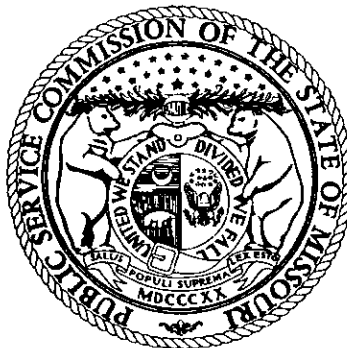


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



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 Electric Service Supplier in)
the Counties of Audrain, Pike and)
Ralls in Missouri.)

Case No. EO-98-142

REPORT AND ORDER

Issue Date: January 8, 1998

Effective Date: January 21, 1998

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OF THE STATE OF MISSOURI

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 Electric Service Supplier in)
the Counties of Audrain, Pike and)
Ralls in Missouri.)

Case No. EO-98-142

APPEARANCES

Patrick A. Baumhoer, Attorney at Law, Andereck, Evans, Milne, Peace & Baumhoer, L.L.C., 305 East McCarty Street, P.O. Box 1438, Jefferson City, Missouri 65102, for Ralls County Electric Cooperative.

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

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

William K. Haas, Senior Counsel, P.O. Box 360, Jefferson City, Missouri 65202, for the Staff of the Missouri Public Service Commission.

REGULATORY

LAW JUDGE:

Thomas H. Luckenbill, Deputy Chief.

REPORT AND ORDER

Procedural History

On October 3, 1997, Ralls County Electric Cooperative (Ralls) and the City of Vandalia, Missouri (Vandalia) filed a Joint Application

pursuant to Section 394.312 RSMo¹ requesting that the Missouri Public Service Commission approve an amendment to an electric territorial agreement. The original electric territorial agreement was approved by the Commission in Case No. EO-96-174.

The preparation and filing of the October 3 Joint Application is necessary because Ralls and Vandalia found an error in the original territorial agreement and Section 394.312.3. RSMo provides that amendments to territorial agreements shall be approved by this Commission.

On November 13, 1997, Mr. Daniel L. Strode, General Manager of Ralls County Electric Cooperative and Mr. Alfred Minner, City Administrator of Vandalia, filed direct testimony. On November 26 Mr. James L. Ketter, an engineer in the Engineering Section of the Electric Department of the Missouri Public Service Commission, filed rebuttal.

The Commission held an evidentiary hearing on December 22, 1997. At that hearing the testimony and hearing memorandum were marked and received into the record. The hearing memorandum provides that there are no disputed issues among the parties and that all parties recommend that the Commission approve the amended agreement.

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. Strode testified that the original agreement contained an error in that it should have been written to include areas annexed by Vandalia after 1991 in the 5 percent gross receipts provision. He states that it was the original intent of the parties that the Cooperative would

¹All statutory references are to the Revised Statutes of Missouri, 1994, unless otherwise indicated.

pay an amount equal to 5 percent of the gross receipts from sales of electricity within areas annexed by Vandalia since 1991 rather than from the date of the original agreement. The original agreement was executed on October 10, 1995.

Mr. Minner testified that after the original agreement was approved the City noticed that Ralls was providing electricity service to an area which was annexed in 1991 and under the agreement Ralls would not have to pay the City 5 percent of gross receipts generated on those electricity sales. Mr. Minner testifies that the City and Ralls support the amendment to the territorial agreement.

Mr. Ketter testified that the amendment addresses the Cooperative's agreement to pay the City a percentage of the Cooperative's gross receipts from sales of electricity in annexed areas and that the amendment changes the relevant language from "date of this agreement" to "after January 1, 1991, . . . to which service is first supplied after September 16, 1997." Mr. Ketter states that the area in question is an industrial park that was annexed by the City. Currently there are no customers in the industrial park, but with the proposed amendment electric revenues from customers located in the industrial park will be subject to the 5 percent gross receipts provision.

Mr. Ketter states that this change in the agreement does not alter the public interest and benefits of the territorial agreement and that the amendment does not change the previously established boundaries for electric service areas. The amendment does not affect the original agreement's benefits of avoidance of duplication of facilities, efficient use of resources in the assigned areas, and reduction of potential hazards. Finally, there is no exchange of customers as a result of the amendment.

The Office of the Public Counsel (Public Counsel) did not submit testimony in this proceeding. In opening remarks Deputy Public Counsel Lewis R. Mills states that Public Counsel does not object to the agreement and that it seems like a reasonable way to correct the error.

