

**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 )  
Supplier within Camden, Cole, Franklin, Gasconade, )  
Maries, Miller, Moniteau, Osage, Phelps, and Pulaski )  
Counties, Missouri. )

Case No. EO-2005-0122

**AMERENUE's REBUTTAL TO THE JOINT APPLICANT'S RESPONSE TO  
AMERENUE'S MOTION TO INTERVENE**

**COMES NOW**, Union Electric Company d/b/a AmerenUE ("AmerenUE"), by and thru its attorney, and hereby submits the following response to the Gascosage Electric Cooperative ("Gascosage") and Three Rivers Electric Cooperative ("Three Rivers") (hereinafter collectively referred to as "Joint Applicants") response opposing AmerenUE's Motion to Intervene in this case. In rebuttal to the Joint Applicants, AmerenUE states as follows:

1. On November 2, 2004, the Joint Applicants filed their Joint Application for approval of a territorial agreement (the "Territorial Agreement") with the Commission. On November 29, 2004, AmerenUE filed its Verified Motion to Intervene. On December 3, 2004, the Joint Applicant filed their response opposing AmerenUE's Motion to Intervene.

2. In their response, the Joint Applicants state that a territorial agreement cannot diminish the rights or duties of a nonparty citing Section 394.315.5 RSMo 2000 and AmerenUE therefore is not affected by the Territorial Agreement. This citation is the wrong standard for intervention in a case before the Missouri Public Service Commission ("Commission"). The standard that the Commission must apply in ruling on AmerenUE's application is given in 4CSR 240-075(4):

- (4) The commission may on application permit any person to intervene on a showing that –
- (A) The proposed intervenor has an interest which is different than which is different from that of the general public and which may be adversely affected by a final order arising in this case; or
  - (B) Granting the proposed intervention would serve the public interest.

AmerenUE reiterates that it has an interest in this case different from the general public. AmerenUE is an electric supplier operating in portions of the area that is subject to the proposed territorial agreement that is subject to Commission approval in this proceeding. In the past, the Commission has granted requests to intervene made by other similar situated electric suppliers based on this fact alone. For example, the Commission granted Intercounty Electric Cooperative Association's request to intervene in Case No. EO-98-279 (an application for Commission approval of a territorial agreement between AmerenUE and Gascoage) and the request by North Central Missouri Electric Cooperative, Inc. to intervene Case No. EO-98-511 (an application for Commission approval of a territorial agreement between AmerenUE and Farmers' Electric Cooperative). Further, AmerenUE cited in its application to intervene a potential interest that could be adversely impacted by the Commission's approval of the proposed Territorial Agreement as written – Three Rivers could use the Territorial Agreement in an attempt to serve in municipalities were it cannot serve presently under Missouri Law, which in turn adversely impact AmerenUE's system planning and facility utilization. <sup>1</sup>

2. In the Joint Applicants response to AmerenUE's motion to intervene, they stated that AmerenUE has used similar language in prior territorial agreements and AmerenUE is now complaining about the same language in this agreement. As stated in our Motion to Intervene,

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<sup>1</sup> Section 4 of the Territorial Agreement sets forth the exclusive service area of Three Rivers and states "Three Rivers may serve within municipalities that are located in the Three Rivers Exclusive Service Area, pursuant to this Agreement." Pursuant to Section 394.312.2 RSMo 2000, this provision if the proposed Territorial Agreement, if approved by the Commission, would grant to Three Rivers the

AmerenUE acknowledges that it has included similar language in prior agreement agrees because language granting certain rights to cooperatives to operate in municipalities is necessary to have an effective territorial agreement. However the Joint Applicants' argument ignores the differences among the territorial agreements in question. In its territorial agreements with cooperatives, AmerenUE was the sole electrical cooperation operating in the areas subject to the territorial agreements. On an individual agreement basis, in addition to the cooperative that entered into the territorial agreement with Ameren, other cooperatives often operated in the area subject to the territorial agreement. As an electrical corporation prior to territorial agreement approval, AmerenUE has right to serve in areas in which it has a certificate, including municipalities with populations in excess of 1500 inhabitants. The territorial agreements gave no addition rights to AmerenUE. The cooperatives ability to operate in municipalities with populations in excess of 1500 inhabitants is strictly limited by Missouri Law. The territorial agreements gave additional rights to cooperative that were parties. But, there was little on no risk that destructive competition among electric supplier may arise inside a municipality with populations in excess of 1500 inhabitants as a result of these older territorial agreements.

