

**BEFORE THE PUBLIC SERVICE COMMISSION
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)	Case No. EO-2007-0253
Designating the Boundaries of Each Electric Service)	
Supplier within Portions of Callaway County,)	
Missouri.)	

**STAFF RECOMMENDATION
TO APPROVE TERRITORIAL AGREEMENT**

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) and, for its recommendation that the Commission grant the joint application of Callaway Electric Cooperative (“Callaway”) and the City of Fulton, Missouri, (“Fulton”) and approve their Territorial Agreement, states:

1. In the attached Memorandum, which is labeled Appendix A, the Staff recommends the Missouri Public Service Commission grant the joint application of Callaway and Fulton, and approve their Territorial Agreement.

2. As stated in the Staff’s memorandum, Callaway and Fulton have entered into the Territorial Agreement for an area that presently lies outside of, but near, the corporate limits of Fulton in Callaway County. Fulton provides municipal electric service to its citizens and Callaway provides electric service to its members. Under the Territorial Agreement, if Fulton annexes any or all of the land encompassed in the Territorial Agreement, Callaway will be able to continue to provide electric service to new members in the annexed land, and Fulton will not. This exclusivity pertains only to new service; therefore, this agreement does not involve any change of suppliers to existing customers, or members.

3. Section 394.312.4, RSMo 2000, establishes the standard of “not detrimental to the public interest” for Commission review of territorial agreements. The Staff found no Missouri case law applying this standard in this context; however, based on how it has been interpreted in the context of changes in utility ownership as discussed following, this standard includes a consideration of the broad public interest, not merely affected utilities and their customers and their members. In a change of ownership case in the mid-1980’s this Commission, applied the standard of “not detrimental to the public interest,” and approved the sale of steam operations from a regulated utility to an unregulated subsidiary of the Bi-State Development Agency. The sale was part of a plan by the Bi-State Development Agency to ultimately use refuse to fuel the steam generation and included an immediate rate increase. In its opinion on review of the Commission’s decision, the Missouri Supreme Court stated:

The Commission's decision and order shows that concern for the public interest was predominant in its deliberations. It considered not only the interest of its customers, but the interest of the St. Louis metropolitan area in solving its refuse problems. The thought of using refuse to produce worthwhile energy is certainly appealing. The Commission is justified in looking at the broad picture.¹

The Missouri Supreme Court, in *State ex rel. City of St. Louis v. Public Service Commission*,² includes a statement of the standard of “not detrimental to the public”:

. . . The whole purpose of the act is to protect the public. The public served by the utility is interested in the service rendered by the utility and the price charged therefore; investing public is interested in the value and stability of the securities issued by the utility. *State ex rel. Union Electric Light & Power Co. v. Public Service Commission et al.* (Mo. Sup.) 62 S.W. (2d) 742. In fact the act itself declares this to be the purpose. Section 5251, R.S. 1929 Mo. Stat. Ann. Section 5251, p. 6674), in part reads: “The provisions of this chapter shall be liberally construed with a view to the public welfare, efficient facilities and *substantial justice between patrons and public utilities.*” (Italics ours.)

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¹ *Love 1979 Partners, et al. v. Public Serv. Comm’n*, 715 S.W.2d 482, 490 (Mo.banc 1986).

² 73 S.W.2d 393, 399-400 (Mo.banc 1934).

The state of Maryland has an identical statute with ours, and the Supreme Court of that state in the case of *Electric Public Utilities Co. v. Public Service Commission*, 154 Md. 445, 140 A. 840, loc. cit. 844, said: "To prevent injury to the public good in the clashing of private interest with the public good in the operation of public utilities, is one of the most important functions of Public Service Commissions. It is not their province to insist that the public shall be benefited, as a condition to change of ownership, but their duty is to see that no such change shall be made as would work to the public detriment. 'In the public interest,' in such cases, can reasonably mean no more than 'not detrimental to the public.'"

4. As stated in Appendix A, this territorial agreement will prevent crossing facilities and duplication of facilities between these utilities in the exclusive service area established by the territorial agreement. Such duplication reduces safety by exposing both workmen and the general public to more dangerous facilities than what efficient engineering design would require to serve demand for electricity. Callaway has sufficient distribution facilities to serve members in the exclusive service area established by the territorial agreement. Callaway has existing capacity to serve the exclusive service area and is preparing for anticipated load growth. Establishing the-is exclusive service area will assist these utilities in anticipating the electric needs of their customers and members, and will also assist emergency responders to identify which electric service provider to notify, if the emergency event involves electric facilities.

5. For all the foregoing reasons, the Staff believes that approval of the agreement, as amended, is not detrimental to the public interest.

6. As required by §394.312.2, RSMo 2000, the Territorial Agreement specifically designates the boundary of the service area subject to the agreement and the powers Fulton is granting to Callaway to operate within the corporate boundaries of Fulton.

