

# BEFORE THE PUBLIC SERVICE COMMISSION

## OF THE STATE OF MISSOURI

In the Matter of the Application of Union Electric )  
Company and Macon Electric Cooperative, Inc., for )  
Approval of a Written Territorial Agreement )  
Designating the Boundaries of Each Electric Service )  
Supplier Within Macon, Randolph, Monroe, Shelby, ) Case No. EO-97-6  
Adair, Linn, Knox, Sullivan, and Chariton Counties )  
in Missouri and for Authority to Transfer Customers )  
and Certain Property in Accordance With the Terms of )  
Said Agreement. )

In the Matter of the Application of Union Electric )  
Company for a Certificate of Convenience and )  
Necessity Authorizing It to Own, Control, Manage and )  
Maintain an Electric Power System for the Public in ) Case No. EA-96-55  
Chariton, Linn, Monroe, and Randolph Counties in )  
Missouri. )

In the Matter of the Application of Union Electric )  
Company to Transfer Transmission Facilities to ) Case No. EM-97-61  
Northeast Missouri Electric Power Cooperative, Inc. )  
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### REPORT AND ORDER

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**Issue Date:** October 29, 1996

**Effective Date:** November 8, 1996

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In the Matter of the Application of Union Electric )  
Company to Transfer Transmission Facilities to ) Case No. EM-97-61  
Northeast Missouri Electric Power Cooperative, Inc. )  
)

**APPEARANCES**

Michael F. Barnes, Attorney, Union Electric Company, 1901 Chouteau Avenue,  
Post Office Box 149, St. Louis, Missouri 63166, for Union Electric Company.

Patrick A. Baumhoer, Victor S. Scott, and Wayne Hackman, Andereck, Evans,  
Milne, Peace & Baumhoer, I.L.C., 301 East McCarty Street, Post Office  
Box 1438, Jefferson City, Missouri 65102, for Macon Electric Cooperative,  
Inc.

Charles Brent Stewart, French & Stewart Law Offices, 1001 Cherry Street,  
Suite 302, Columbia, Missouri 65201, for North Central Missouri Electric  
Cooperative, Inc., and the Missouri Association of Municipal Utilities.

Lewis R. Mills, Jr., Deputy Public Counsel, Office of the Public Counsel,  
Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the  
Public Counsel and the public.

Roger W. Steiner, Assistant General Counsel, and R. Blair Hosford,  
Assistant General Counsel, Missouri Public Service Commission, Post Office  
Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri  
Public Service Commission.

**ADMINISTRATIVE**

**LAW JUDGE:** Joseph A. Derque, III.

## **REPORT AND ORDER**

### **Procedural History**

On July 5, 1996, Union Electric Company (UE) and Macon Electric Cooperative, Inc. (MEC) filed a joint application requesting Commission approval of a territorial agreement between the two companies, filed pursuant to Sections 394.312 and 416.041(3), R.S. Mo. (1994).

The proposed agreement, appended to this Report And Order as Attachment A, provides for the apportionment of electric service areas between the two applicants in the Missouri counties of Macon, Randolph, Monroe, Shelby, Adair, Linn, Knox, Sullivan and Chariton. The proposed boundaries resulting from the territorial agreement are particularly described in Attachment A and, together with a metes and bounds description and accompanying maps, describe the MEC area resulting from the agreement.

The Commission consolidated two other concurrent applications filed by UE, those being Case No. EA-97-55, an application for a certificate of convenience and necessity to serve various customers gained by UE in the agreement, and Case No. EM-97-61, an application by UE to exchange various transportation and other facilities with Northeast Missouri Electric Power Cooperative, Inc. (NEMEP) for the convenience of MEC under the territorial agreement. The outcome of both cases depends on the Commission's decision regarding the territorial agreement itself. The evidence presented in support of the territorial agreement also includes all evidence necessary for decision in the other two consolidated cases.

An evidentiary hearing was held and this matter was finally submitted to the Commission for decision on October 2, 1996.

### **Stipulation and Agreement**

On October 2, 1996, a stipulation and agreement between UE, MEC, the Staff of the Commission (Staff), and the Office of the Public Counsel (OPC) was filed, resolving the following two matters:

A. UE agreed that the Staff has the right to reexamine the financial impacts of the territorial agreement as part of the annual sharing credits for UE's current Experimental Alternative Regulatory Plan approved by the Commission on July 21, 1995. Adjustments to book earnings, based on more current data, can be proposed at that time, if necessary.

