

OFFICIAL CASE FILE

STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

TRANSCRIPT

FILED

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PUBLIC SERVICE COMMISSION

CASE NO. : EO-95-151

In the matter of the application of Union Electric Company and Laclede Electric Cooperative, Inc., for approval of a written territorial agreement designating the boundaries of each electric service supplier within portions of Miller and Camden counties, Missouri.

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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Hearing of the Public Service
Commission, held at Jefferson City,
Missouri, on the 26th day of
January, 1995.

CASE NO. EO-95-151

In the matter of the application of
Union Electric Company and Laclede
Electric Cooperative, Inc., for
approval of a written territorial
agreement designating the boundaries
of each electric service supplier
within portions of Miller and Camden
counties, Missouri.

BEFORE:

DALE H. ROBERTS, Presiding,
DEPUTY CHIEF HEARING EXAMINER.
ALLAN G. MUELLER, Chairman,
KENNETH McCLURE,
PATRICIA D. PERKINS,
DUNCAN E. KINCHELOE,
HAROLD CRUMPTON,
COMMISSIONERS.

REPORTED BY:

BARBARA A. TOMBLINSON, CCR

Missouri Public Service Commission

APPEARANCES:

DAVID C. LINTON, Attorney at Law
1901 Chouteau Avenue
P.O. Box 149
St. Louis, Missouri 63166

FOR: Union Electric Company.

RODRIC A. WIDGER, Attorney at Law
Andereck, Evans, Milne, Peace & Baumhoer
P.O. Box 4929
Springfield, Missouri 65808

FOR: Laclede Electric Cooperative, Inc.

MICHAEL F. DANDINO, Senior Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102

**FOR: Office of the Public Counsel
and the Public.**

CHERLYN D. MCGOWAN, Assistant General Counsel
P.O. Box 360
Jefferson City, Missouri 65102

**FOR: Staff of the Missouri Public
Service Commission.**

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1 P R O C E E D I N G S

2 (Written Entries of Appearance filed.)

3 EXAMINER ROBERTS: We'll go on the record,
4 please.

5 We're here in the matter of the application
6 of Union Electric Company and Laclede Electric Cooperative,
7 Incorporated, for approval of a written territorial
8 agreement designating the boundaries of each electric
9 service supplier within portions of Miller and Camden
10 counties, Missouri. This is Case No. EO-95-151.

11 As I indicated off the record, my name is
12 Dale Roberts. I'm the Hearing Examiner to whom this has
13 been assigned.

14 Before we went on the record, I asked if
15 there were any motions pending, and there were none, other
16 than the fact that Public Counsel may move to be excused
17 from this hearing. And I would ask that you hold that
18 motion until the Commissioners are here, if that's all
19 right. And you've nodded your head yes, so thank you for
20 the record.

21 And, as to the other -- there was some
22 discussion of waiver of certain rights. And, if it's all
23 right with the parties, I will wait and take those waivers
24 formally when the Commissioners are present. I don't hear
25 any objection to that.

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1 So really the only thing I need to do on the
2 record at this time is ask you to enter your appearance for
3 the record, starting with the applicants, and then Staff and
4 Public Counsel, if you would, please.

5 MR. LINTON: On behalf of Union Electric
6 Company, I'm David C. Linton, 1901 Chouteau Avenue,
7 P.O. Box 149, St. Louis, Missouri 63166. I have with me
8 Larry D. Merry, who is the District Manager of Capital
9 District and Lakeside District. His address is Post Office
10 Box 780, Jefferson City, Missouri 65102.

11 MR. WIDGER: My name is Rod Widger. I'm
12 with the firm of Andereck, Evans, Milne, Peace & Baumhoer.
13 Our mailing address is P.O. Box 4929, Springfield,
14 Missouri 65808. I'm here today representing Laclede
15 Electric Cooperative.

16 MS. MCGOWAN: Cherlyn McGowan representing
17 the Staff, P.O. Box 360, Jefferson City, Missouri 65102.

18 MR. DANDINO: Michael F. Dandino
19 representing the Office of Public Counsel, Post Office
20 Box 7800, Jefferson City, Missouri 65102.

