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February 15, 2005

FILED³

FEB 15 2005

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 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

Dear Secretary:

Enclosed for filing please find an original and eight copies of the Joint Applicants' Motion to Strike Staff's Brief in the above referenced case.

If you have any questions, please contact me at the number listed above.

Sincerely,


Lisa Cole Chase

LCC:lw

Encl.

CC: Office of Public Counsel
General Counsel, PSC
Jon Greenlee
Walt Ryan
William Bobnar

FEB 15 2005

Case No. EO-2005-0122

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3. The two issues raised by Staff seek to have the Commission construe and interpret legal matters. The first issue raised by Staff, Staff is requesting the Commission to interpret Section 394.312.2 RSMo in the same manner as construed by Staff, and to apply the statute as so construed. This section has not previously been construed by any court or by the Commission to require parties to a Territorial Agreement to attach any and all franchises granted to a rural electric cooperative by a municipality. Staff gives no explanation for this interpretation or request. As the Commission knows, an electric cooperative can serve in any rural area, which may include a town under 1500. The Cooperative may or may not have a franchise with that particular town. The Territorial Agreement, as between the Joint Applicants, does not effect the cooperative's ability to serve in these towns. There is simply no reason why the Applicants should file every franchise from a municipality with its application for approval of a Territorial Agreement.

In the second issue, Staff specifically states that the case of "*State ex rel. Ozark Border Electric Cooperative v. Public Service Comm'n* may be construed to limit the rights of non-parties...". Staff's request to have the Commission determine legal principles is outside of the Commission's jurisdiction. The case of Ozark Border was decided in 1996. Since that case, the Commission has approved numerous Territorial Agreements without the Staff requesting the extraordinary relief of having the Commission make legal determinations. The Joint Applicants do not oppose the Commission reiterating the statutory provision that this Territorial Agreement does not effect the rights of non-parties. The Joint Applicants do oppose however, the notion that the case of Ozark Border should be used as a precept by the Staff to request such relief.

Whereas Staff witness, Alan Bax, failed to list the issues raised by Staff in his written testimony and on the stand, to properly allow the Joint Applicants to respond to such issues or cross examine Mr. Bax on these issues and the reason for Staff's position, Staff's brief should be stricken.

Respectfully Submitted,

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

By *Lisa Chase*

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**ATTORNEYS FOR GASCOSAGE AND
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COOPERATIVES**

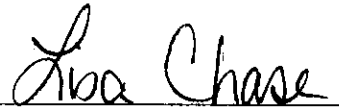
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 15th day of February, 2005, to the following parties:

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