BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Co-Mo Electric Cooperative for Approval of Designated Service Boundaries Within Portions of Cooper County, Missouri.	))))	File No. EO-2022-0190

AMEREN MISSOURI'S REPLY TO CO-MO'S SUR-RESPONSE TO AMEREN MISSOURI'S MOTION FOR SUMMARY DETERMINATION

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), pursuant to 20 CSR 4240-2.080(13), and for its Reply to Co-Mo Electric Cooperative's ("Co-Mo") *Sur-Response to Ameren Missouri's Motion for Summary Determination* (collectively, the "Co-Mo Sur-Response"), states as follows:

1. Co-Mo's Sur-Response rests on premises that are contrary to the law in two respects. Specifically, Co-Mo ignores or overlooks (a) the fact that Boonville's annexation of the subject property meant that, in the absence of the possible application of the new statutory amendments to § 393.800, Ameren Missouri had the sole right and obligation to serve the property since the area immediately ceased to be a "rural area"; and (b) that given the plain language of subsection 2 of § 393.800, the rules applicable to statutory interpretation prohibit the Commission from manufacturing, as Co-Mo attempts to do, Co-Mo's claimed "legitimate statutory interpretation that arrives at the correct legislative intent" because the intent ascribed by Co-Mo to the statute is at odds with its plain meaning.

A. Had Ameren Missouri not already possessed a § 393.170.2 area certificate to serve Sections 5 and 8, Township 48 North, Range 16 West, Cooper County, Missouri, *Boonville's* annexation and Ameren Missouri's franchise from Boonville would have extended Ameren Missouri's pre-annexation service territory to include the subject property.

2. It is undisputed that Missouri Power & Light Company ("MP&L") possessed an area certificate under § 393.170.2 to serve the municipality of Boonville prior to MP&L's merger

into Ameren Missouri. It is further undisputed that that Ameren Missouri succeeded to all of MP&L's rights, including under that area certificate, as the survivor of the 1983 merger that was approved by the Commission. *See Motion for Summary Determination,* ¶ 1, and the exhibits referenced therein. Specifically, Exhibit 4 reflects that after the merger Ameren Missouri possessed an area certificate for Boonville, an area certificate that of necessity was obtained by MP&L and via the merger, became an area certificate for Ameren Missouri.

3. When Boonville (or any other municipality with a population of 1,600 or more) annexes additional territory, the territory in question ceases to be a rural area. Putting aside the situation where a cooperative is serving structures within the annexed area prior to annexation (a situation that does not exist here), at the moment of annexation either the municipal utility for the municipality at issue (if there is one) becomes the sole electric service provider, or the franchised utility pursuant to an area certificate from the Commission becomes the sole electric service provider. *See Missouri Pub. Serv. v. Platte-Clay Elec. Co-op,* 407 S.W.2d 883, 893-94 (Mo. App. W.D. 1966) (A cooperative cannot extend service to homes or businesses within a newly annexed area [unless after annexation it remains rural]; the "franchised utility is entitled to supply this kind of demand for electric energy in the annexed area ….") . How does the franchised utility become entitled to serve the newly annexed area? Because the *municipal* annexation *extends* its service territory to also cover the newly annexed area as a matter of law.

4. That this is true is reflected in the provisions of § 494.080(4), which deals with the situation where a cooperative was serving load within the newly annexed area at the time the annexation caused that area to cease to be a rural area. In that case, the statute provides that the "holder of a franchise to furnish electric energy in such municipality" may purchase the cooperative's property the cooperative was using to serve load within the newly annexed area. In that case, the franchised utility will of course serve that load together will all of the other load

within the newly annexed area, because its area certificate was extended by the municipality's act of annexing the property. If that were not the case, the electrical corporation would have no authority to serve the annexed area, yet we know the electrical corporation is *entitled* to do so, as to structures the cooperative was not already serving, and can even buy the cooperative's assets as to structures the cooperative was serving.[1]

5. Co-Mo is right: electrical corporations themselves "do not and cannot extend their electric service territory pursuant to lawful annexation." *Co-Mo Sur-Response,* p, 3. And Ameren Missouri did not contend that they could. However, had Ameren Missouri not already possessed a certificate to serve the newly annexed area, *the City of Boonville's* lawful annexation would have extended Ameren Missouri's service territory to include it. Since Ameren Missouri did already possess a certificate to serve the newly annexed area, the lawful annexation did not extend the service territory.

6. Subsection 3 of § 386.800 plainly and expressly provides that "[i]n the event an electrical corporation rather than a municipally owned electric utility lawfully is providing electric service in the municipality, *all* the provisions of subsection 2 of this section shall apply equally *as if the electrical corporation were a municipally owned electric utility"* (emphasis added). And that command from the legislature must mean exactly what Ameren Missouri said it means: that whenever "municipally owned electric utility" appears in the text of subsection 2 the term "electrical corporation" is deemed substituted for it. Plainly, subsection 2 provides that when a "lawful annexation" happens (which, again, obviously only the municipality can perform) the *electrical corporation's* (because there is no municipally owned electric utility) electric service

[1] In the latter situation, the cooperative does not have to sell. *Platte-Clay Elec. Co-op,* 407 S.W.2d at 890-91. Regardless, at least as to areas for which service is not being provided, the electrical corporation has an unconditional right and obligation to serve once the annexation occurs, because of the existence of its franchise.

territory is extended but only if an extension is possible. In this case, there was no extension under Subsection 2 of § 386.800.

