BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of the application of Union Electric Company and Crawford Electric Cooperative, Inc., for approval of a written Territorial Agreement designating the boundaries of each as electric service supplier within Jefferson, Crawford, Franklin and Gasconade Counties, Missouri.	))))))	CASE NO. EO-91-204 8-91

APPEARANCES: Paul Agathen and David C. Linton, Attorneys at Law, P. O. Box 149, 1901 Chouteau Avenue, St. Louis, Missouri 63166, for Union Electric Company.

Rodric A. Widger, Attorney at Law, Stockard, Andereck, Hauck, Sharp & Evans, P. O. Box 1280, Jefferson City, Missouri 65102, for Crawford Electric Cooperative, Inc.

John B. Coffman, Assistant Public Counsel, P. O. Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the Public.

Michaelene A. Knudsen, Robert J. Hack and Thomas Luckenbill, Assistants General Counsel, P. O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

HEARING EXAMINER: C. Gene Fee

REPORT AND ORDER

Procedural History

On November 15, 1990, Joint Applicants, Union Electric Company (Company) and Crawford Electric Cooperative (Cooperative), filed an application seeking approval of a Territorial Agreement pursuant to Section 394.312, RSMo Cum. Supp. 1990.

By order of the Commission issued December 7, 1990, notice of the application was given to County Commissioners and members of the Missouri General Assembly serving in the affected area, to the Cities of Owensville, Steelville, Cuba, and Sullivan, and to the newspapers of general circulation in the affected area. By

order issued February 5, 1991, the Commission ordered the Joint Applicants to notify each customer who would be affected by the contemplated exchange. Hearings were held in the City of Union, Missouri, on March 19, 1991, at 2:00 p.m. and 7:00 p.m. to hear testimony of the customers affected by the exchange.

As a result of concerns of the Commission Staff expressed in their evidentiary filings, the Joint Applicants filed an Amended Application with an amended Territorial Agreement which satisfied some of the Staff's concerns.

Hearing was held on the application in Jefferson City, Missouri, on April 29, 1991, which was followed by the filing of briefs by all parties. The transcript of the hearings on March 19 and April 29 and the briefs filed by the parties have been considered in arriving at this Report and Order.

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:

Applicant Cooperative is a Rural Electric Cooperative organized in 1940 pursuant to Chapter 394, RSMo. As provided for in Chapter 394, the Cooperative has been engaged in the distribution of electric energy and service to its members in all or parts of five Counties in east-central Missouri. Its principal office is located near Bourbon, Missouri. Testimony on behalf of the Cooperative was offered in this matter by its General Manager, Larry Austin.

The Company is an electric corporation as defined in Section 386.020, RSMo Supp. 1990 and is engaged in the distribution of electrical service to the public subject to this Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo. In its authorized service territory in east-central Missouri the Company operates a Capital District and a Franklin District which partially overlap the service territory of the Cooperative. It is those overlapping areas, in Gasconade, Franklin,

Jefferson, Crawford, and Washington Counties, which are involved in the instant application.

The Joint Application, as amended, seeks the following:

A. Finding the designated electric service areas to be in the public interest and approval of the Territorial Agreement;

B. Authorization of the Joint Applicants to perform under the terms of the Territorial Agreement;

C. Authorizing the Company to provide electric service to the public within the area described in the agreement and terminating all of the Company's rights and duties to serve, whether by certificate of public convenience and necessity, in Franklin, Gasconade and Crawford Counties, except as provided in the agreement;

D. A finding that the change of electric suppliers for reasons other than a rate differential is in the public interest;

E. A waiver of the provisions of the Utility Building Practices Rule 4 CSR 240-13.010, et seq., which prohibits disconnection of service for a customer's failure to pay a delinquent account owed to another;

F. Approving the transfer between the Applicants of all security deposits applicable to the accounts to be transferred;

G. Authorizing Applicants to serve customers at an incentive rate who were previously served at such an incentive rate by the transferring supplier;

H. Authorizing Company, for ratemaking purposes, to treat the facilities received as equivalent in value to the facilities transferred and to include the value of such facilities in its rate base; and

I. Granting the Company waiver of the Commission's rule 4 CSR 240-20.030 and permitting the Company to book the facilities received from the Cooperative at its book cost of the facilities transferred to the Cooperative.

As a result of the Amended Application, and by further explanations in the Joint Applicants' evidence, all objections of the Commission Staff have been resolved other than those presented in paragraphs H and I, supra.

