

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

In the Matter of the Application of Co-Mo)
Electric Cooperative for Approval of) File No. EO-2022-0190
Designated Service Boundaries Within)
Portions of Cooper County, Missouri.)

**AMEREN MISSOURI'S RESPONSE AND
MOTION TO DISMISS**

COMES NOW Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or the "Company") and pursuant to 20 CSR 4240-2.116(4) hereby moves for dismissal of Co-Mo Electric Cooperative's ("Co-Mo") Application filed in this case. In support hereof, Ameren Missouri states as follows:

Introduction/Background Facts

1. On January 19, 2022, Co-Mo filed its Application seeking an order "approving designated service boundaries" which it claims is authorized by §386.800, RSMo.¹ The Application requests the Commission designate Co-Mo as the exclusive service provider for an approximately 216-acre² parcel of land planned for development with a subdivision to be known as the Fox Hollow subdivision. The subject property was annexed by the City of Boonville effective January 18, 2022. Co-Mo states it is a rural electric cooperative organized and existing under the laws of Missouri. Co-Mo further states it is a "Chapter 394 rural electric cooperative corporation engaged in the distribution of electric energy and service to its members." Co-Mo Application at para. 1, p.1.

¹ All statutory references are to the Revised Statutes of Missouri (Cum. Supp. 2022), unless otherwise specified.

² The Company has been provided documents reflecting two different legal descriptions, one indicating the subdivision is 216 acres and one, attached to Co-Mo's Application, indicating the subdivision is 158 acres. As discussed below, the land covered by both legal descriptions is within Ameren Missouri's exclusive service territory.

2. Co-Mo states to its "knowledge and belief, there are no other electric suppliers currently serving any structures on the subject property." Co-Mo Application at para. 4, p.2. Co-Mo acknowledges Ameren Missouri provides electric service within the city of Boonville. *Id.*

3. Co-Mo states that Troy Thurman Construction Company, owned by Mr. Troy Thurman, is the owner and developer of the Fox Hollow subdivision, and that the developer invoked the provisions of §386.800, expressing the developer's preference that Co-Mo provide electric service for the Fox Hollow subdivision. Co-Mo Application at para. 3, p.2. Co-Mo states its existing electric service facilities are located within one mile of the boundaries of the Fox Hollow subdivision. Co-Mo Application at para. 6, p.3. Co-Mo also states it attempted to negotiate a Territorial Agreement under Section 394.312 with Ameren Missouri. *Id.* at para. 8. Co-Mo claims §386.800 requires the Commission to review certain factors on the facts alleged.

4. Section 386.800 was amended in the 2021 Regular Session of the General Assembly.³ Under the amended statute, when a municipality annexes an area where another supplier is not then providing permanent service to a structure, a rural electric cooperative, *under certain circumstances*, may seek Commission authorization to serve the newly annexed area. As discussed below, those circumstances are not present here.

5. Ameren Missouri is the electric service provider for the City of Boonville (the "City") and it, or its predecessors, have been for many decades. Ameren Missouri possesses area certificates of public convenience and necessity granting it the exclusive right and obligation to serve both the City of Boonville and the designated areas specified in its Commission-approved electric service tariffs. See Exhibit A attached hereto and incorporated herein by reference.

³ 2021 H.B. 271 merged with H.B. 734 merged with S.B. 44.

6. The Fox Hollow Subdivision property is located within Ameren Missouri's Commission-designated exclusive service territory, in sections 5 and 8 of Township 48 North, Range 16 West, Cooper County, Missouri. A map showing Ameren Missouri's exclusive service territory in Cooper County in and in the vicinity of Boonville, Missouri, including the subject property is attached hereto and incorporated herein by this reference as Exhibit B.⁴

7. For the reasons outlined below, Co-Mo's Application must be dismissed because it fails to state a claim upon which relief can be granted in that (i) the Commission lacks the power to grant the relief sought by Co-Mo because the statute under which Co-Mo purports to proceed does not apply since the land in question is within Ameren Missouri's exclusive service territory; (ii) as such, Co-Mo is not authorized to file its Application under §386.800; and (iii) the Application constitutes an impermissible collateral attack on the Commission's April 27, 1990 *Report and Order* in File No. EA-87-159 designating Ameren Missouri's exclusive service territory in Cooper County as well as on the Commission-approved tariffs reflecting the terms of that order and reflecting the service territory established by it.⁵

II. Applicable Legal Standards

8. The Commission is a body of limited jurisdiction, having only the powers given it by the General Assembly. *State ex rel. Pub. Counsel v. Pub. Serv. Comm'n*, 397 S.W.3d 441, 446 (Mo. App. W.D. 2013) ("Because the [PSC] is purely a creature of statute, its powers are limited to those conferred by statute either expressly, or by clear implication as necessary to carry out the powers specifically granted"). Utility tariffs have the force and effect of law. *Midland*

⁴ Exhibit B consists of three pages, the first of which shows the entire service territory in this general area, the second of which focuses on the area of and immediately adjacent to the Fox Hollow subdivision, and the third page of which shows Ameren Missouri's electric infrastructure at or near the subdivision.

