

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

In the Matter of the Application of Union Electric)
Company d/b/a Ameren Missouri and Farmers')
Electric Cooperative, Inc. for Approval of an)
Addendum to an Approved Territorial Agreement)

File No. EO-2018-0278

**STAFF RECOMMENDATION FOR APPROVAL OF AN
ADDENDUM TO AN APPROVED TERRITORIAL AGREEMENT**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), through Staff Counsel's Office, in response to the Missouri Public Service Commission's ("Commission's") April 10, 2018, Order Directing Notice, Setting Intervention Deadline and Directing Staff Recommendation in which among other things it directed the Staff to file its recommendation regarding the Joint Application of Ameren Missouri and Farmers' Electric Cooperative, Inc. no later than May 25, 2018. In support thereof, the Staff states as follows:

1. On April 6, 2018, Ameren Missouri and Farmers' filed a Request For Waiver under authority and in accordance with 4 CSR 240-4.017(1)(D). On April 9, 2018, the Commission issued an Order Granting Waiver Of 60-Day Notice Requirement of 4 CSR 240-4.017(1) to Ameren Missouri and Farmers'. On that same day, April 9, 2018, Ameren Missouri and Farmers' filed their Joint Application For Approval Of An Addendum To An Approved Territorial Agreement.

2. The Joint Applicants entered into a Territorial And Exchange Agreement which designated each Applicant's service areas and provided means for each to promote orderly development of rural electric service in nine counties and a process for agreeing on and seeking approval of addenda to the agreement. The Commission approved the territorial agreement in a September 3, 1998, Report and Order in

Case No. EO-98-511. An Addendum No. 1 To Territorial Agreement Between Union Electric Company And Farmers' Electric Cooperative, Inc. ("Addendum 1") was entered into by the Applicants in July 2013 and considered and approved by the Commission in a Report And Order in File No. EO-2014-0044 dated October 9, 2013.

3. Addendum 1 allows Farmers' to provide retail electric service to a single structure owned by and on the property of Beetsma Farms, Inc. ("Beetsma"). Although the structure was in Ameren Missouri's service territory, Farmers' facilities were nearer to the structure's location and, as a consequence, Farmers' could more cost-effectively provide service. The Joint Application notes that Ameren Missouri agreed to transfer service responsibility to Farmers'.

4. Ameren Missouri and Farmers' on March 29, 2018 entered into Addendum No. 2 To Territorial Agreement Between Union Electric Company And Farmers' Electric Cooperative, Inc. ("Addendum 2"). Addendum 2 allows Farmers' to provide retail electric service to a proposed new structure, a three-phase irrigation system, on the Beetsma property. Since Farmers' already serves structures on the Beetsma property, including the maintenance building considered in Addendum 1, Farmers' has facilities physically closer, making it more economic and cost-effective for Farmers' to provide service to the proposed irrigation system that Beetsma proposes to build at its Mooreville site. Except for granting Farmers' the right to provide service to the proposed irrigation system, the Territorial Agreement will not change. Also attached as Exhibit D to the Joint Application is an affidavit of an officer of Beetsma who consents to the change in service provider.

5. As addressed by the Joint Application, Article 8.5 of the Territorial Agreement provides that Staff and the Office of the Public Counsel are to be provided copies of the proposed addendum at the time of its filing at the Commission and if within forty-five (45) days of its receipt of such notice, Staff and Public Counsel do not submit pleadings objecting to the addendum, each of these parties will be deemed to have consented to Commission approval of the Addendum.

6. Section 394.312.3 RSMo. 2016 addresses where the parties cannot agree upon the boundaries of the electric service areas that are to be set forth in the territorial agreement, they may by mutual consent petition the Commission to designate the boundaries, the Commission shall hold evidentiary hearings, and the Commission shall base its final determination upon a finding that its designation of electric service areas is in the public interest. However, under Section 394.312.5 RSMo. 2016, when a territorial agreement is resolved by a stipulation and agreement submitted by all the parties, hearings may be waived by agreement of the parties. Also, the Commission may approve the application if it determines that approval of the territorial agreement in total is not detrimental to the public interest. Finally, regarding evidentiary hearings, in *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo.App. W.D. 1989), there was evidence in the form of a verified application, there were no adverse parties, and the Western District Court of Appeals held that the requirement for a hearing contained in the statute was met when the opportunity for a hearing was provided and no proper party requested the opportunity to present evidence.

7. The Staff Memorandum Recommendation, besides proposing that the Commission approve Addendum 2 and the Joint Application, suggests that the Commission also direct Ameren Missouri to file a new tariff sheet (Mo.P.S.C. Schedule No. 6 Original Sheet No. 24) reflecting Addendum 2 to its Territorial Agreement with Farmers.¹ Finally, Staff recommends that the Commission note in its *Order* that it is not making any ratemaking determinations in its *Order* and reserves the right to consider any ratemaking treatment in a later rate proceeding.

