

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of the application of Union Electric)
Company and Black River Electric Cooperative, Inc.)
for approval of a written territorial agreement)
designating the boundaries of each electric service) CASE NO. EO-95-400 et al
supplier within portions of Cape Girardeau, Dent,)
Iron, Madison, Reynolds, Perry, St. Francois, Scott,)
Stoddard, Washington and Wayne Counties, Missouri.)

REPORT AND ORDER

Issue Date: September 15, 1995

Effective Date: September 26, 1995

BEFORE THE PUBLIC SERVICE COMMISSION
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portions of Cape Girardeau, Dent, Iron,)
Madison, Reynolds, Perry, St. Francois,)
Scott, Stoddard, Washington and Wayne)
Counties, Missouri.)

APPEARANCES

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P. O. Box 149, St. Louis, Missouri 63166,
For: Union Electric Company.

Patrick A. Baumhoer, Attorney at Law, Andereck, Evans,
Milne, Peace & Baumhoer, P. O. Box 1438, Jefferson
City, Missouri 65102, For: Black River Electric
Cooperative, Inc. and M&A Electric Power Cooperative.

Lewis R. Mills, Jr., Deputy Public Counsel, P. O. Box 7800,
Jefferson City, Missouri 65102, For: Office of the
Public Counsel and the Public.

Roger W. Steiner, Assistant General Counsel, P. O. Box 360,
Jefferson City, Missouri 65102, For: Staff of the
Missouri Public Service Commission.

Administrative Law Judge: Anne Wickliffe Freeman.

REPORT AND ORDER

Procedural History

The Union Electric Company and Black River Electric Cooperative, Inc. (U.E. and B.R.E.C. or Applicants) filed a joint application on May 31, 1995, under §§ 394.312 and 416.041 Revised Statutes of Missouri 1994¹, asking the Missouri Public Service Commission

¹All statutory references are to the Revised Statutes of Missouri 1994.

(Commission) to approve a territorial agreement between them and a change in electric suppliers for affected customers. The proposed territorial agreement is attached to this Report and Order as Attachment A. The Commission issued an Order and Notice on June 9, 1995, directing parties wishing to intervene in the case to do so by June 29, 1995. In the same order the Commission established a procedural schedule, setting the case for Prehearing Conference on August 30, 1995, at 10:00 a.m. with an evidentiary hearing beginning the same day at 1:00 p.m. ASARCO Incorporated filed an Application For Intervention on June 29, 1995, which the Commission granted on July 6, 1995. ASARCO Incorporated withdrew its intervention on July 31, 1995. Mr. Norman E. Robinson wrote a letter requesting intervention on June 22, 1995. After receiving instructions from the Commission Staff, Mr. Robinson conformed his request to the Commission's procedural requirements with a more formal request on August 14, 1995. Mr. Robinson was granted intervention on August 25, 1995.

Union Electric filed a Motion to Consolidate on July 19, 1995, asking the Commission to consolidate dockets numbered EO-95-400, EA-95-416, and EM-96-6. By Commission order of August 2, 1995, the cases were consolidated with Case No. EO-95-400 designated the lead case. Case No. EA-95-416 is U.E.'s application for a certificate of convenience and necessity to permit U.E. to serve areas ceded to it by B.R.E.C. pursuant to the territorial agreement for which U.E. is not yet certificated. U.E. filed an Amendment to Application on July 17, 1995. Case no. EM-96-6 is an application for approval of the sale of certain assets belonging to M&A Electric Cooperative (the transmission cooperative of which B.R.E.C. is a member). The transfer of the transmission facilities in question is necessary to effectuate the territorial agreement.

The Office of the Public Counsel filed a Request for Local Public Hearing on July 28, 1995. The Commission conducted local public hearings in Park Hills and Ironton, Missouri, on August 24, 1995. The parties filed testimony and met in prehearing conference at 10:00 a.m. on August 30, 1995. At 1:00 p.m. on August 30, 1995, the Commission conducted an evidentiary hearing. The hearing concluded with closing arguments. Intervenor Norman E. Robinson failed to appear for the prehearing conference or for the evidentiary hearing.

At the hearing exhibit number 10 was reserved and the record held open for a late-filed exhibit entitled "Addendum A to a TERRITORIAL AGREEMENT", signed by U.E. and B.R.E.C. and filed by counsel for B.R.E.C. on September 7, 1995. Since no party has filed an objection to Late Filed Exhibit 10 as of this date, Exhibit 10 is received into the record.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

U.E. is a public utility engaged in providing electric service to the public in the State of Missouri, subject to the jurisdiction of the Commission. U.E.'s principal place of business is located in St. Louis, Missouri. B.R.E.C. is a rural electric cooperative engaged in distributing electric energy and service to its members in the State of Missouri. B.R.E.C.'s principal place of business is located in Fredericktown, Missouri. B.R.E.C. is not subject to Commission regulation of its service or rates.