B. Macon agreed to reduce the availability charge for residential consumers by \$1.00 per month for five (5) years effective upon the transfer of the first consumer from UE to Macon. Macon agreed to file with the Commission a certified copy of its Board Resolution reducing the availability charge within ten (10) days of the date of this stipulation and agreement.

The stipulation and agreement is appended to this Report And Order as Attachment B. The resolution of the MEC Board of Directors authorizing the reduction of the availability charge was filed on October 11, 1996 as Exhibit No. 10.

The Commission has reviewed the stipulation and agreement, and the testimony of record. It finds the agreement to be a reasonable resolution of the concerns of the Staff, and to be in the public interest. The Commission will order UE to comply with the terms of the agreement and will expect MEC to comply with the resolution of its Board of Directors.

### **Findings of Fact**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

UE is a registered public utility engaged in the provision of electricity service to the general public in the State of Missouri and, as such, is regulated by this Commission.

MEC is an electric cooperative organized pursuant to Chapter 394, R.S.Mo. 1994, and is engaged in the distribution of electrical service to its members, all located in the counties noted above. NEMEP is also an electrical power cooperative, which is engaged principally in the sale and transportation of wholesale electrical power in the area affected by this agreement.

The territorial agreement itself established a boundary line, describing the MEC area resulting from the agreement. Testimony reveals that various portions of the agreed-upon area are currently being served by both UE and MEC. The proposed agreement gives MEC a defined territory, basically rectangular in shape, with boundaries on all four sides as set out in Attachment A. UE and MEC have agreed that the area inside the defined boundaries will be the exclusive territory of MEC. MEC agrees not to compete outside the defined boundary and UE agrees not to compete inside.

In addition, in order to accomplish the agreement, an exchange of customers has been agreed to by the parties. All customers to be exchanged were notified by the parties as to the proposal and any resulting alterations in rates. Public meetings were held throughout the area to inform customers of the effects of the agreement and to respond to questions. Testimony indicates that most, if not all, customer concerns were resolved. The Commission can find no indication in the record that any significant customer concerns remain. Approximately 3,000 customers

will be transferred to MEC and approximately 1,000 will be transferred to UE.

The Staff's concern involving an alleged 5 to 6.5 percent increase in rates for customers going from UE to MEC has apparently been resolved by the above-stated stipulation and agreement in which the MEC Board of Directors voluntarily agreed to lower the customer availability charge to offset any potential increase in the commodity rate.

As a result of the exchange of territory and customers, an exchange of plant is also contemplated in the agreement. MEC will gain some 34 kv transmission lines and approximately 244 miles of distribution lines. UE will gain approximately 234 miles of distribution lines, one substation, and approximately 6.3 miles of 69 kv transmission lines. Finally, pending approval of Case No. EM-97-61, NEMEP will gain 25.3 miles of 69 kv transmission lines and an equipment installation referred to as the "Amoco metering equipment."

UE and the Staff agree that the annual increase in the revenue requirement of UE will be approximately \$411,889. This does not include potential savings for items that cannot now be accurately measured, and is also dependent on various intangibles.

The current status of the area in question is one in which UE is serving various local communities by following the highways with its distribution lines. MEC is generally serving the remainder of the outlying areas.

The parties state that the reliability and quality of service will improve for customers in both areas as a result of allowing both parties to consolidate service areas and avoid lengthy distribution lines.

Generally, UE and the Staff maintain that the agreement is in the public interest because inefficient competition and concurrent duplication of service will be eliminated. The Staff adds that the agreement contemplates that the parties will integrate the transferred facilities into their systems over a three-year period. The Staff anticipates that both parties will benefit from the geographical relocation of customers and consolidation of service territories.

The Commission has reviewed the territorial agreement, the stipulation, and accompanying testimony in regard to all three docketed cases. The Commission finds that the public has been well-informed in regard to the proposed exchange of customers and facilities. The Commission also finds that the evidence shows that substantial benefits in improved service and efficiency of operations of both parties will result from the proposed agreement. The concerns of the Staff regarding the effect of the territorial agreement on the Experimental Alternative Regulatory Plan and the increase in rates for those customers transferred to MEC have been alleviated by the stipulation and agreement.