21 EXAMINER ROBERTS: Thank you very much.

22 As I indicated previously, we'll go off the
23 record and I'll go and have the Commissioners join us.

24 Off the record, please.

25 (Discussion off the record.)

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1 (EXHIBIT NOS. 1 TO 3 WERE MARKED BY THE
2 REPORTER.)

3 EXAMINER ROBERTS: We're back on the record
4 in Case No. EO-95-151, a territorial agreement between Union
5 Electric Company and Laclede Electric Cooperative,
6 Incorporated.

7 When we were on the record earlier this
8 morning, I received the entries of appearance from the
9 attorneys. Before we start with the substance of this case,
10 I believe there are -- there is at least one motion to be
11 made from the Office of Public Counsel.

12 Mr. Dandino.

13 MR. DANDINO: That's correct, Mr. Roberts.

14 Members of the Commission, if it please,
15 Public Counsel has reviewed the filings made in this case
16 and wishes to waive presentation of evidence,
17 cross-examination, and briefing in this case and further
18 requests leave of the Commission to be excused from the
19 proceedings.

20 EXAMINER ROBERTS: Does any party have any
21 objection to that?

22 (No response.)

23 EXAMINER ROBERTS: Mr. Dandino, you may be
24 excused from the proceeding then.

25 MR. DANDINO: Thank you.

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1 EXAMINER ROBERTS: It's further my
2 understanding while we were off the record that the parties
3 were willing to waive oral argument and the filing of writs
4 or briefs pursuant to 536.080.1 and similar provisions,
5 which may be -- are, I believe, in our Code of State
6 Regulations.

7 Starting with the applicant, is that
8 correct, Mr. Linton?

9 MR. LINTON: That is correct.

10 EXAMINER ROBERTS: Mr. Widger.

11 MR. WIDGER: Yes. That's correct.

12 EXAMINER ROBERTS: Ms. McGowan.

13 MS. MCGOWAN: Yes.

14 EXAMINER ROBERTS: In that case then, I
15 believe we're ready to proceed with the presentation of the
16 territorial agreement.

17 It's my understanding that there's not
18 actually a Stipulation and Agreement that's formally been
19 filed here. From a review of the prefiled testimony, it
20 doesn't appear to be a contested issue.

21 Either Mr. Widger or Mr. Linton, if either
22 one of you would like to go first. And if you could make
23 perhaps a brief statement as to what this territorial
24 agreement provides for.

25 MR. LINTON: This territorial agreement is

1 basically one that the Commission has seen before. It was
2 previously filed and was rejected by the Commission for the
3 reason that it had a case-by-case exception which the
4 parties could vary -- could allow one party to serve in the
5 other territory on a specific basis without Commission
6 approval. The Commission rejected that agreement for that
7 reason because it wanted to review the case-by-case
8 exception. This agreement incorporated that change that the
9 Commission requested.

10 Basically what this agreement does is it
11 sets a boundary line through the Lake of the Ozarks, through
12 the lake itself, and through Linn Creek and an east/west
13 line through Camden and a very small portion of Miller
14 counties. Laclede Electric Co-op serves in Camden County to
15 the south of that line. Union Electric serves in Camden and
16 a portion of Miller County due north of that line.

17 It's a very simple agreement. There are, I
18 think, four instances where Union Electric presently serves
19 individual customers south of that line. It will continue
20 to serve those four customers, and that is the thrust of the
21 agreement. It is proposed to prevent future duplication of
22 service. There is presently inconsequential, very minimal,
23 nonexistent duplication of service at this time.

24 EXAMINER ROBERTS: Mr. Widger, anything to
25 add to that?

1 MR. WIDGER: I concur with what Mr. Linton
2 had said. Part of the benefit of this agreement is that it
3 catches the two competing suppliers at a point in time
4 before they become heavily entwined in serving, you know,
5 across each other and really scattering out the resources.

6 There have been some natural geographic
7 divisions between the companies, and we're able now to take
8 advantage of those divisions which have basically held us
9 away from each other and to formalize that now under the
10 existing law.

