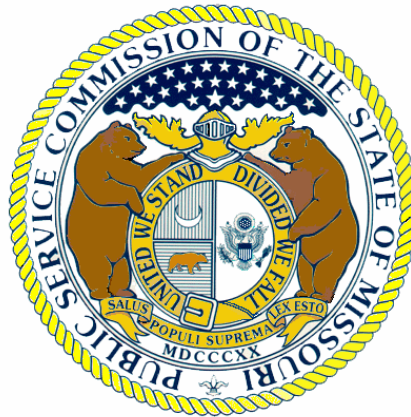


**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



In the Matter of the Application of Callaway )  
Electric Cooperative and the City of Fulton, )  
Missouri, for Approval of a Written Territorial )  
Agreement Designating the Boundaries of )  
Each Electric Service Supplier within Portions )  
of Callaway County, Missouri )

**Case No. EO-2007-0253**

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**REPORT AND ORDER**

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**Issue Date: February 15, 2007**

**Effective Date: February 25, 2007**

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

In the Matter of the Application of Callaway )  
Electric Cooperative and the City of Fulton, )  
Missouri, for Approval of a Written Territorial ) **Case No. EO-2007-0253**  
Agreement Designating the Boundaries of )  
Each Electric Service Supplier within Portions )  
of Callaway County, Missouri )

**APPEARANCES**

**Andrew J. Sporleder**, Andereck, Evans, Milne, Peace & Widger, L.L.C., 700 E. Capitol Ave., P.O. Box 1438, Jefferson City, Missouri 65102, for the City of Fulton and for Callaway Electric Cooperative.

**Blane Baker**, General Counsel's Office, Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

**REGULATORY LAW JUDGE:** Harold Stearley, Judge.

## **REPORT AND ORDER**

**Syllabus:** This Report and Order approves the joint application for approval of a territorial agreement.

### **Procedural History**

On January 2, 2007,<sup>1</sup> Callaway Electric Cooperative (“Callaway”) and the City of Fulton, Missouri (“Fulton”) (collectively “Applicants”) filed a joint application requesting that the Commission determine that their proposed territorial agreement, designating the service territory of each of the Applicants, is not detrimental to the public interest. On January 3, the Commission issued an order directing that notice of the application be given to the general public and to other potentially interested parties. That order also set an intervention deadline of January 23. There were no requests to intervene and no requests for an evidentiary hearing.

On February 1, the Commission’s Staff filed its recommendation and verified memorandum in support of approving the joint application. No party filed a response to Staff’s Recommendation and memorandum within the deadline established by the Commission.

### **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.

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<sup>1</sup> All dates throughout this order refer to the year 2007, unless otherwise noted.

## **The Applicants**

Callaway is a Chapter 394, RSMo 2000,<sup>2</sup> cooperative corporation organized and existing under the laws of Missouri with its principal office located at 503 Truman Road, Fulton, Missouri 65251. It is engaged in the retail sale and distribution of electricity in portions of Missouri, including the rural areas surrounding the City of Fulton in Callaway County. Fulton is a political subdivision of the Home Rule Class organized and existing under Chapter 82 with its principal office located at 4th and Market Streets, Fulton, Missouri 65251. It owns, operates and maintains an electric distribution system within its corporate limits to serve the residents and inhabitants of the city.

Neither of these entities is an “electrical corporation” nor a “public utility” as defined in Section 386.020. Consequently, neither is subject to the jurisdiction and supervision of the Commission for purposes of certificate authority or for rate regulation.<sup>3</sup> However, Section 394.312 gives the Commission jurisdiction over the approval of territorial agreements concerning the sale and distribution of electricity, even if the parties are not normally subject to the jurisdiction of the Commission with regard to other matters.

## **The Proposed Territorial Agreement**

In their Joint Application, the Applicants submit a Territorial Agreement (“Agreement”), for the Commission’s approval that was executed on December 19, 2006. Concurrent with the filing of the Joint Application, the Applicants submitted the fee required by Section 394.312.7 and delineated in Commission Rule 4 CSR 240-3.130(3). Each Applicant has authorized its respective representative to execute and enter into the

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<sup>2</sup> All statutory references are to RSMo 2000 unless otherwise noted.

<sup>3</sup> See Sections 386.020(15) and (42).

Agreement, and Resolutions executed by the Board of Directors for Callaway and by the City Council of Fulton granting that authority are attached to the Application as Appendix C.

The Agreement specifically establishes an exclusive service territory for Callaway in five tracts of land lying outside of, but near, the corporate limits of Fulton within Callaway County, Missouri. The Agreement does not require transfer of any facilities or customers between the Applicants, and does not involve any change of suppliers to existing customers or members. If Fulton annexes any or all of the land encompassed in the Agreement, Callaway will be able to provide electric service to new members in the annexed land. The Agreement allows for more orderly future development of electric service to the public, preventing duplication of facilities and services. Callaway and Fulton will continue to have service responsibilities beyond the boundaries of the territorial agreement which are unaffected by the terms of the agreement.

A copy of the Agreement was included with the Applicants' application as Appendix A. Legal descriptions of the two exclusive service areas and maps depicting the service areas are included as a part of the Agreement, as required by 4 CSR 240-3.130(1)(A), and were submitted with the Agreement and attached as Exhibit A.

Staff, Callaway, and Fulton all agree that the Joint Application and the Agreement meet the requirements of all applicable statutes and Commission Rules.<sup>4</sup> These participating parties further agree that the Agreement is not detrimental to the public interest. Although the Office of the Public Counsel was a party to this action, it filed no pleadings in this matter.

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<sup>4</sup> Sections 394.312 and 416.041.3; 4 CSR 240-2.060 and 4 CSR 240-3.130.

## **Conclusions of Law**

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

### **The Territorial Agreement**

Section 394.312 gives the Commission jurisdiction over territorial agreements concerning the sale and distribution of electricity. Under Section 394.312.4, the Commission may approve such a territorial agreement if the agreement is not detrimental to the public interest. Based on a thorough examination of the Joint Application and Staff's recommendation and verified memorandum, the Commission finds the territorial agreement will not be detrimental to the public interest.

### **The Necessity for an Evidentiary Hearing**

Although Section 394.312.4 provides that the Commission is to hold an evidentiary hearing to determine whether a territorial agreement is to be approved, no party has requested a hearing. The Commission agrees that pursuant to the holding of *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*,<sup>5</sup> the requirement for a hearing was met when the opportunity for hearing was provided and no proper party requested the opportunity to present evidence.

## **Decision**

Having considered the Applicants' Joint Application and Staff's recommendation and verified memorandum in support of approval, which are hereby admitted into evidence, the Commission concludes that the territorial agreement executed by Callaway Electric

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<sup>5</sup> 776 S.W.2d 494 (Mo. App. W.D. 1989).

Cooperative and the City of Fulton, Missouri, is in the public interest. The Commission shall approve the Territorial Agreement. Furthermore, the Commission concludes that no evidentiary hearing is required.

**IT IS ORDERED THAT:**

1. The Territorial Agreement between Callaway Electric Cooperative and the City of Fulton, Missouri, entered into by these parties on December 19, 2006, is approved.
2. Any modifications in, or amendments to, the Territorial Agreement between Callaway Electric Cooperative and the City of Fulton, Missouri, must be reviewed and approved by the Commission.
3. This order shall become effective on February 25, 2007.
4. This case may be closed on February 26, 2007.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Gaw, and Appling, CC.,  
concur and certify compliance with the provisions  
of Section 536.080, RSMo 2000.  
Clayton, C., absent

Dated at Jefferson City, Missouri,  
on this 15th day of February, 2007.