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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Prehearing Conference
April 2, 1998
Jefferson City, Missouri
Volume I

In the Matter of the Application of)
Union Electric Company and) CASE EO-98-279
Gascosage Electric Cooperative for)
Approval of a Written Territorial)
Agreement Designating the)
Boundaries of Each Electric Service)
Supplier Within Portions of Camden,)
Miller, Maries, Pulaski and Phelps)
Counties, Missouri.)

DALE H. ROBERTS, Presiding
CHIEF REGULATORY LAW JUDGE
NANCY DIPPELL, REGULATORY LAW JUDGE

REPORTED BY:
ERICA SCHULTE, CSR
ASSOCIATED COURT REPORTERS, INC.

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1 P R O C E E D I N G S

2 JUDGE ROBERTS: Good morning. My name is
3 Dale Roberts. I'm the regulatory law judge to who
4 this case is presently assigned. We're here for
5 case number EO-98-279, which is In the Matter of
6 the Territorial Agreement Application of Union
7 Electric Company and Gascosage Electric Cooperative
8 for approval of the Written Territorial Agreement
9 designating the boundaries of each electric service
10 supplier within portions of Camden, Miller, Maries,
11 Pulaski and Phelps Counties.

12 This case was filed -- was originally
13 assigned to Judge Derque before he left the
14 Commission. It was filed on January 5th. And
15 evidently an Application to Intervene was filed on
16 February 9th, one day out of time.

17 The Commission granted that Application to
18 Intervene on March 4th. And from there I don't
19 think any motions have been filed from any of the
20 parties. There has been direct testimony filed
21 fairly recently on behalf of Gascosage.

22 The problem, of course, with a late
23 intervenor in these cases, as you all may know,
24 Territorial Agreements have fairly short
25 timelines. The Commission is required to issue a

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1 decision, I believe, within 120 days. I believe
2 those 120 days run on May 5th.

3 And as you may also know, Commission
4 orders are generally issued with a 10 day effective
5 date. That's not a hard and fast rule. The Court
6 has told us one day is not enough and 10 days is
7 plenty. There may be an adequate number somewhere
8 in the middle, but we don't know.

9 So we've always tried to stay with 10
10 days. Which means, of course, if you back 10 days
11 off May 5th means we have to issue a decision, our
12 last agenda day I think would be Thursday,
13 April 23rd. I'm doing this off the top of my head,
14 which really puts us under the gun.

15 This case was brought to my attention by
16 the Staff attorney Mr. Poston around the time of
17 Judge Derque's departure. In fact, we were in a
18 time crunch and the status of this case was
19 unclear, so I set this prehearing and I indicated I
20 believe in the notice setting this prehearing that
21 if the case goes to a hearing, we would probably be
22 looking -- I think it's set April 13th.

23 I am guessing that -- or it should be
24 clear that the parties who filed this case are in
25 agreement. The question is what the position of

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1 Staff, Office of the Public Counsel and Intervenors
2 will be so that we can see if this case is going to
3 settle or if it's going to go forward as a
4 contested case. So that's where I understand this
5 case to be.

6 Before we go any further, Judge Dippell,
7 Nancy Dippell, is the new regulatory law judge for
8 the Commission. She will be handling this case
9 with me or she may be handling it in its entirety,
10 so I wanted to bring her in on this. As some of
11 you know we're in kind of a transition in terms of
12 a change of personnel here.

13 Before we go beyond that, I would like to
14 take entries of appearance starting with the two
15 applicants, either one. I guess Union Electric.

16 MR. BOBNAR: Appearing for Union Electric,
17 which is doing business as Ameren UE, William
18 Bobnar.

19 JUDGE ROBERTS: I'm sorry. Could you
20 state your last name again?.

21 MR. BOBNAR: Yes. William Bobnar.

22 JUDGE ROBERTS: And what's your business
23 address please?

24 MR. BOBNAR: It's One Ameren Plaza,
25 St. Louis, Missouri 63113.

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1 JUDGE ROBERTS: And Gascosage?

2 MR. SCOTT: Appearing for Gascosage,

3 Victor Scott of the law firm Andereck, Evans,

4 Milne, Peace and Baumhoer, address P.O. Box 1338

5 Jefferson City, Missouri 65102.

6 JUDGE ROBERTS: Thank you. Staff?

7 MR. POSTON: Mark Poston for the Staff of

8 the Missouri Public Service Commission, P.O.

9 Box 360, Jefferson City, Missouri 65102.

10 MR. COMLEY: Thank you, your Honor. Let

11 the record reflect the entry of Mark W. Comley of

12 the law firm Newman, Comley and Ruth, 205 East

13 Capitol Avenue, Post Office Box 537, Jefferson

14 City, Missouri 65102 on behalf of Intercounty

15 Electric Cooperative Association.

16 And also I'd like to introduce to the

17 Commission the gentleman on my left who is also

18 entering his appearance today, Mr. William E.

19 Gladden, Post Office Box 217, Houston, Missouri

20 65483.

