

# **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. )

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### **REPORT AND ORDER ON REHEARING**

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**Issue Date:** March 22, 1996

**Effective Date:** April 2, 1996

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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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St. Louis, Missouri 63166, For: Union Electric Company.

**Patrick A. Baumhoer**, Attorney at Law, Andereck, Evans,  
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City, Missouri 65102, For: Black River Electric  
Cooperative, Inc. and M&A Electric Power Cooperative.

**Lewis R. Mills, Jr.**, Deputy Public Counsel, and  
**John B. Coffman**, Senior 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**: Elaine E. Bensavage.

**REPORT AND ORDER ON REHEARING**

**Procedural History**

This case appears before the Missouri Public Service Commission (Commission) upon rehearing. The Commission will adopt portions of its original Report And Order verbatim where it deems appropriate.

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 1994<sup>1</sup>, asking the 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

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<sup>1</sup>All statutory references are to the Revised Statutes of Missouri 1994.

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 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.

On September 15, 1995, the Commission issued its original Report And Order in this case, denying Applicants' request for approval of the Territorial Agreement, and denying the relief sought in the companion cases, Case No. EA-95-416 and Case No. EM-96-6. The Commission found the proposed Territorial Agreement to be detrimental to the public interest because the benefits of the agreement were outweighed by the negative effect the agreement would have on the large group of B.R.E.C. members to be transferred to U.E. under the agreement, with regard to these members' recoupment of the capital credits accrued to them while members of B.R.E.C. The Commission also found a portion of the language in the addendum provision of the agreement, which appeared to limit the Commission's ratemaking discretion, to be detrimental to the public interest.

On September 25, 1995, both U.E. and B.R.E.C. filed separate motions for rehearing. On October 25, 1995, the Commission issued its Order Granting Rehearing, which found that there was sufficient reason for rehearing and that the motions should be granted. The Commission added that concerns remained regarding the capital credits of the B.R.E.C. customers. The order did not, however, limit the issues for rehearing, and thus the Commission will consider all issues anew.

The Commission's order also granted the parties an opportunity to file additional direct and rebuttal testimony, and set the rehearing date for December 20, 1995. That date was subsequently continued due to inclement weather, and the rehearing commenced on January 17, 1996 instead. Intervenor Norman E. Robinson failed to appear for the rehearing, and he was dismissed from the case at the request of B.R.E.C., pursuant to 4 CSR 240-2.110(4)(B). At the rehearing it was indicated that the record in the original hearing of this case would be considered as part of the record in the rehearing. Subsequent to the rehearing, initial and reply briefs were filed by U.E., B.R.E.C., and Staff.

#### 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, except as specified in § 394.160 RSMo.

**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.

**A. 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.

**B. 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 toll free 800 numbers which are 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.

**C. 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.

**D. 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. 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. Similar provisions have been approved in other cases approving territorial agreements, including *Re Union Electric Company and Laclede Electric*



**Cooperative, Inc.**, Case No. EO-95-151, Report and Order, issued February 8, 1995.

The addendum provision has undergone several permutations during the course of this proceeding. The original language of the addendum provision can be found at numbered paragraph 7 on pages 5-6 of the Territorial Agreement, attached to the Report And Order as Attachment A. That language was subsequently modified after the conclusion of the initial hearing in an effort to alleviate the concerns of Staff, and a new paragraph 7 was late-filed as Exhibit 10 on September 7, 1995. Late-filed Exhibit 10 is attached to this Report And Order as Attachment B. In its original Report And Order, the Commission found certain of the addendum language to be detrimental to the public interest. In response to the Commission's order, both U.E. and B.R.E.C. offered in their respective motions for rehearing to delete the offending language. Upon rehearing, the Staff changed its position and put forth three objections to the language in late-filed Exhibit 10. In response to Staff's objections, both U.E. and B.R.E.C. in their reply briefs reluctantly conceded to Staff's proposed changes.

The language agreed to by U.E. and B.R.E.C. in Exhibit 10 is as follows:

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.