For the above reasons, the Commission finds the territorial agreement and the accompanying stipulation and agreement to be reasonable, in the public interest, and in compliance with Section 394.312, R.S. Mo. (1994). The Commission will approve the territorial agreement and the stipulation and agreement, and order the joint applicants to perform in accordance with their terms.

In addition, the Commission will issue a certificate of convenience and necessity to UE to own, operate, acquire, control, manage, and serve customers in those areas contemplated in the territorial

agreement and as specifically set out in Exhibit No. 1 to the application in Case No. EA-97-55.

Finally, the Commission will authorize UE to transfer certain facilities as set out in the territorial agreement, as specifically requested in Case No. EM-97-61.

### **Conclusions of Law**

The Missouri Public Service Commission has arrived at the following conclusions of law.

Union Electric Company is a public utility and electric corporation under Section 386.020, R.S. Mo. (1994), and Macon Electric Cooperative, Inc. is an electric cooperative subject to Chapter 394, R.S. Mo. (1994). Both parties entered into a territorial agreement under Section 394.312. All parties in this case entered into a stipulation and agreement resolving all matters at issue. The Commission has found that the territorial agreement complies with Section 394.312 and that approval of the territorial agreement, stipulation and agreement, and the accompanying application by UE to transfer certain facilities and for the issuance of a certificate of convenience and necessity is in the public interest and, therefore, the agreement and stipulation will be approved.

### **IT IS THEREFORE ORDERED:**

1. That the territorial agreement entered into by and between Union Electric Company and Macon Electric Cooperative, Inc. is hereby approved. In this regard the Commission specifically finds that its approval of this agreement in no way impairs Union Electric Company's



current certificates of convenience and necessity except as specifically limited in the territorial agreement.

2. That Union Electric Company is hereby granted a certificate of convenience and necessity to acquire and construct facilities, change electric service providers for certain customers, and otherwise serve an area and accompanying customers as set out in Attachment 1 to the application in Case No. EA-97-55.

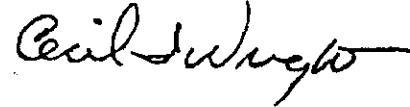
3. That Union Electric Company will transfer and acquire certain facilities as set out in and contemplated by the above-stated territorial agreement and specifically requested in Case No. EM-97-61.

4. That the stipulation and agreement executed by the parties hereto and attached to this Report And Order is hereby approved, and the parties are ordered to comply with its terms and conditions.

5. That Union Electric Company is hereby ordered to file tariffs in this docket in accordance with the terms and conditions of the territorial agreement and the Commission's Report And Order prior to commencing operations under the territorial agreement. In regard to the contemplated tariff filing, the Commission will waive its billing practices rule specifically and solely for the purpose of allowing the applicants to disconnect electrical service to customers exchanged under the territorial agreement who fail to pay the final bill of the other applicant.

6. That this Report And Order shall become effective on the 8th day of November, 1996.

BY THE COMMISSION

A handwritten signature in dark ink, appearing to read "Cecil I. Wright", with a long horizontal flourish extending to the right.

**Cecil I. Wright**  
**Executive Secretary**

( S E A L )

Zobrist, Chm., Kincheloe, Crumpton  
and Drainer, CC., concur.  
McClure, C., absent.

Dated at Jefferson City, Missouri,  
on this 29th day of October, 1996.

TERRITORIAL AGREEMENT

THIS AGREEMENT is entered into between Union Electric Company, hereinafter referred to as "Company," and Macon Electric Cooperative, Inc., hereinafter referred to as "Cooperative."

WHEREAS, Company is authorized by law to provide electric service within the State of Missouri, including all or portions of Macon, Randolph, Monroe, Shelby, Adair, Linn, Knox, Sullivan and Chariton Counties; and

WHEREAS, Cooperative is authorized by law to provide electric service within the State of Missouri, including all or portions of Macon, Randolph, Monroe, Shelby, Adair, Linn, Knox, Sullivan and Chariton Counties; and

WHEREAS, the Missouri Legislature has authorized electrical corporations and rural electric cooperatives to enter into written territorial agreements; and

WHEREAS, Company and Cooperative desire to promote the orderly development of the retail electric service within portions of the above referenced counties in Missouri, to avoid wasteful duplication and to minimize disputes which may result in higher costs in serving the public;

NOW, THEREFORE, Company and Cooperative, in consideration of the mutual covenants and agreements herein contained, agree as follows:

1. For purposes of this Agreement:

a. "Customer" includes any natural person, firm, association, partnership, business trust, public or private corporation, political subdivision or any agency, board, department or

bureau of the state or federal government or any other legal entity which 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.

b. "Structure" is defined as 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 and a replacement of a previously existing structure.

c. "Company" shall mean Union Electric Company and any subsidiary or other corporate entity owned or controlled by Union Electric Company.

d. "Cooperative" shall mean Macon Electric Cooperative, Inc. and any subsidiary or other corporate entity owned or controlled by Macon Electric Cooperative, Inc.

e. "Customer service equipment" shall mean all lines or conductors with nominal voltage of 35,000 volts or less, phase to phase; all transformers, regulators, capacitors, poles, meters, equipment and installations connected thereto necessary for the distribution of electricity through said lines or necessary for the support of said lines; and all rights, privileges, easements, appurtenances and immunities in land on which such lines, conductors, poles, equipment and installations are located; provided, however, "customer service equipment" shall not include poles and any structures supporting lines and conductors with nominal voltage of more than 35,000 volts regardless of whether such poles or structures also support lines and conductors with nominal voltage of 35,000 volts or less; and provided further that "customer service equipment"

shall not include any equipment identified on Exhibit 4 which is attached hereto and made a part hereof for all purposes.

f. "Transfer" shall mean grant, convey or assign any and all interests the transferor has in the customer service equipment and any and all rights to serve customers, free of any and all liens and liabilities, to the transferee. The parties understand this to be an exchange of property and service right and not a sale. Any reference herein to transferor or transferee shall apply to both parties in their capacity in effecting such transfer or accepting such transfer, respectively.

2. As between the parties each shall have the exclusive right to furnish electric service to all electric consuming structures located within its respective territory described in paragraphs 3 and 4 of this Agreement, regardless of the size of the load or the characteristics of the customers' requirements. Neither party may furnish, make available, render or extend electric service to a structure or for use within the territory of the other party either directly, indirectly or through a subsidiary corporation or other entity controlled by the party, in whole or in part, excepting sales to each other.

However, during the period of implementation prior to the time when all transfers have been made, a new customer shall be served by the party with adequate customer service equipment closer to the new customer than the other party. Unless the parties agree otherwise, the new customer shall be served from such customer service equipment which is closer to the customer. In the event the new customer is located in a party's exclusive service area and the other party serves the new customer therein during the period of implementation, the other party

shall only have the right to provide such service until the customer service equipment from which the new customer is served is transferred.

3. The electric service area of Company shall be all of Macon, Randolph, Monroe, Shelby, Adair, Linn, Knox, Sullivan and Chariton counties except such portions thereof as are described by metes and bounds in Exhibit 1 to this Agreement and as illustrated by the map marked Exhibit 2, both exhibits being incorporated herein by reference and made a part of this Agreement as if fully set out verbatim.

Cooperative shall transfer all of its customer service equipment and customers located within Company's service area to Company within three (3) years of the effective date of this Agreement ("period of implementation"). Company shall thereafter provide electric service to all existing and future customers located within its electric service area, and Cooperative shall not provide electric service to customers in Company's area.

4. The electric service area of Cooperative shall be such area as is described by metes and bounds in Exhibit 1 and as illustrated by the map marked Exhibit 2 which are incorporated herein by reference.

Company shall transfer all of its customer service equipment and customers located within Cooperative's service area to Cooperative during the period of implementation. Cooperative shall thereafter provide electric service to all existing and future customers located within its electric service area, and Company shall not provide electric service to customers in Cooperative's area. Notwithstanding Cooperative's electric service area, Company retains the

right and facilities to continue to serve Amoco Oil Company's pump station located in or near Rothville, Missouri.

5. The electric service area of the Cooperative as defined in paragraph 4 above includes incorporated communities of Marceline, Macon, LaPlata and Shelbina, each of which operates and maintains municipally-owned electric facilities. Should any of these municipalities cease to operate and maintain municipally-owned electric facilities and sell such facilities to the Company, notwithstanding this Agreement, Company may serve within the incorporated boundaries of such municipality as it exists on the date the municipality and Company agree on a sale of the municipality's facilities to Company pursuant to the following conditions and agreement. Company shall, notwithstanding this Agreement, have the power to serve the structures being served by the municipality on the date Company and municipality agree on the purchase of the municipality's facilities by Company. Following the purchase by Company and the receipt of all required regulatory approvals, Company and Cooperative shall agree on an amendment to this Agreement which excludes from the exclusive territory of the Cooperative under this Agreement, territory lying within the incorporated boundaries of the municipality whose facilities were purchased by Company. Boundaries of the area to be excluded from the exclusive service territory of the Cooperative shall be that portion of the incorporated limits of the municipality as it exists on the effective date of this Agreement plus such portion of any territory annexed by the municipality after the effected date of this Agreement which territory is closer to the facilities acquired by Company from the municipality than to facilities of Cooperative as both such facilities exist on the date of the agreement between Company and municipality for sale of

