matter of general practice, does not formulate its position until after the local hearing has been held. In light of the strong public interest that has already been expressed, Public Counsel does not believe it is in the public interest to vary from this policy in the instant case. Accordingly, the requirement that the parties file Rebuttal testimony in this docket on August 16th, three days before the local hearing, is untenable and should be modified.

10. Another of the parties' concerns is that the Commission's ordered procedural schedule will undermine the discovery process, currently underway. Public Counsel, on August 5th, received fourteen data requests from Cooperative. Pursuant to 4 CSR 240-2.090(2), Public Counsel has twenty days to prepare its responses. Under the applicable rule, the responses are not due until August 25th, two days after the evidentiary hearing is to be held.

11. The discovery problem affects Staff as well. AmerenUE and Cooperative timely filed their Direct testimony on August 6, 1999 and August 9, 1999, respectively. These filings prompted Staff to prepare data requests for each of the parties. The requests were transmitted on August 11, 1999, and responses thereto are, under the applicable rule, not due until well after the evidentiary hearing date ordered by the Commission. Staff believes that the allowance of sufficient time to permit full discovery is essential to the development of a well-reasoned position in this case.

12. A third difficulty stems from the fact that Poplar Bluff was not granted intervention in this case until August 10th, the day the Commission set the procedural schedule. Under these circumstances, it would be unduly prejudicial and burdensome to expect Poplar Bluff, a municipality, to prepare and submit prepared Rebuttal testimony by August 16th, a period of five days, including a weekend. The parties also believe that the present procedural schedule produces a disincentive to explore settlement possibilities and indeed discourages those that are currently underway. Presently, Poplar Bluff, Cooperative, and AmerenUE are in negotiations that could lead to settlement of the issues raised by Poplar Bluff. The existing schedule does not adequately accommodate these negotiations. Since Poplar Bluff has officially only been a party to this proceeding for one day, the parties wish to have additional time to explore settlement possibilities with all involved, instead of rushing to prepare Rebuttal testimony.

13. The parties also believe that the present procedural schedule provides a disincentive to explore global settlement possibilities. The parties recognize that it is impossible to reach a global settlement of the issues presented in this case until the public hearing is completed. Given that the Commission's schedule permits only three days to reach a global settlement prior to the hearing date, the parties believe that the schedule acts as a barrier thereto. Further, the parties believe that it is in the best interest of the Commission to have a schedule with sufficient time to reach a global settlement if such settlement is possible.

14. In its Order, the Commission stated that when the parties proposed their original schedule on July 16, 1999, they must have been prepared for an evidentiary hearing on August 23rd. In their July 16th pleading, however, the parties indicated that "it would be premature to propose a detailed procedural schedule," and suggested that the Commission schedule a prehearing conference for July 30, 1999. In addition to developing a procedural schedule, the parties anticipated that the prehearing conference would provide an opportunity to: (i) initiate the discussions to resolve Poplar Bluff's concerns, (ii) set a suggested time for the local public hearing in early August, and (iii) discuss each party's discovery needs. However, no Commission response was forthcoming. As a consequence, the parties were limited to an informal telephone discussion, which was hampered by the unavailability of one of the parties and the fact that Poplar Bluff had not yet been granted intervention status. The parties further stated in their July 16th pleading that following a prehearing conference, they would be "much better positioned to propose a more detailed procedural schedule, should that be necessary." Shortly thereafter, on August 3, 1999, the Commission issued its Order scheduling the local public hearing for August 19th, a date considerably later than the parties anticipated; as a result, it became clear to the parties that a more detailed procedural schedule would indeed be

necessary. Therefore, on August 4, 1999, the day after the Commission's Order, the parties filed their Revised Proposed Procedural Schedule. It is to be noted that, even though Poplar Bluff had not yet been granted intervention, Counsel for Poplar Bluff was apprised of and consented to the procedural schedule that was developed by the then-parties.

15. The parties believe that it is unreasonable to expect the filing of surrebuttal testimony just 72 hours after the filing of rebuttal testimony under the present schedule. It is unreasonable to expect parties to be able to obtain the testimony from all the other parties, give reasoned consideration to it and prepare a response in such a short period of time, especially where there is no compelling reason for such haste. There is no "operation of law" date in this proceeding and the statute allows the Commission to take additional time if good cause is shown. Here, none of the parties is objecting to the Commission taking additional time if good cause is shown. Here, none of the parties is objecting to the Commission taking a moderate amount of additional time.

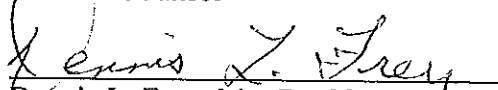
16. In its August 10th Order the Commission rejected the Revised Proposed Procedural Schedule because it "does not allow sufficient time for the Commission to rule on the application within the one hundred twenty (120) day statutory period." Section 394.312.3, RSMo provides for an extension of this time period for good cause shown. The parties hereby agree that good cause for such extension has been shown above, and they therefore give consent thereto. .

17. In view of the time pressures inherent in the procedural schedule recently established by the Commission, the parties agree that expedited consideration of this Motion is necessary.

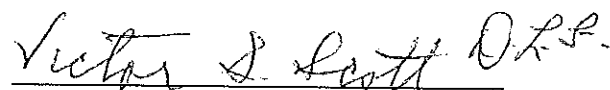
WHEREFORE, for good cause shown, the Parties respectfully move that the Commission reconsider its August 10, 1999 Order establishing the procedural schedule and, in its place, adopt the Revised Procedural Schedule, as proposed by the parties on August 4, 1999. The parties further request that the Commission accord expedited consideration to this motion.

Respectfully submitted,

DANA K. JOYCE
General Counsel

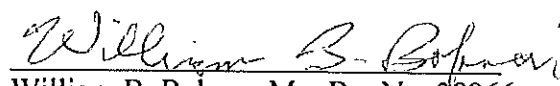

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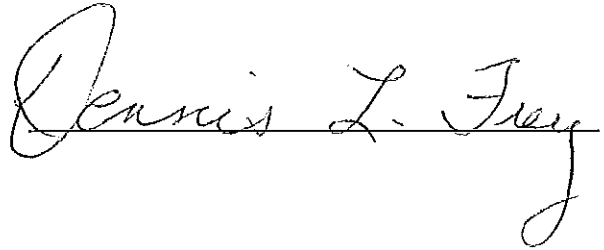
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 11th day of August 1999.

A handwritten signature in cursive script, reading "Dennis L. Frey", is written over a horizontal line.

**SERVICE LIST FOR
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August 11, 1999**

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