

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

In the Matter of the Joint Motion of Osage Valley )  
Electric Corporative, Inc. and Evergy Missouri )  
West for Approval of a Third Addendum to the )  
Parties’ Territorial Agreement Designating the )  
Boundaries of Each Electric Service Supplier )  
Within Portions of Cass County )

**File No. EO-2021-0339**

**STAFF RECOMMENDATION**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), through Staff Counsel’s Office, and for its *Staff Recommendation*, states as follows:

1. On April 9, 2021, Osage Valley Electric Cooperative (Osage Valley) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West filed a *Joint Motion for Approval of a Third Addendum*.

2. On April 12, 2021, the Commission issued its *Order Directing Notice, Setting Intervention Deadline, and Directing Staff Recommendation*. The *Order* directed Staff to file a recommendation regarding the *Joint Motion for Approval of a Third Addendum* no later than May 12, 2021.

3. On May 12, 2021, Staff requested until May 19, 2021 to file its recommendation. The Commission approved this request on May 13, 2021.

4. On May 19, 2021, the Applicants filed a *Joint Motion to Clarify*, limiting the Third Addendum to 9.7 acres, now owned by Toy Lot, LLC.

5. Also on May 19, 2021, Staff requested two weeks to review the *Joint Motion to Clarify*. On May 20, 2021, Staff was granted until June 2, 2021 to file its recommendation.

6. Osage Valley is a rural electric cooperative organized and existing under the laws of Missouri with its principal office at 1321 Orange Street, Butler, Missouri 64730. It is a Chapter 394 rural electric cooperative corporation engaged in the distribution of electric energy and service to its members within certain Missouri counties.

7. Evergy Missouri West is a Delaware corporation with its principal office and place of business at 1200 Main Street, Kansas City, Missouri 64102. Evergy Missouri West is primarily engaged in the business of providing electric and steam utility services in Missouri to the public in its certificated areas. Evergy Missouri West is an electrical corporation and a public utility as defined in Section 386.020 RSMo (Supp. 2019).

8. Pursuant to Section 394.312., RSMo (2016), the Commission may approve a territorial agreement if the Commission determines that the territorial agreement in total is not detrimental to the public interest.

9. In determining whether an addendum to a territorial agreement is not detrimental to the public interest, the Commission has considered four factors: 1) the extent to which the agreement eliminates or avoids unnecessary duplication of facilities; 2) the ability of each party to the territorial agreement to provide adequate service to the customers in its service territory; 3) the likely effect of the addendum on customers of the parties to the agreement; and 4) other cost and safety benefits attributed to the proposed territorial agreement.<sup>1</sup>

10. Based upon its review of the *Third Addendum* and *Joint Motion to Clarify*, Staff recommends that the Commission issue an order approving the Third Addendum,

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<sup>1</sup> *In Re City of Union*, Case No. WO-2003-0186, 2006 WL 3613271, at 2 (Dec. 7, 2006)(citing *In the Matter of the Application of Union Electric Company and Black River Electric Cooperative*, 4 Mo PSC 3d 66, 68-72 (*Report & Order*, iss'd September 15, 1985)).

now limited by the Applicants' clarification, to the previously-approved territorial agreement that is the subject of this proceeding. Additionally, Staff recommends the Commission order Evergy Missouri West to file revised tariffs to reflect the change in its approved service territory. The revised tariff should reflect the legal description for all parcels associated with the Territorial Agreement.

**WHEREFORE** the Staff respectfully requests that the Commission accept its Recommendation in this matter; and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

**/s/ Casi Aslin**

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Attorney for the Staff of the  
Missouri Public Service Commission

### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile, or electronically mailed to all parties and/or counsel of record on this 28<sup>th</sup> day of May, 2021.

