

In the matter of the application of Ralls County )  
Electric Cooperative and the City of Vandalia, )  
Missouri, for approval of a written territorial )  
agreement designating the boundaries of each ) Case No. EO-96-174  
electric service supplier in the counties of )  
Audrain, Pike and Ralls in Missouri. )  
)

**Effective Date:** March 19, 1996

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

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**APPEARANCES**

Patrick A. Baumhoer, Andereck, Evans, Milne, Peace & Baumhoer, L.L.C., 301 East McCarty Street, Post Office Box 1438, Jefferson City, Missouri 65102-1438, for Ralls County Electric Cooperative.

William C. McIlroy, Attorney at Law, 210 South Main Street, Vandalia, Missouri 63382, for the City of Vandalia, Missouri.

Lewis R. Mills, Jr., Deputy Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Aisha Ginwalla, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

**ADMINISTRATIVE**

**LAW JUDGE:** Thomas H. Luckenbill, Deputy Chief.

**REPORT AND ORDER**

On November 22, 1995, Ralls County Electric Cooperative (Ralls or Cooperative) and the City of Vandalia, Missouri (Vandalia or City), filed a joint application under Sections 394.312 and 416.041.3, R.S.Mo. 1994, requesting approval of a territorial agreement between Ralls and Vandalia. Specifically, Ralls and Vandalia (Applicants) request that the Missouri Public Service Commission (Commission) find the electric service areas designated in the agreement to be not detrimental to the public<sup>3</sup> interest. Applicants further

request that the Commission authorize them to perform in accordance with the terms and conditions of the territorial agreement.

On November 30, 1995, the Commission issued an Order And Notice which included notice provisions for the area affected and an intervention date of December 20, 1995. On January 8, 1996, Union Electric Company (UE) filed an application to intervene. On January 23, 1996, the Commission denied UE's application to intervene because the application was untimely and UE had not demonstrated an interest in the proceeding of sufficient weight to justify allowing intervention at an advanced stage of the proceeding.

The Commission held an evidentiary hearing on February 14, 1996.

### **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.

Mr. Todd Hileman, Vandalia City Administrator, filed direct testimony on behalf of Vandalia. Mr. Daniel L. Strode, General Manager of Ralls County electric Cooperative, filed direct testimony on behalf of Ralls. Staff witness B.J. Washburn filed rebuttal testimony. All parties to the case support approval of the application and territorial agreement.

Vandalia witness Mr. Hileman recommends approval of the application and territorial agreement. Mr. Hileman testifies that the agreement avoids duplication of services. Mr. Hileman states that Ralls' participation in the industrial development of Vandalia will allow Vandalia to use more resources for the purpose of upgrading the voltage throughout Vandalia. Mr. Hileman states that Ralls will be assisting in the construction of buildings in the industrial area set aside by the City. Thus, Mr. Hileman testifies that the agreement is in the best interests of Vandalia. Mr. Hileman testifies that Vandalia provides

electric service to Tri-County Nursing Home (Nursing Home), even though it is outside the city limits. Mr. Hileman testified that Vandalia provides service to the Nursing Home because it needed three-phase service and Vandalia was able to provide that service. Mr. Hileman states that the City has served the Nursing Home for more than ten years and had no service complaints during that time. Mr. Hileman states that customers are charged the same rate whether or not they are in the city limits.

Ralls witness Mr. Strode recommends approval of the application and territorial agreement. Mr. Strode testified that the agreement will prevent duplication of facilities by the Cooperative and the City. Mr. Strode testified that Ralls and Vandalia are serving the public interest by acting now to avoid wasteful duplication and focusing their efforts on efficient use of existing resources in more compact operational areas. Mr. Strode states the public will have more certainty in who to call for service and service issues. Mr. Strode further states that Ralls' planning, engineering, and operational decisions will be simplified since its investments will not be driven by competition for new loads. In addition, Mr. Strode testifies that another benefit to the public is an enhanced ability to keep rates as low as possible due to greater customer density.

