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August 29, 2002

Secretary of PSC  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

FILED

AUG 29 2002

Re: Case No. EO-2002-1091

Missouri Public  
Service Commission

Dear Secretary Roberts:

Enclosed please find for filing an original and five (5) copies of the Unanimous Stipulation and Agreement in the above-referenced matter.

Thank you for seeing this filed.

Sincerely,



Lisa Cole Chase

LCC:tr

Enc.

cc: Bill Bobnar  
Office of Public Counsel  
PSC General Counsel

FILED

AUG 29 2002

Missouri Public  
Service Commission

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

In the Matter of the Application of Union Electric )  
Company d/b/a AmerenUE and Cuivre River )  
Electric Cooperative for Approval of a Written )  
Territorial Agreement Designating the Boundaries )  
of Each Electric Service Supplier within Portions of )  
Lincoln and Warren Counties in Missouri. )

Case No. EO-2002-1091

**UNANIMOUS STIPULATION AND AGREEMENT**

**COME NOW** Union Electric Company d/b/a AmerenUE ("Company"), the Cuivre River Electric Cooperative ("Cooperative"), (hereinafter collectively referred to as "Joint Applicants"), Staff of the Missouri Public Service Commission ("Staff"), and the Office of Public Counsel ("OPC"), (hereinafter collectively referred to as "the Parties") and for their Unanimous Stipulation and Agreement ("Stipulation and Agreement"), respectfully state as follows:

**I. Procedural History**

1. On May 23, 2002, Joint Applicants filed with the Missouri Public Service Commission ("Commission") a verified joint application pursuant to Section 394.312 RSMo. 2000 (the "Joint Application"), requesting that the Commission issue an Order: (1) approving a Second Territorial Agreement between the Company and the Cooperative designating the boundaries of each electric service supplier in Lincoln and Warren Counties in Missouri (the "Second Territorial Agreement") pursuant to Section 394.312 RSMo. 2000; (2) finding that the Second Territorial Agreement shall not impair Company's certificates of convenience and necessity, except as specifically limited by said agreement; (3) approving Company's change to its tariffs as illustrated in Exhibit C to the Joint Application; (4) authorizing Company to make

offers as described in Section 11 of the Joint Application to potential customers in the Competition Area, which is described in Article 5 of the Second Territorial Agreement, the same constituting a waiver from the Commission's Utility Promotional Practices Rule 4 CSR 240-14.010 et seq. pursuant to 4 CSR 240-14.010(2).

2. In the Joint Application, Company and Cooperative seek Commission approval of the Second Territorial Agreement. On October 30, 1992, the Joint Applicants entered into a written territorial agreement designating the boundaries of each Joint Applicant's exclusive service area for new structures in St. Charles County (hereinafter the "First Territorial Agreement"). The First Territorial Agreement was approved by the Commission in Case No. EO-93-166 by Report and Order on March 5, 1993. Now, Company and Cooperative have agreed to displace competition between themselves in Lincoln and Warren Counties, as allowed by law and have set out the terms of the Second Territorial. The Second Territorial Agreement sets forth the exclusive service area boundaries for new structures of both Company and Cooperative in Lincoln and Warren counties. The Second Territorial Agreement also provides that Company and Cooperative shall be entitled to continue serving those existing structures it was serving as of the date of this Agreement. Thus, Company and Cooperative are not required to transfer any customers and/or facilities to implement the Second Territorial Agreement.

3. On May 29, 2002, the Commission issued an Order and Notice concerning, among other things, the intervention of interested parties. Applications for intervention were to be filed no later than June 18, 2002. As of the date of this filing, no parties have filed for intervention.

4 On May 29, 2002, the Commission ordered the Applicants, Staff of the Missouri Public Service Commission, and the Office of the Public Counsel to file a proposed procedural

schedule including a date for evidentiary hearing on or before June 28, 2002, requiring the proposed procedural schedule to provide for such a hearing to take place on or before July 28, 2002.

5. On June 28, 2002, Staff filed a Motion for Establishment of Procedural Schedule on behalf of itself, Company, Cooperative and the OPC. The Parties proposed an Evidentiary Hearing date of September 3, 2002.

6. The Staff, Company, Cooperative, and OPC, having reviewed the Joint Application and associated Second Territorial Agreement and having considered the position of the Parties and the issues to be resolved in this case, have entered into this Stipulation and Agreement.

