

SECOND TERRITORIAL AGREEMENT

Between

UNION ELECTRIC COMPANY

d/b/a AMERENUE

and

CUIVRE RIVER ELECTRIC COOPERATIVE, INC.

SECOND TERRITORIAL AGREEMENT

This Agreement is made and entered into as of the 23rd day of _____ 2002, by and between UNION ELECTRIC COMPANY d/b/a/ AmerenUE (hereinafter "Company") and CUIVRE RIVER ELECTRIC COOPERATIVE, INC. (hereinafter "Cooperative").

RECITALS

- A. Company is authorized by law to provide electric service within the State of Missouri, including all or portions of Lincoln and Warren Counties;
- B. Cooperative is authorized by law to provide electric service within the State of Missouri, including all or portions of Lincoln and Warren Counties;
- C. The Missouri Legislature by RSMo Section 394.312 2000, has authorized electrical corporations and rural electric cooperatives to enter into written territorial agreements;
- D. On October 30, 1992, Company and Cooperative entered into a written territorial agreement designating the boundaries of each Applicant's exclusive service area for new structures in St. Charles County (the "First Territorial Agreement") and said agreement was approved by the Missouri Public Service Commission ("Commission") in Case No. EO-93-166 by Report and Order on March 5, 1993.
- E. Now, Company and Cooperative desire to promote the orderly development of the retail electric service within portions of Lincoln and Warren Counties, and to minimize disputes which may result in higher costs in serving the public; and
- E. Company and Cooperative desire to reduce the wasteful duplication of Customer Service Equipment and offer improved level of service to their Customers.

AGREEMENT

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1.

DEFINITIONS

In addition to terms defined elsewhere herein, when used herein, the following terms shall have the definitions set forth below. Words importing persons include corporations or other entities, as applicable, and words importing on the singular include the plural and vice versa when the context requires.

- 1.1 Agreement shall mean this document including any appendices or exhibits hereto.
- 1.2 Customer shall mean any person, partnership, corporation, limited liability company, political subdivision, or any agency, board, department or bureau of the state or federal government, or any other legal entity that has requested or is receiving electric service. Any Customer who has requested or is receiving electric service at one structure shall be a new and different Customer at each structure at which electric service has been requested.
- 1.3 Effective Date of this Agreement shall be the effective date of the order issued by the Commission pursuant to RSMo. Section 394.312, approving this Agreement.
- 1.4 **Electric Power Provider** shall mean any other electrical corporation, municipally owned utilities and/or rural electric cooperative.
- 1.5 **Existing Structure** shall mean any Structure that receives electric energy from either party prior to or on the Effective Date of this Agreement. "Existing Structure" shall also mean (i) any replacement of an Existing Structure, provided said Structure is totally removed and then replaced by a Structure that is: (1) located at the same location on the property where the previous Structure was located and (2) used for the same purpose of

the Structure it is replacing, and (ii) any maintenance, repair, remodeling, or partial replacement of an Existing Structure.

- 1.6 New **Outbuilding** shall mean, if the Existing Structure's Purpose is residential, a New Structure that is a detached garage, detached storage building, gazebo, detached porch, or similar structure that is not attached to the Existing Structure in question and is not a residence. If the Existing Structure's Purpose is agricultural, a "New Outbuilding" is a New Structure that is a detached garage, barn, well, silo, grain bin, or similar structure that is not attached to an Existing Structure in question and is not a residence.
- 1.7 New Structure shall mean (i) any Structure that did not receive electric energy from either party prior to or on the effective date of this Agreement and (ii) the replacement of an Existing Structure with a Structure that does not satisfy the definition of Existing Structure set forth herein.
- 1.8 **Structure** shall mean an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus but shall not include customer-owned meter wiring. A Structure shall include an original structure and any contiguous addition to or expansion thereto. Structure shall not include a metering device or customer-owned meter wiring.
- 1.9 **Laws and Regulations** shall mean all applicable statutes, regulations, codes, laws, licenses, decisions, interpretations, policy statements, regulatory guides, rules, criteria, all license requirements enforced or issued by any government, federal, state, or local, or any governmental agency, authority, or body and industry-recognized guidelines and professional standards.

