

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 30th
day of September, 1994.

In the matter of the application of)
John Snow and Shirley Snow for change)
of electric supplier.)
CASE NO. EO-94-270

ORDER GRANTING CHANGE OF SUPPLIER

On March 4, 1994, John Snow and Shirley Snow (Applicants or Snows) filed an application with the Commission for a change of electric service provider from Ozark Electric Cooperative (Ozark or Cooperative) to The Empire District Electric Company (Empire). Applicants stated in their application that they are at the end of an Ozark service line, and service is available through Empire. Applicants further stated that they made numerous calls to Ozark, and that numerous service calls were made by Ozark; that they had requested a change of supplier numerous times, prior to May 1, 1991; and that their attorney requested a change on October 29, 1993, and Ozark has now consented.

Attached to the application was a document entitled "Consent and Waiver of Hearing," which stated as follows: "Comes now Ozark Electric Cooperative and hereby waives any right to a hearing and consents to the Application filed by John Snow and Shirley Snow in the above-referenced matter." It was signed by Jerry E. Mayberry, and was notarized. There was no indication of who Mr. Mayberry is, what his position with Ozark might be, or whether he has actual or apparent authority to execute such a document.

Two statutes, Sections 394.080.5 and 394.315.2, RSMo Supp. 1993, authorize a change in electric supplier where the customer seeking the change is currently receiving service from a rural electric cooperative. Both statutes provide that the Public Service Commission may order a change in suppliers where

the change is in the public interest for a reason other than a rate differential. However, Section 394.315.2 also states that "those customers who had cancelled service with their previous supplier or had requested cancellation by May 1, 1991, shall be eligible to change suppliers as per previous procedures." The previous procedures alluded to are found in an earlier version of the same statute, Section 394.315.2, RSMo 1986: "Notwithstanding any other provision of law to the contrary, no rural electric cooperative shall be permitted or required to supply retail electric energy to any person at a structure where said person is receiving, or has within the last sixty days received, retail electric energy from another supplier of electric energy."

On April 5, 1994, the Commission issued an Order and Notice directing that Ozark and Empire be notified of this matter, and ordering both suppliers to file a response to the application on or before May 5, 1994. In its order the Commission noted that the application contained insufficient information to determine whether Applicants had made attempts to switch electric suppliers under the old version of Section 394.315.2 prior to the May 1, 1991 cutoff date, but also indicated that if all parties consented to the change of suppliers, the Commission could grant the change of suppliers under the circumstances alleged therein. The Commission did not grant a change of suppliers at that time because the only indication of Ozark's consent was a document signed by an individual without any indication of authority to bind Ozark, and because there was no evidence of Empire's consent with regard to its willingness and ability to serve the Applicants.

On May 25, 1994, Empire filed its response. Empire explains that its response was late because the Commission's order was sent to a district office not accustomed to receiving correspondence from the Commission, rather than its corporate office. Empire states that it is aware that Jerry Mayberry is the General Manager of Ozark and believes that he had authority to execute the

"Consent and Waiver of Hearing" attached to the application on behalf of the cooperative, and waives any right it has in this proceeding to argue otherwise; that it has investigated its ability to provide service to the Applicants at their residence, and is of the opinion that it can provide service to that location if the Commission so orders; and that with reference to the particular facts in this situation, it waives any right it has to a hearing on this matter before the Commission. In addition, Empire states that if the Commission issues an order authorizing a change of electric suppliers due to the unique circumstances presented here, where any requirement for a hearing has been waived by the affected electric co-suppliers, Empire will take the necessary steps in cooperation with Ozark to transfer electric service at the affected location.

On June 23, 1994, Ozark filed its response. Ozark states that it waives its right to a hearing in this cause and further waives any objection to a finding by the Commission that it is in the public interest for the Snows to be allowed a change of electric supplier for a reason other than a rate differential, and that Ozark will timely cooperate with Empire to effect the transfer of service if such transfer is allowed by the Commission, and suggests that the Commission render a decision on the record before it.

The Staff of the Commission (Staff) filed a recommendation on July 12, 1994. Based on additional information provided to Staff from both electric suppliers, Staff states that the Snows are now served by a single-phase line approximately three-fourths of a mile in length, and are the only customers on this line. As the area is almost entirely surrounded by the City of Ozark, which is served by Empire, and as no other customers are likely to be added to the line and the line will need repairs in the future, the Cooperative agrees to a change in suppliers. Staff also states that Empire has a nearby 12 kv line and can provide service to the Snows' residence by installing a transformer on the

existing 12 kv pole, and adding one pole for the service drop. Staff's memorandum recommends approval of the Snows' application.

Applicants apparently maintain that they attempted to switch electric suppliers prior to May 1, 1991. Neither Ozark nor Empire addresses the factual allegations contained in Applicants' application, but instead consent to the change and waive their respective rights to a hearing. Both suppliers stress that their waivers are limited to this proceeding. The Commission is of the opinion that in the unique circumstances presented in this proceeding, it is appropriate to allow the Applicants to change electrical suppliers as requested. None of the parties seek to litigate any issue in this case, and it does not appear that there are any factual matters in dispute. In addition, Applicants state that they are at an end of an Ozark service line, therefore it is less likely that the change in suppliers will cause undue confusion, or a checkerboard effect with respect to the customers remaining on Ozark's service line. Given Staff's recommendation and the context in which this case has arisen, the Commission determines that a change in suppliers is in the public interest for a reason other than a rate differential.

IT IS THEREFORE ORDERED:

1. That John Snow and Shirley Snow may change electric suppliers to their property located at 1653 N. 20th Street, Ozark, Missouri from Ozark Electric Cooperative to The Empire District Electric Company, as soon as The Empire District Electric Company has constructed the necessary facilities to provide service to the Snow property.

2. That the Empire District Electric Company shall inform the Commission Staff when the change of electric supplier ordered in Ordered Paragraph 1 is complete and the Snows become a customer of The Empire District Electric Company.

3. That Commission Staff will monitor the change of supplier and file a memorandum with the Commission when it is satisfied that the change of supplier has been successfully and safely accomplished.

4. That this Order shall become effective on October 12, 1994.

BY THE COMMISSION



David L. Rauch
Executive Secretary

(S E A L)

McClure, Perkins, and Kincheloe, CC.,
Concur.
Mueller, Chm., and Crumpton, C., Absent.