

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 2nd day of  
October, 2007.

In the Matter of the Application of The Empire District )  
Electric Company and Ozark Electric Cooperative for )  
Approval of a Written Territorial Agreement Designating ) **Case No. EO-2008-0043**  
the Boundaries of an Exclusive Service Area for Ozark )  
within a Tract of Land in Greene County, Missouri and )  
Associated Requests for Approval of a Transfer of )  
Facilities and Change of Supplier. )

**ORDER ADOPTING PROCEDURAL SCHEDULE**

Issue Date: October 2, 2007

Effective Date: October 2, 2007

On August 15, 2007, The Empire District Electric Company and Ozark Electric Cooperative (the Applicants) filed a joint application asking the Commission to approve a territorial agreement between the utility and the cooperative (Joint Application). The Joint Application also asks the Commission to approve a transfer of facilities and change of suppliers from Empire to Ozark necessary to effectuate the territorial agreement.

On August 17, 2007, the Commission issued an Order Directing Notice and Setting Date for Submission of Intervention Requests. That order, among other things, required the parties to jointly or separately file a proposed procedural schedule on or before September 17, 2007. The Commission's Staff timely filed a proposed procedural schedule. Staff indicated it had been unable to confirm the Applicants' position regarding the proposed schedule, but that the proposed schedule was acceptable to the Office of the Public Counsel.

On September 19, 2007, Ozark, with the consent of Empire, filed an alternate proposed procedural schedule. In support of its alternate proposed schedule, Ozark contends that a more compressed schedule is appropriate due to the parties' familiarity with the facts and issues underlying the Joint Application. Ozark did not provide any reason it did not timely file its proposed procedural schedule. Ozark also did not provide any basis to support its contention that all parties are familiar with the facts and issues underlying the Joint Application. Further, Ozark did not suggest that either of the Joint Applicants would be harmed or prejudiced in any way if the Commission adopted Staff's proposed procedural schedule.

Because Ozark did not indicate whether Staff or Public Counsel supported the alternate procedural schedule, and several dates contained therein were rapidly approaching, the Commission directed that objections to Ozark's proposed procedural schedule be filed no later than September 24, 2007. Staff timely filed an objection to the Ozark's procedural schedule contending that it does not permit the Staff an adequate opportunity to explore all the facts surrounding the "highly unusual proposed territorial agreement and enable it to determine which facts are relevant and should be presented to the Commission for its determination." Staff denies having prior familiarity with the facts and issues of the pending application. Additionally, Staff argues that its proposed procedural schedule, unlike the one proposed by Ozark, permits adequate time for Public Counsel and Staff to propound two rounds of data requests before filing testimony and allows them to allocate their resources among the many cases currently pending before the Commission.

A side-by-side comparison of the competing schedules proposed by Staff and the Applicants looks like this:

Event	Staff's Proposed Date	Applicants' Proposed Date
Applicants' Direct Testimony	October 12, 2007	October 1, 2007
Staff and Public Counsel Rebuttal Testimony	November 9, 2007	October 19, 2007
Applicants' Surrebuttal Testimony	December 7, 2007	November 2, 2007
List of Issues	December 10, 2007	November 5, 2007
Position Statements	December 14, 2007	November 12, 2007
Evidentiary Hearing	December 18-19, 2007	November 26-27, 2007

After considering the Joint Application and the arguments of the parties, the Commission has determined good cause has been shown for purposes of Section 392.312.3, RSMo 2000, for the Commission to take more than 120 days from the filing of the Application for the Commission to approve or disapprove the territorial agreement. The Commission finds that the procedural schedule proposed by Staff is more reasonable and, unlike the procedural schedule proposed by Ozark, affords the parties a reasonable time to conduct discovery. Further, Ozark did not suggest that it, or Empire District, would experience any harm if the Commission adopts the procedural schedule proposed by Staff. The Commission does not believe any negative consequence that could result from a three-week delay in scheduling the hearing would justify denying the other parties an opportunity to conduct discovery. The Commission will adopt the procedural schedule proposed by Staff on September 17<sup>th</sup>.

The Commission finds that the following conditions should be applied:

(A) The Commission will require that testimony be prefiled as defined in Commission Rule 4 CSR 240-2.130. All parties must comply with this rule, including the requirement that testimony be filed on line-numbered pages.

(B) The parties shall agree upon and Staff shall file a list of the issues to be heard, the witnesses to appear on each day of the hearing, the order in which they will 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.

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

(D) All parties are required to bring an adequate number of copies of exhibits that they intend to offer into evidence at the hearing. If an exhibit has not been prefiled, the party offering it should bring, in addition to the copy for the court reporter, copies for the five Commissioners, the Presiding Judge, and all counsel.

**IT IS ORDERED THAT:**

1. The following procedural schedule is established:

<b>Direct Testimony by The Empire District Electric Company and Ozark Electric Cooperative</b>	<b>–</b>	<b>October 12, 2007</b>
<b>Rebuttal Testimony by the Commission’s Staff and Office of the Public Counsel</b>	<b>–</b>	<b>November 9, 2007</b>
<b>Surrebuttal Testimony by The Empire District Electric Company and Ozark Electric Cooperative</b>	<b>–</b>	<b>December 7, 2007</b>
<b>List of Issues, Order of Issues, Order of Witnesses, and Order of Cross</b>	<b>–</b>	<b>December 10, 2007</b>
<b>Statements of Position</b>	<b>–</b>	<b>December 14, 2007</b>
<b>Hearing</b>	<b>–</b>	<b>December 18-19, 2007, beginning at 9:00 a.m.</b>

2. The hearing will be held at the Commission's office at the Governor Office Building, Room 310, 200 Madison Street, Jefferson City, Missouri. This building meets accessibility standards required by the Americans with Disabilities Act. If you need additional accommodations to participate in this hearing, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 before the hearing.

3. This order shall become effective on October 2, 2007.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is positioned above the printed name and title.

Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Clayton,  
Appling, and Jarrett, CC., Concur.

Voss, Regulatory Law Judge