

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 16th
day of August, 2017.

In the Matter of the Joint Application for)
Extension of the City of Poplar Bluff, Missouri)
And Ozark Border Electric Cooperative for)
Approval of a Territorial Agreement Involving)
Three Areas in Butler County, Missouri)

File No. EO-2017-0358

**REPORT AND ORDER APPROVING AMENDMENT TO
TERRITORIAL AGREEMENT AND APPROVING STIPULATION AND AGREEMENT**

Issue Date: August 16, 2017

Effective Date: August 26, 2017

This decision approves the amendment to the territorial agreement between the City of Poplar Bluff, operating through its Municipal Utilities, and Ozark Border Electric Cooperative (collectively, "Applicants"). The amendment extends by five years the previously approved territorial agreement. This order also approves the *Unanimous Stipulation and Agreement* entered into by the parties.

Findings of Fact

On June 30, 2017, the Applicants filed a joint application with the Commission for approval of an extension of their previously approved territorial agreement.¹ The Applicants proposed to amend their existing territorial agreement by extending it for an additional five-year term. The Applicants stated that approval of the amendment to the

¹ *In the Matter of the Joint Application of the City of Poplar Bluff, Missouri, and Ozark Border Electric Cooperative for Approval of a Territorial Agreement Involving Three Areas in Butler County, Missouri*, File No. EO-98-143 (*Report and Order*, issued Dec. 31, 1997).

territorial agreement would not change any of the other terms or conditions of the territorial agreement.

On August 10, 2017, the Applicants along with the Staff of the Missouri Public Service Commission (Staff) and the Office of the Public Counsel filed a *Unanimous Stipulation and Agreement*. The agreement resolved all issues in this matter and waived the parties' rights to a hearing in accordance with Section 394.312.5, RSMo.² The agreement further indicates that the proposed territorial agreement extension is not detrimental to the public interest and is, in fact, in the public interest because it establishes certainty regarding the provision of retail service within the designated areas, reducing potential disputes between the Applicants.

No other electric utilities currently serve the specific areas sought to be designated by the Applicants. According to the *Unanimous Stipulation and Agreement*, the proposed extension of the territorial agreement also incorporates the terms of the *Stipulation and Agreement* filed on July 1, 2004, in File No. EC-2003-0452.

Based on the information contained in the verified joint application, previous findings of the Commission approving the terms of the territorial agreement, and the *Unanimous Stipulation and Agreement*, the Commission finds that the proposed amendment by extension of the territorial agreement is in the public interest.

Conclusions of Law

Section 394.312, RSMo, gives the Commission jurisdiction over electric service territorial agreements, including any subsequent amendment to such agreement, between rural electric cooperatives and municipally owned utilities. Under Section

² All citations to the Revised Statutes of Missouri 2016 unless otherwise noted.

394.312.3, RSMo, the Commission may approve such amended territorial agreement if the agreement in total is in the public interest. As the Commission found in its findings of fact, the territorial agreement is in the public interest.

Although Section 394.312.5 RSMo, provides that the Commission is to hold an evidentiary hearing to determine whether a territorial agreement is to be approved, no party has requested a hearing. The requirement for a hearing is met when the opportunity for a hearing is provided and no proper party requests the opportunity to present evidence.³ Notice was given and the parties waived their rights to a hearing. Therefore, no hearing is necessary.

Decision

Based on its findings of fact and conclusions of law, the Commission determines that the submitted amendment to the territorial agreement between the Applicants is in the public interest and shall be approved.

THE COMMISSION ORDERS THAT:

1. The *Unanimous Stipulation and Agreement* filed on August 10, 2017 and attached as Attachment 1 is approved, including the incorporation of the terms of the *Stipulation and Agreement* filed on July 1, 2004, in File No. EC-2003-0452.
2. The amendment of the previously approved territorial agreement between the City of Poplar Bluff, operating through its Municipal Utilities, and Ozark Border Electric Cooperative extending for five years the designation of exclusive service territories in Butler County, Missouri is approved.