....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 language suggested by Staff is as follows:

If the Staff, Office of the Public Counsel or other interested parties 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 [sic] and the Staff shall file a recommendation with the Commission and the Commission may then issue an order approving the Addendum. However, if a pleading in opposition to the Addendum is filed, the Commission shall schedule an evidentiary hearing at the earliest reasonable opportunity to determine whether the Addendum should be approved. Each Addendum shall contain a statement in bold uppercase typeface indicating that the Staff, Office of the Public Counsel, or other interested parties have forty-five (45) days to oppose the Addendum or else the Addendum shall be deemed approved by the aforesaid parties.

Exhibit 16, Schedule 1.

The Commission has carefully reviewed the language proposed by Applicants in late-filed Exhibit 10, and the language proposed by Staff in Exhibit 16. The Commission is reluctant to approve either Addendum provision as proposed because of the apparent attempt to bind the Commission to a particular addendum procedure. The Commission is not a party to the territorial agreement and its jurisdiction and duty to the public interest are statutory and not contractual. Territorial agreements and amendments are governed by § 394.312 RSMo which addresses the Commission's obligation to conduct a hearing. Interpretation of that statute, and the choice of how to proceed in carrying out duties delegated to it by the legislature, are matters for the Commission's discretion and not for contractual agreement by the parties. The Commission may not be bound to the language of the addendum to the extent that it purports to

limit the Commission's discretion. See generally, e.g., *May Department Stores Co. v. Union Electric Light & Power Co.*, 107 S.W.2d 41 (Mo. 1927).

Although the bulk of the language in Exhibit 10 has been approved in other territorial agreements, the Commission is no longer convinced that such language is harmless. Parties who might otherwise pursue valid challenges to an amendment or addendum could forego their legal rights on the belief that the addendum procedure precludes all objections not made within 45 days of the filing of an Addendum. The language in Exhibit 16, while slightly different, essentially contains the same infirmities. Permitting parties to an agreement to determine Commission procedure could encourage parties in other types of cases to presume on the Commission's forbearance and attempt to usurp its discretion. The Commission finds that Staff's suggested language in Exhibit 16 should be revised to delete the phrase "or other interested parties" and to delete all the language thereafter beginning with "and the Staff shall file a recommendation . . . ." The portion quoted above would read as follows:

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.

The Commission finds that, on condition that paragraph 7 of the Territorial Agreement be reformed as described above, the case-by-case addendum would not be detrimental to the public interest. The Commission reminds Applicants that Paragraph 7 of the Territorial Agreement must also be reformed to delete the language attempting to limit the Commission's ratemaking discretion, which the Commission found to be detrimental to the public interest in its original Report And Order issued on September 15, 1995, as agreed to by Applicants in their respective rehearing motions.

Given that the Commission has reformed the language in Paragraph 7 of the Territorial Agreement, the Commission finds that it will be necessary for Applicants to provide the Commission with a final modified version of the Territorial Agreement, incorporating the required changes.

**E. 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 2,950 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 Rural Electrification Administration (REA) approval and meeting other conditions.

In response to the rehearing and the concern expressed by the Commission in its original Report And Order, B.R.E.C. witness David J. Hedberg testified that capital credits are a cooperative's only source of equity. Cooperatives raise equity by retaining margins, unlike investor-owned utilities (IOUs), which can issue stock. Also unlike IOUs, ownership in a cooperative is not an investment. Hedberg explained that when a cooperative needs to borrow funds, the two major sources of funds are the RUS (Rural Utilities Service, formerly REA), and the National Rural Utilities Cooperative Finance Corporation (CFC), which meets the gap between RUS funding and cooperative needs. RUS regulations do not permit capital credits to be retired which would reduce member equity below 40% or would exceed 25% of the previous year's margins. Hedberg also expressed

concern that if the entire amount of capital credits were paid out to those members leaving the system under the Territorial Agreement, such treatment could be considered discriminatory to the members remaining on the system, and as a result B.R.E.C. could conceivably lose its tax exemption under Section 501(c)12 of the Internal Revenue Service (IRS) code. The issue has not been addressed by the IRS in a ruling, however, and thus there is no certainty about how the IRS might react.

Additionally, Mr. Farris indicated that B.R.E.C. was considering switching to a combination of first-in, first-out plus percentage of the whole method for returning capital credits to all former members, which would allow for full recovery in 15 years or less. At the time of the rehearing no final decision had been made regarding this possibility, and Mr. Farris testified that the decision to pay out capital credits in any given year would still have to be made on a yearly basis, based on the financial health of the cooperative, and the restrictions of its mortgage agreements. Mr. Farris did however testify that a switch to a combination of first-in, first-out plus percentage of the whole method for returning capital credits was very likely.