the municipality's facility to Company. In the event the parties cannot agree on the boundaries defined above within six (6) months after the date of agreement between the municipality and Company, the parties shall submit the issue of the appropriate boundaries to determination by the Missouri Public Service Commission as provided in Section 394.312.2 RSMo. Company shall be entitled to serve all of the structures served by municipality prior to the purchase of the facilities by Company regardless of whether the structures are located in territory determined to be served by Company or Cooperative. The Cooperative shall be entitled to serve all of the structures it was serving prior to the purchase of the municipal system by Company regardless of whether the structures are located in territory deemed to be served by Company or Cooperative.

6. Customers and customer service equipment shall be transferred by identifiable lines or line segments. The customers and customer service equipment shall be transferred in the sequence listed in Exhibit 3 which is incorporated herein by reference. The timing of such transfers shall be in accordance with future agreement of the parties.

The time of the transfer of any line shall be the point in time the line is energized by the transferee's system or at such time as the parties agree the transferee is receiving power pursuant to the Interchange Agreement between Associated Electric Cooperative and Company, entered into on June 28, 1978, as amended, without regard to the execution or delivery of any documentation evidencing the transfer. Upon the transfer of a line, the transferee shall become responsible and liable for the condition of the facilities and service provided by such facilities and shall have unlimited access thereto, except as otherwise provided herein. After the transfer, transferee shall indemnify, defend and hold transferor harmless against any loss, harm, claim or



cost, including reasonable attorneys' fees, arising out of the possession or operation of the facilities, including but not limited to any personal injury to employees of the transferee and personal injury or property damage of persons not parties to this Agreement.

7. The location of a structure for purposes of this Agreement shall be the geographical location at which electric power and energy is used, regardless of the metering point or point of delivery. The first owner of a new structure who requests and receives electric service at a structure which is located on or crossed by any mutual boundary line described in paragraphs 3 and 4 dividing the electric service territories 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 service area. Thereafter that party shall exclusively serve that structure.

8. 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.

Such Addendum referred to above shall be filed with the Executive Secretary of the Missouri Public Service 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.

Each Addendum shall consist of a notarized statement identifying the structure, the party to serve the structure and the justification for the Addendum and indicating that the parties support the Addendum.

Each Addendum shall be accompanied by a notarized 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 Public Service Commission and shall indicate the customer's consent to be served by the Party contemplated by the Addendum.

If the Staff or Office of 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. However, if a pleading in opposition to the Addendum is filed by the above listed parties, the Commission shall schedule an evidentiary hearing at the earliest reasonable opportunity to determine whether the Addendum should be approved. Each Addendum shall contain a statement in bold uppercase typeface indicating that the Staff or Office of Public Counsel has forty-five (45) days to oppose the Addendum or else the Addendum shall be deemed approved by the aforesaid parties.

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.

9. This Agreement shall become effective upon approval by the Missouri Public Service Commission pursuant to Section 394.312 RSMo. The term of this Agreement shall be perpetual. Performance of the parties is contingent upon all of the following having occurred no later than December 31, 1996, unless such condition is waived, extended or modified by agreement in writing signed by an officer of each party hereto:

- a. All required approvals of the Cooperative's Board of Directors.
  - b. Approval of the transaction by the Public Service Commission of Missouri, including but not limited to, a waiver of provisions of the Utility Billing Practices Rule, 4 CSR 240-13.010 et seq., which would prohibit Company or Cooperative from discontinuing service for a customer's failure to pay a delinquent account owed to the other party;
  - c. Approval of the transaction, if necessary, to the extent of its jurisdiction, by the Federal Energy Regulatory Commission.
  - d. Company reaching agreement with Northeast Missouri Electric Power Cooperative and Associated Electric Cooperative regarding generation and transmission issues affected by this agreement, which shall be approved by the Federal Energy Regulatory Commission, to the extent of its jurisdiction.
  - e. Approval by the Missouri Public Service Commission of an Application for a Certificate of Public Convenience and Necessity by Company to own, operate and maintain the electric transmission and distribution facilities acquired by the Company.
10. Continuing performance of the parties is contingent upon the following having occurred for each line segment prior to the transfer of the line segment unless such condition is waived, extended or modified by agreement in writing signed by an officer of each party hereto:
- a. Approval of the transaction by the Rural Utility Services ("RUS") including the release of Cooperative's customer service equipment located within Company's electric service area from all liens held by RUS. Cooperative shall make a good faith effort to release the easements from all such liens.

b. Cooperative shall have obtained the release of Cooperative's customer service equipment located within Company's electric service area from all liens held by the National Rural Utilities Cooperative Finance Corporation and shall make a good faith effort to release the easements from all such liens.

c. Company shall have obtained the release of Company's customer service equipment located within Cooperative's electric service area from all liens created by the Company, including the lien of its Mortgage and Deed of Trust dated June 15, 1937, as supplemented, and the lien of its predecessor Missouri Power and Light Company's Mortgage and Deed of Trust dated July 1, 1946, as supplemented, and it shall make a good faith effort to release the easements from all such liens.

If reasonable grounds arise to believe that the transferor will be unable to perform the applicable conditions, the transferee may demand adequate assurance of performance. If the transferor fails to provide adequate assurance of performance to the transferee, the parties shall treat this agreement as void in its entirety and shall transfer all facilities back to the original owner or shall within one year negotiate a compromise transaction which is mutually agreeable.

11. The parties agree to undertake all actions reasonably necessary to implement this Agreement. This shall include, but not be limited to, the following:

a. Each party shall calculate, as of the date of transfer of a customer, the active and outstanding accounts receivable and unbilled revenues ("receivables"), including all amounts which have been billed to the customer as well as bill amounts which have been calculated but not yet rendered, for such customer the party was serving to the date of transfer. It shall then remit to

the customer a final bill. If the party does not receive payment of the final bill within sixty (60) days of the date of its remittance, it may identify the other party as its agent to collect the accounts receivable. The other party shall take such actions as may be necessary to collect the final bill, including but not limited to the disconnection of service. Any payments on said accounts received by the other party shall be remitted promptly to the party to which payment is due.

b. Security deposits and accrued interest existing at the time of transfer shall be credited to the customer on the final bill.

c. During the period of implementation, transferor shall execute and deliver to the transferee bills of sale with accurate inventories of the facilities and assignments of existing easements, permits and licenses being transferred. Transferor shall also assign to transferee all joint use pole agreements and street light agreements for facilities or areas being transferred. Such bills of sale and assignments of property rights or contracts shall be delivered concurrently with the actual transfer.

d. During the period of implementation, transferor shall conduct such work on its existing lines at its own expense as will allow for them to be cut free from the transferor's system. By way of example, transferor shall build the deadends at the borderline and on the day of transfer shall cut open the span between the deadends. Transferor shall be responsible to install all necessary 12kV primary metering.

During the period of implementation, transferee shall conduct any work necessary to connect the transferred facilities to its system, excluding the work to be done by the transferor. By way of example, transferee shall build line extensions, as necessary; convert the

transferred lines from one voltage to another, as necessary; string additional phases, as necessary; install protective devices on the transferred lines, as necessary; and on the day of transfer, make connections at the borderline after the transferor has cut open the span between the deadends.

e. Company shall maintain at Cooperatives expense a 34.5 kV line from Bucklin to Macon and a 34.5kV line from Cairo to LaPlata. Company will account for accrued expenses and periodically submit to Cooperative an invoice. Within thirty (30) days of receipt, Cooperative will pay for the labor and materials as indicated on the invoice. The lines shall be transferred to Cooperative as of the date meters are installed and readings taken at Bucklin and Cairo pursuant to paragraph 6 above. Notwithstanding the transfer, Company shall have exclusive jurisdictional and functional control of the 34.5kV lines and shall respond to requests for line maintenance from Cooperative and emergency circumstances as it would its own lines. For scheduled work, a representative of the Cooperative shall be present for the duration of the work to act as an inspector. If a representative of the Cooperative is not present when Company's work crew is present at the scheduled work location, Cooperative shall be liable for Company's costs associated with mobilizing crew(s) to and from the work site along with the time spent at the work site awaiting the representative of the Cooperative. Company reserves the right to refuse to perform any work if the Company's employees identify a violation of Company's safe work practices, the National Electric Safety Code, or Occupational Safety and Health Administration rules. For storm restoration work, Company will treat outages on these lines as having the same priority as Company 34kV line outages. The obligation to maintain and right to control said lines

shall terminate when the lines are downgraded to a lesser voltage and cut free from Company's 34.5 kV system.