Mr. Strode further testified that certain safety improvements result from the agreement. He states that Ralls will be able to work with Vandalia to develop efficient distribution systems. Mr. Strode states that the agreement will result in fewer poles along roads and fewer energized lines, which will reduce potential public hazards. Mr. Strode states that employee time spent driving to respond to service calls will be reduced, resulting in reduced labor expense and quicker restoration of service for customers. Mr. Strode states that there are three Ralls customers in the territory assigned to Vandalia and that those three customers will remain with Ralls. Mr. Strode further points out that

there are seven Vandalia customers in the territory assigned to Ralls and that those seven customers will remain customers of Vandalia.

Staff witness Washburn recommends approval of the application and territorial agreement. Mr. Washburn testified that there will be no change of utility service as a result of this agreement. In describing the agreement, Mr. Washburn further testified that a new Women's Correctional Center will be located in the eastern part of Vandalia and that Ralls has been selected to be the electric service provider for the new correctional center. Mr. Washburn further testified that the agreement does not contain any provisions for making case-by-case exceptions to the boundary line, because the parties do not anticipate a need to make such exceptions.

Mr. Washburn testified that although the City is serving a few customers outside the city limits, Staff believes the service is justified. Mr. Washburn states the facilities outside the city limits have been in place for several years. Mr. Washburn testified that the City commenced providing electric service to Tri-County Nursing Home, one of the customers outside the city limits, because the Nursing Home needed three-phase electric service and the City was able to provide that service.

The Office of the Public Counsel (OPC) states that this is exactly the type of territorial agreement that the territorial agreement law was designed to accommodate. OPC states that it appears to avoid duplication of service and wasteful competition, and, as a result, OPC supports the application.

The Commission is concerned about this particular territorial agreement because under the agreement, Ralls County Electric Cooperative has agreed that Vandalia may continue to provide service to customers within a 1,100-foot wide tract of land immediately adjacent to and west of the western edge of Vandalia. The Commission would note, however, that a portion of this tract was annexed by Vandalia before the date of the Commission hearing.

The provision of electric service to customers outside the city limits by municipally owned utilities concerns the Commission because the customers of Vandalia's municipally owned and operated electric provider do not vote for city councilmen or the mayor of Vandalia. Thus, the customers outside the city limits have no direct representation within city government.

The Missouri Legislature has provided a variety of means for monopoly utility services to be provided to residential and business customers. The common element found in investor-owned, cooperative, and municipally owned utilities is the right of the ratepayers to participate in the ratemaking process.

Investor-owned utilities are regulated by the Commission and must have their rates established after a hearing in which all parties have an opportunity to be heard. The public is represented in all proceedings before the Commission by the Office of the Public Counsel, and Commission orders may be appealed by aggrieved parties through the state's judicial system.

Cooperatives are not subject to the Commission's jurisdiction except for territorial agreements and safety issues. This is because the ratepayers, in essence, have the authority to run the cooperative. The customers themselves elect a board of directors which is responsible for operating the cooperative. If the customers are dissatisfied, they may elect new directors or even run for the board themselves.

Municipalities may establish their own utility systems subject to local regulation. In these situations, the city council or board of aldermen directly supervises the municipal utility or delegates that oversight to a utility board. Rates are ultimately set by the city's elected representatives, who must answer to the public for their decisions.

However, the principles of regulation break down when, as in this case, municipalities are allowed to provide utility services outside the city

limits with no additional oversight. Customers living outside the city limits have no voice in the regulatory process. They cannot complain, and expect to be heard, about rates or quality of service to a city councilman because they have no representation. They cannot take out their frustrations at the ballot box because they cannot vote in municipal elections. Essentially, they have no recourse at the municipal level to effect change with regard to utility service. Their protection in the ratemaking process is limited and the potential for discrimination and inequitable treatment is very real. The availability of a rival provider of electricity willing and able to serve these customers may be one of their few protections from such treatment.

In deciding whether to approve a territorial agreement, the Commission must determine whether approval of the agreement is detrimental to the public interest. Section 394.312, R.S.Mo. The Commission must exercise its discretion because Section 386.800, R.S.Mo., contemplates territorial agreements where cities are allowed territory beyond their corporate limits.

