

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 1st  
day of May, 1996.

Ozark Border Electric Cooperative,

Complainant,

v.

City of Poplar Bluff, Missouri,  
and  
Union Electric Company,

Respondents.

Case No. EC-96-269

**ORDER DISMISSING COMPLAINT**

On February 16, 1996, Ozark Border Electric Cooperative (Ozark) filed a complaint with this Commission relating to a territorial agreement between the City of Poplar Bluff (City or Poplar Bluff) and Union Electric Company (UE). The territorial agreement was signed by UE and the City on or about September 7, 1993. UE and the City filed a joint application for approval of the territorial agreement on September 13, 1993. The Commission held an evidentiary hearing regarding the territorial agreement and related stipulation and agreement on December 1, 1993. The Commission approved the territorial agreement by order issued December 3, 1993. A copy of the territorial agreement is attached to the complaint and is incorporated herein by reference.

Ozark requests that the Commission grant a hearing and allow Ozark to present evidence about the City's acts which are in violation of state law and the territorial agreement. Ozark requests that the Commission order the City to cease and desist from the construction of utility lines and service to new structures or consumers in areas previously served by Ozark and which lie outside

the city limits of Poplar Bluff; that the Commission order the City to cease and desist from any further extension of existing lines previously owned by UE; that the Commission order the City to remove all lines which have been constructed outside the city limits of Poplar Bluff; and that the Commission order the City to transfer to Ozark the electric service of all structures served by the City outside its city limits which were not previously served by UE.

Ozark has previously challenged this territorial agreement. On December 30, 1994, Ozark filed a complaint with this Commission relating to the same territorial agreement. The Commission established Case No. EC-95-198 for handling that complaint. On March 7, 1995, the Commission issued an order dismissing that complaint on the basis that Ozark had not alleged a violation of law, rule, or Commission order, and that Ozark had not alleged facts constituting a substantial change in circumstances since the approval of the territorial agreement. On November 15, 1995, the Cole County Circuit Court affirmed the Commission's decision in that case. The dismissal of the previous complaint is now pending before the Western District Court of Appeals. ***Ozark Border Electric Cooperative v. Public Service Commission***, No. 52085.

On March 11, 1996, UE filed an answer and requested that the complaint be dismissed on grounds including, but not limited to, the complaint's failure to set forth a claim against UE upon which relief may be granted.

On March 21, 1996, the City filed an answer and motion to dismiss the complaint. The City argues that the instant complaint is simply a repetition of the same vague generalizations contained in the EC-95-198 complaint. The City states that there is no allegation of any specific violation of any statute, rule, or order of the Commission. The complaint, according to the City, merely requests that the Commission "revisit" the approved territorial agreement and investigate instances where a prospective Ozark customer has chosen service from a lawful, competitive supplier.

On April 1, 1996, Ozark filed a response to the City's motion to dismiss. Ozark argues that this proceeding is not a reiteration of the complaint which it filed in Case No. EC-95-198. Ozark asserts that the complaint filed in this proceeding does not challenge the initial or continued viability of the territorial agreement between the City and UE. The instant complaint, according to Ozark, alleges that the City is operating illegally by serving electric consumers outside of its territorial boundaries who are not authorized by the territorial agreement with UE. Ozark appears to concede that a municipally owned utility can provide electric service beyond its city limits pursuant to the terms of a territorial agreement under Sections 386.800 and 394.312, R.S.Mo. Ozark points out, however, that "territorial agreements shall specifically designate . . . any and all powers granted to a municipally owned utility . . . to operate in areas beyond the corporate municipal boundaries of its municipality." Section 394.312.2.<sup>1</sup> Ozark maintains that the territorial agreement does not specifically designate the powers granted to the City of Poplar Bluff to provide service beyond its corporate limits.