ARTICLE 2.

EXCLUSIVE RIGHT TO SERVE

- 2.1 Pursuant to RSMo Section 394.312, this Agreement designates the boundaries of the electric service area of Company and Cooperative. In this Agreement, Cooperative

agrees not to furnish electric service to New Structures in an area described in Article 3, hereinafter referred to as the Exclusive Service Area of the Company. Likewise, Company agrees not to furnish electric service to New Structures in an area described in Article 4, hereinafter referred to as the Exclusive Service Area of the Cooperative. Because RSMo Sections 394.312 permits electric suppliers to displace competition only by a written agreement, any Electric Power Providers that are not signatories to this Agreement are in no way effected by the terms of this Agreement, including but not limited to the *exclusive service* area boundaries set forth herein.

- 2.2 After the Effective Date, as between the parties, each party shall have the exclusive right to furnish electric service to all New Structures located within its respective Exclusive Service Area described in Articles 3 and 4 of this Agreement, regardless of the size of the load or the characteristics of the customer's requirements. Except as provided expressly herein, neither party may furnish, make available, render, or extend electric service to New Structures or for use within the exclusive service area of the other party, either directly, indirectly, through a parent, affiliate, or subsidiary of Company or Cooperative, whether said parent, affiliate, or subsidiary be a corporation, limited liability company, partnership, or cooperative corporation.
- 2.3 Both Parties retain the right to furnish electric service to all Existing Structures that they are serving by either permanent or temporary electric service on the Effective Date of this Agreement, regardless of their location.
- 2.4 The parties recognize and agree that this Agreement places limits on the party's abilities to distribute retail electric energy. In the event that retail wheeling of unbundled electric energy becomes available in the territory affected by this Agreement (i.e., retail customers are permitted to choose their suppliers of electric energy), nothing in this Agreement shall be construed to limit in any way the ability of either party to furnish electric energy to Structures located in the Exclusive Service Area of the other party; provided, however, that the electric energy shall be delivered to said Structures by means of the electric distribution facilities of the party in whose Exclusive Service Area the

Structures are located. Further in the event changes in this Agreement are required due to retail wheeling of unbundled electric energy becoming available in the territory affected by this Agreement, both parties agree to negotiate in good faith changes to this Agreement and the parties shall cooperate in obtaining approval of the modified agreement by participating in the joint application requesting Commission approval, if required.

ARTICLE 3.

EXCLUSIVE SERVICE AREA OF COMPANY

The Exclusive Service Area of Company, as between the parties under this Agreement shall be those portions of Lincoln County (Exhibit 1A) and Warren County (Exhibit 1B), as described by metes and bounds in Exhibit 2 and as illustrated by the lines shown on the above referenced figures. All exhibits referred to in this Article are incorporated herein by reference and made a part of this Agreement as if fully set out verbatim. In cases of conflict between maps in Exhibits 1A or 1B and the written legal descriptions by metes and bounds in Exhibit 2, the legal written descriptions shall prevail. The Company may serve within municipalities that are located in the Company's Exclusive Service Area, pursuant to this Agreement.

ARTICLE 4.

EXCLUSIVE SERVICE AREA OF COOPERATIVE

The Exclusive Service Area of Cooperative, as between the parties under this Agreement shall be those portions of Lincoln County (Exhibit 1A) and Warren County (Exhibit 1B), as described by metes and bounds in Exhibit 3 and as illustrated by the lines shown on the above referenced figures. All exhibits referred to in this Article are incorporated herein by reference and made a part of this Agreement as if fully set out verbatim. In cases of conflict between maps in Exhibits 1A or 1B and the written legal descriptions by metes and bounds in Exhibit 3, the legal written descriptions shall prevail. The Cooperative may serve within municipalities that are located in the Cooperative's Exclusive Service Area, pursuant to this Agreement.