11 The benefits obviously will include greater
12 certainty in the planning by each company so that they know
13 that, when they make an investment to serve an area, they
14 will have the opportunity to recover that investment by the
15 ability to serve everything that develops around those
16 facilities. So we are very happy with this agreement and
17 urge its approval.

18 EXAMINER ROBERTS: Ms. McGowan, do you have
19 anything to add to that?

20 MS. MCGOWAN: No. As stated by Mr. Linton
21 and Mr. Widger, the agreement is very similar to the one
22 previously reviewed by the Commission. And the Commission
23 rejected that solely on the basis that the Commission didn't
24 have the authority to review those case-by-case exceptions,
25 which they felt was detrimental to the public interest and

1 in violation of 394.312 Revised Statutes of Missouri.

2 In accordance with that decision, as stated,
3 the companies refiled the application, including an addendum
4 procedure which allowed for Commission review of those
5 case-by-case exceptions. The Staff has reviewed the
6 proposed territorial agreement and the addendum procedure
7 and supports the application.

8 Staff believes the territorial agreement
9 will prevent duplication of services and facilities and
10 allow each supplier to plan their distribution system in a
11 rational manner, knowing they'll be serving all the
12 customers in that designated area. And, accordingly, the
13 Staff recommends approval of the proposed territorial
14 agreement.

15 EXAMINER ROBERTS: Thank you.

16 I'd like to go to the evidence which was
17 marked while we were off the record and before the
18 Commissioners joined us. I'll go first to Mr. Linton.

19 It's my understanding that Exhibit No. 1 has
20 been marked for you. If you'd like to offer that for the
21 record.

22 MR. LINTON: Yes. I do offer that for
23 admission into the record.

24 EXAMINER ROBERTS: Any objections to that?

25 (No response.)

1 EXAMINER ROBERTS: Are the parties waiving
2 their rights to cross under 536? Is that my understanding?
3 I see you're nodding your head yes.

4 MS. MCGOWAN: Yes.

5 MR. LINTON: Yes.

6 MR. WIDGER: Yes.

7 EXAMINER ROBERTS: There's no objection.
8 All right. Thank you.

9 I believe the next exhibit was marked for
10 you, Mr. Widger.

11 MR. WIDGER: Right. Laclede Electric
12 Cooperative offers as Exhibit 2 the prefiled verified direct
13 testimony of Donald Clark with its Schedule 1, which is the
14 executed territorial agreement.

15 EXAMINER ROBERTS: And are there any
16 objections to that or any requests to cross-examine the
17 witness?

18 MS. MCGOWAN: No.

19 MR. LINTON: No.

20 EXAMINER ROBERTS: Hearing none.

21 Ms. McGowan for the Staff.

22 MS. MCGOWAN: Staff would like to move for
23 admission of Exhibit 3, which is the rebuttal testimony of
24 Bill Washburn.

25 EXAMINER ROBERTS: Any objections to that or

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1 any requests to cross-examine the witness?

2 MR. WIDGER: No.

3 MR. LINTON: None.

4 EXAMINER ROBERTS: Hearing none, Exhibits
5 No. 1, 2, and 3, as previously set out in the record, will
6 be admitted into the record.

7 (EXHIBIT NOS. 1 TO 3 WERE RECEIVED IN
8 EVIDENCE.)

9 EXAMINER ROBERTS: I'll also note for the
10 record, for clarification of the issues perhaps, this
11 territorial agreement was filed pursuant to 394.312 of the
12 statute and also with reference to Section -- excuse me --
13 416.041 of the statute. The area covered by the agreement
14 includes, it's my understanding, rural electric cooperatives
15 who may be known as Southwestern Electric Cooperative,
16 Gascosage Electric Cooperative, Co-Mo Electric Cooperative,
17 and Three Rivers Electric Cooperative.

18 Notice was issued regarding the application
19 in this case. An intervention date was set of December 19,
20 1994. The record reflects there have been no requests for
21 intervention.

22 With the admission of the evidence, I
23 believe we can move to questions. We'll go to the
24 Commissioners.

25 Vice-Chairman McClure, do you have any

1 questions for any of the parties?

2 COMMISSIONER McCLURE: Just one question for
3 counsel.

4 By the fact that the cross-examination of
5 the witnesses has been waived, is it the opinion of counsel
6 that the requirement of 394.312 for a hearing is met?

