

**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 Applicants' Electric )  
Utility Business Associated with its Customers )  
Transferred Pursuant to the Territorial Agreement. )

**FILED<sup>2</sup>**  
AUG 16 1999  
Missouri Public  
Service Commission

Case No. EO-99-599

**APPLICATION TO INTERVENE  
OF THE CITY OF MALDEN, MISSOURI**

Comes now The City of Malden, Missouri, ("the City" or "Malden") by and through its Board of Public Works, by and through counsel, pursuant to 4 CSR 240-2.075, and for its application to intervene respectfully states as follows:

1. On August 12, 1999, the Malden Board of Public Works received a copy of the Commission's "Order Establishing Procedural Schedule ..." issued on August 10, 1999, regarding this proceeding, which described a "Territorial and Exchange Agreement" ("Territorial Agreement") entered into between Ozark Border Electric Cooperative and Union Electric Company d/b/a AmerenUE. This order was apparently sent by the Commission to "municipal electric supply systems in the cities of Poplar Bluff, Malden, Kennett, Sikeston, Jackson and Campbell." It was also sent to the mayors of several municipalities in southeast Missouri. The Malden Board of Public Works owns and operates a municipally-owned electric utility which serves the City of Malden, Missouri, in Dunklin County. The City has made a preliminary

inquiry into this matter in the short period of time since it received this notice and has determined that it should seek intervention to protect its interests. This is the first notice the Board of Public Works has received of this proceeding. Although the City has been made aware that an earlier intervention deadline was established by the Commission in this docket, it interprets the Commission's action in sending out its August 10 order to constitute an additional opportunity for intervention.

2. Based upon a preliminary review, the City believes there are portions of the Territorial Agreement that are unlawful, beyond the jurisdiction of the Commission, not in the public interest, and which will adversely affect the interests of both the Board of Public Works and City of Malden as a municipally-owned electric utility. To prevent these unlawful and inappropriate actions, the City seeks intervention in this proceeding to bring these matters to the attention of the Commission and to have them removed from any proposed Territorial Agreement before it is approved by the Commission.

3. The City is a political subdivision of the State of Missouri. The City provides electric service through its municipally-owned and operated Board of Public Works. The principal office and place of business of the Board of Public Works is 111 East Laclede Street, Malden, Missouri 63863.

4. All pleadings, correspondence, communications, notices, and orders in regard to this proceeding should be addressed to the following:

Gary W. Duffy, Attorney at Law  
Brydon, Swearengen & England, P.C.  
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David Darnell, Assistant Office Manager  
Malden Board of Public Works  
111 East Laclede Street  
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5. The City has an interest in this proceeding which is different from that of the general public since the City is an electric service supplier. The City believes that portions of the proposed Territorial Agreement have been purposely worded to adversely affect the interests of the City relating to its future operations as a municipal utility system.

6. The Commission's rules provide for intervention on a showing that (A) the applicant for intervention has an interest in the proceeding which is different from that of the general public; (B) that the applicant is a municipality or other political subdivision; or (C) granting intervention would serve the public interest. Only one of the above is required to be demonstrated for intervention. The City respectfully submits that it meets all three tests in this instance and that its intervention in this proceeding will serve the public interest.

7. For purposes of 4 CSR 240-2.075(2), the City states that it opposes the relief sought in the Territorial Agreement regarding the provision of electric service by Ozark Border in Dunklin County. Given that the Territorial Agreement purports to be "perpetual" in nature, it is also possible that the Territorial Agreement would affect the provision of electric service by the City in New Madrid County sometime in the future if the City annexes land in New Madrid County, since portions of the current city boundary are also the county boundary. If all of the objectionable provisions are ultimately removed or modified to remove their objectionable characteristics, the City does not oppose the Commission approving the Territorial Agreement. The City understands the law to be, however, that the Commission only has the authority to either approve or disapprove a territorial agreement. See, §394.312.4 RSMo. It does not have

the authority to condition its approval on changes.

8. The City does not oppose territorial agreements in general, or between electric suppliers who do not attempt to adversely affect the interests of non-parties.

9. While the City has not had sufficient time to determine whether it has access to all of the documents which may contain objectionable provisions, it has preliminarily identified several. The City will briefly address the provisions it has identified in order to provide the Commission with an explanation of the objectionable provisions. This brief listing shall not be construed to be a complete listing or to preclude the City from identifying additional objectionable provisions later in the course of this proceeding.

10. Trying To Foreclose Malden from Its Rights Under §386.800 RSMo It is apparent to the City that there is language in the Territorial Agreement which, if approved by the Commission, could be used by Ozark Border Electric Cooperative in an attempt to block future annexations by the City, and the concomitant right of the City to seek to exclusively serve those annexed areas under an order of the Commission pursuant to §386.800 RSMo. In simple terms, if this Territorial Agreement is approved by the Commission, and the City later annexes land in Dunklin or New Madrid County, Ozark Border could argue that it would be a waste of time for the City to seek “an order assigning exclusive service territories within the annexed area” under §386.800.6 RSMo because the Commission has already declared Ozark Border to be the “exclusive service provider” under this Territorial Agreement.