I. Case No. EO-95-400

U.E. & B.R.E.C. jointly applied for approval of a territorial agreement which would designate the boundaries of the exclusive electric

service area of each Applicant in the City of Cape Girardeau, and the Missouri counties of Dent, Iron, Madison, Perry, Reynolds, St. Francois, Scott, Stoddard, Washington, and Wayne. The agreement is designed to eliminate existing duplication of facilities and concentrate the service territories of each supplier. The agreement calls for the exchange of certain electric service facilities and for a change of electric supplier for approximately 3,000 U.E. customers and approximately 2,950 B.R.E.C. customers. Before approving the proposed territorial agreement the Commission must determine that it is not detrimental to the public interest.

Duplication of facilities:

The first factor the Commission will consider in deciding the appropriateness of this territorial agreement is the extent to which the agreement eliminates or avoids unnecessary duplication of facilities. The Applicants and Staff testified that extensive duplication of facilities currently exists between U.E. and B.R.E.C., particularly in the areas which are to be exchanged by means of the proposed territorial agreement. The territorial agreement would eliminate present duplication of facilities and avoid any future increase in duplication in the affected area. The Commission finds that approval of the territorial agreement would be effective in eliminating existing, and avoiding future, duplication of facilities in the affected areas.

Ability of each supplier to provide adequate service in its designated exclusive area:

Second, the Commission will consider the ability of each party to the territorial agreement to provide adequate service to the customers in its exclusive service area. The Applicants are now providing service in overlapping service areas with similar terrain and service needs. The

parties testified that the landscape is hilly and irregular and that special equipment is sometimes necessary to provide service to isolated customers. Both U.E. and B.R.E.C. witnesses testified that the Applicants have the necessary equipment and have developed methods of reaching remote sites. U.E.'s witness testified that during regular working hours there would be service personnel based in Potosi, Missouri, within an hour's drive of anyone in the northern area needing service. Both Applicants maintain 800 numbers in service 24 hours a day to receive customer calls for service and assistance.

Both Applicants have the ability to make available adequate power supplies. Although B.R.E.C. is a distribution cooperative, it is a member of M & A Electrical Cooperative which supplies its power needs under a long term, all requirements, contract.

The Commission finds that the Applicants are capable of supplying the electric power supply, service, and maintenance needs of the customers in their service areas as designated in the proposed territorial agreement.

Cost and safety benefits:

Third, the Commission will consider a category of other cost and safety benefits attributed to the proposed territorial agreement. Both Applicants and Staff testified that the agreement will promote efficiency and lower costs to ratepayers, both by eliminating the isolated customer areas the Applicants must now travel long distances to serve, and by increasing the customer density in both Applicants' service areas. The elimination of duplicated facilities would result in fewer live power lines crossing the same area, thereby increasing public safety. Staff's and U.E.'s witnesses testified that the agreement should reduce customer

confusion caused by the operation of two electric suppliers in the same area.

Staff and the Applicants support the agreement on the grounds that both Applicants will be able to avoid constructing new facilities which will otherwise be needed. U.E. could eliminate projects currently planned for the Piedmont area. B.R.E.C. could avoid construction which will soon be needed near Graniteville and Potosi.

The Commission finds that the territorial agreement will increase the efficiency and safety of both Applicants. The Commission further finds that the agreement will decrease customer confusion and will enable both Applicants to avoid costs for new facilities to accommodate their present service areas.

Case-by-case addendum:

The fourth factor the Commission will consider in regard to the appropriateness of the territorial agreement is the case-by-case addendum, i.e. Paragraph 7 filed on September 7, 1995. The addendum is attached to this Report and Order as Attachment B. The addendum provision would permit a structure to receive service from one party even though it is located in the other party's designated service area. The party wishing the special arrangement would have to file appropriate documentation (called an "Addendum") with the Commission and the arrangement would be subject to Commission approval. A similar provision was approved in Case No. EO-95-151 as part of a territorial agreement between U.E. and Laclede Electric Cooperative, Inc. The proposition here differs most importantly in including language prohibiting the Commission from disallowing any expenditures involved in providing temporary service in a subsequent rate case:

In any Order rejecting an Addendum, the Commission shall determine whether temporary service was

provided pursuant to the Addendum in good faith. In the event the Commission determines that temporary service was provided in good faith, it may not disallow any expenditure made from any rates in any subsequent rate case. Exhibit 10.

The Commission Staff reviewed the addendum in its final version and Staff's witness testified that the language is acceptable to Staff.

With the exception of the portion quoted above, the proposed addendum is generally in conformance with the approved addendum in Case No. EO-95-151. The attempt to prohibit the Commission from disallowing expenditures associated with the provision of temporary service presents an obstacle to the approval of the territorial agreement. The Commission is not a party to the territorial agreement and its jurisdiction and duty to the public interest are statutory and not contractual. There is no statutory provision which requires the Commission to allow expenses because they are incurred in good faith. The Commission may consider all relevant factors in the cases before it; the Applicants are entitled to have their good faith considered as a factor if proven to the Commission's satisfaction but the Commission may not be bound to the language of the addendum to the extent that it purports to limit the Commission's discretion in the proceedings before it. The Commission finds that the above quoted language goes beyond the acceptable parameters of the addendum approved in Case No. EO-95-151 and that the addendum clause is detrimental to the public interest.

