

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of the application of Marshall Municipal)
Utilities and Central Missouri Electric Cooperative,)
Inc., for approval of a written territorial agreement) CASE NO. EO-96-165
designating the boundaries of each electric service)
supplier within portions of Saline County, Missouri.)

REPORT AND ORDER

Issue Date: March 8, 1996

Effective Date: March 19, 1996

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Electric Cooperative, Inc. for approval of a)
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within portions of Saline County, Missouri.)

APPEARANCES: George S. Huff, Attorney at Law, Huff and Huff,
 78 South Jefferson Avenue, Marshall, MO 65340-2106,
 For: Marshall Municipal Utilities.

Douglas E. Micheel, Senior Public Counsel, and
 Lewis R. Mills, Jr., Deputy Public Counsel,
 P. O. Box 7800, Jefferson City, MO 65102-7800,
 For: Office of the Public Counsel and the Public.

Roger W. Steiner, Assistant General Counsel,
 P. O. Box 360, Jefferson City, Missouri 65102,
 For: Staff of the Missouri Public Service Commission.

Administrative
Law Judge: Mark A. Grothoff

REPORT AND ORDER

On November 21, 1995, Marshall Municipal Utilities (Marshall) and Central Missouri Electric Cooperative, Inc. (Cooperative), collectively referenced as Applicants, filed a joint application seeking Commission approval of a territorial agreement (agreement) attached to the application as Schedule A. On November 28, 1995, the Commission issued an Order and Notice which directed that notice of this matter be provided, set an intervention date, and established a procedural schedule. On January 5, 1996, the Commission continued the scheduled hearing by Notice. No motions for intervention were filed and on January 16, 1996, a hearing was convened with all parties participating.

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:

Marshall is a municipally owned electric utility operated under the direction of a Board of Public Works for the City of Marshall, Missouri. The Cooperative is a cooperative corporation organized pursuant to Chapter 394, RSMo, and as such is engaged in the distribution of electric energy and service to its members.

Applicants filed their joint application pursuant to Section 394.312, RSMo 1994 which provides that competition to provide retail electric service, as between rural electric cooperatives and municipally owned utilities, may be displaced by written territorial agreements to the extent provided by the statute. Section 394.312 states that the Commission may approve the agreement if it is not detrimental to the public interest.

The agreement specifically designates the exclusive service areas for Marshall and the Cooperative. Included in Marshall's designated service area, in addition to customers currently served by Marshall, are new customers on three parcels of land which are adjacent but outside of the corporate limits of the City of Marshall, Missouri.

Applicants state that the agreement is in the public interest because it will prevent duplication of services by assigning exclusive service territories to Marshall and the Cooperative. Applicants argue that the agreement will increase customers' certainty as to their electric service provider, will guard economic efficiencies, and will benefit the public safety and aesthetics of the community.

The Staff of the Commission (Staff) supports the agreement. Staff states that the agreement will help to prevent the duplication of

services. In addition, the Office of the Public Counsel (Public Counsel) does not oppose the agreement.

As a policy, the Commission has encouraged territorial agreements for much the same reason proffered by the Applicants and Staff. Likewise, the Commission has often found circumstances where municipalities may be better able to provide the financial resources necessary to operate a utility and may also be better able to provide the manpower and technical expertise to do so as well. Another benefit which often makes municipally operated utilities attractive is the fact that oversight of the utility is "closer to home". If problems exist with the utility, the customer need not travel to or communicate with the agent or agency which represents them in the state capital. Rather, the customer may contact their city councilman or other elected official.

What is important in either scenario is the fact that customers who are required to engage in business with a monopoly have some form of representation and/or protection. Representation is at the core of the United States and Missouri Constitutions and subjecting the citizens to a situation in which they have no voice nor avenue for recourse is indistinguishable from taxation without representation.

In re Finley Valley Water Company, Inc., Case No. WM-95-243, Order Approving Sale, p. 17, December 6, 1995.

