

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

In the Matter of the Application of Sullivan                    )  
Development Properties, LLC for change of                    )  
electric supplier from Union Electric                        )       File No. EO-2024-0251  
Company d/b/a Ameren to Farmington City                    )  
Light and Water    )

**AMEREN MISSOURI'S AND CITY OF FARMINGTON'S JOINT MOTION TO  
DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION  
AND FOR SUMMARY DETERMINATION**

COME NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) and the City of Farmington ("Farmington"), pursuant to 20 CSR 4240-2.117(1) and for their Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Summary Determination, state as follows:

**I.       BACKGROUND**

Sullivan Development Properties, LLC ("Sullivan") seeks a Commission order under RSMo. § 393.106.2 allowing Sullivan to change electric service providers from Ameren Missouri to Farmington City Light and Water. Sullivan's property is located within Ameren Missouri's service territory but is not currently receiving service from Ameren Missouri or any other electric provider. Sullivan's property is not currently located within Farmington's city limits.

**II.       MATERIAL UNDISPUTED FACTS**

1.       Sullivan is the owner of real property located at 259 Kenwood Drive, Farmington, Missouri 63640 (the "259 Kenwood Drive Property"). *Amended Application* at ¶ 1.
2.       Sullivan is not currently receiving electric service at the 259 Kenwood Drive Property from any electric provider. *Farmington Response to Application* at ¶ 4, *Ameren Missouri Response to Application* at ¶ 9, *Transcript of Aug. 5th Conference* at p. 6 ll. 2-3.

3. Ameren Missouri is a "public utility" and an "electric corporation" pursuant to RSMo. § 393.1700.1, with its Missouri operations subject to the jurisdiction of the Commission as provided by law. *Ameren Missouri Response to Application* at ¶ 7.

4. Farmington is a municipality of the State of Missouri that owns and operates an electric utility that provides service to the inhabitants of Farmington.

5. The 259 Kenwood Drive Property is not located within the City of Farmington. *Id.* at ¶ 4; *Ameren Missouri's Response to Application* at ¶ 10.

6. The 259 Kenwood Drive Property is located within Ameren Missouri's service territory, granted by a Certificate of Convenience and Necessity issued by the Missouri Public Service Commission (the "Commission"). *Ameren Missouri's Response to Application* at ¶ 4.

7. The structure located on the 259 Kenwood Drive Property did not receive permanent service from Farmington before July 11, 1991. *Farmington Response to Application* at ¶ 7.

8. There is no known territorial agreement between Farmington and Ameren Missouri that would allow Farmington to provide electric service to the 259 Kenwood Drive Property. *Id.* Additionally, Farmington and Ameren Missouri have no plans to enter into a territorial agreement that would include the 259 Kenwood Drive Property. *Transcript of July 10th Conference* at p.3 ll. 20–21.

9. The 259 Kenwood Drive Property was not previously served by an electric corporation that has been acquired by Farmington before July 11, 1991. *Id.*

10. Sullivan has not submitted an application for annexation within Farmington, though Sullivan has expressed an intent to do so. *Transcript of Aug. 5th Conference* at p. 7 ll. 4-7.

11. The Missouri anti-flip-flop statutes, and the exceptions contained therein, are applicable only after an electric corporation or municipally owned utility "commences" providing electric service to a facility. RSMo. § 393.106.2.

### III. ARGUMENT AND CONCLUSION

Missouri law limits a municipally owned electric utility's ability to provide retail electric service to structures located outside of the municipality's corporate boundaries unless:

- (1) The structure was lawfully receiving permanent service from the municipally owned electric utility prior to July 11th, 1991;
- (2) The service is provided pursuant to an approved territorial agreement under Section 394.312;
- (3) The service is provided pursuant to lawful municipal annexation and subject to the provisions of this section; or
- (4) The structure is located in an area which was previously served by an electrical corporation regulated under this chapter in Chapter 393, and the electric corporation's authorized service territory was contiguous to or inclusive of the municipality's previous corporate boundaries, and the electric corporation's ownership or operating rights within the area were acquired in total by the municipally owned electric system prior to July 11th, 1991. [].

RSMo. § 386.800.1. The 259 Kenwood Drive Property is located outside of Farmington's corporate boundaries and none of the above-listed exceptions apply: there is no territorial agreement between Farmington and Ameren Missouri that would permit Farmington to provide electric service to the 259 Kenwood Drive Property, the 259 Kenwood Drive Property has not been annexed into the City of Farmington, Farmington did not provide service to the 259 Kenwood Drive Property prior to July 11, 1991, and Farmington did not acquire an electric corporation that previously served the 259 Kenwood Drive Property.

Sullivan filed its application in reliance on RSMo. § 393.106, which applies only if two electric suppliers (e.g., an investor-owned electric utility and a municipally owned electric utility) have concomitant rights to serve a particular area. *Union Elec. Co. v. Platte-Clay Elec. Coop.*, 814

S.W.2d 643, 648 (Mo. App. W.D. 1991). If and only if this concomitant right exists, the Commission can then allow a change of electric service providers for a reason other than a rate differential if the Commission finds it in the public interest to do so. However, where there is no such concomitant right, as here, § 393.106 is never triggered; it simply does not apply, and the Commission lacks subject matter jurisdiction to grant the relief requested by Sullivan. Alternatively, RSMo. § 386.800 does not permit the Commission to grant the relief requested by Sullivan as Farmington cannot legally provide electric service to the 259 Kenwood Drive Property.

WHEREFORE, for the reasons stated above, Ameren Missouri and Farmington respectfully request the Commission grant summary determination and dismiss this case for lack of subject matter jurisdiction.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was filed in EFIS on this 20th day of August 2024, with notification of same being sent to all counsel of record.

**/s/ William D. Holthaus, Jr.**  
William D. Holthaus, Jr.