## **II. The Parties Have Reached the Following Stipulation and Agreement:**

7. The Parties assert and, in consideration of the promises and covenants herein contained, state that the Second Territorial Agreement between Company and Cooperative is not detrimental to the public interest and therefore should be approved.

8. The Parties further assert and state that the Company's illustrative tariff sheets, as shown in Exhibit C to the Joint Application are acceptable in format and substance, with the following exceptions:

a. The footnote on Tariff Sheet No. 26.1 shall be revised as follows:

“ΔIn the underscored Sections/U. S. Surveys above, Company’s right and obligation to serve in Linn County is limited by the terms of the Territorial Agreement between Company and Farmers’ Electric Cooperative approved in Case No. EO-98-511.”

b. Tariff Sheet No. 26.2 shall be revised as follows:

Township 57 North, Range 25 West, add a space between Sections 18 and 19.

- c. Tariff Sheet No. 26.30, revise the list of sections associated with Township 46 North, Range 2 West in Warren County to read as follows:  
  
1, 11, 12, 13, 14
- d. Tariff Sheet No. 203, revise to reflect the unregulated competition waivers granted in this case, Case No. EO-2002-1091, and in the First Territorial Agreement in Case No. EO-93-166. The area for these unregulated competition waivers shall be described by County, Township, Range, and Section (or part thereof).

Within 30 days of the effective date of an Order approving the Territorial Agreement, Company is to file revised tariff sheets consistent with the illustrated tariffs but incorporating the above modifications. With these modifications, the Parties believe that the illustrative tariff sheets reflect the Company's service area changes due to the Territorial Agreement, and that revised tariff sheets based upon the illustrative tariff sheets are in the public interest and therefore should be approved.

9. Company has on its illustrative Tariff Sheet Nos. 26 and 26.30 the following language: "...in the underscored Sections/U.S. Surveys above, Company's right and obligation to serve in [Warren/Lincoln] County is limited by the terms of the Second Territorial Agreement between Company and Cuivre River Electric Cooperative approved in Case No. EO-2002-1091". The Parties agree this language shall be interpreted (i) to permit Company, in accordance with Article 2 of the Second Territorial Agreement, to continue to serve all other Existing Structures that it is serving on the Effective Date of the Agreement regardless of their location (even if that location is in the exclusive service area of Cooperative) and (ii) to allow Company to serve customers in accordance with Article 10 of the Second Territorial Agreement, the Case-by-Case

Exception Procedure, without having to file with the Commission for a certificate of convenience and necessity or to revise its tariffs.

10. Like the First Territorial Agreement, the Second Territorial Agreement contains a competition area, which is located adjacent to the so-called Highway T corridor contained in the First Territorial Agreement (hereinafter the "Competition Area"). A metes and bounds description of the Competition Area and map depicting said area is part of Exhibit A of the Joint Application, and Exhibit D of the Joint Application is a drawing showing the location of the Competition Area in relation to the "Highway T corridor" from the First Territorial Agreement.

This is an area in which the Joint Applicants were unable to assign in the context of the two agreements. Nevertheless, the Joint Applicants are in agreement that the Cooperative should be able to continue to serve the Competition Area in the event the population in a future decennial census exceeds 1500 and have included this provision in the Second Territorial Agreement. In order to retain parity with respect to the Highway T corridor, Joint Applicants request that the Commission grant Company the authority to make offers and waive charges to potential customers in accordance with the procedure described in paragraph 11 below, notwithstanding the Commission's Utility Promotions Practices Rule 4 CSR 240-14.010 et seq. to the contrary.

11. Like the blanket waiver granted to the Company with respect to the Highway T corridor in Case No. EO-93-166, the Company requests that the Competition Area waiver apply to any charge for any service to any new structure located in the Competition Area, including wiring, conduit, appliances or equipment. The Parties propose to employ the following procedure:

A. Until September 1, 2011, Company may make offers without prior Commission approval that waive charges for new service to any new structure located in the Competition Area notwithstanding the Commission's Utility Promotional Practices Rule 4 CSR 240-14.101 et seq. Company shall not be required to make offers and Company shall make an offer if and only if it believes the investment, considering all relevant factors, is justified.

