

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. EO-2009-0272, Application of Jerry and Sharon West to Change
the Electrical Supplier for Part of Their Property from AmerenUE to
Cuivre River Electric Cooperative

FROM: Alan J. Bax, Energy Department – Engineering Analysis

<u>/s/ Daniel I. Beck 03/20/09</u> Energy Department / Date	<u>/s/ Jaime Ott 03/20/09</u> General Counsel's Office / Date
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SUBJECT: Staff Recommendation

DATE: March 20, 2009

OVERVIEW

On September 25, 2008, Jerry and Sharon West (Applicants), owners of property at 7333 Weldon Springs Road, Dardenne Prairie, MO 63368, wrote an e-mail to the Missouri Public Service Commission (Commission). Upon receipt, the Staff of the Missouri Public Service Commission (Staff) initiated an *Informal Complaint* (C200901476) later the same day.

This e-mail, attached to this Memorandum as Attachment 1, which is highly confidential, describes the circumstances that have led to the present Application. Applicants report to have both their home and business on a six acre property. Their existing residence, along with two kennels, a barn and training facility are all currently receiving electric service from Cuivre River Electric Cooperative (CREC or Cooperative) (*see* Attachment 2). Applicants decided to tear down the existing residence and rebuild, and also add a second structure, described to be for the caretaker. They contacted CREC to inform them of their plans, presuming that CREC would be the electric service provider to these two new structures. However, CREC disclosed that they could not be

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the provider of electric service to these new structures, per the terms of a Territorial Agreement (TA), unless the Union Electric Company d/b/a AmerenUE (AmerenUE) agreed to allow CREC to provide this electrical service.

Applicants preferred to have CREC be the exclusive electric service provider to all structures on the property, therefore, they contacted AmerenUE to gain this permission. Applicants say that the TA gives AmerenUE the ability to allow CREC to provide electric service to all structures on the property including the two new homes. However, AmerenUE has not granted this authority. Applicants say that if AmerenUE provides service to the two new structures, this results in a split in the billing. In addition, Applicants assert that AmerenUE providing service would be cost prohibitive in the long run to AmerenUE, given that AmerenUE would need to bore underneath the street in front of their home (Weldon Springs Road) in its provision of service.

Staff contacted the Applicants, AmerenUE, and CREC regarding this *Informal Complaint* and confirmed the information contained in the e-mail. Unable to persuade AmerenUE to reconsider, Applicants desired to file a Formal Complaint per Code of State Regulations (4 CSR 240-2.070.3).¹ Staff closed the *Informal Complaint* on October 16, 2008 upon mailing the Applicants the desired materials on filing a Formal Complaint.

Applicants filed a *Formal Complaint* on November 14, 2008 (Case No. EC-2009-0193). Attachments to this filing included a copy of the TA, (Case No. EO-93-166), a sketch of their property noting location of the two new structures in relation to existing structures, and a letter received from CREC, which noted CREC's willingness to provide

¹ Section 4 CSR 240-2.070.3 states, in relevant part, that "...If a complainant is not satisfied with the outcome of the informal complaint, a formal complaint may be filed..."

the desired electric service to the two new homes should AmerenUE release them per the terms of this TA. Applicants noted the particular section of the TA that allows AmerenUE or CREC to serve a customer in the exclusive service territory of the other on a case-by-case basis. The Applicants state that their main concern is for safety in the event of a fire or other emergency. Applicants also state that having two different service providers does not make sense, that during an outage service could be restored at different times, and that this could hurt the resale value of the property.

AmerenUE filed an *Answer* on December 19, 2008, stating that it does not disagree with the Applicants' factual recitation, but for the assertion that AmerenUE would bore underneath Weldon Springs Road in its provision of service. AmerenUE acknowledges the authenticity of the copy of the TA included in the *Formal Complaint* filed by the Applicants. AmerenUE states that the provision of electric service to new structures built on this property is governed by the terms included in this TA and it intends to provide service to these two new structures in accordance with these terms. AmerenUE plans to tap its existing overhead distribution line across Weldon Springs Road and route a conductor over CREC's distribution line, setting a new pole and transformer on the Applicants' property in ultimately providing electric service to the two new structures. AmerenUE disagrees with the statement made by the Applicants in their *Formal Complaint* that having two electric service providers on this property is a safety concern. AmerenUE states it has other customers that are served by both AmerenUE and CREC, though this is not a common occurrence. Moreover, AmerenUE believes that there is no risk of confusion on which entity is serving which structure given that CREC

will be providing service to the kennels, while AmerenUE will be providing service to the homes.

AmerenUE recommended that the Commission dismiss the Applicants' *Formal Complaint*, or alternatively, have the Case converted into an Application requesting for a Change of Electric Service Providers. AmerenUE asserted that the *Formal Complaint* be dismissed as the Applicants did not allege that AmerenUE had violated any statute, regulation, tariff, order, or decision. Moreover, even if the *Formal Complaint* were converted into an Application Requesting to Change Electric Service Providers, AmerenUE recommended the Commission deny such a request.