⁵ As supplemented by the Commission's March 13, 1991 *Supplemental Report and Order* defining "distribution facilities" for purposes of the original order. See also *Order Approving Tariffs*, File No. EA-87-159 (Aug. 9, 1991) (approving the tariff sheets that reflect Ameren Missouri's exclusive service territory in Cooper and other counties).

Realty Co. v. Kansas City Power & Light Co., 300 U.S. 109, 114 (1937), *aff'g* 93 S.W.2d 954 (Mo. 1936). Such tariffs cannot be collaterally attacked. *See* §386.550 (in all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive). The prohibition on collateral attack applies not just to Ameren Missouri's tariffs but to the Commission's above-referenced *Report and Order* in File No. EA-87-159 which established the service territory reflected in those tariffs.

9. An application fails to state a claim upon which relief can be granted if, accepting the well-pleaded factual allegations as true, the applicant nevertheless fails to establish that it is entitled to the relief sought. *See, e.g. Tari Christ v. Southwestern Bell Tele. Co. et al.*, 2003 Mo. PSC LEXIS 37 (Case No. TC-2003-0066, *Order Regarding Motions to Dismiss*, Jan. 9, 2003), *citing Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 306 (Mo. *banc* 1993). While the allegations in Co-Mo's Application respecting Boonville's annexation of the subject property, the developer's preference, and negotiations relating to a possible territorial agreement can be taken as true, because the subject statute does not apply on such facts – meaning the Commission acquires no authority to act pursuant to it – the Commission has no authority to grant the relief requested by Co-Mo, necessitating the dismissal of Co-Mo's application as a matter of law. Moreover, the Application constitutes an unlawful collateral attack on the Commission's order establishing the subject property as being within Ameren Missouri's exclusive service territory and the Commission-approved tariffs reflecting that territory.

III. Analysis

10. Under Missouri law, different electric service providers are allowed to compete for electric customers unless and until this Commission designates an area as being within the exclusive service territory of a given provider. Such designations, prior to the 2021 amendments

to §386.800, happened in one of two ways. For Commission-regulated providers like Ameren Missouri, the Commission designates such areas by granting an "area certificate" under §393.170.2. *See also* 20 CSR 4240-20.045(4). As earlier noted, an area certificate for the property in question here was granted to Ameren Missouri in 1991 in File No. EA-87-159. Ameren Missouri's tariffs have reflected that the subject property (and the entire shaded area on page 1 of Exhibit B) were within Ameren Missouri's exclusive service territory since the Commission approved the first set of tariffs so providing in August 1991. The most recent such tariff is attached hereto as Exhibit A.

11. In general, the Commission does not establish service territories for rural electric cooperatives, but there was one exception to this general rule (prior to 2021) and there is a second exception post-2021 that applies, *under certain circumstances*. The first exception arises under §394.312, RSMo. (2016) if and only if a cooperative and a Commission-regulated electric utility or municipal utility (as applicable) voluntarily reach agreement on establishing exclusive service territories and if the Commission determines such an agreement should be approved. There is no such agreement here.

12. The 2021 amendments to §386.800 created a second exception, but it only confers authority on the Commission to designate a given area as the territory of a cooperative or a Commission-regulated provider or a municipal utility *if the area in question is subject to open competition*. If the Fox Hollow subdivision were not within Ameren Missouri's exclusive service territory, Ameren Missouri concedes that even though it is the exclusive electric service provider within the pre-annexation city limits of Boonville, the statutory amendments would give Co-Mo the opportunity to convince the Commission that Co-Mo should serve this newly annexed area if the newly annexed had, pre-annexation, been an area of open competition. But it wasn't.

13. Under these circumstances, Section 386.800 cannot be interpreted to authorize the Commission to allow Co-Mo to serve the area in question. The purpose of statutory interpretation is to "ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words in their plain and ordinary meaning." *State ex rel. Hillman v. Beger*, 566 S.W.3d 600, 604–05 (Mo. banc 2019) (quoting *S. Metro. Fire Prot. Dist. v. City of Lee's Summit*, 278 S.W.3d 659, 666 (Mo. banc 2009)). "In construing a statute, courts cannot add statutory language where it does not exist; rather, courts must interpret the statutory language as written by the legislature." *Peters v. Wady Indus., Inc.*, 489 S.W.3d 784, 792 (Mo. banc 2016) (quotation marks omitted). Put another way, "This Court enforces statutes as they are written, not as they might have been written." *Turner v. Sch. Dist. of Clayton*, 318 S.W.3d 660, 667 (Mo. banc 2010). An examination of §386.800, as amended, in light of these binding principles of law demonstrates that it does not apply here.

