

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held by telephone and internet audio conference on the 4th day of November, 2020.

In the Matter of the Joint Application)	
of Union Electric Company d/b/a)	
Ameren Missouri, and Three Rivers)	<u>File No. EO-2020-0315</u>
Electric Cooperative, Inc. for an Order)	
Approving a Territorial Agreement in)	
Cole and Osage Counties, Missouri)	

**REPORT AND ORDER AUTHORIZING
TRANSFER OF ASSETS AND APPROVING
TERRITORIAL AND SUPPLIER EXCHANGE AGREEMENT**

Issue Date: November 4, 2020

Effective Date: November 23, 2020

This order approves a Territorial and Exchange Agreement between Union Electric Company, d/b/a Ameren Missouri (Ameren Missouri) and Three Rivers Electric Cooperative (Three Rivers) (collectively, "Applicants") for areas in Cole and Osage Counties, Missouri. Specifically approved are a territorial agreement, a transfer of assets agreement, and a supplier exchange agreement.¹

Procedural History

The Application was filed on May 27, 2020.² The Commission issued its Order Directing Notice and Filing on June 11. The Commission Staff (Staff) filed its Staff

¹ The Applicants have requested leave to exchange customers and members. The Commission cannot order the exchange of customers or members per se. The Application is really one for leave to change suppliers. As customer and member residences and businesses are the points of supply, the Commission will authorize that exchange. Hereinafter, the points of this supplier exchange may be referred to the "service addresses."

² Unless otherwise indicated, date references will be to 2020.

Recommendation on September 24, recommending approval of the Application. On September 24, the Office of Public Counsel (OPC) filed its Response and Recommendation. Therein, OPC urged the Commission to direct the applicants to present a new territorial agreement that did not require the transfer of Three Rivers customers to Ameren Missouri. The Applicants filed a Response to OPC's Response and Recommendation on October 9. Thereafter, "in light of the additional explanations and clarifications" which the Applicants had provided, OPC filed a Reply Withdrawing Request for a Revised Territorial Agreement on October 15. No persons have sought intervention or requested a hearing.³ Ameren Missouri also requested a variance from the 60-day notice requirement of 20 CSR 4240-4.017.

Findings of Fact

1. Union Electric Company is a Missouri corporation doing business under the fictitious name of Ameren Missouri, organized, existing and in good standing under the laws of the State of Missouri. It provides electric and gas utility service to approximately 1.2 million electric service customers and approximately 130,000 gas service customers in Missouri.

2. Three Rivers is a rural electric cooperative organized under Chapter 394 RSMo.⁴ It provides electric service to approximately 21,000 members in Cole, Miller, Franklin, Gasconade, Maries, Moniteau, and Osage Counties located in Missouri.

³ Collectively, the proposed agreement to authorize a mutual transfer of assets, a change in suppliers, and a territorial agreement, will be referred to as the Territorial Agreement.

⁴ All statutory references will be to 2016 Missouri Revised Statute as amended unless otherwise indicated.

3. The Territorial Agreement's areas of focus are the Village of Wardsville and the nearby vicinity (together referred to as Wardsville) (Cole and Osage Counties) and the Rock Ridge/Frog Hollow area (together referred to as Frog Hollow), (Cole County). The current load split in Wardsville is approximately 60% served by Three Rivers and 40% served by Ameren Missouri. Ameren Missouri currently has three substations in Frog Hollow. Three Rivers has one.

4. The Territorial Agreement involves a transfer of current Three Rivers member's service addresses in the Frog Hollow area to Ameren Missouri in exchange for current Ameren Missouri customer's service addresses in the Wardsville area. Two hundred seventy Three Rivers service addresses will be transferred to Ameren Missouri, and 258 Ameren Missouri customer service addresses will be transferred to Three Rivers. Then, going forward, the Territorial Agreement will establish exclusive service territories for the Applicants in portions of Cole and Osage Counties in Missouri.

5. The Applicants communicated with the customers and members involved, and a meeting was held on February 12, 2020. Nearly all current Three Rivers members attending this meeting expressed their opposition to any agreement that included transfer of their service to Ameren Missouri. On the other hand, few current Ameren Missouri customers expressed a desire to stay with Ameren Missouri. All of 270 Three Rivers customers involved are within and around the Rock Ridge/Frog Hollow Road area southwest of the current municipal limits of Jefferson City, Missouri. Leading up to OPC's initial opposition to the proposed Territorial Agreement, OPC was made aware of 65 comments from Three Rivers members opposing the proposed change of electric service provider. All of these 65 members are within the Rock Ridge/Frog Hollow Road areas.

6. The Territorial Agreement involves a mutual transfer of assets. The assets to be exchanged include associated poles, insulators, cross-arms, conductors, transformers, and fusing and switching equipment that is utilized in the Applicants' provision of electric service. The respective values of the assets exchanged between the Applicants will be essentially equal.

