

**PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

FILED³

OCT 26 2001

Missouri Public
Service Commission

In the matter of the Joint Application)
of Union Electric Company and)
Gasconsage 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 Gasconsage Electric Cooperative; and)
Approving the First Amendment to the)
existing Territorial Agreement between)
Union Electric Company and Gasconsage)
Electric Cooperative.)

Case No. EO-2002-178

**JOINT MOTION TO OPPOSE INTERVENTION OF
OPERATING ENGINEERS LOCAL 148**

Come now Gasconsage Electric Cooperative ("Gasconsage"), by and through its counsel Andereck, Evans, Milne, Peace and Johnson, and Union Electric Company d/b/a AmerenUE ("AmerenUE"), by and through its counsel, William B. Bobnar of Ameren Services Company and hereby move to oppose the application to intervene filed by Operating Engineers, Local No. 148, ("IUOE Local 148"). In support of this motion, Gasconsage and AmerenUE state as follows:

1. This matter involves an Application submitted to the Missouri Public Service Commission ("Commission") on October 10, 2001, by AmerenUE and Gasconsage for: (1) approving a change in the electric supplier for approximately 1200 structures in and around the cities of Brumley and Ulman from AmerenUE to Gasconsage pursuant to Section 393.106 RSMo. 2000; (2) authorizing the sale, transfer, and assignment of certain substations and electric distribution facilities, easements, and other rights generally constituting AmerenUE's electric

utility business associated with said structures pursuant to Section 393.190 RSMo. 2000; and (3) approving the first amendment to the existing territorial agreement that was approved by the Commission by Report and Order in Case No. EO-98-279 (hereinafter the "First Amendment" and "Territorial Agreement") pursuant to Sections 394.312 RSMo. 2000.

2. Under section 393.106, "[t]he public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public interest for reason other than a rate differential." Section 393.106.2 RSMo. 2000. Under section 394.312 RSMo. 2000, "all territorial agreements entered into under the provisions of this section , including any subsequent amendments to such agreements, ... shall receive the approval of the public service commission by report and order." Section 394.312.3 RSMo. 2000. "Unless otherwise ordered by the commission for good cause shown, the commission shall rule on such" territorial agreement within 120 days after filing of an application. Section 394.312.3 RSMo. 2000. "The commission may approve the application if it shall after hearing determine that approval of the territorial agreement in total is not detrimental to the public interest." Section 394.312.4 RSMo (2000).

3. IUOE Local 148 seeks to intervene in this matter pursuant to 4 CSR 240-2.075. IUOE Local 148 states that it is a labor organization representing employees of AmerenUE who may be directly affected by the proposed transaction, and whose interests are different from the general public. In addition, IUOE Local 148 asserts "the employees it represents are concerned with the impact the proposed transaction could have on jobs and other terms and conditions of employment." Verified Application of International Union of Operating Engineers, Local 148, to Intervene at 3.

4. Rule 4 CSR 240-2.075 sets forth the grounds upon which intervention will be granted: (A) that the proposed intervenor has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or (B) granting the proposed intervention would serve the public interest.

5. AmerenUE and Gascosage now move that the Commission deny IUOE Local 148's request to intervene because its stated interests are too remote and contingent to create a right to intervene. Moreover, this case involves a rural electric cooperative, the Commission cannot remedy by law the issues alleged by IUOE Local 148 in a proceeding that is also ill suited to resolve labor disputes.

6. An interest that is too remote and contingent does not create a right to intervene. Commission Order in Case No. GO-2001-249 ("GO-2001-249 Order"). In Case No. GO-2001-249, Missouri Gas Energy filed a timely application to intervene stating that it has an interest that is different from the general public and suggesting that it might be adversely affected by the final order in the case. In the GO-2001-249 Order, the Commission reasoned that its rules distinguish between those with a right to intervene and those with a mere desire to intervene. "Intervention is the process whereby a stranger becomes a full participant in a legal action." The GO-2001-249 Order citing Ballmer v. Ballmer, 923 S.W.2d 365, 368 (Mo.App.W.D. 1996). In Ballmer, State Farm, an insurance company, sought to intervene in a "friendly" lawsuit wherein a father sued his son for the wrongful death of another son in an automobile accident. State Farm sought to intervene in the underlying wrongful death action to prevent its insured from confessing judgment. The Ballmer Court, denied State Farm's request to intervene and stated, "As to whether State Farm has an "interest" in the underlying action, this court has stated that 'the liability of an insurer as a potential indemnitor of the judgment debtor does not constitute a direct

interest in such a judgment as to implicate intervention as a matter of right.” Id at 366. (citations omitted). The Commission reasoned by analogy that like State Farm in Ballmer, Missouri Gas Energy’s interest was too remote and contingent to create a right to intervene.