As previously discussed, the provision of territory beyond Vandalia's city limits to Vandalia concerns the Commission. However, in exercising its discretion in this matter, the Commission finds that the potential for abuse of customers outside the city limits is mitigated in this case by numerous considerations hereinafter set forth.

First, persons affected by territorial agreements are afforded recourse before this Commission. Under Section 394.312.6, the Commission has jurisdiction to hear complaints involving any Commission-approved territorial agreement. If the Commission determines, after hearing, that the territorial agreement is no longer in the public interest, it has authority to suspend or revoke the territorial agreement. Electric service customers within the territorial agreement boundaries would have standing to file a complaint seeking revocation or suspension of the territorial agreement.

There are six customers outside Vandalia's city limits but within Vandalia's territory under the agreement. Five of those customers are commercial and one is a single-family residence. Although notice and an opportunity to intervene were provided, none of these customers responded. This suggests that none of these customers objects to the agreement. Mr. Todd Hileman, Vandalia's City Administrator, testified at hearing that these customers have received service from the City for more than twenty years and during that time, no complaints have been received. Mr. Hileman further testified that the customers outside the city limits would be treated in the same manner as customers in the city limits.

The Commission finds that Section 386.800, R.S.Mo., contemplates that the Commission has discretion to approve territorial agreements which set aside service territory to a city which is beyond the city limits. Since there is no indication of objection from electric customers outside the city limits but within the City's territory under the agreement, and since those electric customers have a statutory right to seek revocation or suspension of the agreement before this Commission under Section 394.312.6, the Commission finds that the agreement in total is not detrimental to the public interest. Therefore, the Commission finds that the application, together with the territorial agreement, should be approved.

Based on the testimony, the written agreement and the map depicting the agreement, the Commission finds that the territorial agreement is reasonably designed to avoid duplication of facilities. The Commission finds that the agreement promotes the efficient use of resources in more compact operational areas. The Commission finds that the agreement will result in fewer poles and energized lines, which will reduce potential hazards.

The Commission is of the opinion that by enacting the electrical territorial agreement laws (Sections 394.312 and 416.041.3, R.S.Mo. 1994), the



Missouri General Assembly sought to encourage voluntary agreements between rural electric cooperatives, electric corporations, and municipally owned electric utilities to displace competition which frequently results in wasteful duplication or inefficient use of resources. The Commission further finds that when a proposed territorial agreement, such as the one presented in this case, furthers that legislative intent, it should be approved.

### **Conclusions of Law**

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

The Missouri Public Service Commission has jurisdiction over the matters at issue in this application pursuant to Sections 394.312 and 416.041, R.S.Mo.

In deciding whether to approve a territorial agreement, the Commission must determine whether approval of the agreement is detrimental to the public interest. Section 394.312, R.S.Mo. The Commission must exercise its discretion because Section 386.800, R.S.Mo., contemplates territorial agreements where cities are allowed territory beyond their corporate limits.

Section 386.800, R.S.Mo., provides, in pertinent part:

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

. . . . .

"(2) The service is provided pursuant to an approved territorial agreement under section 394.312, RSMo."

The above-quoted statutory language clearly shows that the Missouri legislature contemplated that the Commission has the discretion to approve territorial agreements where municipalities are allowed territory beyond their boundaries.

Persons affected by territorial agreements are afforded recourse before this Commission. Under Section 394.312.6, the Commission has jurisdiction to hear complaints involving any Commission-approved territorial agreement. If the Commission determines, after hearing, that the territorial agreement is no longer in the public interest, it has authority to suspend or revoke the territorial agreement. Electric service customers within the territorial agreement boundaries have standing to file a complaint seeking revocation or suspension of the territorial agreement.

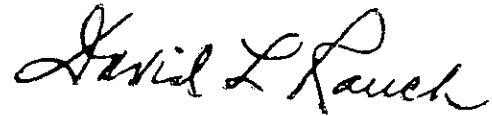
The intent of the General Assembly in enacting Sections 394.312 and 416.041.3, R.S.Mo. 1994, was to encourage voluntary agreements between rural electric cooperatives, electric corporations, and municipally owned utilities to displace competition which may result in duplication or inefficient use of facilities. The Commission concludes that when a proposed territorial agreement, such as the one presented in this matter, furthers that legislative intent, it should be approved.

