

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of Union)
Electric Company d/b/a AmerenUE and Ozark)
Border Electric Cooperative for Approval)
of a Written Territorial Agreement)
Designating the Boundaries of Each Electric)
Service Supplier within portions of Bollinger,)
Butler, Carter, Dunklin, Iron, Madison, New)
Madrid, Reynolds, Ripley, Stoddard and Wayne)
Counties; Authorizing the Sale, Transfer, and)
Assignment of Certain Electric Distribution)
Facilities, Easements and Other Rights)
Generally Constituting the Applicant's)
Electric Utility Business Associated with)
Its Customers Transferred Pursuant to the)
Territorial Agreement.)

Case No. EO-99-599

FILED²

AUG 18 1999

Missouri Public
Service Commission

**MOTION IN LIMINE OF UNION ELECTRIC COMPANY
AND OZARK BORDER ELECTRIC COOPERATIVE TO STRIKE
CERTAIN TESTIMONY BY MEMBERS OF THE PUBLIC**

COMES NOW, Union Electric Company d/b/a AmerenUE ("AmerenUE" or "Company")
And Ozark Border Electric Cooperative ("Ozark Border"), hereinafter collectively known as the
"Applicants", and moves in limine to strike any statements made by members to the public
concerning rate or bill differential or any related to any internal operations of the Cooperative or
the Board of Directors regarding the decisions made by the Board of Directors in entering into
the Territorial and Exchange Agreement, on the grounds that such testimony is not relevant to
any of the issues in this proceeding. In support of this motion, Ozark Border and UE states as
follows:

I. PROCEDURAL HISTORY

1. On June 16, 1999, the Applicants filed a Joint Application requesting Missouri Public Service Commission ("Commission") approval of a document entitled "Territorial and Exchange Agreement", which, *inter alia*, provides for the change electric service providers for certain AmerenUE customers and Ozark Border members.

2. On July 9, 1999, the Office of Public Counsel filed with the Commission a request for a local hearing in Dexter, Missouri, citing consumer interest in this matter.

3. On August 3, 1999, the commission ordered that a local hearing shall be held on August 19, 1999, at 6:00 P.M. at the auditorium of the Dexter High School, 1101 West Grant, Dexter, Missouri.

II. THE MOTION IN LIMINE

4. The Applicants understand that the purpose of the local public hearing is to permit members of the public to be heard on the Territorial and Exchange Agreement. For this reason, members of the public will be sworn and permitted to testify on the record in Case No. EO-99-599. Since the member of the public will not be prefilng testimony and the Applicants wish to avoid repeated objections at the local public hearing while members of the public are testifying, the Applicants move in limine to strike any testimony made by members of the public related to rate or bill differential on the grounds that such testimony is not relevant to any of the issues in this proceeding. Applicants further move to limine and to strike any testimony made by members of the public related to any internal operations of the Cooperative or the Board of Directors regarding the decisions made by the Board in entering into the Territorial and Exchange Agreement.

III. ARGUMENT

5. Sections 393.106 and 394.315 RSMo. govern a change in the electric service provider to a structure.

2. Once an electrical corporation or joint municipal utility commission, or its predecessor in interest, lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800, RSMo., and section 394.080, RSMo., or pursuant to a territorial agreement approved under section 394.312, RSMo. The 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 a reason other than a rate differential.... RSMo. Section 393.106.2 (1994) (emphasis added)

2. Once a rural electric cooperative, or its predecessor in interest, lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800, RSMo., and section 394.080, RSMo., or pursuant to a territorial agreement approved under section 394.312, RSMo. The 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 a reason other than a rate differential.... RSMo. Section 394.315.2 (1994)(emphasis added)

6. The Territorial and Exchange Agreement is in fact two agreement in one contract. It sets forth a territorial agreement between the Applicants while also describing an agreement to exchange certain customers and facilities between the Applicants. The proper standard for the Commission review of the customer exchange provisions of the Territorial And Exchange Agreement is set forth above — the change in suppliers is in the public interest for reasons other than a rate differential.

7. The rates of the Applicants differ in regard to the amounts charged for kilowatt-hour usage, fixed charges and time of year applicability. Therefore, any customer that is transferred from one supplier to the other may experience changes in his monthly bill directly attributable to differences in the Applicants' rates. It is anticipated by the Applicants, that members of the public unfamiliar with the above cited statutes may raise the issue of differing rates or the related differing monthly or annual amount billed at the local public hearing. This type of testimony is clearly irrelevant to the Commission's review of the provisions of the Territorial and Exchange Agreement.

8. Ozark Border Electric Cooperative's Annual Membership meeting is scheduled for August 28, 1999. It has come to the Cooperative's attention, through member sponsored radio and newspaper ads which, ran on Friday, August 13, 1999, that a faction of the membership may attempt to politicized the Public Hearing. These individuals may attempt to grand stand and testify on issues which are related to the internal operations and management of the Cooperative, in attempt to sway those members which are present at the Public Hearing to vote for particular candidates at the upcoming Annual Meeting.

8. While Applicants could move to object to this testimony at the time it is offered, such repeated objection take time away from the public and unnecessarily confuse the proceeding. Therefore, Applicants will file with the Commission, after receipt of the transcript of the local public hearing, a listing of the testimony that should be struck pursuant to this motion. Further, the Applicants suggest that the Commission take this motion under advisement and rule on it at the September 17, 1999, evidentiary hearing.

9. In conclusion, Applicants' motion to strike certain testimony by members of the public should be granted because this testimony is not relevant to any of the issues involved in this proceeding.

WHEREFORE, Applicants respectfully requests that its Motion to Strike be granted.

Respectfully submitted,

UNION ELECTRIC COMPANY
d/b/a AmerenUE

By William B. Bobnar
William B. Bobnar *by VSC*
MBEN 38966
One Ameren Plaza
P.O. Box 66149 (MC 1310)
St. Louis, MO 63166-6149
(314) 554-3148
(314) 554-4014 (fax)

ATTORNEY FOR UNION
ELECTRIC COMPANY
d/b/a AmerenUE

**OZARK BORDER ELECTRIC
COOPERATIVE**

Andereck, Evans, Milne, Peace & Baumhoer

By Victor S. Scott
Victor S. Scott
MBEN 42963
305 E. McCarty Street
P.O. Box 1438
Jefferson City, MO 65102
(573) 634-3422
(573) 634-7822 (fax)

ANDERECK, EVANS, MILNE, PEACE
& BAUMHOER

ATTORNEYS FOR OZARK BORDER
ELECTRIC COOPERATIVE

CERTIFICATE OF SERVICE

I, Victor A. Scott, an attorney for Ozark Border Electric Cooperative, do hereby certify that a copy of the foregoing was served on all Parties of Record, by first-class mail, postage prepaid, this 18th day of August, 1999.

Victor Scott

Victor A. Scott