14. Attached hereto as Exhibit C is a compare version of §386.800 prior to the 2021 amendments as compared to the statute post-the amendments. Focusing first on subsection 1, it is clear that while that subsection was amended, subsection 1 by its terms does not apply to the circumstances at bar. The question then is, do subsections 2 or 3 apply? It is true that subsection 3 made subsection 2 applicable to electrical corporations if the electrical corporation "rather than a municipally owned electric utility lawfully is providing electric service in the municipality . . . [at the time of the annexation at issue]." §386.800.3. Therefore, we must next look to subsection 2 and see if *its terms* apply to the facts at issue. Subsection 2 provides that a "municipally owned utility may *extend* pursuant to lawful annexation, its electric service territory to include areas where another electric supplier is not providing permanent service to a structure" (emphasis added). No such supplier is/was at the time of the annexation providing service to any structure within the

subdivision property because there are no structures there – the land is vacant. But the issue in this case is not extension by a *municipal* utility of the *municipal utility's service territory* – Boonville does not have a municipal utility. Rather, since subsection 3 provides that subsection 2 applies to electrical corporations (Ameren Missouri here), subsection 3 means that subsection 2, when an electrical corporation serves the municipality, reads as follows: an "~~municipally owned utility~~ [electrical corporation] may *extend* pursuant to lawful annexation, its electric service territory to include areas where another electric supplier is not providing permanent service to a structure" (emphasis added). By the plain terms of the statute, Ameren Missouri did not extend its service territory to include Fox Hollow because its service territory *already included Fox Hollow*. The verb "extend" simply does not apply; there is nothing to extend, indeed an extension is not possible. For the same reasons, neither did (or could) Boonville's annexation of Fox Hollow "extend" Ameren Missouri's service territory to include it.

The clear intent of the General Assembly in amending subsections 2 and 3 of §386.800 was to not *automatically* give a municipally owned electric utility or an electrical corporation serving a municipality under a municipal franchise the right to serve undeveloped, *open competition* land annexed by the municipality. Prior to the amendments, that right would have been automatic even if the facts on the ground and the factors enumerated in subsection 2 would have, in the Commission's judgment, favored cooperative service. The amendments changed this as to open competition land. However, this land is not open competition land. The Commission already decided in litigation involving, not surprisingly, a 4-year battle between Missouri cooperatives and Ameren Missouri, that the public convenience and necessity dictated that Ameren Missouri be granted an exclusive right and obligation to serve the land in question. Had the General Assembly intended the statutory amendments to apply here, subsection 2 would not be triggered only when

the annexation results in an *extension* of the service territory. Instead, the General Assembly would have amended subsection 2 to read something like "If a municipality annexes land, pursuant to lawful annexation, to include areas where another electric supplier is not providing permanent service to a structure, then" In that case, even if the annexed area is within a certificated service territory if no service has yet been provided within annexed area subsection 3's process which Co-Mo attempts to invoke in this docket would apply. But those are not the words the General Assembly used. Under the plain words the General Assembly used, subsection 3 simply does not apply.

III. Summary of Bases for Dismissal

15. Because the statute, as amended, does not apply unless the annexed area in question is open competition area, Co-Mo is unable to invoke any jurisdiction on the part of the Commission to designate Fox Hollow as its service area because the Commission simply has no such jurisdiction. Lacking authority to grant the relief sought, the Commission must dismiss the Application.

16. That this is true is shown on Exhibits A and B, which demonstrate that the Fox Hollow subdivision is within the exclusive service territory boundaries stated in Ameren Missouri's electric tariffs, as established by the Commission's order in File No. EA-87-159. Moreover, neither the tariffs nor the order establishing the service territory can be collaterally attacked in this proceeding. §386.550. The area in question is not an area of open competition, nor was it when the annexation was accomplished, and absent an unlawful collateral attack on the tariffs and relevant orders, could not be. Consequently, Co-Mo's Application is, effectively an unlawful collateral attack.

17. The bottom line is that because the Commission cannot lawfully grant Co-Mo's request to serve an area within the exclusive service territory of Ameren Missouri, Co-Mo's Application must be dismissed as a matter of law.

WHEREFORE, for the reasons outlined herein, Ameren Missouri prays for an order of the Commission dismissing the Application with prejudice.

Respectfully submitted,

/s/ James B. Lowery

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**ATTORNEYS FOR UNION ELECTRIC
COMPANY d/b/a AMEREN MISSOURI**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 8th day of February 2022, served the foregoing either by electronic means, or by U. S. Mail, postage prepaid addressed to all parties of record.

