

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 9th day of June, 2021.

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

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

Issue Date: June 9, 2021

Effective Date: July 9, 2021

This order approves a Third Addendum to a Territorial Agreement between Osage Valley Electric Cooperative (Osage Valley) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (Evergy Missouri West) for an area comprised of 9.7 acres, now owned by Toy Lot, LLC, and located in Cass County, Missouri.

Procedural History

Osage Valley and Evergy Missouri West (“Joint Applicants”) filed a Joint Motion for Approval of Third Addendum on April 9, 2021.¹ The Commission issued its Order Directing Notice, Setting Intervention Deadline, and Directing Staff Recommendation on April 9. The Joint Applicants filed a Joint Motion to Clarify on May 19, limiting the scope of the Third Addendum to 9.7 acres owned by Toy Lot, LLC. Commission Staff (Staff) filed its Staff Recommendation on May 28, recommending approval of the Third Addendum as limited by the Joint Motion to Clarify. No persons have sought intervention

¹ Unless otherwise indicated, date references will be to 2021.

or requested a hearing, nor have the Joint Applicants responded to Staff's Recommendation.

Findings of Fact

1. Osage Valley is a rural electric cooperative organized and existing under the laws of Missouri with its principal office in Butler, Missouri. 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. Osage Valley is in good standing under the laws of the State of Missouri.

2. Evergy Missouri West is a Delaware corporation with its principal office and place of business in Kansas City, Missouri. Evergy Missouri West is primarily engaged in the business of providing electric and steam utility service in Missouri in its certificated areas. Evergy Missouri West is an electrical corporation and public utility as defined in Section 386.020, RSMo.²

3. The joint applicant's territorial agreement was first approved in a Report and Order dated September 30, 2004 in EO-2004-0603. That territorial agreement made Osage Valley the exclusive electric service provider, as between Osage Valley and Evergy Missouri West, to three specific parcels, each of which lies in Cass County, Missouri. Subsequently to the approval of the territorial agreement, there have been two further addenda, Addendum No. 1, being approved in EO-2005-0448; and Addendum No. 2, being approved in EO-2006-0244. The stated rationale for the territorial agreement and both subsequent addenda was the excessive cost of extending Evergy's Missouri West's facilities to service the associated properties.

² All references to the Missouri Revised Statutes will be to 2016.

4. The Third Addendum's area of focus is a parcel of land located in Cass County, Missouri, consisting of approximately 9.7 acres and owned by Toy Lot LLC. The Joint Motion, as limited by the Joint Applicants' clarification, asks that Osage Valley be the exclusive provider of electric service for this parcel of land. Toy Lot, LLC, owner of the 9.7 acres, has consented to the Joint Motion, and the signed consent is attached to the Joint Motion to Clarify.

5. The substantial reason for the Third Addendum is that Osage Valley has facilities that are routed along the boundary of the 9.7 acre parcel that also borders an interstate highway. Evergy Missouri West's nearest facilities are 1.5 miles to the west of the parcel. Therefore, in order to make the most efficient use of existing facilities and prevent a duplication of facilities, the Joint Applicants have sought to have Osage Valley be the exclusive electric service provider for the 9.7 acre parcel.

Conclusions of Law

A. Evergy Missouri West is a Delaware corporation providing electric and steam services.³ As such, it is subject to the jurisdiction of the Commission per Chapters 386 and 393, RSMo.

B. Osage Valley is a rural electric cooperative organized under Chapter 394 RSMo, to provide electric service to its members in Missouri.

C. Section 394.312, RSMo 2016, 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, Osage Valley is subject to the Commission's jurisdiction in this case.⁴

³ Section 386.020 (15) and (20), RSMo 2016.

⁴ 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,

D. Pursuant to subsections 394.312.3 and 5, RSMo, 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.

E. 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

The owner of the affected area has consented to the Third Addendum as limited by the parties' Joint Motion to Clarify. Since an agreement has been reached and no hearing has been requested, none is necessary for the Commission to make a determination.⁵ Based upon the uncontroverted verified pleadings and Staff's recommendation, the Commission now determines that all material facts are in accordance with its decision.

The Commission determines the Third Addendum to the Territorial Agreement is in the public interest and not detrimental to the public interest in that while Evergy's nearest facilities are 1.5 miles to the west of the 9.7 acre parcel, Osage Valley has facilities that are routed along the boundary of the 9.7 acre parcel that also borders an interstate highway; and, thus, the Third Addendum, as limited by the parties' joint clarification, makes the most efficient use of existing facilities and prevents an otherwise duplication of facilities.

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. . . .”

⁵ *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).

It is the Commission's decision that the Third Addendum to the Parties' Territorial Agreement is in the public interest and as a whole is not detrimental to the public interest. The Commission will approve the Third Addendum. The Commission will order Evergy Missouri West to file revised tariff sheets to reflect the change in its approved service territory, setting out the legal description for all parcels associated with the Territorial Agreement.

THE COMMISSION ORDERS THAT:

1. The Third Addendum to the Parties' Territorial Agreement, as limited by the Joint Applicants' Joint Motion to Clarify filed on May 19, 2021, is approved.
2. Evergy Missouri West and Osage Valley are authorized to perform the Third Addendum to the Parties' Territorial Agreement and all acts and things necessary to performance.
3. Evergy Missouri West shall file revised tariff sheets to reflect the change in its approved service territory no later than thirty days after the effective date of this order. The revised tariff sheets shall reflect the metes and bounds description for all parcels associated with the Territorial Agreement and the associated Addenda as described in the body of this order.
4. This order shall be effective on July 9, 2021.



BY THE COMMISSION

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

Morris L. Woodruff
Secretary

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

Graham, Regulatory Law Judge