

resolve the issues and stipulate the facts. On August 28, 1990, Northwest filed a motion for, and was granted, an extension of time to file a stipulation of facts. On October 17, 1990, Northwest sent a letter to the Commission requesting that a procedural schedule be set. On October 26, 1990, the Commission established a procedural schedule.

The matters at issue in this case were heard on January 7, 1991. Briefs were filed pursuant to the briefing schedule. Northwest filed a motion for leave to file a reply brief on April 3, 1991. No party objected to Northwest's motion. Said motion will be granted.

Findings of Fact

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

Northwest is a corporation organized under the laws of the State of Missouri and is a rural electric cooperative as referred to in Chapter 394, RSMo 1986. St. Joseph is a Missouri corporation engaged as a public utility and an electrical corporation within the meaning of Chapter 393, RSMo 1986.

Northwest filed a complaint which alleges that St. Joseph had provided service to one of its customers in violation of Sections 393.106 and 394.315, RSMo 1986, which prohibits electric power suppliers from furnishing power to persons already being served by another electric power supplier. Northwest requests the Commission find that St. Joseph has acted in violation of the law and contrary to the public interest and that it be ordered to dismantle the extension alleged here, that the parts be ordered returned to inventory and that all costs associated with the construction and disassembly of this extension be disallowed from St. Joseph's rate base.

The facts in this case are not disputed. The parties agree that the customers switched from Northwest to St. Joseph are Dale and Melva Wells. They have lived on a farm outside King City in Gentry County since 1974 where Mr. Wells works as a farmer and custom welder. When the Wells moved to the farm, electric service was already supplied by Northwest. From 1974 until July 1990, there were no significant changes in the way electricity was delivered on the property by Northwest. The buildings on the property consisted of their home, a separate garage, a concrete block milking shed and a barn. The four structures are located 62 feet, 50-60 feet, 70-100 feet and 100 feet respectively from a customer-owned distribution pole that held Northwest's meter.

Mr. Wells discussed his desire to switch service from Northwest to St. Joseph with a representative of St. Joseph on January 26, 1990 and was advised of the necessity to be off Northwest's system for at least 60 days. At that time, Mr. Wells initiated construction of an implement shed that he completed in February, 1990. The implement shed is located four to six feet from the nearest building, the milking shed. The two buildings are not physically connected in any way. The implement shed is larger than the milking shed and is used to house farm machinery and Mr. Wells' welding business. The smaller milking shed is used to store items that are no longer needed or used.

In March, 1990, St. Joseph extended service to the Wells' property to supply the implement shed and the remainder of the farm. Rather than use a pole or pedestal, St. Joseph placed the meter on an exterior wall of the milking shed. St. Joseph's service to the implement shed commenced May 2, 1990 and was charged on the basis of its residential service tariff.

By letter dated June 22, 1990, Dale and Melva Wells requested that Northwest disconnect service to their property effective July 9, 1990. Their request was solely based on the difference between Northwest and St. Joseph

electricity rates. In all other regards the service of Northwest was adequate and reliable. Northwest disconnected service on July 9, 1990 and a final billing was given. Mr. Wells testified that for the 60-day period following the break from Northwest's service his generator supplied their residential electrical requirements. He claimed that they cooked meals in a camper trailer and on an outdoor grill. St. Joseph provided service to the remaining buildings on the property after the required 60-day period expired.

The controversy in this case centers on whether the implement shed is a contiguous or adjacent addition to or expansion of an existing structure or if it is a new structure, as set forth in Section 393.106, RSMo 1986, which states in relevant part:

(2) "Structure" or "structures", an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus at which retail electric energy is being delivered through a metering device which is located on or adjacent to the structure and connected to the lines of an electrical corporation or joint municipal utility commission. Such terms shall include any contiguous or adjacent additions to or expansions of a particular structure which was in existence on August 13, 1986, but shall not include or be construed to apply to noncontiguous additions to or expansions of new structures upon which construction is commenced after August 13, 1986, or to confer any right on an electric supplier to serve new structures on a particular tract of land because it was serving an existing structure on that tract prior to August 13, 1986.

Northwest interprets structure to be the entire Wells' farmstead, and argues that the implement shed is a contiguous or adjacent addition to a statutory structure in which there was pre-existing service by Northwest on August 13, 1986. Therefore, Northwest contends that St. Joseph cannot serve the Wells at the implement shed as the Wells were already receiving service under the statute.

St. Joseph argues that the statute does not refer to a farmstead or to separate buildings considered as one under a common roof doctrine. St. Joseph argues that the statute is simple and clear that an agricultural building is a

structure within its terms. St. Joseph contends that the interpretation of structure should be guided by the following rules of statutory consideration:

1. Words standing alone are to be interpreted according to their ordinary meaning, [citation omitted], but if a term is specially defined by statute the special definition must be given effect. St. Louis Country Club v. Administrative Hearing Commission, 657 S.W.2d 614, 617 (Mo. banc 1983).