/s/James B. Lowery
James B. Lowery

MO.P.S.C. SCHEDULE NO. 6

Original

SHEET NO. 14

CANCELLING MO.P.S.C. SCHEDULE NO. _____

SHEET NO. _____

APPLYING TO MISSOURI SERVICE AREA

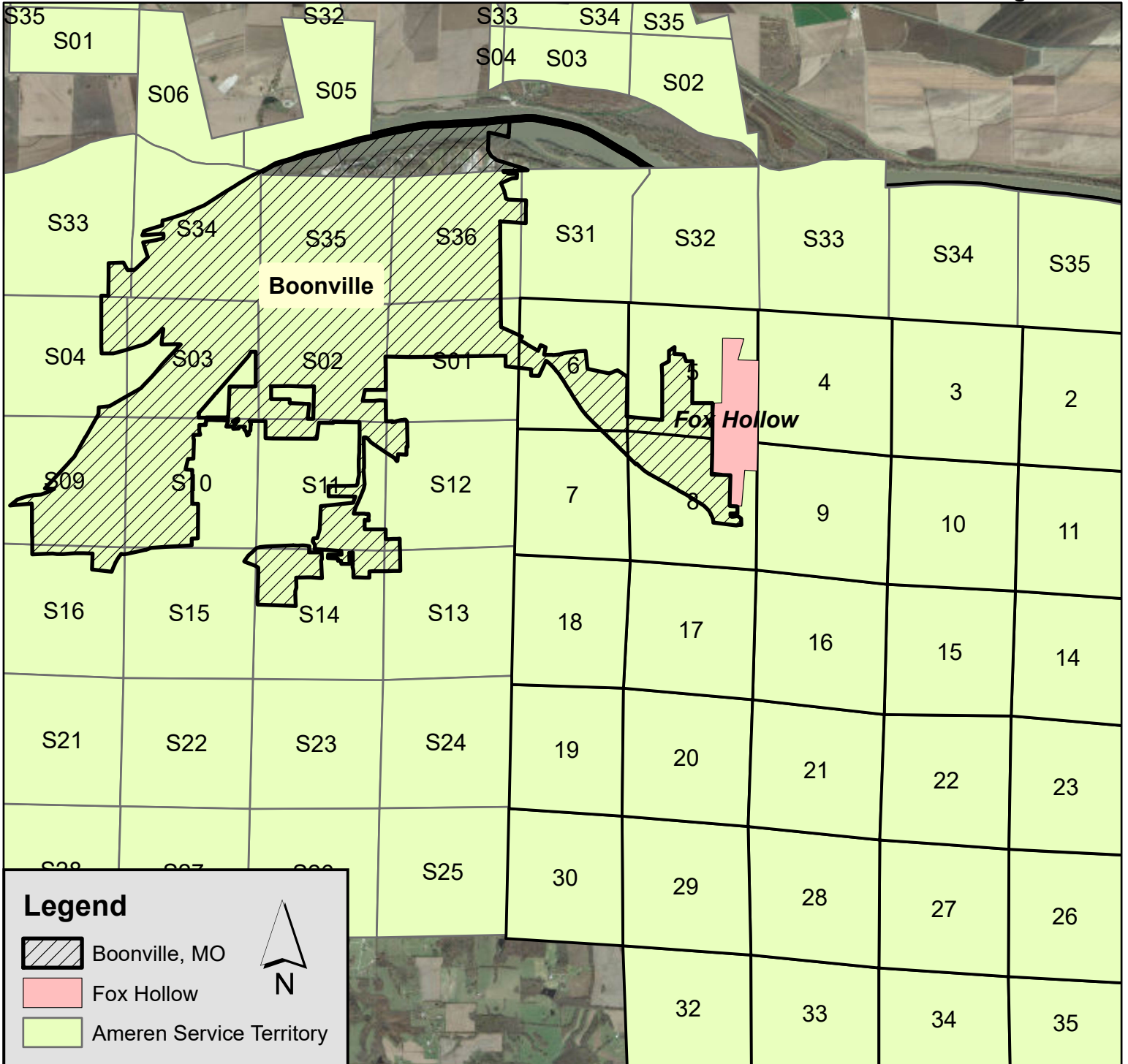
MISSOURI SERVICE AREAS (Cont'd.)