7. The goal of the Applicants is to equalize the load associated with the service addresses to be transferred, along with reducing facility duplication in the Wardsville and Frog Hollow areas. To enable Three Rivers to serve the anticipated growth in the Frog Hollow area in the coming years, Three Rivers would need to infuse a significant investment into the existing infrastructure. With only one substation, Three Rivers is disadvantaged in planning for this forecasted growth as compared to Ameren Missouri.

8. To maintain adequate and reliable service within the Rock Ridge/Frog Hollow Road areas, Three Rivers estimates that at least one new substation would be required, as well as other significant electric distribution infrastructure additions, to meet foreseeable future load growth in the Rock Ridge/Frog Hollow Road areas, all at a significant cost to Three Rivers and its other member/owners outside of this one area.

9. Expenditure of this significant amount of capital by Three Rivers would be a risky investment in the Rock Ridge/Frog Hollow Road areas because it is foreseeable that this area will be annexed, voluntarily or involuntarily, by the city of Jefferson City, Missouri in the future. Such annexation would strand future expansion of services necessary to offset such a large expenditure because Three Rivers, being a Missouri Rural Electric Cooperative organized under Chapter 394, RSMo, subject to limited exceptions, is allowed to serve new consumers only within "rural areas" of the state. A

“rural area” is defined as an area not included within the boundaries of any city, town or village having a population in excess of fifteen hundred inhabitants.⁵

10. Conversely, within and very near the Rock Ridge/Frog Hollow Road areas, Ameren Missouri has already expended the capital and resources to have in place sufficient facilities to provide adequate and reliable service for future significant consumer and load growth with less required additional investment and investment risk.

11. A substantial reason behind the proposed change of electric service providers within the Rock Ridge/Frog Hollow Road areas is Three River’s acknowledged lack of adequate facilities within this area to accommodate future growth within the area. This area is currently served by Three Rivers via a lengthy radial line. Future load growth within the Rock Ridge/Frog Hollow Road areas, brought about by the natural expansion of development spurred on by the recent addition of Saint Mary’s Hospital and Capital City High School, is inevitable.

12. The Territorial Agreement requires that approximately 250 customers of Ameren Missouri have their electric service provider changed to Three Rivers. All of these customers are within and around the Village of Wardsville, Missouri. Ameren Missouri has received fewer than 5 comments in regard to the proposed change of electric service provider from Ameren Missouri to Three Rivers.

13. A substantial reason behind the proposed change of electric service supplier within and around the Village of Wardsville is Ameren Missouri’s acknowledged inability to provide any redundant feed to the area, which negatively impacts overall reliability. This area is currently served by Ameren Missouri via a lengthy radial line. In

⁵ See Section 394.020.

contrast, Three Rivers has within the Village of Wardsville a robust electric distribution system to meet current and future load growth with minimal future investment needed to provide adequate and reliable service.

14. Furthermore, within Wardsville there is a plethora of duplicated facilities in existence as this area has been served by both Ameren Missouri and Three Rivers in the past. Reduction of duplicated facilities is in the best interests of all parties and affected consumers.

15. Addressing these circumstances, the Applicants have entered into the Territorial Agreement attached to the Application, consisting of the Territorial and Exchange Agreement with attached exhibits identifying the 258 customer service addresses to be transferred from Ameren Missouri to Three Rivers, the 270 customer service addresses to be transferred from Three Rivers to Ameren Missouri, the legal descriptions, maps of the areas affected by the Territorial Agreement, and lists of involved equipment and facilities.

16. The Territorial Agreement makes no provision for customer rates. Staff stated it conducted no analysis of how the transfer would affect Ameren Missouri rates and recommended the Commission defer consideration of any effect the transaction may have on rates to Ameren Missouri's next general rate case.

Conclusions of Law

A. Ameren Missouri is a Missouri corporation providing electric and gas services.⁶ As such, it is subject to the jurisdiction of the Commission.

⁶ Section 386.020 (15).

B. Three Rivers is a rural electric cooperative organized under Chapter 394 RSMo, and providing electric service. Section 394.312, RSMo, gives the Commission jurisdiction over the Territorial Agreement. Although the Commission has limited jurisdiction over rural electrical cooperatives, because the Commission has jurisdiction over all territorial agreements, Three Rivers is subject to the Commission's jurisdiction in this case.⁷

C. Section 393.190.1, RSMo states:

No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.

The Commission may deny the application to transfer assets only if approval would be detrimental to the public interest.⁸

D. Section 393.106.2, RSMo, states:

2. Once an electrical corporation or joint municipal utility commission, or its predecessor in interest, lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800 and section 394.080, or pursuant to a territorial agreement approved under section 394.312. The public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential. The commission's jurisdiction under this section is limited to public interest determinations

E. Section 394.315.2, RSMo provides:

⁷ Section 394.312.4, RSMo, states, in relevant part: “[B]efore becoming effective, all territorial agreements entered into under the provision of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligation of any party to an agreement, shall receive the approval of the public service commission by report and order. . . .”