Witness Farris also testified about the notice given by B.R.E.C. to its membership. He stated that initially a letter was sent to every account in the area in question. In addition, information was posted on the back page of B.R.E.C.'s monthly newsletter, and an information booth was set up at the cooperative's annual June meeting. The Commission notes that neither the letter nor the newsletter was admitted into evidence. Subsequent to the Commission's initial Report And Order, B.R.E.C. responded to media interviews, but took no further action to educate its membership about the capital credits issue. Further action was considered, but was

not implemented because of a belief that it would only add to the confusion.

Arthur Martin, a member of B.R.E.C. who initially opposed the Territorial Agreement, testified that he had changed his mind upon learning that he would continue to receive his capital credits on the same basis as current members. Mr. Martin testified that he went to see Mr. Farris, and was satisfied with Mr. Farris' explanation of how the capital credits would be paid. The witness also opined, however, that it would have been valuable if B.R.E.C. had sent another letter to its members explaining about this issue, or had placed a more detailed story in the county paper.

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. Moreover, the Commission finds that these B.R.E.C. customers will be transferred involuntarily and will not receive the entirety of their capital credits all at once, as would the estate of a deceased member. The Commission finds, however, that there exists potential impediments of a serious nature to paying involuntarily transferred members the entirety of their capital credits. More specifically, the Commission finds that B.R.E.C.'s ability to pay out capital credits is circumscribed by its financial condition, by mortgage or other requirements of its lenders such as RUS or CFC, and by the requirements of the IRS with regard to its tax exemption. In addition, the Commission finds that the likelihood of B.R.E.C. changing its procedure to utilize a combination of first-in, first-out plus percentage of the whole method for returning capital credits demonstrates that B.R.E.C. is serious about ensuring that capital credits are returned to former members,

and that the cooperative has heeded the concerns raised by the Commission in its original Report And Order.

In addition, the Commission finds that B.R.E.C. has never adequately explained to its members how capital credits would be handled with respect to customers who would be transferred to U.E., except perhaps to some extent by word-of-mouth. Most of B.R.E.C.'s efforts have been designed in such a way as to require its members to take action to further their inquiries, for example by calling the cooperative or attending a meeting and stopping by an information booth. The Commission finds that customers are entitled to find out how they will be affected by a proposed territorial agreement without further effort on their part.

In its initial brief B.R.E.C. suggests that the Commission grant the requested relief conditioned upon specific notification of certain information to customers affected by the Territorial Agreement. The Commission will do so. The Commission finds that further notification should be given to those customers to be transferred under the Territorial Agreement, regarding how they will be affected under the agreement, including the method with which capital credits will be dealt. The Commission is cognizant of the fact that the notification will essentially be an after-the-fact notification, and recognizes that it could be nothing else given that B.R.E.C. did not provide adequate notice prior to the filing of the application for approval or after the Commission's original Report And Order was issued. However, the Commission finds no purpose to be served in delaying implementation of the Territorial Agreement on this basis.

While the Commission now finds that the Territorial Agreement as modified by this Report And Order On Rehearing is not on balance detrimental to the public interest, the Commission has reservations about



how territorial agreements involving the involuntary transfer of large numbers of customers are handled. The Commission is very concerned with maintaining public confidence in both the cooperative and regulatory systems and their processes. Thus, the Commission is of the opinion that in the future electric suppliers who enter into territorial agreements which will involve massive switches in customers should provide affected customers with a process for a direct voice or input into the transaction, regardless of whether such input is otherwise legally required by bylaws or any other mechanism.

Thus, with respect to the issue of the effect of the Territorial Agreement on transferred customers, the Commission finds that the restrictions on B.R.E.C.'s ability to pay out capital credits, and B.R.E.C.'s serious consideration of a change in its method of returning capital credits which would combine first-in, first-out plus a percentage of the whole, mitigates the Commission's concerns regarding the issue of capital credits, but that further notification of the transferred customers is necessary.

