

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

In the Matter of the Joint Motion of Farmers'	)	
Electric Cooperative, Inc. and The City of	)	
Gallatin for Approval of a First Addendum	)	<b><u>File No. EO-2019-0396</u></b>
To the Parties' Territorial Agreement	)	
Designating the Boundaries of each Electric	)	
Service Supplier within Portions of Daviess County	)	

**STAFF RECOMMENDATION**

**COMES NOW** Staff of the Missouri Public Service Commission ("Staff"), by and through Staff Counsel's Office, and files the Staff Recommendation regarding the Joint Motion For Approval Of First Addendum filed with the Missouri Public Service Commission on June 17, 2017, by Farmers' Electric Cooperative, Inc. ("Farmers") and The City of Gallatin ("Gallatin"), as amended July 15, 2019. Staff's Appendix A Memorandum Recommendation is that the Commission should approve the amended First Addendum to the Territorial Agreement as not detrimental to the public interest.<sup>1</sup> In support thereof, Staff states as follows:

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<sup>1</sup> Section 394.312.1 RSMo. 2016 states:

Competition to provide retail electric service, as between rural electric cooperatives, electrical corporations and municipally owned utilities may be displaced by written territorial agreements, but only to the extent hereinafter provided for in this section.

Section 394.312.5 RSMo. 2016 states, in part:

The commission shall hold evidentiary hearings to determine whether such territorial agreements should be approved or disapproved, except that in those instances where the matter is resolved by a stipulation and agreement submitted to the commission by all the parties such hearings may be waived by agreement of the parties. The commission may approve the application if it determines that approval of the territorial agreement in total is not detrimental to the public interest. . . .

Section 394.312.6 RSMo. 2016 states, in part:

Commission approval of any territorial agreement entered into under the provisions of this section shall in no way affect or diminish the rights and duties of any supplier not a party to the agreement or of any electrical corporation authorized by law to provide service within the boundaries designated in such territorial agreement. . . . *continued on next page*

1. Farmers is a Chapter 394 rural electric cooperative with its principal office at 201 W. Business Highway 36, P.O. Box 680, Chillicothe, Missouri 64601. It is engaged in the distribution of electric energy and service to its members within certain Missouri Counties.<sup>2</sup> Gallatin is a Missouri City of the fourth class organized and established under the laws of Missouri, existing pursuant to Section 79.010 RSMo., with its principal office and place of business at 112 E. Grand St., Gallatin, Missouri 64640. Gallatin is engaged in the providing of electrical and other utility services to customers in its municipal service area.<sup>3</sup>

2. On October 31, 1996, Farmers and Gallatin filed a joint application requesting approval of a territorial agreement between Farmers' and Gallatin. The filing established *Re Farmers' Elec. Coop., Inc. and The City of Gallatin*, Case No. EO-97-181, which concluded in a *Report And Order*, 6 Mo.P.S.C.3d 22, dated February 18, 1997, authorizing the requested Territorial Agreement. No entities intervened and all parties, including the Office of the Public Counsel ("OPC") and Staff entered into a Stipulation And Agreement.<sup>4</sup> The Territorial Agreement provided for all existing customers to remain with their current suppliers.

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*continued from previous page*

See also 4 CSR 240-3.130 Applications For Approval Of Electric Service Territorial Agreements: Filing Requirements states, in part:

(1)(D) An explanation as to why the territorial agreement is not detrimental to the public interest or the proposed electric service area designation(s) is in the public interest;

<sup>2</sup> Joint Motion, Paragraph 1, p. 1.

<sup>3</sup> *Id.* at Paragraph 2, pp. 1-2.

<sup>4</sup> See footnote 1 on page 1 for Section 394.312.5 RSMo.

3. The Commission explained in its prior *Report And Order* that section 12 of the Territorial Agreement has an addendum procedure which allows Farmers and Gallatin to agree on a case-by-case basis to allow a new structure to receive service from the supplier in whose service territory the new structure is not located and not take service from the supplier in whose service territory the new structure is located. 6 Mo.P.S.C.3d at 23. Section 12 also provides that if Staff or OPC does not file with the Commission objecting to the operation of the addendum within 45 days of the addendum being invoked by a filing with the Commission, the addendum is deemed as approved by Staff and OPC.

