

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

In the Matter of the Application of Dave )  
Eversole for Change of Electric Supplier ) Case No. EO-2026-0208  
from Union Electric Company d/b/a )  
Ameren Missouri to Co-Mo Electric )  
Cooperative, Inc. )

**THE OFFICE OF PUBLIC COUNSEL'S  
RESPONSE TO STAFF'S RECOMMENDATION**

**COMES NOW** the Office of Public Counsel and for its response to Staff's recommendation states:

1. In paragraph no. 3 of its recommendation Staff states:

Staff reviewed the application, concluding that the Applicant's request appears to have merit. However, absent approval by Ameren Missouri and Co-Mo to amend their territorial agreement, Staff recommends that Mr. Eversole's request for a change in electric service providers to the Properties be dismissed by the Commission.

Staff explicates its rationale in paragraph no. 8 as follows:

If the Commission granted the Applicant's request without the mutual consent of Ameren Missouri and Co-Mo to amend the agreement, the territorial agreement between those providers could be rendered void under Article 11.3, which states:

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.

Article 11.5 further provides:

If the Commission does not approve the provisions of this Agreement, then it shall be nullified and of no legal effect between the Parties. Further, if any part of this Agreement is declared invalid or void by a Court or agency of competent jurisdiction, then the whole Agreement shall be deemed invalid and void.

2. Public Counsel disagrees with Staff’s supposition that if the Commission were to grant Mr. Eversole’s request to change providers from Ameren Missouri to Co-Mo for existing structures at 17651 and 17601 B Highway, Booneville, Missouri, it might void Ameren Missouri and Co-Mo’s territorial agreement.

3. Based on information available to Public Counsel, 17651 and 17601 B Highway, Booneville, Missouri, are in territory that, as between Ameren Missouri and Co-Mo, because of their Commission-approved amended territorial agreement, Co-Mo exclusively is to provide electric service to new structures.<sup>1</sup>

4. In the consolidated cases—Case Nos. EO-2022-0190 and EO-2022-0332—where the Commission approved this amended territorial agreement Public Counsel raised concerns with the adequacy of public notice and input. Mr. Eversole was not a party in those cases, did not appear at the local public hearing, and there is no indication that he, or any prior owner or tenant of 17651 and 17601 B Highway, Booneville, Missouri, was aware of Ameren Missouri and Co-Mo’s territorial agreement when the Commission addressed it.

5. Distinct from the cases where the Commission addressed Ameren Missouri and Co-Mo’s territorial agreement, Mr. Eversole initiated this proceeding, which is entirely separate and distinct from Ameren Missouri and Co-Mo’s territorial agreement.

6. Ameren Missouri and Co-Mo’s territorial agreement bears on this case only as a factor for the Commission to consider when evaluating Mr. Eversole’ change of supplier request. Based on the filings in this case it appears to Public Counsel that in the past Ameren Missouri provided electric service to a previous owner of some or all of the structures located at 17651 and

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<sup>1</sup> See the map at the Cooper County, Missouri, Recorder of Deeds website—<https://www.coopercountymo.gov/records.html>—link to the Cooper County GIS website—<https://coopergis.integritygis.com/H5/Index.html?viewer=cooper>, and the map on page 12 of First Amended Ex. A to the October 19, 2022, Addendum to the Territorial Agreement between Ameren Missouri and Co-Mo that the Commission approved in its January 25, 2023, *Report and Order Approving Stipulation and Agreement and Territorial Agreement* in Case Nos. EO-2022-0190 and EO-2022-0332.

17601 B Highway, Booneville, Missouri, but that no one has taken service there for several years.

7. Because 17651 and 17601 B Highway, Booneville, Missouri, is within the area that between Ameren Missouri and Co-Mo, only Co-Mo may serve without further amending the existing territorial agreement between Ameren Missouri and Co-Mo, should anyone build new structures, the new structures would be served by Co-Mo absent such a territorial agreement amendment.

8. In the past the Commission has ordered a change in supplier so that existing structures on a parcel would be served by the same electric service provider. See, for example, the Commission's August 7, 2007, *Order Granting Application for a Change in Electric Supplier* entered in *In the Matter of the Application of Thomas A. Marshall for Change of Electric Service Provider from SEMO Electric Cooperative to Sikeston Board of Municipal Utilities*, Case No. EO-2007-0309.

