

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

In the Matter of the Application of the Empire District)
Electric Company and Ozark Electric Cooperative for)
Approval of a Written Territorial Agreement)
Designating 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.)

Case No. EO-2008-0043

Staff's Objections to Ozark Electric Cooperative's Proposed Schedule

COMES NOW the Staff of the Missouri Public Service Commission and, as ordered by the Commission in its September 19, 2007, *Order Directing Response*, objects to the alternate proposed procedural schedule file by Ozark Electric Cooperative on September 19, 2007, as follows:

1. On September 19, 2007, joint applicant Ozark Electric Cooperative ("Ozark"), "with the consent of The Empire District [Electric Company]," filed its response to the Commission's *Order Directing Notice and Setting Date for Submission of Intervention Requests* in which it proposed a procedural schedule culminating with hearings November 26-27, 2007, rather than the December 18-19, 2007, hearing dates proposed by the Staff that were acceptable to Public Counsel.

2. In response to Ozark's proposed schedule the Commission issued its *Order Directing Response* in which the Commission directed, "Any objections to the alternate proposed procedural schedule filed by Ozark Electric Cooperative on September 19, 2007, shall be filed no later than September 24, 2007."

3. With its proposed schedule Ozark states that it "proposes a more compressed

schedule based on the parties' prior familiarity with the facts and issues of this application.”

4. The Staff does not have prior familiarity with the facts and issues of this application. The Staff does have familiarity with facts and issues involved in Case Nos. EO-2007-0029 and EE-2007-0030; however, the facts and issues in this case differ from the facts and issues in those cases.

5. In Case No. EE-2007-0030 The Empire District Electric Company (“Empire”) was seeking a variance from its tariff to allow it to discriminatorily provide service to the developer of *The Lakes at Shuyler Ridge* subdivision, and in Case No. EO-2007-0029 Empire and Ozark were seeking approval of a territorial agreement. In that agreement Empire was to be the electric service provider, exclusive of Ozark, in an area of about 4.5 square miles that included *The Lakes at Shuyler Ridge* subdivision and Ozark was to be the electric service provider, exclusive of Empire, in an area of about 4.0 square miles that included another subdivision—*Terrell Creek*. Both proposed exclusive service areas were in unincorporated Greene and Christian Counties near Republic, Missouri.

6. In contrast, in this case, not only are Empire and Ozark seeking approval of a territorial agreement limited to Ozark being the electric service provider in *The Lakes at Shuyler Ridge* subdivision, exclusive of Empire, but Empire is also seeking authority to transfer assets to Ozark and to change the electric service supplier to structures in *The Lakes at Shuyler Ridge* subdivision from Empire to Ozark. According to the applications when they were filed with the Commission in the prior cases, Empire was not the electric service provider in *The Lakes at Shuyler Ridge* subdivision. According to the application in this case, Empire is the electric service provider in *The Lakes at Shuyler Ridge* subdivision. Thus, the facts, issues and statutes involved in this case are quite different from those involved in the prior cases.

7. If Ozark intends to include the Staff within the parties to which it is referring in paragraph 3 of its September 19, 2007, response to the Commission's *Order Directing Notice and Setting Date for Submission of Intervention Requests*, when Ozark states the basis for its more compressed schedule is "the parties' prior familiarity with the facts and issues of this application," then the Staff disagrees with the asserted basis.

8. In its response to the Commission's *Order Directing Notice and Setting Date for Submission of Intervention Requests*, the Staff stated,

The Staff wishes to learn facts beyond those stated in the Joint Application before making a recommendation to the Commission regarding the territorial agreement that is the subject of this case. The schedule the Staff is proposing is designed to permit time to learn those facts and to accommodate existing workload and pending hearings.

9. The schedule which the Staff proposed to the Commission follows:

SCHEDULE

EVENT	DATE
Applicant's The Empire District Electric Company and Ozark Electric Cooperative's Direct Testimony	October 12, 2007
Staff and Public Counsel Rebuttal Testimony	November 9, 2007
Applicant's The Empire District Electric Company and Ozark Electric Cooperative's Surrebuttal Testimony	December 7, 2007
List of Issues	December 10, 2007
Position Statements	December 14, 2007
Evidentiary Hearing	December 18-19, 2007

This schedule permits adequate time for Public Counsel and the Staff to propound two rounds of data requests before filing testimony and it allows them to allocate their resources among the many cases currently pending before the Commission. It also allows the Office of the Commission's General Counsel to allocate resources among matters pending before both the Commission and before the Courts.

10. Some of the other electric matters pending before the Commission that require resources of the Staff and the Office of the General Counsel through the end of this year are Kansas City Power & Light Company's pending general electric rate case, Case No. ER-2007-0291, that is set for hearings October 1-5, 9-12 (main hearing) and November 8 (true-up), 2007; Great Plains Energy Incorporated's request for authority to acquire Aquila, Inc., Case No. EM-2007-0374, which is set for hearings December 3-7, 10-14, 2007; Aquila's request for authorization to join MISO, Case No. EO-2008-0046; Aquila's fixed bill program, Case No. EO-2007-0395 that is set for hearing October 16, 2007; Chapter 22 (Integrated Resource Plan) cases—Case Nos. EO-2007-0298 (Aquila), EO-2007-0409 (AmerenUE), EE-2008-0034 (KCPL) and EO-2008-0069 (Empire); and rulemakings such as Case No. EX-2007-0214. Further, some of the matters pending in the courts that require resources of the Office of the General Counsel are court review of the Commission's decision in ER-2007-0002 (AmerenUE), Cole County Case No. 07AC-CC00584, for which the Commission's brief is due October 25, 2007; court review of the Commission's decision in ER-2007-0004 (Aquila), which was filed July 20, 2007; and court review of the Commission's decision in ER-2007-0314 (KCPL), Cole County Case No. 07-AC-CC00131.

11. The Staff notes Ozark and Empire assert in the joint application that electric service is being supplied to structures in *The Lakes at Shuyler Ridge* subdivision and they

anticipate more structures being served before the Commission issues its decision. Neither Ozark nor Empire requested the Commission to rule on the joint application on an expedited basis. Based on information included in the application, Empire has been providing electric service to one or more structures in *The Lakes at Shuyler Ridge* subdivision since 2006. The Staff is unaware of any reason why this case must be expedited by the Commission, and neither Ozark nor Empire proposes one. The Staff also notes that Ozark did not propose shortened discovery response times with its alternative shortened schedule.

12. In short, the Staff's objection to Ozark's schedule is that it does not permit the Staff an adequate opportunity to explore all the facts surrounding this highly unusual proposed territorial agreement and enable it to determine which facts are relevant and should be presented to the Commission for its determination of whether to grant the joint applicants any or all of the relief they request, conditionally or not.

WHEREFORE, the Staff respectfully objects to the alternate schedule proposed by Ozark Electric Cooperative and requests that the Commission adopt the procedural schedule the Staff proposed in its September 17, 2007, filing.

Respectfully submitted,

/s/ Nathan Williams

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 24th day of September 2007.

/s/ Nathan Williams