STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service Commission held at its office in Jefferson City on the 4th day of February, 1994.

In the matter of the application of Roger Craven for change of electric supplier.) CASE NO. EO-93-318

ORDER GRANTING OZARK ELECTRIC COOPERATIVE'S MOTION TO DISMISS

On December 16, 1993, Ozark Electric Cooperative (Ozark) filed motions to dismiss for failure to comply with Commission order in three of the change of supplier cases which were consolidated for hearing purposes. Specifically, Ozark filed motions with respect to the application of Larry E. Dye, Case No. EO-93-315; the application of Roger Craven, Case No. EO-93-318; and the application of Nolan E. Mattocks, Case No. EO-93-322.

The Commission has made every attempt to try to accommodate the applicants in these cases, who are exclusively representing themselves before the Commission without benefit of legal counsel. The Commission scheduled the evidentiary hearing in Springfield at the request of the applicants, close to where the applicants reside. The Commission also issued orders of a much more detailed nature than usual, giving the applicants explicit directions of what was required of them, including a sample of the format for direct testimony and examples of the types of questions pertinent to a proceeding for a change of electric supplier. In addition, the Commission allowed the applicants to file less than the normal number of copies of direct testimony, and permitted direct filing of all copies with the Commission, rather than requiring the applicants to serve the other parties with copies; instead, the Commission undertook to forward copies to the parties.

None of the above-mentioned applicants filed any prefiled direct testimony. Applicants Dye and Mattocks did file a letter with the Commission in

effect asking that their depositions be filed in lieu of prefiled direct testimony, which they were permitted to do under the Commission's order of November 19, 1993; applicant Craven did not file a similar letter. The depositions of these three applicants were never taken, however, and are not on file with the Commission.

The Commission's order of October 22, 1993 specifically directed as follows: "Applicants shall prefile their direct testimony, or, in the event an applicant has been deposed, may file a copy of the deposition in lieu of prefiled direct testimony, or may choose to file both." (Emphasis added.) It is clear that only applicants who had been deposed had the option of filing their deposition instead of the required prefiled direct testimony. Common sense would also dictate this interpretation of the Commission's order, as one cannot file a copy of a nonexistent deposition.[1]

A hearing on the consolidated change of supplier cases was held on January 27, 1994, as scheduled. Counsel for Ozark renewed his motion to dismiss applicants Dye, Craven, and Mattocks, which motion was taken with the case. It was noted on the record that these three applicants were not present at the prehearing conference or at the hearing, which followed immediately thereafter. Although the Commission has been very accommodating to the applicants, it cannot ignore its obligations to provide due process to Ozark. The Commission would be justified in dismissing these applicants for failure to comply with Commission order, as originally requested by Ozark in its motions of December 16, 1993. The Commission would also be justified in dismissing the applicants for failure to

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[1] A later order of the Commission dated November 19, 1993 ordered: "That those Applicants who wish to have their deposition considered in lieu or in addition to their prefiled direct testimony, and whose depositions have already been filed with the Commission, need not file an additional six (6) copies of their deposition, but shall instead file a letter with the Missouri Public Service Commission stating that they wish to have their deposition filed either in lieu of or in addition to their direct testimony." (Emphasis added.) Thus it is clear that only in the event an applicant's deposition was already on file with the Commission would a letter of intent suffice.

attend the prehearing conference and the hearing.[2] As a practical matter, since applicants Dye, Craven, and Mattocks were not in attendance at the hearing, no evidence was introduced in support of their applications. Therefore, the Commission dismisses the applications of applicants Dye, Craven, and Mattocks for utter lack of evidence that a change of electric suppliers as to these applicants would be in the public interest.

IT IS THEREFORE ORDERED:

1. That the application of applicant Roger Craven, Case No. EO-93-318 be and is hereby dismissed.

2. That this order shall be effective on February 15, 1994.

BY THE COMMISSION

David L Rauch

David L. Rauch
Executive Secretary

(S E A L)

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

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[2] Applicants were warned of the consequences of failure to attend the prehearing conference and hearing in the Commission's order of November 19, 1993: "Pursuant to rule 4 CSR 240-2.090(5), attorneys representing the parties shall be present at all prehearing conferences, unless excused by the Commission or presiding officer. The Commission is of the opinion that this rule applies to parties representing themselves as well. Pursuant to rule 4 CSR 240-2.110(6), a party's application may be dismissed for failure to appear at a hearing without good cause, unless a continuance has been previously secured."