21 JUDGE ROBERTS: Okay.

22 MR. MILLS: On behalf of the Office of the

23 Public Counsel, my name is Lewis Mills and my

24 address is P.O. Box 7800, Jefferson City, Missouri

25 65102.

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1 JUDGE ROBERTS: Thank you. So gentlemen,
2 I guess the question is really to the Intervenor
3 and to the Staff and Public Counsel and maybe I'll
4 do this in a different order.

5 Staff, are you able to state at this time,
6 does the Staff have any opposition to the
7 application as filed?

8 MR. POSTON: No, the Staff does not. The
9 Staff supports the application.

10 JUDGE ROBERTS: Public Counsel?

11 MR. MILLS: We have no objection to it
12 either. It seems to be in the public interest and
13 doing what Territorial Agreements are designed to
14 do.

15 JUDGE ROBERTS: Mr. Comley?

16 MR. COMLEY: I have to change the tune.
17 Intercounty would oppose the agreement as it's
18 drafted at the present.

19 On the matter of the deadline that the
20 Bench has discussed, I think there is an escape
21 valve in the statute that we could all
22 investigate. For good cause I think the Commission
23 can extend the time in which it should decide the
24 issues.

25 And given the fact that there has been a

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1 turnover in personnel particularly those fact
2 finders and hearing examiners and given the fact
3 that there is an Intervenor in this case, which I'm
4 led to believe is somewhat rare, that may
5 constitute sufficient cause for the Commission to
6 rethink the deadline. And we might consider that
7 this morning.

8 But I thought I'd raise that on the record
9 portion to alert you to the fact that that may be a
10 possible motion.

11 JUDGE ROBERTS: All right. Thank you.
12 Response from the applicants?

13 MR. BOBNAR: Well, obviously, your Honor,
14 in Intercounty's Application to Intervene they did
15 not state that they were going to oppose the
16 Territorial Agreement. One of the things that
17 we're very interested in, is their grounds for why
18 they're opposing the agreement. And, you know, if
19 they are opposing the agreement on the basis that
20 they believe it's detrimental to the public
21 interest, that's one thing.

22 If they're opposing it for other reasons,
23 both Union Electric and Gascosage would be very
24 interested in finding out what those are and
25 whether or not there's actual grounds for those

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1 reasons for opposing the agreement.

2 JUDGE ROBERTS: All right. Mr. Scott?

3 MR. SCOTT: I'd echo those sentiments.

4 JUDGE ROBERTS: Okay. Mr. Comley, is
5 there anything that you can tell us to clear this
6 up? Is your client -- does your client have a
7 position on opposing this in terms of --

8 MR. COMLEY: Well, the grounds as we
9 anticipated them in our application I think speak
10 for themselves. There is some concern that UE and
11 Gascosage are taking some form of dominion over
12 areas in which Intercounty has already placed
13 facilities. The operation of the statute, I don't
14 know whether it's a good, safe harbor for
15 Intercounty at this stage.

16 Again, we pointed out in the application
17 that we're seeing the electric industry influx.
18 Even this morning there is a hearing at which staff
19 members of this Commission will be attending
20 involving a Power and Exchange Bill filed by
21 Representative Greisinger.

22 And I think with the advent of
23 deregulation, electric restructuring, Territorial
24 Agreements that have been couched in the terms like
25 that that we have misfiled need to be carefully

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1 examined by those who may have self interest to
2 protect.

3 JUDGE ROBERTS: Okay.

4 MR. SCOTT: Your Honor, in response to --
5 if that's one issue, our position is the statute is
6 the law. It hasn't changed. If it changes
7 tomorrow, then the legislature knows that these
8 agreements are there.

9 I have represented other cooperatives and
10 this Commission has approved Territorial Agreements
11 that the boundaries overlap between these different
12 entities.

13 And so we don't believe that's a viable
14 reason for their intervention or that they should
15 oppose or that the Commission should deny this
16 application.

17 The Territorial Agreement boundary, you
18 know, set out the lines for these two entities.
19 The statute clearly says a nonparty is not effected
20 by this agreement. And no matter where these lines
21 are, it doesn't matter that the lines encompass
22 what Intercounty is claiming their territory and
23 their facilities. They're not a party. The
24 agreement doesn't effect them.

25 And that's one reason we don't think the

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1 Commission needs any additional time under the
2 statute, and that the April 13th hearing date would
3 be proper. Because this is a simple Territorial
4 Agreement despite Intercounty intervening. We're
5 not switching customers. It's a straight boundary
6 line Territorial Agreement.

7 And the areas are big. They're defined.
8 And it's just clean cut compared to some of the
9 other ones we've done.

10 MR. BOBNAR: I would just like to take the
11 time to point out in entering into a Territorial
12 Agreement both of the parties tend to negotiate,
13 therefore, when the Intervenors come in and say we
14 want the boundary line moved, it tends to upset the
15 balance of the entire agreement.

