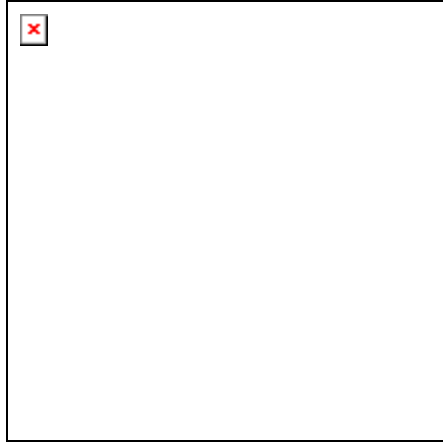


BEFORE THE PUBLIC SERVICE COMMISSION



OF THE STATE OF MISSOURI

In the Matter of the Joint Application of)
Kansas City Power & Light Company and the)
City of Marshall for an Order Approving a)
territorial agreement.)

Case No. EO-2001-240

REPORT AND ORDER

Issue Date:

January 23, 2001

Effective Date:

February 2, 2001

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APPEARANCES

Michael A. Rump, Attorney, Kansas City Power & Light Company, 1201 Walnut, Post Office Box 418679, Kansas City, Missouri 64141-8679, for Kansas City Power & Light Company.

George S. Huff, Huff & Huff, 78 South Jefferson Avenue, Marshall, Missouri 65340, for the City of Marshall, Missouri.

John B. Coffman, Deputy Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Dennis L. Frey, Assistant General Counsel, and **Eric William Anderson**, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Vicky Ruth.

REPORT AND ORDER

Procedural History

Kansas City Power & Light Company (KCPL) and the City of Marshall (City) filed a joint application on October 11, 2000, asking the Public Service Commission (Commission) to approve a territorial agreement pursuant to Sections 386.800, 393.106, and 394.312, RSMo. The proposed territorial agreement is attached to this Report and Order as Attachment A. [\[1\]](#)

The Commission issued an Order and Notice on October 27, 2000,

directing parties wishing to intervene in the case to do so by November 16, 2000. No applications to intervene were filed. The parties filed a proposed procedural schedule on November 27, 2000. On November 29, 2000, the Commission issued an Order Adopting Procedural Schedule. That order provided that a hearing would be held on January 2, 2001.

On December 22, 2000, KCPL, City, the Office of the Public Counsel (Public Counsel), and the Staff of the Public Service Commission (Staff) filed a Unanimous Stipulation and Agreement. The parties agree that the territorial agreement is not detrimental to the public interest and should be approved. A copy of the Stipulation and Agreement is attached to this order and incorporated herein as Attachment B.

The Commission held an evidentiary hearing on January 2, 2001. All parties were represented at the evidentiary hearing.

Discussion

KCPL is a public utility engaged in providing electric service to the public in the state of Missouri, subject to the jurisdiction of the Commission. KCPL is also engaged in providing electric service in portions of Kansas. KCPL's principal place of business is located in Kansas City, Missouri. City is a municipal body politic and corporate in perpetuity, duly and legally established as a third-class city under the provisions of the Missouri Constitution. City operates a municipal utility (Marshall Municipal Utilities) which renders electric utility service to the public in the City of Marshall and adjoining areas within Saline County in Missouri. City is generally not subject to Commission regulation of its service or rates.

KCPL and City jointly applied for approval of a territorial agreement. The Agreement notes that KCPL has constructed a service center within the corporate limits and electric service area of the City. KCPL desires to provide electric service to that service center. In return, the City will provide electric service to five metered locations within KCPL's electric service area. The parties provided a customer list which contains

affidavits from each customer to be switched, indicating that they have been informed of the proposed change and have no objection to the change in electric service providers.

The Stipulation and Agreement states that the change in electric service providers is in the public interest for a reason other than a rate differential and therefore should be approved under Section 393.106, RSMo 1994. The parties also note that there are no other electric service suppliers providing permanent service in the area covered by the territorial agreement in Saline County. KCPL and City have agreed to displace competition between them in Saline County, as allowed by law, and have set out the terms of the territorial agreement.

