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November 2, 2001

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Missouri Public Service Commission

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Governor Office Building
200 Madison
Post Office Box 360
Jefferson City, Missouri 65102

Re: ***In the matter of the Joint Application of Union Electric Company and Gascosage Electric Cooperative for an order approving a change in electric supplier for certain Union Electric Company customers for reasons in the public interest; authorizing the sale, transfer, and assignment of certain electric distribution facilities, substations, and easements from Union Electric Company to Gascosage Electric Cooperative; and approving the First Amendment to the Existing Territorial Agreement between Union Electric Company and Gascosage Electric Cooperative***
(Case No. EO-2002-178)

Dear Judge Roberts:

I am enclosing an original and ten copies of an Opposition Of International Brotherhood of Electrical Workers Local 1455 To Joint Motion To Oppose Intervention in the referenced matter. I would appreciate the Commission stamping a copy of the document as received and returning it to me in the enclosed stamped, self-addressed envelope.

Thank you for your cooperation in this matter.

Very truly yours,

Jan L Bond

JAN BOND

JB/jkl
Enclosures

cc: John Coffman, Esq.
Robert Francen, Esq.
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BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the matter of the Joint Application of Union Electric Company and Gascosage Electric Cooperative for an order approving a change in electric supplier for certain Union Electric Company customers for reasons in the public interest; authorizing the sale, transfer, and assignment of certain electric distribution facilities, substations, and easements from Union Electric Company to Gascosage Electric Cooperative; and approving the First Amendment to the Existing Territorial Agreement between Union Electric Company and Gascosage Electric Cooperative	)	Case No. EO-2002-178

OPPOSITION OF INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 1455
TO JOINT MOTION TO OPPOSE INTERVENTION

Comes now intervenor-applicant International Brotherhood of Electrical Workers Local 1455, AFL-CIO ("IBEW Local 1455"), and states its opposition to joint applicants' motion to oppose IBEW Local 1455's intervention here as follows:

Background

This matter involves an Application submitted to the Missouri Public Service Commission ("Commission") by Union Electric Company, d/b/a AmerenUE ("AmerenUE"), and Gascosage Electric Cooperative ("Gascosage") for: (1) approval of a change in the electric supplier for certain AmerenUE customers in and around the Cities of Brumley and Ulman from AmerenUE to Gascosage; (2) authorization of the sale, transfer, and assignment of certain electric distribution facilities, easements, and substations from AmerenUE to Gascosage; and (3) approval of an amendment to an

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existing territorial agreement that was approved by the Commission by Report and Order in Case No. EO-98-279 (the "First Amendment" and the "Territorial Agreement," respectively).

The Application at issue was filed on October 10, 2001. Thereafter, on October 24, 2001, IBEW Local 1455 applied to intervene here. As support for its motion, IBEW Local 1455 alleged, inter alia, that it was a labor organization that "represents for purposes of collective bargaining approximately 1000 of Union Electric's employees in 'clerical and technical' classifications, including employees who may be directly affected by the proposed transaction" and that it sought permission to intervene here "pursuant to 4 CSR 240-2.075." (IBEW Local 1455's Intervention Application, ¶¶ 2 and 8) IBEW Local 1455 further alleged:

> As the exclusive collective bargaining representative of certain of Union Electric's non-managerial, non-professional employees, IBEW Local 1455 and the employees it represents have interests in this proceeding which are clearly different from those of the general public. Where the public's interests here are concentrated in the dependable delivery of electricity and related products and services at a reasonable cost, IBEW Local 1455and the employees it represents are additionally concerned with the impact the proposed transactions could have on jobs and other terms and conditions of employment. These separate interests could be adversely affected by a final order arising from the case. [Emphasis supplied]

(OE Local 148's Intervention Application, ¶ 9)[1]

[1] The emphasis is supplied because, at page 2 of Applicants' Motion here, they purport to quote from paragraph 9 of IBEW Local 1455's Intervention Application, but omit the word "additionally," as well as the introductory phrase, "[w]here the public's interests here are concentrated in the dependable delivery of electricity and related products and services at a reasonable cost,..." IBEW Local 1455 respectfully suggests that Applicants' misquotation materially changes the meaning of the actual allegation.