COOPER COUNTY

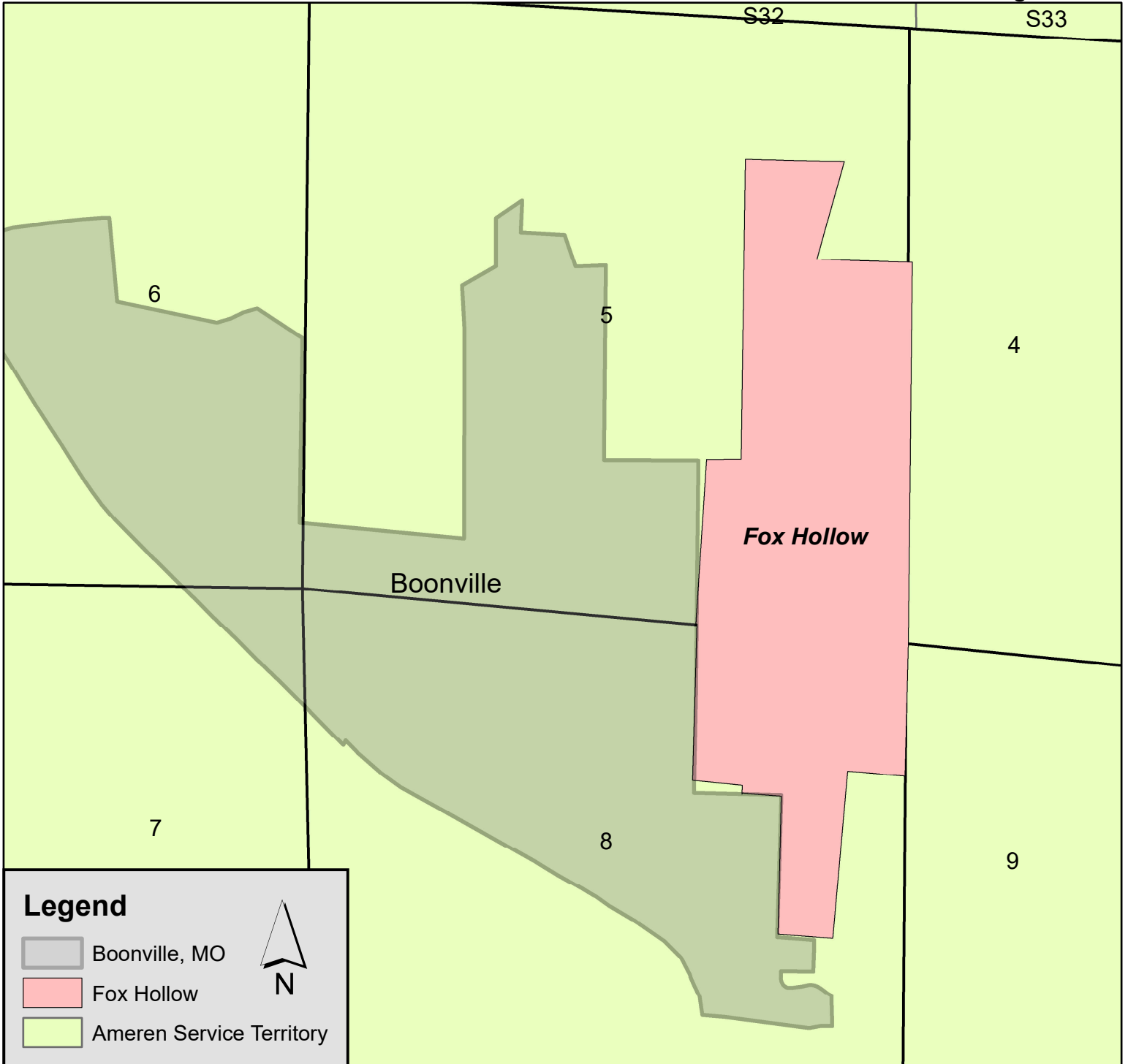
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45 North	18 West	1, 2, 3, 4
45 North	19 West	2, 3, 4, 5, 6
46 North	17 West	3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, 33
46 North	18 West	1, 2, 11, 12
46 North	19 West	26, 27, 28, 31, 32, 33, 34, 35
47 North	15 West	4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31, 32, 33
47 North	16 West	1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 23, 24, 25, 36
47 North	17 West	4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 34
47 North	18 West	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 24, 25, 26, 35, 36
47 North	19 West	1
48 North	15 West	18, 19, 20, 21, 28, 29, 30, 31, 32, 33
48 North	16 West	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36
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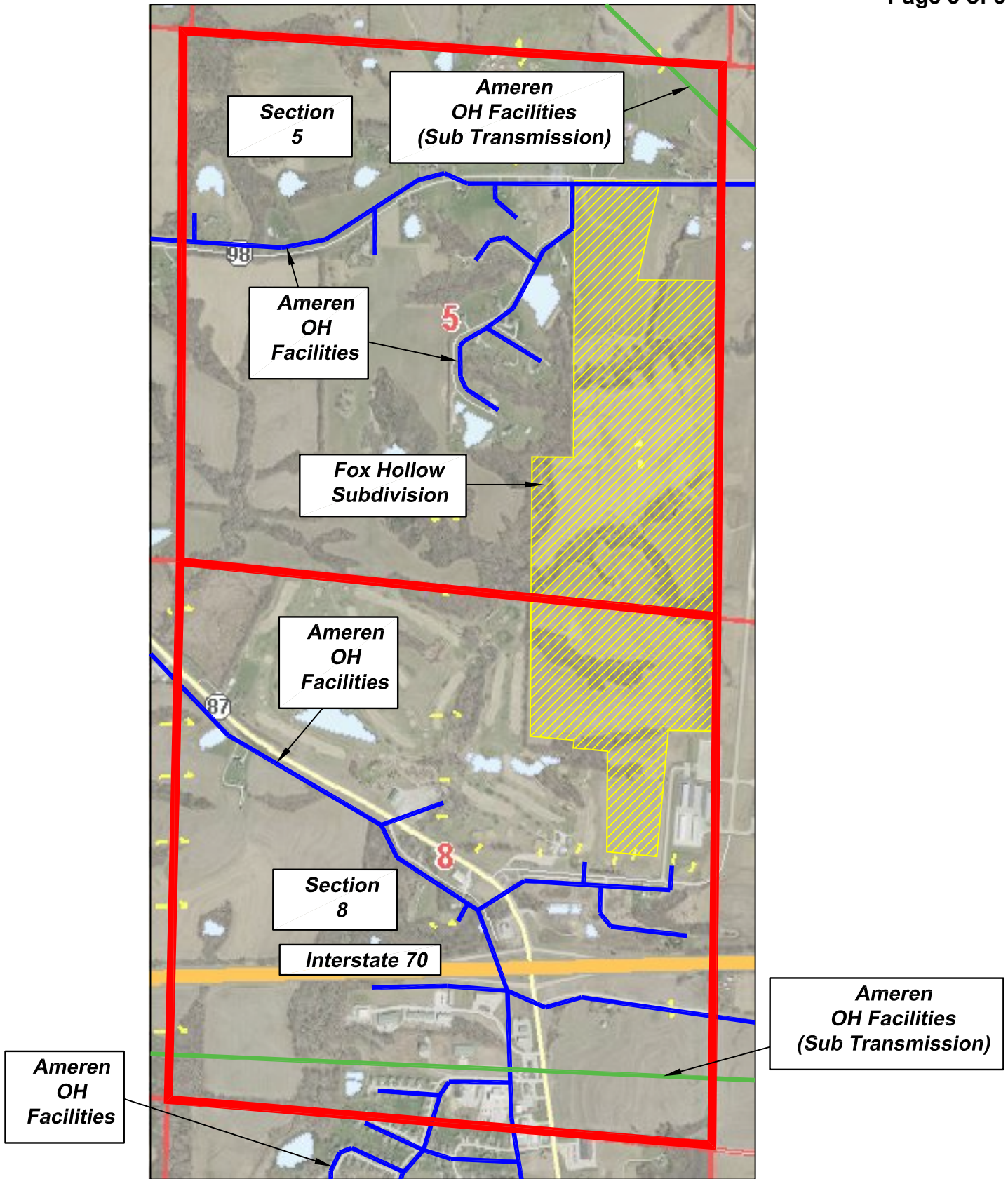
DATE OF ISSUE May 31, 2013 DATE EFFECTIVE June 30, 2013
 ISSUED BY Warner L. Baxter President & CEO St. Louis, Missouri
NAME OF OFFICER TITLE ADDRESS

