

At a session of the Public Service Commission held at its office in Jefferson City on the 28th day of January, 1997.

In the Matter of the Application of Union Electric)
Company and Black River Electric Cooperative, Inc.,)
for Approval of an Addendum to the Territorial Agree-) Case No. EO-95-400
ment Between Union Electric Company and Black River)
Electric Cooperative, Inc.)
)

ORDER APPROVING ADDENDUM TO TERRITORIAL AGREEMENT

On March 22, 1996, the Missouri Public Service Commission (Commission) issued its Report And Order On Rehearing, which conditionally approved a territorial agreement between Union Electric Company (UE) and Black River Electric Cooperative, Inc. (Black River). The order required the parties to make certain modifications to the territorial agreement, and to file with the Commission a complete, integrated copy of the modified agreement. The Commission subsequently issued an order finalizing its approval of the territorial agreement as modified, on June 7, 1996. The territorial agreement contains an addendum provision which would permit a structure to receive service from one electric supplier even though it is located in the other electric supplier's designated service area. The addendum provision also contains the following language: "If the Staff or Office of the Public Counsel do not submit a pleading objecting to the addendum within forty-five (45) days of the filing thereof, the addendum shall be deemed approved by the aforesaid parties."

On December 6, 1996, UE and Black River filed a Joint Application seeking Commission approval of an addendum executed between the parties. The

addendum allows a customer who has requested electric service for a new residence to be served by Black River rather than UE, even though the new residence is located in an area which was assigned to UE pursuant to the territorial agreement. The parties explain in their application that the new residence can be served more economically by Black River than by UE. In order to serve the residence, UE would be required to extend its line approximately 6,000 feet at a cost in excess of \$30,000, while Black River, in contrast, would only have to extend its line approximately 935 feet, at a cost of \$4,000. The customer would not have to pay for the line extension, although he would be obligated to a minimum monthly electric charge of \$25.

On December 20, 1996, the Staff of the Commission (Staff) filed a memorandum recommending approval of the addendum to the territorial agreement. Staff indicates that Kenneth G. Sumpter has requested electric service for a new residence located in TWP 34N, RGE 1W, Section 7, Iron County, Missouri. Staff notes that UE's facilities are approximately 6,000 feet from the new residence, and it would cost approximately \$30,000 to extend the line to serve the new residence, while Black River's facilities are approximately 935 feet from the new residence, and it would cost approximately \$4,000 to extend the line to serve the new residence. However, Mr. Sumpter would not be charged for the line extension, with the exception of an obligation for a minimum monthly electric charge of \$25. Staff points out that UE, Black River, and Mr. Sumpter have all agreed to Black River providing the electric service to this location. In accordance with the territorial agreement, the parties have filed as part of their application a notarized statement identifying the structure and the party to serve the structure, as well as a justification for the addendum. In addition, Staff indicates that it was provided with a map showing the location of the new residence in relationship to the existing facilities of UE and Black River. The

map is appended hereto as Attachment A. Staff recommends that the Commission approve the addendum to the territorial agreement in order to allow Mr. Sumpter to be served in the most economical manner.

When an opportunity for hearing is provided and no proper party requests an opportunity to present evidence, any requirement for a hearing has been met. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. P.S.C.*, 776 S.W.2d 494, 496 (Mo. App. 1989). A hearing presupposes a proceeding for the trial of issues between adversary parties. *Id.* In the present case UE, Black River and the customer all support approval of the addendum. Similarly, Staff has filed a memorandum recommending approval. The Office of the Public Counsel (OPC) has not indicated whether it supports or opposes the addendum, and the 45-day period provided for in the territorial agreement has now elapsed.

The Commission finds that based upon a comparison of the cost to extend a line to serve Mr. Sumpter's new residence, Black River has the ability to serve the new residence much more economically than UE. The Commission further finds based upon the addendum, which is attached to the Joint Application as Exhibit A, that Mr. Sumpter will not be required to pay a line extension charge, but instead will be obligated to a minimum monthly electric charge of \$25 for a period of three years. The map attached to Staff's memorandum indicates that the new residence is located near the UE/Black River territorial line, and that Black River's line is substantially closer to the new residence than UE's existing line. There is no indication that the 935-foot extension will result in an unnecessary duplication of facilities, nor is there any indication that the extension will create safety problems. Further, there is no indication that Black River cannot provide adequate service to the new residence. The addendum involves only this one customer. The customer has signed an affidavit requesting Black River as his electric supplier. Based upon the foregoing findings, the

Commission finds that approval of the addendum will not be detrimental to the public interest.

However, the addendum appears to refer to the territorial agreement as having an effective date of April 2, 1996. This is incorrect. The Commission's Report And Order On Rehearing, which became effective on April 2, 1996, only approved the territorial agreement in principle, subject to certain requirements, including modification of some of the territorial agreement language. The Report And Order On Rehearing directed the parties to file with the Commission a complete, integrated copy of the territorial agreement with the required modifications. On May 31, 1996, the parties filed a territorial agreement between UE and Black River, signed on April 26, 1996, which purported to be a complete, integrated copy of the territorial agreement. The Commission reviewed this filing, found that it complied with the Report And Order On Rehearing, and finalized the approval of the territorial agreement. See *In re the Application of Union Electric Company and Black River Electric Cooperative, Inc. for Approval of a Written Territorial Agreement*, Case No. EO-95-400, Order Finalizing Approval Of Territorial Agreement, Granting Certificate Of Convenience And Necessity, And Approving Tariffs (June 7, 1996). Thus, the Commission's action should be construed as approving an addendum to the territorial agreement executed between UE and Black River on April 26, 1996, which became effective on June 10, 1996.

IT IS THEREFORE ORDERED:

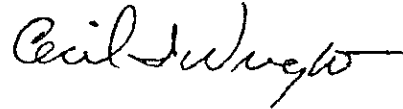
1. That the Joint Application for approval of an addendum to a territorial agreement between Union Electric Company and Black River Electric Cooperative, Inc., filed on December 6, 1996, is hereby granted.

2. That the addendum to the territorial agreement between Union Electric Company and Black River Electric Cooperative, Inc., which allows Black River to provide electric service for a new residence located at TWP 34N,

RGE 1W, Section 7, Iron County, Missouri, is hereby approved in accordance with this order.

3. That this order shall become effective on February 7, 1997.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

McClure, Kincheloe, Crumpton
and Drainer, CC., concur.
Zobrist, Chm., absent.

ALJ: Bensavage

