

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Thomas)	
A. Marshall for Change of Electric Service)	<u>Case No. EO-2007-0309</u>
Provider from SEMO Electric Cooperative to)	
Sikeston Board of Municipal Utilities)	

ORDER SETTING PREHEARING CONFERENCE

Issue Date: May 9, 2007

Effective Date: May 9, 2007

On February 15, 2007,¹ Thomas A. Marshall of Sikeston, Missouri filed a verified application with the Missouri Public Service Commission for a change in electric service provider. In the application, Mr. Marshall indicated that he has received electric service for his home from the SEMO Electric Cooperative (“SEMO”) for over 55 years. He requested a change in electric provider to the Sikeston Board of Municipal Utilities (“BMU”), explaining that over the years, the City of Sikeston has steadily grown north toward his home, which was located outside the city limits for many years but is now located within them due to annexation.

In the cover letter accompanying his application, Mr. Marshall stated that all four property owners surrounding him are also within the city limits of Sikeston, but are receiving electric service from BPU, not SEMO. Although he has no service quality or safety issues with the electric service provided by SEMO, Mr. Marshall averred that since he is now a Sikeston taxpayer, he would like to be able to take advantage of the electric services

¹ Unless otherwise specified, all dates refer to the year 2007.

provided by BMU, which are also less expensive than those provided by SEMO. He further stated that since BMU already provides electric service to a grain storage facility he owns, which is located adjacent to his home, he would like to have only one electric service provider (and receive only one monthly electric bill) instead of having two providers and receiving two electric bills every month.

Mr. Marshall's application was accompanied by a January 30 letter from Alan W. McSpadden, the Operations Manager for BMU, which states that BMU is now serving new electrical loads within the annexed area and indicates that the system has more than adequate capacity to provide service to that area, including the property owned by Mr. Marshall.

On February 27, the Commission served notice of Mr. Marshall's application on SEMO and BMU, joined them as necessary parties to this proceeding, and directed them to respond to the application by March 27. The Commission also ordered its Staff to investigate the merits of the application and to file a report concerning the results of its investigation, along with its recommendation as to whether the application should be approved or rejected, by no later than April 10. Finally, the Commission observed that the critical statutory determination would ultimately be whether Mr. Marshall would meet his burden of proof to demonstrate that his requested change in electric suppliers from SEMO to BPU would be "in the public interest for a reason other than a rate differential," as required by Section 394.315.2, RSMo 2000.

SEMO filed its reponse on March 14. Although SEMO acknowledged that nearly all of the factual allegations in the application were true, SEMO opposed the application, arguing that Mr. Marshall had "not alleged sufficient cause under the statute to support a

finding that a change of electric supplier at his residence is in the public interest” on the basis of something other than a rate comparison.

In its response, which was filed on March 16, BPU supported Mr. Marshall’s application. BPU admitted everything alleged in the application, stated that it had no objection to granting the relief requested therein, and averred that it was ready and able to provide electric service to Mr. Marshall’s home should his application be granted.

After asking for and receiving an extension of time to do so, Staff filed its report on May 1, in which it recommended that the Commission deny Mr. Marshall’s application for a change of electric service provider from SEMO to BPU because its investigation revealed “no basis upon which granting the application would be in the public interest” for a reason other than the lower electric rates offered by BPU. Staff also noted that although Section 394.312.1, RSMo 2000, authorizes rural electric cooperatives like SEMO and municipally owned utilities such as BPU to enter into written territorial agreements, SEMO and BPU have evidently neither negotiated nor presented to the Commission a territorial agreement that would affect Mr. Marshall’s property.

This matter is now at issue and a prehearing conference is appropriate to ensure its prompt resolution. In part, a prehearing conference is designed to permit the parties to pursue settlement discussions and to identify all remaining procedural or substantive matters of concern prior to the formal disposition of the issues in the case.² In addition, a prehearing conference offers the parties a valuable opportunity to attempt to resolve their differences by agreeing to voluntary mediation of their dispute.

² See Commission Rule 4 CSR 240-2.090(6).

The Commission reminds the parties that this prehearing conference is *not an evidentiary hearing*. Sworn testimony will not be taken and no final decision will result from the conference.³ However, all parties are required to be present for the prehearing conference, and a court reporter will be present to make a record of the parties that appear.

Parties must arrive in person or appear by telephone at or before the scheduled starting time of 9:00 a.m. in order to participate. Pursuant to Commission Rule 4 CSR 240-2.090(5), “Failure to appear at a prehearing conference without previously having secured a continuance shall constitute grounds for dismissal of the party or the party’s complaint, application or other action unless good cause for the failure to appear is shown.”

The Commission further advises the parties that arriving late to a prehearing conference is the equivalent of failing to appear. Parties are expected to appear at scheduled hearings on time, or to advise the Commission of their need to appear late or to timely request a continuance. If a party fails to meet those obligations, that party may be dismissed and the Commission may rule in favor of an opposing party. This is why the Commission issues advance notice of all hearings and conferences and extends various opportunities prior to any scheduled event for the parties to appear by phone or request a continuance.

IT IS ORDERED THAT:

1. All parties shall appear at a prehearing conference to be held on Thursday, May 31, 2007, beginning at 9:00 a.m. The prehearing conference will be held in Room 305 at the Commission’s offices in the Governor Office Building, 200 Madison Street,

³ Also, under Commission Rule 4 CSR 240-2.090(7), any facts the parties may discuss during the conference, including any settlement offers or discussions, are privileged and cannot be used against any participating party unless the parties agree to disclose them or they are fully backed up by other, independent evidence.

Jefferson City, Missouri, a building that meets the accessibility standards required by the Americans with Disabilities Act. Any person needing additional accommodations to participate in this prehearing conference should call the Public Service Commission's Hotline at 1-800-392-4211 or dial Relay Missouri at 711 prior to the conference.

2. Any party wishing to appear by telephone shall notify the Regulatory Law Judge by calling 573-751-7485 no later than May 24, 2007.

3. Any party wishing to request a continuance shall file a pleading with the Commission stating why they are unable to attend the scheduled prehearing conference on May 31, 2007, either in person or by phone, and shall provide the Commission with a list of dates when that party is available to appear. Any such pleading shall be filed no later than May 28, 2007, and shall also be served on every other party to this complaint by the party requesting the continuance.

4. This order shall become effective on May 9, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Benjamin H. Lane, Regulatory
Law Judge, by delegation of authority
under Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 9th day of May, 2007.