WHEREFORE the Staff recommends that the Commission (a) approve the Joint Application For Approval Of An Addendum (Addendum No. 2) To An Approved Territorial Agreement filed on April 9, 2018, and Addendum No. 2 itself, as being not detrimental to the public interest, pursuant to Section 394.312 RSMo. and 4 CSR 240-3.110, (b) direct Ameren Missouri to file new tariffs reflecting Addendum 2 to its Territorial Agreement with Farmers, and (c) not make any ratemaking determinations in its *Order* and reserve the right to consider any ratemaking treatment in a later rate proceeding.

¹ The new tariff sheet will reflect Ameren Missouri's right and obligation to serve in Livingston County (Township 57 North, Range 24 West, Section 29) is limited by the terms of Addendum No. 2 in File No. EO-2018-0278 to the Territorial Agreement approved by the Commission in Case No. EO-98-511. Presently the tariff sheet does not reflect that there is an Addendum No. 1 approved by the Commission in File No. EO-2014-0044.

Respectfully submitted,

/s/ Steven Dottheim

Chief Deputy Staff Counsel
Missouri Bar No. 29149

Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 751-7489
(573) 751-9285 (Fax)
steve.dottheim@psc.mo.gov

Attorney for the Staff of the
Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail on counsel for the parties of record to this case, on this 22nd day of May, 2018.

/s/ Steven Dottheim

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
File No. EO-2018-0278 – In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri and Farmers’ Electric Cooperative, Inc. for Approval of an Addendum to An Approved Territorial Agreement

FROM: Alan J. Bax – Operational Analysis Dept. / Engineering Analysis Unit

/s/ Daniel I. Beck 05/22/18 /s/ Mark Johnson 05/22/18
Manager – Engr. Analysis Unit / Date Staff Counsel’s Office / Date

SUBJECT: Staff Memorandum Recommending Approval of Joint Application

DATE: May 22, 2018

STAFF RECOMMENDATION

The Staff of the Missouri Public Service Commission (“Staff”) recommends that the Missouri Public Service Commission (“Commission”) approve the Joint Application (“Joint Application”) of Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) and Farmers’ Electric Cooperative, Inc. (“FEC”), (collectively referenced as the “Applicants”), to revise the Applicants’ Territorial Agreement (“TA”) in accordance with Addendum No. 2 (“Addendum 2”). Approval of Addendum 2 would authorize FEC to provide three phase electric service to a new irrigation system proposed to be installed by Beetsma Farms, LLC (“Beetsma”) on its property located along Livingston County Road 412 in Mooresville, Missouri. This property lies in an area “exclusively” served by Ameren Missouri per the terms of the TA.¹ Staff has reviewed the Joint Application and recommends the Commission approve it, finding that the transaction is not detrimental to the public interest, pursuant to Section 394.312 RSMo (2016), 4 CSR 240-2.060, and 4 CSR 240-3.130. Staff also recommends the Commission order Ameren Missouri to file revised tariff sheets reflecting Addendum 2.

¹ A territorial agreement only addresses the rights of the entities to the service area covered by that particular territorial agreement. Also although the Commission may not have authorized more than one investor-owned utility to serve a particular area, there is no statute, case law, or Commission rule that precludes the Commission from granting more than one investor-owned utility a certificate of convenience and necessity (“CCN”) to serve a particular service area or part of a service area. See Section 394.312.6 RSMo. 2016.

OVERVIEW

On April 6, 2018, the Applicants filed a Request for Waiver, in accordance with 4 CSR 240-4.017 (1), which would otherwise require a sixty day written notice be provided to the Commission in advance of an anticipated filing that would initiate a case. The Applicants' Request for Waiver was approved by the Commission in an *Order* issued on April 9, 2018 for good cause shown (the harm caused by requiring the 60 days' notice would be the delay in the operation of the three-phase irrigation system that is to be installed by Beetsma under Addendum 2 near County Road 412 in Mooresville, Mo.).

On April 9, 2018, the Applicants filed this Joint Application requesting approval of Addendum 2 to their TA. This TA was approved by the Commission in a *Report and Order* dated September 3, 1998, in Case No. EO-98-511.

On April 10, 2018, the Commission issued an *Order Directing Notice, Setting Intervention Deadline and Directing Staff Recommendation* that directed both the Commission's Data Center to send a copy of this *Order* to the County Commissioners of Livingston County, Missouri and the Commission's Public Policy and Outreach Department to send notice to members of the General Assembly representing Livingston County, Missouri as well as to the newspapers and other media serving Livingston County, Missouri. This Commission Order also established an intervention deadline of April 30, 2018 for any entity wishing to intervene in this matter and directed Staff to file its recommendation to the Joint Application by May 25, 2018.

FEC is a rural electric cooperative organized under Chapter 394 RSMo (2016) to provide electric service to its members in all or parts of nine Missouri counties, including Livingston County, in which lies the property that is the subject of the Joint Application. Although the Commission has limited jurisdiction over rural electric cooperatives, FEC is subject to the jurisdiction of the Commission in this case per Section 394.312 RSMo (2016).

