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January 16, 2003

FILED²

JAN 16 2004

**Missouri Public
Service Commission**

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

Re: Citizen's Response to Staff Response to Order Directing Filing and
Recommendation
Case No. ED-2004-0223

Dear Secretary:

Enclosed please find an original and eight copies of Citizen's Response to Staff Response to Order Directing Filing and Recommendation in the above referenced case.

Thank you for seeing this filed.

Sincerely,



Lisa C. Chase

LCC:lw

Encl.

CC: Tony Campbell
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JAN 16 2004

Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of the Application of)
Citizens Electric Corporation for)
Cancellation of its Tariff, P.S.C. Mo. Nos.)
2 and 7)

Case No. ED-2004-0223

**Citizens' Response to Staff Response to Order Directing Filing and
Recommendation**

COMES NOW Citizens Electric Corporation ("Citizens"), by and through its
counsel of record, Andereck, Evans, Milne, Peace & Johnson, L.L.C., and in response to
the Staff Response to Order Directing Filing and Staff Recommendation, states as
follows:

1. On November 13, 2003, Citizens filed its Application to cancel its Tariffs,
P.S.C. Mo. Nos. 2 and 7, in response to statutory section 393.110.2 RSMo. taking effect.
Section 393.110.2 RSMo. provides:

Notwithstanding any provision in chapter 386, RSMo, or this chapter to
the contrary, the public service commission shall not have jurisdiction
over the rates, financing, accounting, or management of any electrical
corporation which is required by its bylaws to operate on the not-for-profit
cooperative business plan, with its consumers who receive service as the
stockholders of such corporation, and which holds a certificate of public
convenience and necessity to serve a majority of its consumer-owners in
counties of the third classification as of August 28, 2003. Nothing in this
section shall be construed as amending or superceding the commission's
authority granted pursuant to subsection 1 of section 386.310, RSMo,
section 386.800, RSMo, section 393.106, and section 394.312, RSMo.
(emphasis added)

2. In its Application, Citizens made the following assertions to demonstrate
that it meets the requirements of §393.110.2 RSMo. for lifting the Commission's
jurisdiction over Citizens' rates, financing, accounting or management by stating that:

"Citizens operates on a not-for-profit cooperative business plan pursuant to its bylaws and provides electric service to over 24,980 consumers who are also member-owners of the Corporation. The majority of Citizens' consumer-owners reside in Ste. Genevieve and Perry Counties, both of which are counties of the third classification. As successor to Genevieve Electric Cooperative, Citizens was granted a certificate of public convenience and necessity by the Commission to serve these consumers."

3. On November 18, 2003, the Commission ordered Staff to file a response to Citizens' Application by no later than December 18, 2003.
4. On December 18, 2003, Staff filed the Staff Response to Order Directing Filing ("Response") and the Staff Recommendation ("Recommendation"). In its Response at paragraph 3, Staff states:

Although Senate Bill No. 255 and now Section 393.110.2 refer to electrical corporations that hold certificates of public convenience and necessity to serve a majority of its consumer-owners in counties of the third classification as of August 28, 2003, **there is nothing in Senate Bill No. 255/Section 393.110.2 that provides for such electrical corporations to retain their Commission granted certificates of public convenience and necessity when the Commission loses jurisdiction over their rates, financing, accounting and management.** Citizens has not indicated the statutory basis or purpose for Citizens to retain the certificates of public convenience and necessity once the Commission loses jurisdiction over its rates, financing, accounting and management.(emphasis added).

5. Staff is incorrect in their assertion as emphasized above. Senate Bill No. 255/Section 393.110.2 RSMo. **specifically recognizes** the fact that electrical corporations must have certificates of public convenience and necessity. The sole purpose of Senate Bill No. 255/Section 393.110.2 RSMo. was to identify the extent to which the Missouri Public Service Commission ("Commission") would retain jurisdiction over an electrical corporation who has a certificate of public convenience and necessity. Specifically, it states that "the public service commission shall not have jurisdiction over the rates,

financing, accounting, or management of any electrical corporation which is required by its bylaws to operate on the not-for-profit cooperative business plan, with its consumers who receive service as the stockholders of such corporation, and which holds a certificate of public convenience and necessity to serve a majority of its consumer-owners in counties of the third classification as of August 28, 2003". The Commission retains jurisdiction over all other matters, including Section 393.170 RSMo. regarding certificates of public convenience and necessity. There was no need to address the retention of certificates of public convenience and necessity in section 393.110.2 RSMo. because the requirement for such certificates is already addressed in section 393.170 RSMo., and section 393.110.2 RSMo. did not disturb the Commission's jurisdiction with regard to such certificates. Citizens should be allowed to retain its Commission-granted certificates of public convenience and necessity as they are required under the Missouri statutes. If the Commission were to rescind or cancel Citizens' certificates as staff proposes, Citizens would no longer have legal authority to serve its existing customers or to construct new electric lines and power plants to serve future customers.

