

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

In the Matter of the Application of the)
City of Butler and Osage Valley Electric)
Cooperative for Approval of a First)
Territorial Agreement Designating the)
Boundaries of Exclusive Service Areas)
within the Portions of Bates County)

File No. EO-2023-0126

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 Deadline For Intervention, and Directing Staff Recommendation* issued in File No. EO-2023-0126 on October 7, 2022, the Commission ordered Staff to file a recommendation in that case no later than November 7, 2022.

2. On November 07, 2022, Staff filed its *Motion for Extension of Time to File Staff's Recommendation*. The request was granted, and the Commission ordered Staff to file its recommendation no later than November 16, 2022.

3. Attached hereto and incorporated herein by reference is Staff's Recommendation, in which Staff recommends the Commission approve the Joint Application of The City of Butler and Osage Valley Electric Cooperative (collectively, "Joint Applicants").

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

Respectfully submitted,

/s/ Eric Vandergriff

Eric Vandergriff

Legal Counsel

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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 counsel of record on this 10th day of November, 2022.

/s/ Eric Vandergriff

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. EO-2023-0126 – In the Matter of the Application of the
City of Butler and Osage Valley Electric Cooperative, Inc. for
Approval of a First Territorial Agreement Designating the Boundaries of
Exclusive Service Areas within Portions of Bates County

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

Claire M. Eubanks 11/10/22 Eric Vandergriff 11/10/22
Engineering Analysis Dept. / Date Staff Counsel’s Office / Date

SUBJECT: Staff Memorandum Recommending Approval of Joint Application

DATE: November 10, 2022

STAFF RECOMMENDATION

Staff of the Missouri Public Service Commission (“Staff”) recommends that the Missouri Public Service Commission (“Commission”) approve the Joint Application of The City of Butler (“Butler”) and Osage Valley Electric Cooperative Inc. (“Osage Valley”); (collectively referenced as the “Joint Applicants”) that includes the Joint Applicants’ First Territorial Agreement (“First TA”). Approval of the First TA would allow Butler to exclusively provide electric service to twenty-eight (28) parcels, which includes the Evergreen Estates subdivision, despite these parcels being currently located outside the city limits of Butler, Missouri, in Bates County. Commission approval of the First TA would also designate Osage Valley as the exclusive service provider to a twenty-ninth (29th) parcel, also currently located outside the city limits of Butler, regardless of possible future annexations. 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 October 5, 2022, the Joint Applicants filed their Joint Application requesting Commission approval of their First TA. The First TA was filed with the Commission in relation to fifteen (15) Change of Electric Service Providers Applications involving property owners that are included within the twenty-eight properties identified in the First TA as being located in the exclusive service area of Butler should the Commission approve this Joint Application.

On October 7, 2022, the Commission issued an *Order Directing Notice, Setting Deadline for Intervention and Directing Staff Recommendation* in which the Commission ordered its Data Center to provide a notice along with this Joint Application to other electric service providers in the area and to the County Commissioners serving Bates County. The Data Center was also directed to send this Joint Application to the fifteen (15) property owners that had previously filed Change of Electric Supplier Applications with the Commission.¹ The Commission ordered its Public Policy and Outreach Department to notify media entities in Bates County, Missouri of this Joint Application, as well as members of the General Assembly that serve Bates County, Missouri. In addition, the Commission set an intervention deadline of October 24, 2022 for any entity wishing to intervene in this matter² and directed its Staff to file a Recommendation by November 7, 2022.

¹ The associated case numbers for these Change of Electric Provider Applications were: EO-2023-0039, EO-2023-0040, EO-2023-0041, EO-2023-0042, EO-2023-0043, EO-2023-0044, EO-2023-0045, EO-2023-0046, EO-2023-0047, EO-2023-0048, EO-2023-0049, EO-2023-0050, EO-2023-0051, EO-2023-0063, and EO-2023-0064.

² No intervention requests have been received.

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 (7) Missouri counties, including Bates County, in which lies the properties that are the subject of the Joint Application. The Commission has limited jurisdiction over 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.

Butler is a political subdivision of the 3rd Class organized under the laws of the State of Missouri. Butler 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, Butler is not required to file annual reports or pay assessment fees. Further, Staff is not aware of any pending or final unsatisfied judgments against Butler 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 October 7, 2022 as a consequence/in response to fifteen requests for a Change of Electric Service Provider from current customers of Butler in the Evergreen Estates subdivision, which is located outside the city limits of Butler, Missouri in Bates County. These requests to change electric service providers all

included a copy of a petition that specifically listed the fifteen customers and the concurrence of each customer to have their electric service switched to Osage Valley stating, "...established ordinances directly impede expansion of electrical services to multiple private properties in our housing area, preventing advancement of home construction and devaluation of property in Evergreen Estates..." These Butler customers continue in each of their respective requests in this petition to say, "...It is our understanding that some of the currently provided power services to our properties are not provided legally. These properties were constructed after 1991.³ It is our understanding it is Osage Valley's territory and therefore right to provide power to our geographical area. It is our understanding there is no territorial agreement."