The agreement between Ralls and Vandalia which was approved in Case No. EO-96-174 provides that Ralls will pay Vandalia a semiannual amount equal to 5 percent of the Cooperative's gross receipts from sales of electricity within areas annexed by Vandalia after the date of that agreement. The amendment addresses Ralls' agreement to pay the City a percentage of the Cooperative's gross receipts from sales of electricity in annexed areas. The language of the original agreement did not accurately reflect the intention of the parties because they did not intend to limit the application of the 5 percent of gross receipts provision to areas annexed after the date of the agreement. The amended agreement provides that Ralls will pay Vandalia 5 percent of gross receipts with respect to structures located in areas annexed after January 1, 1991, to which service is first supplied after September 16, 1997.

Based on the testimony and the amended territorial agreement the Commission finds that the amended agreement is reasonably designed to avoid duplication of facilities and promote the efficient use of resources. The amendment does not change the boundaries established for electric service areas as approved in Case No. EO-96-174 nor does the amendment result in an exchange of customers. The amendment cures a drafting error and causes the written agreement to accurately reflect the original intent of the parties. Thus, the Commission concludes that approval of the amended agreement is not detrimental to the public interest.

Conclusions of Law

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

The Commission has jurisdiction over the matters at issue in this application pursuant to Sections 394.312 and 416.041, RSMo.

In deciding whether to approve a territorial agreement, the Commission must determine whether approval of the agreement is detrimental to the public interest under Section 394.312, RSMo. The Commission concludes that the territorial agreement as amended is not detrimental to the public interest and therefore should be approved.

In this case, all parties agree that the territorial agreement as amended should be approved. This can be construed as an agreed settlement under Section 536.060 RSMo and the Commission may accept this agreed settlement as disposition of the case.

IT IS THEREFORE ORDERED:

1. That the amended territorial agreement filed by Ralls County Electric Cooperative and the City of Vandalia, Missouri on October 3, 1997 is approved and the Applicants are authorized to perform in accordance with the terms and agreements of that agreement (Attachment A).

2. That this Report and Order shall become effective on January 21, 1998.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Dated at Jefferson City, Missouri,
on this 8th day of January, 1998.

AMENDED 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 the **Cooperative** to be the sole and exclusive supplier of electric service within areas annexed after January 1, 1991, **Cooperative** agrees to pay to **City**, semi annually an amount equal to five percent (5%) of **Cooperative's** gross receipts from sales of electricity in the annexed area(s) for all sales to structures, to which service is first supplied after September 16, 1997. **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 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 (5) year 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 the 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.

12. This Agreement shall supersede and replace the Agreement made on the 10th day of October, 1995.

IN WITNESS WHEREOF, the parties have executed this Agreement this 16th day of September, 1997.

CITY OF VANDALIA, MISSOURI

By Ramon Barnes
Ramon Barnes-Mayor

ATTEST:

By Kimberly Wood
Kimberly Wood-City Clerk

RALLS COUNTY ELECTRIC COOPERATIVE

BY Rex Cogan
-President

ATTEST:

