

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of)	
JERRY WEST and SHARON WEST)	
to Change the Electrical Supplier for)	Case No. EO-2009-0272
Part of their Property)	

STAFF RESPONSE TO APPLICANTS' MOTION FOR LEAVE TO AMEND APPLICATION

COMES NOW Staff (Staff) of the Missouri Public Service Commission (Commission) and, for its response to Applicants' Motion to Leave to Amend Application, respectfully states as follows:

1. This case commenced on November 14, 2008, when Jerry and Sharon West filed a *Formal Complaint* with the Commission seeking for Cuivre River Electric Cooperative (CREC) to be the permanent electric service provider to all structures on approximately six acres of property located at 7331, 7333, and 7335 Weldon Spring Road, Dardenne Prairie, Missouri (hereinafter Property). The Property consists of a newly constructed residential home and new caretaker home, two dog kennels, and a business office. The new residential home replaced an existing residential structure CREC served. Presently CREC provides permanent electric service to the longstanding structures on the Property and the rebuilt home and provides temporary electric service to the new home per an agreement with Union Electric Company d/b/a/ AmerenUE (AmerenUE).

2. On June 1, 2009, the Commission granted intervention by WIK, L.L.C., which is wholly owned by the West's, because it owns the structures at 7331 and 7333 Weldon Springs Road; the West's own the structure at 7335 Weldon Springs Road.

3. On July 30, 2009, Jerry and Sharon West, and WIK, L.L.C. (collectively Applicants) filed notice of partial dismissal of the *Complaint*. The partial dismissal left only the property located at 7331 Weldon Springs in issue.

4. On September 10, 2009, Applicants filed a *Motion for Leave to Amend Application*. Despite the intervening notice of partial dismissal, the proposed First Amended Application incorporates the allegations of the *Complaint* as filed on November 14, 2008, and seeks to expand that *Complaint* to include allegations that the 1992 Territorial Agreement (TA) between AmerenUE and CREC that formed a basis of their complaint is no longer in the public interest.

5. As Staff stated in its March 20, 2009 recommendation;

The Commission's authority with regard to territorial agreements is to determine in the first instance whether they are not detrimental to the public interest and, upon complaint, whether circumstances have changed such that the territorial agreement is no longer in the public interest; therefore, the Commission does not have the authority to determine if AmerenUE is being unreasonable in this matter. § 394.312 RSMo; *State ex rel. Ozark Border Electric Cooperative v. Public Service Commission of Missouri*, 924 S.W.2d 597 (Mo. App. 1996). In 1993, by approving the TA, the Commission granted AmerenUE the authority to be the supplier of electrical service to the Property and found that the TA was not detrimental to the public interest. *In the matter of the application of Union Electric Company and Cuivre River Electric Co-op, Inc., for approval of a written territorial agreement designating the boundaries of each as electric service supplier within a portion of St. Charles, County, Missouri*, Vol.2 MPSC 3d. 110 Case No. Eo-93-166 (Report and Order, decided March 5, 1993). To allow CREC to serve the new structures would increase the lack of uniformity of service providers in the service area designated exclusive to AmerenUE in the TA rather than encourage the duplication of facilities in that area which is significant near the Property as shown by the photographs and description in Appendix A.

6. In their motion, Applicants assert they have “discovered an additional basis for this Commission to grant a change of electrical supplier in this matter as there exists a substantial change in circumstances such that the Territorial Agreement between AmerenUE and Cuivre

River Electric Cooperative, Inc. is no longer in the public interest.” Review of the proposed amended application reveals the additional basis is:

[N]either the parties to the Territorial Agreement nor the Commission anticipated the scenario at issue in the case at bar and the hardship caused to the public when a property owner erects an additional structure on the same parcel of property where the owner is already serviced by one supplier but is now subject to having multiple suppliers on the property.

