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**FILED<sup>3</sup>**

**JUL 30 2003**

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

**Missouri Public  
Service Commission**

**Re: Case No. EO-2003-0518**

Dear Secretary:

Enclosed please find an original and eight copies of the Response of Howell-Oregon Electric Cooperative, Inc. and City of Thayer, Missouri To Staff's Recommendation and Motion for Commission Order Directing Response by Joint Applicants 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 Chase*  
Lisa Cole Chase

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Enc.

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BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>  
JUL 30 2003

Missouri Public  
Service Commission

In the matter of the Joint Application )  
of City of Thayer, Missouri and Howell-Oregon )  
Electric Cooperative, Inc. for an order approving ) Case No. EO-2003-0518  
the change in electric supplier for certain customers )  
for reasons in the public interest. )

**RESPONSE OF HOWELL-OREGON ELECTRIC COOPERATIVE, INC. AND CITY  
OF THAYER, MISSOURI TO STAFF'S RECOMMENDATION AND MOTION FOR  
COMMISSION ORDER DIRECTING RESPONSE BY JOINT APPLICANTS**

COMES NOW Howell-Oregon Electric Cooperative, Inc. by and through its counsel of  
record and in response to Staff's Recommendation and Motion for Commission Order Directing  
Response by Joint Applicants hereby states as follows:

1. On May 23, 2003, the City of Thayer ("City") and Howell-Oregon Electric  
Cooperative ("Cooperative") filed a Joint Application for an order approving a customer  
exchange for a change of supplier for the Thayer High School from the City to the Cooperative  
at the request of the School District.

2. In their Recommendation, Staff states that "[t]he Joint Application provides, at  
paragraph 9 on pages 4-5, sufficient grounds for finding that the proposed change in the  
electrical supplier for the Thayer High School is in the public interest." see para. 7. In the  
attached Memorandum, "Staff recommends approval of the APPLICATION for a change in  
electrical supplier for the existing electric service to the Thayer High School from City to  
Howell-Oregon."

3. The Applicants do not change the terms of their existing Territorial Agreement,  
nor the boundaries for the exclusive electric service territories of each electric service supplier as  
set forth in their existing Territorial Agreement which has been approved by the Commission in

Case No. EM-92-157 in a *Report and Order* issued February 28, 1992. Staff's Recommendation cites the Applicants' Joint Application at paragraph 4 which states that the Applicants do not change the boundaries of the Territorial Agreement, but then states that "Applicants do not indicate whether any boundaries set by the Territorial Agreement approved in Case No. EM-92-157 are being changed as a result of the 35 acres of property owned by the Thayer R-II School District being served by Howell-Oregon Coop rather than by the City of Thayer." see para. 3. Again, the Applicants DO NOT change the boundaries of the existing Territorial Agreement, including the 35 acres of property owned by the Thayer R-II School District. Applicants continue to operate pursuant to their existing, approved Territorial Agreement.

The 35 acre description is just that, a description of the area that the Thayer R-II School District owns and will be using to construct an elementary school. The 35 acres may also be used by the school district to construct other buildings which may or may not need their own metering points. As such, the cooperative and the City, in negotiating the addendum, wrote it broadly enough to insure that all of the electric needs of the Thayer R-II School District can be met by the Cooperative.

Pursuant to the Addendum executed by the parties, the intent is to allow, on this case by case basis, the Cooperative to serve Thayer R-II School District structures (i.e. the new elementary school and the existing High School). If the School District ever sold a portion of the 35 acres to another party, the Cooperative would not have the authority to serve new structures of the new owner. For the severed portion of the property, the City would have to serve the new structure, or another Addendum would be required.

4. The existing Territorial Agreement provides at paragraph 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.*” **see attachment 1** (emphasis added).

5. The City and Cooperative have reached an agreement to allow the new elementary school being built in the territory of the City to be served by the Cooperative. In compliance with the terms of their approved Territorial Agreement, the Applicants have put the terms of their agreement into writing in Addendum No. 1 to their Territorial Agreement, and provided a copy of the addendum to the Public Service Commission as an attachment to their Application for Customer Exchange.

