

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

In the Matter of the Application of Co-Mo)
Electric Cooperative for Approval of) Case No. EO-2022-0190
Designated Service Boundaries Within)
Portions of Cooper County, Missouri.)

CO-MO'S RESPONSE
IN OPPOSITION TO AMEREN MISSOURI'S
MOTION FOR SUMMARY DETERMINATION

COMES NOW Co-Mo Electric Cooperative (“Co-Mo”), pursuant to 20 CSR 4240-2.117, and for its Response in Opposition to Ameren Missouri's Motion for Summary Determination, respectfully states as follows:

Answer and Statement of Disputed Material Facts

1. Deny that any certificate approvals or any other Orders issued by the Commission in Case No. EA-87-159, Case No. EM-83-248, or in any other related Commission proceedings in any way precluded, or purported to preclude, Co-Mo as an electric cooperative from *also* providing service in competition with Ameren Missouri or Missouri Power & Light Company within the PSC-approved certificated areas in those cases. Co-Mo affirmatively states that Ameren Missouri, like any other electrical corporation, is required to obtain all necessary Commission approvals prior constructing new facilities and providing electric service (Section 393.170). Admit all remaining allegations of Paragraph 1.
2. Deny that the Commission’s *Report and Order* issued on April 27, 1990, and other related Orders issued in Case No. EA-87-159 or in any other proceedings, in any way granted or purported to grant Ameren Missouri an “exclusive service territory”, at least with respect to Co-Mo or any other electric supplier not regulated by the Commission.

Admit all remaining allegations of Paragraph 2.

3. Deny that the referenced Commission-approved tariff sheets granted to Ameren Missouri an "exclusive service territory", at least with respect to Co-Mo or any other electric supplier not regulated by the Commission. Admit all remaining allegations of Paragraph 3.
4. Deny that in the referenced cases the particular rural electric cooperatives, and their electrical corporation affiliates, were seeking Commission approval to exclusively serve "large swaths of rural Missouri". Co-Mo affirmatively states that: 1) only a relatively small number of rural electric cooperatives out of a total of forty distribution cooperatives in the state had formed electrical corporation affiliates, that in turn, sought service area certificates as Commission-regulated utilities from the Commission; 2) that these cases constituted, exemplified and reflected just one more example of the years of ongoing territorial disputes, Commission proceedings, and litigation between and among rural electric cooperatives and investor-owned, Commission-regulated electric utilities, up to and until the time that the Missouri General Assembly passed legislation in 1989 authorizing territorial agreements (Section 394.312 RSMo); and 3) that then as now, rural electric cooperatives are statutorily authorized to and do serve in any and all "rural areas" of the state (Section 394.080 RSMo) in competition with Commission-regulated investor-owned electric utilities. Admit all remaining allegations of Paragraph 4.
5. Deny that the referenced exhibits reflect or otherwise grant Ameren Missouri an "exclusive service territory", at least with respect to Co-Mo or any other electric supplier not regulated by the Commission. Admit all remaining allegations of Paragraph 5.
6. Admit.

7. Deny that the referenced maps reflect or otherwise grant Ameren Missouri an “exclusive service territory”, at least with respect to Co-Mo or any other electric supplier not regulated by the Commission. Admit all remaining allegations of Paragraph 7.
8. Admit.
9. Admit.
10. Admit.
11. Admit. Co-Mo affirmatively states that prior to the developer, Mr. Thurman, ultimately selecting Co-Mo to provide service to his subdivision, he also discussed with Ameren Missouri the provision of electric service to the subdivision by Ameren Missouri.
12. Co-Mo admits it has powerlines on the south side of Highway 98 and that it has a powerline roughly 3981 feet (or .754 mile) south/southwest of Fox Hollow Subdivision. Deny all remaining allegations of Paragraph 12.
13. Admit.
14. Admit, but affirmatively states that the statutory language and legislative history found in the Revised Statutes of Missouri provide the Commission with the best evidence of same.
15. Admit.
16. Deny that Co-Mo required, or lawfully could have requested, Commission approval to exclusively serve the subject property prior to the property being annexed into the City of Boonville, except by way of a Commission-approved territorial agreement with Ameren Missouri. Co-Mo affirmatively states once it became aware that Mr. Thurman desired Co-Mo to serve his subdivision, Co-Mo timely pursued good faith negotiations for a territorial agreement with Ameren Missouri for the subject property, along with other areas where Co-Mo and Ameren Missouri's respective service areas overlap, prior to the

