

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 20th day of
June, 2012.

In the Matter of the Application of)
Thomas L. Chaney for a Change)
of Electric Supplier)

File No. EO-2011-0391

**ORDER DENYING JOINT MOTION
TO DISMISS FOR LACK OF JURISDICTION**

Issue Date: June 20, 2012

Effective Date: June 20, 2012

Thomas L. Chaney has requested a change of supplier from Cuivre River Electric Cooperative, Inc., to Union Electric Company d/b/a Ameren Missouri. Both Cuivre River and Ameren Missouri argue that the Missouri Public Service Commission does not have jurisdiction over this matter. The Staff of the Commission disagrees, as does Mr. Chaney.

In support of their position, Cuivre River and Ameren Missouri state that because they have entered into a territorial agreement, through which only Cuivre River has the right to serve Mr. Chaney's property, the two companies do not have concomitant, or concurrent, rights to provide such service. And, because they do not have concomitant rights to provide service, the Commission does not have jurisdiction.

In support of their position, the companies offer Commission File No. EO-2008-0031 and *Union Electric Co. v. Platte-Clay Coop.*¹ The Commission case and the Platte-Clay Coop. case involved similar facts; where a cooperative was prevented from serving in a municipality with a population greater than 1,500. Neither case involves a territorial

¹ *Union Electric Co. v. Platte-Clay Coop.*, 814 S.W. 2d 643 (Mo. App. W.D. 1991).

agreement as does this case. For this reason, the companies have misconstrued the meaning of concomitant rights.

The circumstances of the appellate case cited by the companies are different than those of this case, and are as such:

A rural cooperative was allowed by law to serve only “rural areas”; defined by law as an area with less than 1,500 inhabitants. The rural cooperative was serving a structure in a rural area. The area on which the structure stood was annexed to a city with more than 1,500 inhabitants. Ameren, who served the city, sought a declaratory judgment in circuit court to determine which company had the right to serve the structure. The circuit court dismissed the case for lack of jurisdiction. The appellate court, citing the Eastern District of Missouri, found that the Commission did not have jurisdiction because the cooperative and the electric company did not have concomitant rights to serve the area, and remanded the case to the circuit court.

The companies in the cited case did not have concomitant rights because the rural cooperative was prohibited by Missouri law from providing service to the “non-rural” area; not because a territorial agreement defined those rights. Arguing that their territorial agreement prohibits concomitant rights, Ameren Missouri and Cuivre River have inappropriately paralleled a prohibition stemming from Missouri law with a prohibition stemming from their territorial agreement.

Further, the territorial agreement is binding only to the signatories; not, to Mr. Chaney. As pointed out by Staff, the agreement itself states that it is binding only on the parties to the agreement.² Mr. Chaney’s right to pursue a change of supplier does not stem from the territorial agreement but rather from Missouri statute.

Missouri statute grants jurisdiction to the Commission to order a change of supplier with regard to both rural and investor-owned electric companies.³ Both Ameren Missouri and Cuivre River have legal authority to serve Mr. Chaney’s property except for the terms

² Paragraph 9 of the Territorial Agreement.

³ Sections 394.315 and 393.106, RSMo.

of their territorial agreement, which does not extinguish Mr. Chaney's statutory right to request a change of supplier. The Commission will therefore deny the motion to dismiss for lack of jurisdiction. In doing so, the Commission is making no findings about the appropriateness of Mr. Chaney's change of supplier.

THE COMMISSION ORDERS THAT:

1. Cuivre River Electric Cooperative, Inc., and Union Electric Company d/b/a Ameren Missouri's joint motion for dismissal, based on lack of jurisdiction, is denied.
2. This order shall become effective upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Jarrett, Kenney,
and Stoll, CC., concur.

Jones, Senior Regulatory Law Judge