7. In this case, the stated interests of IUOE Local 148 are too remote and contingent to create a right to intervene. AmerenUE has a labor agreement with IUOE Local 148 that remains in effect until July 1, 2002, with continuance provisions. The proposed customer transfer, in this case, has no immediate impact on the Lakeside District operations. No member of IUOE Local 148 will be laid off. In the long term one can only speculate on the impact, if any, of this transaction. IUOE Local 148 does not assert and cannot assert any concrete impact on their members, especially since there are no members of IUOE Local 148 who reside in the Brumley and Ulman areas. They can only speculate as to the impact of this transaction. Therefore, their request to intervene should be denied.

8. In Case No. EA-2000-37, the Commission denied the application of Missouri Industrial Energy Consumers (MIEC) to intervene in AmerenUE’s application for approval of the transfer of generating assets by an affiliate to another affiliate. In their application to intervene, MIEC stated that it should be permitted to intervene because its members are all large customers of AmerenUE and their interest is different from that of the general public. In denying the request to intervene the Commission stated that “the possibility that this matter may impact the rates, terms and conditions under which MIEC’s members receive electric service is not a sufficiently direct interest to create a right of intervention.” Order denying Intervention in Case No. EA-2000-37. This Commission further stated that “MIEC’s interest is remote and MIEC does not assert any certainty that the interests of its members will be harmed by the outcome of this case.” Id. Here, IUOE Local 148’s interests are similarly remote and IUOE

Local 148 does not assert any certainty that the interests of its members will be harmed by the outcome of this case.

9. Since this case involves a rural electric cooperative, Gascosage, the Commission cannot by law remedy the issues alleged by IUOE Local 148 in a proceeding that is also ill suited to resolve labor disputes. Pursuant to Section 394.160.1 RSMo. 2000, the Commission's jurisdiction extends to rural electric cooperatives "to the extent of providing for the safety of the public and the elimination or lessening of induction or electrical interference, The jurisdiction of the public service commission shall be extended only to the extent provided in this section, and nothing herein contained shall be construed as otherwise conferring upon such commission jurisdiction over the service, rates, financing, accounting or management of any such cooperative."

10. Under Sections 393.106.2 and 394.315. 2 RSMo. 2000 the Commission's jurisdiction pertaining to the procedures for changing suppliers is limited to public interest determinations.

11. IUOE Local 148's concerns pertaining to the impact the proposed transactions could have on jobs and other terms and conditions of employment are management and labor issues, not issues pertaining to public safety or electrical interference. Unlike situations where AmerenUE is the sole applicant, there is nothing the Commission can do to remedy these speculative concerns raised by IUOE Local 148. IUOE Local 148's concerns do not rise to the level of public interest determinations, and are accordingly outside of the Commission's jurisdiction in this matter. The members of IUOE Local 148 are covered by a labor agreement that contains procedures to be employed to resolve concerns of this type. The Commission

proceeding in this case is not set up to deal with these concerns within the 120 day time limit.

Thus the Commission should deny IUOE Local 148's request to intervene.

12. IUOE Local 148 states that it's interests are clearly different from those of the general public, therefore there is no need to analyze IUOE Local 148's application under 4 CSR 240-2.075(4)(B).

WHEREFORE, Gascosage Electric Cooperative and Union Electric Company respectfully request that its motion to oppose intervention by IUOE Local 148 be sustained together with such other relief as the Commission deems proper.

**ANDERECK, EVANS, MILNE
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing was mailed, via U.S. Mail, postage prepaid, this 26th day of October, 2001, to:

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