Overview of Ameren Territory Near Boonville, MO
And Fox Hollow Subdivision



Boonville's Pre-Annexation Boundary And the Fox Hollow Subdivision





DATE	REV
1/21/2022	01
SCALE	
1" = 1500'	
SHEET	
1 OF 1	



386.800. Municipally owned electrical supplier, services outside..., MO ST 386.800

[Vernon's Annotated Missouri Statutes](#)

[Title XXV. Incorporation and Regulation of Certain Utilities and Carriers \[Chs. 386-394\]](#)

[Chapter 386. Public Service Commission \(Refs & Annos\)](#)

[Municipally Owned Electrical Supplier, Services Outside Boundaries](#)

This section has been updated. [Click here for the updated version.](#)

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[Title XXV. Incorporation and Regulation of Certain Utilities and Carriers \[Chs. 386-394\]](#)

[Chapter 386. Public Service Commission \(Refs & Annos\)](#)

[Municipally Owned Electrical Supplier, Services Outside Boundaries](#)

V.A.M.S. 386.800

386.800. Municipally owned electrical supplier, services outside boundaries prohibited~~-,~~ exceptions~~--~~annexation~~--~~negotiations, territorial agreements, regulations, procedure~~--~~fair and reasonable compensation defined~~--~~assignment of sole service territories~~--~~commission jurisdiction~~--~~[rural electric cooperatives, service within municipality, when](#)

Effective: [\[See Text Amendments\]](#) to August ~~27~~[28](#), 2021

[Currentness](#)

1. No municipally owned electric utility may provide electric energy at retail to any structure located outside the municipality's corporate boundaries after July 11, 1991, unless:

(1) The structure was lawfully receiving permanent service from the municipally owned electric utility prior to July 11, 1991;
~~or~~

(2) The service is provided pursuant to an approved territorial agreement under ~~section 394.312~~[section 394.312](#); or

(3) The service is provided pursuant to lawful municipal annexation and subject to the provisions of this section; or

(4) The structure is located in an area which was previously served by an electrical corporation regulated under [this](#) chapter ~~386~~, and chapter 393, and the electrical corporation's authorized service territory was contiguous to or inclusive of the municipality's previous corporate boundaries, and the electrical corporation's ownership or operating rights within the area were acquired in total by the municipally owned electrical system prior to July 11, 1991. In the event that a municipally owned electric utility in a city with a population of more than one hundred twenty-five thousand located in a county of the first class not having a charter form of government and not adjacent to any other county of the first class desires to serve customers

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beyond the authorized service territory in an area which was previously served by an electrical corporation regulated under the provisions of ~~chapter 386, and chapter 393, as provided in this subdivision,~~this chapter, and chapter 393, as provided in this subdivision, in the absence of an approved territorial agreement under section 394.312, the municipally owned utility shall apply to the public service commission for an order assigning nonexclusive service territories: and concurrently shall provide written notice of the application to other electric service suppliers with electric facilities located in or within one mile outside of the boundaries of the proposed expanded service territory. The proposed service area shall be contiguous to the authorized service territory which was previously served by an electrical corporation regulated under the provisions of ~~this chapter-386,~~ and chapter 393, as a condition precedent to the granting of the application. The commission shall have one hundred twenty days from the date of application to grant or deny the requested order. The commission, after a hearing, may grant the order upon a finding that granting of the applicant's request is not detrimental to the public interest. In granting the applicant's request the commission shall give due regard to territories previously granted to or served by other electric service suppliers and the wasteful duplication of electric service facilities.