Company shall continue to own and operate all substations connected to the aforestated 34.5 kV line (which have been identified on Exhibit 4) in order to supply Cooperative's customer service equipment connected thereto. Company shall grant Cooperative access to the low voltage side of such substations in order to operate its customer service equipment. Cooperative, its employees, agents and contractors, shall enter said substations at their own risk, and Cooperative shall indemnify, defend and hold Company harmless for and against any claim, loss or damage arising out of Cooperative's presence in the substations. The right to access shall terminate when the substations are taken out of service.

f. Company will grant Cooperative easements which are mutually agreeable across the substation properties identified on Exhibit 4.

12. Transferor shall give to transferee during the implementation period access to books, records, contracts and commitments of transferor related to the customer service equipment transferred in accordance with this Agreement and shall furnish transferee during such period with information concerning the transferor's affairs as transferee may reasonably request with respect to the various transactions contemplated herein. In the event any controversy or claim by or against either party arises out of this transaction or the subject matter hereof after closing, each party shall make available to the other copies of such relevant records as may reasonably be requested pertaining to the controversy or claim.

Transferee shall have the right to retain copies of all original accounting records, customer business records, operating manuals, maps and all other documents containing information about customer service equipment or customers transferred by this Agreement and normally maintained by transferor in the ordinary course of business.

Each party shall have the right, at its own expense, to make or to have the other party make copies of all such documents during the implementation period.

13. All property exchanged is transferred and accepted AS IS and where they stand at the transferee's risk. Each party warrants only that it has the lawful right to transfer and dispose of the same and that it will warrant and defend the title thereto against all claimants whatsoever. No other warranties are given. THE PARTIES AGREE THAT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE EXCLUDED FROM THIS AGREEMENT. Each party shall have the right to inspect the customer service equipment of the other party in its service area at any time during the implementation period.

14. Each party will cooperate in presenting a joint application showing such transfer to be in the public interest. If the Public Service Commission of Missouri 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. Payment to the taxing jurisdiction of all taxes on the property for the year in which closing takes place shall be the responsibility of the Transferor. Transferee shall be responsible for the payment of all taxes thereafter.

16. Neither the boundaries described by this Agreement nor any term of this Agreement may be modified, repealed or changed except by a writing mutually approved by the respective parties and by the Missouri Public Service Commission.

17. This Agreement shall be binding on the parties and all subsidiaries, successors, assigns and corporate parents or affiliates of Company and Cooperative.

18. 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.

19. This Agreement shall in no way affect either party's right to construct such electric distribution and transmission facilities within the designated electric 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.

20. This contract constitutes the entire agreement between the parties relating to the allocation of service rights in the territory described herein.

IN WITNESS WHEREOF, the parties have executed this Agreement this 5TH day of

JUNE, 1996.

UNION ELECTRIC COMPANY

By William J. Carr

Title: Vice President

ATTEST:

[Signature]  
Secretary

MACON  
ELECTRIC COOPERATIVE

By David L. Williams

Title: PRESIDENT

ATTEST:

Bernard Hegwall  
Secretary

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

In the matter of the application of Union )  
Electric Company and Macon Electric )  
Cooperative, Inc. for approval of a written )  
Territorial Agreement designating the )  
Boundaries of Each Electric Service Supplier )  
Within Macon, Randolph, Monroe, Shelby, )  
Adair, Linn, Knox, Sullivan, and Chariton )  
Counties in Missouri and for Authority to )  
Transfer Customers and Certain Property in )  
Accordance With the Terms of Said )  
Agreement. )

Case No. EO-97-6

**FILED**  
**OCT 2 - 1996**  
**MISSOURI**  
**PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Union )  
Electric Company for a Certificate of )  
Convenience and Necessity Authorizing it to )  
Own, Control, Manage, and Maintain an )  
Electric Power System for the Public in )  
Chariton, Linn, Monroe, Randolph Counties )  
in Missouri. )