16 These agreements take time. I've been
17 personally involved with four of them. They
18 typically take well over a year to negotiate. It's
19 quite clear from the statute that only parties that
20 are signatories to the agreement are the parties
21 that are going to be bound by the agreement.

22 What's more is Union Electric in testimony
23 in the last three Territorial Agreements has always
24 stated that they will not assert any right over any
25 other party in any activity related to the

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1 Territorial Agreement. We recognize that party
2 like any other party who is not a signatory to a
3 contract is just not bound by it.

4 So we think it gives us two hardships.
5 One's, you know, we have filed testimony.
6 Gascosage has filed testimony. We are willing to
7 support the urgent need of the Commission for a
8 hearing to simplify this matter.

9 We're also thinking that, you know, if
10 Intercounty has reasons that they can point out to
11 the Commission that this is detrimental, yes, let's
12 go ahead and have the hearing. Let the Commission
13 hear the evidence and make the decision.

14 But again like Mr. Scott said, this is a
15 very simple agreement. Only boundary lines are
16 being drawn and only two parties are really at
17 issue here. We're not exchanging customers. We're
18 not swapping facilities.

19 JUDGE ROBERTS: All right. Well, I am
20 certainly not the person who is going to make the
21 final decision on your arguments today. The
22 information you have given me clears -- at least
23 answers the questions I had about the status of the
24 case.

25 I hope that you-all can engage in the

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1 usual opportunities that a prehearing conference
2 offers. I don't know if this is something that
3 would be resolved between the Intervenor and the
4 Applicants or not. Unless there are any motions or
5 any requests from any of the parties, I will leave
6 you this opportunity and wait to here back from
7 you.

8 And unlike our practice for most
9 prehearing conferences, I suspect that I will
10 probably try and get back to you before -- I'd like
11 to sort of check in with you before you leave today
12 whether you speak for ten minutes and decide you're
13 at an impasse or whether you spend the entire day
14 here, if someone would try to track me down.
15 Staff, Mr. Poston, is probably the person to ask to
16 do that so that I can find out where you're leaving
17 this issue when you leave the building today.

18 Then if there are requests for continuance
19 which it sounds like those would come from the
20 Intervenor with the explanation, you know,
21 arguments as to why those should be granted, I
22 would really like to get that before the Commission
23 right away. And if it's possible to get something
24 and if there's going to be such a request, if it's
25 possible to get it to me by Monday, maybe by the

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1 close of business Monday. And I know that puts you
2 under pressure, Mr. Comley. That would certainly
3 be ideal.

4 And similarly, you know, any other
5 motions that anybody intends to file in this case,
6 I will probably put this on for discussion with the
7 Commissioners for their Tuesday agenda to let them
8 know where the case sits. Yes. Because that would
9 be the Tuesday the 7th and as we sit here, I
10 believe our hearing is set for Monday the 13th. So
11 that's -- I'm sorry to put you under that much of a
12 time crunch but that's probably as close as we want
13 to cut it.

14 And then this Commission can consider the
15 potential for continuance or any other motions that
16 you-all want to bring to us. Any other comments or
17 any requests or motions from any of the parties?

18 MR. SCOTT: No, your Honor.

19 MR. BOBNAR: No, your Honor.

20 JUDGE ROBERTS: Okay. Just this really
21 sort of hit me when I came in this morning -- let
22 me ask this, where is the headquarters for
23 Intercounty?

24 MR. GLADDEN: Licking, Missouri in Texas
25 County.

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1 JUDGE ROBERTS: That's what I thought.
2 The name just sort of rang a bell. I need to tell
3 you that I believe my little sister's brother works
4 for Intercounty. I'd rather not disclose his name,
5 but I will do so if you ask me.

6 But I want every party to know that,
7 however, continuous contact exists or if that makes
8 you nervous or if you have any concerns about that,
9 I'll answer any questions you have. There's a
10 provision for recusing the presiding officer. And
11 that may be moot because as I said, Judge Dippell
12 may take the case anyway.

13 But since I think I have a relative who
14 works for Intercounty which is not a regular -- I
15 believe is ordinarily a regulated entity, but since
16 you're here before the Commission, I think the
17 parties should know that.

18 MR. SCOTT: Your Honor, for Gascoage we
19 have no problem with that, and we thank you for
20 your candor.

21 JUDGE ROBERTS: You can talk to your
22 client about it before you make any decision about
23 it.

24 MR. BOBNAR: Union Electric appreciates
25 the Judge's honesty.

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1 JUDGE ROBERTS: As I say, if you would try
2 and track me down, Mr. Poston, you know, I will be
3 in agenda from 9:30 until probably noon and there
4 are other meetings throughout the day, but I will
5 make sure that my assistant knows where to find me
6 so when you conclude, whether that's in five
7 minutes or five hours, because I just kind of like
8 to know where this case sits so I can be thinking
9 about Tuesday. Anything else? Last chance.

10 (NO RESPONSE.)

11 JUDGE ROBERTS: Thanks you very much,
12 we'll go off the record.

13 (THE PREHEARING CONCLUDED.)

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