

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 25th day of
October, 2005.

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| In the Matter of the Application of Macon Electric |) | |
| Cooperative and Union Electric Company, d/b/a |) | <u>Case No. EO-2006-0096</u> |
| AmerenUE, for Approval of Case-By-Case Addendum |) | |
| No. 1 to a Written Territorial Agreement |) | |

**REPORT AND ORDER APPROVING ADDENDUM TO TERRITORIAL
AGREEMENT**

Issue Date: October 25, 2005

Effective Date: November 4, 2005

This decision approves Case-By-Case Addendum No. 1 to the Territorial Agreement between Union Electric Company, d/b/a AmerenUE, and Macon Electric Cooperative, which will allow Macon Electric to provide electric service to a farmstead located in AmerenUE's service territory.

FINDINGS OF FACT

1) On August 30, 2005, Union Electric Company, d/b/a AmerenUE, and Macon Electric Cooperative filed a joint application asking the Commission to approve an addendum to their written territorial agreement that designates boundaries of exclusive service areas in Linn County, Missouri.

2) AmerenUE is a public utility providing electric utility services to customers in its Missouri service areas.

3) Macon Electric is a rural electric cooperative.

4) Both companies provide electric service in portions of Linn County.

5) In 1996, the Commission approved a territorial agreement between the companies that established exclusive electric service areas for the companies.

6) The proposed addendum to that territorial agreement would allow Macon Electric to serve a farmstead, including grain bins, barns, and a new residence, located within AmerenUE's service territory.

7) The farmstead can most easily be served by extending an existing Macon Electric power line by approximately one half mile. The nearest AmerenUE line would have to be extended 1.2 miles, and cross a creek, to provide service to the farmstead.

8) The customer to be served requests that he be served by Macon Electric and supports the addendum.

9) Staff recommends that the addendum be approved as being in the public interest.

10) Based on the information contained in the Joint Application and on the recommendation of Staff, the Commission finds that the proposed addendum is not detrimental to the public interest.

CONCLUSIONS OF LAW

1) Section 394.312, RSMo 2000, gives the Commission jurisdiction over territorial agreements concerning electric service, including any subsequent amendment to such agreement.

2) Under Section 394.312.4, the Commission may approve such a territorial agreement if the agreement is not detrimental to the public interest.

3) Article 8 of the existing territorial agreement provides that if the Commission's Staff or the Office of the Public Counsel does not file a pleading objecting to the addendum within 45 days, then "the addendum shall be deemed approved by the aforesaid parties."

4) Public Counsel did not file a recommendation or objection within 45 days of the filing of the addendum. So by the terms of the territorial agreement, Public Counsel is deemed to have approved the addendum.

5) Although Section 394.312.4, RSMo 2000, provides that the Commission is to hold an evidentiary hearing to determine whether a territorial agreement is to be approved, no party has requested a hearing. The decision in State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri,¹ holds that the requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence. Therefore, no hearing is necessary.

DECISION

Based on its findings of fact and conclusions of law, the Commission determines that the submitted addendum to the existing territorial agreement between the parties is not detrimental to the public interest and shall be approved.

IT IS THEREFORE ORDERED:

1. That Case-By-Case Addendum No. 1 to the Territorial Agreement between Union Electric Company, d/b/a AmerenUE, and Macon Electric Cooperative is approved.
2. That this order shall become effective on November 4, 2005.

¹ 776 S.W. 2d 494 (Mo. App. W.D. 1989).

3. That this case may be closed on November 5, 2005.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Woodruff, Senior Regulatory Law Judge