

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the joint application of Missouri)
Public Service, a division of UtiliCorp United, Inc.)
and Platte-Clay Electric Cooperative, Inc., for)
approval of a written territorial agreement)
designating the boundaries of each as electric)
service supplier at and near Platte City in Platte)
County, Missouri.)

CASE NO. EO-92-155

APPEARANCES: Gary W. Duffy, Attorney at Law, Brydon, Swearengen
& England, P.C., P. O. Box 456, Jefferson City,
Missouri 65102 for Missouri Public Service.

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

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

Mary Ann Young, General Counsel, and Thomas H. Luckenbill,
Assistant 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

By a joint application filed January 8, 1992, Missouri Public Service, a division of UtiliCorp United, Inc., (MPS) and Platte-Clay Electric Cooperative, Inc. (Platte-Clay) seek approval of a Territorial Agreement pursuant to Section 394.312, RSMo Supp. 1990. Under the Territorial Agreement MPS and Platte-Clay would exclusively render service to certain areas designated in the agreement, primarily in and near Platte City in Platte County, Missouri.

By Order and Notice issued January 15, 1992, a procedural schedule was established which included extensive notice in the area affected, a prehearing conference, and hearing.

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:

At the hearing held on March 12, 1992, the parties stipulated to the reception of all of the prefiled testimony and waived cross-examination. The parties further stated that an agreement in principle had been reached contingent on the execution by the respective managements of the Joint Applicants of an amendment to the Territorial Agreement which was designed to address some of the Staff's concerns in this matter.

A witness from each of the Joint Applicants stated they would recommend that management execute the amendment. Based on the assumed amendment to the Territorial Agreement, all parties recommended to the Commission that the agreement be approved.

On March 26, 1992, the amendment to the Territorial Agreement executed by the authorized representatives of the Joint Applicants on March 19, 1992, was filed with the Commission.

In the Commission's opinion the oral stipulation and agreement and amended Territorial Agreement is not adverse to the public interest, provides for adequate future electric service to the affected area, and should be approved for disposition of all matters presented.

In the Commission's opinion the proposed Territorial Agreement is in the public interest because it allows the Joint Applicants to avoid unnecessary duplication of facilities in and near Platte City and will permit the efficient development and operation of the respective distribution systems. By having a known service area each electric provider may more efficiently plan and use their electrical distribution system in the future.

The Board of Aldermen of the City of Platte City supports approval of the Territorial Agreement by a resolution which commends the Joint Applicants for reaching the Territorial Agreement which will facilitate annexation, prompt orderly growth and provide for the most equitable electric service to present and future citizens.

The Agreement provides for the transfer of service to a presently existing single duplex structure in Platte City from Platte-Clay to MPS. The Agreement also provides, upon approval or consent of the customer, for the transfer of the service at an existing structure at 42 Hillcrest in Platte City, Missouri, from Platte-Clay to MPS.

Since the occupant of 42 Hillcrest will receive adequate notice of any contemplated change, and the right to refuse acceptance of the change, the Commission is of the opinion that that contemplated transfer should be authorized.

One of the occupants of the duplex at 1821 and 1823 Gates Drive in Platte City, Missouri, has, by letter, informed all parties that it enthusiastically supports the proposal. The record reflects that the duplex in question is the only house in the subdivision having service by Platte-Clay, with all of the remaining subdivision having MPS service. The service was installed by Platte-Clay under the mistaken assumption by all concerned that the residence was constructed outside the city limits. After Platte-Clay service was installed it was learned by all concerned that the residence was actually in the city limits. As a result, Platte-Clay's service, although inadvertent, was in violation of the statutory prohibition of a rural electrical cooperative extending new services in communities with a population of 1500 or more. In the Commission's opinion the contemplated change of supplier should be authorized since it will allow elimination of the unintended violation on the part of Platte-Clay.

For all of these reasons, the Commission is of the opinion that the Territorial Agreement, as amended, is in the public interest and 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 the instant application pursuant to Section 394.312, RSMo Supp. 1990.

The intent of the General Assembly in enacting that Section 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, executes that legislative intent, it should be approved.

Pursuant to Section 394.315, a rural electric cooperative is entitled to the right to continue serving a structure once it has commenced that service through permanent facilities. Pursuant to that section the Public Service Commission is authorized to order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential. Since the Commission has found, in the instant case, the contemplated transfers to be in the public interest to promote operating efficiency and to correct an inadvertent statutory violation, the transfer should be approved.

IT IS THEREFORE ORDERED:

1. That the Amendment to Territorial Agreement amended by the Joint Applicants on March 26, 1992, be received in evidence in this matter as Exhibit 13.

2. That the Territorial Agreement entered into between Missouri Public Service, a division of UtiliCorp United, Inc., and Platte-Clay Electric Cooperative, Inc., received in evidence in this matter as Exhibit 4, as amended by Exhibit 13, be approved and the Applicants are authorized to perform in accordance with the terms and conditions of the Territorial Agreement.

3. That Missouri Public Service, a division of UtiliCorp United, Inc. be relieved of the duties and obligations to serve customers at new structures in those areas set aside for Platte-Clay Electric Cooperative, Inc.'s service provided in the Territorial Agreement. A change of electric suppliers from Platte-Clay Electric Cooperative, Inc. to Missouri Public Service Company to the residences located at 1821 and 1823 Gates Drive and 42 Hillcrest in Platte City, Missouri, be authorized.

4. That this Report and Order shall become effective on April 20, 1992.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

McClure, Chm., Mueller, Rauch,
Perkins and Kinkleloe, CC., Concur.

Dated at Jefferson City, Missouri,
on this 10th day of April, 1992.