

ANDERECK, EVANS, MILNE, PEACE & JOHNSON, L.L.C.

ATTORNEYS AT LAW

TERRY M. EVANS
ERWIN L. MILNE
JACK PEACE
CRAIG S. JOHNSON
RODRIC A. WIDGER
GEORGE M. JOHNSON
BEVERLY J. FIGG
WILLIAM S. LEWIS
VICTOR S. SCOTT
COREY K. HERRON
MATTHEW M. KROHN
LANETTE R. GOOCH
SHAWN BATTAGLER

700 EAST CAPITOL AVENUE
COL. DARWIN MARMADUKE HOUSE
P.O. BOX 1438
JEFFERSON CITY, MISSOURI 65102-1438
TELEPHONE 573-634-3422
FAX 573-634-7822

JOSEPH M. PAGE
LISA C. CHASE
JUDITH E. KOEHLER
ANDREW J. SPORLEDER
JASON A. PAULSMYER
BRYAN D. LADE
CONNIE J. BURROWS
R. AARON MARTINEZ
MARVIN L. SHARP, Of Counsel

December 3, 2004

FILED

DEC 03 2004

EUGENE E. ANDERECK (1923-2004)
GREGORY C. STOCKARD (1904-1993)
PHIL HAUCK (1924-1991)

Secretary
Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

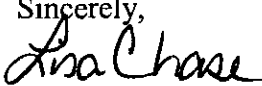
**Missouri Public
Service Commission**

Re: In the Matter of the Application of Gasconade 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

Dear Secretary:

Enclosed for filing please find an original and eight copies of the Joint Response to Ameren UE's Application to Intervene in the above referenced case.

Thank you for seeing this filed.

Sincerely,

Lisa Cole Chase

LCC:lw

Encl.

CC: General Counsel, Office of Public Counsel
General Counsel, Missouri Public Service Commission
William Bobnar

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

DEC 03 2004

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.)

**Missouri Public
Service Commission**

Case No. EO-2005-0122

JOINT RESPONSE TO AMERENUE'S APPLICATION TO INTERVENE

COMES NOW Gascosage Electric Cooperative and Three Rivers Electric Cooperative, by and through their counsel of record, and in response to the Commission's Order Directing Filing hereby submits the following response objecting to granting AmerenUE's Verified Application to Intervene in this matter:

1. On November 2, 2004, Gascosage Electric Cooperative and Three Rivers Electric Cooperative ("the Cooperatives") filed a Joint Application for approval of the Territorial Agreement these two parties entered into. Under §394.312.5 RSMo, this territorial agreement cannot "affect or diminish the rights and duties of any supplier not a party to the agreement...".

2. On November 29, 2004, Union Electric Company, d/b/a AmerenUE ("AmerenUE") filed its Verified Application to Intervene. AmerenUE complained of the following language in Article 4 of the Territorial Agreement: "Three Rivers may serve within municipalities that are located in Three Rivers' Exclusive Service Area, pursuant to this Agreement."

3. AmerenUE acknowledges that similar language to that above has been included in territorial agreements that it has entered into with rural electric cooperatives.

Some of those provisions may be found in the following territorial agreements:

Case No. EO-2002-178, Gascosage/AmerenUE, paragraph 4
Case No. EO-2002-458, Callaway/AmerenUE, paragraph 6.3
Case No. EO-2002-0191, Cuivre River/AmerenUE, Article 5
Case No. EO-2000-630, Lewis/AmerenUE, Article 5

While this is not an exhaustive list, these examples reflect that the same or similar language is commonly granted by AmerenUE to rural electric cooperatives in territorial agreements. In fact, the territorial agreement between Gascosage Electric Cooperative and AmerenUE covers similar territory to the territory boundaries established between Three Rivers and Gascosage. In the AmerenUE /Gascosage Territorial Agreement, Gascosage agreed to language that grants AmerenUE the right to serve within municipalities that are located in AmerenUE's Exclusive Service Area. AmerenUE now complains that Gascosage should not grant the identical language to Three Rivers. Gascosage, in agreeing to include in its Territorial Agreement with Three Rivers the same language that it agreed to give to AmerenUE, simply puts Three Rivers in an equitable position with AmerenUE with regard to each company's respective Territorial Agreements with Gascosage Electric Cooperative.