Effect on transferred customers:

The final area for Commission concern is the effect of approval of the territorial agreement on the approximately six thousand customers whose electric power supplier will be changed. U.E.'s witness testified that the Applicants' electric rates are comparable but that some transferred customers would experience an increase in electric costs and

some a decrease, depending on patterns of usage. Staff's witness testified that the difference in price between the two suppliers is less than one percent. Both Applicants' witnesses testified that there would be no charge to the customers for the transfer and no customer deposit such as would be required of a new customer. Customers being transferred to B.R.E.C. would be required to become members of the cooperative and pay a one-time membership fee of \$25.00. B.R.E.C.'s witness stated that payment arrangements could be made for the payment of that one-time charge.

Members of B.R.E.C. accumulate credits to a capital account from the cooperative's revenue which is not needed to offset cost, expenses and losses. The capital credits are refunded in total to the members at death, or are refunded in part when the Board of Directors authorizes a refund in compliance with the cooperative's Bylaws. (Black River Electric Cooperative Bylaws, Exhibit 5, 23-25.) B.R.E.C.'s witness testified that in recent years B.R.E.C. has been making refunds of 3% to 4% annually; each member receives the same percentage of his total capital account. Members who leave the cooperative for any reason other than death continue to receive their allotted refund whenever a refund is authorized. B.R.E.C.'s witness, Mr. John Farris, testified that the capital credit accounts of members who are transferred to U.E. will be handled in the same manner as other customers who leave the system; transferred customers will continue to receive their allotted refund whenever a refund is authorized. He stated that B.R.E.C.'s goal is for the capital credits of transferred customers to be returned in full in 15 to 20 years.

In response to Commission questioning Mr. Farris stated that the approximately 2950 cooperative members who would be transferred to U.E. have capital credits averaging approximately \$700 per member, or a total of approximately two million dollars. He stated that B.R.E.C.'s bylaws

would not permit any refunds except those made on a general basis to all members and that any changes in the bylaws must be made by a vote of the full membership. Mr. Farris also testified that the mortgage agreements covering B.R.E.C.'s assets would prevent a refund of capital credits without receiving REA approval and meeting other conditions.

Mr. Farris testified that, because the territorial agreement does not involve a transfer of a substantial portion of B.R.E.C.'s assets, a vote of the cooperative's membership was not required. The territorial agreement was decided upon by the Board of Directors. The members to be transferred to U.E. had no direct input into the decision making process, other than participating in the last election of Board members. Mr. Farris testified that all customers were notified of the pending agreement in the cooperative's monthly newsletter and that members' questions were answered at an information booth at the annual meeting in June.

The Commission finds that the electric rates charged by the two Applicants are comparable. The Commission further finds that transferred B.R.E.C. customers who have accrued funds in a capital account with the cooperative will be refunded those amounts in the same way in which other former cooperative members are refunded capital credits. The Commission finds that B.R.E.C.'s manner of dealing with the capital credits of transferred customers presents a serious obstacle to approval of the proposed territorial agreement on public interest grounds. This agreement would result in slightly less than 3000 cooperative members being transferred to U.E. involuntarily. Those members would be separated from their money - amounting to capital investments of approximately \$700 each - involuntarily. Although B.R.E.C. would return the accumulated capital in the same way it returns the capital of other members, the rate of return of 3 to 4% per year does not impress this Commission as a good faith effort

to accomodate these members who are leaving the system but not by choice. Some of these customers will not live long enough to recoup their capital credits; the enjoyment of their credits will descend to their survivors. It appears to the Commission that B.R.E.C. made little, if any, effort to canvas these customers or to devise an appropriate refunding mechanism before entering into the proposed territorial agreement. Although this agreement would offer the benefits discussed above, those benefits largely accrue to U.E. and B.R.E.C. In considering the public interest the Commission finds that the benefits of the agreement are outweighed by the negative effect the agreement would have on this large group of B.R.E.C. members. Therefore, the Commission finds that the proposed territorial agreement is detrimental to the public interest.

Other issues:

There are two other issues raised by the applicants. U.E. has requested a limited waiver of the provisions of the Commission's Rules regarding Discontinuance of Service, 4 CSR 240-13.050(2)(A), in order to enforce payment of a transferred customer's final bill to B.R.E.C. In addition, Applicants have requested that the Commission grant them authority to change the electric service providers to the customers in the exchanged service areas pursuant to the Territorial Agreement. Since the Commission has determined that the proposed territorial agreement is detrimental to the public interest these two issues are moot.

Summary:

The Commission finds that the Territorial Agreement signed by the Applicants on April 28, 1995, would result in a decrease in duplication of facilities and avoid future duplication of facilities, and that U.E. and B.R.E.C. are capable of providing adequate and safe electric service to the areas set out to them in the proposed agreement. The Commission further

finds that the agreement would promote efficiency and safety, reduce the need for further facility construction in the near future, and reduce customer confusion.