**F. 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.

U.E. seeks a limited waiver of 4 CSR 240-13.050(2)(A), which essentially provides that the failure of a customer to pay for merchandise, appliances, or services not subject to commission jurisdiction as an

integral part of the utility service provided by a utility shall not constitute sufficient cause for a utility to discontinue service. At the hearing U.E. explained that there was concern that those customers whose electric supplier would change might have no incentive to pay the final bill to their prior supplier. U.E. claimed that a limited waiver to allow disconnection of customers who do not pay their bills to the opposite supplier would give the suppliers some ability to collect the final bill. The Commission finds that in the context of this Territorial Agreement, with its swap of territory between suppliers, a limited waiver of the Commission's rule is warranted. The Commission will thus grant a limited waiver of 4 CSR 240-13.050(2)(A), restricted to those customers being exchanged between B.R.E.C. and U.E. However, the Commission cautions that the waiver should not be applied where a customer genuinely cannot pay the final bill all at once but can meet terms under a reasonable payment plan.

Applicants also request authority to change the electric supplier of those customers located in the service areas which will be traded between U.E. and B.R.E.C. A change of supplier may be authorized where it is in the public interest for a reason other than a rate differential. The Commission finds that the change in suppliers as part of the Territorial Agreement is in the public interest because the change will help maintain adequate service for all affected customers, will help eliminate existing and prevent future duplication of facilities, and will promote efficiency and safety. In addition, the Commission finds that the rates of U.E. and B.R.E.C. are comparable, and as such, the purpose of the change in suppliers is for a reason other than a rate differential.

**G. 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 both the addendum language proposed by Applicants in late-filed Exhibit 10, and the substitute language proposed by Staff in Exhibit 16, is unacceptable. The Commission further finds that in the event Paragraph 7 of the Territorial Agreement is reformed in conformity with this Report And Order On Rehearing, the case-by-case addendum would not be detrimental to the public interest. With respect to the language originally contained in late-filed Exhibit 10 and in Exhibit 16, the Commission reiterates that it does not consider itself bound by the efforts of contracting parties to dictate internal Commission operating procedure.

In addition, the Commission also finds that its concerns regarding the issue of capital credits have been addressed by the additional testimony regarding restrictions on B.R.E.C.'s ability to pay out capital credits and B.R.E.C.'s serious consideration of a different method of returning capital credits which would combine first-in, first-out with a percentage of the whole. The Commission further finds that notification of members to be transferred is still necessary to fully explain to the members the effect of the transfer on them, particularly with respect to the capital credits issue. Furthermore, the Commission finds that in the future territorial agreements which contemplate a large swap in customers should provide affected customers with input into the decision-making process.

Finally, the Commission finds that the proposed Territorial Agreement in total, as modified by this Report And Order, would not be detrimental to the public interest. However, the Commission finds that its approval of the Territorial Agreement must be conditioned upon the filing by the Applicants of a final version of the Territorial Agreement incorporating the modifications contained herein, and by the notification by B.R.E.C. of the members proposed to be transferred by the agreement regarding the effect of the agreement on them.

**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. At the time of the Commission's original Report And Order, the city had not yet voted on the

franchise, but the issue was scheduled for a vote on November 7, 1995. Evidence was presented at the rehearing that the voters approved the franchise, and U.E. was granted a franchise by the City of Viburnum.

In prefiled testimony Staff witness McDuffey stated that the certificate application is dependent upon the Commission's approving the proposed Territorial Agreement. The Commission finds that the requested waiver of portions of the Commission's rule on certificates is reasonable and should be granted. No feasibility study is necessary since the facilities U.E. will use to provide service are extant, and the other information has previously been provided and is available to the Commission. The application is otherwise in appropriate form. Since the Commission finds the Territorial Agreement to be not detrimental to the public interest, the Commission also finds that the application for a certificate of convenience and necessity, which is necessary for the implementation of the Territorial Agreement, is in the public interest.

### III. Case No. EM-96-6

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. Testimony was presented at the hearing that while B.R.E.C. owns its own distribution facilities, the transmission facilities used by it to serve its customers are owned by M&A Electric Cooperative. The purpose of the sale is to avoid having either U.E. or B.R.E.C. serve customers using facilities hooked up to someone else's transmission system.