4. The Commission noted in its Case No. EO-97-181 *Report And Order* that Farmers and Gallatin's addendum procedure is similar to the procedure approved by the Commission in *Re Union Elec. Co. and Black River Elec. Coop., Inc.*, Case No. EO-95-400, et al., 4 Mo.P.S.C.3d 77, 81-83, *Report And Order On Rehearing* (March 22, 1996) and *Re Grundy Elec. Coop., Farmers' Elec. Coop., and Northwest Mo. Elec. Coop.*, Case No. EO-96-188, 4 Mo.P.S.C.3d 363, *Report And Order* (March 19, 1996). 6 Mo.P.S.C.3d at 25. The Commission in Case No. EO-97-181 found the Territorial Agreement to be not detrimental to the public interest because it would prevent duplication of facilities, promote efficiency and safety, reduce customer confusion, and allow both suppliers to plan their distribution systems in a rational manner. *Id.* at 26.

5. Paragraph 6, at page 2 of the Joint Motion For Approval Of First Addendum states that the Joint Motion is filed in accordance with section 12 of the

Territorial Agreement which addresses addendums to vary the boundaries of the Territorial Agreement on a case-by-case basis.

6. The First Addendum To Territorial Agreement is attached to the Joint Motion as Appendix C and an affidavit of Mr. Steve Holcomb is attached as Appendix D. Mr. Holcomb in the Affidavit gives his consent to Farmers as his supplier to a new structure in Gallatin, Mo. Paragraph 8, page 3 of the Joint Motion explains that section 12 of the Territorial Agreement establishes exclusive service territories for new structures for the two electric suppliers. Paragraph 8 and Appendix D, the Holcomb affidavit, explain that Farmers currently has electric facilities located on the Holcomb tract from which Farmers can serve the Holcomb tract more cost-effectively. Mr. Holcomb makes clear in his affidavit that the site of the new structure is in the Gallatin service area.

7. On July 15, 2019, Farmers filed with the Commission an amended First Addendum to the Territorial Agreement. The First Addendum to the Territorial Agreement filed on June 17, 2019, has the word “Second” in the phrase “the Second Territorial Agreement.” at the end of paragraph “3. **Term.**” The amended First Addendum to the Territorial Agreement filed on July 15, 2019, does not have the word “Second” in the phrase, so that the phrase at the end of paragraph “3. **Term.**” appears as follows: “the Territorial Agreement.” There is no second Territorial Agreement.

8. Although the “Wherefore” clause of the *Joint Motion For Approval Of First Addendum* requests that the Commission issue its Order finding that the Farmers provision of electric service to the Holcomb tract is not detrimental to the

public interest, paragraph 8 at page 3 of the *Joint Application For Approval Of First Addendum* states that the First Addendum is in the public interest for a number of reasons.

9. Appendix A, the Staff Memorandum Recommendation of Amanda Coffey, agrees with the Joint Motion of Farmers and Gallatin that the provision of electric service by Farmers to the Holcomb tract as addressed by the amended First Addendum to the Territorial Agreement is not detrimental to the public interest and should be authorized.

**WHEREFORE** Staff recommends that the Commission find that pursuant to Section 394.312 RSMo. 2016, between Farmers and Gallatin, the Movants, the exclusive provision of service to the Holcomb tract by Farmers is not detrimental to the public interest and approve the July 15, 2019, amended First Addendum to Territorial Agreement and authorize the Movants to perform in accordance with the terms and conditions of the amended First Addendum.

Respectfully submitted,

**/s/ Steven Dottheim**

Steven Dottheim, Mo. Bar No. 29149

Chief Deputy Staff Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Staff Response To Commission Order Directing Filing has been transmitted electronically to all counsel of record this 17th day of July, 2019.