On October 26, 2001, Applicants filed their Joint Motion To Oppose Intervention Of International Brotherhood of Electrical Workers Local 1455.[2] In that Motion, they argue that the Commission should deny IBEW Local 1455's Intervention Motion because the stated interests of the intervenor-applicant are too remote and contingent to create a right to intervene and because "the Commission cannot remedy by law the issues alleged by IBEW Local 1455 in a proceeding that is also ill suited to resolve labor disputes." (Applicants' Motion, ¶5) AmerenUE and Gascosage further assert that, since OE Local 148 and the employees it represents "can only speculate as to the impact of this transaction," the request to intervene should be denied. (Applicants' Motion, ¶7)

Argument

Applicants note, correctly, that the Commission here must examine the "public interest" in deciding this case. In making this argument, Applicants appear to assume that the interests of IBEW Local 1455 and the employees it represents are wholly unrelated to those of the general public. However, the fact that IBEW Local 1455 and the employees it represents have concerns that are supplemental to those of the constituency represented by the Public Counsel, does not mean that those additional interests are irrelevant or antithetical to the interests of the affected consumers.

That is particularly true in a case such as the present one, where the Application reveals that Gascosage's ability to properly serve the customers and territory at issue will be dependent on the completion of several projects, including:

[2] By separate motion also filed on October 26, 2001, Applicants ask the Commission to deny the Intervention Motion filed by Operating Engineers Local 148, AFL-CIO ("OE Local 148"). The previous day, Applicants had apparently filed a similar motion in which they combined and confused the names of the two unions. IBEW Local 1455 assumes the instant Motion and the motion opposing OE Local 148's intervention were meant to supercede the initial motion.

(1) Sho-Me Power Cooperative, Gascosage's transmission cooperative, plans to build a 69kV transmission line from its existing Montreal substation to Brumley.

(2) The Equiline pump station will be connected to Sho-Me Power's existing 69kV grid.

(3) Gascosage plans to build a three-phase distribution line north from Brumley through Ulman to Highway 17.

(4) Sho-Me Power has future plans to "loop" the Brumley Substation and the Iberia Substation.

(5) Gascosage plans to replace approximately 700 poles that have deteriorated over time.

Further, Gascosage will have to hire (and train) linemen, and presumably other employees to correct service problems, to answer customer outage calls, to conduct business transactions, and to perform all the other functions currently performed by AmerenUE's employees.

No information is provided concerning how these additional expenses will be financed, how long the "planned" construction and hiring/training will take, or the extent to which Gascosage has the resources to accomplish all this, except the acknowledgment that, "without the revenue from the transferred customers, Gascosage and Sho-Me could not afford to make these system improvements." (Application p. 8) In fact, the proposed new paragraph 16 to the "Territorial Agreement" states that, "[t]he parties recognize that the Cooperative will have to construct extensive facilities to serve customers in the New Area," and provides procedures in the event Gascosage cannot serve a structure. (Application Exhibit 2, pp. 2-3)

The employees who, on a daily basis, work with and service the assets and customers proposed to be transferred have first-hand knowledge of the current system's shortcomings. Their evidence could be relevant to Commission evaluations of effectiveness and feasibility of Gascosage's proposals, matters clearly within even the most narrow definition of the "public interest." Additionally, if these experienced employees are eliminated, service to both assets and customers could suffer. Thus, in the process of trying to protect their supplemental interests, the intervenor-applicants could also be aligned with and further the discussion concerning customer interests.

On a more basic level, IBEW Local 1455 submits that the employees it represents who work in this area are part of the "public" whose interests are at issue here. Although Missouri cases are not replete with descriptions of what constitutes the "public interest," see, e.g., Collins v. Public Service Commission, 293 S.W.2d 345, 349-51 (Mo banc 1956), IBEW Local 1455 submits that the "public interest" protected by Sections 393.106.2 and 394.312.4, RSMo (2000), must be sufficiently broad to include the interests of those who earn their livelihoods in the area affected, by using and servicing the assets and serving the customers proposed to be transferred. Based on the bald statement that "[n]o member of IBEW Local 1455 will be laid off," Applicants argue that any impact of the proposed transaction on any of these employees is totally speculative. However, it is fact, not speculation, that these employees will lose the work associated with the assets and customers proposed to be transferred if the Application is approved. Even if the affected employees are all able to remain fully employed by AmerenUE, which is not at all a certainty, they will presumably have to perform different, perhaps

less desirable, work. On the whole, there will be less work for AmerenUE's employees to perform. Unless one is of the leisure class, this is an adverse impact.[3]