On January 22, 2009, the Commission issued an *Order* that changed the nature of the original *Formal Complaint* Case (EC-2009-0193) to an Application requesting a *Change in Electric Service Providers* (EO-2009-0272). This *Order* also required CREC to file a *Response* to this Application.

CREC filed a *Response* on February 5, 2009. CREC's *Response* confirmed the contents of its letter dated October 15, 2008, a document that was included in the Applicants' *Formal Complaint*. CREC has provided electric service to all structures located at 7333 Weldon Springs Road, Dardenne Prairie, MO prior to March 5, 1993, the date that the Commission issued its Order in Case No. EO-93-166 approving a Territorial Agreement entered into between CREC and AmerenUE on October 30, 1992. Per the terms of this TA, all new structures built on this property would be served by AmerenUE by virtue of the property lying within the exclusive service territory of AmerenUE. Although the TA does allow CREC and AmerenUE to mutually agree to serve customers in the exclusive service area of the other, CREC reports not to have embarked on such an

agreement with AmerenUE to date. However, CREC noted that it is providing temporary service to the new structures, with AmerenUE's permission, until April 15, 2009.

The Cooperative is organized under Chapter 394 RSMo² to provide electric service to its members who are located in parts of five Missouri counties, including St. Charles County in which lies the Applicants' property that is the subject of this Case. Rural electric cooperatives, such as CREC, are subject to the jurisdiction of the Commission as specified in Chapter 394 and Section 386.800 RSMo. For the purpose of this Case, the Cooperative is subject to the jurisdiction of the Commission under Section 394.315.2, RSMo.³

AmerenUE is an electrical corporation subject to the jurisdiction of the Commission as specified, in part, by Chapters 386 and 393, RSMo. AmerenUE is the investor owned electrical corporation authorized to provide electricity to the property in and around the area that is the subject of this Application.

DISCUSSION

According to the terms of the applicable TA between AmerenUE and CREC and approved by the Commission in March 1993, this approximate six acre tract of land lies within the territory that AmerenUE has the right to serve as the exclusive provider of electric service to all newly built structures. Hence, AmerenUE would be the electric service provider to the two new structures Applicants were currently building and CREC

² All references to the RSMo are the 2000 edition.

³ Section 394.315.2 states, in relevant part, that "...The public service commission, upon application made by an affected party, may order a change of suppliers on the basis that is in the public interest for a reason other than a rate differential, and the commission is hereby given jurisdiction over rural electric cooperatives to accomplish the purpose of this section..."

would remain the lawful provider of electric service to the remaining existing structures on the property.

After visiting said property, Staff observed CREC and AmerenUE have existing facilities on either side of Weldon Springs Road, which runs in front of the Applicants' property (*see* attachment 3). In its current provision of service, CREC actually taps its line that is run under AmerenUE's line on joint use poles that lie along the West side of Henning Road. CREC's conductors are routed near the pond and over kennel #1 to a pole and transformer. AmerenUE plans to install another pole and transformer on the customer's property near the location of CREC's existing facilities, and tap its existing line that runs along the South side of Willow Springs Road and route a conductor over CREC's line to this transformer. The new structures are currently being fed underground; conduit and conductor have been placed to the location of CREC's temporary meter as depicted on aforementioned sketch.

Much exhaustive discussions typically take place between parties involved in preparing and formulating a TA prior to a filing with the Commission seeking a necessary approval. The reasons that are persuasive to parties in coming together and ultimately hammering out a TA include reducing duplicative facilities, given each party to the TA presumably would like to make the best use of its facilities for the benefit of their respective businesses and customer bases. Details of TAs may include customer exchanges and/or a transfer/purchase of assets in order to enhance a more efficient use of existing facilities and improve the planning of future installations/improvements. Particular areas are specified in which one party or another to the agreement is granted exclusive rights to serve new structures, that is, the parties agree to eliminate competition

amongst themselves for the betterment of each party and not to the detriment of the public's interest. Nonetheless, the parties recognize that situations can arise that would be best addressed by allowing for exceptions to these aforementioned exclusions. More recent TAs also contain a provision to allow either party to provide temporary service if necessary, although this TA between CREC and AmerenUE does not include this provision.

In Case No. EO-93-166, AmerenUE and CREC entered into a TA citing the desire to "...promote the orderly development of the retail electric service system within portions of St. Charles County, Missouri, to avoid wasteful duplication and to minimize disputes which may result in higher costs in serving the public." Their agreement included specified areas in which one provider would be the electric service provider to the exclusion of the other. It also contained a clause to allow one party to serve within the exclusive service territory of the other, if both AmerenUE and CREC agreed⁴ and subsequently approved by the Commission.⁵

For the most part, the TA has seemed to have benefited CREC and AmerenUE and their respective customers. In this particular instance, CREC would be able to provide service to the new structures without the additional pole, transformer, and conductor that AmerenUE would have to otherwise install in its provision of service. Limiting duplication of facilities has often been cited in past Commission Orders

⁴ ...the parties may agree on a case-by-case basis to allow structures to receive service from one party though the structure is located in the electric service area of the other. Such agreements shall be in writing and approved by both parties.

