

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

In the Matter of the Application of Laclede Electric	)	
Cooperative and the City of St. Robert, Missouri, for	)	
Approval of a Written Territorial Agreement	)	
Designating the Boundaries of Each Electric Service	)	Case No. EO-2005-0391
Supplier Within the Hickory Valley Subdivision of	)	
the City of St. Robert, Pulaski County, Missouri.	)	

**STIPULATION AND AGREEMENT**

Come now the Staff of the Missouri Public Service Commission (Staff), the City of St. Robert, Missouri (St. Robert) and Laclede Electric Cooperative (Laclede), the “Signatory Parties” to this Stipulation And Agreement, and respectfully state as follows:

1. On April 29, 2005 Laclede and St. Robert filed a verified Joint Application with the Commission, pursuant to 4 CSR 240-2.060(1)and 2.060(13) (now 4 CSR 240-3.130), 4 CSR 240-21.010 (now 4 CSR 240-3.135) and Sections 394.312 and 416.041 RSMo 2000, for an order approving Applicants Laclede’s and St. Robert’s Territorial Agreement. Laclede is a Chapter 394 cooperative corporation organized and existing under the laws of Missouri with its principal office located in Lebanon, Missouri. It is engaged in the sale and distribution of electricity in portions of Missouri, including in and around St. Robert in Pulaski County. St. Robert is a political subdivision of the 4th class organized and existing under the laws of Missouri with its principal office at St. Robert, Missouri. Since the population of St. Robert is in excess of 1,500 inhabitants, the corporate limits of St. Robert is not a “rural area” as defined by Section 394.020(3). St. Robert owns, operates and maintains an electric distribution system within its corporate limits to serve the residents and inhabitants of the city. Neither Laclede nor St. Robert is subject to the jurisdiction of the Commission for purposes of certificate authority or for rate regulation.

2. By an agreement known as the “Territorial Agreement,” attached to the Joint Application as Appendix A, Laclede and St. Robert have specifically designated the boundaries of a proposed exclusive electric service area for Laclede for service to new structures in three parcels of land referred to as Phases 4, 5 and 6 of the residential development known as the Hickory Valley subdivision of St. Robert. The Territorial Agreement establishes an exclusive service area for Laclede for these parcels of land in a single subdivision. The intent of the Territorial Agreement is to designate an exclusive provider of electric service for structures or anything else using or designed to use electricity to be located within Phases 4, 5, and 6 of the Hickory Valley subdivision. St. Robert does not now serve any structures, agrees not to serve any new structures and shall not be allowed to serve any new structures within Phases 4, 5, and 6 of the Hickory Valley subdivision. The Territorial Agreement does not require the transfer of any facilities or customers between Laclede and St. Robert, so there is no list of persons whose utility service would be changed by the Territorial Agreement. Laclede commenced serving customers in an adjoining area referred to as Phases 1, 2 and 3 of the Hickory Valley subdivision prior to that area being annexed by St. Robert. Although St. Robert does not have service facilities in the immediate area of Phases 4, 5 and 6 of the Hickory Valley subdivision, Laclede does have such service facilities.

3. The initial term of the Territorial Agreement is twenty (20) years from and after the “Effective Date.” Thereafter, the Territorial Agreement shall be automatically renewed, for successive five (5) year terms commencing on the anniversary of the Effective Date, unless either Laclede or St. Robert notifies the other party to the Territorial Agreement in writing of its intent to terminate the Territorial Agreement at least one (1) year in advance of any such renewal date. The Territorial Agreement specifies that during the interim period between the date of the

execution of the Territorial Agreement and the Effective Date, Laclede and St. Robert shall abide by the territorial division provisions of the Territorial Agreement and may provide provisional service to any customer seeking service.

4. The Territorial Agreement provides that no failure of St. Robert or Laclede to enforce any provision of the Territorial Agreement shall be deemed a waiver.

5. Applicants relate in their Joint Application that Laclede has statutory franchise authority in the areas it proposes to serve and to their knowledge and belief there are no other electric suppliers serving in the immediate area covered by the Territorial Agreement. The Territorial Agreement does not purport to affect the rights of any electric supplier not a party to the Territorial Agreement. Each Applicant will continue to have service responsibilities, unaffected by the terms of the Territorial Agreement, beyond the boundaries that are the subject of the Territorial Agreement, which boundaries are exclusively Phases 4, 5 and 6 of the Hickory Valley subdivision. The fee required by 4 CSR 240-3.135 was submitted with the Joint Application.

6. On May 4, 2005, the Commission issued an Order Directing Notice And Setting Date For Submission Of Intervention Requests in which it determined that notice should be given of the Joint Application and directed that proper persons wishing to intervene should file an application to intervene with the Secretary of the Commission within twenty (20) days from the date of said Order, i.e., no later than May 24, 2005. The Order states, in part, that “[i]f no proper party is granted intervention and neither the Commission’s Staff nor the Office of the Public Counsel requests a hearing, the Commission may determine that a hearing is not necessary.” No persons or entities filed for intervention.

7. On July 6, 2005, the Staff filed its Staff Recommendation requesting that the Commission approve the Territorial Agreement between Laclede and St. Robert.