The Commission finds that the addendum clause, Paragraph 7, of the territorial agreement includes language that attempts to limit the Commission in the performance of its statutory duties in an unacceptable fashion and is detrimental to the public interest. The Commission also finds that the agreement would have a serious negative effect on approximately 2950 the customers with an investment in B.R.E.C. who would be involuntarily transferred to U.E. The Commission finds that the overall effect of the proposed territorial agreement would be detrimental to the public interest.

II. Case No. EA-95-416

U.E. has requested a certificate of convenience and necessity which would permit U.E. to serve the portion of the service area it will receive from B.R.E.C. by means of the territorial agreement and for which it is not certificated. The areas to be served are described in a document attached to this Report and Order as Attachment C. According to the testimony of U.E.'s witness the areas included in the "Note" at the bottom of Attachment C are now to be included in U.E.'s certificated service area and will be transferred from B.R.E.C. to U.E.. U.E. also requested waivers from three application requirements: (1) submission of a feasibility study and plans for future construction, 4 CSR 240-2.060(2)(A)(9), because U.E. is already providing service in the area; (2) submission of the names and addresses of ten persons residing in the area, 4 CSR 240-2.060(2)(A)(11)(B), because names of customers to be affected by the territorial agreement have been submitted in EO-95-400; and (3) submission of a certified copy of U.E. Articles of Incorporation, 4 CSR 240-

2.060(2)(A)(1), because U.E.'s annual report is on file with the Commission. U.E.'s ability to serve the area is contingent upon U.E. receiving a franchise from the City of Viburnum. The city will be voting on the franchise issue November 7, 1995, and U.E. has asked the Commission to approve the certificate of convenience and necessity contingent upon U.E.'s receiving the franchise.

In prefiled testimony Staff witness McDuffey stated that the certificate application is dependent upon the Commission's approving the proposed territorial agreement. Although the application appears to be appropriate, with the exception of the lack of a franchise from the City of Viburnum, since the Commission finds the territorial agreement to be detrimental to the public interest the application for a certificate of convenience and necessity is no longer in the public interest.

III. Case No. EM-96-16

U.E. has requested that the Commission approve a sale of facilities to M&A Electric Power Cooperative (M&A) in Case No. EM-96-6 in order to effectuate the territorial agreement. Specifically, U.E. wishes to transfer to M&A its 69 kV/34.5kV/12.47kV substation located near Piedmont, and its 34.5 kV circuit between the Piedmont Substation and Greenville, Missouri. Counsel for U.E. stated that the transfer of facilities would not go forward unless it could proceed with the entire transaction. Since the Commission finds the territorial agreement to be detrimental to the public interest, approval of this application for sale of assets would be detrimental to the public interest.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:

The Missouri Public Service Commission has jurisdiction over the services, activities, and rates of U.E. pursuant to § 386.250 and Chapter 393 RSMo. The Commission does not have jurisdiction over the services, activities, and rates of rural electric cooperatives such as B.R.E.C. except as specified in § 394.160 RSMo.

Case No. EO-95-400:

When a cooperative enters into a territorial agreement with a regulated public utility the agreement must be approved by the Commission after hearing. § 394.312 RSMo. The Commission may approve a territorial agreement if the agreement in total is not detrimental to the public interest. § 394.312.4 RSMo. Based on the findings of fact it has made, the Commission concludes that the territorial agreement proposed by U.E. and B.R.E.C., Case No. EO-95-400, is detrimental to the public interest and should not be approved.

The Applicants have requested that the Commission authorize the change of suppliers necessary to effectuate the territorial agreement. § 393.106 RSMo authorizes the Commission to approve a change of supplier when the change is in the public interest for other than a rate differential. Based on the findings the Commission has made regarding the territorial agreement, the Commission concludes that the request for changes of suppliers has become a moot issue.

U.E. has requested a limited waiver of the provisions of the Commission's Rules regarding Discontinuance of Service, 4 CSR 240-13.050(2)(A). The Commission may grant waiver of the application of its rules when a party has shown good cause for the waiver. Based on the findings the Commission has made regarding the territorial agreement, the Commission concludes that the request for waivers has become a moot issue.

Case No. EA-95-416:

U.E. has requested, in Case No. TA-95-416, that the Commission approve a certificate of convenience and necessity which would permit U.E. to serve the portion of the service area it would receive from B.R.E.C. by means of the territorial agreement and for which it is not certificated. It is within the Commission's discretion to grant a certificate of convenience and necessity when it determines that certification is "necessary or convenient for the public service". § 393.170.3 RSMo; **State ex rel. Intercon Gas, Inc. v. Public Service Commission**, 848 S.W.2d 593, 597 (Mo. App. 1993). The Commission has found in this case that the territorial agreement on which this certificate application is dependent is detrimental to the public interest. Therefore, the Commission concludes that the certification of the areas described in Attachment C to this Report and Order is not convenient and necessary for the public interest and should not be granted.