ARTICLE 5.
COMPETITION AREA

Company and Cooperative reserve for purposes of a future territorial agreement a portion of Warren County, more specifically described by metes and bounds in Exhibit 4 (hereinafter the "Competition Area"), which is incorporated herein by reference and made a part of this Agreement as if fully set out verbatim. Both parties shall have the right to serve new structures in the Competition Area as they would have under the principles of law of the State of Missouri provided, Cooperative shall also have the right to provide electric service to new structures in portion of the Competition area whose population exceeds 1500 persons. Company shall have the right to apply to the Commission for a waiver of any charge for any service, including wiring, piping, appliances, or equipment, required by its tariffs on file with the Commission or by the Commission's Utility Promotional Practice Rule, 4 CSR 240-14.010 ~~et seq.~~ to New Structures located within the Competition Area. In the Application for the approval of this Territorial Agreement , the Cooperative shall support Company to obtain this waiver by requesting in the Joint Application that the Commission grant Company a waiver of the Commission's Utility Promotional Practice Rule, 4 CSR 240-14.010 et.seq. Further, the Cooperative hereby waives any right it may have to file a complaint either with the Commission or a court of competent jurisdiction alleging the Company's violation of the Utility Promotional Practices Rule with the Competition Area.

ARTICLE 6
NON-EXCLUSIVE SERVICE TERRITORY

This Agreement establishes exclusive service territories for Company and Cooperative within the areas described in Exhibits 2 and 3, respectively. The Agreement also defines the Competition Area described in Exhibit 4. The Territorial Agreement has no impact on those portions of Lincoln and Warren Counties outside the areas described in Exhibits 2,3, and 4.

ARTICLE 7

EXCEPTIONS TO EXCLUSIVE SERVICE TERRITORIES

Company and Cooperative agree to the following exceptions to Exclusive Service Areas set forth in Sections 3 and 4 above. Company and Cooperative are presently supplying electric service or have under contract to supply electric service to certain subdivisions, trailer parks, and developments that are to be located in the other party's Exclusive Service Area under this Agreement. These subdivisions, trailer parks, and developments are listed in Exhibit 5 and either (i) depicted in Figures 5A through 5P to this Agreement, which are incorporated herein by reference and made a part of this Agreement as if fully set out verbatim, or (ii) cross referenced for identification purposes to the appropriate county official record of said subdivision, trailer park, or development. On the Effective Date of this Agreement, the party designated in Exhibit 5 shall have the exclusive right to serve any New Structures located in the subdivisions, trailer parks, and developments listed in Exhibit 5. Existing Structures within these subdivisions, trailer parks, and developments shall be served in accordance with the terms of this Agreement.

ARTICLE 8

LOCATION OF A STRUCTURE

- 8.1 The location of a Structure for purposes of this Agreement shall be the geographical location at which electric energy is used, regardless of the metering point or point of delivery.
- 8.2 The first owner of a New Structure who requests and receives electric service at said Structure which is located on or crossed by any mutual boundary line, as described in Articles 3 and 4, defining the Exclusive Service Areas of the parties shall be permitted to choose either party for permanent electric service; provided that the Customer's meter is installed within that party's Exclusive Service Area. Thereafter, that party shall exclusively serve that Structure.
- 8.3 A party may provide electric service to a New Outbuilding located in the Exclusive Service Area of the other party, so long as (i) the New Outbuilding is located within the contiguous tract of land on which that party's customer's Structure is located and the

New Outbuilding shall not be used for commercial or industrial purposes or (ii) the other party consents in writing. This section shall not apply to a customer who receives electric service from both Company and Cooperative on the same tract of land, and requests additional electric service. New Outbuildings for these customers shall be served by the designated exclusive service provider, unless the customer, Company, and Cooperative agree otherwise and follow the procedures set out in Article 10.

ARTICLE 9

RIGHT TO CONSTRUCT FACILITIES

This Agreement shall in no way affect either party's right to construct such electric generation, distribution and transmission facilities within the designated Exclusive Service Area of the other as that party deems necessary, appropriate or convenient to provide electric service to its customers not inconsistent with the terms of this Agreement and as otherwise allowed by law.

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.

