

**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 Cuivre River)
Electric Cooperative for Approval of an Addendum)
To an Approved Territorial Agreement)

File No. EO-2012-0134

**STAFF RECOMMENDATION TO APPROVE
ADDENDUM TO TERRITORIAL AGREEMENT**

COMES NOW the Staff of the Missouri Public Service Commission and, for its recommendation on the joint application of Union Electric Company d/b/a Ameren Missouri and Cuivre River Electric Cooperative to approve an amendment to the second territorial agreement between them that initiated the above case, states:

1. On November 1, 2011, Union Electric Company d/b/a Ameren Missouri and Cuivre River Electric Cooperative filed a joint application requesting that the Commission approve an addendum to an Approved Territorial Agreement. The Addendum would allow Ameren Missouri to provide electric service to a new residential structure, owned by Rodney D. Tate, located at 26200 Shade Lane, Wright City, Missouri (Township 27N, Range 1W, Section 33, Warren County, Missouri) even though that structure is located within Cuivre River's exclusive service area under the second territorial agreement.

2. On November 2, 2011, the Commission issued an Order to provide notice of the application and to set an intervention date of December 2, 2011. No one applied to intervene.

3. The Commission directed its Staff to file its recommendation on the application by no later than December 9, 2011.

4. In reviewing the application, Staff determined that the residential structure at issue is in Warren County. Therefore, the addendum applies only to the second territorial agreement between Ameren Missouri and Cuivre River referenced in their application, which is

the territorial agreement regarding parts of Lincoln and Warren Counties. The first territorial agreement between these parties is limited to part of St. Charles County and, therefore, is not implicated in the proposed addendum. The Commission approved the first territorial agreement in a March 5, 1993 *Report and Order* in Case No. EO-93-166, (2 Mo.P.S.C. 3d 110), and it approved the second in a September 17, 2002 *Report and Order* in Case No. EO-2002-1091.

5. Although pages six and seven of the application ask that the Commission approve an Addendum involving “the Taylors,” Staff notes that this application involves property of Mr. Tate only. A structure owned by the Taylors was the subject of a previous Addendum to the second territorial agreement, which the Commission approved in File No. EO-2012-0093. It is clear from the remainder of the application in this case that the requesting parties intended to ask the Commission to approve an Addendum to permit Ameren Missouri to provide permanent electrical service to a structure owned by Mr. Tate.

6. In its Memorandum, attached hereto as Appendix A, Staff, for the reasons stated therein, recommends the Commission approve the addendum as complying with the case-by-case exception criteria in the second territorial agreement and for being in the public interest. The landowner, Ameren Missouri, and Cuivre River all agree that the proposed addendum allows for the provision of electric service in the manner best suited to all parties. Further, it will cost less for Ameren Missouri to extend its facilities to serve the new residential structure located at 26200 Shade Lane, in Wright City, Missouri, than for Cuivre River to do so.

7. As the joint applicants noted in their application, the Commission-approved second territorial agreement includes the following provisions regarding addenda to change the authorized service provider:

ARTICLE 10

CASE-BY-CASE EXCEPTION PROCEDURE

- 10.1 The parties may agree on a case-by-case basis by an Addendum hereto to allow a Structure to receive service from one party though the Structure is located in the Exclusive Service Area of the other party.
- 10.2 Such Addendum shall be filed with the Executive Secretary of the Commission in the same manner as a motion or other pleading, with a copy submitted to the Office of Public Counsel. There will be no filing fee for these addenda.
- 10.3 Each Addendum shall consist of a statement identifying the Structure, the party to serve the Structure, the justification for the Addendum, and indicating that the parties support the Addendum.
- 10.4 Each Addendum shall be accompanied by a statement, signed by the customer to be served, which acknowledges such customer's receipt of notice of the contemplated electric service to be provided and that the Addendum represents an exception to the territorial boundaries approved by the Commission and shall indicate the customer's consent to be served by the service provided contemplated by the Addendum.
- 10.5 If the Commission Staff or Office of the Public Counsel do not submit a pleading objecting to the Addendum within forty-five (45) days of the filing thereof, the Addendum shall be deemed approved by the aforesaid parties. Each Addendum shall contain a statement in bold uppercase typeface indicating that the Staff or Office of the Public Council have forty-five (45) days to oppose the Addendum or else the Addendum shall be deemed approved by the aforesaid parties.
- 10.6 Each party, pursuant to an executed Addendum, shall have the right to provide temporary service, as defined in Section 393.106 RSMo., until the Commission approves or disapproves the Addendum. No party shall be required to remove any facilities installed pursuant to an agreement until the effective date of an Order of the Commission or a court regarding the removal of same.

Further, Section 394.312.5, RSMo Cum. Supp. 2010, in part, provides:

The commission may approve the application if it determines that approval of the territorial agreement in total is not detrimental to the public interest.

Although these are addenda to a territorial agreement, Staff applied this standard.

8. Being a cooperative organized under Chapter 394 RSMo, Cuivre River is not required to provide annual reports or assessments to the Commission. Ameren Missouri has provided the required annual reports and assessments.