The petition mentions the lack of territorial agreement. Therefore, these current Butler customers are also apparently aware that a territorial agreement between Butler and Osage Valley would address this question of legality⁴ regarding receiving electric service

³ It appears that this statement is made in referencing Section 91.025.2 RSMo (2020), which states: Once a municipally owned or operated electrical system, or its predecessor in interest, lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800 or pursuant to a territorial agreement approved under section 394.312 (emphasis added). The public service commission, upon application made by a customer, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential, and the commission is hereby given jurisdiction over municipally owned or operated electric systems to accomplish the purpose of this section. The commission's jurisdiction under this section is limited to public interest determinations and excludes questions as to the lawfulness of the provision of service, such questions being reserved to courts of competent jurisdiction. Except as provided in this section, nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting or management of any such municipally owned or operated electrical system, and nothing in this section, section 393.106, and section 394.315 shall affect the rights, privileges or duties of any municipality to form or operate municipally owned or operated electrical systems. Nothing in this section shall be construed to make lawful any provision of service, which was unlawful prior to July 11, 1991. Nothing in this section shall be construed to make unlawful the continued lawful provision of service to any structure, which may have had a different supplier in the past, if such a change in supplier was lawful at the time it occurred.

⁴ As proffered by Butler.

from Butler, as it would allow Butler to not only continue providing existing electrical services but also allow Butler to establish electric service to new structures in the Evergreen Estates.

The Joint Applicants indicate that the First TA was approved by the City Council of Butler, MO as well as the Osage Valley Board of Directors. In its response to the fifteen (15) change of supplier applications, Osage Valley acknowledged its ability to provide the desired electric service to these applicants but noted that it would need to extend its current facilities at least 2,400 feet with extensive tree-trimming, which would be extremely costly. Alternative routes to providing service to the area encompassing the Evergreen Estates would require crossing railroad property and an interstate highway.

The First TA identifies twenty-eight (28) properties that would be in the exclusive service territory of Butler should the Commission approve the First TA. The properties associated with the current Butler customers that had previously filed requests for a change of supplier are included in this group of twenty-eight properties. In addition, the First TA includes a twenty-ninth (29th) property, not within the Evergreen Estates subdivision, that would be in the exclusive service territory of Osage Valley should the Commission approve the Joint Application. All twenty-nine properties are currently located outside the city limits of Butler, MO. There are no other electric service providers in the immediate vicinity that would be affected by the Joint Application.

The First TA contains a clause that would allow structures to be served by either Butler or Osage Valley despite the particular structure being located in the exclusive

service area of the other per the designations reflected in the First TA. Such an amendment would require Commission approval.⁵

The Joint Applicants' First TA contains the appropriate general information as specified in 20 CSR 4240-2.060 and 20 CSR 4240-3.130. The Joint Applicants have provided the associated filing fee.

Staff agrees with the Joint Applicants that the First TA underscores Butler's ability to provide electric service to new structures in the Evergreen Estates. The First TA is being requested in relation to Butler's contention that a question of legality exists regarding its provision of electric service to properties located in the Evergreen Estates subdivision. However, it remains unclear whether each of the fifteen individual change of supplier cases will be resolved solely through this territorial agreement, as the Joint Application does not include such indication.⁶ Regardless, the proposed First TA is not detrimental to the public interest as it avoids an otherwise necessary uneconomical duplication of electric service facilities.

CONCLUSION

For the aforementioned reasons, Staff recommends that the Commission approve the Joint Application, concluding that the First TA is not detrimental to the public interest pursuant to Section 91.025.2, 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 Butler to be the exclusive electric

⁵ Paragraph 15 of the First TA

⁶ Both Butler and Osage Valley have asserted that Commission approval of their First TA would alleviate the concerns expressed by the set of existing Butler customers in their individual applications requesting a change in electric service providers to Osage Valley.

service provider to twenty-eight (28) properties, which includes the properties in the Evergreen Estates, which are located outside the city limits of Butler, Missouri in Bates County. Commission approval of the Joint Application would also allow Osage Valley to be the exclusive service provider to a twenty-ninth (29th) property also located outside the city limits of Butler, Missouri regardless of possible future annexations. Osage Valley providing service to the area encompassing the Evergreen Estates would be duplicative and uneconomical, requiring crossing railroad property and an interstate highway and/or an extensive area of tree trimming.

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Electric Cooperative for Approval of a First)
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Within Portions of Bates County)

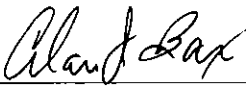
File No. EO-2023-0126

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 Recommendation, in Memorandum form*; and that the same is true and correct according to his best knowledge and belief.

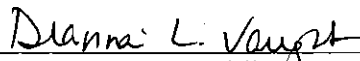
Further the Affiant sayeth not.



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 7th day of November, 2022.



Notary Public