**IT IS THEREFORE ORDERED:**

1. That the territorial agreement filed by Ralls County Electric Cooperative and the City of Vandalia, Missouri, on November 22, 1995, and submitted at the hearing on February 14, 1996, be, and is hereby, approved, and the Applicants are authorized to perform in accordance with the terms and agreements of the territorial agreement (Attachment A).

2. That this Report And Order shall become effective on the  
19th day of March, 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., McClure, Kincheloe,  
Crompton and Drainer, CC., concur  
and certify compliance with the  
provisions of Section 536.080,  
R.S.Mo. 1994.

Dated at Jefferson City, Missouri,  
on this 8th day of March, 1996.

## TERRITORIAL AGREEMENT

THIS AGREEMENT is entered into between the City of Vandalia, Missouri, hereinafter referred to as "City", and Ralls County Electric Cooperative, hereinafter referred to as "Cooperative".

WHEREAS, Section 394.312 of the Revised Statutes of Missouri provides that competition to provide retail electric service as between rural electric cooperatives and municipally owned utilities may be displaced by written territorial agreements specifically designating the boundaries of the electric service area of each electric service supplier subject to said Agreement; and

WHEREAS, City and Cooperative desire to promote the orderly development of the retail electric service system within the City of Vandalia and Audrain, Pike, and Ralls Counties, Missouri, to avoid wasteful duplication and to minimize disputes which may result in higher costs in serving the public;

NOW THEREFORE, City and Cooperative in consideration of the mutual covenants and agreements herein contained agree as follows:

1. The electric service area of City is described in Exhibit 1 to this Agreement by metes and bounds and illustrated by the map marked Exhibit 2, both of which are hereby expressly incorporated herein by reference and made a part of this Agreement as fully as if set out herein verbatim.

2. City shall provide electric service to all those meter locations that it presently has and to all new meter locations for electric customers within its electric service area. Cooperative acknowledges and agrees that as between the parties City shall have

the sole and exclusive right to continue to service the electrical customers City presently serves and all new or additional services within City's electric service area.

3. The electric service area of Cooperative is described in Exhibit 3 to this Agreement by metes and bounds and illustrated by the map marked Exhibit 2, both of which are hereby expressly incorporated herein by reference and made a part of this Agreement as fully as if set out herein verbatim.

4. Cooperative reserves the right to continue to provide electric service to those customers it has as of the date of this Agreement within the City's electric service area but shall not provide electric service to any new customers within the City's electric service area.

5. The parties agree that if City annexes areas set forth and contained within the Cooperative service territory that as between the parties the Cooperative shall have the sole and exclusive right to continue to service the electrical customers within such annexed areas including all new or additional services within said annexed areas. City hereby grants all necessary permission, approval and authority to Cooperative to engage in retail electric sales and service within the corporate limits of City to carry out the intent of this Agreement.

6. In consideration for the right of Cooperative to be the sole and exclusive supplier of electric service within areas annexed by City after the date of this Agreement, Cooperative agrees to pay to City semi-annually an amount equal to 5% of

Cooperative's gross receipts from sales of electricity in the annexed area(s) for all sales. City agrees that Cooperative shall have the right to use city public rights of way in the same manner as other utilities.

7. The parties agree that either party hereto may service its own facilities even if located within the service area of the other party hereto except when such service would result in duplication of current services or other wasteful duplication of facilities. The Cooperative has service territory outside the areas covered by this Agreement. For service outside of the areas described by this Agreement, the parties will continue to operate without regard to this Agreement.

8. Neither the boundaries described by this Agreement nor any term of this Agreement may be modified, repealed, or changed except by writing mutually approved by the respective governing bodies of the parties and by the Missouri Public Service Commission.