Although some of the earlier controversies have been resolved, the Commission will describe their resolution since this matter is a case of first impression in two respects. Although the Commission has had other proposed Territorial Agreements presented to it for approval, the instant case is the first Territorial Agreement involving an investor-owned utility. This application also presents the first proposal to transfer existing customers and facilities between the electrical suppliers. Under the terms of the proposed agreement, approximately 1,300 customers previously served by Cooperative will become customers of the Company and approximately 1,200 customers of the Company will become customers of the Cooperative. The majority of the customers to be transferred live in Gasconade and Franklin Counties.

The primary purpose of the proposed agreement is reduction of the amount of overlapping or duplicating electric facilities and the resultant decrease in costs by elimination of the need to maintain those redundant lines. The Territorial Agreement would also reduce travel time to remote lines by employees of the Applicants, reduce line losses, and accelerate restoration of service outages. For the Company, the agreement will also mean the elimination of a scheduled substation renovation in Gasconade County, at an estimated savings of $233,000.

Where significant parallel or overlapping facilities exist, the two suppliers plan to dismantle the portions which appear to be least efficient. An example of that aspect may be best illustrated by the testimony of one of the witnesses at the hearing in Union. One of the customers proposed for transfer stated that he had a pole of each supplier in his yard, and asked if one of those poles would be removed if the agreement was approved. The witness was assured that he

would lose one of those poles from his yard since that was one of the purposes of the proposed agreement.

There is substantial testimony of the Applicants, as well as by the Commission Staff, regarding the economic and operational efficiencies to be achieved by implementing the proposed Territorial Agreement. It is agreed by all parties that the Applicants will be able to improve their system planning in the area which now involves two concurrent estimates. At present each Applicant must estimate the population growth in the area and then attempt to determine how many of those persons will request its service. The present inability to precisely determine future service needs is one of the sources of the duplication of facilities and redundant costs. The Applicants desire further reduction of duplicating lines since the cost of single-phase overhead construction is presently between $15,000 and $25,000 per mile.

At the local hearing 14 customers of the Company testified in opposition to being transferred to the Cooperative. Many of those testifying had been Company customers of long standing, were satisfied with the Company's service, and simply didn't want any change. Many expressed the opinion that they would receive inferior service from the Cooperative at increased rates.

Coincidentally, 14 customers of Cooperative testified in objection to being transferred to Company generally on the same basis. Several of the witnesses have been Cooperative customers for more than 30 years and were also of the opinion that they would receive inferior service from Company at higher prices. An additional witness opposed the transfer because of a financial interest in receiving service to a residential real estate development at no cost as previously promised by the Cooperative. Another witness supported the transfer from the Cooperative to the Company in anticipation of receiving cheaper service which would be more reliable. An additional witness had no problems with the Cooperative's service but understood

why the agreement was signed, to improve what he characterized as "end-of-the-line service".

As a result of the questions concerning rates raised by the public witnesses and the relatively slight addressing of that issue by the parties, the presiding officer had requested the Company to provide a one-year history of the use and billing of some actual customers. In response to the acquiescence of the parties during the hearing on April 29, 1991, the Commission will receive three billing histories in evidence as hereinafter ordered. The three billing histories represent a customer with relatively low use, relatively high use of a space heating customer, and the history of an average or intermediate user. The actual billing of the Company has been converted to the rates of the Cooperative and those actual rate comparisons have been considered by the Commission in this matter. A relatively low use customer consuming 6,172 kilowatt hours on an annual basis had a Union Electric billing of $507.65. For the same use, Crawford Electric's bill would have been $508.87 or an increase of $1.22 on an annual basis. The customer with actual use of 13,804 kilowatt hours and a Company billing of $1,053.56 would have paid $982.93 under the Cooperative's rates for a decrease of $70.63. The relatively high consuming space heating customer with an annual consumption of 34,280 kilowatt hours had an actual Company billing of $2,033.40. Cooperative's billing for the same use would have been $2,165.29 for an increase of $131.89 on an annual basis. The cited examples illustrate that no generalization can be made about whether customers will receive an increase or a decrease as a result of the change, but some slight increases or decreases may result based on individual patterns and volume of use.

Under the terms of the agreement approximately 225 Cooperative customers in Jefferson County would be transferred to the Company which would thereafter make all service extensions in that County. No comment concerning the proposal was received from any of those customers in response to the individual notice sent by Cooperative.

