

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 6th day of
January 2010.

**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)	<u>File No. EO-2010-0125</u>
Boundaries of each Electric Service Supplier within)	
the Woodland Hills Redevelopment Area of the)	
City of St. Robert, Pulaski County, Missouri)	

Report and Order¹ Approving Territorial Agreement

Issue Date: January 6, 2010

Effective Date: January 16, 2010

The Missouri Public Service Commission is approving the territorial agreement ("agreement") described in the caption of this report and order because the agreement includes the required terms and is not detrimental to the public interest.

Procedure

On October 26, 2009, the City of St. Robert, Missouri, ("the City") and Laclede Electric Cooperative ("the Cooperative") filed the Joint Application ("application"). The application includes the territorial agreement. The agreement includes signatures for the Cooperative and the City, a legal description of the territory at issue ("territory") by metes and bounds,² and a supporting affidavit.

¹ "Report and [O]rder" is the statutory designation for the document by which the Commission approves any territorial agreement between electrical suppliers. Section 394.312.4. All references to Section 394.312 are in the 2008 Supplement to the 2000 Revised Statutes of Missouri. All other sections are in the 2000 Revised Statutes of Missouri.

² As Section 394.312.2 requires.

Also on October 26, 2009, the Commission gave notice of this action and allowed the filing of applications to intervene³ through November 25, 2009. As of the date of this report and order, no person has filed such motion. On December 16, 2009, the Commission's staff ("Staff") filed its recommendation, with a supporting affidavit, in favor of the application.

Because all parties agree to the approval of the application, and no party opposes the application,⁴ the Commission deems the parties' filings to constitute a stipulation and agreement, and a waiver of hearing.⁵ The Commission opts not to exercise its authority to convene a hearing on its own motion.⁶ The Commission relies on the verified application and verified Staff recommendation for its findings of fact.⁷

Findings and Conclusions

The Cooperative is a rural electrical cooperative organized under the provisions of Chapter 394, RSMo. The City is a city of the third class in Pulaski County. Neither the City nor the Cooperative is overdue for any annual report or annual assessment fees due the Commission, and neither the City nor the Cooperative has been the subject of any pending action, or final unsatisfied judgment or decision against it, from any state or federal agency or court involving customer service or rates within three years before the date of the application.

The territory is within the City. The City owns, operates, and maintains a municipal utility but lacks the facilities to serve the territory. Such facilities are available

³ As Section 394.312.4 requires.

⁴ The Public Counsel, a party to this action under 4 CSR 240-2.010(11), has elected to enter no appearance.

⁵ Sections 394.312.5 and 536.060. Such posture also permits the Commission to dispense with separately stated findings of fact. Section 536.090.

⁶ Section 394.312.9.

⁷ *Rex Deffenderfer Ent., Inc. v. Public Serv. Com'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

to the Cooperative. But the Cooperative cannot serve the territory without a territorial agreement approved by the Commission⁸ because the City's population⁹ is greater than 1,500 persons.¹⁰

The conflict for the territory between the current supply and more economical supply—from the City and the Cooperative, respectively—finds a remedy in the agreement. The agreement requires Commission approval.¹¹ Such approval depends on two substantive statutory standards.

First, the agreement must include specific provisions for the Cooperative to operate in the City,¹² which the agreement does by allowing the Cooperative to supply electricity to new structures in the territory.

Second, “approval of the territorial agreement in total [must be] not detrimental to the public interest.[¹³]” The public interest includes factors related to “efficient facilities and substantial justice between patrons and public utilities [.]”¹⁴ As to substantial justice between patrons and the utilities, current and future customers will have certainty as to who their supplier will be. As to efficient facilities, the agreement makes better use of existing supplier resources and avoids future duplicate facilities. As to both factors, the agreement requires no customer to change supplier, and requires no supplier to transfer

⁸ Section 394.312.4.

⁹ Section 394.020(3).

¹⁰ We base that finding on two sources. First, Staff showed that the City's population was 3,507 persons in 2000. Staff Recommendation, Appendix A, page 3. Second, the Commission takes notice of the **Official Manual of the State of Missouri 2007-2008**, page 891, which estimates the City's population as 3,155 in 2005 and 3,260 in 2006. Section 536.070(6), RSMo 2000; **Amos v. City of Noel**, 276 S.W.3d 355, 356, fn. 3 (Mo. App., S.D. 2009).

¹¹ Section 394.312.4.

¹² Section 394.312.2.

¹³ Section 394.312.5.

¹⁴ Section 386.610.

facilities or customers. Therefore, the Commission concludes that approval of the agreement in total is not detrimental to the public interest.

THE COMMISSION ORDERS THAT:

1. The Joint Application for approval of the territorial agreement that the City of St. Robert, Missouri, and Laclede Electric Cooperative filed with the Commission on October 26, 2009, is granted.
2. This report and order is effective on January 16, 2010.
3. This file shall close on January 17, 2010.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Davis, Jarrett, Gunn,
and Kenney, CC., concur.

Jordan, Regulatory Law Judge