

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

In the Matter of the Application of)
James and Denise Haston for Change) File No. EO-2020-0163
Of Electric Supplier.)

**OZARK ELECTRIC COOPERATIVE’S RESPONSE TO THE CITY OF MONETT,
MISSOURI’S MOTION TO DISMISS
AND
REQUEST FOR ADDITIONAL TIME TO MORE FULLY RESPOND**

COMES NOW Ozark Electric Cooperative (“Ozark”), by and through its Attorneys, Andereck, Evans, Lewis, Figg, and Battagler, LLC, and for its Response to The City’s Motion to Dismiss and its Request for Additional Time to More Fully Respond states as follows:

Introduction

On January 20, 2020, the City of Monett, Missouri (“City”) filed its Motion to Dismiss and Response to the Application of James and Denise Haston for Change of Electric Supplier.

On January 22, 2020, the Commission issued its Order Directing Responses to the City’s Motion to Dismiss, giving Ozark and Commission Staff until January 29, 2020 to respond.

Ozark Electric Cooperative does not object to a change of supplier. Further, it does not dispute most of the facts alleged by the City. However, it is important that the appropriate principles of well-settled law on this subject be applied. These issues are not uncommon in the State, but the application of the law to a particular set of facts can be nuanced. Ozark respectfully requests additional time to fully brief the relevant legal

principles which should guide the Commission's decision on the City's Motion to Dismiss.

Argument

The City's justification for dismissal relies on the principal that a new structure within a newly annexed (non-rural) area may not be served by a rural electric cooperative ("REC"), and therefore the City is the only electric utility eligible to serve the subject structure. Ozark acknowledges this principle as a constraint on its ability to serve **new structures** but denies its applicability to the present case.

The theory relied upon by the City, based in part upon *Farmers Electric Cooperative v. Missouri Department of Corrections*, 977 S.W.2d 266 (Mo. Banc 1998), does not apply to this case, as a new structure is not being served in this case. Rather, an existing well and wellhouse, previously served by Ozark and still having available permanent electric service to the structure is the subject of the change of supplier request.

The question of dismissal should therefore be governed by the well-established anti-flip-flop laws. Time constraints have not allowed for full briefing of the legal arguments. In order to ensure consistent application of the law on this subject, the Commission should have the benefit of a full briefing.

In conclusion: 1) Ozark agrees the reasons for granting a change of supplier weigh in favor of the Applicants request, and Ozark makes no objection to the Commission granting the underlying request, 2) Ozark wishes to defend the principles of Missouri's anti-flip-flop laws, and therefore objects to the City's request to dismiss the

Application, and 3) Ozark requests additional time to more fully brief the matter for the benefit of the Commission.

WHEREFORE, Ozark Electric Cooperative respectfully requests the Commission issue an Order granting it additional time to fully brief the important legal issues raised by the City in its Motion to Dismiss.

Respectfully submitted,

ATTORNEYS FOR OZARK
ELECTRIC COOPERATIVE:



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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on January 29, 2020, to the following:

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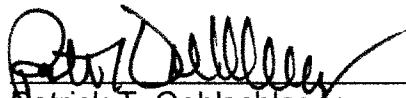


Shawn Battagler

VERIFICATION

STATE OF MISSOURI)
) ss
COUNTY OF Greene)

Being first duly sworn, Patrick Oehlschlager states as follows: that he is the Manager of Ozark Electric Cooperative; that he has read the foregoing Response; that the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief; and, that Andereck, Evans, Lewis, Figg & Battagler, L.L.C. is authorized by Ozark Electric Cooperative to make this filing and represent it in this matter.


Patrick T. Oehlschlager

Subscribed and sworn to before me this 24th day of January, 2020.


Notary Public

