

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Farmers'
Electric Cooperative and the City of Gallatin,
Missouri, for Approval of a Written Territorial
Agreement Designating the Boundaries of Each
Electric Supplier in the County of Daviess in
Missouri.

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) Case No. EO-97-181
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REPORT AND ORDER

Issue Date: February 18, 1997

Effective Date: February 28, 1997

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OF THE STATE OF MISSOURI

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Electric Cooperative and the City of Gallatin,)
Missouri, for Approval of a Written Territorial) Case No. EO-97-181
Agreement Designating the Boundaries of Each)
Electric Supplier in the County of Daviess in)
Missouri.)

APPEARANCES

Victor S. Scott and Patrick A. Baumhoer, Andereck, Evans, Milne, Peace & Baumhoer, L.L.C., 301 East McCarty Street, Post Office Box 1438, Jefferson City, Missouri 65102, for Farmers' Electric Cooperative and the City of Gallatin, Missouri.

Douglas E. Micheel, Senior Public Counsel, and Lewis R. Mills, Jr., 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.

Carol M. Keith, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

ADMINISTRATIVE

LAW JUDGE: Gregory T. George.

REPORT AND ORDER

On October 31, 1996, Farmers' Electric Cooperative (Farmers) and the City of Gallatin, Missouri (Gallatin), hereinafter referred to jointly as Applicants, filed a joint application under Sections 394.312 and 416.041.3, RSMo 1994, requesting approval of a territorial agreement between Farmers and Gallatin. Specifically, Applicants request that the Commission find that the electric service areas designated in the agreement are not detrimental to the public interest. Applicants further request

that the Commission authorize them to perform in accordance with the terms and conditions of the territorial agreement.

On November 18, 1996, the Commission issued an Order and Notice which included notice provisions for the area affected and an intervention date of December 4, 1996. No one filed an application to intervene. All parties to this case, including the Office of the Public Counsel (Public Counsel) and the Staff of the Commission (Staff), filed a stipulation and agreement on January 15, 1997. The Commission held an evidentiary hearing on January 17, 1997.

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.

Mr. Dan Bryan, Executive Vice President/CEO of Farmers' Electric Cooperative, filed direct testimony and surrebuttal testimony on behalf of Farmers. Mr. Gary Stuva, Director of Public Works for the City of Gallatin, filed direct testimony and surrebuttal testimony on behalf of Gallatin. Mr. Darren Hennen, Economic Coordinator of the Gallatin Industrial Development Authority, filed direct testimony and surrebuttal testimony on behalf of Gallatin. Staff witness B.J. Washburn filed rebuttal testimony. All parties to this case support approval of the application and territorial agreement which sets forth the service territory of Gallatin as the city limits of Gallatin along with an area adjoining the southwest boundary of the city limits. The service territory of Farmers is the remainder of Daviess County.

Farmers witness Mr. Bryan recommended approval of the application and territorial agreement. He testified that the agreement will prevent duplication of facilities by Farmers and Gallatin, will promote more efficient use of existing resources in more compact operational areas, will provide the public with more certainty as to service issues, and will promote safe and adequate service at just and reasonable rates. According to Mr. Bryan, the agreement calls for Farmers to construct lines and facilities to provide electrical service for the proposed Gallatin industrial park. He stated Farmers has the ability to provide expanded distribution facilities in its area under the agreement, whereas Gallatin's resources are limited to providing infrastructure other than electricity to the proposed industrial park.

Mr. Bryan testified the addendum procedure stated in the agreement allows the parties to agree on a case-by-case basis to allow a new structure to receive service from one party even though the structure is located in the service area of the other party. He referred to Section 12 of the agreement which provides if no pleading in opposition to the addendum is filed, then the addendum is deemed approved by the Staff and by Public Counsel. If a pleading in opposition to the addendum is filed, then the case will proceed to an evidentiary hearing similar to other cases decided by the Commission.

Mr. Bryan further testified he had no disagreement with Mr. Washburn's rebuttal testimony which stated the map attached to the territorial agreement did not accurately show the metes and bounds description of the service area of the City of Gallatin. He stated the description of the Gallatin's service area in the agreement includes one area on the southwest boundary of the City which is not currently a

part of the city limits; however, no customers are currently in that area, and Farmers' nearest electric line is over one-half mile away. Mr. Bryan also stated that the Gallatin service area under the agreement includes one customer served by Farmers that was annexed into the city limits and that Gallatin serves approximately 15 customers located outside the Gallatin service area and across the road from the city limits for whom electrical service was established more economically by Gallatin. He emphasized the territorial agreement provides for all existing customers to remain with their current suppliers.