⁵ ...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 approved by the Missouri Public Service Commission.

approving Territorial Agreements and/or Requests to Change Electric Service Providers. In addition, the possible safety concern associated with multiple electric service providers on the same property, as noted by Applicants, has been included in some of these Orders. CREC's provision of service to these two structures is contingent upon AmerenUE agreeing to release the Applicants' property to CREC, an allowance here-to-fore AmerenUE has not granted.

The Staff notes that the Applicants' property was annexed into the City of Dardenne Prairie in 1985, whose population was in excess of 1500 inhabitants as of the 1990 census. This TA contains a provision that CREC may continue to serve in areas annexed into a city limits with a population greater than 1500 when the Cooperative has installed primary distribution facilities designed for and capable of providing service to such structures prior to annexation. However, Rural Electric Cooperatives are generally limited to providing service to structures in rural areas, defined as having populations of less than 1500 per 394.080.2 RSMo.⁶ This property was annexed into the city limits of Dardenne Prairie at a date before the Commission approved this TA in March 1993.

STAFF RECOMMENDATION

AmerenUE and CREC filed a Territorial Agreement (TA) with the Commission on October 29, 1992. The Commission approved this TA in an *Order* dated March 5, 1993. Per the terms contained in this TA, AmerenUE is the electric service provider for new structures being built on the Applicants' property located in Dardenne Prairie, MO. This property lies within the territory assigned to AmerenUE, giving it exclusive rights to

⁶ ...rural electric cooperatives shall have the power to supply electric energy in cities, towns, and villages having a population in excess of 1500 inhabitants under the following conditions...

provide electric service to all newly built structures. As noted earlier, Dardenne Prairie's population now exceeds 1500 inhabitants and is designated as a municipality. Pursuant to 394.080.2 RSMo, a Rural Electric Cooperative is generally limited to providing electric service in communities with less than 1500 inhabitants. In the immediate Case, CREC does not have authority to serve residents of Dardenne Prairie, only those customers whom they served prior to the approval of this TA, or properties served before being annexed into the city limits of Dardenne Prairie, MO.

There is a clause included in the TA to allow exceptions on a case-by-case basis. In this Case, the Applicants desire to maintain their relationship with the Cooperative, pleading with AmerenUE to forego its right and allow CREC to provide electric service to these two new structures. In addition to the inconvenience of separate billing requirements, the Applicants surmise it would limit duplication of facilities and preclude a possible safety hazard associated with having two electric service providers on the property. These rationales have often been cited in Commission Orders approving Territorial Agreements and Requests for Changing Electric Service Providers. Applicants also question whether AmerenUE providing service to the two new structures would be cost prohibitive.

However, both AmerenUE and CREC, the parties to this TA, must agree to allow an exception such as this, and AmerenUE has not released the Applicants from this provision. The safety concern alleged by the Applicants could also be alleviated if AmerenUE would become the sole electric service provider on the property. This possibility has not been discussed with Staff by the Applicants, AmerenUE, or CREC.

While the Applicants' assertions appear to have merit, without the actual approval of the parties to the TA, AmerenUE and CREC, Staff believes that the request to change electric service providers to new structures, from AmerenUE to CREC in this Case, should be denied. Staff recommends that the Application is not in the public interest for reasons other than a rate differential as required in Sections 393.106.2 and 394.315.2 RSMO, and 4 CSR 240-3.140 (1) (G), which states "The reasons a change of electrical suppliers is in the public interest...". Additionally, Staff Counsel will address whether CREC may legally provide service in this situation. Therefore, per the aforementioned reasons, the Staff recommends that the Commission issue an Order denying Applicants' request to change its electric service provider from AmerenUE to the Cooperative for two newly built structures on their property.

CREC is not required to file annual reports or pay assessment fees with the Commission. Further, it does not have any known pending or final unsatisfied decisions against it from any state or federal court involving customer service or rates within three years of the date of this filing.

AmerenUE is current on its required annual report filings and assessment fees. Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

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 Part of their
Property

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Case No. EO-2009-0272

AFFIDAVIT OF ALAN J. BAX

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Alan J. Bax, 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 given by 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.




Alan J. Bax

Subscribed and sworn to before me this 20th day of March, 2009.



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086



Notary Public

Attachment 1

Is Deemed

Highly Confidential

In Its Entirety

NEW
HOUSE

PROPERTY
JERRY &
SHARON M. WEST

Field
lights

Kenne

NEW
HOURS

1335
Weldon
Springs

7333
Weldon
Spring Rd

KENNEL⁶

KENNEL #2

Dog
Yard

Vocabulary
Part 1



731

16

Weldon Spring Ed

Exhibit I Henning Road

51870'18"E 214.38'