WHEREFORE, the Staff recommends the Commission approve the Application for an Addendum to an Approved Territorial Agreement that designates Ameren Missouri to provide electric service to a new residential structure at 26200 Shade Lane, Wright City, Missouri, in Wright City, Warren County, Missouri, as being in the public interest.

Respectfully submitted,

/s/ Amy E. Moore

Amy E. Moore

Legal Counsel

Missouri Bar No. 61759

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-4140 (Telephone)
(573) 751-9285 (Fax)
amy.moore@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed with first-class postage, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 9th day of December, 2011.

/s/ Amy E. Moore

MEMORANDUM

TO: Missouri Public Service Commission Official Case File No. EO-2012-0134,
Case-by-Case Addendum to Second Territorial Agreement Between Cuivre River
Electric Cooperative and Union Electric Company d/b/a Ameren Missouri

FROM: Daniel I. Beck, Energy Department – Engineering Analysis

/s/ Daniel I. Beck 12/09/11
Energy Department / Date

Amy E. Moore 12/09/11
General Counsel's Office / Date

Subject: Staff Recommendation to approve addendum to second territorial agreement

Date: December 9, 2011

OVERVIEW

On November 1, 2011, Cuivre River Electric Cooperative (Cuivre River) and Union Electric Company d/b/a Ameren Missouri (Ameren Missouri or Company) filed an application with the Missouri Public Service Commission seeking Commission approval of case-by-case addenda to two territorial agreements to allow the Company to serve a new residential structure in Cuivre River's exclusive service territory under the territorial agreements. The first of these two territorial agreements is limited to territory in St. Charles County. The Commission approved that agreement in a March 5, 1993 *Report and Order* in Case No. EO-93-166, (2 Mo.P.S.C. 3d 110). The second territorial agreement is limited to territory in Lincoln and Warren counties. The Commission approved that agreement in a September 17, 2002 *Report and Order* in Case No. EO-2002-1091. The location of the new residential structure is in Warren County; therefore, Staff's review, analysis and recommendations are limited to the second territorial agreement. The intervention deadlines the Commission set in this file passed without

anyone seeking to intervene. The Commission's Staff recommends the Commission find the addendum is not detrimental to the public interest and approve the addendum.

DISCUSSION

The Application describes the two Territorial Agreements between the parties that the Commission previously approved in Case Nos. EO-93-166¹ and EO-2002-1091². In Case No. EO-93-166 the Commission approved the "Territorial Agreement" for new structures in part of St. Charles County and in Case No. EO-2002-1091 the Commission approved the "Second Territorial Agreement" for new structures erected in parts of Lincoln and Warren counties. These Agreements include provisions for addenda to be filed on a case-by-case basis to modify them to allow a new structure to receive service from one party although the structure is located in the territory exclusive to the other party. The current Application is for service to a new residential structure that is located in Warren County. The proposed Addendum would allow a new residential structure owned by Mr. Rodney D. Tate located at 26200 Shade Lane, Wright City, Missouri, to receive service from Ameren Missouri.

The Application states that service to this new residential structure would be both economic and practical if the addendum is approved. More specifically, the Application states that both Ameren Missouri and Cuivre River would need to extend their facilities to serve the new Tate residence but that extending Ameren Missouri's facilities is the

¹ Both Applications state that the first territorial agreement between these two utilities was approved in Case No. EM-96-6 but both Addendums state the Case Number was EO-93-166. Staff has determined that Case No. EO-93-166 is the correct case number.

² Both Applications state that the second territorial agreement between these two utilities was approved in Case No. EO-2002-0191 while the Addendums do not reference a case number. Staff has determined that Case No. EO-2002-1091 is the correct case number.

most cost-effective option because Ameren Missouri's existing facilities are much closer to the Tate's location than are those of Cuivre River.

The Application includes each of the items required by Article 10 of the Second Territorial Agreement for an addendum to the Territorial Agreements. (A copy of Article 10 is furnished in the Applications.) This includes, but is not limited to, Affidavits by a representative of the Cooperative, a representative of the Company, and the landowner stating their support of and agreement by all the parties that would be directly affected by the Application.

STAFF RECOMMENDATION

Staff recommends that the Commission approve this Addendum to the Second Territorial Agreement between Cuivre River and Ameren Missouri. The legal standard for Commission approval of territorial agreements is that they be "not detrimental to the public interest" per 393.312.4, RSMo. Staff maintains that it is in the public interest to serve this new residential structure with facilities that are the most economical and that avoid duplication of existing facilities.

As a cooperative, Cuivre River is not required to provide annual reports or assessments to the Commission. Ameren Missouri has provided the required annual reports and assessments. Appendix 2 of the Application includes a list of pending or appellate cases involving Ameren Missouri and the Commission. Staff maintains that the Application Case does not affect or is not affected by any other cases before the Commission. However, Staff would note that File Nos. EO-2012-0085 and EO-2012-0093 involved two case-by-case addendums to the same Territorial Agreements between Cuivre River Electric Cooperative and Union Electric Company d/b/a Ameren Missouri.

MO PSC CASE NO. EO-2012-0134
OFFICIAL CASE FILE MEMORANDUM
December 9, 2011
Page 4 of 4

These two addendums were recently approved by the Commission in Orders dated
November 9, 2011 and November 22, 2011.

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Notary Public