B. If the offer is rejected, no further action is required.

C. If the offer is accepted, the Company shall issue a report to the Commission Staff and the Office of the Public Counsel within two (2) weeks of its acceptance containing a description of the offer, the location and short description of the new structure to be served, the overall cost to serve the customer, the cost associated with the charges being waived, a cost-benefit analysis that includes among other things the impact of the offer on the Company's energy and capacity requirements, and any other evidence that the Company will receive a benefit by providing service to the new structure and such service will benefit its existing customers.

D. The recovery of the cost of extending service to the new structure wherein an offer was made shall only be allowed upon a rate case finding by the Commission based upon evidence submitted by Company that it will receive a benefit by providing service to the new structure and that such service will benefit its existing customers.

12. The Parties assert and, in consideration of the promises and covenants herein contained, state that Commission has good cause for granting Company the authority to make offers and waive charges to potential customers in accordance with the procedure described in

paragraph 11 above, notwithstanding the Commission's Utility Promotions Practices Rule 4 CSR 240-14.010 et seq. to the contrary.

### **III. General Matters**

13. This Stipulation and Agreement shall be binding upon the successors and assigns of Company and Cooperative.

14. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation and Agreement in total, then this Stipulation and Agreement shall be void and no Party shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the Parties to take other positions in other proceedings.

15. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the Parties and participants waive, with respect to the issues resolved herein: their respective rights, pursuant to §536.080 RSMo. 2000, to present testimony, to cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2 RSMo. 2000; their respective rights to seek rehearing pursuant to §386.500 RSMo. 2000; and their respective rights to seek judicial review pursuant to §386.510 RSMo. 2000. Notwithstanding the foregoing each party may present oral testimony at the evidentiary hearing supporting the fact that the Second Territorial Agreement is not detrimental to the public interest. The Parties agree to cooperate with each other in presenting for approval to the Commission this Stipulation and Agreement, and will take no action, direct or indirect, in opposition to the request for approval of this Stipulation and Agreement.



16. The Staff shall 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 and participants with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.

17. The Staff shall have the right to file suggestions or a memorandum in support of this Stipulation and Agreement, and the other parties shall have the right to file responsive suggestions.

18. None of the Parties to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any rate-making principle or any method of cost determination or cost allocation underlying or allegedly underlying the Stipulation and Agreement. Further, the Parties agree that each party reserves any and all arguments before the Commission about the ratemaking treatment to be afforded this transaction in any ratemaking proceeding.

**WHEREFORE**, the Parties respectfully request the Commission to issue its Order:

A. Finding that the designated electric service areas are not detrimental to the public interest and approving the Second Territorial Agreement, (Exhibit A to the Joint Application);

B. Authorizing Company and Cooperative to perform in accordance with the terms and conditions of the Agreement;

C. Finding that the Second Territorial Agreement does not impair Company's certificates of convenience and necessity, except as specifically limited by the Agreement;

D. Directing that Company file revised tariff sheets with respect to its service area in Lincoln and Warren Counties, as described in this Stipulation and Agreement;

E. Authorizing Company to make offers to potential customers in the Competition Area, which is described in Article 5 of the Second Territorial Agreement until September 1, 2011 the same constituting a waiver from the Commission's Utility Promotional Practices Rule 4 CSR 240-14.010 et seq;

F. Permitting the Company to make said offers without prior Commission approval provided, however, that recovery of the cost of extending service to a new structure wherein an offer was made shall only be allowed upon a rate case finding by the Commission based upon evidence submitted by Company that it will receive a benefit by providing service to the new structure and that such service will benefit its existing customers;

G. Requiring, if an offer is accepted, that the Company shall issue a report to the Commission Staff and the Office of the Public Counsel within two (2) weeks of its acceptance containing a description of the offer, the location and short description of the new structure to be served, the overall cost to serve the customer, the cost associated with the charges being waived, a cost-benefit analysis that includes among other things the impact of the offer on the Company's energy and capacity requirements, and any other evidence that the Company will receive a benefit by providing service to the new structure and such service will benefit its existing customers;

H. Authorizing Company to enter into, execute, and perform in accordance with the terms of all other documents reasonably necessary and incidental to the performance of the transactions which are the subject of the Agreement; and

I. Approving all of the terms of this Stipulation and Agreement.

Respectfully submitted,


DANA K. JOYCE  
General Counsel

  
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Attorneys for Cuivre River Electric  
Cooperative

### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 29th day of August 2002.

Lisa Chase