Case No. EA-97-55

In the Matter of the Application of Union )  
Electric Company to Transfer Transmission )  
Facilities to Northeast Missouri Electric )  
Power Cooperative. )

Case No. EM-97-61

**STIPULATION AND AGREEMENT**

On July 5, 1996, Union Electric Company ("UE") and Macon Electric Cooperative, Inc. ("MEC" or "Macon"), submitted for filing a joint application for approval of a territorial agreement between the two companies. In conjunction with this application, on August 9, 1996, UE filed an application for a certificate of public convenience and necessity (Case No. EA-97-55) requesting the Commission authorize it to serve a portion of the area contained in the territorial agreement, and on August 14, 1996 UE filed an application requesting transfer of various facilities

from UE to Northeast Missouri Electric Power Cooperative as a result of the proposed territorial agreement (Case No. EM-97-61). On August 20, 1996 the Commission issued an Order Regarding Consolidation of Cases, Intervention, and Procedural Schedule. The Order of Consolidation consolidated the three cases, as approval or rejection of any one of the three cases would, logically, result in failure of the entire proposal, with Case No. EO-97-6 being the lead case. The Commission granted intervention to the Missouri Association of Municipal Utilities (MAMU) and North Central Missouri Electrical Cooperative (NCM).

In accordance with the procedural schedule established by Order, UE and MEC submitted the prepared direct testimony of Mr. Ronald W. Loesch and Mr. Wayne Hackman respectively.

On September 20, the Staff of the Commission submitted the prepared rebuttal testimony of Mr. B.J. Washburn, Mr. James L. Ketter, Ms. Susan G. Meyer, and Mr. Stephen M. Rackers.

On September 27, UE and MEC both submitted surrebuttal testimony prepared by the same witnesses who had prepared direct testimony.

The parties held informal discussions during the prehearing on October 1. In response to those discussions, the Staff, OPC, Macon and UE have reached the following Stipulation And Agreement to completely resolve these proceedings as follows:

A. UE agrees that the Staff has the right to re-examine the financial impacts of the territorial agreement as part of the annual sharing credits for UE's current Experimental Alternative Regulatory Plan approved by the Commission on July 21, 1995. Adjustments to book earnings, based on more current data, can be proposed at that time, if necessary.

B. Macon will reduce the availability charge for residential consumers by \$1.00 per month for five (5) years effective upon the transfer of the first consumer from UE to Macon. Macon

will file with the Commission a certified copy of its Board Resolution reducing the availability charge within ten (10) days of the date of this Stipulation And Agreement. In the event that the Board of Directors Resolution is not received within this time period, the Stipulation And Agreement shall be null and void.

1. In the event the Commission accepts the specific terms of this Stipulation And Agreement, the parties waive their respective rights to cross-examine witnesses and to present oral argument and written briefs pursuant to Section 536.080.1 RSMo 1994; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 1994; and their respective rights to judicial review pursuant to Section 386.510 RSMo 1986.

2. This Stipulation And Agreement represents a negotiated settlement for the sole purpose of disposing of this case, and none of the signatories to this Stipulation And Agreement shall be prejudiced or bound in any manner by the terms of the Stipulation And Agreement in any other proceeding, except as otherwise specified herein.

3. If requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation And Agreement. Each party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all parties. All memoranda submitted by the parties shall be considered privileged in the same manner as are settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding or in this proceeding whether or not the Commission approves this

Stipulation And Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to the Stipulation And Agreement, whether or not the Commission approves and adopts this Stipulation And Agreement.

The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation And Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties with advance notice of when the Staff shall respond to the Commissions's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or otherwise protected from disclosure.

4. This Stipulation And Agreement has resulted from extensive negotiations among the parties and the terms hereof are interdependent. In the event the Commission does not approve and adopt this Stipulation And Agreement in total, this Stipulation And Agreement shall be void and no party shall be bound by any of the agreements or provisions hereof.

WHEREFORE, for the foregoing reasons, the undersigned parties respectfully request that the Commission issue its Order granting the relief requested by the Applicants in Case Nos. EO-97-6, EA-97-55 and EM-97-61 subject to the terms of this Stipulation And Agreement, and such further relief as may be appropriate and necessary to implement the Stipulation And Agreement.

Respectfully submitted,

**UNION ELECTRIC COMPANY**

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