8. The Territorial Agreement is not detrimental to the public interest because the establishment of exclusive service territory for Laclede within the corporate limits of St. Robert (a) will prevent future duplication of electric service facilities, (b) will allow electric service customers within the area to know with certainty the supplier of their electric service, (c) makes most effective use of past investment in substation and distribution facilities by Laclede while avoiding the necessity of duplicate investment by St. Robert and (d) enhances public safety.

9. Section 394.312.4 RSMo. 2000 provides as follows:

The commission shall hold evidentiary hearings to determine whether such territorial agreements should be approved or disapproved. The commission may approve the application if it shall after hearing determine that approval of the territorial agreement in total is not detrimental to the public interest. Review of commission decisions under this section shall be governed by the provisions of sections 386.500 to 386.550, RSMo.

10. It is the Signatory Parties understanding and belief that the Office of the Public Counsel (Public Counsel), the only other party to this proceeding, does not object to the Joint Application of Laclede and St. Robert, will not request a hearing, and will file a letter with the Commission indicating that it neither objects to the instant Stipulation And Agreement nor requests a hearing.

11. The Signatory Parties note that 4 CSR 240-2.115, respecting stipulations and agreements, states in part as follows:

(2) Nonunanimous Stipulations and Agreements.

(A) A nonunanimous stipulation and agreement is any stipulation and agreement which is entered into by fewer than all of the parties.

(B) Each party shall have seven (7) days from the filing of a nonunanimous stipulation and agreement to file an objection to the

nonunanimous stipulation and agreement. Failure to file a timely objection shall constitute a full waiver of that party's right to a hearing.

- (C) If no party objects to a nonunanimous stipulation and agreement, the commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement.

12. The Signatory Parties believe that since there will be no objection to the Joint Application or this Stipulation And Agreement and no request for an opportunity to present evidence at a hearing, any requirement for a hearing will be satisfied by a Commission decision based on the pleadings in this case. *State ex rel. Rex Deffenderfer Enterprises v. Public Serv. Comm'n*, 776 S.W.2d 494 (Mo.App. 1989). Accordingly, the Signatory Parties do not believe that it is necessary to establish a procedural schedule or to set this case for a "live" evidentiary hearing. Section 393.170.3 RSMo 2000 provides the Commission with the power to grant a certificate of convenience and necessity "after due hearing." The Court of Appeals in *Deffenderfer* discussed what is required by the word "hearing" in Section 393.170.3:

. . . The Commission's Order stated that in the event no proper party filed an application to intervene and neither the Commission Staff nor the office of Public Counsel requested a hearing . . . , the Commission would allow appellant to submit its evidence in support of the Application by verified statement. Appellant's Application was verified. In its Report and Order the Commission correctly determined that the requirement for a hearing contained in Section 393.170 was met when the opportunity for hearing was provided and no proper party requested the opportunity to present evidence. There were no adverse parties and under the circumstances of the case at bar it was proper for the Commission to grant appellant's Certificate on the basis of appellant's verified Application after affording notice and an opportunity to be heard to all proper parties.

*Id.* at 496. The Signatory Parties believe that the requirement for a hearing will be met in this case without a live hearing occurring.

13. In the event the Commission does not adopt this Stipulation And Agreement in total, then this Stipulation And Agreement shall be void and no signatory shall be bound by any

of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the signatories to take other positions in other proceedings.

14. In the event the Commission accepts the specific terms of this Stipulation And Agreement, the Signatory Parties waive, with respect to the issues resolved herein: their respective rights, pursuant to Section 536.080 RSMo 2000, to present testimony, to cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 2000; their respective rights to seek rehearing pursuant to Section 386.500 RSMo 2000; and their respective rights to seek judicial review pursuant to Section 386.510 RSMo 2000. The Signatory Parties agree to cooperate with each other in presenting for approval to the Commission this Stipulation And Agreement, and will take no action, direct or indirect, in opposition to the request for approval of this Stipulation And Agreement.

15. The Staff shall file suggestions or a memorandum in support of this Stipulation And Agreement and the other parties shall have the right to file responsive suggestions. The Staff shall have the right to provide, at any agenda meeting at which this Stipulation And Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure, pursuant to any protective order issued in this case.

16. None of the Signatory Parties to this Stipulation And Agreement shall be deemed to have approved or acquiesced in any ratemaking principle or any method of cost determination or cost allocation underlying or allegedly underlying this Stipulation And Agreement.

**WHEREFORE**, the Signatory Parties respectfully request the Commission to issue its Order pursuant to Sections 394.312 and 416.041 RSMo 2000 and 4 CSR 240-3.130 and 4 CSR 240-3.135:

A. Finding the requested designation of exclusive electric service area within the Hickory Valley subdivision in St. Robert to Laclede as specified in the filed Joint Application and Territorial Agreement is not detrimental to the public interest;

B. Approving the Applicants' Territorial Agreement;

C. Authorizing the Applicants to perform in accordance with the terms and conditions of the Territorial Agreement, Appendix A to the Joint Application; and

D. Approving the terms of this Stipulation And Agreement.

Respectfully submitted,

**CITY ATTORNEY**

/s/Tyce S. Smith

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 11<sup>th</sup> day of August 2005.

/s/ Steven Dottheim