³ *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

3. This order shall become effective on August 26, 2017.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
Rupp, and Coleman, CC., concur.

Dippell, Senior Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the matter of the Joint Application for)
Extension of the City of Poplar Bluff,)
Missouri and Ozark Border Electric) Case No. EO-2017-0358
Cooperative for approval of a territorial)
agreement involving three areas in)
Butler County, Missouri.)

UNANIMOUS STIPULATION AND AGREEMENT

COME NOW the undersigned Parties¹ to this proceeding, and for their Unanimous Stipulation and Agreement ("Stipulation and Agreement"), respectfully state as follows:

I. Procedural History

1. On August 22, 1997, the City of Poplar Bluff, Missouri, operating through its Municipal Utilities ("City"), and Ozark Border Electric Cooperative ("Ozark Border" or "Cooperative"), entered into a Territorial Agreement that specifically designates the boundaries of the electric service areas of City and Cooperative in three (3) areas in Butler County, Missouri. The Territorial Agreement contains provisions applicable to three (3) Zones in which the respective rights of the City and Cooperative relative to the provision of retail electrical service to present and future structures are set out. This Territorial Agreement was approved by the Missouri Public Service Commission ("Commission") in Case No. EO-98-143, and expires on August 17, 2017.

2. On June 30, 2017, the City and Cooperative filed with the Commission a Joint Application for Extension for a five (5) year extension of the duration of the Territorial Agreement.

¹ Collectively, the City of Poplar Bluff, Missouri, operating through its Municipal Utilities ("City"); the Ozark Border Electric Cooperative ("Ozark Border" or "Cooperative"); the Missouri Public Service Commission Staff ("Staff"); and the Office of the Public Counsel ("OPC").

3. On July 5, 2017, the Commission issued its Order Directing Notice, which, inter alia: a) established July 20, 2017, as the filing deadline for applications to intervene in this docket; and b) stated that the Commission Staff ("Staff") shall file a recommendation on the Joint Application for Extension in this docket by July 20, 2017.

4. The Staff submitted Data Requests to the City and the Cooperative. On July 19, 2017, the Staff filed a Staff Motion for Extension of Time to File Recommendation to August 10, 2017.

5. No applications for intervention were received by the July 20, 2017 deadline and the City and Cooperative quickly responded to the Data Requests from the Staff. On July 20, 2017, the Commission issued an Order Granting Extension of Time to Staff to August 10, 2017, to file its recommendation or to join in a unanimous stipulation and agreement in lieu of such a recommendation.

II. The Parties Stipulate and Agree as Follows:

6. The Staff, OPC, City and Cooperative, having reviewed the Joint Application for Extension and associated Territorial Agreement, and having considered the positions of the Parties on the issues raised by them, have entered into this Stipulation and Agreement.

7. There are no other electric utilities that serve in the affected areas (Butler County, including Poplar Bluff) other than the Cooperative and City. Union Electric Co. d/b/a AmerenUE provided retail service in Poplar Bluff and other portions of Butler County until it entered into territorial agreements with Poplar Bluff in 1994 in Case No. EM-94-90 and with the Cooperative in 1999 in Case No. EO-99-599. (4 CSR 240-3.130(1)(B))

8. The Staff, OPC, City and Cooperative further assert and state that the Extended Territorial Agreement incorporates the terms of the Stipulation and Agreement filed on July 1, 2004, in Case No. EO-2003-0452.

