

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 29th day of
June, 2022.

In the Matter of the Joint Application by the City of)
Poplar Bluff, Missouri and Ozark Border Electric)
Cooperative for Approval of Minor Modifications) **File No. EO-2022-0264**
and Extension of a Territorial Agreement)
Involving Three Areas in Butler County, Missouri)

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT

Issue Date: June 29, 2022

Effective Date: July 28, 2022

This order approves a new territorial agreement between the City of Poplar Bluff, Missouri (Poplar Bluff) and Ozark Border Electric Cooperative (Ozark Border) (collectively, the Applicants) replacing the prior territorial agreement in force between them. The new agreement incorporates most of the terms of the prior agreement, but extends the relationship between the Applicants for a period of thirty years and makes minor modifications to some aspects of the prior agreement.

Procedural History

On March 30, 2022, the Applicants filed their *Joint Application*, and on March 31 the Applicants moved for a waiver of the notice requirements of 20 CSR 4240-4.017.1, pursuant to 20 CSR 4240-4.017.1(D), affirming that they had not had contact with the Commission about the subject to the application within 150 days before filing the application. On March 31, the Commission issued its Order Directing Notice, Setting Intervention Deadline, and Directing Staff Recommendation. On June 3, the Applicants filed a joint motion for leave to file an amended joint application with the new territorial agreement (styled “2022 Territorial Agreement”) attached. The Commission granted the

joint motion on June 3. On June 17, the Commission's Staff filed its *Staff Recommendation*, recommending approval of the 2022 Territorial Agreement.

Findings of Fact

1. Poplar Bluff is a municipal corporation of the State of Missouri and operates a municipally owned electric utility system known as Municipal Utilities. Municipal Utilities' principal place of business is at 1902 Sunset Drive, Poplar Bluff, Missouri. Poplar Bluff is a political subdivision of the state of Missouri and is generally not subject to regulation by the Commission, but is subject to the jurisdiction of the Commission for the purpose of seeking approval of a territorial agreement per Sections 91.025 and 394.312, RSMo.

2. Ozark Border is a rural electric cooperative organized under Chapter 394 RSMo (2020) to provide electric service to its members in all or parts of Missouri including Butler County, in which lies the designated areas that are the subject of the Application. Ozark Border's principal place of business is 3281 S. Westwood Blvd, Poplar Bluff, Missouri. Although the Commission has limited jurisdiction over rural electric cooperatives, Ozark Border is subject to the jurisdiction of the Commission for the purposes of this territorial agreement under Section 394.312 RSMo.

3. The Commission previously approved a territorial agreement between the parties for a period of twenty years under Case No. EO-98-143, which was clarified by stipulation in case number EO-2003-0452 (Prior Agreement). The Prior Agreement was extended for an additional period of five years under Case No. EO-2017-0358.

4. Subject to the approval of the Commission pursuant to Section 394.312, RSMo, the Applicants have entered into an agreement (styled "2022 Territorial Agreement") that extends their Prior Agreement for a period of thirty years and modifies their existing electric service boundaries.

5. The 2022 Territorial Agreement incorporates all of the same legal terms of the Prior Agreement, and retains a three-zone concept in which the respective rights of Poplar Bluff and Ozark Border for the provision of retail electric service to present and future structures is set forth. The 2022 Territorial Agreement makes minor modifications to the zones, changing some areas previously established as Zone 2 into Zone 1. The boundaries of Zone 3 remain unchanged.

6. No existing customers of either Poplar Bluff or Ozark Border will have their electric service changed by the proposed 2022 Territorial Agreement.

7. Neither Poplar Bluff nor Ozark Border had any communication with the Commission about the subject of the application within one hundred fifty days before filing the application.

8. No persons have sought intervention or requested a hearing, nor have the Applicants responded to Staff's Recommendation.

Conclusions of Law

A. Under Section 394.312.1, RSMo, the Commission has jurisdiction over territorial agreements between municipally owned utilities and rural electric cooperatives, thus the Applicants are subject to the Commission's jurisdiction in this case. ¹

B. Under Sections 394.312.3 and 5, RSMo, the Commission may approve the territorial agreement's service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.

¹ Section 394.312.4, RSMo, states, in relevant part: "[B]efore becoming effective, all territorial agreements entered into under the provision of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligation of any party to an agreement, shall receive the approval of the public service commission by report and order. . . ."

C. Under Section 394.312.5, RSMo, the Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing.

D. Commission Rule 20 CSR 4240-4.017.1 requires that any person intending to file a case before the Commission file notice of the intended filing at least sixty days before the case is filed. Commission Rule 20 CSR 4240-4.017.1(D) provides that the Commission may waive the sixty-day notice filing requirement for good cause, including the affirmation of the parties that they have not had contact with the Commission about the application within 150 days before filing the application.

E. Since an agreement has been reached and no hearing has been requested, none is necessary for the Commission to make a determination.²

Decision

It is the Commission's decision that the 2022 Territorial Agreement is in the public interest as a whole and is not detrimental to the public interest. The Commission will waive application of the 60-day notice requirements of Commission Rule 20 CSR 4240-4.017(A) pursuant to 20 CSR 4240-4.017(D). The Commission will approve the 2022 Territorial Agreement. In addition, the Commission finds it reasonable to make this order effective in less than thirty days to accommodate the 120-day decision requirement of Section 394.312.4, RSMo.

THE COMMISSION ORDERS THAT:

1. The 2022 Territorial Agreement, filed on June 3, 2022, is approved.

² *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

2. Poplar Bluff and Ozark Border are granted a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017.

3. Poplar Bluff and Ozark Border are authorized to perform the 2022 Territorial Agreement, and all acts and things necessary to performance.

4. This order shall be effective on July 28, 2022.

5. This file shall be closed on July 29, 2022.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeier CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Keeling, Regulatory Law Judge


STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 29th day of June, 2022.





Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

June 29, 2022

File/Case No. EO-2022-0264

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.