**/s/ Steven Dottheim**

## **MEMORANDUM**

**TO:** Missouri Public Service Commission Case File  
Case No. EO-2019-0396, Farmers' Electric Cooperative and the City of Gallatin's  
Joint Motion for Approval of First Addendum to Territorial Agreement

**FROM:** Amanda Coffey, Engineering Analysis

/s/ Daniel I. Beck / 07-17-19      /s/ Steven Dottheim / 07-17-19  
Engineering Analysis / Date      Staff Counsel's Office / Date

**SUBJECT:** Staff Report and Recommendation on Farmers' Electric Cooperative and  
the City of Gallatin's Joint Motion for Approval of First Addendum to  
Territorial Agreement

**DATE:** July 17, 2019

### **SUMMARY OF RECOMMENDATION**

Staff has reviewed the Farmers' Electric Cooperative (Farmers') and the City of Gallatin's (Gallatin) Joint Motion for Approval of First Addendum. Based on its review, Staff recommends the following:

- For the Commission to find that the exclusive provision of electric service by Farmers' to the Holcomb tract is not detrimental to the public interest and approve the First Addendum to Territorial Agreement as filed in Case No. EO-2019-0396 on July 15, 2019; and
- For the Commission to authorize Farmers' and Gallatin to perform in accordance with the terms and conditions of the First Addendum as filed in Case No. EO-2019-0396 on July 15, 2019.

### **DISCUSSION**

On June 17, 2019, Farmers' and Gallatin filed their Joint Motion for Approval of First Addendum (Addendum), requesting the Commission find that the exclusive provision of electric service by Farmers' to the Holcomb tract is not detrimental to the public interest, approve the Addendum to the Territorial Agreement (Agreement) approved in *Re Farmers' Elec. Coop., Inc.*

*and The City of Gallatin*, Case No. EO-97-181, Report And Order, 6 Mo.P.S.C.3d 22 (February 18, 1997) and to authorize Farmers' and Gallatin to perform in accordance with the terms of the Addendum. On July 15, 2019, Farmers filed, in Case No. EO-2019-0396, an amended First Addendum to Territorial Agreement. The Addendum pertains to a parcel of land referred to as the "Holcomb tract" located within the corporate limits of the City of Gallatin and would give Farmers' authorization to provide electrical service to new structures located on the Holcomb tract.

The provision of service by Farmers' requires less new construction of electrical facilities as Farmers' has existing electric facilities located along a portion of the Holcomb tract and it does not require any customer of either Gallatin or Farmers' to change its supplier. There is a provision in the Agreement that addresses addendums. Section 12 of the Agreement states,

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 electric service area of the other party.

Staff agrees that limiting the amount of new construction of electrical facilities by allowing Farmers' to utilize its existing electric facilities located along a portion of the Holcomb tract to serve new structures to be built on the Holcomb tract is in the public interest. Therefore, Staff agrees that provision of service by Farmers' to the Holcomb tract is not detrimental to the public interest and recommends the Commission approve the amended Addendum.

Neither Farmers' or Gallatin is subject to the Commission's jurisdiction as it relates to annual assessments or the filing of annual reports. Staff is not aware of any other filing that affects or will be affected by this Addendum.



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In the Matter of the Joint Motion of Farmers' )  
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Gallatin for Approval of a First Addendum to )  
the Parties' Territorial Agreement Designating )  
the Boundaries of each Electric Service )  
Supplier within Portions of Daviess County )

**AFFIDAVIT OF AMANDA COFFER**

STATE OF MISSOURI     )  
                                  )     ss.  
COUNTY OF COLE     )

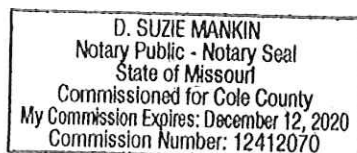
**COMES NOW AMANDA COFFER** and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *Staff Recommendation* in Memorandum form; and that the same is true and correct according to her best knowledge and belief.

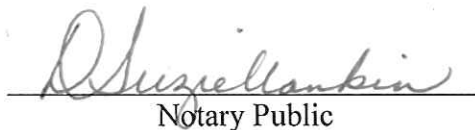
Further the Affiant sayeth not.

  
**AMANDA COFFER**

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 17<sup>th</sup> day of July 2019.



  
Notary Public