

In the Matter of the Joint Application of
City of Columbia, Missouri and Boone
Electric Cooperative for an order approving
the change in electric supplier for certain
customers for reasons in the public interest.

1. On July 14, 2014, the Applicants filed a *Joint Application* with the Commission requesting an order approving Applicants' *Customer Exchange Agreement*, which provides for a change in the electric supplier from Boone Electric to Columbia for twenty-nine (29) structures currently being served by Boone Electric.

2. On August 5, 2014, the Commission issued an *Order Directing Filing of Recommendation* which required that Staff file a recommendation no later than October 24, 2014.

3. Although the Commission has limited jurisdiction over rural electric cooperatives, Boone Electric is subject to the jurisdiction of the Commission in this case under Section 394.312, RSMo 2000. The City is subject to the jurisdiction of the Commission for the purpose of seeking approval for change in electric service providers per Section 91.025.2, RSMo 2000.

4. As explained in Staff's *Memorandum*, attached hereto as Appendix A and incorporated herein by reference, Staff is of the opinion that approval of this *Joint Application* is in the public interest, for reasons other than a rate differential, pursuant to Section 91.025.2 and 394.315.2, RSMo 2000, 4 CSR 240-2.060, and 4 CSR 240-3.140. The City is able to provide electric service to these structures, effectively and efficiently, which should not only improve the reliability of service to these existing structures but also enhance additional development that is currently prevented from being constructed. Moreover, the City is already currently providing other services to these structures, including water, sewage, and trash service.

5. Section 386.800.1, RSMo 2000, is relevant to this case. In part it provides:

No municipally owned electric utility may provide electric energy at retail to any structure located outside the municipality's corporate boundaries after July 11, 1991, unless:

- (1) The structure was lawfully receiving permanent service from the municipally owned electric prior to July 11, 1991; or
- (2) The service is provided pursuant to an approved territorial agreement under section 394.312;

(3) The service is provided pursuant to lawful municipal annexation and subject to the provisions of this section; or

(4) The structure is located in an area which was previously served by an electrical corporation regulated under chapter 386 and chapter 393....

Since there is no “or” between (2) and (3) the statute could be read to require that both annexation and a territorial agreement are required to meet the exception from a municipality being unable to lawfully provide service to structures outside its corporate boundaries after July 11, 1991. However, Section 386.800 is a part of Senate Bill 221 passed into law in 1991. That senate bill includes what is codified in statute as Sections 91.025 and 394.315, RSMo 2000. Both include annexation and territorial agreements as independent exceptions:

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.

Section 91.025.2, RSMo 2000.

“Once a rural electric cooperative, 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 and section 394.080 , or pursuant to a territorial agreement approved under section 394.312.

Section 394.315.1(2), RSMo 2000. Therefore, the better construction of Section 386.800.1, RSMo 2000, is that municipal annexation and territorial agreements are independent means by which a municipality may extend its authority to provide electric utility service.

6. Neither Boone Electric nor the City is required to file annual reports or pay assessment fees to the Commission. Further, the Applicants have no pending or final unsatisfied judgments against them from any state or federal court involving customer service or rates within three years of the date of filing this *Joint Application*.

WHEREFORE, Staff recommends that the Commission grant the City of Columbia's and Boone Electric Cooperative's Application, find that their Customer Exchange Agreement to transfer electric service to twenty-nine (29) structures from Boone Electric Cooperative to the City of Columbia is in the public interest for reasons other than a rate differential, and order that the electric service to those structures be changed from Boone Electric Cooperative to the City of Columbia.

Respectfully submitted,

/s/ Nathan Williams

Nathan Williams
Deputy Staff Counsel
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed with first-class postage, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 24th day of October, 2014.