**/s/ Casi Aslin**

## **MEMORANDUM**

**TO:** Missouri Public Service Commission Official Case File  
Case No. EO-2021-0339, In the Matter of the Joint Motion of Osage Valley Electric Cooperative, Inc. and Evergy Missouri West For Approval of a Third Addendum to the Parties' Territorial Agreement Designating the Boundaries of Each Electric Service Supplier Within Portions of Cass County

**FROM:** Claire M. Eubanks, PE, Engineer Manager  
Industry Analysis Division – Engineering Analysis Dept.

/s/ Claire M. Eubanks / 05-28-2021  
Engineering Analysis Dept. / Date

/s/ Casi Aslin / 05-28-2021  
Staff Counsel's Office / Date

**SUBJECT:** Staff Recommendation

**DATE:** May 28, 2021

The Staff of the Missouri Public Service Commission (“Staff”) recommends that the Missouri Public Service Commission (“Commission”) approve the Joint Motion, as modified by the Joint Motion to Clarify, (“Application”) of Osage Valley Electric Cooperative, Inc. (“Osage”) and Evergy Missouri West, Inc. (“Evergy”), referred to collectively as the Applicants (“the Applicants”). The Applicants are requesting that an additional specific parcel of land located in Cass County, Missouri, an approx. 9.7 acre parcel and indicated to be owned by Toy Lot LLC, be approved by the Commission as Addendum No. 3 to the Applicants’ Territorial Agreement (“TA”), concluding that approving the Application will not be detrimental to the public interest, per Section 394.312, RSMo 2016, 20 CSR 4240-2.060, 20 CSR 4240-3.130, and 20 CSR 4240-3.135. Staff also recommends the Commission order Evergy to file revised tariff sheets reflecting this change in its electric service territory. These revised tariff sheets should reflect the metes and bounds description for all parcels associated with this Territorial Agreement and each subsequent Addendum.

### **BACKGROUND**

On April 9, 2021, Osage and Evergy filed a Joint Motion with the Commission seeking approval of a Third Addendum to the Applicants’ TA, which requested that Osage be the exclusive provider of electric service to an additional specific parcel of land located within

Cass County, MO, (approximately 55.4 acres) described as being owned by CC Land & Cattle, LLC. This Application was filed per the terms included in Article 7 of the Applicants' TA, originally filed with the Commission on June 10, 2004, in Case No. EO-2004-0603, and approved by a Commission Order issued on September 30, 2004.

On April 12, 2021, the Commission issued an Order *Directing Notice, Setting Intervention Deadline, and Directing Staff Recommendation* in which the Commission's Data Center was ordered to provide notice of this Application to other electric service providers in Cass County, Missouri as well as the Cass County Commission. In addition, the Commission's Public Affairs Office was ordered to provide notice of Application to the members of the Legislature representing Cass County, Missouri and also to the news media serving Cass County, Missouri. This Order also set an intervention period until May 4, 2021<sup>1</sup> for any party desiring to intervene in this case and directed Staff to file a recommendation by May 12, 2021.

On May 4, 2021, Staff became aware that this 55.4 acre parcel had reportedly been sold by CC Land and Cattle, LLC according to Cass County records. Staff contacted the Applicants attempting to verify that this property had been sold and obtain copies of the consents from the new owners to their Application that Osage be the exclusive provider of electric service. Staff consequently requested an extension of one week, until May 19, 2021, in which to file its Recommendation. Staff's extension request was approved by the Commission in its *Order Extending Deadline* filed May 13, 2021.

Subsequently, on May 19, 2021, the Applicants filed a Joint Motion to Clarify in which the Applicants limited their request for approval of Addendum No. 3 to their TA to a 9.7 acre tract indicated to have been sold to Toy Lot LLC. As a consequence, Staff requested a further extension of time in which to file its recommendation on May 19, 2021, a request that was approved by the Commission on May 20, 2021 in its *Order Granting Second Request for Extension of Time*.

Osage is organized under Chapter 394 RSMo 2016 to provide electric service to its members located in all or parts of seven Missouri counties including Cass County, in which lies the parcel of land that is the subject of this case. Rural electric cooperatives, such as Osage, are

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<sup>1</sup> No additional party has sought intervention in this Case.

subject to the jurisdiction of the Commission as specified, in part, in Chapter 394 and Section 386.800 RSMo 2016. For the purpose of this case, Osage is subject to the jurisdiction of the Commission under Section 394.312.3 and 394.312.4 RSMo 2016<sup>2</sup>.

Osage is not required to file annual reports or pay assessment fees with the Commission. Further, Staff is not aware of any pending or final unsatisfied decisions against it from any state or federal court involving customer service or rates within three years of the date of this filing.

Evergy is an electrical corporation subject to the jurisdiction of the Commission as specified, in part, by Chapters 386 and 393, RSMo 2016. Evergy is authorized to provide electricity in and around the area that is the subject of this Application.

