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May 9, 2005

FILED²

MAY 12 2005

**Missouri Public
Service Commission**

Secretary/Chief Administrative Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

OF COUNSEL
MARVIN J. SHARP
PATRICK A. BAUMHOER
GREGORY C. STOCKARD (1904-1993)
PHIL HAUCK (1924-1991)

Re: In the Matter of the Proposed Amendment to Commission Rule 4 CSR 240-3.130 Filing and Reporting Requirements. Case No. EX-2003-0371.

Dear Secretary:

Enclosed for filing please find an original and eight (8) copies of the Comments of the Association of Missouri Electric Cooperatives to the Proposed Rule Changes to 4 CSR 240-3.130.

Thank you for seeing this filed.

Sincerely,


Lisa Cole Chase

LCC:sjo

Enclosure

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

MAY 12 2005

Missouri Public
Service Commission

In the Matter of Proposed Amendment to)
Commission Rule 4 CSR 240-3.130 Filing)
and Reporting Requirements.)

Case No. EX-2003-0371

**Comments of The Association of Missouri Electric Cooperatives to
the Proposed Rule Changes to 4 CSR 240-3.130**

COMES NOW the Association of Missouri Electric Cooperatives, (hereinafter AMEC)
by and through its attorneys, Andereck, Evans, Milne, Peace and Johnson L.L.C. and for its
comments to the proposed rule changes to 4 CSR 240-3.130 states as follows:

1. AMEC participated in an industry meeting on April 18, 2005, wherein staff and industry participants made several suggested changes to the proposed language for clarification purposes. AMEC supports the proposed modifications.
2. There are two proposed additions, 4 CSR 240-3.130(1)(E) and 4 CSR 240-3.130(1)(G), which AMEC believes are inappropriate. These two provisions require information to be submitted with a territorial agreement application that is irrelevant to Commission determination of whether or not a territorial agreement is not detrimental to the public interest.
3. 4 CSR 240-3.130(1)(E) provides that: "A comparison of electric rates if the territorial agreement or the proposed electric service area designation(s) includes an exchange of customers;" Applications for the approval of a proposed territorial agreement need not include a proposed customer exchange. If no customer exchange is requested at the time an application is filed seeking approval of a proposed territorial agreement, then this provision is meaningless. If

and when applicants seek approval of a proposed territorial agreement together with a proposed customer exchange, then that application seeks two separate and distinct orders from the Commission. A request for a customer exchange is made pursuant to either §§91.025, 393.106, or 394.315. The standard for approving a customer exchange is for reasons other than a rate differential. The Commission now seeks information regarding rates when the applicants seek to combine the approval of its proposed territorial agreement and proposed customer exchange. The Commission should reject the proposed section 4 CSR 240-3.130(1)(E), as the information sought by this provision will not provide the Commission with any information regarding whether a proposed territorial agreement is not detrimental to the public interest. The information sought by 4 CSR 240-3.130(1)(E) can only influence the Commission when applicants seek a customer exchange, by providing information which §§ 91.025, 393.106, and 394.315 specifically states is not to be considered in determining whether or not to approve a proposed customer exchange.

4. 4 CSR 240-3.130(1)(G) requires: "A statement of the impact, if any, that the territorial agreement or proposed electric service area designation(s) will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the utilities involved are located." Again, applications for the approval of a proposed territorial agreement need not include a request from an IOU to sell and or transfer facilities and equipment. If no request is made to transfer facilities and equipment at the time an application is filed for approval of a proposed territorial agreement, then this provision is not relevant. If an IOU seeks to sell or transfer facilities and equipment to another utility, there are existing Commission rules which requires the IOU to state what the tax impact will be due to the transfer. Requiring tax impact information when the applicants seek approval to transfer facilities and

equipment together with the approval of a proposed territorial agreement does not provide the Commission with any information that would lead to a proper determination of whether or not the proposed territorial agreement is not detrimental to the public interest. In fact, the tax impact information may actually provide a false impression of the territorial agreement and exchange between the applicants. The false impression would be based on the fact that there is a difference of tax rates between IOUs and electric cooperatives. Because of the difference in the way IOUs and electric cooperatives are taxed, there will always be a tax rate differential. What helpful information does the Commission seek by highlighting information that it does not have the power or authority to alter or modify. Tax impact information from an electric cooperative is simply unnecessary information when determining whether to grant an IOU's request to transfer facilities or equipment. Furthermore, AMEC believes that the Commission lacks the jurisdiction to require an electric cooperative to provide tax impact information, as an electric cooperative is not required to seek Commission approval to transfer facilities and equipment to another utility.

5. For the foregoing reasons, AMEC believes that the Commission should reject the proposed sections 4 CSR 240-3.130(1)(E) and 4 CSR 240-3.130(1)(G), as the information sought does not relate to the review and approval of proposed territorial agreements, but seeks information which is related to other applications for relief. As such, the Commission should reject the proposed changes.

Respectfully Submitted,

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

By: 

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