Gallatin witness Mr. Stuva recommended approval of the territorial agreement which will allow Gallatin to better maintain and operate its system without having to expend resources for building new electric lines and facilities into areas that will be annexed by Gallatin, including the new industrial park. Mr. Stuva testified that the agreement advances the public interest by avoiding duplication of services, by allowing industrial development for Gallatin, and by permitting the Gallatin to save money it would have spent for developing the industrial park in order to upgrade existing lines throughout the City. According to Mr. Stuva, the existing customers will remain with their current suppliers, and the new structure addendum procedure provided in the agreement is similar to other addendum procedures approved by the Commission.

Mr. Stuva further testified Farmers has one member in the territory assigned to the City, and the City serves approximately 15 customers that border the city limits where Farmers did not have electric lines close enough to serve them. He testified the territorial agreement designates an area in the southwest corner of the City's boundary which is outside the current city limits. He said he overlooked this area

at first because it has no current customers or electric lines. Mr. Stuva stated this area is considered a potential growth area for the City, and, as it develops, it will probably be annexed into the City.

Gallatin witness Mr. Hennen testified the agreement should be approved because duplication of services will be avoided by allowing Farmers to serve the area surrounding the City. He stated Gallatin will be able to upgrade its own electrical system without having to spend for new facilities as it annexes surrounding area, including the industrial park, so the agreement will benefit both Farmers and Gallatin. Mr. Hennen agreed with Mr. Washburn's testimony that the map of Mr. Washburn is the correct visual representation of the Gallatin service area under the territorial agreement and corresponds to the metes and bounds description. The Gallatin service area, Mr. Hennen testified, is the area considered to be the existing current city limits with one exception: in the southwest corner of the Gallatin service area is a potential growth area of the City where Farmer's nearest electrical line is over one-half mile away. Mr. Hennen indicated Gallatin serves approximately 15 customers located across the street from the city limits, and under the agreement all existing customers will remain with their current suppliers.

Staff Witness Washburn recommended approval of the application and territorial agreement which he believes will lessen future duplication of facilities and allow both suppliers to plan their distribution systems in a rational manner. Mr. Washburn testified that Gallatin's area under the agreement is described in the metes and bounds description, and Farmers' area is the remaining portion of Daviess County. He testified the map attached to the territorial agreement is incorrect. Attached to

Mr. Washburn's rebuttal testimony as schedule 1 is the map which he testified correctly corresponds to the metes and bounds description.

The stipulation and agreement which was filed by all the parties to this case on January 15, 1997, provides that (1) the territorial agreement with the metes and bounds description contained in the original joint application is in the public interest; (2) the map submitted with the rebuttal testimony of Mr. Washburn corresponds to the metes and bounds description of the service area of the City of Gallatin; and (3) the proposed territorial agreement will not change the electrical provider of any customer.

Applicants' addendum procedure is similar to the procedure approved by the Commission in *In re Union Elec. Co. and Black River Elec. Coop., Inc.*, Case No. EO-95-400 (Report and Order, Mar. 22, 1996) and *In re Grundy Elec. Coop., Farmers Elec. Coop, and Northwest Mo. Elec. Coop.*, Case No. EO-96-188 (Report and Order, Mar. 19, 1996). Section 12 of Applicants' proposed territorial agreement provides that the parties may agree on a case-by-case basis by addendum filed with the Commission to allow a structure to receive service from one party although the structure is located in the service area of the other party. Section 12 declares if Staff or Public Counsel does not submit a pleading objecting to the addendum within forty-five (45) days, the addendum is deemed approved by the aforesaid parties.

The Commission approved a territorial agreement which granted a city the right to have a service area beyond its corporate limits in *In re Ralls County Elec. Coop. and the City of Vandalia*, Case No. EO-96-174 (Report and Order, Mar. 8, 1996). That case involved a city with a designated service area outside its city limits which had five commercial

customers and one single-family residence. There the Commission stated the potential for abuse of customers outside the city limits was mitigated by the fact that the Commission has jurisdiction to hear complaints involving Commission-approved territorial agreements. The Commission may suspend or revoke a territorial agreement if it finds the agreement is no longer in the public interest. § 394.312.6, RSMo 1994.