/s/ Nathan Williams

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. EO-2015-0012 – In the Matter of the Joint Application of the
City of Columbia, Missouri and Boone Electric Cooperative for Approval
of a Change in Electric Suppliers for Certain Customers for Reasons in the
Public Interest

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

<u>/s/ Daniel I. Beck 10/24/14</u> Engineering Analysis / Date	<u>/s/ Nathan Williams 10/24/14</u> Staff Counsel's Office / Date
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SUBJECT: Staff Memorandum To Recommend A Grant of Joint Application

DATE: October 24, 2014

STAFF RECOMMENDATION

The Staff of the Missouri Public Service Commission (“Staff”) recommends that the Missouri Public Service Commission (“Commission”) grant the Joint Application (“Application”) of the City of Columbia, Missouri (“City”) and Boone Electric Cooperative (“Boone Electric”), collectively referenced as the (“Applicants”), finding that the requested change in electric service providers to certain customers from Boone Electric to the City, is in the public interest for reasons other than a rate differential, pursuant to Section 91.025.2 and 394.315.2 RSMo (2000), 4 CSR 240-2.060, and 4 CSR 240-3.140, and order that the electric service to the structures of those customers be changed from Boone Electric to the City.

OVERVIEW

On July 14, 2014, the Applicants filed their Application requesting approval of a “Customer Exchange Agreement” that would allow the City to provide electric service to twenty-nine structures currently receiving electric service from Boone Electric. The reasons cited for seeking a change in electric suppliers include the age of the existing distribution line utilized by Boone Electric in its provision of service, the difficulty in accessing the properties to perform maintenance and/or repair, and enhancing private development in the area.

On July 15, 2014, the Commission issued an *Order Directing Filing* directing Staff to file suggestions regarding the contents of a customer notice, when such notice should be sent to those affected by the Application and how such notice should be delivered. In addition, Staff was to provide a date in which it would file its recommendation. Staff filed its response to this *Order* on July 25, 2014.

In two separate *Orders* issued on August 5, 2014, the Commission approved Staff's request to file its recommendation by October 24, 2014, and directed the Applicants to file a draft notice that contained the information previously suggested by Staff and provide an updated list of customers and/or property owners that would receive this notice.

The Applicants filed this information on August 13, 2014, and the Commission issued an *Order Directing Customer Notice* accepting the Applicants' draft notice and directing its issuance the same day. This *Order Directing Customer Notice* also directed the Applicants to inform the Commission when this notice was mailed to the updated list of customers/property owners. The Applicants filed such concurrence on August 19, 2014. Although the notice invited affected customers to intervene in the case, no one has filed to seek intervention.

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

The City is a municipal electric utility authorized to provide electric service to customers that lie primarily within its corporate limits as well as, in certain circumstances, structures outside these boundaries per Section 91.025, RSMo (2000). The City is subject to the jurisdiction of the Commission for the purpose of seeking approval for change in electric service providers per Section 91.025.2, RSMo (2000).

Neither Boone Electric nor the City is required to file annual reports or pay assessment fees to the Commission. Further, neither Boone Electric nor the City 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

Boone Electric has provided electric service to the twenty-nine structures that are the subject of this Application since the 1960s. Boone Electric maintained its service to these twenty-nine structures although these structures are in an area designated as the exclusive service area of the City per the terms of a Territorial Agreement (“TA”), an agreement sought by the Applicants in Case No. OA-89-130 and approved by the Commission in a *Report and Order* dated March 28, 1989. With these structures located within an area designated to be exclusively served by the City, any new structures that have been built in the immediate vicinity of these twenty-nine structures since 1989 have been served by the City. These twenty-nine structures are effectively surrounded by properties receiving electric service from the City. Boone Electric’s service to these twenty-nine structures has been hampered by increased difficulty in accessing the structures for maintenance and/or repairs. The heightened difficulty in accessing these structures is reflected in statistics provided to Staff by Boone Electric’s Response to Staff Data Request No. 2. Boone Electric members in this area in recent years have experienced longer outage duration periods as compared to Boone Electric’s system average.