2. It is presumed that the legislature intended that every word, clause, sentence, and provision of a statute have effect and be operative. Conversely, it will not be presumed that the legislature inserted idle verbiage or superfluous language in a statute. Union Electric Company v. Public Service Commission, 765 S.W.2d 626, 628 (Mo. App., W.D. 1988).

St. Joseph contends that the statute envisions that many structures could be on a tract of property. The possibility of multiple structures being served through one metering point differentiates the statute from its predecessor which, instead of "persons at structures," referred to "persons at metering points." St. Joseph contends that the Wells' farm has several structures by definition and until recently, they were served with electrical power through a Northwest meter located on a meter pole. St. Joseph further argues that given the meaning of structure as set out in the statute, the issue becomes whether the implement shed is a contiguous or adjacent addition to or expansion of "an agricultural building. . . at which retail electric energy is being delivered through a metering device which is located on or adjacent to the structure. . . ." The only agricultural building near the implement shed is the milk shed. St. Joseph argues to be such an addition or expansion, there must be proof that the implement shed is being used for a purpose like that of the milk shed. St. Joseph argues there is no such proof. Mr. Wells testified that the milk shed is used to store "junk and stuff that needs to be thrown away," whereas the implement shed is used to house large farm equipment and his welding business. St. Joseph argues that the evidence overwhelmingly establishes that the implement shed is a new structure and that the topic of new structures is

specifically mentioned in Section 393.106. The last clause in the definition of "structure" contains this qualifier:

[structure] shall not include or be construed . . . to confer any right on an electric supplier to serve new structures on a particular tract of land because it was serving an existing structure on that tract prior to August 13, 1986.

St. Joseph argues that under the facts and circumstances of this case, it has the clear right and entitlement to serve the implement shed, a new structure, notwithstanding Northwest's history of service to other structures on the premises.

The relevant issue in this case is whether the implement shed is a contiguous or adjacent addition to or expansion of an existing structure or if it is a new structure. The Commission is guided by the rules of statutory construction, as set forth above. The plain meaning of these terms can be determined by the definitions established in Webster's Dictionary:

[contiguous] in physical contact; touching along all or most of one side, near, next or adjacent.

[adjacent] near or close (to something); adjoining.

[addition] a joining of a thing to another thing, a thing or part added; increase specif., a room or rooms added to a building.

[expansion] an expanding or being expanded; enlargement; dilation, an expanded thing or part; the amount, degree or extent of expansion.

Webster's New World Dictionary (1980)

To violate Section 393.106, the implement shed must be a contiguous or adjacent addition to or expansion of a particular structure which was in existence August 13, 1986. Reading the statutory phrase as a whole, using the common meaning of the language and from the evidence presented, the implement shed, clearly, is a new structure. The implement shed is a freestanding structure located 4-6 feet from the nearest structure, the milking shed. The implement shed is not physically connected to the milking shed. It neither expands or adds to the physical structure of the milking shed. Additionally, the two buildings are used for entirely separate purposes. Based on the evidence and the plain

meaning of the words in the statute, the Commission determines that the implement shed is a new structure. Therefore, the Commission determines that St. Joseph did not violate Section 393.106, as the implement shed is a new structure, not a contiguous or adjacent addition to or expansion of a structure in existence August 13, 1986.

Conclusions of Law

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

Northwest is a corporation organized under the laws of the State of Missouri and is a rural electric cooperative as referred to in Chapter 394, RSMo 1986. The Commission has limited jurisdiction over rural electric cooperatives pursuant to Section 394.315, RSMo 1986, to decide matters as presented in this case. St. Joseph Light & Power Company is a Missouri corporation engaged as a public utility and an electrical corporation within the meaning of Chapter 393, RSMo 1986, subject to the jurisdiction of the Commission pursuant to Chapters 386, 393 and 393.106, RSMo 1986, as amended.

Based upon the evidence presented, the Commission concludes that Northwest's complaint should be dismissed as the implement shed in question is a new structure and not a contiguous or adjacent addition to or expansion of a particular structure which was in existence August 13, 1986.

IT IS THEREFORE ORDERED:

1. That Northwest's motion for leave to file a reply brief be hereby granted.
2. That Northwest's complaint be hereby dismissed.

3. That this order shall become effective on May 17, 1991.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

Steinmeier, Chm., Mueller, Rauch,
McClure and Perkins, CC., Concur
and certify compliance with the
provisions of Section 536.080, RSMo 1986.

Dated at Jefferson City, Missouri,
on this 7th day of May, 1991.