Applicants' territorial agreement provides for an area adjoining the southwest boundary of the city limits to be included in the Gallatin service area; however, the evidence indicates this area currently has no customers, and it is a growth area which is likely to be annexed into the city limits. Although the current 15 customers across the street from the city limits who will continue to receive electric service from Gallatin do not have direct representation within city government, these individuals do have standing to file a complaint with the Commission concerning the territorial agreement. None of the fifteen customers has responded to the notice of this proceeding with any objection to the agreement.

Based on the evidence, the Commission finds that Applicants' territorial agreement is not detrimental to the public interest because it will prevent duplication of facilities, it will promote efficiency and safety, it will reduce customer confusion, and it will allow both suppliers to plan their distribution systems in a rational manner. The Commission finds that the Applicants' stipulation and agreement should be accepted and the territorial agreement should be approved.

Conclusions of Law

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

The Missouri Public Service Commission has jurisdiction over the matters at issue in this application pursuant to §§ 394.312 and 416.041.3, RSMo 1994.

The Commission may approve a territorial agreement if the agreement in total is not detrimental to the public interest. § 394.312.4, RSMo 1994. Pursuant to § 394.312.5, RSMo 1994, Commission approval of a territorial agreement does not affect or diminish the rights and duties of any supplier not a party to the agreement or electrical corporation authorized by law to provide service within the territory designated in the territorial agreement.

A municipality may provide electrical energy at retail to a structure outside its corporate limits if the service is provided pursuant to a territorial agreement approved by the Commission. § 386.800.1(2), RSMo 1994. Those persons located outside city limits and given city electric service may seek recourse by filing a complaint with the Commission. The Commission has jurisdiction to hear complaints involving any Commission-approved territorial agreement, and the Commission may suspend or revoke a territorial agreement which is no longer in the public interest. § 394.312.6, RSMo 1994.

IT IS THEREFORE ORDERED:

1. That the territorial agreement filed by Farmers' Electric Cooperative and the City of Gallatin, Missouri, on October 31, 1996, and submitted at the hearing on January 17, 1997, be, and is hereby, approved,

and the Applicants are authorized to perform in accordance with the terms and conditions of the territorial agreement attached to this Report and Order as Attachment A, with the corrected map of the service territory of the City of Gallatin as stipulated by the parties attached hereto as Attachment B, and with the stipulation of the parties attached as Attachment C.

2. That this Report and Order shall become effective on February 28, 1997.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

Zobrist, Chm., Kincheloe, Crumpton
and Drainer, CC., concur.
McClure, C., absent.

Dated at Jefferson City, Missouri,
on this 18th day of February, 1997.

acknowledges and agrees that as between the parties, CITY shall have the sole and exclusive right to provide service to the structures CITY presently serves and all new or additional structures within CITY's electric service area as described in Exhibit 1.

3. The electric service area of COOPERATIVE for the purposes of this Agreement is described in Exhibit 3 to this Agreement by metes and bounds and illustrated by the map attached as Exhibit 4 which is expressly incorporated herein by reference and made a part of this Agreement as fully as if set out herein verbatim.

4. COOPERATIVE shall provide electric service to all structures that it presently serves and to all new structures located within its electric service area under this Agreement. CITY acknowledges and agrees that as between the parties, COOPERATIVE shall have the sole and exclusive right to provide service to the structures COOPERATIVE presently serves and all new or additional structures within COOPERATIVE's electric service area as described in Exhibit 3.

5. The CITY and the COOPERATIVE shall enter into separate agreements relating to service agreements and street lighting contracts, etc., as needed.

6. CITY hereby grants all necessary permission, approval and authority to COOPERATIVE to engage in retail electric sales and service within the corporate limits of CITY to carry out the intent of this Agreement.

7. Additional consideration for the right of COOPERATIVE to

be the sole and exclusive supplier of electric service within areas annexed by CITY after the date of this Agreement, COOPERATIVE agrees to pay to CITY semi-annually an amount equal to 5% of COOPERATIVE's gross receipts from sales of electric to residential and small commercial customers of the COOPERATIVE's located within the city limits of the CITY, who first received service after approval of the Agreement by the Public Service Commission. CITY agrees that COOPERATIVE shall have the right to use city public rights of way in the same manner as other utilities.