4. AmerenUE asserts its concerns that Three Rivers may argue in the future that this language grants them the right to serve in any city that exceeds 1500 inhabitants. The issue raised by AmerenUE is actually more of a concern about competition between two electric service providers, one of whom is not party to the Territorial Agreement. As the Commission well knows, pursuant to §394.312.5 RSMo, a territorial agreement cannot effect or diminish the rights and duties of a nonparty. AmerenUE is simply not

effected by the Territorial Agreement between Three Rivers and Gascosage. The standard for approving a Territorial Agreement is that it is not detrimental to the public interest. §394.312.2 RSMo. AmerenUE's contention appears to be that since it has no Territorial Agreement with Three Rivers, as it does with Gascosage, that AmerenUE will somehow be deprived of its ability to serve its customers in the Three Rivers Exclusive Territory. But as stated above, Territorial Agreements do not effect non-parties. AmerenUE will still have the right to serve Jefferson City, Eldon, and its other cities. What AmerenUE is really suggesting in its Application to Intervene to oppose the language in Article 4, is that AmerenUE ought to be free from competition with Three Rivers Electric Cooperative. AmerenUE's position simply does not warrant granting intervention as it does not state a position that the Proposed Territorial Agreement will be detrimental to the public interest. All AmerenUE does is suggest that it may be forced to compete with Three Rivers in non-rural areas. This is an issue which is simply irrelevant to the Commission's determination of whether the Territorial Agreement between Gascosage and Three Rivers is in the public interest.

5. The issue of an electric cooperative's ability to serve in a non-rural area has been addressed by the Missouri statutes. If those statutes are violated, such violation becomes a legal issue to be addressed by the Missouri Courts. The Commission is to decide whether the territorial agreement is in the public interest. AmerenUE's concern is a legal issue that is not ripe for determination. The language at issue has been given to various rural electric cooperatives in numerous approved territorial agreements, and no cooperative has caused this issue to become ripe for determination. If and when Three Rivers Electric Cooperative tries to assert that an Order from this Commission trumps the

Missouri statutes (which it has no intent to do), then AmerenUE will have a legal issue that is ripe for determination by the Missouri Courts.

6. AmerenUE states that "Company seeks intervention in this proceeding in order to protect its interest, interest that could be adversely impacted by a final order arising from the case" to justify its request for Intervention. However, it can not be overstated that AmerenUE is not a party to the Territorial Agreement in this proceeding and that the Commission's approval of the proposed Territorial Agreement will have no effect on AmerenUE's ability to serve any of its customers. The language complained of simply gives Three Rivers equitable status with AmerenUE under territorial agreements with Gascosage. The standard for determination of the Commission is whether the Territorial Agreement is in the public interest. If Three Rivers and AmerenUE compete to provide non-rural service in a manner compliant with the Missouri statutes, such competition is to the benefit of the public.

WHEREFORE, for the foregoing reasons, Gascosage Electric Cooperative and Three Rivers Electric Cooperative hereby jointly request that this Commission deny AmerenUE's Verified Application to Intervene.

Respectfully Submitted,

**ANDERECK, EVANS, MILNE,
PEACE & JOHNSON L.L.C.**

By *Lisa Chase*
Victor S. Scott, Mo. Bar No. 42963
Lisa Cole Chase, Mo. Bar No. 51502
700 East Capitol Avenue
P.O. Box 1438
Jefferson City, MO 65102
Telephone: (573) 634-3422
Facsimile: (573) 634-7822
Email: VScott@aempb.com
Email: lisachase@aempb.com

**ATTORNEYS FOR
GASCOSAGE AND
THREE RIVERS ELECTRIC
COOPERATIVES**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served on all Parties of Record, via hand-delivery or first-class U.S. Mail, postage prepaid, on this 3rd day of December, 2004.

General Counsel
Office of the Public Counsel
P.O. Box 7800
200 Madison Street – Suite 640
Jefferson City, Missouri 65102

William Bobnar
Ameren Services Company
1901 Chouteau Avenue
P.O. Box 66149 (MC 1310)
St. Louis, Missouri 63166-6149

General Counsel
Missouri Public Service Comm'n
P.O. Box 360
200 Madison Street – Suite 800
Jefferson City, Missouri 65102

Lisa Chase
Lisa Cole Chase