

**BEFORE THE  
MISSOURI PUBLIC SERVICE COMMISSION**

In the Matter of the Application of	)	
Thomas and Tammy McCain for	)	Case No. EO-2010-0067
Change of Electric Supplier.	)	

**Pemiscot-Dunklin Reply to  
Ozark Border Electric Cooperative**

Comes now Pemiscot-Dunklin Electric Cooperative, pursuant to 4 CSR 240-2.0780, and in response to Ozark Border's October 2, 2009 Motion to Respond Out of Time, Response to Applicant's Application, and Reply to Pemiscot' Dunklin's Application to Intervene, and respectfully sets forth the following:

1. Pemiscot-Dunklin does not object to Ozark Border being granted leave to respond out of time.
2. Pemiscot-Dunklin respectfully disagrees that Ozark Border is the proper electric supplier for Applicant.
3. Pemiscot Dunklin respectfully disagrees that the 1999 Territorial Agreement between Ameren UE and Ozark Border approved by the Commission On October 19, 1999 in EO-99-599 makes Ozark Border a proper electric supplier to applicant for the following reasons:
  - a. Pemiscot-Dunklin was not a party to EO-99-599;
  - b. The City of Campbell was not a party to EO-99-599;

c. the City of Campbell before and during the pendency of EO-99-599 operated a municipally owned and operated retail electrical distribution system for the electrical customers the City;

d. The Revised Territorial Agreement approved by the Commission by Order of October 19, 1999 was based upon an October 4, 1999 Stipulation and Agreement between UE, Ozark Border, Staff, Stoddard County Intervenors, Poplar Bluff, City of Malden and the Office of Public Counsel. Paragraph 2 of that Stipulation specified the Territorial Agreement was only between UE and Ozark Border. Paragraph 29 of that Stipulation further specified that the exclusive service areas designated in the Revised Territorial Agreement were only exclusive as between UE and Ozark Border, and “shall in no way affect or diminish the present or future rights and duties of Poplar Bluff and Malden, which are municipal electric suppliers, or any other electric supplier not a party to the Revised Territorial Agreement.” (underlining added). Paragraph 31 of that Stipulation stated that Ozark Border agreed not to use the Revised Territorial Agreement, or Commission approval thereof, in any way to attempt to convince potential electric consumers to choose Ozark Border as their electrical supplier. Paragraphs 31- 35 set forth additional provisions with respect to Malden and Poplar Bluff specifying that approval of this Revised Territorial Agreement was not to impact these municipal electrical suppliers. In presenting this Stipulation to the Commission at the October 8, 1999 hearing, the parties at Transcript Page 8 represented to the Commission that any other municipally owned electrical supplier is and shall be free to serve anywhere it may legally choose without regard to the revised territorial agreement boundaries;

e. The Commission's October 19, 1999 Report and Order approving the revised territorial agreement relied upon the above-referenced stipulation provisions, and made them part of the revised territorial agreement approved.

4. Section 394.312.6 RSMo provided in 1999, and still provides, that Commission approval of a territorial agreement shall in no way affect or diminish the rights and duties of any electrical supplier not a party to the agreement.

5. The City of Campbell and Pemiscot-Dunklin were not parties to the 1999 Territorial Agreement, and their rights are in no way affected or diminished by that Territorial Agreement.

6. No provision of the 1999 UE-Ozark Border Territorial Agreement addressed the electrical distribution facilities of the City of Campbell, purported to set a purchase price for these facilities, identified these facilities as being included in any exchange, or included any customers of the City of Campbell as being exchanged.

7. Any provision of the 1999 Territorial Agreement by which UE and Ozark Border purported to designate the City of Campbell as an exclusive service area of Ozark Border was a nullity, and beyond the proper scope of said Territorial Agreement, as neither UE nor Ozark Border provided service to the City of Campbell in 1999.

8. Any provision of the 1999 Territorial Agreement by which UE and Ozark Border purported to designate the City of Campbell as an exclusive service area of Ozark Border, was null and void and of no impact or binding effect whatsoever upon the City of Campbell and Pemiscot-Dunklin, and by statute, stipulation, and order shall in no way affect or diminish the present or future rights and duties of the City of Campbell or Pemiscot-Dunklin in their capacities as power suppliers.

9. On the basis of the foregoing paragraphs 3-8 above, Pemiscot respectfully disagrees with Ozark Border's assertion in paragraph 5 of its Reply to Pemiscot's Application to Intervene that, as against the interests of the City of Campbell and of Pemiscot, the City of Campbell is the exclusive service area of Ozark Border.

10. On the basis of the foregoing paragraphs 3-8 above, Pemiscot respectfully disagrees with Ozark Border's assertion, set forth at paragraph 8 of its Reply to Pemiscot's Application to Intervene, that any sale of the municipal utility system of Campbell to Pemiscot will necessitate the amendment of the 1999 Territorial Agreement.

11. On the basis of the foregoing paragraphs 3-8 above, Pemiscot respectfully disagrees with Ozark Border's assertion, set forth at page 8 of its Reply to Pemiscot's Application to Intervene, that it "gave considerable value" in acquiring the City of Campbell as an exclusive service area from UE. In consideration could only have gone to the City of Campbell, not to UE. The City of Campbell was not UE's territory to sell to Ozark Border, as UE was not the supplier within the City of Campbell before 1999. Ozark Border should not have paid for something Ozark Border knew was not UE's to sell.

12. Pemiscot respectfully disputes Ozark Border's assertions, set forth in paragraphs 4, 6, and 7 of its Reply to Pemiscot's Motion to Intervene, describing the existing facilities, the cost of additional facilities, the alleged duplication of facilities, and Ozark Border's description of the negotiations to purchase the facilities of the City of Campbell.

13. At the least there are disputed facts and questions of law. Pemiscot's application to Intervene sets forth a legitimate interest which is different than that of the general public.

14. Pemiscot and Dunklin have entered into a contract for the sale of the facilities of the City of Campbell. Ozark Border has no such contract. Ozark Border has no legitimate claim to the City of Campbell as its exclusive service area, except as between Ozark Border and Ameren UE. It would appear that Ozark Border's interest here is no different than that of the general public, except that the Applicant has requested Ozark Border to be its power supplier.

WHEREFORE, on the basis of the foregoing, Pemiscot respectfully requests that its application to intervene be granted, and that it be allowed to participate as a party herein opposing the relief Applicant's have requested.

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this pleading was electronically mailed to the following attorneys of record in this proceeding this 7th day of October, 2009:

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A paper copy of this pleading has also been mailed to Applicants at the address listed on their application, first class US mail, postage prepaid.

/s/ Craig S. Johnson  
Craig S. Johnson