Evergy is current on its required annual report filings and assessment fees. Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

### **DISCUSSION**

The Applicants filed a TA on June 10, 2004, in Case No. EO-2004-0603. This document, attached to their Application as “Appendix B”, was an agreement that made Osage the exclusive electric service provider, as between Osage and Evergy, to three specific parcels, each of which lies within Cass County, MO:

Parcel A: Harvest Hill – (approx. 15.2 acres)

Parcel B: Arnall Property – 35 acres

Parcel C: Peculiar Industrial Park

The Commission approved the Applicants’ TA in a Report and Order dated September 30, 2004. In its Report and Order, the Commission cited the avoidance of an otherwise duplication of facilities that would result from Evergy providing electric service to these identified parcels, as well as the excessive cost to extend Evergy’s facilities to these parcels, which were in excess of one mile away from said parcels. Conversely, Osage had adequate facilities comparably adjacent to or nearby the associated parcels. The Commission

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<sup>2</sup> Section 394.312.3 states, in relevant part, that “...all territorial agreements entered into under the provisions of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligations of any party to an agreement shall receive the approval of the public service commission by report and order...”

also mentioned tree-trimming that would be necessary if Evergy were to provide an extension of its service facilities.

Section 7 of the TA contains the procedure for filing subsequent addendums that request additional parcels to be included as part of the TA. There were two previous Addendums requested within the first couple of years following the Commission approval of the TA. The Applicants sought approval of Addendum No. 1 to the TA in May 2005 (Case No. EO-2005-0448). They requested that Parcel D, a sewer lift station, be allowed to receive electric service exclusively from Osage, a request that was approved by the Commission in its Order issued in July 2005.

Similarly, the Applicants filed Addendum No. 2 to their TA in December 2005 (Case No. EO-2006-0244), requesting that Osage be allowed to provide electric service to Parcel E, specifically described as a commercial industrial park that was adjacent to the aforementioned sewer lift station that was the subject property of Addendum No. 1. This was approved by the Commission in an Order dated January 2006. Identically to their reasoning provided in its Order approving the TA, the Commission cited the excessive distance required for Evergy to extend its existing facilities in order to provide electric service to these respective parcels and that utilizing Osage's facilities located adjacent to the parcels eliminates an otherwise duplication of facilities.

Likewise, again utilizing the procedure included in Section 7 of the TA, Evergy and Osage have filed their Application regarding Addendum No. 3 to the TA, attached to the Application as "Appendix C", Addendum No. 3. In the Application, the Applicants requested that Osage be the exclusive service provider to an additional parcel - an approximate 55 acre parcel owned by CC Land and Cattle, LLC. A document indicated to be a legal description of this parcel is included in the Application as "Appendix C" along with a map that depicts the approximately 55.4 acre parcel and illustrates the respective electric facilities of both Evergy and Osage and the location of these facilities in relation to this parcel. On May 4, 2021, Staff became aware that the approximately 55 acre parcel owned by CC Land and Cattle, LLC had been sold on April 21, 2021. According to Cass County Records, this approximately 55 acre parcel was divided between two buyers: a portion was purchased by Remmet, LLC and an

approximate 9.7 acre parcel was purchased by Toy Lot, LLC.<sup>3</sup> Staff reached out to the Applicants attempting to not only verify the sale of this property, but to also obtain signed consents from the new owners to have Osage be the electric service provider. Until they were contacted by Staff, Applicants were unaware that the 55 acre parcel had been sold.

On May 12, 2021, Osage provided contact information for the new owner of the 9.7 acre parcel:

Toy Lot, LLC  
c/o Mr. Brando Carney  
105 E. Battlefield / Suite C  
Long Jack, MO 64070

A signed consent from Mr. Carney, illustrating his agreement to have Osage be the provider of electric service was received by Staff and is attached to this recommendation as “Schedule 2”.

On May 17, 2021, the Applicants notified Staff that their current request seeking Commission approval of Addendum No. 3 to their TA would be limited to this 9.7 acre parcel purchased by Toy Lot, LLC. The Applicants filed a *Joint Motion to Clarify* on May 19, 2021, that included the aforementioned consent from Mr. Brando Carney, a representative of Toy Lot, LLC, to have Osage be the service provider to its recently acquired parcel.

Osage has facilities that are routed along the boundary of this 9.7 acre parcel that also borders an interstate highway. Evergy’s nearest facilities are indicated to be 1.5 miles to the west of this parcel. Therefore, as was the case with the associated parcels described in the original TA and Addendums Nos. 1 and 2, in order to make the most efficient use of existing facilities and prevent an otherwise duplication of facilities, the Applicants sought to have Osage be the exclusive electric service provider.