⁸ *State ex rel. City of St. Louis v. Public Service Comm'n of Missouri*, 73 S.W.2d 393, 400 (Mo. 1934).

2. Once a rural electric cooperative, or its predecessor in interest, lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800 and section 394.080, or pursuant to a territorial agreement approved under section 394.312. The public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it 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.

F. Pursuant to subsections 394.312.3 and 5, RSMo 2016, the Commission may approve the Territorial Agreement's service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.

G. Section 394.312.5, RSMo 2016, provides that the Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing.

Decision

Since an agreement has been reached and no hearing has been requested, none is necessary for the Commission to make a determination.⁹ Based upon the uncontroverted verified pleadings and Staff's recommendation, the Commission now determines that all material facts are in accordance with its decision.

Nearly all current Three Rivers members attending a meeting held on February 12 opposed the Territorial Agreement. OPC received 65 Three Rivers member comments in opposition. These comments, however, were all from within the areas where Three Rivers has a lack of adequate facilities to accommodate future growth. The

⁹ *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

Commission determines the Territorial Agreement enhances the use and efficiency of existing facilities of both Ameren Missouri and Three Rivers in the affected areas. The Territorial Agreement will allow for improved facilities installation planning in anticipation of future growth. It will prevent further duplication of electric service facilities and result in economic efficiencies and reduce future operations and maintenance expenses as well as improve public safety and community aesthetics. The exchange of the parties' equipment, whose resultant respective values will be relatively equal, will facilitate a more seamless exchange of customers.

The Commission finds that all requirements of 20 CSR 4240-3.130(1), 20 CSR 4240-3.140(1), and 20 CSR 4240-10.105(1) are met.¹⁰ The Commission finds that the requirements of Section 393.106.2, RSMo, and Section 393.190.1, RSMo with respect to the exchange of the right to provide service are met in that the exchange is in the context of a territorial agreement and is in the public interest. The Commission finds the requirements of Section 393.190.1, RSMo 2016 for the transfer of assets are met in that the assets transfer is not detrimental to the public interest. The Commission finds the requirements of subsections 394.312.3 and 5, RSMo 2016 are met in that the territorial agreement is in the public interest and not overall detrimental to the public interest.

The Commission will approve the territorial agreement, exchange of service suppliers for the parties' respective service addresses, and the transfer of assets. The Commission will order Ameren Missouri to file any tariff sheets deemed necessary or otherwise report to the Commission on the need for any such tariffs. The Commission

¹⁰ The Commission notes that Ameren Missouri provided no balance sheet and income statement as is required by 20 CSR 4240-105(1)(E). The Commission, however, finds the Application is in substantial compliance with the rules in that the assets and service addresses exchanged are of substantially equal value.

makes no findings nor will it enter any order here regarding ratemaking. Any effect the Territorial Agreement may have on rates may be considered in Ameren Missouri's next general rate case. Ameren Missouri has shown good cause with its verified declaration that it has had no communication with the office of the commission concerning the matters here determined within the prior 150 days, and the Commission will grant Ameren Missouri a variance from the 60-day notice requirement of 20 CSR 4240-4.017.

As the deadline for ruling on the Application is November 23, the Commission will make this Report and Order effective on November 23¹¹

THE COMMISSION ORDERS THAT:

1. Ameren Missouri is granted a variance from the 60-day notice requirement of 20 CSR 4240-4.017.

2. The *Territorial and Exchange Agreement between Union Electric Company d/b/a AmerenUE and Three Rivers Electric Cooperative, Inc.* attached to the Application filed on May 27, 2020, is approved.

3. Ameren Missouri and Three Rivers Electric Cooperative, Inc. are authorized to transfer to each other the property as identified in the Territorial Agreement.

4. The agreement to change service suppliers is approved, and Ameren Missouri and Three Rivers Electric Cooperative, Inc. are authorized to exchange service for their respective customer service addresses as described and identified in the Territorial Agreement.

¹¹ The Application was filed on May 27, 2020. Section 394.312.4, RSMo requires an application for a territorial agreement approval be ruled within 120 days of the filing date. On September 15, 2020, the Commission extended the deadline to November 23, 2020.

5. Ameren Missouri and Three Rivers are authorized to perform the Territorial Agreement and all acts and things necessary to performance.

6. Ameren Missouri shall file any required tariff revisions no later than thirty days after the effective date of this order or otherwise file a pleading explaining the need for any such tariff revisions.

7. This order shall be effective on November 23, 2020.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and
Holsman CC., concur.

Graham, Regulatory Law Judge