

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

In the Matter of the Application of Gascosage Electric)	
Cooperative and Three Rivers Electric Cooperative)	
for Approval of a Written Territorial Agreement)	
Designating the Boundaries of Each Electric Service)	Case No. EO-2005-0122
Supplier within Camden, Cole, Franklin, Gasconade,)	
Maries, Miller, Moniteau, Osage, Phelps, and Pulaski)	
Counties, Missouri.)	

**UNION ELECTRIC COMPANY'S STATEMENT OF
POSITIONS ON THE ISSUES**

COMES NOW, Union Electric Company d/b/a AmerenUE ("AmerenUE"), a Missouri corporation, and for is Statement of Positions on the Issues in the above-styled case, respectfully states as follows:

ISSUE 1: Does Commission approval of the Territorial Agreement between Three Rivers and Gascosage in any way affect or diminish the rights and duties of any supplier not a party to the agreement or of any electrical corporation authorized by law to provide service within the boundaries designated in such Territorial Agreement?

AMERENUE'S POSITION: No, under Section 394.312.5 RSMo. 2000. But among other reasons due to *State ex rel. Ozark Border Elec. Cooperative v. Public Service Comm'n*, 924 S. W. 2d 597 (Mo.App. 1996), should the Commission decide to approve the Territorial Agreement, the Commission's Report And Order should state that the Commission's approval of the Territorial Agreement is not intended to any way affect or diminish the rights and duties of any supplier not a party to the agreement or of any electrical corporation authorized by law to provide service within the boundaries designated in such territorial agreement.

ISSUE 2: Pursuant to Section 394.312 RSMo 2000, is approval of the territorial agreement between Gascosage Electric Cooperative and Three Rivers Electric Cooperative ("Territorial Agreement") in total not detrimental to the public interest?

AMERENUE'S POSITION: AmerenUE believes that the approval of the Territorial Agreement in total is not in the public interest and the Commission should reject it as written. Section 4 of the Territorial Agreement sets forth the exclusive service area of Three Rivers under the Territorial Agreement and states "Three Rivers may serve within municipalities that are located in the Three Rivers Exclusive Service Area, pursuant to this Agreement." The ability of rural electric cooperatives to serve municipalities with populations in excess of 1500 inhabitants is strictly limited by Missouri Law. Mr. Ryan in his surrebuttal testimony further construes the purpose of this sentence by stating Commission approval of the Territorial Agreement along with subsequent city authority gives Three Rivers the right to serve in municipalities with populations in excess of 1500 inhabitants (hereinafter "the Interpretation"). AmerenUE disagrees with the

Interpretation. The cited provision is not necessary to implement the Territorial Agreement nor does it act as a narrowly drawn “savings clause” to eliminate future problems in implementing the Territorial Agreement.¹ The Cooperative witnesses have presented in their testimony no need for the cited provision except stating that it permits Three Rivers to serve in municipalities with populations in excess of 1500 inhabitants with consent of the municipality; areas where it cannot serve under existing Missouri Law. Since the Joint Applicants have not demonstrated a need for this provision to implement the Territorial Agreement and no Missouri Courts have ruled of the validity of such a novel interpretation, these facts alone should be sufficient for the Commission to find the Territorial Agreement not in the public interest.

If the Commission accepts the Interpretation, it must consider all its impact in making its determination that the Territorial Agreement in total not detrimental to the public interest. Thus, the Commission must consider the impact on AmerenUE of Three Rivers serving within municipalities with populations in excess of 1500 inhabitants, especially with respect to annexations. This is especially true with regard to the rural areas around Jefferson City, Eldon or New Haven; areas where according to Mr. Ryan’s surrebuttal testimony competition between AmerenUE and Three Rivers is most intense. Under existing Missouri Law if these areas were annexed by a city, Three Rivers would be prevented from serving new structures. With the Interpretation Three Rivers may continue to serve. As stated in Mr. Merry’s rebuttal testimony, the Territorial Agreement will impact AmerenUE’s ability to plan its system and optimally utilize its facilities inside said these cities would be negatively impacted. Over time, since urban areas develop faster than rural ones, the Territorial Agreement will actually increase duplication of facilities, which in turn will result in congested lines in urban areas, increased unsafe conditions, inefficient use of existing facilities, more complex system planning and ultimately higher costs to both Three Rivers and AmerenUE. These facts clearly offset the advantages espoused by those supporting the Territorial Agreement and make it not in the public interest.

ISSUE 3: Should the Commission adopt the language proposed in the rebuttal testimony of AmerenUE witness Larry Merry for Article 4 of the Territorial Agreement between Three Rivers and Gascosage?

AMERENUE’S POSITION: AmerenUE believes if language similar to the language proposed in the rebuttal testimony of AmerenUE witness Larry Merry was substituted for the existing Article 4 of the Territorial Agreement language, AmerenUE would take no position on Issue 2.

ISSUE 4: May Three Rivers and Gascosage terminate the Territorial Agreement without the authorization of the Commission?


AMERENUE’S POSITION: AmerenUE takes no position on Issue 4.

¹ On pages 5 and 6 of his Rebuttal Testimony, Mr. Merry gives examples terms similar to the one included in Article 4 of the Territorial Agreement which were either necessary to implement a territorial agreement or acted as a “savings clause” to eliminate future problems in long term territorial agreements.

AmerenUE also concurs with the Order of Opening Statements, Order of Witnesses, Order of Cross Examination set forth in the Commission Staff's "List of Issues, statement of Positions, Order of Opening Statements, Order of Witness and Order of Cross-Examination dated December 29, 2004.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail, to the following parties on the 29th day of December, 2004.

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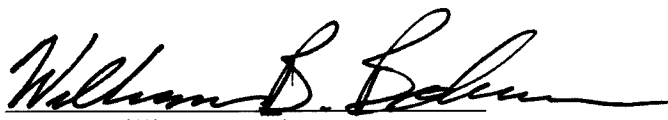
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