

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

In the Matter of the Application of Osage Valley)
Electric Cooperative Association & the City of)
Harrisonville, Missouri for Approval of a Written) **File No. EO-2023-0439**
Territorial Agreement Designating the Boundaries)
of each Electric Service Supplier Within the City)
of Harrisonville, Cass County, Missouri)

STAFF RECOMMENDATION

COMES NOW Staff of the Missouri Public Service Commission, by and through the undersigned counsel, and respectfully states as follows:

1. In its *Order Directing Notice, Setting Intervention Deadline, and Directing Staff Recommendation* issued in File No. EO-2023-0439 on July 3, 2023, the Commission ordered Staff to file a recommendation in that case no later than August 3, 2023.

2. On July 3, 2023, the Commission ordered the City of Harrisonville, Missouri (“Harrisonville”) and Osage Valley Electric Cooperative Association (“Osage Valley”) to correct their deficiency pursuant to 20 CSR 4240-4.017(D) by August 2, 2023. To date, the party in question has not effectively remedied their inadequacy.

3. Harrisonville and Osage Valley do not have a case-by-case addendum procedure in their territorial agreement. As such, there’s no problem solving mechanism in their agreement to resolve territorial disputes subject to this agreement.

4. The Commission is authorized to approve written territorial agreements between municipal electric providers and rural electric cooperatives if it determines¹ that approval of the territorial agreement in total is not detrimental to the public interest.

¹ The requirement for a hearing is met if the opportunity for hearing is provided and no proper party requests the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Pub. Serv. Comm’n*, 776 S.W.2d 494, 496 (Mo. App. W.D. 1989).

§ 394.312, RSMo (2016). Additionally, the Commission is authorized to approve changes of electric suppliers on a finding that it is in the public interest for a reason other than a rate differential. § 91.025, RSMo (Supp. 2021).

5. Attached hereto and incorporated herein by reference is *Staff's Recommendation*, in which Staff recommends the Commission approve the Application of Osage Valley & Harrisonville, Missouri (collectively the "Joint Applicants").

WHEREFORE, Staff respectfully requests the Commission issue an order approving the Joint Applicants' Application for approval of a territorial agreement and for such further orders as the Commission deems meet and proper.

Respectfully submitted,

/s/ Eric Vandergriff

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Attorney for the Staff of the
Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or electronically mailed to all parties and/or counsel of record on this 3rd day of August, 2023.

/s/ Eric Vandergriff

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
File No. EO-2023-0439 – In the Matter of the Application of Osage Valley Electric Cooperative Association and the City of Harrisonville, Missouri for the Approval of a Written Territorial Agreement Designating the Boundaries of Each Electric Service Supplier within the City of Harrisonville, Cass County, Missouri

FROM: Alan J. Bax – Engineering Analysis Dept., Industry Analysis Division

/s/ Alan J. Bax / 08-03-2023
Engineering Analysis Dept. / Date

/s/ Eric Vandergriff / 08-03-2023
Staff Counsel's Office / Date

SUBJECT: Staff Memorandum Recommending Approval of Joint Application

DATE: August 3, 2023

STAFF RECOMMENDATION

Staff of the Missouri Public Service Commission (“Staff”) recommends that the Missouri Public Service Commission (“Commission”) approve the Joint Application of the Osage Valley Electric Cooperative Association (“Osage Valley”) and the City of Harrisonville, Missouri (“Harrisonville”) (collectively referenced as the “Joint Applicants”) that includes the Joint Applicants’ Written Territorial Agreement (“TA”). Approval of the TA would allow Osage Valley to exclusively provide electric service to two parcels located in the State of Missouri right-of-way (“ROW”) along a highway corridor in Section 16, Township 44N, Range 31W in Cass County, Missouri despite these parcels being within the city limits of Harrisonville, Missouri. Staff recommends that the Commission conclude that this Joint Application is not detrimental to the public interest pursuant to Sections 394.312 and 416.041 RSMo (2020), 20 CSR 4240-2.060, and 20 CSR 4240-3.130.

OVERVIEW

On June 27, 2023, the Joint Applicants filed their Joint Application requesting Commission approval of their TA. The TA requests that Osage Valley be the exclusive service provider to two parcels located in Section 16, Township 44N, Range 31W in Cass County, Missouri despite the parcels being within the corporate limits of the City of Harrisonville, which operates a municipal electric system in and around the City of Harrisonville. The Joint Applicants assert that Commission approval of their Joint Application will allow Osage Valley and Harrisonville to make best use of their respective existing electric facilities in the immediate area and prevents an otherwise duplication of facilities associated with Harrisonville providing electric service to said parcels.

Osage Valley is a rural electric cooperative organized under Chapter 394 RSMo (2020) to provide electric service to its members in all or parts of seven Missouri counties, including Cass County, in which lies the parcels that are the subject of the Joint Application. The Commission has limited jurisdiction over rural electric cooperatives. For the purposes of this case, Osage Valley is subject to the jurisdiction of the Commission under Section 394.312 RSMo (2020).

As a rural electric cooperative, Osage Valley is not required to file annual reports or pay assessment fees. Further, Staff is not aware of any pending or final unsatisfied judgments against Osage Valley from any state or federal court involving customer service or rates within three years of the date of filing this Joint Application.

Harrisonville is a fourth class municipality organized under the laws of the State of Missouri, as specified in part in Section 91.025 RSMo (2020). Harrisonville owns, operates and

maintains an electric distribution system within its city limits and primarily serves the residents located within the city limits.