Before approving the proposed territorial agreement, the Commission must determine that it is not detrimental to the public interest. The first factor the Commission will consider in deciding the appropriateness of this territorial agreement is the extent to which the agreement eliminates or avoids unnecessary duplication of facilities. The applicants note that "very little" duplication of facilities currently exists between KCPL and City. The applicants indicate that the territorial agreement would eliminate any further duplication of facilities and avoid any future increase in duplication in the affected area.

Second, the Commission will consider the ability of each party to the territorial agreement to provide adequate service to the customers in its exclusive service area. Both applicants have the ability to make available adequate power supplies.

The third area for Commission concern is the effect of approval of the territorial agreement on customers of the applicants. The applicants indicate that under the territorial agreement, KCPL would provide electric service to its service center located within the corporate limits and electric service area of the City. In addition, the City would provide electric service to five metered locations within KCPL's electric service area. Attached to the territorial agreement are affidavits from each

affected customer indicating that they have been informed of the proposed change and have no objection to the change in electric service providers.

Fourth, the Commission will consider a category of other cost and safety benefits attributed to the proposed territorial agreement. Applicants noted that the agreement will promote efficiency, both by avoiding the duplication of electric service facilities, guarding economic efficiencies, and benefiting the public safety and aesthetics of the community. The agreement will also allow electric service customers to know with certainty the supplier of their electric service.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

The Commission finds that approval of the territorial agreement signed by KCPL and City would avoid future duplication of facilities. The Commission finds that KCPL and City are capable of adequately and safely providing the electric power supply, service, and maintenance needs of the customers in their service areas as designated in the proposed territorial agreement. The Commission further finds that the overall effect of the proposed territorial agreement would not be harmful to ratepayers, that the agreement would promote efficiency and safety, and reduce customer confusion.

The Commission further finds that the approval of this territorial agreement will not impair KCPL's existing certificates of public convenience and necessity except as specifically limited by the territorial agreement.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

The Missouri Public Service Commission has jurisdiction over the services, activities, and rates of KCPL pursuant to Section 386.250 and Chapter 393, RSMo. The Commission does not have jurisdiction over the services, activities, and rates of municipal electric utilities, except as specified in Section 386.800, RSMo.

When a cooperative enters into a territorial agreement with a regulated public utility, the agreement shall be submitted to the Commission for approval. The Commission is required to hold evidentiary hearings on all requests for approval of territorial agreements. Section 394.312, RSMo. The Commission may approve a territorial agreement if the agreement in total is not detrimental to the public interest. Section 394.312.4, RSMo. Based on the findings of fact it has made, the Commission concludes that the territorial agreement proposed by KCPL and the City of Marshall is not detrimental to the public interest and should be approved.

IT IS THEREFORE ORDERED:

1. That the territorial agreement attached to this order as Attachment A and signed by Kansas City Power & Light Company and the City of Marshall is approved.

2. That the Unanimous Stipulation and Agreement of the parties is approved.

3. That no more than 30 days after the effective date of this order, Kansas City Power & Light Company shall file revised tariff sheets in compliance with the territorial agreement approved in Ordered Paragraph 1.

4. That Kansas City Power & Light Company and the City of Marshall are authorized to perform in accordance with the terms and conditions of the territorial agreement.

5. That this Report and Order shall become effective on February 2, 2001.

BY THE COMMISSION

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

Vicky Ruth, Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 23rd day of January, 2001.

[1] The attachments to the territorial agreement include: 1) Exhibit 1, the legal description for KCPL's Marshall Service Center; 2) Exhibit 2, the legal description of the five metered locations to be served by the City, including maps; 3) Attachment 2, a copy of the September 18, 2000, City of Marshall Ordinance No. 7280; and 4) Attachment 3, affidavits from the customers whose utility service would be transferred to the City. These attachments are not attached to this order due to their size, but are in the official case file available for public inspection.