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July 31, 2003

FILED⁴

JUL 31 2003

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Secretary of PSC
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Missouri Public
Service Commission


Re: *EO-2004-0071*
Case No. ~~EM-2004-0071~~
**In the Matter of the Joint Application of City of Thayer, Missouri and
Howell-Oregon Electric Cooperative, Inc. for an order approving proposed
Territorial Agreement**

Dear Secretary:

Enclosed please find an original and eight copies of the Motion for Leave to Supplement Notice of Addendum to Approved Territorial Agreement in the above cited case.

Thank you for seeing this filed. If you should have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Lisa Cole Chase

LCC:sw

Enc.

Cc: Michael Dandino
Dan Joyce
Harvey Allen

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED⁴

JUL 31 2003

In the matter of the Joint Application
of City of Thayer, Missouri and Howell-Oregon
Electric Cooperative, Inc. for an order approving
proposed Territorial Agreement.

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Missouri Public
Service Commission

EO

) Case No. EM-2004-0071

**MOTION FOR LEAVE TO SUPPLEMENT NOTICE OF ADDENDUM TO APPROVED
TERRITORIAL AGREEMENT**

COMES NOW Howell-Oregon Electric Cooperative, Inc. by and through it's counsel of record and hereby files its Motion for Leave to Supplement its Notice of Addendum to Approved Territorial Agreement states as follows:

1. On July 30, 2003, Howell-Oregon filed its Notice of Addendum to its Approved Territorial Agreement with the City of Thayer, Missouri.
2. That Notice referenced two Attachments, a copy of the Addendum being noticed and a copy of the Territorial Agreement to which the Addendum applies. Counsel for Howell-Oregon inadvertently failed to attach copies of these two attachments.
3. Howell-Oregon attaches hereto a copy of the Addendum No. 1 to its Territorial Agreement with the City of Thayer, Missouri, and a copy of its Territorial Agreement which was approved by the Commission in Case No. EM-92-157 in supplement to its Notice of Addendum to Approved Territorial Agreement.

WHEREFORE, Howell-Oregon requests the Commission grant leave for the Notice of Addendum to Approved Territorial Agreement to be supplemented with the Addendum No. 1 and Territorial Agreement attached hereto.

Respectfully Submitted,

**ANDERECK, EVANS, MILNE, PEACE
& JOHNSON L.L.C.**

By 

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**ATTORNEYS FOR HOWELL-OREGON
ELECTRIC COOPERATIVE, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served on all Parties of Record, via first-class U.S. Mail, postage prepaid, on this 31 day of July, 2003.

General Counsel
Office of the Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102

General Counsel
Missouri Public Service Comm'n
Governor Office Building
200 Madison Street – Suite 100
Jefferson City, Missouri 65101

Harvey Allen, Esq.
221 Chestnut Street
Thayer, Missouri 65791


Lisa Cole Chase

ADDENDUM NO. 1
TO THE
TERRITORIAL AGREEMENT

Between

CITY OF THAYER, MISSOURI

and

HOWELL-OREGON ELECTRIC COOPERATIVE, INC.

ADDENDUM NO. 1 TO THE TERRITORIAL AGREEMENT

This Agreement is made and entered into as of the 21st day of APRIL, 2003, by and between CITY OF THAYER, MISSOURI (hereinafter "City") and HOWELL-OREGON ELECTRIC COOPERATIVE, INC. (hereinafter "Cooperative").

RECITALS

- A. City is authorized by law to provide municipally owned electric service within the City of Thayer, State of Missouri;
- B. Cooperative is authorized by law to provide electric service within the State of Missouri, including all of Oregon County;
- C. The Missouri Legislature by RSMo Section 394.312 2000, has authorized municipally owned utilities and rural electric cooperatives to enter into written territorial agreements;
- D. On February 9, 1992, City and Cooperative entered into a written territorial agreement designating the boundaries of each Applicant's exclusive service area for existing and new structures in the City of Thayer, Missouri (the "Territorial Agreement", **attachment No. 1**) and said agreement was approved by the Missouri Public Service Commission ("Commission") in Case No. EM-92157 by Report and Order filed on February 28, 1992.
- E. Now, City and Cooperative desire to transfer the electric service of the Thayer High School from City to Cooperative at the request of the Thayer R-II School District. (**Attachment No. 2**, 02-03-03 letter from Thayer R-II School District). Thayer R-II School District is in the process of building a new elementary school near the existing Thayer High School and would prefer to have one utility supply electric service to these two structures. On January 14, 2003, at the Thayer City Council Regular Meeting, the Aldermen voted to approve the release of the Thayer High School electric services in an effort to do what is in the best interest of the Thayer School system (**attachment No. 3**, 01-30-03 letter from Mayor Deckard); and
- F. City and Cooperative desire to establish exclusive service for any new structures and the existing the structures of the Thayer R-II School District which are located on 35 acres on East Highway 142. This transfer will promote efficiencies in providing services to the Thayer R-II School District, it requires no duplication of electric service facilities as Thayer High School borders the existing Territorial Agreement boundaries, the Cooperative presently has facilities located near the School from which it could provide electric service, and the Thayer R-II School District in constructing new buildings will benefit from the Cooperative's ground source heat pump rebate program. The exchange of this facility and customer will aid both Applicants in the consolidation of facilities and bring efficiencies and savings to the Thayer R-II School District. The Addendum No. 1 to the Territorial Agreement will also allow emergency personnel to know with certainty

the supplier of electric service to the different structures of the Thayer R-II School District.