2. Any municipally owned electric utility [*electrical corporation*] may extend, pursuant to lawful annexation, its electric service territory to include ~~any areas where another electric supplier currently is not providing permanent service to a~~ structure. If a rural electric cooperative has existing electric service facilities with adequate and necessary service capability located in or within a newly annexed area which has not received permanent service from another supplier one mile outside the boundaries of the area proposed to be annexed, a majority of the existing developers, landowners, or prospective electric customers in the area proposed to be annexed may, anytime within ninety-fourty-five days prior to the effective date of the annexation-, submit a written request to the governing body of the annexing municipality to invoke mandatory good faith negotiations under section 394.312 to determine which electric service supplier is best suited to serve all or portions of the newly annexed area. In such negotiations the following factors shall be considered, at a minimum:

3(1) The preference of landowners and prospective electric customers;

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(2) The rates, terms, and conditions of service of the electric service suppliers;

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(3) The economic impact on the electric service suppliers;

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(4) Each electric service supplier's operational ability to serve all or portions of the annexed area within three years of the date the annexation becomes effective;

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(5) Avoiding the wasteful duplication of electric facilities;

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(6) Minimizing unnecessary encumbrances on the property and landscape within the area to be annexed; and

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(7) Preventing the waste of materials and natural resources.

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If the municipally owned electric utility [*electrical corporation*] and rural electric cooperative are unable to negotiate a

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territorial agreement pursuant to section 394.312 within forty-five days, then they may submit proposals to those submitting the original written request, whose preference shall control, section 394.080 to the contrary notwithstanding, and the governing body of the annexing municipality shall not reject the petition requesting annexation based on such preference. This subsection shall not apply to municipally owned property in any newly annexed area.

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3. In the event an electrical corporation rather than a municipally owned electric utility lawfully is providing electric service in the municipality, all the provisions of subsection 2 of this section shall apply equally as if the electrical corporation were a municipally owned electric utility, except that if the electrical corporation and the rural electric cooperative are unable to negotiate a territorial agreement pursuant to section 394.312 within forty-five days, then either electric service supplier may file an application with the commission for an order determining which electric service supplier should serve, in whole or in part, the area to be annexed. The application shall be made pursuant to the rules and regulations of the commission governing applications for certificates of public convenience and necessity. The commission after the opportunity for hearing shall make its determination after consideration of the factors set forth in subdivisions (1) to (7) of subsection 2 of this section, and section 394.080 to the contrary notwithstanding, may grant its order upon a finding that granting of the applicant's request is not detrimental to the public interest. The commission shall issue its decision by report and order no later than one hundred twenty days from the date of the application unless otherwise ordered by the commission for good cause shown. Review of such commission decisions shall be governed by sections 386.500 to 386.550. If the applicant is a rural electric cooperative, the commission shall charge to the rural electric cooperative the appropriate fees as set forth in subsection 9 of this section.

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4. When a municipally owned electric utility desires to extend its service territory to include any structure located within a newly annexed area which has received permanent service from another electric service supplier within ninety days prior to the effective date of the annexation, it shall:

(1) Notify by publication in a newspaper of general circulation the record owner of said structure, and notify in writing any affected electric service supplier and the public service commission, within sixty days after the effective date of the annexation its desire to extend its service territory to include said structure; and

(2) Within six months after the effective date of the annexation receive the approval of the municipality's governing body to begin negotiations pursuant to ~~section 394.312 with any affected electric~~section 394.312 with the affected electric service supplier.

45. Upon receiving approval from the municipality's governing body pursuant to subsection ~~34~~ of this section, the municipally owned electric utility and the affected electric service supplier shall meet and negotiate in good faith the terms of the territorial agreement and any transfers or acquisitions, including, as an alternative, granting the affected electric service supplier a franchise or authority to continue providing service in the annexed area. In the event that the affected electric service supplier does not provide wholesale electric power to the municipality, if the affected electric service supplier so desires, the parties ~~shall~~may also negotiate, consistent with applicable law, regulations and existing power supply agreements, for power contracts which would provide for the purchase of power by the municipality from the affected electric service supplier for an amount of power equivalent to the loss of any sales to customers receiving permanent service at structures within the annexed areas which are being sought by the municipally owned electric utility. The parties shall have no more than one hundred eighty days from the date of receiving approval from the municipality's governing body within which to conclude their negotiations and file their territorial agreement with the commission for approval under the provisions of ~~section 394.312~~section 394.312. The time period for negotiations allowed under this subsection may be extended for a period not to exceed one hundred eighty days by a mutual agreement of the parties and a written request with the public service commission.

