

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
August 10, 1999**

CASE NO: EO-99-599

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Jefferson City, MO 65102**

Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

Uncertified Copy:

To all mayors of all municipalities, all county commissioners within counties of Bollinger, Dunklin, Iron, Madison, New Madrid, Reynolds, Snoddard, and Wayne

To Rural Electric Cooperatives and electric suppliers covered by territorial agreement

To the municipal electric supply systems in the cities of: Poplar Bluff, Malden, Kennett, Sikeston, Jackson, Campbell, and

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 10th
day of August, 1999.

In the Matter of the Application of)
Union Electric Company d/b/a AmerenUE)
and Ozark Border Electric Cooperative for)
Approval of a Written Territorial Agreement)
Designating the Boundaries of Each Electric)
Service Supplier within Portions of)
Bollinger, Butler, Carter, Dunklin, Iron,)
Madison, New Madrid, Reynolds, Ripley) Case No. EO-99-599
Stoddard and Wayne Counties, Authorizing)
the Sale, Transfer, and Assignment of)
Certain Electric Distribution Facilities,)
Easements and Other Rights, Generally)
Constituting the Applicants' Electric)
Utility Business Associated with its)
Customers Transferred Pursuant to the)
Territorial Agreement)

**ORDER ESTABLISHING PROCEDURAL SCHEDULE, ORDER GRANTING
AND DENYING INTERVENTION, ORDER DENYING SHOW CAUSE ORDER,
AND ORDER DENYING MOTION TO REJECT TERRITORIAL AGREEMENT**

Procedural History

On June 16, 1999, Union Electric Company d/b/a AmerenUE
(AmerenUE) and Ozark Border Electric Cooperative (Ozark Border) (jointly,
Applicants) filed their Joint Application for approval of their agreement
contained in a document entitled Territorial Agreement (territorial
agreement).

On June 24, 1999, the Missouri Public Service Commission
(Commission) entered its Order and Notice, stating, *inter alia*, that
proper parties should be given notice and an opportunity to intervene in

this matter and that the Applicants shall give notice to their affected customers. The order and notice also stated that any interested party wishing to intervene in this case shall file an application to do so no later than July 14, 1999, and that the parties may file a procedural schedule no later than July 16, 1999.

The Applicants gave notice by letters sent on July 2, 1999, by Ozark Border and on July 5, 1999, by AmerenUE to their affected customers. The letters stated, inter alia, ". . . [a]s a customer. . . that is being effected (*sic*) by the Territorial Agreement[,] you have the right to intervene in this case." This is a misstatement of the law.

Commission rule 4 CSR 240-2.075(4) (A) Intervention states the Commission may grant intervention on a showing that "[T]he applicant has an interest in the proceeding which is different from that of the general public. . . ."

On July 9, 1999, the Office of the Public Counsel (OPC) filed its Request for Local Hearing, citing consumer interest in this matter. Joint Applicants did not file a response. However, OPC orally informed the Commission on July 29, 1999, that the attorneys for the Joint Applicants did not oppose a public hearing. On August 3, 1999, the Commission entered its Order Scheduling Local Hearing which scheduled a local public hearing in Dexter, Missouri, on August 19, 1999. On August 3, 1999, Ozark Border late-filed its Response of Ozark Border Electric Cooperative to Office of Public Counsel's Request for Public Hearing, requesting ". . . that if the Commission orders a public hearing in this matter[,] that said public hearing be held in Fisk, Missouri." The

Commission found nothing in the pleading that would cause it to conclude that Fisk would be a better location than Dexter. Therefore, the Commission will not change the location of the hearing.

Ruling on Procedural Schedule

On July 16, 1999, the parties filed their Proposed Procedural Schedule. On August 4, 1999, the parties filed their proposed Revised Procedural Schedule. The Commission has reviewed the proposed revised procedural schedule and finds, with one exception, that the dates are inappropriate. The Commission will reject the proposed revised procedural schedule because it does not allow sufficient time for the Commission to rule on the application within the one hundred twenty (120) day statutory period. The Commission will allow the filing of direct testimony by Applicants on August 9, 1999; however, if that is not done, then the Applicants shall file the direct testimony no later than August 12, 1999. The Commission points out that the first proposed procedural schedule filed on July 16, 1999, by the parties requested only a prehearing conference on July 30, 1999, and an evidentiary hearing on August 23, 1999. Thus, the parties must have been prepared on July 16, 1999, to proceed with an August 23, 1999, evidentiary hearing date.

The Commission establishes the following procedural schedule and finds that these conditions should be applied:

(A) The Commission will require the prefiling of testimony as defined in 4 CSR 240-2.130. All parties shall comply with this rule, including the requirement that testimony be filed on line-numbered pages. The practice of prefiling testimony is designed to give parties notice

of the claims, contentions and evidence in issue and to avoid unnecessary objections and delays caused by allegations of unfair surprise at the hearing.

(B) Pursuant to 4 CSR 240-2.130(15), testimony and schedules shall not be filed under seal and treated as proprietary or highly confidential unless the Commission has first established a protective order. Any testimony or schedule filed without a protective order first being established shall be considered public information.

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

(D) Each party shall file a statement of its position on each disputed issue. Such statement shall be simple and concise, and shall not contain argument about why the party believes its position to be the correct one.

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

(F) All parties are required to bring an adequate number of copies of exhibits which they intend to offer into evidence at the

hearing. If an exhibit has been prefiled, only three copies of the exhibit are necessary for the court reporter. If an exhibit has not been prefiled, the party offering it should bring, in addition to the three copies for the court reporter, copies for the five Commissioners, the regulatory law judge, and all counsel.