Case No. EM-96-16:

U.E. has requested that the Commission approve a sale of facilities to M&A Electric Power Cooperative in Case No. EM-96-6. The Commission may approve such a sale when it is assured that adequate service will continue to be supplied to the public and the sale is not detrimental to the public interest. **State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz**, 596 S.W.2d 466, 468 (Mo.App. 1980.) Based on its findings that the territorial agreement in this case is detrimental to the public interest, if the sale of assets were approved U.E. would not be able to continue to supply safe and adequate electric service and the Commission concludes that the sale of assets is detrimental to the public interest and should not be approved.

IT IS THEREFORE ORDERED:

1. That the request for approval of the Territorial Agreement attached to this order as Attachment A and signed by Union Electric Company and Black River Electric Cooperative, Inc. on April 28, 1995, is denied.

2. That the requests by Applicants and Union Electric Company for approval of change of suppliers and waivers are denied.

3. That the application of Union Electric Company for a certificate of convenience and necessity to install, acquire, build, construct, own, operate, control, manage, and maintain an electric power system for the public within all the areas described in Attachment C to this Report and Order is denied.

4. That Union Electric Company's application for authority to transfer to M&A Electric Power Cooperative, Inc. the property described in the application, including a 69 kV/34.5kV/12.47kV substation located in or near Piedmont, Missouri, and a 34.5 kV circuit between the Piedmont Substation and Greenville, Missouri, is denied.

5. This Report and Order shall become effective on the 26th day of September, 1995.

BY THE COMMISSION



(S E A L)

David L. Rauch
Executive Secretary

McClure, Crumpton and
Drainer, CC., Concur and certify
compliance with the provisions of
Section 536.080, RSMo 1994.
Mueller, Chm., and Kincheloe, CC.,
Absent.

Dated at Jefferson City, Missouri,
on this 15th day of September, 1995.

TERRITORIAL AGREEMENT

THIS AGREEMENT is entered into between Union Electric Company, hereinafter referred to as "Company," and Black River Electric Cooperative, Inc., hereinafter referred to as "Cooperative."

WHEREAS, Company is authorized by law to provide electric service within the State of Missouri, including all or portions of Cape Girardeau, Washington, Wayne, Scott, St. Francois, Stoddard, Iron and Reynolds Counties; and

WHEREAS, Cooperative is authorized by law to provide electric service within the State of Missouri, including all or portions of Washington, Wayne, Dent, Crawford, Madison, Iron, Perry, St. Francois and Reynolds Counties; and

WHEREAS, the Missouri Legislature has authorized electrical corporations and rural electric cooperatives to enter into written territorial agreements; and

WHEREAS, Company and Cooperative desire to promote the orderly development of the retail electric service within portions of the above referenced counties in Missouri, to avoid wasteful duplication and to minimize disputes which may result in higher costs in serving the public;

NOW, THEREFORE, Company and Cooperative, in consideration of the mutual covenants and agreements herein contained, agree as follows:

1. For purposes of this Agreement:
 - a. "Customer" includes any natural person, firm, association, partnership, business trust, public or private corporation, political subdivision or any agency, board, department or bureau of the state or federal government or any other legal entity which

has requested or is receiving electric service. Any customer who has requested or is receiving electric service at one structure shall be a new and different customer at each structure at which electric service has been requested.

b. "Structure" is defined as an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus but shall not include customer-owned meter wiring. "Structure" shall include a contiguous addition to or expansion of a previously existing structure and a replacement of a previously existing structure.

c. "Company" shall mean Union Electric Company and any subsidiary or other corporate entity owned or controlled by Union Electric Company.

d. "Cooperative" shall mean Black River Electric Cooperative, Inc. and any subsidiary or other corporate entity owned or controlled by Black River Electric Cooperative, Inc.

e. "Customer service equipment" shall mean all lines or conductors operated at 30,000 volts or less, phase to phase; all transformers, regulators, capacitors, poles, equipment and installations connected thereto not located in a substation, necessary for the distribution of electricity through said lines or necessary for the support of said lines; and all rights, privileges, easements, appurtenances and immunities in land on which such lines, conductors, poles, equipment and installations are located.

f. "Transfer" shall mean grant, convey or assign any and all interests the transferor has in the customer service equipment and any and all rights to serve customers, free of any and all liens and liabilities, to the transferee. The parties

understand this to be an exchange of property and service right and not a sale. Any reference herein to transferor or transferee shall apply to both parties in their capacity in effecting such transfer or accepting such transfer, respectively.

2. As between the parties each shall have the exclusive right to furnish electric service to all electric consuming structures located within its respective territory described in paragraphs 3 and 4 of this Agreement, regardless of the size of the load or the characteristics of the customers' requirements. Neither party may furnish, make available, render or extend electric service to a structure or for use within the territory of the other party either directly, indirectly or through a subsidiary corporation or other entity controlled by the party, in whole or in part, excepting sales to each other.

3. The electric service area of Company shall be all of Cape Girardeau, Iron, Reynolds, Scott, St. Francois, Stoddard and Washington counties, except such portion thereof as is described by metes and bounds in Exhibit 1 to this Agreement and as illustrated by the map marked Exhibit 2, both exhibits being incorporated herein by reference and made a part of this Agreement as if fully set out verbatim.

