

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

In the Matter of the Application of Howard Electric )  
Cooperative and the City of Fayette, Missouri for an )  
Order Approving a Territorial Agreement Within a ) **File No. EO-2024-0247**  
Portion of Howard County Missouri )

**STAFF RECOMMENDATION**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), and submits its recommendation that the Missouri Public Service Commission (“Commission”) approve the Joint Application, as filed March 11, 2024, of Howard Electric Cooperative (Howard) and the City of Fayette, Missouri (Fayette)<sup>1</sup>, requesting approval of their Territorial Agreement (“The Agreement”). The Joint Applicants also requested a variance per 20 CSR 4240-4.017(1)(D) and expedited treatment per 20 CSR 4240-2.080(14). Staff recommends the Commission find that the transaction is not detrimental to the public interest, pursuant to Sections 394.312 and 416.041, RSMo, as well as Commission rules 20 CSR 4240-2.060 and 20 CSR 4240-3.130. Staff recommends a waiver of 20 CSR 4240-4.017(1)(D) and approval of The Agreement.

1. The Agreement designates the boundaries of exclusive electric service areas<sup>2</sup> for both Howard and Fayette, within Howard County – specifically in and around the City of Fayette. Portions of these service areas may have been, or may in the future be, annexed into the City of Fayette. The Agreement does not require transfer of any

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<sup>1</sup> Howard Electric Cooperative (Howard) and the City of Fayette, Missouri (Fayette) may be referred to together as “joint applicants”.

<sup>2</sup> Respective service areas are identified and described in Appendix A to the Joint Application, as filed March 11, 2024.

facilities or customers between the joint applicants and allows each joint applicant to continue providing service to all existing structures they are already providing service to as of the effective date of The Agreement. The joint applicants are in agreement on these points.

2. Howard is organized under Chapter 394 RSMo to provide electric service to its members located in all or parts of four Missouri counties, including Howard County. Although the Commission has limited jurisdiction over rural electric cooperatives, Howard is subject to the jurisdiction of the Commission under Section 394.312(5), RSMo.<sup>3</sup> As a rural electric cooperative, the Commission does not require Howard to file annual reports or assessment fees. Further, Staff is not aware of any pending or final unsatisfied decisions against Howard from any state or federal court involving customer service or rates within three years of the date of filing this Joint Application.

3. Fayette is a political subdivision of the 4th Class organized under the laws of the State of Missouri. Fayette owns, operates and maintains an electric distribution system within its city limits and primarily serves the residents located within the city limits. Staff is not aware of any other matter before the Commission that affects, or is affected by, this filing.

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<sup>3</sup> Section 394.312(5) states, in relevant part, that “The commission shall hold evidentiary hearings to determine whether such territorial agreements should be approved or disapproved, except that in those instances where the matter is resolved by a stipulation and agreement submitted to the commission by all the parties such hearings may be waived by agreement of the parties. The commission may approve the application if it determines that approval of the territorial agreement in total is not detrimental to the public interest.”

4. Staff is filing its Official Case File Memorandum with this recommendation. The Joint Applicants have paid the necessary \$500.00 filing fee as required by 20 CSR 4240-3.130(3). Based on its investigations and findings, Staff recommends that the Commission approve The Agreement. The application contains the verified declarations requisite for waiver of 20 CSR 4240-4.017(1)(D). Staff recommends waiver of the 60-day notice rule.

**WHEREFORE,** Staff respectfully submits this recommendation that the Commission issue an order approving The Agreement granting the requested waiver of 20 CSR 4240-4.017(1)(D), and for such further orders as the Commission deems appropriate.

Respectfully submitted,

**/s/ Tracy D. Johnson**

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Missouri Public Service Commission

**CERTIFICATE OF SERVICE**

The undersigned by their signature below certifies that the foregoing pleading was served upon all counsel of record on this May 1, 2024, by electronic filing in EFIS, electronic mail, hand-delivery, or U.S. postage prepaid.

**/s/ Tracy D. Johnson**



pursuant to Sections 394.312 and 416.041 RSMo (2021). The Joint Application meets the filing requirements contained in 20 CSR 4240-2.060 and 20 CSR 4240-3.130. Staff also recommends approving the Joint Applicants' waiver request regarding 20 CSR 4240-4.017. Staff notes it is not aware of any other item before the Commission that would affect, or be affected by, this Joint Application.