A portion of the application originally objected to by the Commission Staff was the proposed transfer to the Cooperative of approximately 63 customers of Arkansas Power & Light Company (APL) in Washington County. At the time of this application, there was pending before the Commission an application to transfer virtually all of APL's Missouri customers and facilities to Company. Initially, the Staff was of the opinion that the portion of the application concerning Washington County should be held in abeyance until such time as the decision was rendered on the Union Electric-APL merger and notice of the proposal could be tendered to the affected customers for any response.

The Washington County customers are actually being served by facilities connected to the Company system. Under the proposed method of service the line presently serving them will be connected to the Cooperative's system at a point which will result in the most advantages for reliable service. The parties contemplate transferring the Washington County customers to the Cooperative because the Cooperative will have a closer repair dispatch point than Company. Although all of the APL customers have now received notice of the proposed application, only one inquiry has been received by the Commission.

As a result of supplemental evidence concerning the present and proposed service to the Washington County customers, the notice to those customers, and the minimal response, the Commission finds the agreement reasonable. The Commission is of the opinion that it would be improper, however, to presently authorize the conveyance of property which the Company does not yet own, or the transfer of the customers which it presently has no authority to serve. As such, approval of the Territorial Agreement should except that portion of paragraph four which states as follows: "In addition, Company shall transfer to Cooperative all customers and facilities located in Sections 15, 16 and 17 of Township 40 North, Range 2 East, Washington County, Missouri, which the Company may obtain the right to serve as the

result of the purchase by Company of the Arkansas Power & Light facilities in Missouri." Consideration of that portion of the Territorial Agreement should await the disposition of the pending application in the Union Electric-APL merger.

The Commission is of the opinion and finds, based on all elements of the proposed transfer, that the proposed Territorial Agreement is in the public interest and should be approved. The Joint Applicants propose to effect the proposed transfer over a period of three years, thereby permitting an orderly transition. The Applicants intend to notify customers again when the transfer of their individual service is scheduled to occur. After the transfer, all of Crawford County will be within the service territory of the Cooperative. Although Crawford County is in the service area of Company it has no customers there, and has no desire to make random or isolated extensions into that territory.

The agreement provides for most of north and northeast Franklin County to be in the Company's service territory with the south part of the County being in the territory of the Cooperative. The proposed transfer of customers will make the division of the territories more clearly defined and eliminate overlapping of efforts. In Gasconade County Company will confine its efforts to approximately the north two-thirds of the County with the Cooperative confining its efforts in the south one-third.

Upon considering all aspects of the proposal, the Commission is of the opinion that it will result in operating economies for the service providers and increased efficiency and quality for the service receivers. Most of the opposition voiced in this matter is primarily based on laudable customer loyalty and the apprehension that the new service provider will provide inferior service at higher rates. However, both the Commission Staff and the Office of the Public Counsel (Public Counsel) support the approval of the proposed Territorial Agreement because

of the anticipated benefit to the ratepayers of both Applicants through more efficient utility operations and more responsive customer service.

The only remaining contested issues concern the valuation and booking of the properties to be received by the Company. Company seeks permission to treat the facilities received as equivalent in value to the facilities transferred and to include the value of the facilities in rate base. The proposal includes pricing the property received at an average unit price of the comparable equipment by vintage year contained in the Company property records, adjusted to equal the original cost of the property transferred. Under the agreement there would be no adjustment to the depreciation reserve to reflect the age of the various units exchanged. The total book value of the Company property to be transferred is $1,802,718 without depreciation adjustment.

The Company proposes this method of valuation because the Cooperative records do not include continuing property records showing age and specific property location of additions to its system performed over a period of 50 years. Without knowing the year of installation, the accumulated depreciation reserve cannot be accurately calculated as suggested by the Commission Staff. Reconstruction of records that develop average unit price by vintage would be a lengthy and expensive task which would still require some estimation in judgment.

As a substitute, the Cooperative has performed physical inventories of representative sections of line to arrive at an average cost of three-phase line to be $11,016 per mile. The average cost of the single-phase line sampled was established to be $6,888 per mile. Since the transfer involves 36.35 miles of three-phase line and 181.1 miles of single-phase line the Cooperative estimates the value of the facilities that it will transfer to the Company to be $1,647,906.70 as unadjusted. By comparison, the present construction cost per mile of three-phase and single-phase line is $27,480 and $18,308 respectively.

The Company performed a similar calculation of book values of eight one mile segments of line and applied the sample to the approximately 150 miles of line to be transferred to arrive at its estimated value of $1,807,718. For comparison purposes the Company's distribution plant in its Capital District is $75,577,479. The corresponding value in the Franklin District is $50,319,165.