9. Nothing in §393.106.2, RSMo, makes anything in a territorial agreement an impediment to the Commission granting a request to change electric suppliers to structures. Section 393.106, RSMo, follows (Highlighting added.):

1. As used in this section, the following terms mean:

(1) "Auxiliary power", the energy used to operate equipment and other load that is directly related to the production of energy by an independent power producer or electrical corporation, obtained through generation at the site or through adjacent transformation and transmission interconnect, but does not include energy used for space heating, lighting, air conditioning, office needs of buildings, and other nongenerating uses at the generation site;

(2) "Independent power producer" or "IPP", an entity that is also considered a nonutility power producer in the United States. IPPs are wholesale electricity producers that operate within the franchised service territories of host utilities and are usually authorized to sell at market-based rates. Unlike traditional electric utilities, IPPs do not possess transmission facilities or sell electricity in the retail market;

(3) "Permanent service", electrical service provided through facilities which have been permanently installed on a structure and which are designed to provide

electric service for the structure's anticipated needs for the indefinite future, as contrasted with facilities installed temporarily to provide electrical service during construction. Service provided temporarily shall be at the risk of the electrical supplier and shall not be determinative of the rights of the provider or recipient of permanent service;

(4) "Structure" or "structures", an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus at which retail electric energy is being delivered through a metering device which is located on or adjacent to the structure and connected to the lines of an electrical supplier. Such terms shall include any contiguous or adjacent additions to or expansions of a particular structure. Nothing in this section shall be construed to confer any right on an electric supplier to serve new structures on a particular tract of land because it was serving an existing structure on that tract.

2. Once an electrical corporation or joint municipal utility commission, or its predecessor in interest, lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800 and section 394.080, or pursuant to a territorial agreement approved under section 394.312. The public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential. The commission's jurisdiction under this section is limited to public interest determinations and excludes questions as to the lawfulness of the provision of service, such questions being reserved to courts of competent jurisdiction. Except as provided in this section, nothing contained herein shall affect the rights, privileges or duties of existing corporations pursuant to this chapter. Nothing in this section shall be construed to make lawful any provision of service which was unlawful prior to July 11, 1991. Nothing in this section shall be construed to make unlawful the continued lawful provision of service to any structure which may have had a different supplier in the past, if such a change in supplier was lawful at the time it occurred. However, those customers who had cancelled service with their previous supplier or had requested cancellation by May 1, 1991, shall be eligible to change suppliers as per previous procedures. No customer shall be allowed to change electric suppliers by disconnecting service between May 1, 1991, and July 11, 1991.

3. Notwithstanding the provisions of subsection 2 of this section or any other provision of chapter 386 or 394 to the contrary, auxiliary power may be purchased on a wholesale basis, under the applicable federal tariffs of a regional transmission organization instead of under retail service tariffs filed with the public service commission by an electrical corporation, for use at an electric generation facility located in any county of the first classification with more than ninety-two thousand but fewer than one hundred one thousand inhabitants which commenced commercial operations prior to August 28, 2021, and which is operated as an independent power producer.

4. Notwithstanding the provisions of this section, and sections 91.025, 394.080, and 394.315 to the contrary, in the event that a retail electric supplier is providing service to a structure located within a city, town, or village that has ceased to be a rural area, and such structure is demolished and replaced by a new structure, such retail electric service supplier may provide permanent service to the new structure upon the request of the owner of the new structure.

10. The Commission has recognized the separateness of requests to change suppliers and territorial agreements in the past. The Commission did so in its December 12, 2012, *Report and Order in In the Matter of the Application of Thomas L. Chaney for Change of Electric Supplier*, Case No. EO-2011-0391. It also did so in *In the Matter of the Application of Union Electric Company to Sell Distribution Facilities to Cuivre River Electric Cooperative and for Approval of a Change in Supplier for Reasons in the Public Interest*, Case No. EM-93-341 (*Order Approving Sale of Assets and Change of Supplier*, issued September 10, 1993) where it approved a change in suppliers based on an existing territorial agreement.

11. Public Counsel agrees with Staff's statement in paragraph no. 3, "Staff reviewed the application, concluding that the Applicant's request appears to have merit," but disagrees with Staff's caveat following that Ameren Missouri and Co-Mo need to further amend their territorial agreement to accommodate changing electric suppliers to structures at 17651 and 17601 B Highway, Booneville, Missouri. Contrary to that caveat, their territorial agreement—because the structures are in an area that between Ameren Missouri and Co-Mo is exclusive to Co-Mo—supports granting Mr. Eversole's application for Co-Mo to serve existing, as well as new, structures at 17651 and 17601 B Highway, Booneville, Missouri.

**Wherefore**, Public Counsel responds to Staff's recommendation as set forth above.

Respectfully,

/s/ Nathan Williams

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 22<sup>nd</sup> day of April 2026.

/s/ Nathan Williams