6. Although the Commission has been provided a copy of Addendum No. 1 as an attachment to the Joint Application in this proceeding, Howell-Oregon Electric Cooperative has separately filed a Notice of Addendum, attaching a copy of Addendum No. 1 and referencing Case No. EM-92-157, with the Commission on the same date of this filing.

7. The procedures under the existing Territorial Agreement with respect to case-by-case service to a structure by one party in the territory of the other party require only notice to the Commission, not approval of the Commission. These procedures have previously been approved by the Commission.

8. The cases referred to by Staff with respect to Territorial Agreements, at paragraph 11 of their Recommendation and Motion, are consistent with the actions taken by Applicants with respect to Addendum No. 1 to the Applicants' existing Territorial Agreement. The cases referred to by Staff deal with Territorial Agreements that have specified Addendum procedures, and the parties in those cases acted pursuant thereto. The Addendum procedure in each of those Territorial Agreements may not be the same as the Addendum procedure contained in the Territorial Agreement between the Cooperative and City in this case. But, like this case, the Territorial Agreement and their Addendum procedures were approved by the Commission, and the parties were acting pursuant to those approved procedures. The course of action taken by the Applicants in this case, i.e. entering into an agreement on a case-by-case basis for service to a structure in the other party's territory and supplying notice of the Addendum to the Commission, is an approved and lawful course of action pursuant to the Applicants approved Territorial Agreement. The Applicants are not required to do more. Such action is contemplated within the existing Territorial Agreement, no change to the terms or boundaries of the Territorial Agreement has transpired.

9. Since the Thayer R-II High School is an existing structure being served by the City, the parties are required to seek Commission approval for a change of supplier pursuant to Section 91.025 and/or Section 394.315 RSMo. 2000. Because the High School is located in the exclusive territory of the City, the Cooperative cannot serve the High School, unless the Territorial Agreement boundary lines were modified, which would require the applicants to file an amendment to the Territorial Agreement and seek Commission approval, or the parties follow the existing Territorial Agreement and adhere to the Addendum procedure which allows the exclusive service provider to agree that a particular structure can be served by the other electric

supplier without having to modify the boundary lines of the agreement. Therefore, the City and Cooperative entered into an Addendum to the Territorial Agreement for the structures owned by Thayer R-II School District, which are located only on this 35 acres. Any other structure owned by the School will continue to be served by its existing electric supplier, or new structures will be served by the electric service provider whose exclusive service territory will have the structure located in said territory. The Addendum procedure, however, does not permit the parties to ignore their statutory requirements to seek Commission approval for a change of supplier for the high school, even though the parties have agreed to allow a structure which is located in the exclusive service territory of the City to be served by the Cooperative, pursuant to paragraph 8 of the Territorial Agreement. Thus, the Addendum does two things. First, it allows the Cooperative to serve new structures of the School District (i.e. the elementary school) and second, it allows the Cooperative to serve an existing structure (i.e. the high school), but only if the Commission approves the proposed customer exchanges.

10. It is the position of Howell-Oregon that there is no need for the parties to file an application seeking an amendment to the existing Territorial Agreement when the Addendum procedure, as set out in paragraph 8 of the Territorial Agreement, was properly followed and implemented by the parties to allow Howell-Oregon to serve specific structures of Thayer R-II School District. The parties are not changing any of the boundary lines as established by the Territorial Agreement, and do not wish to change said boundary lines. Since the Commission has approved the Territorial Agreement between the City of Thayer and Howell-Oregon Electric Cooperative, which includes the Addendum procedure, it would be redundant to file an amended Territorial Agreement and seek Commission approval of said amended agreement.

WHEREFORE, Howell-Oregon Electric Cooperative hereby requests the Commission to

accept Staff's recommendation that the Application for Customer Exchange be approved as it is in the public interest, and deny Staff's Motion for Commission Order Directing Response by Joint Applicants as moot, or in the alternative, as immaterial to the issues raised in the Joint Application.

Respectfully submitted,

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

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**ATTORNEYS FOR HOWELL-OREGON  
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### **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 21<sup>st</sup> day of July, 2003.

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