

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

In the matter of the Application of Marshall)
Municipal Utilities and Central Missouri Electric) **Case No. EO-2015-0137**
Cooperative, Inc. for Approval of an)
Amendment to an Approved Territorial Agreement)

**STAFF’S RECOMMENDATION FOR APPROVAL OF
AMENDED TERRITORIAL AGREEMENT**

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through undersigned counsel, and for its recommendation in this matter files Staff’s Recommendation to approve the Application for Approval of an Amendment to an Approved Territorial Agreement (“Joint Application”) filed by Marshall Municipal Utilities (“MMU”) and the Central Missouri Electric Cooperative (“CMEC”), (collectively referenced as the “Applicants”) to revise the Applicants’ Territorial Agreement (“TA”) in accordance with their Amendment. Staff has reviewed the Joint Application and recommends the Commission approve it, finding that the amended TA still is not detrimental to the public interest pursuant to Section 394.312 RSMo.¹ While Staff supports the amended TA, Staff points out in both its Report and this cover pleading, some areas of possible concern for the Commission to consider in reviewing this application. In support of Staff’s recommendation, Staff states as follows:

1. On November 25, 2014, the Applicants filed an Application requesting approval of an amendment to their TA. The original TA was approved by the Commission in a Report and Order dated March 8, 1996, in Case No. EO-96-165. On December 1, 2014, the Commission issued an Order establishing an intervention date

¹ All statutory references are RSMo Supp. 2014, unless otherwise noted.

of January 2, 2015, for anyone desiring to intervene in this case and directing Staff to file a recommendation on the Application by January 9, 2015. No party has sought intervention in this matter.

2. Approval of the amended TA would authorize MMU to provide electric service to a new structure, a horse barn, built on property owned by Missouri Valley College (“MVC”) where MMU is currently providing electric service. This property lies outside the city limits of Marshall, Missouri, in an area, as between MMU and CMEC, exclusively served by CMEC per the terms of the original TA.

3. As explained in Staff’s *Memorandum*, attached hereto as Appendix A and incorporated herein by reference, Staff recommends the Commission issue an order in this case that approves the amended territorial agreement and finds that, on the whole, the amended territorial agreement is not detrimental to the public interest.²

4. Section 394.312 RSMo authorizes territorial agreements to displace competition to provide retail electric service, as between rural electric cooperatives, electrical corporations and municipally owned utilities. All territorial agreements entered into under the provisions of this section, including any subsequent amendments to such agreements shall receive approval by the Public Service Commission by Report and Order. The Commission may approve territorial agreements, original and amended, “if it determines that approval of the territorial agreement in total is not detrimental to the public interest.” Section 394.312.5, RSMo.

5. A concern of Staff with the Amendment is that the original TA does not provide for a mechanism for exceptions to the exclusive territories agreed to between MMU and CMEC. Unlike other territorial agreements that have been approved by the

² In its memorandum Staff refers to the amendment to the TA as “Addendum No. 1” or “Addendum.”

Commission, the original TA in this case does not include a method or procedure for exceptions like the one in the current request. Territorial agreements should contain a method of addressing exceptions on a case-by-case basis.³ An example of prior language in territorial agreements addressing exceptions on a case-by-case basis is included in Staff's recommendation.

6. Lastly, other than the notice the Commission issued, there is no indication KCP&L has notice of this new amendment to the TA although the new structure that is the genesis of the amendment is located within KCP&L's Missouri service territory and the TA does not "affect or diminish the rights and duties [of KCP&L] to provide service within the boundaries designated [in the TA]."⁴ In the case where the Commission approved the original TA, CMEC provided testimony to the Commission that KCP&L had been contacted and did not object to MMU serving certain areas outside of the municipal city boundaries. No such testimony or information was provided with this filing.

7. Neither MMU nor CMEC are required to provide annual reports or assessments to the Commission.

WHEREFORE, Staff recommends the Commission determine that the original territorial agreement between Marshall Municipal Utilities and Central Missouri Electric

³ The general rule in Missouri is that parties have the freedom to contract as they choose. *Hughes v. Davidson-Hues*, 330 S.W.3d 114, 118 (Mo. Ct. App. 2010) citing *Sanger v. Yellow Cab Co.*, 486 S.W.2d 477, 482 (Mo. banc 1972).