8. The parties agree that either party hereto may service its own facilities even if located within the service area of the other party hereto except when such service would result in duplication of current services or other wasteful duplication of facilities. The COOPERATIVE has service territory outside the areas covered by this Agreement. For service outside of the areas described by this Agreement, the parties will continue to operate without regard to this Agreement.

9. The initial term of this agreement shall be fifty (50) years from and after the said Agreement is approved by the Missouri Public Service Commission. Thereafter, this agreement shall automatically be renewed for successive five-year terms unless either party hereto shall notify the other party in writing of its intent to terminate this Agreement at least one (1) year in advance of any such renewal date.

10. The COOPERATIVE agrees that all electric transformers owned or used by it within the limits shall be classified as non-

PCB transformers.

11. Neither the boundaries described by this Agreement nor any term of this Agreement may be modified, repealed, or changed except by writing mutually approved by the respective governing bodies of the parties and by the Missouri Public Service Commission.

12. The parties may agree on a case-by-case basis by an Addendum hereto to allow a structure to receive service from one party though the structure is located in the electric service area of another party.

Such Addendum referred to above shall be filed with the Missouri Public Service Commission with a copy to the Office of Public Counsel. There will be no filing fee for these Addendums.

These Addendums apply to new structures only and not to structures receiving service on the effective date of the Commission's Order approving the Territorial Agreement.

Each Addendum shall be accompanied by a notarized statement indicating that the party in whose territory the structure will be located and the party who will serve the structure support the Addendum.

Each Addendum shall be accompanied by a notarized statement, signed by the customer to be served, which acknowledges such customer's receipt of notice of the contemplated electric service to be provided and that the Addendum represents an exception to the territorial boundaries approved by the Public Service Commission and shall indicate the customer's consent to be served by the

service provided contemplated by the Addendum.

Each Addendum shall include, or be accompanied by, an explanation of the justification that electric service should be provided in the agreed manner.

If the Staff, or Office of the Public Counsel do not submit a pleading objecting to the Addendum within forty-five (45) days of the filing thereof, the Addendum shall be deemed approved by the aforesaid parties.

Each party, pursuant to an executed Agreement, shall have the right to provide temporary service, as defined in Section 393.106 RSMo. until the Commission approves or disapproves the Addendum. No party shall be required to remove any facilities installed pursuant to an Agreement until the effective date of a final and non-appealable Order of the Commission or a court regarding the removal of same.

13. The parties agree to undertake all actions reasonably necessary to implement this Agreement. The parties will share equally the cost of obtaining administrative approval of this Agreement. Each party will cooperate in presenting a joint application showing such Agreement to be in the public interest. If the Public Service Commission of Missouri does not approve the provisions of this Agreement then it shall be nullified and of no legal affect between the parties. Further, if any part of this Agreement is declared invalid or void by a Court or agency of competent jurisdiction then the whole Agreement shall be deemed invalid or void and the parties shall return to that status

existing prior to this Agreement.

14. This agreement shall be binding upon the parties hereto and all subsidiaries, successors in interest, and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement this 7th day of June, 1996.

CITY OF GALLATIN

By *N. William Piesse*
Mayor

ATTEST:

Candy Walton
Clerk

FARMERS' ELECTRIC COOPERATIVE

By *[Signature]*
President

ATTEST:

[Signature]
Secretary

"EXHIBIT 1"