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56. For purposes of this section, the term “**fair and reasonable compensation**” shall mean the following:

(1) The present-day reproduction cost, new, of the properties and facilities serving the annexed areas, less depreciation computed on a straight-line basis; and

(2) An amount equal to the reasonable and prudent cost of detaching the facilities in the annexed areas and the reasonable and prudent cost of constructing any necessary facilities to reintegrate the system of the affected electric service supplier outside the annexed area after detaching the portion to be transferred to the municipally owned electric utility; and

(3) ~~Four~~Two hundred percent of gross revenues less gross receipts taxes received by the affected electric service supplier from the twelve-month period preceding the approval of the municipality’s governing body under the provisions of subdivision (2) of subsection 34 of this section, normalized to produce a representative usage from customers at the subject structures in the annexed area; and

(4) Any federal, state and local taxes which may be incurred as a result of the transaction, including the recapture of any deduction or credit; and

(5) Any other costs reasonably incurred by the affected electric supplier in connection with the transaction.

67. In the event the parties are unable to reach an agreement under subsection 45 of this section, within sixty days after the expiration of the time specified for negotiations, the municipally owned electric utility or the affected electric service supplier may apply to the commission for an order assigning exclusive service territories within the annexed area and a determination of the fair and reasonable compensation amount to be paid to the affected electric service supplier under subsection 56 of this section. Applications shall be made and notice of such filing shall be given to all affected parties pursuant to the rules and regulations of the commission governing applications for certificates of public convenience and necessity. Unless otherwise ordered by the commission for good cause shown, the commission shall rule on such applications not later than one hundred twenty days after the application is properly filed with the secretary of the commission. The commission shall hold evidentiary hearings to assign service territory between the affected electric service suppliers inside the annexed area and to determine the amount of compensation due any affected electric service supplier for the transfer of plant, facilities or associated lost revenues between electric service suppliers in the annexed area. The commission shall make such determinations based on findings of ~~what serves the public interest and shall issue its decision by report and order. Review of such commission decisions shall be governed by sections 386.500 to 386.550. Review of such commission decisions shall~~ be governed by sections 386.500 to 386.550. The payment of compensation and transfer of title and operation of the facilities shall occur within ninety days after the order and any appeal therefrom becomes final unless the order provides otherwise.

78. In reaching its decision under subsection 67 of this section, the commission shall consider the following factors:

(1) Whether the acquisition or transfers sought by the municipally owned electric utility within the annexed area from the affected electric service supplier are, in total, in the public interest, including the preference of the owner of any affected

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structure, consideration of rate disparities between the competing electric service suppliers, and issues of unjust rate discrimination among customers of a single electric service supplier if the rates to be charged in the annexed areas are lower than those charged to other system customers; and

(2) The fair and reasonable compensation to be paid by the municipally owned electric utility, to the affected electric service supplier with existing system operations within the annexed area, for any proposed acquisitions or transfers; and

(3) Any effect on system operation, including, but not limited to, loss of load and loss of revenue; and

(4) Any other issues upon which the municipally owned electric utility and the affected electric service supplier might otherwise agree, including, but not limited to, the valuation formulas and factors contained in subsections 4, 5, 6, and 67, of this section, even if the parties could not voluntarily reach an agreement thereon under those subsections.

89. The commission is hereby given all necessary jurisdiction over municipally owned electric utilities and rural electric cooperatives to carry out the purposes of this section consistent with other applicable law; provided, however, the commission shall not have jurisdiction to compel the transfer of customers or structures with a connected load greater than one thousand kilowatts. The commission shall by rule set appropriate fees to be charged on a case-by-case basis to municipally owned electric utilities and rural electric cooperatives to cover all necessary costs incurred by the commission in carrying out its duties under this section. Nothing in this section shall be construed as otherwise conferring upon the public service commission jurisdiction over the service, rates, financing, accounting, or management of any rural electric cooperative or municipally owned electric utility, except as provided in this section.

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10. Notwithstanding sections 394.020 and 394.080 to the contrary, a rural electric cooperative may provide electric service within the corporate boundaries of a municipality if such service is provided:

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(1) Pursuant to subsections 2 to 9 of this section; and

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(2) Such service is conditioned upon the execution of the appropriate territorial and municipal franchise agreements, which may include a nondiscriminatory requirement, consistent with other applicable law, that the rural electric cooperative collect and remit a sales tax based on the amount of electricity sold by the rural electric cooperative within the municipality.

Credits

(L.1991, S.B. No. 221, § A, eff. July 11, 1991.)

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Notes of Decisions (2)(L.1991, S.B. No. 221, § A, eff. July 11, 1991. Amended by L.2021, H.B. No. 271, § A, eff. Aug. 28, 2021; L.2021, H.B. No. 734, § A, eff. Aug. 28, 2021; L.2021, S.B. No. 44 § A, eff. Aug. 28, 2021.)

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386.800. Municipally owned electrical supplier, services outside..., MO ST 386.800

[Notes of Decisions \(2\)](#)

[Footnotes](#)

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Revisor's Note: [Word "through" appears in original rolls of H.B. 271 and S.B. 44, 2021.](#)

V. A. M. S. 386.800, MO ST 386.800

Statutes are current through the end of the 2021 First Regular and First Extraordinary Sessions of the 101st General Assembly.
Constitution is current through the November 3, 2020 General Election.

End of Document

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