Here, the agreement is between two cooperatives and AmerenUE provides electric service in many of the areas covered by this agreement. In fact, AmerenUE and Three Rivers actively compete for customers in the rural areas, areas with less than 1500 inhabitants. Inside municipalities with populations greater than 1500 inhabitants there is no competition because Three Rivers' ability to serve is limited by current Missouri Law. Commission approval of the proposed Territorial Agreement in its current form will change eliminate the limitations imposed by Missouri Law, destructive competition

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power to serve within municipalities with population in excess of 1500 inhabitants notwithstanding the provisions of Sections 394.020 and 394.080 RSMo 2000 to the contrary.

inside municipalities such as Jefferson City would result, and AmerenUE's ability to plan its system and to optimally utilize its facilities inside municipalities such as Jefferson City would be adversely impacted by competition by Three Rivers, competition the existing Missouri Law prevents. This fact satisfies 4CSR 240-075(4)(A). In additions, AmerenUE believes that it participation in this case serves the public interest, for AmerenUE as a party will be able to present witnesses and test evidence by cross-examination to assure that the proposed Territorial Agreement is not detrimental to the public interest.

3. AmerenUE's participation as a party in this case will aid it ability to assert in the future a "substantial change in circumstances" required to successfully invoke Commission jurisdiction to re-review the Teritorial Areement pursuant to Section 394.312.6 RSMo 2000. In their response the Joint Applicants state that if Missouri Law is violated as a result of the proposed Territorial Agreement, these matters must be addressed by Missouri courts. This assertion ignores the Commissions authority under Section 394.312.6 RSMo 2000 to determine whether a change in circumstances causes a territorial agreement to be no longer in the public interest. A party must allege a change in circumstances to invoke jurisdiction under Section 394.312.6 RSMo 2000. Ozark Border Electric Cooperative v. Public Service Commission of Missouri (924 S.W.2d 597, 601). In Ozark Border, Ozark Border Electric Cooperative asserted that it cannot allege a change in circumstance because a minimal hearing entering only the territorial agreement and a stipulation and agreement among the parties was held. The Court in ruling that the Commission did not err in dismissing Ozark's complaint, noted that publication notice was given to interested parties, the hearing was sufficient and Ozark chose not to intervene in the original proceeding essentially causing the insufficient record. Ozark Border at 601. Now, AmerenUE is attempting to intervene in this case in order to preserve its future right to invoke

Commission jurisdiction under Section 394.312.6 RSMo 2000. Therefore, it would be an injustice to deny AmerenUE's application to intervene in this case.

**WHEREFORE**, for the foregoing reasons, AmerenUE respectfully request that the Commission grant its Motion to Intervene in this proceeding.

Respectfully submitted,

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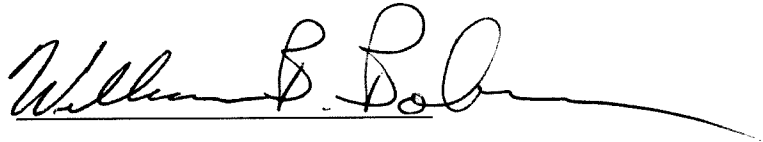
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been served on all Parties of Record, via first-class U.S. Mail, postage prepaid, on this 7th day of December, 2004.

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A handwritten signature in black ink, appearing to read "William B. Polk", with a long horizontal flourish extending to the right.