9. The initial term of this Agreement shall be fifty (50) years from and after the date said Agreement is approved by the Missouri Public Service Commission. Thereafter, this Agreement shall automatically be renewed for successive five years terms unless either party hereto shall notify the other party in writing of its intent to terminate this Agreement at least one year in advance of any such renewal date.

10. The parties agree to undertake all actions reasonably necessary to implement this Agreement. The parties will share

equally the cost of obtaining administrative approval of this Agreement. Each party will cooperate in presenting a joint application showing such Agreement to be in the public interest. If the Public Service Commission of Missouri does not approve the provisions of this Agreement then it shall be nullified and of no legal affect between the parties. Further, if any part of this Agreement is declared invalid or void by a Court or agency of competent jurisdiction then the whole Agreement shall be deemed invalid or void and the parties shall return to that status existing prior to this Agreement.

11. This Agreement shall be binding upon the parties and all subsidiaries, successors in interest and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement this 10<sup>th</sup> day of October, 1995.

CITY OF VANDALIA

By Ramon Barnes  
Mayor

ATTEST:

Kimberly Hood  
City Clerk

RALLS COUNTY ELECTRIC COOPERATIVE

By Rex Cragen  
President

ATTEST:

Linda Dahl  
Secretary

# EXHIBIT 1

Commencing at a point in the Southwest corner of property belonging to Pearl M. Holt, Jr. and Doris M. Holt, husband and wife as recorded in Book 251, Page 970, being the true point of beginning. Thence north 00 degrees 06' 12" east 208.00' to 5/8 rebar. Thence north 00 degrees 06' 12" east 515.13' to 5/8 rebar. Thence south 59 degrees 58' 55" west 683.55' to 5/8 rebar on north line of McPike Street. Thence north 00 degrees 06' 12" east 1,873.87' to center of county line road. Thence west along center of county line road to a point 1,100' west of the center of Galloway Road. Thence south to center line of State Road "P". Thence west on State Road "P" 650' more or less to east property line of Vandalia Industrial Park. Thence south along east border line of Vandalia Industrial Park 1,000' more or less to a point 200' more or less west of north corner of Gaslight Road and west corner of Rosebud Road. Thence in a southeasterly direction along west right-of-way of Gaslight Road 350' more or less to north right-of-way line of U. S. Highway #54. Thence in a northeasterly direction along north right-of-way of U.S. Highway #54 to the true point of beginning.



EXHIBIT 2

(Exhibit 2 has been omitted because it is a voluminous map. Exhibit 2 is contained in the Commission's Exhibit File and is hereby incorporated by reference.)

### EXHIBIT 3

Commencing at a point 200' north and 200' west of the center of the intersection of state roads #154 and "P" in Ralls County. Thence 200' north of Highway #154 right-of-way line 7 1/2 miles more or less to the north right-of-way of U.S. Highway #54 in Pike County. Thence in a southwesterly direction along the north right-of-way line of U.S. Highway #54 to a point at the southwest corner of property belonging to Pearl M. Holt, Jr. and Doris M. Holt husband and wife as recorded in Book 251, Page 970. Thence north 00 degrees 06' 12" east 208.00' to 5/8 rebar. Thence north 00 degrees 06' 12" east 515.13' to 5/8 rebar. Thence south 59 degrees 58' 55" west 683.55' to 5/8 rebar on north line of McPike Street. Thence north 00 degrees 06' 12" east 1873.87' to center of county line road. Thence west along center of county line road to a point 1100' west of the center of Galloway Road. Thence south to center line of State Road "P". Thence west on State Road "P" 650' more or less to east property line of Vandalia Industrial Park. Thence south along east border line of Vandalia Industrial Park 1,000' more or less to a point 200' more or less west of north corner of Gaslight Road and west corner of Rosebud Road. Thence in a southeasterly direction along west right-of-way of Gaslight Road 350' more or less to north right-of-way line of U.S. Highway #54. Thence in a southwesterly direction along north right-of-way line along U.S. Highway #54 to a point 200' west of the center line of County Road 667 in Audrain County. Thence north along County Road 667, 200' west of County Road to State Road "P". Thence continuing north 200' west of center line of State Road "P" to 200' north of center line of State Road #154 to point of beginning.