7. Staff disagrees that this allegation, if true, is a change in circumstances.

Regardless, Staff believes the allegation is refuted by the terms of the TA itself. The following definition is found in the TA:

(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 aw 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 servicer has been request. (emphasis added).**

AmerenUE, CREC and the Commission understood when entering into and approving a territorial agreement that particular customers might have different electric service providers to the same parcel of property, but that the public interest in displacing competition in areas agreed to by providers of electricity outweighed that possible result. Moreover, the result of having multiple providers to this parcel may be resolved by AmerenUE being the provider of electric service to all the structures on the parcel.

8. “Competition to provide retail electric service, as between rural electric cooperatives, electrical corporations and municipally owned utilities may be displaced by written territorial agreements. . .”. § 394.312 RSMo¹; 4 CSR 240-3.140.

9. The Commission’s authority is limited to what powers are conferred upon it by statute. *Utilicorp United Inc., v. Platte-Clay Electric Co-op*, 799 S.W.2d 108, 109

¹ All statutory references are from the 2000 edition unless otherwise noted.

(Mo.App.WD. 1990); *State ex. rel. Utility Consumers Council of Missouri, Inc. v. PSC*, 585 S.W.2d 41, 49 (Mo. banc. 1979). Statutes shall be interpreted by the plain language contained within the text of the statute. § 1.090 RSMo. Section 394.312.4 and 394.312.5 expressly give the Commission the authority to approve a territorial agreement after holding an evidentiary hearing if it concludes that the territorial agreement is not detrimental to the public interest. The Commission held an evidentiary hearing and approved the TA between CREC and AmerenUE pursuant to their statutory authority by its *Report and Order* in Case No. EC-93-166.

10. The Commission's authority with regard to territorial agreements is to determine in the first instance whether they are not detrimental to the public interest and, upon complaint, whether circumstances have changed such that the territorial agreement is no longer in the public interest. § 394.312 RSMo; *State ex rel. Ozark Border Electric Cooperative v. Public Service Commission of Missouri*, 924 S.W.2d 597 (Mo. App. 1996). In 1993, by approving the TA, the Commission granted AmerenUE the authority to be the supplier of electrical service to the Property and found that the TA was not detrimental to the public interest.²

11. It is Staff opinion that if TA is ended by the Commission for no longer being in the public interest, the basis the Applicants rely on for CREC being able to provide service to the new structures on the parcel would also cease.

12. Applicants are the owners of the Property located at 7333 Weldon Spring Road, Dardenne Prairie, Missouri, Saint Charles County 63368 which they acquired in 1997. Dardenne Prairie was incorporated on October 20, 1981. The Property was annexed into the city on October 29, 1985. Dardenne Prairie, Mo., Ordinances § 61 (1985). According to the 1990 official United States decennial census report Dardenne Prairie's population was 1,769

² *In the matter of the application of Union Electric Company and Cuivre River Electric Co-op, Inc., for approval of a written territorial agreement designating the boundaries of each as electric service supplier within a portion of St. Charles, County, Missouri*, Vol.2 MPSC 3d. 110 Case No. Eo-93-166 (Report and Order, decided March 5, 1993).

and according to the 2000 official United States decennial census report, Dardenne Prairie's population was 4,384.³ In April 2001 the town of Dardenne Prairie became a Fourth Class City pursuant to § 79.010 RSMo.

13. A further look into the nature of the Property shows that it is located in a municipality. Rural Electric Cooperatives have the statutory authority to serve in "Rural Areas." § 394.030 RSMo. CREC is a rural electric cooperative subject to chapter 394 RSMo. A "rural area" is defined as "any area of the United States not included within the boundaries of any city, town or village having a population in excess of fifteen hundred inhabitants . . ." § 394.020(2) RSMo. The population of Dardenne Prairie is greater than 1,500 people.

14. Therefore, if the TA agreement is no longer in the public interest, CREC does not have the authority to serve within the city limits of Dardenne Prairie because the city is not a "rural area" required by statute for a electric cooperative to serve and has not been granted a franchise agreement with the city.

WHEREFORE, Staff respectfully responds to the Applicants' *Motion for Leave to Amend Application*.

³ United States Census Bureau, <http://factfinder.census.gov> (last visited Feb. 19, 2009).

Respectfully submitted,

/s/ Jaime N. Ott

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 21st day of September, 2009.

/s/ Jaime N. Ott