WHEREFORE, the Staff respectfully recommends to the Commission that it grant the joint application of Callaway Electric Cooperative and the City of Fulton, Missouri, for approval of their Territorial Agreement.

/s/ Blane Baker

Blane Baker

Missouri Bar No. 58454

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 1st day of February, 2007.

/s/ Blane Baker

Blane Baker

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. EO-2007-0253, 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 Supplier within Portions of Callaway County, Missouri

FROM: James L. Ketter, Energy Department – Engineering Analysis

<u>/s/ James L. Ketter 2/1/2007</u> Energy Department / Date	<u>/s/ Nathan Williams 2/1/2007</u> General Counsel's Office / Date
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Subject: Staff Report and Recommendation

Date: February 1, 2007

OVERVIEW

On January 2, 2007, Callaway Electric Cooperative (Callaway) and the City of Fulton, Missouri (Fulton) (collectively “Applicants”) filed a Joint Application for approval of a written Territorial Agreement (Agreement) designating exclusive service territory of Callaway. This Agreement specifically designates boundaries, as between the Applicants, of exclusive service areas within portions of Callaway County, Missouri for all new structures. No other electric service providers are affected by the Agreement and the Agreement has no impact on the Applicants’ obligations to provide electric service in areas outside the territory designed in the Agreement.

On January 3, 2007, the Commission issued an Order Directing Notice, Establishing Time for Filing Recommendations, Setting Date for Submission of Intervention Requests and Setting Date for Filing a Procedural Schedule. To date, no one has sought to intervene.

DISCUSSION

Under the Agreement, Callaway would supply electricity to all new structures in the five (5) tracts that are identified in Appendix A of the Agreement, which total approximately 124 acres. This property is located outside the current corporate limits of Fulton, Missouri, on the northwest quadrant of the intersection of State Highway 54 and State Highway H. In anticipation of future annexation of this property, the Applicants have designed the Agreement to establish a service territory in Callaway County, Missouri, where Callaway may serve new structures, but Fulton may not. The terms of the Agreement apply to new structures in the designated territories after the effective date of an order by the Commission approving this Agreement. No existing customers will be transferred as a result of the Agreement.

Establishing an exclusive service territory will prevent future duplication of facilities and will allow electric service customers within the territory to know with certainty the supplier of their electric service. Exclusive service territories assist emergency responders in identifying which electric service provider to notify if an accident involves electric facilities. Duplication of electric facilities exposes workmen and the public to more facilities than is necessary as compared to areas where electric providers serve in exclusive territories.

The exclusive service territory will aid Callaway and Fulton in their long range planning of the placement and capacity of electric facilities. Each will be able to plan for the electric needs of the geographic areas where it is the exclusive supplier of electric service. Economic benefits are apparent because the supplier will have all the new customers and the density of that supplier's load will be maximized within its exclusive service territory.

The Staff has conducted a field investigation of the proposed service territory and met with representatives of Callaway and Fulton. Callaway has existing overhead electric facilities on the road frontage of the exclusive territory to serve future customers. The five (5) tracts are contiguous and together form one area for development. The establishment of exclusive service territories will help both the cooperative and the city in their ability to anticipate the electric needs of its members or customers.

STAFF RECOMMENDATION

The Staff recommends the Commission grant the Joint Application for the Territorial Agreement between Callaway and Fulton, and approve the Agreement as being in the public interest. With an approved agreement, both the cooperative and the city will be better able to plan for the future needs of its customers. In addition, duplication of electric facilities can be avoided which, in turn, will reduce the public and worker exposure to additional overhead electric facilities.

Callaway is a rural electric cooperative and it is not required to file annual reports or pay assessments to the Commission. Callaway states that it has no pending or final judgments or decisions against it from any state or federal agency which involve customer service or rates, which have occurred within the three years immediately preceding this filing.

Fulton operates a municipal utility that provides electric service to its citizens, and it is not required to file annual reports with or pay assessments to the Commission. Fulton states there are no pending or final judgments or decisions against it from any state or federal agency that involve its customer service or rates within the three years immediately preceding the filing of the Joint Application. The Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

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Electric Service Supplier within Portions)
of Callaway County, Missouri)

Case No. EO-2007-0253

AFFIDAVIT OF JAMES L. KETTER

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

James L. Ketter, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Report and Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Report and Investigation was given by him; that he has knowledge of the matters set forth in such Staff Report and Investigation; and that such matters are true to the best of his knowledge and belief.



James L. Ketter

Subscribed and sworn to before me this 1st day of February, 2007.



DAWN L. HAKE
My Commission Expires
March 16, 2009
Cole County
Commission #05407643



Notary Public

My commission expires March 16, 2009