Beginning at the Northeast corner of the Southwest Quarter of the Northeast Quarter of Section 17, Township 59 North, Range 27 West; thence South approximately 9240 feet to the Southeast corner of the Southwest Quarter of the Southeast Quarter of Section 20, Township 59 North, Range 27 West; thence East approximately 1320 feet to the Northeast corner of the Northeast Quarter of the Northeast Quarter of Section 29, Township 59 North, Range 27 West; thence South approximately 3960 feet to the Southeast corner of the Northeast Quarter of the Southeast Quarter of Section 29, Township 59 North, Range 27 West; thence West approximately 7920 feet to the Southwest corner of the Northwest Quarter of the Southeast Quarter of Section 30, Township 59 North, Range 27 West; thence North approximately 6600 feet to the Northeast corner of the Southwest quarter of Section 19, Township 59 North, Range 27 West; thence West approximately 2640 feet to the Northwest corner of the Southwest Quarter of Section 19, Township 59 North, Range 27 West; thence North approximately 2700 feet to the center line of Missouri State High 6; thence East approximately 5280 feet along the center line of Missouri State Highway 6 to the center line of State Route "MM"; thence in a Northwesterly direction along the center line of Missouri State Route "MM" to a point at the Northwest corner of the Southeast Quarter of the Northeast Quarter of Section 18, Township 59 North, Range 27 West; thence East approximately 5280 feet to the point of beginning.