ARTICLE 11

TERM AND CONDITIONS OF PERFORMANCE

- 11.1 **Effective Date.** The Effective Date of this Agreement shall be the date the order issued by the Commission pursuant to Section 394.312, RSMo. approving this Agreement becomes effective.
- 11.2 **Term of Agreement.** The term of this Agreement shall be perpetual unless terminated by the parties in accordance with Article 12, Termination.
- 11.3 **Conditions of Performance.** Performance of the parties is contingent upon all of the following having occurred no later than December 31, 2002 unless such condition is waived, extended or modified by agreement in writing signed by an officer of each party hereto:

- A. Approval of this Territorial Agreement by the Commission, including but not limited to the following: (i) an order approving this Agreement, (ii) a finding that this Agreement does not impair Company's certificates of convenience and necessity, except as specifically limited by the Agreement, and (iii) an order authorizing Company to make offers without prior Commission approval to potential customers in the Competition Area, the same constituting a waiver from the Commission's Utility Promotional Practices Rule 4 CSR 240-14.010 et seq.
 - B. All required approvals of both the Company's and Cooperative's Board of Directors, if required;
 - C. Approval by the Federal Energy Regulatory Commission to the extent of its jurisdiction, if required;
 - D. Approval by the Securities and Exchange Commission to the extent of its jurisdiction, if required.
- 11.4 This Agreement shall be submitted to the Board of Directors of both Company and Cooperative for approval. Once approved each party's board of directors, each board member and officer of Company and Cooperative agree to support the approval of this Agreement as being in the public interest. To this end, each party will cooperate in presenting a joint application showing that this Agreement is in the public interest. Further, no board member or officer of Company or Cooperative shall support any effort undertaken by others to oppose this Agreement.
- 11.5 Company and Cooperative agree to undertake all actions reasonably necessary to implement this Agreement. Company and Cooperative will cooperate in presenting a joint application showing this Agreement, in total, not to be detrimental to the public interest. Company and Cooperative will share equally in the costs assessed by the Commission for seeking of administrative approval of this Agreement. All other costs will be borne by the respective party incurring the costs.

ARTICLE 12.

TERMINATION

- 12.1 Termination Events. This Agreement and the transactions contemplated by this Agreement may be terminated by mutual consent of Company and Cooperative.
- 12.2 Effective Date of Termination. The termination of this Agreement shall be effective on the date the Commission receives a notice signed by both Company and Cooperative of their decision to terminate this Agreement.
- 12.3 Effect of Termination. If the transactions contemplated by this Agreement are terminated as provided herein each party shall pay the costs and expenses incurred by it in connection with this Agreement, and no party (or any of its officers, directors, employees, agents, attorneys, representatives, or shareholders) shall be liable to any other party for any costs, expenses, or damages; except as provided herein, neither party shall have any liability or further obligation to the other party to this Agreement.

ARTICLE 13.

NOTICES

All notices, reports, records, or other communications which are required or permitted to be given to the parties under this Agreement shall be sufficient in all respect if given in writing and delivered in person, by fax, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to the receiving party at the following address:

For Company

Mr. Robert Schmidt
District Manager
Union Electric Company
200 Callahan Road
Wentzville, MO 63385

For Cooperative

Mr. Dan L. Brown
General Manager/CEO
Cuivre River Electric Cooperative
1112 E. Cherry Street, P.O. Box 160
Troy, MO 63379-0160

or to such other address as such party may have given to the other by notice pursuant to this Section. Notice shall be deemed given on the date of delivery, in the case of personal delivery or

fax, or on the delivery or refusal date, as specified on the return receipt, in the case of overnight courier or registered or certified mail.

ARTICLE 14

ASSIGNMENT

- 14.1 This Agreement shall be binding on the successors and assigns of both Company and Cooperative. Neither party shall make any assignment of any of its rights or interests under this Agreement without the written consent of the other party, which consent shall not be unreasonably withheld, and approval of the Commission.
- 14.2 Notwithstanding the foregoing, in the event of a merger, corporate reorganization, or corporate restructuring of a party, said party may assign this Agreement to the corporate entity responsible for providing distribution level electric service in the area covered by this Agreement and the consent of the other party shall be deemed to be given. The consenting party or party whose consent is deemed to be given shall cooperate in obtaining approval of the assignment by (a) participating in the joint application requesting Commission approval of the assignment and (b) providing an affidavit, stating that it consents to the Assignment, for inclusion in such application.