Counsel for U.E. stated that the transfer of facilities would not go forward unless it could proceed with the entire transaction. Since

this transaction is necessary to implement the Territorial Agreement, and since the Commission finds the Territorial Agreement to be not detrimental to the public interest, approval of this application for sale of assets would also be not 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.

#### I. 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 not detrimental to the public interest and should be approved.

The Applicants have requested that the Commission authorize the change of suppliers necessary to effectuate the Territorial Agreement. Section 393.106.2 RSMo, § 394.080.5 RSMo, and § 394.315.2 RSMo authorize the Commission to approve a change of supplier when the change is in the public interest for a reason other than a rate differential. Based on the findings the Commission has made regarding the Territorial Agreement, the Commission concludes that the requested change of suppliers is in the

public interest for a reason other than a rate differential. The Commission notes that in an ordinary change of supplier case, many of the factors to be balanced are similar to those which have been discussed in the context of this case, such as the ability of the supplier to provide adequate service, cost and safety benefits or detriments, duplication of facilities, effect on a territorial agreement, and so on. See **Re the application of Martin J. Sinclair**, Case No. EO-95-165, Report And Order, issued September 5, 1995, at 9-10. The Commission also notes that the applicable statutes exempt territorial agreements approved under § 394.312 from the exclusive right to serve certain structures granted to electrical corporations and rural electric cooperatives under the statutes.

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 good cause has been demonstrated.

**II. 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 not 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 convenient and necessary for the public interest and should be granted.

**III.**      **Case No. EM-96-6:**

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 not detrimental to the public interest, the sale of assets is likewise not detrimental to the public interest and should be approved.

**IT IS THEREFORE ORDERED:**

1. That late-filed Exhibit 10 is received into the record.
2. That the request for approval of a Territorial Agreement between Union Electric Company and Black River Electric Cooperative, Inc. similar to the Territorial Agreement attached to this Report And Order as Attachments A and B is approved in principal, as modified by this Report And Order, and subject to compliance with the requirements contained in the ordered sections below.
3. That Union Electric Company and Black River Electric Cooperative, Inc. are hereby directed to file with the Commission a complete, integrated copy of the Territorial Agreement containing the modifications required by this Report And Order.
4. That Black River Electric Cooperative, Inc. is hereby directed to provide notification of its members proposed to be transferred



under the Territorial Agreement regarding the effect of the agreement on them.

5. That Union Electric Company shall file revised thirty-day tariffs to reflect the changes in its territory pursuant to the Territorial Agreement.

6. That the actions required by Ordered Paragraphs 3 through 5 shall be completed by Union Electric Company and Black River Electric Cooperative, Inc. within thirty (30) days from the effective date of this Report And Order.

7. That the requests by Union Electric Company and Black River Electric Cooperative, Inc. for approval of a change of suppliers with respect to the customers to be transferred under the Territorial Agreement are hereby granted.

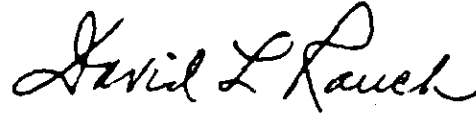
8. That Union Electric Company is hereby granted a limited waiver from the provisions of 4 CSR 240-13.050(2)(A).

9. 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 hereby granted, effective as of the effective date of the tariffs required to be filed pursuant to Ordered Paragraph 5 above.

10. 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 hereby granted.

11. That this Report And Order shall become effective on  
April 2, 1996.

BY THE COMMISSION

A handwritten signature in cursive script that reads "David L. Rauch".

David L. Rauch  
Executive Secretary

(S E A L)

McClure, Kincheloe, Crumpton,  
and Drainer, CC., Concur and  
certify compliance with the  
provisions of Section 536.080,  
RSMo 1994.  
Zobrist, Chm., Not Participating.

Dated at Jefferson City, Missouri,  
on this 22nd day of March, 1996.

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. Adams  
Title: Vice President

ATTEST:

Sh Waters  
Ass't. Secretary

BLACK RIVER  
ELECTRIC COOPERATIVE

By R E. Jones  
Title:

ATTEST:

William D. Cristofano  
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:

W. L. Waters  
Asst. Secretary

BLACK RIVER  
ELECTRIC COOPERATIVE

By Stephen Dees  
Title: President

ATTEST:

William D. Cagle  
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