7. Ameren Missouri's electric service territory was not extended on the facts at bar. Consequently, the statute does not apply to this case. Co-Mo cannot invoke subsection 3. The Commission has no power to grant the relief Co-Mo seeks in this case.

B. <u>All of Co-Mo's remaining arguments require the Commission to interpret the statute by ignoring its plain meaning, in contravention of basic principles of statutory interpretation.</u>

8. As previously argued, Co-Mo's arguments amount to ignoring the plain and ordinary meaning of the term "extend." Co-Mo attempts to avoid this problem, but does so by ignoring it, in violation of the following principles of interpretation: "Provisions not found plainly written or necessarily implied from what is written 'will not be imported or interpolated therein in order that the existence of (a) right may be made to appear when otherwise, upon the fact of (the statutes), it would not appear.'" *Missouri Public Serv. Co v. Platte-Clay Electric Co-Op, Inc.*, 407 S.W.2d 883, 891 (Mo. 1966), *quoting Allen v. Str. Louis San-Francisco Ry. Co.*, 90 S.W.2d 1076, 1079; "We are enjoined to take words and phrases in their plain and ordinary and usual sense." *Id.* The "plain and rational meaning of language should be ascribed to it"; the tribunal must be "guided by what the legislature says, and not by what we think it meant to say." *Id.*

9. Co-Mo also claims that if the statute is applied as written, it won't apply as widely as it thinks it should. As the court has made clear, statutes must be interpreted and applied "as the legislature writes them." *State v. Haynes*, 564 S.W.3d 780, 787 (Mo. App. E.D. 2018). The cases also teach that "[A]ny argument as to the . . . difficulty in obtaining relief occasioned by the wording of a statute, or the policy ramifications thereof should be addressed to the legislative and executive branches of government." *State v. Fields*, 517 S.W.3d 549, 558 (Mo. App. E.D. 2016). Put another way, Co-Mo's policy arguments and claims that the statute would not apply as widely

as it likes do not allow it, or the Commission, to rewrite the statute to suit an interpretation Co-Mo favors.

10. Not only must Co-Mo's alternative interpretation be disregarded because it is unfaithful to the language the legislature actually used, but the primary basis for the arguments Co-Mo makes is simply incorrect. Co-Mo makes much of Exhibit F to Co-Mo's *Response in Opposition to Ameren Missouri's Motion for Summary Determination*. Exhibit F is a map that purports to have been prepared by the Commission. It purports to show, as an example, that Ameren Missouri has an area certificate to serve every square inch of numerous Central Missouri counties such that the statutory amendments, say Co-Mo, would never apply. Co-Mo's Exhibit F is demonstrably inaccurate. *See* Exhibit B to Ameren Missouri's Summary Determination Motion, which itself shows the service territory does not cover the entirety of Cooper County, contrary to the inaccurate map reflected in Exhibit F. The map is inaccurate in terms of showing Ameren Missouri's service territory and is probably inaccurate as to other electrical corporation territories.[2]

11. Regardless, Exhibit F is irrelevant and is incompetent in terms of what the statute means, as the authority cited earlier dictates. What Co-Mo is arguing is that the legislature *meant to say* something that it did not say. Co-Mo is arguing that contrary to the plain meaning of the statute, the legislature somehow "intended" for the statute to apply whether or not the annexation by the municipality extended the service territory. *That is not what the express terms of the statute provide for*. What it provides for is that in those cases where the *municipality's* annexation extends the service territory into a newly annexed area is not covered by an area certificate – and such

[2] The source of the information used to develop the map labelled as Exhibit F is unknown and, as noted, is inaccurate. It certainly does not appear to be part of any evidentiary record developed by the Commission, of which the Commission can take administrative notice (§ 536.070), nor is it supported by an affidavit of whomever prepared it. Consequently, it is not competent and substantial evidence that can be used to defeat summary determination.

areas do exist notwithstanding the inaccuracies in Co-Mo's Exhibit F -- the statute applies. But on the fact of this case, it simply does not apply according to its terms.

WHEREFORE, for the reasons outlined herein, the Company prays that the Commission enter its order granting Ameren Missouri's Summary Determination Motion, thereby dismissing Co-Mo's Application with prejudice.

Respectfully submitted,

/s/ James B. Lowery
James B. Lowery, MO Bar #40503
JBL Law, LLC
3406 Whitney Ct.
Columbia, MO 65203
Telephone: (573) 476-0050
Wendy K. Tatro, MO Bar #60261
Director and Assistant General Counsel
1901 Chouteau Avenue, MC-1310
St. Louis, Missouri 63103
Telephone: (314) 554-3484
Facsimile: (314) 554-4014
AmerenMOService@ameren.com

ATTORNEYS FOR UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th day of March 2022, served the foregoing either by electronic means, or by U. S. Mail, postage prepaid addressed to all parties of record.

/s/James B. Lowery
James B. Lowery