As a rural electric cooperative, FEC is not required to file annual reports or pay assessment fees. Further, FEC does not have known pending or final unsatisfied

judgments against it from any state or federal court involving customer service or rates within three years of the date of filing this Joint Application.

Ameren Missouri is an electrical corporation subject to the jurisdiction of the Commission as specified, in part, by Chapters 386 and 393, RSMo (2016). Ameren Missouri is current on all assessment fees and annual report filings. Staff is currently not aware of any unsatisfied judgments or decisions against Ameren Missouri in any state or federal agency or court involving customer service or rates that would have bearing on the immediate case. The Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

DISCUSSION

In Case No. EO-98-511, the Applicants requested and received Commission approval of a TA that designated specific areas in nine Missouri counties in which, as between them, each provides electric service “exclusive” of the other. A map depicting the exclusive service areas in the applicable portion of southwest Livingston County is attached hereto as AJBSchedule-1. The exclusive service area of Ameren Missouri in this section of Livingston County lies within the outlined, “carved-out” portions as illustrated on this map; the area shown outside these outlined, “carved-out” portions is exclusive to FEC . With this TA, the Applicants, in part, sought to limit the duplication of facilities necessary to provide electric service to the entire territory considered in the TA. This TA has allowed the Applicants to most efficiently and effectively utilize their respective installed facilities.

Even with the successful effect that this TA has had on system planning within the Applicants’ respective exclusive boundaries over nearly twenty years, exceptions can occur where an alternate course of action is more efficient and practical. Such an exception was the subject of a filing made by the Applicants in July 2013. At that time, the Applicants entered into Addendum No. 1 to this TA and sought Commission approval of said Addendum No. 1 in File No. EO-2014-0044. In its *Report and Order* dated October 9, 2013, the Commission approved Addendum No. 1 to the Applicants’ TA, allowing FEC to be the electric service provider to a new maintenance building constructed by Beetsma on its property.

Similarly, in their current Joint Application, the Applicants are seeking Commission approval of Addendum 2 to their TA, entered into on March 29, 2018, which would allow FEC to provide three-phase service to an irrigation system that Beetsma is proposing to install on its property along the south side of County Road 412, located in Section 29-Township 57N-Range 24W of Livingston County, Missouri. This quarter mile section is located predominantly within the boundary marking the “exclusive” electric service area of Ameren Missouri in this section of Livingston County, Missouri, as illustrated on AJBSchedule-1. Ameren Missouri and FEC have filed this Application, which would allow FEC to provide electric service to the new proposed irrigation system, per the procedure described in Section 8 of the TA, attached hereto as AJBSchedule-2.

Section 8 of the TA provides a process that ultimately may allow a new structure to be served by either Ameren Missouri or FEC, despite that particular structure being located in an area that is served “exclusively” by the other, per the terms of the TA. Addendum 2 to the TA between Ameren Missouri and FEC, dated March 29, 2018, and attached as Appendix A to the Application, is an agreement that would allow FEC to extend three-phase electric service, should the Commission approve it, to a proposed new irrigation system that would be installed on Beetsma’s property.

FEC has facilities located along the north side of County Road 412 that are capable of providing the desired service to Beetsma’s proposed irrigation system that is to be comprised of two pumps as depicted in Exhibit C attached to the Application. FEC’s facilities are much closer to the Beetsma property as compared to Ameren Missouri’s current facilities, which are nearly a half-mile away. Thus, approval of this Addendum allows for the most efficient use of the available electric facilities in this area of Livingston County, Missouri and avoids the other result of having multiple electric service providers on this property. FEC is currently providing electric service to four meters on the property. The Application includes notarized statements from Ameren Missouri, FEC, and Beetsma Farms, LLC acknowledging that FEC is the desired electric service provider for the proposed new irrigation system. No additional changes to the TA are being sought other than requesting approval of Addendum 2.

CONCLUSION

For the reasons stated above, Staff is of the opinion that approval of this Application is not detrimental to the public interest pursuant to Section 394.312 RSMo (2016), 4 CSR 240-2.060 and 4 CSR 240-3.130. Therefore, Staff recommends that the Commission approve the Joint Application of Ameren Missouri and FEC for Addendum No. 2 to their TA, which would allow FEC to provide a three-phase electric service extension to an irrigation system that is proposed to be constructed on property owned by Beetsma Farms, LLC on the south side of County Road 412 in Livingston County, Missouri. Staff recommends the Commission order Ameren Missouri to revise the Mo. P.S.C. Schedule No. 6 - Schedule of Rates For Electricity tariff, Sheet No. 24 – Missouri Service Area, Livingston County reflecting both Addendum No. 1 and Addendum 2. Staff further suggests that the Commission note that no ratemaking matter is being addressed in this proceeding.