Cooperative shall transfer all of its customer service equipment and customers located within Company's service area to Company on a date to be set by the parties not more than one (1) year after the effective date of this Agreement. Company shall thereafter provide electric service to all existing and future customers located within its electric service area, and Cooperative shall not provide electric service to customers in Company's area. Notwithstanding Company's electric service area, Cooperative retains the right and facilities to continue to serve all customers identified in Exhibit 3.

4. The electric service area of Cooperative shall be such area as is described by metes and bounds in Exhibit 1 and as illustrated by the map marked Exhibit 2 which are incorporated herein by reference.

Company shall transfer all of its customer service equipment and customers located within Cooperative's service area to Cooperative on a date to be set by the parties not more than one (1) year after the effective date of this Agreement. Cooperative shall thereafter provide electric service to all existing and future customers located within its electric service area, and Company shall not provide electric service to customers in Cooperative's area. Notwithstanding Cooperative's electric service area, Company retains the right and facilities to continue to serve all customers identified in Exhibit 4.

5. Customers and customer service equipment shall be transferred by identifiable lines or line segments by utilizing or installing metering points on each line segment and energizing the same to the account of the transferee pursuant to the Interchange Agreement between Associated Electric Cooperative and Company, entered into on June 28, 1978, as amended. Upon the transfer of a line, the transferee shall become the owner of the facilities thereon and responsible and liable for the condition of the facilities and service provided by such facilities and shall have unlimited access thereto. After the transfer, transferee shall indemnify, defend and hold transferor harmless against any loss, harm, claim or cost, including reasonable attorneys' fees, arising out of the possession or operation of the facilities, including but not limited to any personal

injury to employees of the transferee and personal injury or property damage of persons not parties to this Agreement.

6. The location of a structure for purposes of this Agreement shall be the geographical location at which electric power and energy is used, regardless of the metering point or point of delivery. The first owner of a new structure located on or crossed by any mutual boundary line described in paragraphs 3 and 4 dividing the electric service territories of the parties shall be permitted to choose either party for permanent electric service, provided that the customer's meter is installed on the structure within that party's service area. Thereafter that party shall exclusively serve that structure.

7. The parties may agree on a case-by-case basis by an Addendum hereto to allow a structure to receive service from one party though the structure is located in the electric service area of the other.

Such Addendum referred to above shall be filed with the Missouri Public Service Commission with a copy to the Office of Public Counsel. There will be no filing fee for these addenda.

Each Addendum shall consist of a notarized statement identifying the structure, the party to serve the structure and the justification for the Addendum and indicate that the parties support the Addendum.

Each Addendum shall be accompanied by a notarized statement, signed by the customer to be served, which acknowledges such customer's receipt of notice of the contemplated electric service to be provided and that the Addendum represents an

exception to the territorial boundaries approved by the Public Service Commission and shall indicate the customer's consent to be served by the service provided contemplated by the Addendum.

If the Staff, Office of Public Counsel, or the Commission on its own motion, do not submit a pleading objecting to the Addendum within twenty (20) days of the filing thereof, the Addendum shall be deemed approved. However, if a pleading in opposition to the Addendum is filed by the above listed parties, the Commission shall schedule an evidentiary hearing within ten (10) days to determine whether the Addendum should be approved.

Each party, pursuant to an executed Addendum, shall have the right to provide temporary service, as defined in Section 393.106 RSMo., until the Commission approves or disapproves the Addendum. No party shall be required to remove any facilities installed pursuant to an Agreement until the effective date of an Order of the Commission or a court regarding the removal of same. In any Order rejecting an Addendum, the Commission shall determine whether temporary service was provided pursuant to the Addendum in good faith. In the event the Commission determines that temporary service was provided in good faith, it may not disallow any expenditure made from any rates in any subsequent rate case.

8. This Agreement shall become effective upon approval by the Missouri Public Service Commission pursuant to Section 394.312, R.S.Mo. The term of this Agreement shall be perpetual. Performance of the parties is contingent upon all of the following having occurred no later than December 31, 1995 unless such condition is

waived, extended or modified by agreement in writing signed by an officer of each party hereto:

- a. All required approvals of the Cooperative's Board of Directors.
- b. Approval of the transaction by the Public Service Commission of Missouri, including but not limited to, a waiver of provisions of the Utility Billing Practices Rule, 4 CSR 240-13.010 et seq., which would prohibit Company or Cooperative from discontinuing service for a customer's failure to pay a delinquent account owed to the other party;
- c. Approval of the transaction, to the extent of its jurisdiction, by the Federal Energy Regulatory Commission.
- d. Approval of this Territorial Agreement by M&A Electric Power Cooperative, Cooperative's wholesale power supplier, to the extent that its interests and liabilities may be affected.
- e. Company reaching agreement with M&A Electric Power Cooperative and Associated Electric Cooperative regarding generation and transmission issues affected by this agreement, which shall be approved by the Federal Energy Regulatory Commission, to the extent of its jurisdiction.
- f. Approval by the Missouri Public Service Commission of an Application for a Certificate of Public Convenience and Necessity by Company to own, operate and maintain the electric transmission and distribution facilities which the Company is acquiring pursuant to this Agreement.

