

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 19th day of
October, 2011.

In the Matter of the Application of Black River
Electric Cooperative and the City of Fredericktown,
Missouri for Approval of a Written Territorial
Agreement Designating the Boundaries of Each
Electric Service Supplier Within a Portion of
Madison County, Missouri

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File No. EO-2012-0047

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT

Issue Date: October 19, 2011

Effective Date: October 29, 2011

This decision approves a Territorial Agreement between Black River Electric Cooperative and the City of Fredericktown, Missouri to establish exclusive service areas for service to new structures by both Black River and Fredericktown.

FINDINGS OF FACT

1. On August 11, 2011, Black River and Fredericktown filed a joint application asking the Commission to approve their written territorial agreement to designate boundaries of exclusive service areas in the City of Fredericktown and in surrounding rural areas of Madison County, Missouri.

2. On August 11, 2011, the Commission provided notice of the filing of the joint application to the County Commission of Madison County, to the members of the General Assembly representing Madison County, and to the public. That notice required applications to intervene to be filed no later than August 25, 2011. No such applications to intervene have been filed.

3. On September 27, 2011, Black River and Fredericktown filed an addendum to their territorial agreement in which they agree that except to the extent permitted by statute, the territorial agreement does not authorize Fredericktown to provide retail electric service outside its corporate boundaries.

4. On October 4, 2011, the Commission's Staff filed a recommendation advising the Commission that the proposed territorial agreement is not detrimental to the public interest and should be approved.

5. Black River is a rural electric cooperative corporation organized and existing under the laws of the State of Missouri.

6. Black River provides electric service to customer in rural areas of Madison County, Missouri.

7. Fredericktown is a fourth class city, organized and existing under the laws of the State of Missouri.

8. Fredericktown owns, operates, and maintains an electric distribution system to serve residents and inhabitants of Fredericktown.

9. Neither Black River nor Fredericktown is subject to regulation by this Commission.

10. The proposed territorial agreement establishes the exclusive service area for new structures for Black River, including areas within the city limits of Fredericktown.

11. The proposed territorial agreement also establishes the exclusive service area for new structures for Fredericktown, including areas outside the city limits of Fredericktown.

12. Since Fredericktown's population is greater than 1,500, Black River could not provide retail electric service to new structures inside Fredericktown absent this agreement.

13. The proposed territorial agreement does not require the transfer of any facilities or customers between Black River and Fredericktown.

14. The proposed territorial agreement is in the public interest because it will eliminate or reduce duplication of facilities, reduce the waste of resources and customer costs, and will allow Fredericktown, Black River, and their customers to know with certainty who will supply electricity to a particular location.

15. Based on the information contained in the joint application and on the recommendation of Staff, the Commission finds that the proposed territorial agreement is not detrimental to the public interest.

CONCLUSIONS OF LAW

A. Section 394.312, RSMo (Supp. 2010), gives the Commission jurisdiction over territorial agreements between rural electric cooperatives and municipal utilities concerning electric service.

B. Under Section 394.312.5, RSMo (Supp. 2010), the Commission may approve such a territorial agreement if the agreement is not detrimental to the public interest.

C. Although Section 394.312.5, RSMo (Supp. 2010), provides that the Commission is to hold an evidentiary hearing to determine whether a territorial agreement is to be approved, no party has requested a hearing. The decision in State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri,¹ holds that the requirement for a hearing is met when the opportunity for hearing is provided and no

¹ 776 S.W. 2d 494 (Mo. App. W.D. 1989).

proper party requests the opportunity to present evidence. Therefore, no hearing is necessary.

DECISION

Based on its findings of fact and conclusions of law, the Commission determines that the submitted territorial agreement between Black River and Fredericktown is not detrimental to the public interest and shall be approved.

THE COMMISSION ORDERS THAT:

1. The Territorial Agreement between Black River Electric Cooperative and the City of Fredericktown, Missouri is approved.
2. This order shall become effective on October 29, 2011.
3. This case shall be closed on October 30, 2011.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

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

Woodruff, Chief Regulatory Law Judge