By Carol Bashans
-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

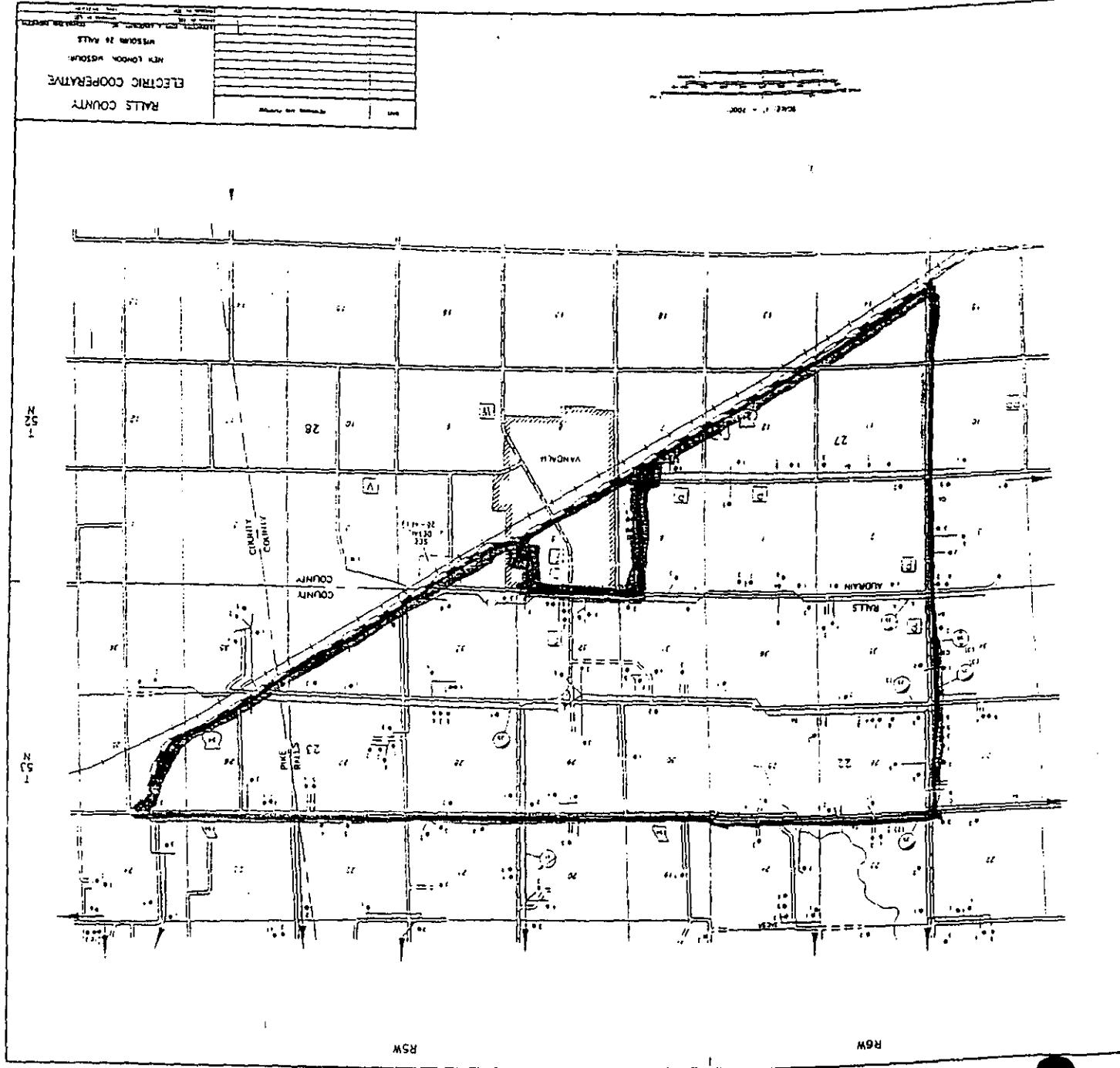


EXHIBIT 3

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.

RESOLUTION ADOPTED BY THE BOARD OF DIRECTORS
OF RALLS COUNTY ELECTRIC COOPERATIVE
AT A MEETING OF THE BOARD OF DIRECTORS
HELD ON SEPTEMBER 16, 1997

I, Averil W. Beshears, do hereby certify that I am the Secretary of RALLS COUNTY ELECTRIC COOPERATIVE; that the following is a true and correct copy of a resolution duly adopted by the board of directors of the Ralls County Electric Cooperative at a meeting held September 16, 1997; the meeting was duly and regularly called and held in accordance with the bylaws of the Cooperative; and said resolution has not been rescinded or modified.

BE IT RESOLVED that after discussion, on motion duly made, seconded and unanimously passed, the Amended Territorial Agreement between the Cooperative and the City of Vandalia, Missouri, was approved.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Cooperative this 16th day of September, 1997.

Averil Beshears
Secretary



City of Vandalia

200 East Park

Vandalia, Missouri 63382-1815

Phone: 573-594-6186

Fax: 573-594-3103

I, Kimberly Wood, City Clerk of the City of Vandalia, Missouri, hereby certify that the attached document is a true and exact copy of Ordinance #884, of the City of Vandalia, Missouri, as passed by the Board of Aldermen on the 16th day of September, 1997.

Kimberly Wood
Kimberly Wood, City Clerk

9/17/97
Date

AN ORDINANCE AUTHORIZING THE MAYOR AND OTHER NECESSARY CITY OFFICIALS TO ENTER INTO AN AMENDED TERRITORIAL AGREEMENT WITH RALLS COUNTY ELECTRIC COOPERATIVE.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF VANDALIA, MISSOURI, AS FOLLOWS, TO-WIT:

I

AUTHORIZATION

The Board of Aldermen does hereby authorize the Mayor, the City Clerk, and any other necessary City officials to enter into an Amended Territorial Agreement with Ralls County Electric Cooperative, a copy of said agreement being attached hereto, marked Exhibit "A" and made a part hereof.

II

EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after its date of passage and approval.

III

ORDINANCES IN CONFLICT

All ordinances in conflict herewith or to the same effect hereof, are hereby ordered repealed.

THIS ORDINANCE PASSED AND APPROVED this 16th day of September, 1997.

CITY OF VANDALIA, MISSOURI

By Ramon Barnes
Ramon Barnes-Mayor

ATTEST:

By Kimberly Wood
Kimberly Wood-City Clerk

Vote on final passage and approval

Alderman Motley:	"Aye"
Alderman Trower:	"Aye"
Alderman Jungers:	"Aye"
Alderman Divins:	"Aye"
Alderman Yager:	"Aye"
Alderman Perret:	Absent