IBEW Local 1455 and the employees it represents have the additional concern that the Contract for Purchase and Sale of Distribution Facilities (the "Sale Contract") permits Gascosage to have access to the assets at issue prior to closing and provides that Gascosage shall indemnify and hold AmerenUE harmless from all liabilities by reason of any injury to or death of any AmerenUE employee. As a practical matter, if any such employee were injured or killed, and AmerenUE and Gascosage disputed coverage of the indemnification clause, the employee (or his family) could be left without medical treatment or death compensation.[4] Thus, contrary to Applicants' assertions that IBEW Local 1455 and the employees it represents have no real interest in this case, Applicants' own papers filed with the Commission purport to alter those employees' standing with their employer.

As this discussion should clearly demonstrate, IBEW Local 1455 does not seek any Commission involvement in labor-management relations or in disputes under the union's collective bargaining agreement with AmerenUE. Contrary to Applicants' assertions, IBEW Local 1455 fully understands that, in general, the Commission's

[3] OE Local 148 notes that 4 CRS 240-2.075(4) requires that an intervenor-applicant show only that he may be adversely affected by a final order arising from the case, not that he will be so affected.

[4] Even if there were no coverage dispute, presumably Gascosage would control the defense of the employee's claim and make treatment and payment decisions. At the very least, Gascosage would not have any incentive to treat an AmerenUE employee with any loyalty or consideration.

authority in such areas is limited.[5] It does not follow from this, however, that the Commission should not consider any adverse impact the proposed transaction could have on those members of the public who are currently performing the work of servicing the assets and customers proposed to be transferred, or that the Commission should not consider the effect of the loss of those experienced employees on such service.

The cases cited by Applicants to support denial of intervention are clearly distinguishable from the present situation. In UtiliCorp United, Inc., Case No. GO-2001-249, Missouri Gas Energy ("MGE") attempted to intervene in a case opened to investigate allegations that UtiliCorp had engaged in improprieties intended to increase profits at the expense of Missouri ratepayers. The Staff of the Commission ("Staff") opposed intervention on the grounds that: (1) the case was an exercise of police powers by the State of Missouri in vindication of purely public rights; (2) confidentiality concerns were paramount because several state commissions were conducting a coordinated investigation of UtiliCorp's conduct; and (3) the interests urged by MGE were too remote and contingent to support intervention. In Union Electric Company, d/b/a AmerenUE, Case No. EA-2000-37, AmerenUE sought PUHCA findings in connection with a proposed transfer of the generating assets of the company's Illinois-based affiliate. The Commission denied the untimely intervention application of the Missouri Industrial Energy Consumers ("MIEC") on grounds that: (1) the possibility that the case could impact the rates, terms, and conditions under which MIEC's members

[5] See, e.g., Section 386.315, RSMo (2000), which provides in pertinent part, "In establishing public utility rates, the commission shall not reduce or otherwise change any wage rate, benefit, working condition, or other term or condition of employment that is the subject of a collective bargaining agreement between the public utility and a labor organization."

received electrical service was too indirect to create a right of intervention; (2) any change in such rates, terms, or conditions would require additional AmerenUE filings with the Commission, in which matters MIEC could participate; and (3) the present parties had reached a settlement, and granting the untimely request would create harm and delay, without giving any real protection to MIEC's members.

The situation in the present case is materially different. Here, IBEW Local 1455 has applied to intervene at the very beginning of the case under circumstances in which bargaining unit work will be lost if the proposed transaction is approved. Thus, certain members of the public, i.e., the employees who service the assets and customers at issue, will no longer have that work to perform. These are concerns that are concrete and immediate, which do not disappear merely because the employees may not lose their jobs the day after the Commission decides this case.

Having said all this, IBEW Local 1455 wishes to emphasize that its request to participate as a party does not mean that the union will automatically oppose the transaction or try to force meaningless litigation. As is set forth in the Intervention Application, IBEW Local 1455 does not yet have sufficient information to determine what position it will take in this case. However, IBEW Local 1455 believes its inclusion to obtain that information and, if necessary, to protect the interests identified here is appropriate under the statues and rules governing the Commission. IBEW Local 1455

thus respectfully urges the Commission to deny Applicant's Motion and to grant the Intervention Application.

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Certificate of Service

The undersigned hereby certifies that a copy of the foregoing was sent by U.S. Mail, postage pre-paid to:

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this 2nd day of November, 2001.