9. Continuing performance of the parties is contingent upon the following having occurred for each line segment prior to the transfer of the line segment unless such condition is waived, extended or modified by agreement in writing signed by an officer of each party hereto:

a. Approval of the transaction by the Rural Utility Services ("RUS") including the release of Cooperative's customer service equipment located within Company's electric service area from all liens held by RUS. Cooperative shall make a good faith effort to release the easements from all such liens.

b. Cooperative shall have obtained the release of Cooperative's customer service equipment located within Company's electric service area from all liens held by the National Rural Utilities Cooperative Finance Corporation and shall make a good faith effort to release the easements from all such liens.

c. Company shall have obtained the release of Company's customer service equipment located within Cooperative's electric service area from all liens created by the Company, including the lien of its Mortgage and Deed of Trust dated June 15, 1937, as supplemented, and shall make a good faith effort to release the easements from all such liens.

If reasonable grounds arise to believe that the transferor will be unable to perform the applicable conditions, the transferee may demand adequate assurance of performance. If the transferor fails to provide adequate assurance of performance to the transferee, the parties shall treat this agreement as void in its entirety and shall transfer

all facilities back to the original owner or shall negotiate a compromise transaction which is mutually agreeable.

10. The parties agree to undertake all actions reasonably necessary to implement this Agreement. This shall include, but not be limited to, the following:

a. Each party shall calculate, as of the date of transfer of a customer, the active and outstanding accounts receivable and unbilled revenues ("receivables"), including all amounts which have been billed to the customer as well as bill amounts which have been calculated but not yet rendered, for such customer the party was serving to the date of transfer. It shall then remit to the customer a final bill. If the party does not receive payment of the final bill within sixty (60) days of the date of its remittance, it may identify the other party as its agent to collect the accounts receivable. The other party may take such actions as may be necessary to collect the final bill, including but not limited to the disconnection of service. Any payments on said accounts received by the other party shall be remitted promptly to the party to which payment is due.

b. Security deposits and accrued interest existing at the time of transfer shall be credited to the customer on the final bill.

c. Transferor shall execute and deliver to the transferee bills of sale with accurate inventories of the facilities and assignments of existing easements, permits and licenses being transferred. Transferor shall also assign to transferee all joint use pole agreements and street light agreements for facilities or areas being transferred.

Such bills of sale and assignments of property rights or contracts shall be delivered concurrently with the actual transfer.

11. Transferor shall give to transferee prior to the date of transfer access to books, records, contracts and commitments of transferor related to the customer service equipment transferred in accordance with this Agreement and shall furnish transferee during such period with information concerning the transferor's affairs as transferee may reasonably request with respect to the various transactions contemplated herein. In the event any controversy or claim by or against either party arises out of this transaction or the subject matter hereof after closing, each party shall make available to the other copies of such relevant records as may reasonably be requested pertaining to the controversy or claim.

Transferee shall have the right to retain copies of all original accounting records, customer business records, operating manuals, maps and all other documents containing information about customer service equipment or customers transferred by this Agreement and normally maintained by transferor in the ordinary course of business.

Each party shall have the right, at its own expense, to make or to have the other party make copies of all such documents prior to the date of transfer.

12. All property exchanged is transferred and accepted AS IS and where they stand at the transferee's risk. Each party warrants only that it has the lawful right to transfer and dispose of the same and that it will warrant and defend the title thereto against all claimants whatsoever. No other warranties are given. THE PARTIES AGREE THAT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND

FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE EXCLUDED FROM THIS AGREEMENT. Each party shall have the right to inspect the customer service equipment of the other party in its service area at any time.

13. Each party will cooperate in presenting a joint application showing such transfer to be in the public interest. If the Public Service Commission of Missouri 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. However, any customer service equipment transferred by bill of sale and assignment of rights pursuant to this agreement prior to the date of such court or agency decision shall remain the property of the transferee.

14. Neither the boundaries described by this Agreement nor any term of this Agreement may be modified, repealed or changed except by a writing mutually approved by the respective parties and by the Missouri Public Service Commission.

15. This Agreement shall be binding on the parties and all subsidiaries, successors, assigns and corporate parents or affiliates of Company and Cooperative.

16. Company has service territories outside of the areas covered by this Agreement. For service outside of the areas described by this Agreement, Company will continue to operate without regard to this Agreement.

17. This Agreement shall in no way affect either party's right to construct such electric distribution and transmission facilities within the designated electric service area

of the other as that party deems necessary, appropriate or convenient to provide electric service to its customers not inconsistent with the terms of this Agreement and as otherwise allowed by law.

18. This contract constitutes the entire agreement between the parties relating to the allocation of service rights in the territory described herein.

IN WITNESS WHEREOF, the parties have executed this Agreement this 28th day of April, 1995.

