BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

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

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), and for its Reply to Co-Mo Electric Cooperative's ("Co-Mo") *Response in Opposition to Ameren Missouri's Motion for Summary Determination* and Co-Mo's accompanying *Legal Memorandum* (collectively, the "Co-Mo Response"), states as follows:

1. Co-Mo's Response reflects that it admits the following which, taken alone and without regard to any other fact alleged by Ameren Missouri's *Motion for Summary Determination* ("Summary Determination Motion"), are dispositive as a matter of law:

   a. Ameren Missouri's service territory includes Sections 5 and 8, Township 48 North, Range 16 West, Cooper County, Missouri. Summary Determination Motion, ¶¶ 2, 3 & 5; Co-Mo Response, ¶¶ 2, 3 & 5; and

   b. The property at issue is located in its entirety in said Sections. Summary Determination Motion, ¶ 6; Co-Mo Response, ¶ 6.

2. Co-Mo's Application in this docket was submitted under § 386.800, RSMo. (Cum Supp. 2022).

3. The verb "extend" means to "enlarge in area, scope, influence, meaning, effect, etc." *Webster's New World Collegiate Dictionary* (4th ed. 2001.).

4. Section 386.800.3 provides "[i]n the event an electrical corporation rather than a municipally owned electric utility lawfully is providing service to the municipality, all the

provisions of subsection 2 of this section shall apply equally as if the electrical corporation were a municipally owned electric utility…."

5. The "municipality" at issue in applying that provision is Boonville, Missouri.

6. Ameren Missouri was and is lawfully providing electric service to Boonville, Missouri. Webb Affidavit, ¶ 7 (attached to Summary Determination Motion).

7. Section 386.800.2 provides "Any municipally owned electric utility may extend, pursuant to lawful annexation, its electric service territory to include areas where another electric supplier is not currently providing permanent service to a structure."

8. By virtue of the command in subsection 3 of § 386.800 that "all the provisions of subsection 2 of this section shall apply equally as if the electrical corporation were a municipally owned electric utility," subsection 2 provides on these facts that "Any ~~municipally owned electric utility~~ [electrical corporation] may extend, pursuant to lawful annexation, its electric service territory to include areas where another electric supplier is not currently providing permanent service to a structure."

9. Assuming the annexation was lawful, which is a prerequisite to Co-Mo invoking subsection 3 of § 386.800 in the first place, the "lawful annexation" did not, under the plain and ordinary mearing of language the legislature used, *extend* Ameren Missouri's service territory since Ameren Missouri's service territory already included every square inch of the annexed property. *See* Summary Determination Motion Exhibits 8, 9 and 10. The plain and ordinary meaning controls. *See, e.g.,* ***Spudich v. Dir. of Revenue***, 745 S.W.2d 677, 680 (Mo. 1988) ("Words used in statutes, absent a statutory definition, are given their plain and ordinary meaning as derived from the dictionary.").

10. It matters not – and is completely irrelevant to the *legal question* presented by the Summary Determination Motion – whether the Ameren Missouri service territory at issue here,

Sections 5 and 8 – is exclusive as to Co-Mo. Assuming, *arguendo*, that Co-Mo was free to compete for customers in Sections 5 and 8 prior to the adoption of subsection 3 of § 386.800 and prior to the annexation of the property, since prior to the annexation it was a "rural area" as defined in § 394.020, RSMo. (2016), the City of Boonville's act of annexing Sections 5 and 8 still did not extend Ameren Missouri's service territory.

11. Indeed, Ameren Missouri's service territory is completely unchanged by the annexation.

12. For the Commission to rule in favor of Co-Mo on the legal question presented by the Summary Determination Motion would require the Commission to ignore, and to enter a ruling that is counter to, the express wording of subsection 2 of § 386.800. *See, e.g.*, ***Missouri Public Serv. Co v. Platte-Clay Electric Co-Op, Inc.***, 407 S.W.2d 883, 891 (Mo. 1966) (Rejecting statutory interpretations that "run . . . counter to the express wording of . . ." the statute.).

13. It would also require the Commission to ignore the plainly written provisions of subsection 2 of § 386.800. "Provisions not found plainly written or necessarily implied from what is written 'will not be imported or interpolated therein in order that the existence of (a) right may be made to appear when otherwise, upon the fact of (the statutes), it would not appear.'" *Id.*, *quoting Allen v. Str. Louis San-Francisco Ry. Co.*, 90 S.W.2d 1076, 1079.

14. It would further require the Commission to interpret the word "extend" in a manner at war with its plain, ordinary, and usual sense, in violation of § 1.090, RSMo, (2016), and the Supreme Court's pronouncements enforcing it. *Id.* ("We are enjoined to take words and phrases in their plain and ordinary and usual sense.").

15. And finally, it would require the Commission to ignore that rule that "the legislative intent should be ascertained from the words used, if possible, and that the plain and

rational meaning of language should be ascribed to it," and to ignore the rule that the tribunal must be "guided by what the legislature says, and not by what we think it meant to say." *Id.*

16. Not one time in Co-Mo's Response did it even attempt to rebut the inescapable conclusion that under the plain language of subsection 2 of § 386.800, there has been no extension of Ameren Missouri's service territory. Indeed, Co-Mo did not acknowledge or even mention that plain language; did not mention the word "extend" or its derivatives even one time.

17. Why? Because it has no answer – nor could it – to the meaning of that plain language. Co-Mo undoubtedly wishes the legislature had said something different; undoubtedly wishes Sections 5 and 8 were not within Ameren Missouri's service territory, but it cannot change the words the legislature used or the undisputed facts.

18. Co-Mo might argue that the Commission can and should look beyond the plain language of the statute on the ground that the plain language leads to an illogical result. *Cf.* ***Spradlin***, 982 S.W.2d at 258 (Courts may look beyond the plain meaning if the plain meaning leads to an illogical result). However, any such contention would fail as a matter of law.

19. Had Sections 5 and 8 not been within Ameren Missouri's service territory, Co-Mo could properly invoke subsection 3 of § 386.800 and seek a Commission determination that Co-Mo should serve this now non-rural area (the annexed territory) based on the statutory factors, and under the standards applicable to applications for certificates of convenience or necessity. Co-Mo did not have the right prior to adoption of the amendments to § 386.800, but Co-Mo has that right post-those amendments. This much Ameren Missouri concedes.

20. Applying the plain language of the statute, however, not only does not lead to illogical results but it leads to an eminently logical result. What the statute has done is change the law in Missouri with respect to the effect of annexation by a municipality of land that is *not already in a service territory as determined by the Commission* and for which the Commission has *not*

already made a convenience or necessity determination. That is why the legislature used the word "extend." If the annexation extends ("enlarges in area", *Webster's*, supra) a service territory, the statutory amendments are simply not triggered. But the statute *is* triggered if, and only if, there is an *extension.*

21. Nothing more needs to be said. Co-Mo cannot invoke subsection 3 of § 386.800 and maintain its Application because a condition precedent to its application, an extension (enlargement in area) of Ameren Missouri's service territory under subsection 2, did not happen.

22. Under 20 CSR 4240-2.117(1)(E), there is no genuine issue as to any material fact. The only fact of substance that Co-Mo disputes in Co-Mo's Response was Ameren Missouri's allegation that its Commission-designated service territory was exclusive as to Co-Mo. While Ameren Missouri stated that it was as a matter of fact, that question is not a factual question at all; it is a legal one, the answer to which is irrelevant under the plain terms of the statute at issue.

23. Consequently, under the rules that bind the Commission in interpreting the statute at issue, Ameren Missouri is entitled to a dismissal of this case as a matter of law because the Commission has no authority to decide it because the statute has simply not been invoked.

WHEREFORE, for the reasons outlined herein, the Company prays that the Commission enter its order granting Ameren Missouri's Summary Determination Motion, thereby dismissing Co-Mo's Application with prejudice.

Respectfully submitted,

/s/ James B. Lowery
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ATTORNEYS FOR UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI

Dated: February 25, 2022

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of February 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