As a municipal electric system, Harrisonville is not required to file annual reports or pay assessment fees. Further, Staff is not aware of any pending or final unsatisfied judgments against Harrisonville from any state or federal court involving customer service or rates within three years of the date of filing this Joint Application.

DISCUSSION

This Joint Application was filed on June 27, 2023 in response to a Missouri Department of Transportation (“MoDOT”) project to install a new interchange at the intersection of I-49 and State Highway 7, which is located within the city limits of Harrisonville, MO.¹ Therefore, as a municipal electric system, Harrisonville has the right to serve the area in question. However, as stated in Paragraph 4 of the Joint Application, Harrisonville prefers that Osage Valley provide electric service to new structures intending to be installed in conjunction with this MoDOT project. Hence, the Joint Applicants entered into a TA that is attached to their Joint Application as “Appendix B” requesting Commission approval to allow Osage Valley to be the electric service provider in the specified area identified in the TA indicated to be located in in Section 16, Township 44N, Range 31W in Cass County, Missouri. The MoDOT project includes the installation of a diverging diamond intersection design, with new associated metering points being illustrated on a map identified as “Exhibit A” in the TA. The Joint Applicants assert that Osage Valley providing service in this specified area allows both utilities to make the most efficient use

¹ MO Route 7 and I-49 Interchange Improvements | Missouri Department of Transportation (modot.org)

of their respective existing electric facilities. Harrisonville would otherwise need to install a duplicative extension of its facilities in order to provide electric service to the requested new load.

As required in 20 CSR 4240-3.130, the Joint Applicants state that the Joint Application does not include a request for an exchange of electric customers or any exchange and/or sale of electric facilities. A copy of the resolution from the Board of Alderman of Harrisonville authorizing Harrisonville to enter into a TA with Osage Valley is attached to the Joint Application.

Typically, territorial agreements contain a “Case-By-Case Addendum Procedure” that contains the protocol to be taken if a given situation arises in the future in which there could be a better course of action to be taken that varies from the specific terms in the associated territorial agreement. For example, in a recent case requesting approval of a territorial agreement between Osage Valley and the City of Butler in Case No. EO-2023-0126, Paragraph 15 addresses this possibility. Paragraph 15 begins,

The parties may agree on a case-by-case basis by an Addendum hereto to allow a structure to receive service from one party though the structure is located in the electric service area of another party. Such Addendum referred to shall be filed with the Missouri Public Service Commission. Each Addendum shall be accompanied by a notarized statement indicating that the party in whose territory the structure will be located and the party who will serve the structure support the Addendum...

The TA requested in the current case does not contain such a clause. However, Paragraph 3A of the TA concludes with the following: “...Harrisonville does not now serve any structures, and shall not be allowed to serve any new structures, in these tracts.” Therefore, given the size of these tracts, this statement made in Paragraph 3A may be considered sufficient to preclude Harrisonville from attempting to serve any new load at any time in the future in the areas identified in the TA.

In Paragraph 8 of the Joint Application, Osage Valley and Harrisonville claim that there are no other electric service providers in the area covered by the TA. However, Evergy Missouri West's ("EMW") certificated service territory includes all 36 sections of Township 44N, Range 31W in Cass County, Missouri as illustrated in its Commission approved tariffs. This was originally established by the Commission in Case No 9470. In fact, predecessors of EMW were the wholesale provider of electric service to Harrisonville until June 2003. Nonetheless, despite the presence of EMW in close proximity to the area included in the TA, Staff agrees with the Joint Applicants that there are no other electric service providers in the specific areas covered by this TA, as described in Section 1A of the TA, as the specific areas identified have been annexed into the city limits of Harrisonville. Staff also concurs with the Joint Applicants' assertion in Paragraph 9 that the requested TA is not detrimental to the public interest as Staff agrees that Osage Valley has existing facilities in the area and its provision of electric service will preclude an otherwise duplication of facilities should Harrisonville need to extend its facilities in order to provide electric service to the two new metering points illustrated in the TA.

CONCLUSION

For the aforementioned reasons, Staff recommends that the Commission approve the Joint Application, concluding that the TA is not detrimental to the public interest pursuant to Section 394.312 and 416.041 RSMo (2020). The Joint Applicants addressed the requirements specified in 20 CSR 4240-2.060 and 20 CSR 4240-3.130. Commission approval of the Application would allow Osage Valley to be the exclusive electric service provider to two tracts located in Section 16, Township 44N, Range 31W in Cass County, Missouri despite this being located within the city limits of Harrisonville, a non-rural area. As depicted on a map included in the TA as "Exhibit A",

Osage Valley has existing facilities to provide electric service to two metering points associated with MoDOT's installation of a diverging diamond intersection at I-49 and State Highway 7. Harrisonville would have to install duplicative facilities to this area in order to provide electric service.

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Valley Electric Cooperative Association & the) File No. EO-2023-0439
City of Harrisonville, Missouri for Approval)
of a Written Territorial Agreement)
Designating the Boundaries of each Electric)
Service Supplier Within the City of)
Harrisonville, Cass County, Missouri)

AFFIDAVIT OF ALAN J. BAX

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW ALAN J. BAX and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff Memorandum*, in memorandum form; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.




ALAN J. BAX

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 3rd day of August 2023.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: April 04, 2025
Commission Number: 12412070



Notary Public