UNION ELECTRIC COMPANY

By M. C. Almon
Title: Vice President

ATTEST:

Sh Waters
Ass't. Secretary

BLACK RIVER
ELECTRIC COOPERATIVE

By R E Jenson
Title:

ATTEST:

William D. Stephenson
Secretary

LATE FILED EXHIBIT 10
Addendum to a

TERRITORIAL AGREEMENT

THIS AGREEMENT is entered into between Union Electric Company, hereinafter referred to as "Company," and Black River Electric Cooperative, Inc., hereinafter referred to as "Cooperative" and collectively referred to as Parties.

WHEREAS, Parties previously entered into a Territorial Agreement, dated April 28, 1995; and

WHEREAS, The Staff of the Missouri Public Service Commission expressed concern regarding paragraph 7 of the Territorial Agreement upon the filing of the Agreement with the Commission for its approval; and

WHEREAS, Parties desire to alleviate Staff's concerns;

NOW, THEREFORE, Company and Cooperative now amend the aforestated Territorial Agreement by striking paragraph 7 and inserting in lieu thereof the following:

7. The parties may agree on a case-by-case basis by an Addendum hereto to allow a structure to receive service from one party though the structure is located in the electric service area of the other.

Such Addendum shall be filed with the Executive Secretary of the Missouri Public Service Commission in the same manner as a motion or other pleading, with a copy submitted to the Office of Public Counsel. There will be no filing fee for these addenda.

Each Addendum shall consist of a notarized statement identifying the structure, the party to serve the structure and the justification for the Addendum and indicate that the parties support the Addendum.

Each Addendum shall be accompanied by a notarized statement, signed by the customer to be served, which acknowledges such customer's receipt of notice of the contemplated electric service to be provided and that the Addendum represents an exception to the territorial boundaries approved by the Public Service Commission and shall indicate the customer's consent to be served by the service provided contemplated by the Addendum.

If the Staff, Office of Public Counsel, or the Commission on its own motion, do not submit a pleading objecting to the Addendum within twenty (20) days of the filing thereof, the Addendum shall be deemed approved by the aforesaid parties and the Staff shall file a recommendation with the Commission and the Commission shall then issue an order approving the Addendum. However, if a pleading in opposition to the Addendum is filed, then the Commission shall schedule an evidentiary hearing at the earliest reasonable opportunity to determine whether the Addendum should be approved.

Each party, pursuant to an executed Addendum, shall have the right to provide temporary service, as defined in Section 393.106 RSMo., until the Commission approves or disapproves the Addendum. No party shall be required to remove

any facilities installed pursuant to an Agreement until the effective date of an Order of the Commission or a court regarding the removal of same. In any Order rejecting an Addendum, the Commission shall determine whether temporary service was provided pursuant to the Addendum in good faith. In the event the Commission determines that temporary service was provided in good faith, it may not disallow any expenditure made from any rates in any subsequent rate case.

IN WITNESS WHEREOF, the parties have executed this Agreement this 1 day of SEPTEMBER, 1995.

UNION ELECTRIC COMPANY

By Wm. J. Law
Title: Vice President

ATTEST:

M. L. Waters
Asst. Secretary

BLACK RIVER
ELECTRIC COOPERATIVE

By Stephen Dees
Title: President

ATTEST:

Willis D. Coyle
Secretary

**Union Electric / Black River Service Area Exchange
Missouri Service Area That Requires
A Certificate To Serve**

County	Township	Range	Sections/U.S. Surveys
Iron	33 North	3 East	3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19
	34 North	1 West	All land sections and surveys therein.
	34 North	2 West	1, 2, 3 (Viburnum Substation)
	34 North	1 East	All land sections and surveys therein.
	34 North	2 East	2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17,
			18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29,
			30, 31, 32, 33, 34, 35, 36
	34 North	3 East	19, 20, 27, 28, 29, 30, 31, 32, 33, 34
	34 North	4 East	23, 24, 25, 26, 36
	35 North	1 West	All land sections and surveys therein.
	35 North	2 West	22, 23, 24, 25, 26, 27, 34, 35, 36
	35 North	1 East	All land sections and surveys therein.
	35 North	2 East	19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32,
			33, 34, 35, and Surveys 2121, 2110, 2184
	35 North	3 East	22, 23, 24, 27, 34
Reynolds	33 North	1 West	1, 2, 3, 4
	33 North	1 East	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12
	33 North	2 East	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15,
			16, 17, 18, 19, 20, 21, 22, 23, 24
Washington	35 North	1 West	All land sections and surveys therein.
	35 North	2 West	1, 12, 13
	35 North	1 East	3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18
	36 North	1 West	All land sections and surveys therein.
	36 North	2 West	1, 12, 13, 24, 25, 36
	36 North	1 East	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15,
			16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29,
			30, 31, 32, 33, 34

Note:

Section 31 in Township 34 North, Range 5 East in Madison County. (One cust.)

Section 1 in Township 36 North, Range 2 West in Crawford County. (Five cust.)

Section 15 in Township 35 North, Range 2 West in Crawford County. (One cust.)

NJE
4/19/95

Exhibit 1