

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY**

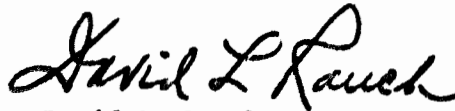
February 8, 1995

CASE NO: EO-95-151

**David C. Linton, Attorney, Union Electric Company, 1901 Chouteau Ave.,
P.O. Box 149(M/C 1310), St. Louis, MO 63166
Rodric A. Widger, Stockard, Andereck, Hauck, Sharp & Evans, 111 S.
Glenstone, P.O. Box 4929, Springfield, MO 65808-4929**

Enclosed find certified copy of ORDER in the above-numbered case(s).

Sincerely,



**David L. Rauch
Executive Secretary**

Uncertified Copy:

**Office of the Public Counsel, P.O. Box 7800, Jefferson City, MO 65102
Larry D. Merry, District Manager, Union Electric Company, 101 Madison
Street, P.O. Box 780, Jefferson City, MO 65101
Donald L. Clark, Manager, Laclede Electric Cooperative, 1000 E. Seminole
Road, P.O. Box M, Lebanon, MO 65536**

UE is an electrical corporation rendering electric utility service and is regulated by the Public Service Commission of Missouri. Laclede is a Chapter 394 cooperative corporation engaged in distribution of electric energy and service to its members within Camden County, Missouri. The Applicants have specifically designated the boundaries of the exclusive electric service area of each electric service supplier for service of new structures in portions of Miller and Camden Counties within their Territorial Agreement. There are no municipal electric supply systems operated within the area covered by the agreement but there exists several rural electric cooperatives in this area which are:

Southwest Electric Cooperative serving Camden, Benton, Hickory, Polk, Greene and Dallas Counties;

Gascoage Electric Cooperative serving Camden, Miller, Maries, Phelps and Pulaski Counties;

Co-Mo Electric Cooperative serving Benton, Morgan, Moniteau, Cooper and Cole Counties; and

Three Rivers Electric Cooperative service Morgan, Miller, Cole, Osage, Maries, Franklin and Gasconade Counties.

On November 18, 1994, the Commission issued an Order and Notice and Procedural Schedule in this case directing that any party wishing to intervene shall do so not later than December 19, 1994. There were no requests for intervention and the case proceeded to evidentiary hearing on January 26, 1995.

On January 25, 1995, Laclede submitted a letter to the Commission via telefax in which it stated its intention to appear at the hearing without its witnesses. Laclede's letter indicated that all the parties to this case have arrived at a mutual agreement which removed the necessity of cross-examination. This would not, however, remove the necessity of having witnesses present in the event that the Commissioners wished to ask questions of those witnesses.

At the commencement of the hearing, the Public Counsel stated that it had reviewed the filings in this case and wished to waive presentation of evidence, cross examination and briefing in this case and further requested leave of the Commission to be excused from the proceeding. Public Counsel was excused and thus is no longer a party herein.

The parties marked for the record Exhibit No. 1 which consisted of the Direct Testimony and Schedules of Larry Merry on behalf of Union Electric Company; Exhibit No. 2 which consisted of the Direct Testimony and Schedules of Donald L. Clark on behalf of Laclede and Exhibit No. 3 which contained the Rebuttal Testimony of B. J. Washburn on behalf of the Commission Staff. These exhibits were admitted into evidence without objection.

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.

The agreement in this case establishes a boundary line through the Lake of the Ozarks, through Linn Creek and continues with an east/west line through Camden County and a very small portion of Miller County. Laclede serves in Camden County to the south of the proposed line and Union Electric serves in Camden and a portion of Miller County to the north of the proposed line. The parties identified approximately four (4) exceptions wherein UE serves individual customers south of the proposed territorial line and the parties further stated that UE would continue to serve those customers. The primary purpose of the Territorial Agreement is to prevent future duplication of utility services and in doing so to

prevent unnecessary duplication of production capacity.

The Commission finds that this Territorial Agreement would prevent unnecessary overlapping of services for two (2) competing suppliers at a point in time before these suppliers have scattered their facilities throughout the overall territory and prior to their duplicating the resources of the other company. This agreement should allow greater certainty for planning by each company as to the investments required to serve their respective utility customers.

The Territorial Agreement filed in this case is essentially the same agreement which the Commission rejected in Case No. EO-94-322 due to the presence of "case-by-case exceptions." The parties had hoped those exceptions could vary, that is to say that they would allow one party to serve in the territory of the other party, without Commission approval. The provisions and potential application of the case-by-case exception as contained in that agreement were found to be detrimental to the public interest and potentially a violation of §394.312, RSMo 1994. The Commission finds the provisions regarding the case-by-case exceptions which were rejected in the prior filing of this Territorial Agreement have been resolved herein by virtue of an addendum which provides for Commission review and this addendum was uniformly supported by Staff and all parties herein.

Although there was not a Stipulation and Agreement filed in this docket the Commission finds that all the parties herein were unanimous in their support for the Territorial Agreement and each party to the hearing specifically waived any objection to the admission of evidence and also waived their opportunity to cross examine the witnesses. The parties to this hearing also waived their rights to oral argument and the filing of writs or briefs pursuant to 536.080 RSMo 1994 and other similar

provisions. In light of the various waivers and the absence of live testimony presented from the witness stand, the parties were asked if it was their position that this hearing complied with the requirements for hearing as found in §394.312 of the Statute. Each of the parties clearly supported and accepted the hearing herein as satisfaction of the statutory requirements.

The Commission finds that the Territorial Agreement herein is not detrimental to the public and that it is in the public interest and should be approved as filed.

CONCLUSIONS OF LAW

The Missouri Public Service Commission has arrived at the following conclusions of law.

(1) The territorial agreement herein under consideration was filed pursuant to §394.312, RSMo 1994. Pertinent sections therein require that:

The commission shall base its final determination upon a finding that the commission's designation of electric service areas is in the public interest.

The commission may approve the application if it shall after hearing determine that approval of the territorial agreement in total is not detrimental to the public interest.

The Commission concludes that the territorial agreement filed by UE and Laclede in total is not detrimental to the public interest.

(2) The Commission concludes that the requirement for a hearing as required by §394.312 RSMo 1994 is satisfied when a hearing has been convened and evidence has been adduced on the record.

IT IS THEREFORE ORDERED:

1. That the Territorial Agreement between Union Electric Company and Laclede Electric Cooperative, Inc. is hereby authorized and

approved.

2. That Union Electric Company shall file revised tariff sheets within thirty (30) days after the date of this order to comply with the Territorial Agreement authorized herein.

3. That this Report and Order shall become effective on February 9, 1995.

BY THE COMMISSION

A handwritten signature in black ink, reading "David L. Rauch". The signature is written in a cursive, flowing style.

David L. Rauch
Executive Secretary

(S E A L)

Dated at Jefferson City, Missouri,
on this 8th day of February, 1995.

Belmont / Harding

CASE NO. EO-95-151

AC
Chairman
KW *ps 1, 2*
Commissioner
JWP
Commissioner
CH
Commissioner
CH
Commissioner

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STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 8th day of February, 1995.

David L Rauch
David L. Rauch
Executive Secretary