AGREEMENT

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree to the following modification of the Territorial Agreement entered into on February 9, 1992 as follows:

1. Pursuant to paragraph 8 of the Territorial Agreement, the Parties "may agree in writing on a case-by-case basis to allow any structure to receive service from one party even though the structure is located in the territory of the other party. Each such instance will be treated as an addendum to this Agreement and a copy of the addendum supplied to the Public Service Commission."
2. Pursuant to paragraph 8, the City and Cooperative hereby exercise their option under their Territorial Agreement to transfer the right to be the exclusive electric service provider to an elementary building being constructed by Thayer R-II School District and any other buildings to be built on approximately 35 acres of property owned by the Thayer R-II School District located on East Highway 142. This transfer will promote efficiencies in providing services to the Thayer R-II School District, it requires no duplication of electric service facilities as Thayer High School borders the existing Territorial Agreement boundaries, the Cooperative presently has facilities located near the School from which it could provide electric service, and the Thayer R-II School District will benefit from the Cooperative's ground source heat pump rebate program. The parties further agree to transfer, upon receiving the appropriate Missouri Public Service Commission approval, the electric service from the City to Cooperative for the Thayer High School. This addendum and the exchange of the Thayer High School will aid the City and

Cooperative in the consolidation of facilities and bring efficiencies and savings to the Thayer R-II School District. The Addendum No. 1 to the Territorial Agreement will also allow emergency personnel to know with certainty the supplier of electric service to the different structures of the Thayer R-II School District.

3. The parties agree to undertake all actions reasonably necessary to implement this Agreement. Cooperative will pay the cost of obtaining administrative approval of the proposed Customer Exchange. Each party will cooperate in presenting a joint application showing such Customer Exchange Agreement to be in the public interest. If the Public Service Commission does not approve the Customer Exchange, then it shall be nullified and of no legal effect between the parties, and the Cooperative shall continue to have the right to serve all new structures which are built and located on 35 acres of the Thayer R-II School District, located on East Highway 142.

4. This Addendum No. 1 shall be binding upon the parties and all subsidiaries, successors in interest and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement this 21st day of

APRIL, 2003.

CITY OF THAYER

By: [Signature]

Mayor

ATTEST: [Signature]

HOWELL-OREGON ELECTRIC
COOPERATIVE, INC.

By: [Signature]

President

ATTEST: [Signature]

TERRITORIAL AGREEMENT

This Agreement is entered into between the City of Thayer, Missouri, hereinafter referred to as "City" and Howell-Oregon Electric Cooperative, Incorporated, hereinafter referred to as "Cooperative".

WHEREAS, Section 394.312 of the Revised Statutes of Missouri provides that competition to provide retail electric service as between rural electric cooperatives and municipally owned utilities may be displaced by written territorial agreements specifically designating the boundaries of the electric service area of each electric service supplier subject to said Agreement; and,

WHEREAS, City and Cooperative desire to promote the orderly development of the retail electric service system within the City of Thayer and the County of Oregon, Missouri, to avoid wasteful duplication and to minimize disputes which may result in higher costs in serving the public;

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

1. The electric service area of City is described in Exhibit 1 to this Agreement by metes and bounds and illustrated by the map marked Exhibit 2, both of which are hereby expressly incorporated herein by reference and made a part of this Agreement as fully as if set out herein verbatim.

2. City shall provide electric service to all those meter locations that it presently has and to all new meter locations for electric customers within its electric service area. Cooperative

acknowledges and agrees that as between the parties City shall have the sole and exclusive right to continue to service the electrical customers and locations City presently serves and all new or additional services within City's electric service area.

3. Except as otherwise stated herein, the electric service area of Cooperative shall be all of that portion of Oregon County, Missouri, not reserved to City at Exhibit 1 and Exhibit 2.

4. As of the date the Missouri Public Service Commission grants approval of this Agreement, the Cooperative will begin service to customers within the City limits of Thayer. If the City can provide adequate electric service to all of these customers plus any new customers within the City limits of Thayer which have been acquired by the Cooperative under the terms of this Agreement during a five (5) year period beginning with the date the Missouri Public Service Commission grants approval for the Cooperative to begin service to the original customers, then the Cooperative agrees to sell to the City these original customers plus any new customers which have been added during said five (5) year period. Described in Exhibit 3 of this Agreement are the original customers and facilities that will be transferred to the City if the City elects to exercise its option to purchase as provided herein. In addition to the facilities listed in Exhibit 3, other facilities necessary to serve new customers may also be transferred to the City. The facilities to be retained by the Cooperative within the City limits of the City of Thayer shall be only those necessary for Cooperative to serve customers located outside the City limits of

Thayer. The Cooperative shall be compensated for the customers by the City in the amount of \$648,000, less an amount equal to \$2,099 for each month for the first five years that the Cooperative has been the supplier of these customers plus the Cooperative shall be compensated by an amount equal to the Cooperative's work order installation cost, including labor, prorata share of overhead, and materials, less the straight line depreciation applied to additions, replacements and improvements to the facilities transferred to the City. It is the intent of the parties that if the City elects to purchase the customers that the purchase and transfer of the customers from the Cooperative to the City be completed within five (5) years from the approval of this Agreement by the Public Service Commission.