Also reflected in the statistics provided to Staff are a greater number of outages occurring in recent years in this area as compared to Boone Electric’s system average. These twenty-nine structures are mainly served via a single lateral distribution line originally installed in the 1960s. This line needs to be upgraded, including possibly having new conductors installed, in order for Boone Electric to improve/sustain reliable service. The location of this distribution line is also delaying/preventing new development that would otherwise be constructed.

Approval of this Application would allow the City to provide electrical service from more conveniently located facilities, which are more than capable of providing service to these twenty-nine structures, as well as any new prospective development, economically and efficiently. The City is currently providing other services to these

structures, including water, sewage and trash service. In its Response to Staff Data Request No. 1, Boone Electric provided to Staff the equipment that is being transferred to the City, which includes the service lines to the twenty-nine structures that will be used initially by the City in its provision of electric service.

Included in the Application as Attachment 1 were the addresses of the twenty-nine affected structures along with the names of those who were currently being billed by Boone Electric for its electric service, referred to by Boone Electric as its members. In Attachment 2 of the Application, Boone Electric included consent forms from twenty-five of these twenty-nine members. Many of the consent forms were dated eighteen months ago or longer. A few of these consents were signed by tenants of a particular property who may no longer be renting the property. Furthermore, Boone Electric did not attempt to notify property owners of its intention to seek a change in its electric service, opting only to approach the particular existing tenants. Boone Electric provided to the Commission a revised list that included property owners as well as current tenants and delivered a new notification informing those affected that an Application had been filed with the Commission requesting to change their electric service provider to the City, as well as methods of contacting the Commission if so desired.

To date, no one has sought to intervene, but there have been two public comments received regarding the Application from affected property owners. One of the aforementioned public comments mentions that their property is not currently within the city limits. Although the Application mentions several times that the twenty-nine structures lie within the corporate boundaries of the City of Columbia, there are seven of the twenty-nine structures that lie on properties that are not incorporated. However, per the terms of the TA, all twenty-nine structures do lie within the area designated as being in the exclusive service territory of the City of Columbia.

Staff has also been contacted by a developer who says that the existing distribution line was inhibiting the progress of his new development. The Applicants mentioned in their filing that there were currently five developments on existing lots being delayed because continuing with the development would cause clearance issues regarding their distribution line, in violation of National Electric Safety Code ("NESC").

The Application includes a Resolution approved by Boone Electric's Board of Directors and an Ordinance passed by the City Council acknowledging the Applicants' intention to seek approval of the Customer Exchange Agreement with the Commission and the transfer of electric service of the twenty-nine structures to the City. The Applicants have notified all affected customers; however, all those affected have not provided their consent. However, it is not necessary for all affected customers to provide their consent in order to seek this request nor is it necessary in advance for the Commission to approve the Application.

CONCLUSION

For the reasons stated above, Staff is of the opinion that changing the electric service provider to the twenty-nine structures listed in the Application from Boone Electric to the City, as requested by this Application, is in the public interest for reasons other than a rate differential, pursuant to Section 91.025.2 and 394.315.2 RSMo (2000), 4 CSR 240-2.060, and 4 CSR 240-3.140. Therefore, Staff recommends that the Commission order that the electric service provider to the twenty-nine structures listed in the Application be changed from Boone Electric Cooperative to the City. The City is able to provide electric service to these structures, effectively and efficiently, which should not only improve the reliability of service to these existing structures but also enhance additional development that is currently prevented from being constructed.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Joint Application of City)
of Columbia, Missouri and Boone Electric)
Cooperative for an Order Approving the)
Change in Electric Supplier for Certain)
Customers for Reasons in the Public Interest)

Case No. EO-2015-0012

AFFIDAVIT OF ALAN J. BAX

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Alan J. Bax, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was given by him; that he has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of his knowledge and belief.



Alan J. Bax

Subscribed and sworn to before me this 24th day of October, 2014.



Notary Public