annexation becoming effective, but that no such agreement was reached. Co-Mo further affirmatively states that upon the conclusion of unsuccessful negotiations for a territorial agreement, new Section 386.800 RSMo grants the Commission the authority to grant the developer's request that Co-Mo provide service to the subject property if the Commission determines that it would not be detrimental to the public interest. Co-Mo admits that in its Application Co-Mo is requesting that the Commission issue an "order determining which electric service supplier should serve" the Fox Hollow subdivision, pursuant to RSMo § 386.800.3.

Opposition To Motion For Summary Determination

As illustrated above, there exists genuine issues of material facts. One *undisputed* fact is that Mr. Thurman, the developer of the subject property, after discussions with both competing electric suppliers, desires Co-Mo to provide service to the new subdivision. Ameren Missouri has now raised and alleges in its already numerous pleadings, if not directly then certainly by clear implication, that it somehow would be detrimental to the public interest for the Commission to allow Co-Mo to honor Mr. Thurman's request. Likewise, in its numerous pleadings and in Mr. Webb's affidavit, Ameren Missouri alleges that Co-Mo honoring Mr. Thurman's request somehow would result in unnecessary duplication of facilities. These are questions of fact, which among many others, are questions that are in dispute between Co-Mo and Ameren. If not thwarted in doing so by Ameren Missouri, Co-Mo intends to support its position in testimony and in other evidence it will bring before the Commission.

Also as illustrated above, Co-Mo agrees that Ameren Missouri has the requisite legal authority by way of its certificate and tariffs to provide service to the subdivision at issue, and

even in undeveloped rural and non-rural areas in Cooper County and elsewhere. However, that is not the controlling factual, and more importantly, the controlling legal issue now before the Commission.

Ameren Missouri is flat wrong on the law with respect to its purported "exclusivity" of its Commission-approved electric service areas. As a matter of law, Ameren Missouri's existing certificates and tariffs never have, and do not now even by default due to annexation, grant Ameren Missouri "an *exclusive right*" to serve the subdivision at issue. While Ameren Missouri's certificate and tariffs may well grant such an *exclusive* right with respect to other Commission-regulated utilities (Evergy, Liberty/Empire), they in no way lawfully preclude Co-Mo from serving the subdivision after annexation if such service by Co-Mo is provided pursuant to the new provisions of Section 386.800 RSMo. Simply put, Section 386.800 RSMo as amended provides a new exception to the 1939 "rural area" restriction regarding rural electric cooperative service areas--provided the Commission concludes, on a case-by-case basis, that the provision of service by the rural electric cooperative is not detrimental to the public interest. To grant Ameren Missouri's request to summarily deny Co-Mo's Application and thereby force Mr. Thurman against his wishes to take service from Ameren Missouri, without even an opportunity for the Commission to review the disputed facts and the proper application of the new law, clearly is contrary to the intent of the Missouri General Assembly as same is reflected in the recent amendments to Section 386.800 RSMo.

As required by 20 CSR 4240-2.117(1)(B), Co-Mo files contemporaneously with this pleading a legal memorandum explaining why Ameren Missouri's Motion For Summary Determination should be denied and incorporates the same herein by reference.

WHEREFORE, for the reasons stated above, Co-Mo respectfully requests that the

Commission enter its Order denying Ameren Missouri's Motion for Summary Determination, thereby allowing this case to proceed under the provisions of Section 386.800 RSMo, and for all such other and further relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ Megan E. Ray

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CERTIFICATE OF SERVICE

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