The Staff's objection to the Company's valuation and booking proposal, supported by Public Counsel, is founded on the belief that it is contrary to the standard method of valuation for ratemaking purposes which is employment of original cost less accumulated depreciation. It is the Staff's further contention that the estimating methods employed are not precise enough to be the basis for departure from Commission precedent. In addition, the Staff contends it would be improper to approve an unusual ratemaking treatment since this proceeding is not a rate case. The Staff disputes the necessity of preapproving the ratemaking treatment since complete transition will not occur for three years.

The Staff also recommends disapproval of the proposed booking contending it is inconsistent with the Uniform System of Accounts (USOA) adopted by the Commission, which requires the booking of property on the basis of original cost and depreciation. Staff claims that the Company proposal would make it possible for the customers on either system to pay more or less for the facilities used to provide service than necessary, and that amount should be reflected by original cost.

In the Commission's opinion the Company proposal should be adopted for several reasons. The Commission does not agree that the USOA precludes the proposal. Staff relies on USOA Electric Plant Instructions 1.C. which states in part as follows: "The detailed electric plan accounts (301 to 399, inclusive) shall be stated on the basis of cost to the utility of plant constructed by it and the original cost, estimated if not known, of plant acquired as an operating unit or system..."

Additional reliance is placed on Section 5. Electric Plant Purchased or Sold which states at B. (1) as follows: "The original cost of plant, estimated if not known, shall be credited to Account 102, Electric Plant Purchased or Sold, and concurrently charged to the appropriate electric plant in service accounts and to Account 104,...as appropriate." (emphasis supplied)

Rather than precluding the treatment proposed by the Company, the Commission is of the opinion that the USOA specifically provides for the use of estimates in arriving at plant values when original cost is impossible to ascertain, as herein involved.

The Commission is also of the opinion that the proposed Company treatment does not violate any iron clad rule that the only method of valuation is the use of original cost less depreciation. When that method is impossible, some method of ascertaining value must be used because it is a certainty that some value should be attributed to the property. The establishment of value for ratemaking purposes commonly employs judgment. In the Commission's opinion the estimating methods employed are sufficiently accurate to be the basis of valuing such an insignificant portion of the Company's rate base.

The Applicants' evidence establishes the virtual impossibility, at any cost, of arriving at the original cost of the properties because it is not contained in the Cooperative's books and records. Obviously if an original cost valuation method is not possible, some other valuation method must be employed.

Although apparently substantial on the surface, the total value at issue is 1.5 percent of the Company's distribution rate base in the Franklin and Capital Districts. That is the maximum potential error in the extremely unlikely event that the properties received by the Company are worth absolutely nothing, rather than their value as a system capable of serving approximately the same customer base as the properties traded. In the Company's last rate case the Commission found

Company's fair value rate base to be $6,068,449,934. That rate base, for ratemaking purposes, was trended original cost less depreciation. Re: *Union Electric,* 27 Mo. P.S.C. (N.S.) 183, 270 (1985). Assuming the extremely unlikely hypothetical zero value, Company's fair value rate base would be distorted approximately .0003 percent. It is quite improbable that this small alteration of the Company's rate base will be the origin of a rate case. In the event of a rate case it is extremely unlikely that the amount of rate base at issue would result in any measurable change in rates.

As an additional reason for approving the proposed agreement the Commission is also of the opinion and finds that the Staff's proposal to consider valuation over a three-year period as increments are traded, may diminish the overall public interest to be promoted by this and future Territorial Agreements. The evidence establishes that the parties negotiated the involved agreement for over a year. One of the assumptions under their agreement is the approval of the equality of the value of the property to be traded. As pointed out in the Applicants' reply brief they should not be subject to the uncertainty over the next three years of whether their arms-length bargain was truly a bargain. The same may be true of other potential Territorial Agreement participants who may be forced to wait three years to observe the outcome of the instant request.

The intent of the General Assembly in providing for Territorial Agreements is to prevent wasteful and costly competition and duplication by the substitution of negotiated agreements between service providers. It is expected and hoped that other requests for approval of Territorial Agreements will follow. It may be counter-productive and thwart the purpose of the legislative intent to make potential applicants wait three years to determine if a plan should be submitted. Because the Commission is persuaded that the overall benefits of the proposed agreement outweigh any potential flaws, it should be approved as herein limited.