ARTICLE 15

MISCELLANEOUS

- 15.1 **Other Products and Services Not Affected.** This Agreement is limited to the distribution of retail electricity and shall in no way affect either party's right to offer other products and services, including but not limited to wholesale electricity, natural gas service, propane service, fiber optic communication service, satellite television service, metering services, and other communication services, to customers located in the Exclusive Service Area of the other party. Neither shall this Agreement limit in any way a party's right to construct such non-electric distribution facilities within the designated Electric Service Area of the other as that party deems necessary, appropriate or convenient to provide other non-electric distribution service to its customers. The

Second Territorial Agreement does not amend, modify, alter, or change in any way the First Territorial Agreement.

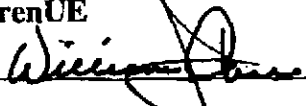
- 15.2 **Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with, and its validity shall be determined under, the laws of the State of Missouri.
- 15.3 **Amendments.** No modification, amendment, deletion, or other change in this Agreement or the boundaries described in the Agreement shall be effective for any purpose unless specifically set forth in writing and signed by the both party and approved by the Commission.
- 15.4 **Headings.** Headings and titles contained in this Agreement are included for convenience only and shall not be considered for purposes of interpretation of this Agreement.
- 15.5 **Impact of Commission or Court Orders.** The filing fee for this application pursuant to 4 CSR 240-21.010 shall be split between the parties. If the Commission does not approve the provisions of this Agreement, then it shall be nullified and of no legal effect between the parties. Further, if any part of this Agreement is declared invalid or void by a Court or agency of competent jurisdiction, then the whole Agreement shall be deemed invalid and void.
- 15.6 **Survival.** Obligations under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive termination, cancellation or expiration of this Agreement.
- 15.7 **No Waiver.** If a party has waived a right under this Agreement on any one or more occasions, such action shall not operate as a waiver of any right under this Agreement on any other occasion. Likewise, if a party has failed to require strict performance of an obligation under this Agreement, such action shall not release the other Party from any other obligation under this Agreement or the same obligation on any other occasion.

- 15.8 **Further Assurances.** The parties shall execute such other documents and perform such other acts as may reasonably be necessary in order to give full effect to this Agreement.
- 15.9 **Company's Service Territory Outside This Agreement.** Company has service territories outside of the areas covered by this Agreement. For service outside of the areas described by this Agreement, Company will continue to operate without regard to this Agreement. The principles of law, rules and regulations applicable to the business of retail sales of electricity shall apply without regard to this Agreement.
- 15.10 **Cooperative's Service Territory Outside This Agreement.** Cooperative has service territories outside of the areas covered by this Agreement. For service outside of the areas described by this Agreement, Cooperative will continue to operate without regard to this Agreement. The principles of law, rules and regulations applicable to the business of retail sales of electricity shall apply without regard to this Agreement.
- 15.11 **Expenses.** Except as otherwise expressly provided herein, all expenses incurred by the parties hereto in connection with or related to the authorization, preparation and execution of this Agreement and the closing of the transactions contemplated hereby, including, without limitation, the fees and expenses of agents, representatives, counsel and accountants employed by any such party, shall be borne solely and entirely by the party which has incurred same.
- 15.12 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to the allocation of service rights in the territories described herein. If the Commission does not approve this Agreement or fails to approve or rejects any portion of this Agreement, then the entire Agreement shall be nullified and of no legal effect. Further, if any part of this Agreement is declared invalid or void by a Court or other agency with competent jurisdiction, then the whole Agreement shall be deemed invalid and void.

The parties have entered into this Agreement as evidenced below by the signature of their duly authorized representatives as of the date set forth on the first page hereof.

UNION ELECTRIC COMPANY

d/b/a AmerenUE

By: 

Name: William J. Carr

Title: Vice President

ATTEST:

By: 
Assistant Secretary

CUIVRE RIVER ELECTRIC COOPERATIVE, INC.

By: Dan L. Brown

Name: DAN L. BROWN

Title: Gen Mgr / CEO

Attest:

By: Ray L. Heald

Title: Asst. Secy

