

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of The Empire)
District Electric Company and Ozark Electric)
Cooperative for Approval of a Written)
Territorial Agreement Designating the)
Boundaries of Exclusive Service Areas within)
Christian County)

File No. EO-2011-0085

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT

Issue Date: November 23, 2010

Effective Date: December 3, 2010

Syllabus: This Report and Order approves the joint application for approval of a second territorial agreement between The Empire District Electric Company and Ozark Electric Cooperative.

Background

On September 16, 2010, The Empire District Electric Company and Ozark Electric Cooperative filed a joint application as described in the above caption. The agreement concerns service to customers in Clever, Missouri, in southwest Christian County. Clever has been considered rural because there have been less than 1,500 inhabitants. Ozark generally serves rural customers. However, Empire anticipates that the 2010 census will reflect a rise in Clever's population to over 1,500. For this reason, Empire approached Ozark to negotiate this Territorial Agreement.

The Joint Applicants have agreed that Ozark will continue to serve current customers until the results of the census are released. If the results show a resulting population of greater than 1,500, then Empire would be the default provider for all new customers.

The Commission issued an Order and Notice of the proposed Territorial Agreement and set an intervention deadline of October 17. There were no requests to intervene. The Commission then directed Staff Counsel to file a pleading informing the Commission of a date by which Staff would file a Recommendation. Staff filed its Memorandum on November 5, recommending that the Commission approve the agreement and that Empire file a revised tariff sheet reflecting the conditions of the agreement. No party has filed a response to Staff's Recommendation

Findings of Fact

1. The Empire District Electric Company is a Kansas corporation with its principal office and place of business in Joplin, Missouri.¹

2. Empire provides electric and water services in Missouri and has a certificate to provide certain telecommunications services.²

3. Ozark is a rural electric cooperative organized and existing pursuant to Chapter 394, RSMo, with its headquarters in Mount Vernon, Missouri.³

4 The applicants have specifically designated the boundaries of their electric service areas.⁴

5. The Agreement establishes separate exclusive service territories for Ozark and Empire for all "new Structures" for more orderly future development or electric service to the public.⁵

¹ *Joint Application*, para 1.

² *Id.*

³ *Id.*, para 3.

⁴ *Appendix A to the Joint Application*, Articles 3 and 4.

⁵ *Joint Application* para.5.

6. The Agreement does not require transfer of any facilities of customers between the Applicants.⁶

7. Applicants do not believe there are other electric service providers in the area covered by the Agreement.⁷

8. The establishment of exclusive service territories will prevent future duplication of electric service facilities.⁸

9. The establishment of exclusive service territories will allow electric customers within the areas to know with certainty the supplier of their electric service.⁹

10. The establishment of exclusive service territories will allow Applicants to avail themselves of prior investment and planning for service to the public.¹⁰

11. Each applicant has sufficient facilities to serve any additional customers in their respective proposed exclusive service areas.¹¹

12. The Agreement also contains a provision allowing the Applicants to serve customers in the exclusive service territory of the other on a case-by-case basis should an appropriate situation arise.¹²

⁶ *Joint Application*, para. 6.

⁷ *Joint Application*, para. 8.

⁸ *Joint Application*, para 9.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Staff Memorandum*, page 3.

¹² *Id.* Page 4.

13. The Agreement also does not preclude either Applicant from adding generation, transmission, or distribution facilities within the exclusive service territory of the other if necessary in the future.¹³

14. Staff opines that the Agreement is not detrimental to the public interest.¹⁴

Conclusions of Law

1. Empire is an electric corporation,¹⁵ and as such is subject to the jurisdiction of the Commission.¹⁶

2. To the extent that Ozark is a party to this Territorial Agreement, it is subject to the jurisdiction of this Commission.¹⁷

3. Section 394.312 requires the Commission to hold an evidentiary hearing to determine if the Territorial Agreement should be approved. However, the requirement for a hearing is met when the opportunity is provided and no party requests a hearing.¹⁸

4. Based on the above facts, and the absence of any facts that would support a conclusion that the Territorial Agreement is detrimental to the public interest, the Commission concludes that the Territorial Agreement is not detrimental to the public interest.

DECISION

Having reviewed the verified application and Staff Counsel's verified Memorandum, the Commission has concluded that the proposed Territorial Agreement will not be detrimental to the public interest. The Agreement will therefore be approved and the

¹³ *Id.* pages 4-5.

¹⁴ *Id.* Page 4.

¹⁵ Section 386.020, RSMo.

¹⁶ Section 366.250(1), RSMo.

¹⁷ Section 394.312, RSMo.

¹⁸ *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 494 (Mo. App. 1989).

Commission will direct Empire to file a revised tariff sheet to reflect the conditions the Agreement places on its service area.

THE COMMISSION ORDERS THAT:

1. The proposed Territorial Agreement filed by The Empire District Electric Company and Ozark Electric Cooperative is approved and the parties thereto are authorized to perform in accordance with the terms and conditions of the Agreement.
2. The Empire District Electric Company shall file a revised tariff sheet to reflect the conditions set out in the Territorial Agreement.
3. This order shall become effective on December 3, 2010.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Kennard L. Jones, Senior Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo.

Dated at Jefferson City, Missouri,
on this 23rd day of November, 2010.