If the transaction cannot be completed within five (5) years the City will grant to the Cooperative an additional two (2) year term to serve the customers until the transaction can be completed. The purchase price shall be adjusted to provide that in addition to the compensation specified above the Cooperative will be compensated by the City for all amounts spent by the Cooperative in maintaining the facilities to be transferred to the City calculated according to the Cooperative's internal work order costing procedures, including labor, material and a prorata share of overhead. The deadline for transferring the customers may be extended for a maximum of 3 two (2) year terms. If the City exercises its option to purchase during the above defined five (5) year period, the City recognizes that this transfer of facilities

is subject to the approval of the Missouri Public Service Commission. Cooperative agrees to cooperate with City in filing a joint application for approval of the transfer, and Cooperative agrees to execute all necessary documents and otherwise cooperate in obtaining approval of the Missouri Public Service Commission. The parties agree that if the Missouri Public Service Commission does not approve the transfer of these facilities within five (5) years from the date of its approval of this agreement, or if the City is unable to accept transfer of all of the original customers, plus any new customers within the original five (5) year period or as it may have been extended by additional two (2) year periods; then the Cooperative shall have the right to continue to provide electric service to these customers, the additional customers as described above, any future customers, and any customers within the City's Service Area which the City is unable or unwilling to supply. If the City fails to exercise its option to buy the customers within the five (5) years or fails to accept transfer of all the customers within eleven (11) years, the Cooperative shall have the exclusive right as between the parties to serve the customers in the territory set aside to the Cooperative pursuant to this Agreement.

5. Upon City's written request, Cooperative shall provide street lighting to areas served by it within the City limits. City shall pay Cooperative for the street lighting Cooperative provides to areas within the City at the Cooperative's adopted rate for former AP&L customers at the date of this Agreement and from time

to time thereafter as amended by Cooperative, but in no event shall the rate charged to City exceed the highest rate for such services charged to other cities or municipalities served by Cooperative.

6. The Cooperative agrees to pay to the city, monthly, an amount equal to 5.5% of the Cooperative's gross receipts, less any taxes, fees, penalties and other charges or adjustments added to customer bills, from all Cooperative sales of electric energy (except sales for City use) in the City's incorporated limits during the previous billing period. Such payment shall be made by Cooperative from its general revenue for the first five years of this Agreement. City agrees that the Cooperative shall have the right to use City public rights of way in the same manner as other utilities. As between the parties, for any areas annexed by City after the date of this Agreement, if Cooperative does not serve any customers within the annexed area at the time of annexation, such annexed area shall be considered a part of the electric service area of City and City shall have the exclusive right to serve any customers within such annexed area. If Cooperative does serve customers within areas annexed by City after the date of this Agreement, any new structures after the date of annexation shall be served by City. If City is unable or unwilling to provide electric service to new structures in annexed areas then Cooperative may be the supplier upon City's written request for such service as provided in paragraph 8 below.

7. The parties agree that either party hereto may service its own facilities even if located within the service area of the

other party hereto except when such service would result in duplication of current services or other wasteful duplication of facilities.

8. Neither the boundaries described by this Agreement nor any term of this Agreement may be modified, repealed, or changed except by writing mutually approved by the respective governing bodies of the parties and by the Missouri Public Service Commission, except the City and Cooperative may agree in writing on a case-by-case basis to allow any structure to receive service from one party even though the structure is located in the territory of the other party. Each such instance will be treated as an addendum to this Agreement and a copy of the addendum supplied to the Public Service Commission.

9. The initial term of this Agreement shall be thirty-five (35) years from and after the date said Agreement is approved by the Missouri Public Service Commission. Thereafter, this Agreement shall automatically be renewed for successive five year terms unless either party hereto shall notify the other party in writing of its intent to terminate this Agreement at least one year in advance of any such renewal date.

10. The parties agree to undertake all actions reasonably necessary to implement this Agreement. Cooperative will pay the cost of obtaining administrative approval of this Agreement. Each party will cooperate in presenting a joint application showing such Agreement 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 affect 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, or void and the parties shall return to that status existing prior to this Agreement.

11. This Agreement shall be binding upon the parties and all subsidiaries, successors in interest and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement this 9th day of FEBRUARY, 1992.

CITY OF THAYER

By: Geraldine Brown
Mayor

ATTEST: Eugene Cherry
City Clerk

HOWELL-OREGON ELECTRIC
COOPERATIVE, INC.

By: Roger Williams
President

ATTEST: Don Proffitt

8

Agreement.

Exhibits 1, 2 and 3 will be late-filled with executed

EXHIBITS

Received Time Jan.28. 4:14PM