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

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

**ORDER GRANTING RECONSIDERATION,  
ORDER ADOPTING PROCEDURAL SCHEDULE,  
AND ORDER EXTENDING DATE FOR RULING ON APPLICATION**

Procedural History

On June 16, 1999, Union Electric Company d/b/a AmerenUE (AmerenUE) and Ozark Border Electric Cooperative (Ozark Border) (jointly, Applicants) filed their Joint Application for approval of their agreement contained in a document entitled Territorial Agreement (territorial agreement).

On June 24, 1999, the Missouri Public Service Commission (Commission) entered its Order and Notice, stating, *inter alia*, that

proper parties should be given notice and an opportunity to intervene, that any interested party wishing to do so shall file an application no later than July 14, 1999, and that the parties may file a procedural schedule no later than July 16, 1999.

On July 9, 1999, the Office of the Public Counsel (OPC) filed its Request for Local Hearing, citing consumer interest in this matter. Joint Applicants did not file a response.

On July 13, 1999, the City of Poplar Bluff (Poplar Bluff), timely filed its Application to Intervene.

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

On August 3, 1999, the Commission entered its Order Scheduling Local Hearing which scheduled a local public hearing in Dexter, Missouri, on August 19, 1999.

On August 4, 1999, the parties filed a Revised Proposed Procedural Schedule. On August 10, 1999, the Commission issued its Order, which, *inter alia*, granted Poplar Bluff intervention, rejected the parties' proposed procedural schedule and established its own procedural schedule.

On August 11, 1999, all the parties filed their Motion to Reconsider Procedural Schedule and Request for Expedited Consideration. The parties stated that the procedural schedule set by the Commission failed to accommodate recent developments in the case and should thus be modified. For example, the parties stated that the requirement in the

Commission's procedural schedule that the parties file rebuttal testimony on August 16, 1999, three days before the local public hearing, is untenable and should be modified. The parties also stated that, under the Commission's procedural schedule and Commission rules, the data requests that Ozark Border served on OPC on August 5, 1999 are not due until August 15, 1999, which is two days after the evidentiary hearing. The parties also stated that Staff served data requests on Applicants on August 11, 1999, and, under the Commission's procedural schedule and Commission rules, the responses thereto are not due until well after evidentiary hearing. The parties further stated that since Poplar Bluff was not granted intervention until August 10, 1999, it would be unduly prejudicial and burdensome to expect Poplar Bluff to prepare and submit rebuttal testimony by August 16, 1999, under the Commission's procedural schedule. The parties alleged that the Commission's procedural schedule provides a disincentive to settlement.

The parties stated that since no Commission response was made to the parties' request to set a prehearing, ". . . 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. . . ." The Commission points out that the parties are in no way hampered or limited in the amount of discussion they have.

#### Ruling on Procedural Schedule

The Commission, however, has found that the parties have shown good cause for it to reconsider its Order of August 10, 1999, and will

adopt the parties' procedural schedule as set forth in the parties' August 4, 1999, Revised Proposed Procedural Schedule.

The Commission establishes the following procedural schedule and finds that these conditions should be applied:

(A) The Commission will require the prefiling of testimony as defined in 4 CSR 240-2.130. All parties shall comply with this rule, including the requirement that testimony be filed on line-numbered pages. The practice of prefiling testimony is designed to give parties notice of the claims, contentions and evidence in issue and to avoid unnecessary objections and delays caused by allegations of unfair surprise at the hearing.

(B) Pursuant to 4 CSR 240-2.130(15), testimony and schedules shall not be filed under seal and treated as proprietary or highly confidential unless the Commission has first established a protective order. Any testimony or schedule filed without a protective order first being established shall be considered public information.

(C) The parties shall agree upon and the Staff shall file a list of the issues to be heard, the witnesses to appear on each day of the hearing and the order in which they shall be called, and the order of cross-examination for each witness. Any issue not contained in this list of issues will be viewed as uncontested and not requiring resolution by the Commission.

(D) Each party shall file a statement of its position on each disputed issue. Such statement shall be simple and concise, and shall

not contain argument about why the party believes its position to be the correct one.

(E) The Commission's general policy provides for the filing of the transcript within two weeks after the hearing. If any party seeks to expedite the filing of the transcript, such request shall be tendered in writing to the regulatory law judge at least five days prior to the date of the hearing.

(F) All pleadings, briefs and amendments shall be filed in accordance with 4 CSR 240-2.080. Briefs shall follow the same list of issues as filed in the case and shall set forth and cite the proper portions of the record concerning the remaining unresolved issues that are to be decided by the Commission.

(G) All parties are required to bring an adequate number of copies of exhibits which they intend to offer into evidence at the hearing. If an exhibit has been prefiled, only three copies of the exhibit are necessary for the court reporter. If an exhibit has not been prefiled, the party offering it should bring, in addition to the three copies for the court reporter, copies for the five Commissioners, the regulatory law judge, and all counsel.

#### Extension of Operation of Law Date

This hearing is governed by Section 394.312, RSMo 1994, and paragraph 3 of that statute states, in part: "Unless otherwise ordered by the commission for good cause shown, the commission shall rule on [territorial agreements] . . . not later than one hundred twenty days after the application is . . . filed. . . ." Unlike many territorial

agreements, this proposed agreement has engendered opposition from a municipality (that has been granted intervention), and considerable interest from the general public. The Commission finds that the need to hear from the public as well as the need to afford the intervenor an opportunity to participate, constitutes good cause for establishing a schedule that anticipates a Commission ruling beyond 120 days.

**IT IS THEREFORE ORDERED:**

1. That the following procedural schedule is adopted for this case:

Direct testimony of Applicants (Already filed)	- August 9, 1999 3:00 PM
Local Public Hearing	- August 19, 1999 6:00 PM
Rebuttal testimony (all parties except Applicants)	- August 27, 1999 3:00 PM
Statement of Issues	- September 2, 1999 3:00 PM
Surrebuttal/Cross-Surrebuttal (all parties)	- September 9, 1999 3:00 PM
Statements of Positions on the Issues (all parties)	- September 13, 1999 3:00 PM
Evidentiary Hearing	- September 17, 1999 9:00 AM

2. That the evidentiary hearing will be held on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Any person with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one of

the following numbers: Consumer Services Hotline -- 1-800-392-4211, or  
TDD Hotline -- 1-800-829-7541.

3. That the date for ruling on the Territorial Agreement between  
Union Electric Company d/b/a AmerenUE and Ozark Border Electric  
Cooperative is extended for good cause shown.

4. That this order shall become effective on August 27, 1999.

BY THE COMMISSION

A handwritten signature in dark ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, somewhat stylized script.

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

( S E A L )

Bill Hopkins, Senior Regulatory Law Judge,  
by delegation of authority pursuant to  
4 CSR 240-2.120(1) (November 30, 1995)  
and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,  
on this 17th day of August, 1999.