6. Staff cites as further support for the Commission to rescind or cancel Citizens' certificates a case in which Cuivre River Electric Service Company, a wholly-owned subsidiary of Cuivre River Electric Cooperative, transferred its assets to the Cooperative and cancelled its certificate. That action was taken following a change to §394.080.2 RSMo. that permitted the Cooperative to serve the area which its subsidiary had been formed to serve. Under Staff's analysis, Staff would effectively treat Citizens the same as an electric cooperative.

7. The Cuivre River case referenced by Staff is specific to cooperatives and what cooperatives can and cannot do and has nothing to do with the present case.

Citizens Electric Corporation is a corporation, as its name clearly indicates. Citizens is not a cooperative, nor does it intend to become one. Citizens is an entity incorporated under The General and Business Corporation Act of Missouri, Chapter 351, RSMo., and operates on a not-for-profit cooperative basis while maintaining its status as an electrical corporation as that term is defined in Section 386.020(15) RSMo. As such, Citizens is subject to the provisions of Chapter 393 RSMo., as specified in section 393.010 RSMo.

8. Staff's analysis ignores the regulatory distinctions between electric corporations and electric cooperatives. Electric corporations are regulated pursuant to Chapter 393 RSMo. Electric cooperatives are regulated pursuant to Chapter 394 RSMo.

9. An electric cooperative operating pursuant to Chapter 394 RSMo, such as Cuivre River, has the legal authority to provide electric service to its customers without a certificate of public convenience and necessity. An electrical corporation operating pursuant to Chapter 393 RSMo, such as Citizens, has **no** legal authority to provide electric service to its customers **without** a certificate of public convenience and necessity. Without legal authority to serve its existing customers or to construct new electric lines and power plants to serve future customers, Citizens would be forced to go out of business. This was not the intent of Section 393.110.2 RSMo. as passed by the legislature.

10. Even the Missouri Supreme Court has recognized the regulatory distinction between electric corporations and electric cooperatives. The Supreme Court of Missouri has stated:

An electrical cooperative is not subject to P.S.C. jurisdiction except to the limited extent set forth in s 394.160. Of some significance, however, is the fact that the legislature specifically required a regulated utility to obtain municipal consent as a prerequisite to receiving a certificate of convenience and necessity from the P.S.C. by s 393.170(2), but exempted an electric cooperative from P.S.C. jurisdiction.

Missouri Utilities Company v. Scott-New Madrid-Mississippi Electric Cooperative, 475 S.W.2d 25, 33 (Mo.banc 1971).

11. Citizens' predecessor, Genevieve Electric Cooperative ("Genevieve"), was organized and incorporated as a rural electric cooperative and filed its Articles of Association with the Secretary of State on August 27, 1941. On October 31, 1945, Genevieve acquired all of the property of Missouri General Utilities Company which was located in Perry, Ste. Genevieve and Cape Girardeau Counties, Missouri, and which included the electric lines and equipment in the towns of Perryville and Ste. Genevieve, Missouri. As a result of the acquisition, Genevieve provided electric service to the residents of the cities of Ste. Genevieve and Perryville.

12. Citizens was organized and incorporated on November 5, 1947. All the property and assets of Genevieve were transferred to Citizens on May 12, 1948. After that date, Genevieve had no assets and no income, and its charter was allowed to forfeit on January 1, 1952. Since May 12, 1948, Citizens has been operating the electric system originally owned by Genevieve and is the successor to Genevieve Electric Cooperative, as recognized by the Commission in its Order issued on February 25, 1948 in Case No. 11,310.

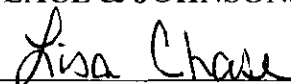
13. Pursuant to Section 393.170 RSMo, Citizens, as successor to Genevieve Electric Cooperative, received its certificate of public convenience and necessity in Consolidated Case Nos. 10,839 and 10,880 on or about June 10, 1947 with supplemental orders issued on February 11, 1950 and March 29, 1951, respectively, and in Case No. 11,839 on or about February 23, 1950.

14. Senate Bill No. 255/Section 393.110.2 RSMo. does not, nor was it intended to, transform the legal status of Citizens Electric Corporation into that of an electric cooperative. Senate Bill No. 255/Section 393.110.2 RSMo removes jurisdiction of the Commission only over any rates, financing, accounting, or management of Citizens. Section 393.110.2 RSMo. does not remove the Commission's jurisdiction over Citizens to require it, as an electrical corporation, to hold a certificate of public convenience and necessity pursuant to Section 393.170 RSMo.

WHEREFORE, Citizens respectfully requests that its tariffs be cancelled, but that Citizens retain its Certificates of Public Convenience and Necessity.

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

By:



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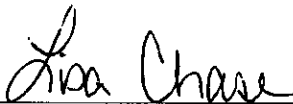
**ATTORNEYS FOR CITIZENS
ELECTRIC CORPORATION**

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 16th day of January, 2004.

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