Approval of the instant plan should not be construed as before-the-fact approval of any future plans, all of which will be considered on a case-by-case basis and approved only if the Commission is persuaded they are soundly negotiated and likely to produce the desired results. The Commission is of the opinion and finds that the instant record adequately demonstrates that the change of electrical suppliers contemplated by the agreement under consideration is in the public interest for reasons other than rate differential.

At the hearing held on April 29, 1991, all parties waived cross-examination of the witnesses. As a result of the inability to inquire about certain areas of the application perceived to be inadequately addressed, the presiding officer asked for the filing of supplemental testimony by Applicant witnesses. Supplemental testimony was filed by the Cooperative Manager Larry Austin on May 10, 1991, and by Company witnesses McClure and Hagan on May 13, 1991. That testimony will be received in evidence as hereinafter ordered and has been considered by the Commission in this Report and Order.

Pursuant to the consent of the parties, comparison of the rates of the Cooperative, the Company and APL will be received in evidence as hereinafter ordered and has been considered in this Report and Order.

The Commission notes that the Territorial Agreement provides in paragraph six the performance of the parties is contingent upon approval of the transaction by the Public Service Commission of Missouri no later than July 31, 1991. As a result of the procedural schedule adopted that date is only 16 days following the completion of the record in this matter. In the Commission's opinion, Joint Applicants should notify the Commission, as hereinafter ordered, that the Territorial Agreement has been amended by the extension of that date and whether the Joint Applicants intend to execute the Territorial Agreement as herein authorized.

Conclusions

The Missouri Public Service Commission has arrived at the following conclusions:

The instant Territorial Agreement was filed pursuant to Section 394.312, RSMo Cum. Supp. 1990. The standard for approval is stated in Subsection 4 as follows: "The Commission shall hold evidentiary hearings to determine whether such Territorial Agreement should be approved or disapproved. The Commission may approve the application if it shall, after hearing, determine that approval of the Territorial Agreement in total is not detrimental to the public interest."

In the Commission's opinion, although the governing statute does not require a finding of being in the public interest or resulting in a public benefit, when the evidence establishes, as in the instant record, that potential benefits outweigh any possible disadvantages, the Commission should exercise its discretion in favor of approval. The Commission is of the opinion and concludes that the instant record establishes that the Territorial Agreement in total is not detrimental to the public interest.

Value of utility property is not required to be based primarily upon either original cost or reproduction cost less depreciation. In arriving at value the courts do not circumscribe regulatory agencies to any hard or fast formula but each case must be determined on its own facts and often times varying factors. *State ex rel. Missouri Water Company v. Public Service Commission,* 308 S.W.2d 704, 718 (Mo. 1957).

For all of the reasons recited herein, the authority sought should be granted as hereinafter ordered.

IT IS THEREFORE ORDERED:

1. That the joint application filed herein by Union Electric Company and Crawford Electric Cooperative, Inc. on November 15, 1990, be granted and the

Territorial Agreement attached to the Amended Application as Exhibit A be approved with the exception of previously cited language in paragraph four concerning the customers in Sections 15, 16 and 17 of Township 40 North, Range 2 East, Washington County, Missouri.

2. That Joint Applicants are hereby authorized to perform any and all acts, and execute any and all documents necessary to the execution of the Territorial Agreement herein approved.

3. That Union Electric Company be granted a waiver of the provisions of the Commission's Utility Billing Practices Rule, 4 CSR 240-13.010, et seq. which would otherwise prohibit the Company from discontinuing service for a customer's failure to pay a delinquent account owed to another party.

4. That Union Electric Company be granted a waiver of the Commission's Rule 4 CSR 240-20.030 to the extent that the Company shall be allowed to book the facilities received in this matter from Crawford Electric Cooperative, Inc., at the book cost of the facilities transferred to the Cooperative.

5. The following described Exhibits be received in evidence in this matter:

Exhibit 17	Comparison of rates of Company, Cooperative and APL
Exhibit 18	Two-page document showing actual use and billing of three Company customers
Exhibit 19	Supplemental testimony of Cooperative witness Austin
Exhibit 20	Supplemental testimony of Company witness Hagan
Exhibit 21	Supplemental testimony of Company witness McClure

6. That within twenty (20) days from the date of this Report and Order Joint Applicants shall notify the Commission concerning their intent to extend the date of July 31, 1991, contained in paragraph six of the Territorial Agreement, and shall further notify the Commission of their intention of executing the Territorial Agreement as herein authorized.

7. That this docket shall remain open for the issuance of further orders herein described or necessary.

8. That this Report and Order shall become effective on September 16, 1991.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

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

Dated at Jefferson City, Missouri, on this 16th day of August, 1991.