9. The Cooperative, City, OPC and Staff agree that the proposed five (5) year extension of the Commission's approval of the August 22, 1997 Territorial Agreement, as clarified by the Stipulation and Agreement filed on July 1, 2004 in total is: (a) not detrimental to the public interest and (b) in the public interest because it establishes certainty regarding the provision of retail service within the designated areas and thus is designed to reduce future potential disputes between City and Cooperative. The Staff continues to take the position as it did in the initial Territorial Agreement proceeding, Case No. EO-98-143, that this territorial agreement will reduce future duplication of facilities, allow both suppliers to plan their distribution systems in a rational manner, and reduce future potential disputes between the two suppliers over the provision of electric service. (§§394.312.3 and .5, RSMo., and 4 CSR 240-3.130(1)(D))

10. The Cooperative and City have been discussing the Territorial Agreement for the better part of two years. There was no agreement, on either side, for an agreement of indeterminate length. The five (5) year extension was agreed upon to give both parties additional time in which to hold further discussions regarding a longer term agreement. The Cooperative and City state there has been a lot of new construction in Butler County, both inside the City Limits and inside the Cooperative's area. It is their mutual belief that a short extension of the current agreement is better for the public than no agreement at all. (§§394.312.3 and .5, RSMo., and 4 CSR 240-3.130(1)(D)).

11. By agreement of the Cooperative, City, OPC, and Staff, evidentiary hearings are waived. (§394.312.5, RSMo.)

12. Any amendment, including rescission, of the Extended Territorial Agreement requires the approval of the Commission, pursuant to §394.312.4, RSMo.

III. General Matters

13. This Stipulation and Agreement shall be binding upon the successors and assigns of the Cooperative and City.

14. This Stipulation and Agreement has resulted from negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation and Agreement in total, then this Stipulation and Agreement shall be void, and no signatory shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the signatories to take other positions in other proceedings.

15. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the Parties waive, with respect to the issues resolved herein; their respective rights, pursuant to §536.080 RSMo., to present testimony, to cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2 RSMo.; their respective rights to seek rehearing pursuant to §386.500 RSMo.; and their respective rights to seek judicial review pursuant to §386.510 RSMo. The Parties agree to cooperate with each other in presenting for approval to the Commission this Stipulation and Agreement, and will take no action, direct or indirect, in opposition to the request for approval of this Stipulation and Agreement.

16. Staff shall have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties with advance notice as to when the Staff shall respond

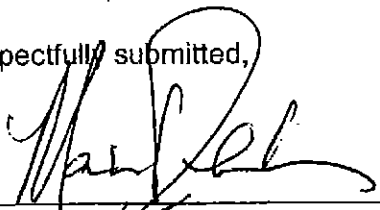
to the Commission's request for such explanation once such explanation is requested from Staff. The Staff's oral explanation shall be subject to public disclosure.

17. In the event the Commission fails to approve the Extended Territorial Agreement in Case No. EO-2017-0358, this Stipulation and Agreement shall be null and void and no signatory shall be bound by any of the agreements or provisions hereof.

WHEREFORE, the Parties respectfully request the Commission to issue an Order in Case No. EO-2017-0358:

- A. Approving all of the terms and conditions of this Stipulation and Agreement;
- B. Finding that pursuant to §§394.312 and 393.800, RSMo., the Extended Territorial Agreement, which incorporates the terms of the Stipulation and Agreement filed on July 1, 2004, in Case No. EO-2003-0452, is not detrimental to the public interest and is in the public interest, and therefore approving the Extended Territorial Agreement to run through August 17, 2022;
- C. Authorizing City and Cooperative to perform in accordance with the terms and conditions of the Extended Territorial Agreement;

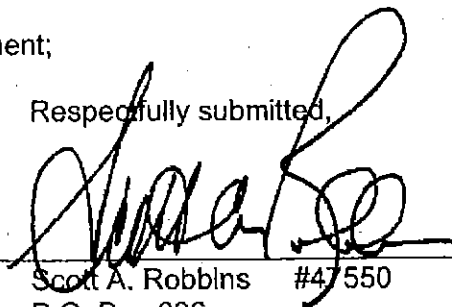
Respectfully submitted,



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Respectfully submitted,



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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 16th day of August 2017.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

August 16, 2017

File/Case No. EO-2017-0358

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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.