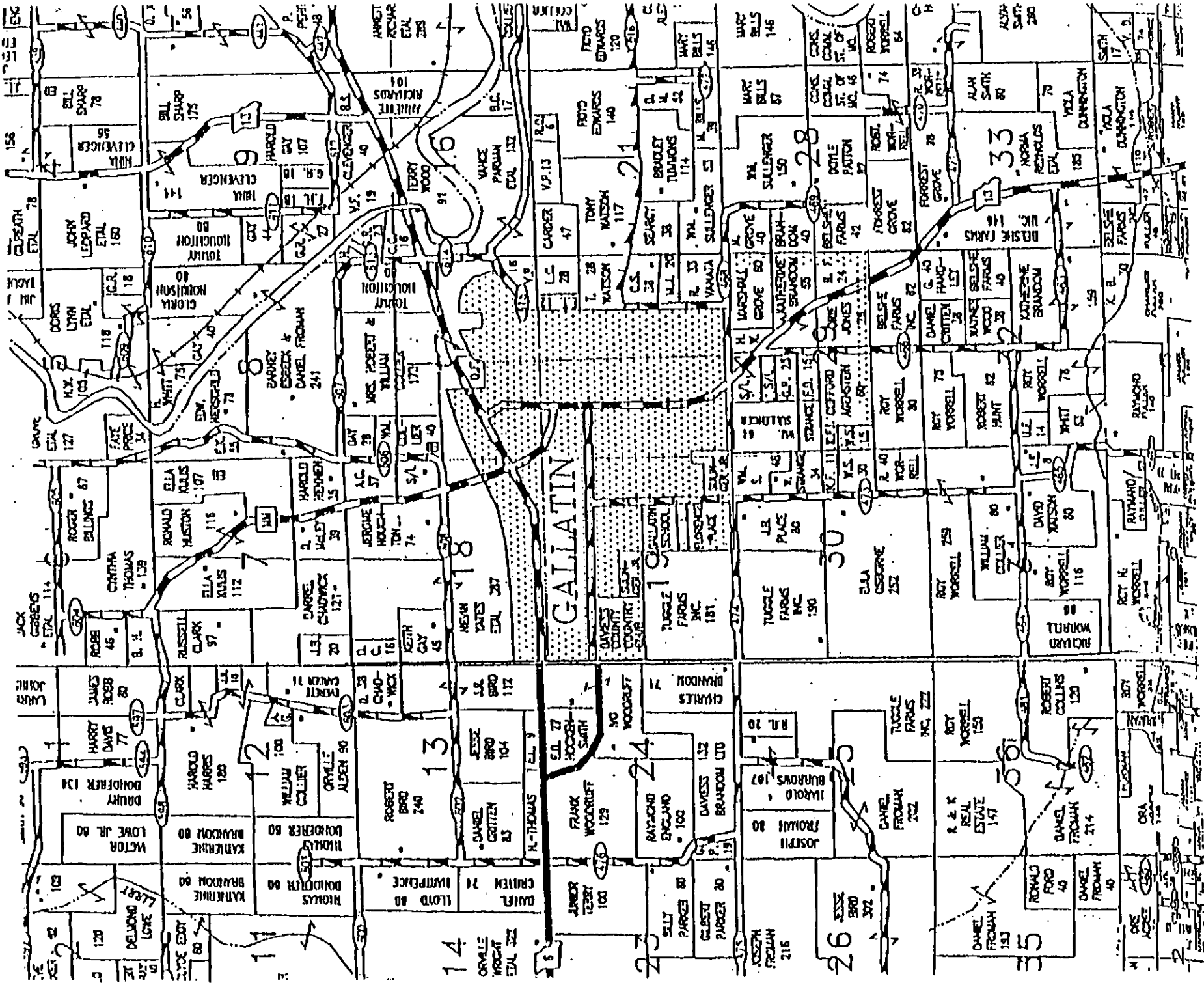


EXHIBIT 3

Beginning at the southeast corner of township fifty-eight, range twenty-six; thence north with the range line between ranges twenty-five and twenty-six to the northeast corner of section thirty-six of township sixty-two of range twenty-six, west; thence west with the subdivisional lines to the northwest corner of section thirty-one of township sixty-two of range twenty-nine, west; thence south with the range line between ranges twenty-nine and thirty to the southwest corner of township fifty-eight, range twenty-nine; thence east with the township line between townships fifty-seven and fifty-eight to the place of beginning.

FILED

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

JAN 15 1997

**MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Farmers')
Electric Cooperative and the City of Gallatin,)
Missouri for Approval of a Written Territorial)
Agreement)

Case No. EO-97-181

STIPULATION AND AGREEMENT

On October 31, 1996, Farmers' Electric Cooperative ("Farmers'") and the City of Gallatin ("City"), filed a joint application for approval of a territorial agreement pursuant to Sec. 394.312 RSMo (1994).

On November 18, 1996, the Commission issued an Order and Notice and Order Establishing Procedural Schedule. No parties intervened in response to the Commission's order.

In accordance with the procedural schedule established by the Commission's Order Establishing Procedural Schedule, on December 5, 1996, the Joint Applicants submitted the Direct individual testimonies of Mr. Darren Hennen, Mr. Gary Stuva, and Mr. Dan Bryan.

On December 20, 1996, the Staff of the Commission submitted the prepared Rebuttal testimony of Mr. B.J. Washburn which was followed by the Cross-Surrebuttal testimonies of the Joint Applicants on January 9, 1997.

The Staff, the City of Gallatin, Farmers' Electric Cooperative, and Public Counsel have reached the following Stipulation and Agreement to completely resolve these proceedings as follows:

A. The City, Farmers' Electric, Public Counsel and the Staff agree that the territorial agreement, as described in the metes and bounds description contained in the original joint

application, is in the public interest. Staff's revised map submitted with the Rebuttal testimony of B.J. Washburn corresponds to the metes and bounds description of the service area of the City.

B. The proposed territorial agreement will not change the electrical provider of any customer.

C. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties waive their respective rights to cross-examine witnesses and to present oral argument and written briefs pursuant to Sec. 536.080.1 RSMo(1994). The parties also waive their respective rights to judicial review pursuant to Sec. 386.510 RSMo(1994).

D. This Stipulation and Agreement represents a negotiated settlement for the sole purpose of disposing of this case, and none of the signatories to this Stipulation and Agreement shall be prejudiced or bound in any manner by the terms of the Stipulation and Agreement in any other proceeding, except as otherwise specified herein.

E. If requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of staff's memorandum, a responsive memorandum which shall also be served on all parties. All memoranda submitted by the parties shall be considered privileged in the same manner as are settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding or in this proceeding, whether or not the Commission approves this Stipulation and Agreement. The contents of any memorandum provided by any party are its own

and are not acquiesced in or otherwise adopted by the other signatories to the Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.

F. The Staff shall also 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 of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or otherwise protected from disclosure.

G. This Stipulation and Agreement has resulted from negotiations between the parties and the terms hereof are interdependent. In the event the Commission does not approve and adopt this Stipulation and Agreement in total, this Stipulation and Agreement shall be void and no party shall be bound by any of the agreements or provisions hereof.

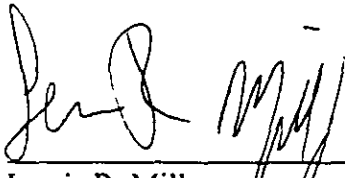
WHEREFORE, for the foregoing reasons, the undersigned parties respectfully request that the Commission issue its Order granting the relief requested by the Applicants in Case No. EO-97-181, subject to the terms of this Stipulation and Agreement, and such further relief as may be appropriate and necessary to implement the Stipulation and Agreement.

Respectfully submitted,




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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 15 day of January, 1997.

