

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

In The Matter Of The Joint Application Of Laclede)
Electric Cooperative And The City Of)
Waynesville, Missouri For Approval Of A Written)
Territorial Agreement Designating The Boundaries) EO-2009-0314
Of Each Electric Service Supplier Within A Portion)
Of The City Of Waynesville, Pulaski County,)
Missouri)

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its Recommendation respectfully states as follows:

Procedural History

1. On March 4, 2009, the City of Waynesville, Missouri (Waynesville) and Laclede Electric Cooperative (Cooperative), known collectively as the Applicants, submitted a *Joint Application* for approval of a written Territorial Agreement (Agreement). The Agreement establishes an exclusive service territory for the Cooperative, and does not require the transfer of any facilities or customers between the Applicants.
2. On March 9, 2009, the Commission issued its *Notice of Application and Order Directing Filing (Order)*. The *Order* allowed the filing of motions for intervention until April 6, 2009, and directed Staff to file its recommendation by April 27, 2009. No motions for intervention have been received to date.

Statutory Authority And Relevant Facts Regarding The Joint Application

3. Pursuant to Sections 394.312.1 and 394.312.3 RSMo (Supp. 2008), “[c]ompetition to provide retail electric service, as between rural electric cooperatives, [and] electrical corporations....may be displaced by written territorial agreements” and “the commission

shall rule on such applications [for territorial agreements] not later than one hundred twenty days after the application is properly filed with the secretary of the commission.”

4. In the *Joint Application*, the Applicants have specifically designated the boundaries of the exclusive electric service area of each Applicant following completion of this transaction.
5. Pursuant to Section 394.312.5 RSMo (Supp. 2008), “[t]he commission may approve the application if it determines that approval of the territorial agreement in total is not detrimental to the public interest.
6. The Commission need not hold a hearing, if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

Staff Recommendation

7. The Staff’s Recommendation is attached to this pleading as Attachment A.
8. The Commission’s approval of the *Joint Application* will allow the Cooperative to serve certain areas within Waynesville, and currently unincorporated areas even if they are annexed by the city in the future.
9. Staff recommends the Commission approve the *Joint Application* as submitted by the Applicants as it is reasonable and necessary, and it meets the Section 394.312.4 requirement that approval of an application not be detrimental to the public interest.
10. The Joint Application will allow each Applicant to make better use of their respective capital resources, decrease the chances for duplicating facilities in the future, and allow residents of the area to know with certainty their electrical supplier.
11. The Cooperative is a rural electric cooperative, and is not required to file annual reports, nor is it subject to the Commission’s fiscal year assessment of fees. The Cooperative

states in the *Joint Application* that it does not have any pending action or final unsatisfied decisions against it from any state or federal court involving customer service or rates within three years of the date of the filing.

12. Waynesville owns, operates and maintains a municipal utility, and is not required to file annual reports, nor is it subject to the Commission's fiscal year assessment of fees.

Waynesville states in the *Joint Application* that it does not have any pending action or final unsatisfied decisions against it from any state or federal court involving customer service or rates within three years of the date the filing.

13. Staff is not aware of any other matter before the Commission that affects or is affected by the *Joint Application*.

WHEREFORE, Staff respectfully requests the Missouri Public Service Commission to accept its Recommendation and issue an order 1) finding the *Joint Application* is not detrimental to the public interest; 2) pursuant to 394.312.5 RSMo (Supp. 2007), waiving any evidentiary hearing in this matter; and 3) approving the *Joint Application* subject to the specific terms and conditions contained therein.

Respectfully submitted,

/s/ Jennifer Hernandez

Jennifer Hernandez

Legal Counsel

Missouri Bar No. 59814

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Missouri Public Service Commission
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 27th day of April, 2009.

/s/ Jennifer Hernandez

MEMORANDUM

To: Missouri Public Service Commission Official Case File

Case No.: **EO-2009-0314**

Joint Application of Laclede Electric Cooperative and the City of Waynesville, Missouri for Approval of a Written Territorial Agreement Designating the Boundaries of each Electric Service Supplier within a portion of the City of Waynesville, Pulaski County, Missouri.

