

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
At a session of the Public Service
Commission held at its office in
Jefferson City on the 6th day of
May, 2009.

BEFORE THE
PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In The Matter Of the Application of Laclede)
Electric Cooperative and the City Of Waynesville,)
Missouri For Approval Of A Written Territorial) File No. EO-2009-0314
Agreement Designating the Boundaries of Each)
Electric Service Supplier within A Portion of The)
City Of Waynesville, Pulaski County, Missouri)

Report and Order¹ Approving Territorial Agreement

Issue Date: May 6, 2009

Effective Date: May 16, 2009

The Missouri Public Service Commission is granting the Joint Application for approval of a territorial agreement between Laclede Electric Cooperative and the City of Waynesville, Missouri.

Procedure

On March 4, 2009, the City of Waynesville, Missouri, ("the City") and Laclede Electric Cooperative ("the Cooperative") filed the Joint Application ("application"), including the territorial agreement signed by the Cooperative and the City, with a legal

¹ A "report and order" is the document by which the Commission grants approval of any territorial agreement between electrical suppliers. Section 394.312.4. All sections are in the 2008 Supplement to the 2000 Revised Statutes of Missouri.

description of the territory at issue (“territory”) by metes and bounds,² and a supporting affidavit.

On March 9, 2009, the Commission gave notice of the application and allowed the filing of motions to intervene³ through April 6, 2009. As of the date of this report and order, no person has filed such motion. On April 27, 2009, the Commission’s staff (“Staff”) filed its recommendation, with a supporting affidavit, in favor of the application.

Because all parties agree to the approval of the application, the Commission deems them to have agreed to waive any hearing.⁴ The Commission also waives its right to convene a hearing on its own motion.⁵ The Commission relies on the verified application and verified Staff recommendation for its findings of fact.⁶

Findings of Fact

1. The City is a city of the third class in Pulaski County. The City owns, operates, and maintains a municipal utility. The City’s population is greater than 1,500 persons.⁷

2. The Cooperative is a rural electrical cooperative organized under the provisions of Chapter 394, RSMo. It serves persons in parts of Pulaski County.

² Section 394.312.2 requires the agreement to specify “the boundaries of the electric service area of each electric service supplier subject to the agreement[.]” Those boundaries appear in the application, part 1, paragraph A, pages 2 through 9.

³ As § 394.312.4 requires.

⁴ Sections 536.060, RSMo 2000, and 394.312.5.

⁵ Section 394.312.9.

⁶ *Rex Deffenderfer Ent., Inc. v. Public Serv. Com’n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

⁷ We imply that finding from Staff’s evidence that the City’s population was 3,507 persons in 2000. Staff Recommendation, Appendix A, page 2, line 4. The Commission also takes notice of the **Official Manual of the State of Missouri 2007-2008**, page 891, which estimates the City’s population as 3,511 in 2005 and 3,626 in 2006. Section 536.070(6), RSMo 2000; *Amos v. City of Noel*, 276 S.W.3d 355, 356, fn. 3 (Mo. App., S.D. 2009).

3. The Cooperative's supply area includes the territory. The territory has been subject to annexation into the City in part, and the remaining part is subject to likely annexation in the future. The City lacks the substation and distribution facilities to serve the territory but the Cooperative has such facilities.

4. The agreement provides that the Cooperative may supply electricity to the territory. Thus, the agreement allows the City and Cooperative to make better use of their respective capital resources and decrease the chances for duplicating facilities in the future. The agreement also allows residents of the area to know with certainty which electrical supplier is theirs.

5. The agreement requires no customer to change supplier.

6. Within three years of the date of the application, neither the City nor the Cooperative has been the subject of any pending action, or final unsatisfied judgment or decision against it, from any state or federal agency or court involving customer service or rates.

7. Neither the City nor the Cooperative is overdue for any annual report or annual assessment fees due the Commission.

Conclusions of Law

The application is subject to the Commission's jurisdiction because:

[B]efore becoming effective, all territorial agreements entered into under the provisions of this section . . . shall receive the approval of the public service commission[.⁸]

Such approval is at issue because of past and future annexations of the Cooperative's supply area into the City.

⁸ Section 394.312.4.

Section 394.315 provides that the Cooperative may continue supplying its customers as follows:

Once a rural electric cooperative . . . 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, RSMo,^[9] and section 394.080,¹⁰ or pursuant to a territorial agreement approved under section 394.312. ^[11]

Further, a rural electrical cooperative's purpose is statutorily determined as:

. . . supplying electric energy and promoting and extending the use thereof in rural areas^[, 12]

which cannot be within:

. . . the boundaries of any city . . . having a population in excess of fifteen hundred inhabitants^[. 13]

More than 1,500 persons inhabit the City, so the part of the territory within the City is not a rural area to which the cooperative may ordinarily supply electricity.

Among the statutory resolutions of those issues is a territorial agreement, the purpose of which is to provide that:

Competition to provide retail electric service, as between rural electric cooperatives, electrical corporations and municipally owned utilities may be displaced by written territorial agreements, but only to the extent hereinafter provided for in this section.^[14]

⁹ That statute provides for negotiation of a territorial agreement under subsection 4 or, in the alternative, City displacement of the Cooperative under subsection 6.

¹⁰ That statute provides for the City to purchase the Cooperative's facilities under subdivision 1(4) or, in the alternative, the City's grant of a franchise to the Cooperative under subdivision 2(2).

¹¹ Section 394.315.2, RSMo 2000.

¹² Section 394.030.

¹³ Section 394.020(3), RSMo 2000.

¹⁴ Section 394.312.1.

That section provides two substantive standards relevant to the application.

First, the nature of the parties requires provisions spelling out any provisions for the Cooperative to operate in the City and the City to operate outside its boundaries:

Such territorial agreements shall specifically designate . . . any and all powers granted to a rural electric cooperative by a municipality, pursuant to the agreement, to operate within the corporate boundaries of that municipality, notwithstanding the provisions of section 394.020 and of section 394.080 to the contrary, and any and all powers granted to a municipally owned utility, pursuant to the agreement, to operate in areas beyond the corporate municipal boundaries of its municipality.^[15]

Only the former is at issue because the City is granting the Cooperative the right to supply locations within the City's boundaries. The agreement meets that requirement because it provides the specific designation required.

Second, all territorial agreements are subject to the following standard:

The commission may approve the application if it determines that approval of the territorial agreement in total is not detrimental to the public interest. ^[16]

The public interest includes factors related to "efficient facilities and substantial justice between patrons and public utilities[.]"¹⁷ Those considerations will suffer no detriment from approval of the territorial agreement in total for the following reasons. As to efficient facilities, the Cooperative will continue serving the parts of the territory that it has historically, and for which it has the facilities in place, and the City does not. As to substantial justice between patrons and the utilities, current and future customers will have certainty as to who their supplier will be. Therefore, approval of the agreement in total is not detrimental to the public interest.

¹⁵ Section 394.312.2.

¹⁶ Section 394.312.5.

THE COMMISSION ORDERS THAT:

1. The Joint Application for approval of the territorial agreement that the City of Waynesville, Missouri, and Laclede Electric Cooperative filed with the Commission on March 4, 2009, is granted.
2. This report and order is effective on May 16, 2009.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Clayton, Chm., Murray, Davis, Jarrett,
and Gunn, CC., concur.

Jordan, Regulatory Law Judge

¹⁷ Section 386.610, RSMo 2000.