

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 19th
day of October, 1994.

In the matter of the application)
of Missouri Valley College for) CASE NO. EO-95-107
change of electric supplier.)

ORDER DISMISSING APPLICATION

On September 30, 1994, Missouri Valley College (Applicant) filed an application with the Commission for a change of electric service provider. Applicant stated in its application that it is the owner of a tract of land located outside the city limits of Marshall, Missouri; that no electrical service is presently being provided to said tract of land; that the tract of land is located within the area certificated to Kansas City Power & Light Company (KCPL); and that because service to the tract of land would require the construction of a distribution line, KCPL is agreeable to service being provided by Marshall Municipal Utilities (hereafter "Marshall" shall refer to either Marshall Municipal Utilities or the City of Marshall) instead, and Marshall is agreeable to serving Applicant. Attached to the application are three exhibits. Exhibit A contains a metes and bounds description of the tract of land owned by Applicant. Exhibit B is an agreement by Kansas City Power & Light Company, consenting to the provision of electric service to Applicant by Marshall, signed by James E. Massey, Manager, Customer Services, on behalf of KCPL, and Exhibit C is an agreement by Marshall Municipal Utilities, consenting to provide electric service to Applicant, signed by Paul E. Jensen, General Manager, on behalf of Marshall.

The Commission has reviewed Applicant's application and the applicable statutory authority, and the Commission determines that it would be inappropriate, if not impossible, to authorize a change of electric service provider where the Applicant is not currently receiving electric

service. Both of the statutes cited by Applicant, Sections 393.106.2 and 91.025.2, which authorize changes in electrical suppliers, presuppose that electric service is being provided by the supplier from whom the Applicant seeks a change. Section 393.106.2, which pertains to electrical corporations and joint municipal utility commissions, generally grants an exclusive right to serve structures after commencement of service, subject to a number of exceptions, including the authority of the Public Service Commission to order a change of suppliers. The statute states as follows:

2. Once an electrical corporation or joint municipal utility commission, or its predecessor in interest, 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, and section 394.080, RSMo, or pursuant to a territorial agreement approved under Section 394.312, RSMo. The public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential. The commission's jurisdiction under this section is limited to public interest determinations and excludes questions as to the lawfulness of the provision of service, such questions being reserved to courts of competent jurisdiction.

Section 393.106.2, RSMo. Supp. 1993. Section 91.025.2, which pertains to municipally owned or operated electrical systems, essentially states the same thing.

Based upon the allegations contained in the Applicant's application, if the application were granted Marshall would be serving Applicant outside its city limits, in an area certificated to KCPL. It would thus appear that Section 386.800 would apply to this situation. Section 386.800 provides as follows:

1. No municipally owned electric utility may provide electric energy at retail to any structure located outside the municipality's corporate boundaries after July 11, 1991, unless:

(1) The structure was lawfully receiving permanent service from the municipally owned electric utility prior to July 11, 1991; or

(2) The service is provided pursuant to an approved territorial agreement under section 394.312, RSMo;

(3) The service is provided pursuant to lawful municipal annexation and subject to the provisions of this section; or

(4) The structure is located in an area which was previously served by an electrical corporation regulated under chapter 386, and chapter 393, RSMo, and the electrical corporation's authorized service territory was contiguous to or inclusive of the municipality's previous corporate boundaries, and the electrical corporation's ownership or operating rights within the area were acquired in total by the municipally owned electrical system prior to July 11, 1991. ...

2. Any municipally owned electric utility may extend, pursuant to lawful annexation, its service territory to include any structure located within a newly annexed area which has not received permanent service from another supplier within ninety days prior to the effective date of the annexation.

Sections 386.800.1 and 386.800.2, RSMo. Supp. 1993. Given the strictures of Section 386.800, it appears likely that under the facts stated by Applicant Marshall would be prohibited from providing service to Applicant unless it first municipally annexed the land or entered into a territorial agreement with KCPL.

The Commission has reviewed this matter in its entirety, and is of the opinion that Applicant's application should be dismissed. Under the unusual circumstances presented in this case, the Commission is also of the opinion that a copy of this order should be sent to KCPL and Marshall, as well as to Applicant, in order that consideration of a territorial agreement or annexation may be expedited.

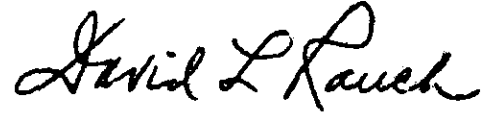
IT IS THEREFORE ORDERED:

1. That the application for change of electric service provider filed by Missouri Valley College be and is hereby dismissed.

2. That the Records Department of the Missouri Public Service Commission be and is hereby directed to send a copy of this order to Kansas City Power & Light Company and Marshall Municipal Utilities.

3. That this order shall be become effective on November 1, 1994.

BY THE COMMISSION



David L. Rauch
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins,
Kincheloe and Crumpton, CC., Concur.