

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

In the Matter of the Application of Co-Mo)
Electric Cooperative for Approval of) File No. EO-2022-0332
Designated Service Boundaries Within)
Portions of Cooper County, Missouri.)

**AMEREN MISSOURI'S REPLY TO STAFF'S MOTION FOR
LOCAL PUBLIC HEARING**

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and for its reply to the Staff of the Missouri Public Service Commission's (“Staff”) *Motion for Local Public Hearing* (“Motion”) filed July 29, 2022, states as follows:

1. In its Motion, Staff explained that Ameren Missouri and Co-Mo Electric Cooperative ("Co-Mo") filed a stipulation and agreement along with a territorial agreement in File No. EO-2022-0190 requesting the Missouri Public Service Commission ("Commission") approve the stipulation and agreement along with the territorial agreement on May 27, 2022. On May 31, the Regulatory Law Judge opened this docket and transferred the proposed territorial agreement into this case. *See* File No. EO-2022-0332, Second Order Directing Notice, Requiring A Staff Recommendation, and Settling a Deadline for Intervention issued July 5, 2022, at p. 1 ("Second Order"). The Commission issued notice of the territorial agreement on June 1, 2022. *Id.*

2. Staff filed a motion to suspend the filing requirements in this case on June 13, 2022, and the Commission granted Staff's motion on June 14, 2022. The Regulatory Law Judge held a procedural conference with the parties to address how to proceed with the two related matters on June 21, 2022. On July 1, 2022, Ameren Missouri and Co-Mo filed a Joint Application for approval of the proposed territorial agreement. Staff Motion at p.1. The Commission issued its Second Order and published notice to the county commissioners of Cooper, Cole, and Moniteau Counties as well as members of the General Assembly representing Cooper, Cole and Moniteau Counties on July 5, 2022. Second Order at p. 2, ordering paragraphs 1 and 3. The Commission

also directed any person or entity wishing to intervene to file an application to intervene no later than August 4, 2022. *Id.* at ordering paragraph 3.

3. Staff's Motion points out that the landowners in the subject territory agreement did not have notice of a July 26th meeting held with Boonville's Mayor and City Administrator as well as a Cooper County Commissioner, representatives from Ameren Missouri and Co-Mo. Staff Motion at p. 2. Staff states the meeting attendees did not have the benefit of Staff and OPC participation, but also acknowledges these parties invited Staff and OPC to the meeting. *Id.* Staff avers that the Commission and landowners would benefit from a public meeting, but Staff does not explain what those benefits would be. Ameren Missouri agrees a meeting was held at the request of economic development officials in Cooper County to answer questions these parties had about the procedures in place for Ameren Missouri and Co-Mo to ensure utility infrastructure is not duplicated. The meeting was not held to resolve the matter pending before the Commission in this docket. Staff's Motion is premature since Staff filed its Motion prior to the intervention deadline set by the Commission in the Second Order. Staff's Motion presumed these parties want to participate in this proceeding, when in fact having had the opportunity to seek intervention they declined to do so.

4. Not only did those who arranged the meeting not seek to intervene, but neither have any landowners. Staff's Motion implies landowners were not accorded due process and the only recourse under the Commission rules is for the Commission to conduct a local public hearing. This is simply not the case under the statute providing for territorial agreements and under the Commission's rule governing the processing of territorial agreement applications. All process that was due to any person or entity has been given, and Staff's Motion fails to raise a sufficient basis for conducting a local public hearing.

5. Under the Commission rules, the filing requirements for the application for approval of electric service territorial agreements include, among other things, a list of all persons and structures whose *utility service would be changed* by the proposed agreement at the time of filing. 20 CSR 4240-3.130(E). As stated in the Joint Application for Approval of Territorial Agreement, there are no persons or structures whose utility service would be changed by the proposed agreement at the time of the filing. Joint Application at p. 4, para. 9.

6. Moreover, the statute governing territorial agreements does not call for actual notice or any kind of hearing respecting Commission decisions to allocate exclusive service territories under a territorial agreement, especially where not a single existing utility customer of either party will experience a change in utility providers. Indeed, the applicable statute, Section 394.312, RSMo.,¹ provides for the notice (i.e., the process) that is required: “Applications for commission approval shall be made and notice of such filing shall be *given to other electrical suppliers* pursuant to the rules and regulations of the commission governing applications for certificates of public convenience and necessity.” Section 394.312.4. And, with respect to any hearing requirement, a hearing is only required in cases where the territorial agreement is submitted *without* agreement thereon via a stipulation and agreement. “The commission shall hold evidentiary hearings to determine whether such territorial agreements should be approved or disapproved, *except* that in those instances where the matter is resolved by a stipulation and agreement submitted to the commission by all the parties such hearings may be waived by agreement of the parties.” Section 394.312.5, emphasis added.

¹ All statutory references are to the Revised Statutes of Missouri (2016), unless otherwise noted.

7. Staff's request is both unnecessary under the applicable statute and Commission rule and is not in any way required by principles of due process.² Indeed, more process as already been given in this case than is required by law. Although not required under the Commission's rules, the Commission sent notice of the case to local officials and placed notices in newspapers and other media service in Cooper, Cole, and Moniteau Counties.

8. Granting the relief sought by Staff would also reflect poor policy and arguably is inconsistent with both the territorial agreement statute and the Commission's rules governing territorial agreements. The Commission has processed territorial agreement applications for decades. It promulgated a rule calling for the notice required. It did not require territorial agreement applicants to presumably comb the County Assessor's property rolls in all affected counties and then provide actual notice to all such landowners – an extremely burdensome requirement to be sure. The Commission makes decisions routinely in a variety of cases that may have an impact on a large number of persons, but it does not require actual notice to every such person who might be affected. Moreover, given that the subject statute specifically calls for the notice to given – to other *electrical suppliers* – Staff is asking the Commission to impose an extra-statutory requirement that violates the letter, or certainly the spirit, of the statute and the Commission's rules.

9. On August 4, 2022, Staff filed its Status Report and indicated it could not make a recommendation until the maps and legal description of the territorial agreement are filed. Ameren Missouri continues to work with Co-Mo to complete the survey in order to file the legal description and maps for the territorial agreement. Based on the foregoing, it is premature to determine

² Staff's due process argument is facially defective. "The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property ... [and] the range of interests protected by procedural due process is not infinite." *See, e.g., Clark v. the Board of Directors of the School District of Kansas City*, 915 S.W.2d 766, 770 (Mo. App. W.D. 1996), *quoting Board of Regents v. Roth*, 408 U.S. 564, 569–70, 92 S.Ct. 2701, 2705, 33 L.Ed.2d 548 (1972). No person will be deprived of liberty or property if the territorial agreement is approved and, as discussed herein, all process that was due under the applicable statutes and rules has been given.

whether Staff will request an evidentiary hearing in this matter. Staff acknowledges it is waiting for additional information before it makes a recommendation. Furthermore, no additional parties filed an application to intervene in this docket by the August 4, 2022, deadline set forth in the Commission's Second Order.

10. For the forgoing reasons, that is, that Staff's Motion is premature and that granting it would reflect, poor public policy and would be administratively burdensome and inefficient for the parties and the Commission, the Commission should deny Staff's Motion.

WHEREFORE, for the reasons outlined herein, the Company prays that the Commission enter its order denying Staff's Motion for Local Public Hearing.

Respectfully submitted,

/s/ James B. Lowery

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**ATTORNEYS FOR UNION ELECTRIC
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 8th day of August 2022, served the foregoing either by electronic means, or by U. S. Mail, postage prepaid addressed to all parties of record.

/s/James B. Lowery
James B. Lowery