A. Section 2.1 of “**Article 2. Exclusive Right to Serve**” in the proposed Territorial Agreement provides: “After the Effective Date, each party shall have the exclusive right to furnish electric service to all New Structures located within its respective exclusive service area described in Articles 3 and 4 of this Agreement ... .” “**Article 3. Exclusive Service Area of Cooperative**” says that “The exclusive service area of Cooperative

under this Agreement shall be ... portions of Dunklin County (Figure 5), New Madrid County (Figure 6) ... . *Cooperative may serve within municipalities that are located in Cooperative's exclusive service area, pursuant to this Agreement.*" (Emphasis supplied)

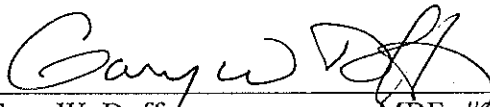
B. The City has not had sufficient time to determine exactly where the boundaries are located, but it preliminarily appears that it could include the area in which the City is located as the "*exclusive service area*" of Ozark Border. Therefore, the Territorial Agreement, on its face, may purport to authorize Ozark Border to serve any "New Structures" inside the City. Since the law of this state (§394.080 RSMo) prohibits a rural electric cooperative such as Ozark Border from serving in non-rural areas such as that within the boundaries of the City of Malden, this appears to be an attempt by Ozark Border to obtain governmental sanction through the guise of a territorial agreement to operate *inside* the City of Malden in violation of the City's rights to determine who it may franchise to provide electric service inside its boundaries.

C. There is no language in the territorial agreement statute, § 394.312 RSMo, which compels Ozark Border to utilize the phrase "exclusive service territory" in the manner it has in the proposed Territorial Agreement. However, "exclusive service territories" is an operative term in §386.800.6 RSMo where the General Assembly has declared the public interest to be that a municipality be allowed to establish exclusive service territories in newly annexed areas. Because there is no language in the proposed Territorial Agreement which the City can locate which restricts the "exclusive service territories" set out in the agreement to the notion that they are *only exclusive as between Ozark Border and Union Electric Company*, the City is forced to conclude, at least preliminarily, that it is Ozark Border's intent to utilize the Commission as an unwitting accomplice in this maneuver.

11. The City has been made aware of certain filings by the City of Poplar Bluff, Missouri in this case and preliminarily believes that its interests will be very similar to those of Poplar Bluff. The City has acted very quickly in responding to the notice provided by the Commission and its intervention in this proceeding at this time should not prejudice any other party since it expects to take positions similar to that of the City of Poplar Bluff.

WHEREFORE, having stated its grounds for seeking intervention, the City of Malden requests an order from the Commission granting it intervention in this proceeding.

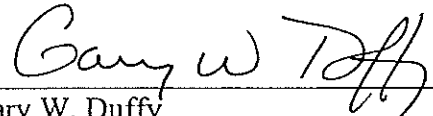
Respectfully submitted,

  
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Gary W. Duffy MBE #24905  
BRYDON, SWEARENGEN & ENGLAND P.C.  
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ATTORNEYS FOR THE CITY OF MALDEN,  
MISSOURI

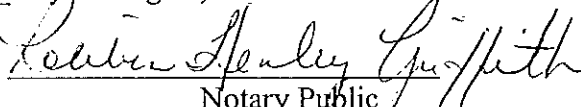
VERIFICATION

State of Missouri     )  
                                  )ss  
County of Cole        )

Gary W. Duffy, being first duly sworn, states upon his oath that he has read the foregoing document and the statements contained therein are true and correct to the best of his knowledge, information and belief and the above-indicated attorneys are authorized to file this document on behalf of the City of Malden, Missouri.

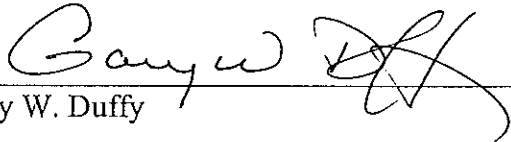
  
\_\_\_\_\_  
Gary W. Duffy  
Subscribed and sworn to before me this 16<sup>th</sup> day of August, 1999.

**ROBBIN HENLEY GRIFFITH**  
A Notary Public of  
Malden County, Missouri  
My Commission Expires 12/28/2001

  
\_\_\_\_\_  
Notary Public

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was either mailed or hand-delivered or mailed by first class mail on August 16, 1999, to counsel for all parties of record.

  
\_\_\_\_\_  
Gary W. Duffy

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