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

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| In the Matter of the Joint Application of Co-Mo Electric Cooperative and Union Electric Company d/b/a Ameren Missouri for an Order Approving a Territorial Agreement in Cooper, Cole, and Moniteau Counties, Missouri | ) ) ) ) ) ) | Case No. EO-2022-0332 |
| In the Matter of the Application of Co-Mo Electric Cooperative for Approval of Designated Service Boundaries Within Portions of Cooper County, Missouri | ) ) ) ) ) | Case No. EO-2022-0190 |

## REPLY TO AMEREN AND CO-MO'S REPLIES TO OPC'S CONCERNS WITH THE TERRITORIAL AGREEMENT

The Office of the Public Counsel ("Public Counsel" or "OPC") offers this reply to Co-Mo Electric Cooperative's ("Co-Mo")[1] and Union Electric Company d/b/a Ameren Missouri's ("Ameren")[2] replies to Public Counsel's concerns with the proposed territorial agreement.

### 1. § 386.800.2 RSMo Requires Consideration of Landowner Preference and Numerous Other Factors Not Addressed

The first concern Public Counsel raised is that the agreement divvies the electric service rights to 19,800 acres of private property for no reason other than settling a disagreement over a single 216-acre tract of land that is only one percent (1%) of the size of the total acreage now at issue. Notably, neither Ameren nor Co-Mo provided an explanation as to why this is not a concern.

[1] CO-MO Electric Cooperative's Reply to Public Counsel's Response to Proposed Territorial Agreement, December 12, 2022.

[2] Ameren Missouri's Reply to Public Counsel's Response to Proposed Territorial Agreement, December 7, 2022.

Public Counsel's concerns that other factors should be considered is consistent with the requirements of § 386.800.2 RSMo. When an electric utility and a rural electric cooperative negotiate an agreement to resolve a dispute over the provider of a newly annexed property, the statute requires the parties to consider a number of factors, including the following:

- Landowner preference;
- The rates, terms and conditions of service;
- Economic impact to electric suppliers;
- Electric supplier's operational abilities;
- Wasteful duplication of electric facilities;
- Unnecessary encumbrances on the property; and
- Material and natural resource waste.

§ 386.800.2(1) to 386.800.2(7) RSMo. Ameren and Co-Mo provided no indication that they considered the above criteria for any parcel of land other than the development in Boonville. The landowners in the other 19,800 acres should not have their choice of provider determined based on only a consideration of the 216-acre Boonville developer's preferences and property.

During the Commission's local public hearing held in this case, Ms. Gigi Quinlan McAreavy, the Director of Economic Development in Cooper County, raised concerns with the impact of the territorial agreement on the other 19,800 acres. Ms. McAreavy testified:

> Who loses and why? Well, landowners, developers, businesses, and communities who are located in this massive territorial agreement by potentially eliminating competition, potentially stalling and/or hindering economic development. Why? A territorial agreement of this

> magnitude removes choices for the very thing the new statute [§ 386.800 RSMo] appeared to promote.[3]

Understanding any landowner's preference requires the landowners receive both notice of the proposal and an opportunity to explain their preferences to the Commission, should they have a preference. Determining if Ameren and Co-Mo considered the other necessary factors requires Co-Mo and Ameren to demonstrate how those factors were considered for the parcels in the 19,800 acres. Ameren and Co-Mo have not demonstrated these considerations.

**2. The Territorial Agreement "Amendment Clause" and Change of Service Provider Rule Are No Substitute for Considering All Relevant Factors in this Case**

Co-Mo argues "the Territorial Agreement at issue herein has an "amendment clause" Co-Mo and Ameren could use if future landowners wish to go against what is set out in the Agreement." That clause states:

> 11.3 **Amendments**. No modification, amendment, deletion, or other change in this Agreement or the boundaries described in the Agreement shall be effective for any purpose, unless specifically set forth, in writing, and signed by both Parties and approved by the Commission.[4]

This clause provides no protection for a landowner wishing to change their service provider. The two utilities reaching this agreement would have to agree to this change in order to recognize a landowner's preference. However, the electric utility that would need to relinquish the authority to serve the property is unlikely to agree to these changes without a benefit for them, regardless of the landowner's reasons for the change.

[3] Transcript of Proceedings, Local Public Hearing, September 15, 2022, Volume 2, Page 17.

Likewise, Co-Mo's argument that the Commission has "change of supplier procedures to permit any future landowner/developer to not be bound by the Territorial Agreement in specific circumstances," provides little comfort to a landowner. Presently, landowners in the 19,800 acres may benefit from the "competition to provide retail electric service" currently existing in these areas. §394.312.1 RSMo. To receive service from either Ameren or Co-Mo requires a request for service. Under this territorial agreement, however, landowners in the 19,800 acres wanting to extend electric service to their property, but prefer a different utility provider than the territorial agreement prescribes, would require additional hurdles. The landowner would need to demonstrate the reasons for the requested change, explain how the change is in the public interest, and fend off any arguments from Ameren or Co-Mo.[5] A corporation seeking to expand operations into this area would also require an attorney, incurring additional expenses that may not be required if the area remained competitive.

Co-Mo also worries that requiring landowner notice would establish "precedent." However, an order on a single territorial agreement cannot set precedent for other cases. The Commission's focus must be on what is best for the public, and improving landowner notice requirements will assist in better serving the public. In the alternative, the Commission can protect the other landowners and their rights to choose a provider by simply determining the provider for only the 216-acre development.

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[4] Joint Application for Approval of Territorial Agreement, July 1, 2022, Appendix A, p. 12.

[5] 20 CSR 4240-3.140.

3. **"Not Detrimental" to the Public Standard Not Satisfied**

This case is one of "first impression" in how the Commission interprets the revised §386.800.2(1)-(7) RSMo.[6] The immense size of the properties at issue (31 square miles) also makes this case unique, and necessitates a careful consideration of all rights impacted by the territorial agreement.

The standard for territorial agreements states, "The commission may approve the application if it determines that approval of the territorial agreement in total is not detrimental to the public interest." §394.312.5 RSMo (emphasis added). Ameren and Co-Mo have not demonstrated how the territorial agreement for the entire 20,016 acres is not detrimental to the public interest.

WHEREFORE, the Office of the Public Counsel respectfully offers this reply and urges the Commission to order directly mailed notice to landowners, or reject the proposed territorial agreement and approve Co-Mo as the service provider to the 216-acre development in Boonville.

Respectfully submitted,

**/s/ Marc Poston**

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[6] A case of first impression is a case that presents a legal issue that has never been decided by the governing jurisdiction.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 16th day of December 2022.

**/s/ Marc Poston**