

MEMORANDUM

TO: Missouri Public Service Commission Official Case File No. EO-2012-0047,
Territorial Agreement Between Black River Electric Cooperative and the City
of Fredericktown

FROM: Daniel I. Beck, Energy Department – Engineering Analysis

/s/ Daniel I. Beck 10/04/11
Energy Department / Date

/s/ Nathan Williams 10/04/11
General Counsel's Office / Date

Subject: Staff Recommendation

Date: October 4, 2011

OVERVIEW

On August 11, 2011, Black River Electric Cooperative and the City of Fredericktown filed a Joint Application with the Missouri Public Service Commission seeking approval of a Territorial Agreement between them to make, as between them, each the exclusive provider of retail electric service in areas in and about Fredericktown. On September 27, 2011 they filed a First Addendum to the Territorial Agreement which incorporated changes to the original agreement the Commission's Staff had suggested. The only change the addendum makes is to state that Fredericktown has no authority to provide retail electric service to the area allocated to it in the agreement that is beyond its corporate boundaries, except that which the agreement gives to it.

DISCUSSION

The Joint Application describes areas in and about Fredericktown where, between Black River and Fredericktown, each is to be the exclusive electric retail service provider, and includes a map of the areas. The area inside the boundary shown on the map is exclusive to Fredericktown, the remainder is exclusive to Black River. The Joint

Application states that Black River serves members outside the areas defined in the Territorial Agreement, and that the terms of the agreement do not affect Black River's authority to serve retail electric customers in areas not addressed in the agreement.

Although in most of Fredericktown the city will serve new structures, this agreement will allow Black River to serve new structures in several areas inside Fredericktown. Since Fredericktown's population is greater than fifteen hundred (1,500) inhabitants, Black River could not provide retail electric service to new structures inside Fredericktown, absent this agreement. In addition, there is one parcel of approximately 50 acres outside Fredericktown that this agreement makes exclusive to Fredericktown between Fredericktown and Black River. In the First Addendum to Territorial Agreement Black River and Fredericktown explain that "this parcel of land is currently used for agricultural purposes and there is no structure on it that receives retail electric service." Additionally, the addendum states, "except to the extent permitted by Section 386.800, RSMo., this FIRST TERRITORIAL AGREEMENT does not authorize FREDERICKTOWN to provide electric service outside its corporate boundaries."

Based on advice of counsel, Staff understands that the most compelling interpretation of the applicable statute is that Fredericktown must annex this parcel before it may lawfully provide retail electric service to structures located there. This understanding is discussed in the cover pleading to which this Memorandum is attached. In addition, based on discussions with Fredericktown, it is Staff's understanding that Fredericktown currently has no plans to serve this parcel unless it is annexed.

Black River and Fredericktown state in their Joint Application that their agreement will:

- Eliminate or reduce duplication of facilities, reduce the waste of resources and customer costs;
- Allow customers to know with certainty the supplier of their electric service; and
- Make the most efficient and effective use of past investment in substation and distribution facilities while avoiding the necessity of duplicative investments.

The Joint Application and the Territorial Agreement both refer to the wrong date for when the Commission approved a territorial agreement between Black River and AmerenUE. Both refer to that date as September 18, 1986. The correct date is September 18, 1996. The agreement between Black River and AmerenUE has no direct bearing on this agreement, but having recognized the error Staff wishes to correct it.

STAFF RECOMMENDATION

The Staff recommends the Commission find that, in total, the Territorial Agreement as amended by the First Addendum is “not detrimental to the public interest” per 393.312.4, RSMo. While it is clear that getting new service to the 50-acre parcel described above is complicated by this agreement, it is Staff’s opinion that those complications are not overly burdensome. In addition, if a customer desired to do so, a customer would have the option of filing a complaint with the Commission seeking revocation or suspension of the territorial agreement at the time new service was requested. The parties have the ability to amend the agreement and seek approval of that Addendum with the Commission. While the issue of serving the 50-acre parcel could be

considered a detriment, it is Staff's opinion that there are significant benefits that are in the public's interest by the Commission approving this agreement. This parcel is less than five percent (5%) of the area reserved to Fredericktown. There are several areas where Black River has made significant investment in distribution facilities that make it the most economical provider of electric service within parts of Fredericktown. These parts include areas where development has taken place and is expected to take place in the future. Approval of this agreement will give Black River the ability to serve new members within part of Fredericktown (now and in the future), which it would not otherwise be able to serve. Staff also notes that both the municipal utility and the electric cooperative represent large segments of the public in the area near Fredericktown. These significant benefits, in total, outweigh the detriment of Black River now committing to not serve new members in the 50 acres outside Fredericktown that this agreement makes exclusive to Fredericktown between the two parties.

Neither Black River nor Fredericktown are required to provide annual reports or assessments to the Commission, and they have paid the filing fee required by 4 CSR 240-3.130(3).

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

In the Matter of the Application of Black)
River Electric Cooperative and the City of)
Fredericktown, Missouri for Approval of a)
Written Territorial Agreement)

File No. EO-2012-0047

AFFIDAVIT OF DANIEL I. BECK

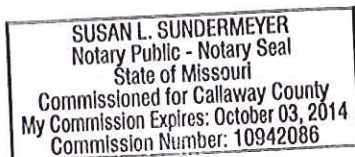
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Daniel I. Beck, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was provided to him; that he has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of his knowledge and belief.



Daniel I. Beck

Subscribed and sworn to before me this 4th day of October, 2011.




Notary Public