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 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 representation, voice, or recourse to affect change with regard to the terms, conditions, and rates established for their 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 this particular case, the lack of representation for those customers of Marshall who are outside the city limits is of serious concern for the Commission. However, in its consideration of the territorial agreement, the Commission finds that the potential for discrimination against customers outside the city limits is mitigated in this case.

Persons affected by territorial agreements are afforded an avenue to be heard before the Commission. Under Section 394.312.6, RSMo 1995, the Commission has jurisdiction to hear complaints involving Commission-approved territorial agreements. If the Commission determines that the territorial agreement is no longer in the public interest, it has the 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.

The record indicates that there will be no change of utility service under this agreement. Marshall's designated service area under the agreement includes approximately eight customers currently served by Marshall and approximately four potential new customers on parcels of land outside of Marshall's city limits. Although notice and an opportunity to intervene were provided, none of these customers responded. Also, these customers could have requested service from the Cooperative if they were unhappy with Marshall's service, but they did not. This suggests that none of these customers objects to receiving electric service from Marshall. In addition, there is testimony on the record that Marshall's customers who are outside the city limits have as much opportunity to appear and speak at meetings of the Board of Public Works as those customers within the city limits.

Section 386.800, RSMo 1994, contemplates that municipalities may provide utility service beyond its city limits under a territorial agreement approved by the Commission. Because the statute authorizes utility service beyond city limits, some basis other than simply serving beyond the city limits is necessary to find that the territorial agreement is detrimental to the public interest. Since there is no indication of objection from Marshall's customers outside the city limits under the agreement, and since those customers have a statutory right to seek revocation or suspension of the agreement, the Commission finds the agreement in total is not detrimental to the public interest. Thus, the Commission finds that the territorial agreement filed by Marshall and the Cooperative should be approved.

The Commission is of the opinion that by enacting the territorial agreement statute (Section 394.312, RSMo 1994), the Missouri Legislature 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 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:

Marshall is a municipally owned electric utility operated under the direction of a Board of Public Works for the City of Marshall, Missouri pursuant to Chapter 91, RSMo 1994. The Cooperative is a cooperative corporation organized pursuant to Chapter 394, RSMo 1994, and is engaged in the distribution of electric energy and service to its members.

Applicants filed the territorial agreement under consideration in this case pursuant to Section 394.312, RSMo 1994. The Commission may approve a territorial agreement if it finds that the territorial agreement in total is not detrimental to the public interest. Section 394.312, RSMo 1994.

Section 386.800, RSMo 1994, contemplates that municipalities may provide utility service beyond its city limits under a territorial agreement approved by the Commission. A basis other than simply serving beyond its city limits is necessary to find that the territorial agreement is detrimental to the public interest. Since there is no objection from Marshall's customers outside the city limits under the agreement, and since those customers have a statutory right to seek revocation or suspension of the agreement, the Commission has found that the agreement in total is not detrimental to the public interest. Thus, the Commission concludes that the territorial agreement filed by Marshall and the Cooperative should be approved.

The intent of the Missouri Legislature in enacting Section 394.312, RSMo 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.

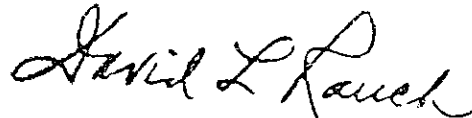
IT IS THEREFORE ORDERED:

1. That the territorial agreement filed in this case by Marshall Municipal Utilities and Central Missouri Electric Cooperative, Inc. is hereby approved.

2. That Marshall Municipal Utilities and Central Missouri Electric Cooperative, Inc. are hereby authorized to perform in accordance with the terms and conditions of the territorial agreement approved in Ordered Paragraph 1.

3. That this Report and Order shall become effective on March 19, 1996.

BY THE COMMISSION

A handwritten signature in dark ink, appearing to read "David L. Rauch". The signature is fluid and cursive, with the first name "David" being more prominent.

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, RSMo 1994.

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