From: A. P. Kuss Energy Department – Engineering Analysis

/s/ Daniel I. Beck 04/27/09
Energy Department / Date

/s/ Jennifer Hernandez 04/27/09
General Counsel's Office / Date

Subject: Staff Recommendation

Date: April 27, 2009

Staff Deadline: April 27, 2009

OVERVIEW

On March 04, 2009, Laclede Electric Cooperative (Laclede) and the City of Waynesville (Waynesville), referred to collectively as the “Applicants”, filed a Joint Application with the Missouri Public Service Commission (Commission) seeking approval of a Territorial Agreement (Agreement) pertaining to a parcel of land located within Waynesville and to certain tracts of unincorporated land in Pulaski County, Missouri. The section of the Agreement entitled “Description of Territory Affected” contains the legal description of the incorporated tract. A map generally illustrative of the affected area is attached to this Appendix as Exhibit A. For ease of reference only, the outline of Waynesville’s incorporated area also shown on this map has been obtained from the US Census Bureau’s website, effective date unknown.

On March 09, 2009, an Order was issued in Case No. EO-2009-0314 that assigned an intervention period ending April 06, 2009. No party has intervened in this case. In addition, the Order states “if no proper party is granted intervention and neither the Commission’s Staff nor the Office of the Public Council requests a hearing, the Commission may determine that a hearing is not necessary.”

Chapter 394, RSMo 2000,¹ which is titled Rural Electric Cooperatives (REC), has several sections that generally describe a REC as serving a “rural area”. Under the definition of a rural area in Section 394.020.(3), the area within Waynesville is not a rural area since Waynesville’s population is approximately 3,507 (Census 2000), which is well above the 1,500 population limit. In addition, Waynesville’s municipal utility is the predominant supplier of retail electric energy within the city limits of Waynesville, and would therefore normally serve any new customer within the city limits. However, Section 394.312 provides for territorial agreements, such as the one filed in this case, which would allow Laclede to serve customers within designated areas of Waynesville.

DISCUSSION

The Joint Application and the Agreement request that Laclede Electric Cooperative be allowed to serve new customers or structures within the territory generally described as a portion of Waynesville and certain unincorporated tracts that may be annexed by Waynesville. Typically, if the area were to be annexed, Waynesville’s municipal utility would supply new customers within the new city limits. However, since Waynesville’s municipal utility does not have facilities in the immediate area and Laclede has facilities currently serving within the area, the parties are pursuing approval of an Agreement. The Applicants state that the “establishment of this exclusive service territory for Laclede within the corporate limits of the City of Waynesville will prevent future duplication of electric service facilities and will also allow electric service customers within the area to know with certainty the supplier of their electric service. It makes most effective use of past investment in substation and distribution facilities by Laclede while avoiding the necessity of duplicate investment by the City of Waynesville.”

On April 24, 2009, Staff visited Laclede REC and observed the affected area accompanied by Laclede’s Manager of Engineering Terry Rosenthal. In discussion with Mr. Rosenthal, Staff determined that Laclede has been serving customers in the areas at issue prior to the conclusion of the Agreement. It was learned that these areas that were served by Laclede over periods of years have either been annexed, or are anticipated to be annexed, at various

¹ All further statutory references are to the Revised Statutes of Missouri 2000 unless otherwise indicated.

times as those areas become developed. Further, Waynesville has no facilities South of Interstate 44 (I-44), yet there now exist developed suburban tracts which have been or are to be annexed by Waynesville. These areas are to remain as being served by Laclede according to the Agreement. Laclede is positioned to most effectively provide electric service to present and anticipated load in these areas.

STAFF RECOMMENDATION

The Staff recommends that the Commission approve the Agreement between Laclede and Waynesville as being not detrimental to the public interest, pursuant to Section 394.312.2. If Laclede is the electric service provider to the described portion of Waynesville and outlying tracts, an otherwise unnecessary duplication of facilities is avoided. Approval of the Agreement would lead to the most efficient use of existing facilities, and would enhance public safety. Given that Laclede is a REC, the Commission does not require annual reports or assessment fees. Further, Laclede states in the Joint Application that it does not have pending action or final unsatisfied decisions against it from any state or federal court involving customer service or rates within three years of the date of filing this Joint Application. Given that Waynesville owns, operates and maintains a municipal utility, the Commission does not require annual reports or assessment fees. Further, Waynesville states in the Joint Application that it does not have pending action or final unsatisfied decisions against it from any state or federal court involving customer service or rates within three years of the date of filing this Joint Application. The Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

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Pulaski County, Missouri.)

Case No. **EO-2009-0314**

AFFIDAVIT OF Arthur P. Kuss

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

Arthur P. Kuss, employee of the Staff of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he has participated in the preparation of the accompanying Memorandum, and that the facts therein are true and correct to the best of his knowledge and belief.

Arthur P. Kuss

Arthur P. Kuss

Subscribed and affirmed before me this 27th day of April, 2009.

I am commissioned as a Notary Public within the County of Callaway, State of Missouri
and my commission expires on September 21, 2010



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086

Susan L. Sundermeyer
NOTARY PUBLIC