⁴ Section 394.312 .6 of RSMo states, "Commission approval of any territorial agreement entered into under the provisions of this section shall in no way affect or diminish the rights and duties of any supplier not a party to the agreement or of any electrical corporation authorized by law to provide service within the boundaries designated in such territorial agreement. In the event any electrical corporation which is not a party to the territorial agreement and which is subject to the jurisdiction, control and regulation of the commission under chapters 386 and 393 has heretofore sought or hereafter seeks authorization from the commission to render electric service or construct, operate and maintain electric facilities within the boundaries designated in any such territorial agreement, the commission, in making its determination regarding such requested authority, shall give no consideration or weight to the existence of any such territorial agreement and any actual rendition of retail electric service by any of the parties to such territorial agreement will not preclude the commission from granting the requested authority."

Cooperative as amended by the November 25, 2014 Amendment is, in total, not detrimental to the public interest, and approve the agreement as amended.

Respectfully submitted,

/s/ Cydney D. Mayfield

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by First Class United States Mail, postage prepaid, on this **9th day of January, 2015**, to all counsel of record.

/s/ Cydney D. Mayfield

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. EO-2015-0137 – In the Matter of the Application of Marshall
Municipal Utilities and Central Missouri Electric Cooperative, Inc. for
Approval of an Amendment to an Approved Territorial Agreement

FROM: Alan J. Bax - Tariff, Safety, Economic and Engineering Analysis

/s/ Daniel I. Beck 01/09/15 Cydney Mayfield 01/09/15
Energy Department / Date Staff Counsel’s Office / Date

SUBJECT: Staff Memorandum Recommending Approval of Joint Application

DATE: January 9, 2015

STAFF RECOMMENDATION

The Staff of the Missouri Public Service Commission (“Staff”) recommends that the Missouri Public Service Commission (“Commission”) approve the Joint Application (“Application”) of Marshall Municipal Utilities (“MMU”) and Central Missouri Electric Cooperative (“CEMC”), (collectively referenced as the “Applicants”) to revise the Applicants’ Territorial Agreement (“TA”) in accordance with their Amendment. Approval of the Amendment would authorize MMU to provide electric service to a new structure, a horse barn, built on property owned by Missouri Valley College (“MVC”). This property lies outside the city limits of Marshall, Missouri in an area exclusively served by CMEC per the terms of the TA. Staff has reviewed the Application and recommends the Commission approve it, finding that the transaction is not detrimental to the public interest pursuant to Sections 91.025 and 394.312 RSMo (2000), 4 CSR 240-2.060, and 4 CSR 240-3.130.

OVERVIEW

On November 25, 2014, the Applicants filed an Application requesting approval of their Amendment to their TA. The original TA was approved by the Commission in a *Report and Order* dated March 8, 1996, in Case No. EO-96-165. On December 1, 2014, the Commission issued an *Order* establishing an intervention date of January 2, 2015 for anyone desiring to intervene in this case and directing Staff to file a recommendation on the Application by January 9, 2015.

CMEC is a rural electric cooperative organized under Chapter 394 RSMo (2000) to provide electric service to its members in all or parts of three Missouri counties, including Saline County, in which lies the property that is the subject of the Application. Although the Commission has limited jurisdiction over rural electric cooperatives, CMEC is subject to the jurisdiction of the Commission in this case under Section 394.312 RSMo (2000).

MMU is a municipal electric utility operated under the direction of a Board of Public Works. MMU is authorized to provide electric service to customers that lie primarily within the corporate limits of the city of Marshall, Missouri as well as, in certain circumstances, structures outside these boundaries per Sections 91.020 and 386.800 RSMo (2000). MMU is subject to the jurisdiction of the Commission in this case pursuant to Section 91.025 RSMo (2000).