Rulings on Applications to Intervene

At least two people responded to the letters giving notice of the territorial agreement sent from the Applicants to their customers by requesting intervention, which the Commission is treating as applications to intervene. On July 12, 1999, A.S. Johnson filed a letter which stated in part, "Please let this letter serve as my intervention as an affected party in this proceeding." On July 14, 1999, Helen Channell filed a letter which stated in part, "I wish to intervene with the Territorial Agreement." Commission rule 4 CSR 240-2.075(4) states, *inter alia*, that "[a]pplications to intervene . . . shall comply with 4 CSR 240-2.080[,] . . . shall state the applicant's interest in the proceeding and reasons for seeking intervention, and shall state whether the applicant supports or opposes the relief sought." Thus, since these two letters do not comply with the Commission's rules, these two applications to intervene will be denied. However, should these two proposed intervenors refile applications, which comply with the Commission's rules, they will be allowed to do so if they refile within ten (10) days of the issue date of this order.

On July 13, 1999, the City of Poplar Bluff, Missouri (Poplar Bluff), filed its Application to Intervene, Objection to Portions

of Proposed Territorial Agreement, and Request for Show Cause Order. Poplar Bluff stated that it is a political subdivision of the State of Missouri, and that it provides electric service through its municipally-owned and operated municipal utilities. Poplar Bluff stated that it opposes the relief sought by Ozark Border in the territorial agreement regarding the provision of electric service by Ozark Border in Butler County (which is the location of Poplar Bluff).

Commission rule 4 CSR 240-2.075(4) states in part: "The [public service] commission may permit intervention on a showing that . . . [t]he applicant is a municipality. . . ." The Commission has reviewed the application to intervene filed by Poplar Bluff and finds that it is in compliance with Commission rule 4 CSR 240-2.075(4) in that Poplar Bluff is a municipality. The Commission will grant Poplar Bluff intervention.

Ruling on Motion for Show Cause

Poplar Bluff also included objections to parts of the territorial agreement. For example, Poplar Bluff stated that section 5.1 of the territorial agreement includes provisions for exclusive service areas. Poplar Bluff stated that the territorial agreement states that if Poplar Bluff ever sells its municipal electric facilities, the Applicants could divide the service territory which Poplar Bluff formerly served. Poplar Bluff stated that "[t]his is the contractual equivalent of the buzzards circling overhead and mentally dividing up the carcass before the cow even feels sick."

Because of this and other objections to certain provisions of the territorial agreement, Poplar Bluff requested that the Commission

". . . require Ozark Border to show cause, in a pleading filed with the Commission, why these provisions are essential to this Agreement."

Commission rule 4 CSR 240-2.060 (D) states that an application shall contain "[r]eference to the statutory provision or other authority under which relief is requested. . . ." Poplar Bluff did not cite any statute or any other authority which showed that the Commission is empowered to issue a show cause order requiring parties to a territorial agreement to justify why certain provisions are essential. Thus, the motion for a show cause order is denied.

Ruling on Motion to Reject

Poplar Bluff also requested "that the Commission reject the Territorial Agreement so long as it contains the referenced or similar objectionable provisions. . . ." This issue will be dealt with in the evidentiary hearing and Report and Order and thus this motion will not be ruled upon herein.

IT IS THEREFORE ORDERED:

1. That the following procedural schedule is established for this case:

| | | |
|---|---|----------------------------|
| Direct testimony of Applicants | - | August 9, 1999 3:00 PM |
| Local Public Hearing | - | August 19, 1999 6:00 PM |
| Rebuttal testimony (all parties except Applicants) | - | August 16, 1999 3:00 PM |
| Statement of Issues | - | August 19, 1999 3:00 PM |

| | | |
|--|---|----------------------------|
| Surrebuttal/Cross-Surrebuttal (all parties) | - | August 19, 1999 3:00 PM |
| Statements of Positions on the Issues (all parties) | - | August 20, 1999 3:00 PM |
| Evidentiary Hearing | - | August 23, 1999 9:00 AM |

2. That the evidentiary hearing will be held on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Any person with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one of the following numbers: Consumer Services Hotline -- 1-800-392-4211, or TDD Hotline -- 1-800-829-7541.

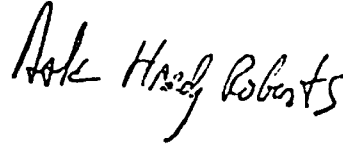
3. That the application of the City of Poplar Bluff, Missouri, to intervene is granted.

4. That the applications of Helen Channell and A.S. Johnson to intervene are denied.

5. That the motion for show cause order of the City of Poplar Bluff, Missouri, is denied.

6. That this order shall become effective on August 20, 1999.

BY THE COMMISSION

A handwritten signature in cursive script that reads "Dale Hardy Roberts".

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Schemenauer, and Drainer, CC., concur
Crompton and Murray, CC., absent

Hopkins, Senior Regulatory Law Judge

ALJ/Sec'y: Hopkins/Boyce

8-9 80-99-599
Date Circulated CASE NO.

ALJ
Lumpe, Chair

ALJ
Crumpton, Commissioner

ALJ
Murray, Commissioner

ALJ
Schemmeyer, Commissioner

ALJ 3
Drainer, Vice-Chair

8-10
Agenda Date

Action taken: 3-OAS

Must Vote Not Later Than _____

STATE OF MISSOURI
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson
City,

Missouri, this 10TH day of AUGUST, 1999.

Dale Hardy Roberts
Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge