

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

In the Matter of the Application of)	
Thomas L. Chaney for a Change of Electric)	<u>File No. EO-2011-0391</u>
Supplier)	

**STAFF’S RESPONSE TO DENY AMEREN MISSOURI’S AND CUIVRE RIVER
ELECTRIC COOPERATIVE, INC.’S JOINT MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION AND FOR DETERMINATION ON THE
PLEADINGS**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the undersigned counsel, and files this response to Union Electric Company d/b/a Ameren Missouri’s (Ameren Missouri) and Cuivre River Electric Cooperative, Inc.’s (Cuivre River), joint motion for summary determination with the Missouri Public Service Commission (Commission). The Staff requests the Commission find jurisdiction in this matter to determine the Applicant’s change of supplier request, and in support, respectfully states the following:

1. Staff admits the factual statements within the Movants’ paragraph one (1).
2. Staff admits the factual statements within the Movants’ paragraph two (2).
3. Staff admits the factual statements within the Movants’ paragraph three (3).
4. Staff is informed and believes 1110 St. Theresa Lane is located in Dardenne Prairie, Missouri; therefore Staff denies 1110 St. Theresa Lane is located in O’Fallon, Missouri, but admits the remainder of the factual statements within the Movants’ paragraph four (4).
5. Staff admits the factual statements within the Movants’ paragraph five (5), but states that the correct citation to the Movants’ assertion is 4 CSR 240-2.010(10).
6. Staff admits the factual statements within the Movants’ paragraph six (6), but states that the correct citation to the Movants’ assertion is 4 CSR 240-2.010(10).

7. Staff admits that Cuivre River and Ameren Missouri have a Commission-approved Territorial Agreement of which numbered paragraph two (2) describes territories that, between them, each may provide electric service to new structures exclusive of the other.

8. Staff states it is informed and believes the property located at 1110 St. Theresa Lane is in the city of Dardenne Prairie, not the city of O'Fallon as alleged, but admits said property is within the ambit of the Territorial Agreement referenced in Movants' paragraph seven (7) and that the terms of that territorial agreement do not purport to divest Cuivre River of its right to continue to provide electric service to structures it was serving before entering into that territorial agreement.

9. Staff admits the factual statements within the Movants' paragraph nine.

10. Staff does not have enough information to either admit or deny the factual statements within the Movants' paragraph ten (10).

11. Staff admits the factual statements within the Movants' paragraph eleven (11).

12. For reasons explained in the attached legal memorandum, Staff denies the statements within the Movants' paragraph twelve (12).

13. Staff admits the factual statements within sentence one (1) and two (2) of the Movants' paragraph thirteen (13). For reasons explained in the attached legal memorandum, Staff denies the statement within sentence three (3) of the Movants' paragraph thirteen (13).

14. Staff admits that Cuivre River and Ameren Missouri have a Territorial Agreement and that numbered paragraph two (2) of the Agreement states the allocated service areas of each Movant. For reasons explained in the attached legal memorandum, Staff denies the statements within sentence two (2) of Movants' paragraph fourteen (14).

15. For reasons explained in the attached legal memorandum, Staff denies the statements within the Movants' paragraph fifteen (15).

Additional Material Undisputed Facts

16. The Applicant's property is located at 1110 St. Theresa Lane in Dardenne Prairie, Missouri. Staff's *Memorandum and Affidavit of Daniel I. Beck* filed July 20, 2011.

17. The city of Dardenne Prairie, Missouri has a population greater than fifteen hundred (1500) inhabitants. Staff's *Memorandum and Affidavit of Daniel I. Beck* filed July 20, 2011. *See also 2011-2012 Missouri Official Manual*, page 611.

18. Pursuant to 394.315.2 RSMo (2000), Cuivre River has the authority to continue to provide electricity to structures located at 1110 St. Theresa Lane in Dardenne Prairie, Missouri, that it was serving before the effective date of the Territorial Agreement referenced in Movants' paragraph seven (7). Movant's *Territorial Agreement*.

19. Ameren Missouri has authority from the Public Service Commission of Missouri to provide electric service to the public in areas of Missouri that include structures located at 1110 St. Theresa Lane in Dardenne Prairie, Missouri. Movants' *Territorial Agreement*.

20. The Territorial Agreement, page 6, paragraph (10)(b)(1), states "This Agreement shall become effective upon approval by the Missouri Public Service Commission...Performance of the parties is contingent upon all of the following having occurred no later than March 31, 1993:... (b)(1) a finding that this agreement shall not impair the Company's certificates of convenience and necessity in any respect within St. Charles county." Movants' *Territorial Agreement*.

21. As stated in paragraph nine (9) of the Territorial Agreement, the agreement is only binding on the parties to the agreement and all subsidiaries, successors, assigns and corporate parents or affiliates of the Company and Cooperative. Movants' *Territorial Agreement*.

22. As stated in paragraph (7) of the Territorial Agreement, the parties may agree on a case-by-case basis to allow structures to receive service from one party though the structure is located in the electric service area of the other. Movants' *Territorial Agreement*.

23. Regardless of their territorial agreement referenced in Movants' paragraph seven (7), both Cuivre River and Ameren Missouri have the authority to serve the Applicant's property.

24. Both Ameren Missouri and Cuivre River provide service to other properties located on St. Theresa Lane. Staff's *Memorandum* and *Affidavit of Daniel I. Beck* filed July 20, 2011.

25. Attached is a more clear and complete copy of the Territorial Agreement than provided by the Movants, labeled as Exhibit A, including a map of the service areas.

WHEREFORE, the Staff files this response and requests the Commission deny Ameren Missouri's and Cuivre River's joint motion for summary determination and requests the Commission find jurisdiction in this matter to determine the Applicant's change of supplier request.

Respectfully submitted,

/s/Jennifer Hernandez

Jennifer Hernandez
Senior Staff Counsel
Missouri Bar No. 59814

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

(573) 751- 8706 (Telephone)
(573) 751-9285 (Fax)
jennifer.hernandez@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing have been sent by electronic mail to Thomas L. Chaney at tomeygun@gmail.com; Wendy K. Tatro, counsel for Ameren Missouri at AmerenMOService@ameren.com; Rodric A. Widger, counsel for Cuivre River at rwidger@lawofficemo.com; and Lewis Mills, counsel for the Office of the Public Counsel at opcservice@ded.mo.gov on this 21st day of May, 2012.

/s/Jennifer Hernandez