### **OVERVIEW**

On March 11, 2024, 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 an area in Howard County, Missouri, identified in the First TA as "Tract A" that lies both within and outside the city limits of Fayette, Missouri. "Tract A" would be the exclusive service territory of Howard, as between the Joint Applicants, should the Commission approve this Joint Application. Reasons mentioned by the Joint Applicants in pursuing Commission approval of their First TA include preventing future duplication of electrical facilities, and allowing both Howard and Fayette to make the most efficient use of the past investments made to their respective electrical systems.

Howard is a rural electric cooperative organized under Chapter 394 RSMo (2021) to provide electric service to its members in all or parts of four Missouri counties, including Howard County, in which lies the area that is the subject of the Joint Application. The Commission has limited jurisdiction over cooperatives. For the purposes of this case, Howard is subject to the jurisdiction of the Commission under Section 394.312 RSMo (2021).

Fayette is a political subdivision of the 4<sup>th</sup> Class organized under the laws of the State of Missouri. Fayette owns, operates and maintains an electric distribution system within its city limits and primarily serves the residents located within the city limits.

### **DISCUSSION**

Howard and Fayette filed their Joint Application on March 11, 2024. It included the Joint Applicants' First TA, which involves a single tract that lies both inside and outside the current boundaries of the City of Fayette, Missouri, identified as "Tract A" and illustrated in Exhibit 1 attached to the First TA. A detailed legal description is included in Section 1A-(1) of the First TA. Described as being located in Township 50 North – Range 16 West, the Joint Applicants state there are no other known electric service providers in the immediate area.<sup>1</sup> The First TA does not consider an exchange of any customers nor sale/exchange of utility assets. The Joint Applicants have paid the necessary \$500.00 filing fee as required by 20 CSR 4240-3.130(3).

The Joint Applicants request expedited treatment in regard to obtaining Commission approval of their First TA. As a consequence, the Joint Applicants have requested a waiver from the requirement contained in 20 CSR 4240-4.017 of providing a sixty-day notice of their intended filing to the Secretary of the Commission. In support of this request for waiver, the Joint Applicants both attest to having "good cause", citing that they had no communications<sup>2</sup> within 150 days with the Commission regarding any

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<sup>1</sup> However, Staff notes that "Tract A" and the immediate surrounding area does lie within the certificated area of the Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") as reflected in its tariff (P.S.C. MO. SCHEDULE NO. 6 – SCHEDULE OF RATES FOR ELECTRICITY – Original Sheet No. 19). Nonetheless, approval of the First TA will not diminish, have any affect, on Ameren Missouri's rights to serve in the immediate area (Section 1B of First TA).

<sup>2</sup> As defined in 20 CSR 4240 – 4.015(10).

substantive issue likely to be part of the pending case, as allowed in 20 CSR 4240-4.017(1)(D).

Included in the First TA were approvals of pursuing and consummating this transaction from Howard's Board of Directors and the Mayor of the City of Fayette. In addition, an approval of a necessary franchise agreement between Fayette and Howard is included that allows Howard to serve new structures installed in Tract A on parcels that may be annexed into the city limits.

Section 8 of the First TA, entitled "Case-by-Case Exception Procedure", would allow new structures to be served by either Howard or Fayette despite the particular structure being located in the exclusive service area of the other per the designations reflected in the First TA. Should such a situation arise, an amendment would be filed with the Commission requiring its approval.<sup>3</sup> Such amendments would need to include certain justifications and acknowledgements as stipulated within this Section.

Staff would agree with the Joint Applicants' assertions that the First TA would not be detrimental to the public interest, as required by Statute 394.315 RSMo (2021) and 20 CSR 4240-3.130. As indicated in the First TA, this should promote the orderly development of retail electric service in a portion of the City of Fayette and Howard County, Missouri. In addition, an unnecessary duplication of facilities should be avoided, as it will allow the Joint Applicants to make the most effective use of respective prior investments and enhance future planning of their electric systems.

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<sup>3</sup> Section 8B of the First TA



### **CONCLUSION**

For the aforementioned reasons, Staff recommends that the Commission approve the Joint Application, concluding that the First TA between Howard and Fayette, concerning a specific tract identified in Exhibit 1 attached to the First TA as “Tract A”, is not detrimental to the public interest pursuant to Sections 394.312 and 416.041 RSMo (2021). 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 Howard and Fayette to most effectively use historic investments made to their respective systems in this area of Howard County, Missouri. This should also reduce and/or avoid an unnecessary duplication of facilities as the Joint Applicants plan for the future.