Neither CMEC nor MMU is required to file annual reports or pay assessment fees to the Commission. Further, neither CMEC nor MMU have pending or final unsatisfied judgments against it from any state or federal court involving customer service or rates within three years of the date of filing this Application.

DISCUSSION

In Case No. EO-96-0165, the Applicants requested and received Commission approval of a TA that designated specific areas in Saline County, Missouri in which, as between them, each provides electric service exclusive of the other. A map depicting the exclusive service area boundary of MMU, per the terms of the TA, was included in the Application and is attached hereto as ScheduleAJB-1 and incorporated herein by reference. The exclusive electric service area of MMU includes all of the several “shaded” portions illustrated on the map. The city limits of Marshall, Missouri are depicted within the “darkly” shaded region. The “brightly-colored” shaded regions lie outside the corporate limits of Marshall Missouri; however, MMU is the exclusive electric service provider in these locations as the result of territorial agreements approved by the Commission. The location of the new structure that the Applicants request to be served by MMU in the immediate case is shown on the attached map in the “red” shaded area, immediately south of an adjacent “green” shaded area in which MMU currently provides electric service to a club house and barn. All three of these structures lie on property owned by MVC. With this TA, the Applicants, in part, sought to limit the duplication of facilities necessary to provide electric service to the entire territory considered in the TA. This TA has allowed the Applicants to most efficiently and effectively utilize their respective installed facilities.

Even with the successful effect that this TA has had on system planning within the respective boundaries, exceptions can occur where an alternate course of action is more efficient and effective. Such an exception is the subject of the current Application.

MVC desired to receive electric service to a new structure, a horse barn, on their property located just outside the current corporate limits of Marshall, Missouri, on South Lincoln Avenue, in the “red” shaded area on the attached map. Immediately north of this new structure, in a “green” shaded area, MMU is currently providing service to a club house and barn owned by MVC, located at 1813 South Lincoln Avenue. MMU serves this club house and barn from a three phase meter attached to a pole, which is located near the centerline of the southern border of the aforementioned “green” shaded area. MMU plans to serve the new structure (horse barn) from this existing meter pole and thus prevent a duplication of facilities that would result if CMEC provided electric service. MMU and CMEC proceeded to discuss the possibility of allowing MMU to provide electric service to this new horse barn.

However, unlike other territorial agreements that have been approved by the Commission, the TA in this case does not include a method or procedure contemplating exceptions like the current request. Territorial agreements should contain a method of addressing exceptions on a case-by-case basis, such as the procedure attached as ScheduleAJB-2. A case-by-case procedure contemplates a process that ultimately may allow a new structure to be served by any party of a territorial agreement (MMU or CMEC in this case), despite that particular structure being located in an area to be served exclusively by the another party per the terms of the associated territorial agreement.

Despite the TA containing no such provision, the Applicants have nonetheless submitted their Amendment to the TA between MMU and CMEC, dated November 3, 2014, and attached as Appendix 3 to the Application. The Amendment is an agreement that would allow MMU to provide permanent electric service to MVC’s new horse barn

should the Commission approve it. MMU would utilize an existing meter pole in its provision of service to the new horse barn, which is of particular benefit given the prospective new load is predominantly limited to the lighting of the horse barn. Therefore, approval of this Amendment allows for the most efficient use of the available electric facilities in this area of Saline County, Missouri. The Application includes notarized statements from MMU, CMEC and MVC acknowledging that MMU is the desired electric service provider for MVC's new horse barn. No additional changes to the terms of the TA are being sought other than requesting approval of the Amendment. Despite the fact that the TA contains no provision to address such a request, Staff is recommending the Commission approve the Application as MMU can serve the new structure via a service drop as compared to CMEC, which would have to construct an extension approximately a mile in length in order to provide electric service.

CONCLUSION

For the reasons stated above, Staff is of the opinion that approval of this Application is not detrimental to the public interest pursuant to Section 394.312 RSMo (2000), 4 CSR 240-2.060 and 4 CSR 240-3.130. Therefore, Staff recommends that the Commission approve the Application of MMU and CMEC for their Amendment to their TA, which would allow MMU to provide electric service to a new structure, a horse barn, on property owned by MVC.