

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

In the Matter of the Application of Union)
Electric Company d/b/a Ameren Missouri)
For Permission to Transfer an Interest in) File No. EM-2022-0292
Transmission Assets under 393.190.1)

**RESPONSE TO STAFF'S RECOMMENDATION TO JOIN
ASSOCIATED ELECTRIC COOPERATIVE, INC. AS
A PARTY TO THESE PROCEEDINGS**

COMES NOW Associated Electric Cooperative, Inc. ("AECI"), by and through its counsel undersigned, and pursuant to the *Order Directing Responses* issued by the Commission on May 24, 2022, in the above-captioned proceeding, timely and respectfully states as follows:

1. AECI is a non-profit rural electric cooperative organized, existing, and operating under Chapter 394 of Missouri’s Revised Statutes. AECI is owned by and provides wholesale electric power to six (6) regional generation and transmission rural electric cooperatives (the “G&Ts”). The G&Ts supply wholesale electric power to thirty-nine (39) retail rural electric distribution electric cooperatives in Missouri, three (3) retail rural electric distribution electric cooperatives in Southeast Iowa, and nine (9) rural electric retail distribution electric cooperatives in Northeast Oklahoma. Additional information about AECI, the G&Ts, and Missouri’s 3-tiered rural electric cooperative system is publicly available on AECI's web site: <https://www.aeci.org>.

2. On April 19, 2022, the Commission issued its initial *Order* in this case setting an intervention deadline of May 20, 2022, but AECI elected not to voluntarily intervene in these proceedings.

3. On May 23, 2022, PSC Staff filed its *Suggestion to Join City of Hannibal, Associated Electric Cooperative, Inc., and Ameren Illinois Company as Parties*, alleging among other things that joining AECI as a party is necessary for the discovery process and Staff's investigation in this proceeding.

4. On May 24, 2022, the Commission issued its *Order Directing Responses*, inviting, but not requiring, responses to Staff's *Suggestion* on or before June 13, 2022.

5. Without conceding or otherwise waiving any jurisdictional legal arguments, AECI appreciates this invitation and will seize this opportunity. For the reasons stated below, AECI respectfully opposes Staff's *Suggestion* that the Commission join AECI as a necessary party in this case.

6. At the outset, AECI maintains that the Commission cannot order AECI's joinder because the Commission lacks general regulatory jurisdiction over AECI as a matter of law. The Commission is a body of *limited* jurisdiction and has only such powers as are conferred upon it by statute and such incidental powers as may be necessary to enable it to exercise those specifically enumerated powers granted. *Katz Drug Co. v. Kansas City Power & Light Co.*, 303 S.W.2d 672, 679 (Mo. App. 1957).

7. The Commission's general regulatory jurisdiction is set forth in Section 386.250 RSMo. and is governed by statutory definition. The Commission regulates and its jurisdiction is limited to "public utilities" as defined by Section 386.020(43) RSMo. Supp. 2021. "Electrical corporations" are therein defined as, and deemed to be, "public utilities". *Id.* Rural electric cooperatives, like AECI, specifically and unambiguously are excluded from the statutory definition of an "electrical corporation". § 386.020(15) RSMo. (Supp. 2021). This exclusion holds true for rural electric cooperatives, like AECI,

that operate, control, own, or use "electric plant" as defined by Section 386.020(14) RSMo Supp. 2021.¹

8. The Commission's own rule governing asset transfers, like the one proposed in the instant case, recognizes that the Commission's jurisdiction does not extend to otherwise non-jurisdictional utilities *unless* those utilities will become subject to Commission jurisdiction after the transfer. 20 CSR 4240-10.105(2). The transfer of assets between Ameren Missouri and the Missouri Joint Electric Utility Commission ("MJMEUC") requested in this proceeding will not affect or change AECI's non-jurisdictional status.

9. The mere existence of electric transmission system interconnections and related agreements between Ameren Missouri and AECI likewise does not affect or change AECI's non-jurisdictional status. To the extent such interconnections are regulated by a governmental agency, they are not regulated by the states but instead are regulated by the Federal Energy Regulatory Commission under transmission open access rules.

10. The need for legitimate discovery as part of Staff's investigation in this proceeding does not and cannot override AECI's non-jurisdictional status as a matter of law, nor does such need necessitate AECI's participation as a party in this proceeding. Staff is able to readily obtain the production of any and all relevant interconnection agreements, contracts, system maps, and related information directly from Ameren Missouri, an entity over which the Commission has plenary regulatory jurisdiction, or

¹ Municipally owned electric utilities and non-utility owner/operators of electric vehicle charging stations likewise are specifically excluded from the definition of "electrical corporation" under Section 383.020(15) RSMo. (Supp. 2021) and therefore also are not subject to the general regulatory jurisdiction of the Commission.

from MJMEUC, an otherwise non-jurisdictional entity that has sought and has been granted intervention as a party herein, thereby subjecting itself to the Commission's procedural rules on discovery matters. AECl has uncovered no prior case in which the Commission forced a rural electric cooperative to become a party to proceedings over the cooperative's objection, and the Commission should not do so now.

11. By submitting this Response, AECl is not signaling its intent or desire to impede Staff's legitimate investigation in this case, nor threaten the comity and good working relationship that exists between the Commission and Missouri's rural electric cooperatives which remains of paramount importance to AECl. Accordingly, to the extent Staff believes additional information is required from AECl that is relevant to this proceeding and that it is otherwise unavailable from another party herein, AECl is willing to discuss the information request and meet informally with Staff at a mutually convenient time concerning the information so requested. This informal approach has worked well in the past, most recently as last Fall when AECl invited and met with Staff at AECl's offices to share information about its response to Winter Storm Uri. Staff is invited to contact AECl's undersigned counsel to commence a dialog on informational requests and is welcome to do so at any time, on this or any other matter.

WHEREFORE, AECl respectfully requests that the Commission deny Staff's request to join AECl as a necessary party to this proceeding, and for such other and further relief deemed just and proper.

Respectfully submitted,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was sent to the persons or organizations listed below by U.S. mail, first class postage prepaid, or by electronic transmission, this 13th day of June, 2022.

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