On April 12, 1996, the City filed a reply to Ozark's response. The City observed that while Ozark had stated its legal theories in a manner less vague than in the complaint, Ozark had still failed to state an appropriate claim for relief subject to the Commission's jurisdiction.

Based upon these pleadings, the Commission finds that the complaint should be dismissed because it fails to state a claim upon which relief can be granted. See 4 CSR 240-2.070(6).

Section 394.312.6 provides that complaints against territorial agreements shall be brought and prosecuted in the same manner as other complaints before the Commission. Section 386.390.1 requires complaints to set forth acts or omissions which violate a provision of law, rule or order or decision of the

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<sup>1</sup>All cites to RSMo (1994).

Commission. The Commission finds that the complaint fails to state facts that constitute a violation of any such law, rule, or order. See 4 CSR 240-2.070(6).

Ozark argues that the territorial agreement between the City and UE does not contain a specific grant of power to the City to serve beyond its corporate limits and is therefore illegal. However, paragraph four of the territorial agreement does specify the electric service area of the City by township, range, and section. The Commission further finds that Exhibit 1 to the territorial agreement is a map which graphically specifies the City's electric service area. The specific designation of the boundary reserved to the City under the agreement is sufficient to constitute the grant of powers to the City contemplated under Section 394.312.2.

Although inconsistent with its other contentions, Ozark apparently maintains that the territorial agreement authorizes the City to serve structures beyond its corporate limits, but only if such structures existed at the time the agreement was approved by the Commission. The addendum clause contained in the agreement between UE and the City states:

"The Addendums subject to this process apply to new structures only, and not to structures receiving service on the effective date of the Commission's order approving the Agreement."

See Paragraph 5(c), territorial agreement, Case No. EM-94-40. Thus, the Commission finds that the agreement applies to structures built after the agreement was approved.

This Commission is a creature of statute, and can only exercise powers expressly conferred upon it. *State ex rel. United Rys. Co. of St. Louis v. Public Service Commission of Missouri*, 192 S.W. 958 (Mo. banc 1917). Given that basic premise of administrative law, it becomes clear that a remedy this Commission could lawfully use in relation to a territorial agreement would be to suspend or revoke the agreement after a determination by the Commission that the territorial agreement is not in the public interest. Section 394.312.6. The

complaint alleges many facts about the provision of service by the City to customers outside the city limits in areas served by Ozark. Ozark may believe that this situation has resulted in a competitive disadvantage to it. The situation may, in fact, have resulted in a competitive disadvantage to Ozark. But a competitive disadvantage to Ozark resulting from a territorial agreement is not a violation of law, rule or Commission order, and is not a basis upon which the Commission can find the agreement not to be in the public interest under Section 394.312.6.

Many of Ozark's allegations appear to be claims for legal or equitable relief beyond this Commission's jurisdiction. In fact, Ozark requests the Commission to order the City to remove facilities -- in essence, a mandatory injunction -- which is beyond this agency's jurisdiction. *State ex rel. Missouri Southern R. Co. v. Public Service Commission of Missouri*, 168 S.W. 1156 (Mo. banc 1914). Ozark also alleges that the City has crossed certain easements in which Ozark has an interest. This clearly involves an issue of property rights, which the Commission lacks jurisdiction to determine.

In conclusion, after assuming the truth of all of the complaint's allegations, the Commission finds that Ozark has not alleged any violation of law, rule or order over which this Commission has jurisdiction. Therefore, the Commission must dismiss the complaint.

**IT IS THEREFORE ORDERED:**

1. That the complaint filed by Ozark Border Electric Cooperative on February 16, 1996, be, and is hereby, dismissed.

2. That this order shall become effective on the 13th day of May,  
1996.

BY THE COMMISSION

A handwritten signature in cursive script, reading "David L. Rauch".

**David L. Rauch**  
**Executive Secretary**

( S E A L )

Zobrist, Chm., Kincheloe,  
Crompton and Drainer, CC.,  
Concur.  
McClure, C., absent.