7 MR. LINTON: Yes.

8 MS. MCGOWAN: Yes.

9 MR. WIDGER: Certainly. I mean, that's what
10 we're doing right now, I believe, here.

11 COMMISSIONER McCLURE: I just wanted to make
12 sure the parties were in agreement on meeting the statutory
13 obligation. That's my question. Thank you.

14 EXAMINER ROBERTS: Thank you, sir.

15 Commissioner Perkins.

16 COMMISSIONER PERKINS: I have no questions.

17 EXAMINER ROBERTS: Commissioner Kincheloe.

18 COMMISSIONER KINCHELOE: I just have a
19 question. I'm having a little difficulty following the
20 exhibits here and the maps indicating the -- where the line
21 is in the lake area, the lake proper.

22 Do I understand correctly that Schedule 3
23 shows the certificated area --

24 MR. LINTON: Yes.

25 COMMISSIONER KINCHELOE: And does that also

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1 represent the southern -- line there represent the boundary
2 where we --

3 MR. LINTON: No. Schedule 3 is a
4 presentation of the company's present certificated area.

5 COMMISSIONER KINCHELOE: Yes. I'm trying to
6 get -- make sure I have a correct understanding of the
7 boundary of the territorial agreement in relation to that,
8 which I guess I don't at this point.

9 MR. LINTON: The boundary to the territorial
10 agreement is to the north of that southern line.

11 COMMISSIONER KINCHELOE: Would it be to the
12 north of Highway 54 there in that area where it crosses the
13 lake? Do you know?

14 MR. LINTON: The boundary line intersects
15 Highway 54 at basically Linn Creek, the north branch of Linn
16 Creek.

17 COMMISSIONER KINCHELOE: And that is an
18 east/west boundary line at that point to mark the southern
19 boundary that --

20 MR. LINTON: That would be the --

21 COMMISSIONER KINCHELOE: -- UE's then --
22 southern boundary of UE's territory under this agreement?

23 MR. LINTON: Under the agreement, yes, that
24 would be the southern boundary line.

25 COMMISSIONER KINCHELOE: Thank you.

1 MR. LINTON: Let me just clarify. I'm not
2 sure -- the line does follow Linn Creek down to the south of
3 there and comes down to -- the furthest south it goes is
4 Section 14 in Township 38 North, I believe, Range 16. And
5 then it makes a kind of a zigzag direction up north again.

6 If you look at -- compare Schedule 1, which
7 is the territorial agreement, the map attached to the
8 territorial agreement, with Schedule 3, you can see that.

9 COMMISSIONER KINCHELOE: Thank you.

10 EXAMINER ROBERTS: Any other questions,
11 Commissioner Kincheloe?

12 COMMISSIONER KINCHELOE: No.

13 EXAMINER ROBERTS: Commissioner Crumpton.

14 COMMISSIONER CRUMPTON: No questions.

15 EXAMINER ROBERTS: Chairman --

16 CHAIRMAN MUELLER: No questions.

17 EXAMINER ROBERTS: Hearing no further
18 requests for questions, I -- it's my understanding -- and
19 I'll see to it that the record reflects -- Exhibits No. 1,
20 2, and 3 have been admitted. All of the parties have waived
21 their right to oral argument, writs, or briefs pursuant to
22 536.080. The parties have indicated, I believe, that this
23 proceeding does constitute a hearing as required by the
24 statute, and I believe that should resolve all the
25 questions.

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1 Are there any requests, any motions or
2 statements before we go off the record?

3 (No response.)

4 EXAMINER ROBERTS: Hearing none, that will
5 conclude this hearing. And we'll go off the record. Thank
6 you very much.

7 WHEREUPON, the hearing of this case was
8 concluded.

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EXHIBITS

Marked

Rec'd

EXHIBIT NO. 1

Direct Testimony and Schedules
of Larry Merry

5

11

EXHIBIT NO. 2

Direct Testimony and Schedules
of Donald L. Clark

5

11

EXHIBIT NO. 3

Rebuttal Testimony of B. J. Washburn

5

11