

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

In the Matter of the Application of Thomas L.)
Chaney for Change of Electrical Supplier.) Case No. EO-2011-0391

**UNION ELECTRIC d/b/a AMEREN MISSOURI'S AND CUIVRE RIVER
ELECTRIC COOPERATIVE, INC.'S JOINT MOTION TO DISMISS FOR LACK
OF SUBJECT MATTER JURISDICTION AND FOR A DETERMINATION ON
THE PLEADINGS**

COMES NOW Union Electric Company d/b/a Ameren Missouri (Ameren Missouri) and Cuivre River Electric Cooperative, Inc. (Cuivre River) pursuant to 4 CSR 240-2.117(2) and 2.080(16), and for their *Joint Motion to Dismiss for Lack of Subject Matter Jurisdiction and for a Determination on the Pleadings*, regarding the Change of Electric Supplier filed by Thomas L. Chaney, pursuant to 4 CSR 240-2.117, states as follows:

Background

1. This case arises from Mr. Chaney's request for a "change of supplier" from Cuivre River to Ameren Missouri. The basis for Mr. Chaney's request is the availability of a solar rebate from Ameren Missouri.

Material, Undisputed Facts

2. Ameren Missouri is an electric utility subject to the jurisdiction of the Missouri Public Service Commission (Commission). § 386.250 RSMo.

3. Cuivre River is a rural electric cooperative, organized pursuant to Chapter 394 of the Revised Statutes of Missouri.

4. Mr. Chaney is the named Cuivre River member¹ for the electric account at 1110 St. Theresa Lane in O'Fallon, Missouri.

¹ Customer of Record

5. Pursuant to Commission rule, Staff of the Commission is a party to this case.²

6. The Office of Public Counsel (OPC) is also a party to this case by Commission rule,³ although OPC has not been active in the case.

7. Cuivre River and Ameren Missouri have a Territorial Agreement⁴ which allocates between Ameren Missouri and Cuivre River territory in which each may exclusively provide electric service.

8. The property located at 1110 St. Theresa Lane in O'Fallon is in an area for which Ameren Missouri and Cuivre River have entered into a Territorial Agreement. Cuivre River retained the sole right to serve this customer as per the terms of the Territorial Agreement. A copy of the Territorial Agreement is attached to the *Joint Memorandum of Law* as Exhibit 1.

9. The current provider of electric service for 1110 St. Theresa Lane is Cuivre River.

10. Ameren Missouri and Cuivre River have not entered into any agreement to change which utility could serve the home at 1110 St. Theresa Lane in O'Fallon.

11. Missouri's anti-flip-flop statutes govern this request and are found at § 393.106.2 and § 394.315.2 RSMo.

² 4 CSR 240-2.010(11)

³ Id.

⁴ The Territorial Agreement was approved by the Commission on March 5, 1993 in Case No. EO-93-166.

Argument and Conclusion

12. As outlined in more detail in the accompanying *Memorandum of Law in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction and for a Determination on the Pleadings* filed concurrently with this pleading, and incorporated by this reference, Mr. Chaney asks the Commission to do something the Commission has no power or jurisdiction to do, that is, grant a “change of supplier” when in fact there exists only one supplier with authority to provide service to Mr. Chaney.

13. Mr. Chaney seeks a “change of supplier” under § 394.315 RSMo, which applies only if two electric suppliers (e.g., an electric utility and a cooperative) both have a concomitant right to serve a particular area.⁵ *If, but only if*, that concomitant right exists, the Commission can then allow a change of suppliers for a “reason other than rate differential” if the Commission finds it is in the public interest to do so. However, where there is no such concomitant right, as here, § 394.315 RSMo simply does not apply and the Commission lacks subject matter jurisdiction to grant the relief sought by Mr. Chaney.

14. As the undisputed facts listed above make clear, there is a territorial agreement in place and it gives Cuivre River the exclusive right to serve this structure. Consequently, only one electric supplier – Cuivre River – has a right to serve Mr. Chaney’s structure, which means there is no concomitant right to serve it which in turn means that the Commission lacks authority under § 394.315 RSMo or otherwise to grant the relief requested by Mr. Chaney.

⁵ *In the matter of the Application of Wastach Investments, L.C.*, Case No. EO-2008-0031, 2008 WL 2444659 (Mo. P.S.C.), Order Granting Summary Determination and Dismissing Application (June 8, 2008) (citing *Union Elec. Co. v. Platte-Clay Elec. Coop*, 814 S.W.2d 643 (Mo. App. W.D. 1991))

15. Consequently, a determination on the pleadings dismissing Mr. Chaney's application with prejudice under 4 CSR 240-.2.117(2) is appropriate.

WHEREFORE, Ameren Missouri and Cuivre River request that the Commission grant this Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Determination on the Pleadings and dismiss Mr. Chaney's Application, with prejudice.

Respectfully submitted,

UNION ELECTRIC COMPANY,
d/b/a Ameren Missouri

/s/ *Wendy K. Tatro*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on the following parties via electronic mail (e-mail) or via regular mail on this 19th day of April, 2012.

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