Should the Commission approve the Applicants’ request, Staff recommends that the Commission order Evergy to file revised tariff sheets to reflect the change in its approved service territory. These revised tariff sheets should reflect the metes and bounds description for all parcels associated with this Territorial Agreement and the associated Addendums.

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<sup>3</sup> Attached to this Staff Recommendation as Schedule 1 is a copy of survey indicated to have been conducted on behalf of CC Land and Cattle, LLC that illustrates the approx. 55.4 acre parcel being divided into two separate parcels (a 45.7 acre parcel and a 9.7 acre parcel) and sold to Remmet, LLC and Toy Lot, LLC respectively (Gail’s Green Acres, Lots 1 and 2).



### CONCLUSION

For the aforementioned reasons, Staff recommends that the Commission approve the Application of Evergy and Osage, which is now limited to the 9.7 acre parcel recently purchased by Toy Lot, LLC, concluding that such approval of Addendum No. 3 to the Applicants' TA is not detrimental to the public interest per Section 394.312, RSMo 2016, 20 CSR 4240-2.060, 20 CSR 4240-3.130, and 20 CSR 4240-3.135.

Per the Applicants' Joint Motion to Clarify, Addendum No. 3 to the Applicants' TA only concerns an approximate 9.7 acre parcel of land in Cass County, Missouri that was recently purchased by Toy Lot, LLC. This 9.7 acre parcel is illustrated on the survey attached as Schedule 1 to the Staff Recommendation, a survey which was conducted on behalf of CC Land and Cattle, LLC. While Osage's facilities are routed along the boundary line of the 9.7 acre parcel, Evergy's nearest facilities are installed 1.5 miles to the west of said parcel. In order to make the most efficient use of existing electric facilities and prevent an otherwise duplication of facilities, Staff agrees with the Applicants that Osage should be the exclusive electric service provider to this 9.7 acre parcel. A representative of Toy Lot, LLC has provided its consent for Osage as the exclusive service provider, as illustrated on Schedule 2 attached to this Staff Recommendation. If the Commission approves the Application, Staff recommends that the Commission order Evergy to file revised tariff sheets to reflect this change to its electrical service territory. These revised tariff sheets should reflect the metes and bounds description for all parcels associated with this Territorial Agreement and each subsequent Addendum.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Joint Motion of Osage	)	
Valley Electric Cooperative, Inc. and	)	Case No. EO-2021-0339
Evergy Missouri West, Inc. d/b/a Evergy	)	
Missouri West for Approval of a Third	)	
Addendum to the Parties' Territorial	)	
Agreement Designating the Boundaries of	)	
Each Electric Service Supplier Within	)	
Portions of Cass County	)	

**AFFIDAVIT OF CLAIRE M. EUBANKS, PE**

STATE OF MISSOURI	)	
	)	ss.
COUNTY OF COLE	)	

COMES NOW CLAIRE M. EUBANKS, PE 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.

  
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 CLAIRE M. EUBANKS

**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 28<sup>th</sup> day of May 2021.

D. SUZIE MANKIN Notary Public - Notary Seal State of Missouri Commissioned for Cole County My Commission Expires: April 04, 2025 Commission Number: 12412070
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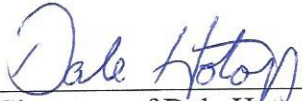
  
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 Notary Public



OWNER CONSENT TO TERRITORIAL AGREEMENT AMENDMENT

Date: 5-12-2021

I, Dale Hotop, state that I am a Member of Toy Lot, LLC and that I am authorized to make this statement on behalf of Toy Lot, LLC, which is the legal owner and occupant of the property located at (TBD) E. Outerbelt Road, Peculiar, Mo. (part of the NE 1/4 of the NW 1/4 of Sec. 23, Twn. 45N, Rg 32W, Cass Co. MO.; signing below I do hereby swear and affirm that Toy Lot, LLC has no objection to an amendment to the territorial agreement between Evergy Missouri West, Inc. and Osage Valley Electric Cooperative, Inc. that would allow the property located at the above-referenced location to be served by Osage Valley Electric Cooperative, Inc.



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Signature of Dale Hotop  
Toy Lot, LLC