

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 30th
day of September, 1994.

In the matter of the joint application of)
Grundy Electric Cooperative, Inc. and North)
Central Missouri Cooperative, Inc. for)
approval of a Boundary Agreement designating) CASE NO. EO-94-299
their respective electric service areas in)
parts of Putnam, Sullivan, Mercer and Linn)
Counties in the State of Missouri.)

ORDER DISMISSING JOINT APPLICATION
FOR APPROVAL OF BOUNDARY AGREEMENT

On June 23, 1994, a prehearing conference was held in the above-styled case, with a hearing scheduled to commence immediately thereafter. At the prehearing conference the parties indicated their belief that they would be able to resolve their differences, and asked for the hearing to be continued to a subsequent date. Prior to the new hearing date Joint Applicants, Grundy Electric Cooperative, Inc. and North Central Missouri Electric Cooperative, Inc. (Applicants or Joint Applicants) filed a Motion For Postponement seeking to have the hearing postponed for approximately 30 days. On July 22, 1994, the Commission issued an order which, for good cause shown, extended the deadline for ruling on the joint application until August 25, 1994, and rescheduled the evidentiary hearing for August 8, 1994. On August 8, 1994, neither Applicant appeared, but instead the Joint Applicants faxed a Motion For Continuance And In The Alternative Motion To Dismiss. Staff made a record of the circumstances surrounding this motion at the time set for hearing. The Motion For Continuance And In The Alternative Motion To Dismiss was subsequently formally filed later in the day on August 8, 1994.

Applicants' original Boundary Agreement sought to divide responsibility of the two electric suppliers in the future according to the physical location of their systems on an agreed date. In the Hearing Memorandum filed on June 14, 1994, Staff took issue with the adequacy of the boundary description contained in Applicants' original Boundary Agreement. The two continuances of the hearing were undertaken to allow negotiation between the Applicants of a further description of their respective service areas in an apparent attempt to address Staff's concerns.

The motion filed by the Joint Applicants asks that the hearing schedule established in this case be continued for a period of 30 days so that the parties may work to stipulate and compromise the issues in controversy, or that in the alternative the joint application be dismissed without prejudice to any subsequent application that may be brought to the Commission. The Commission determines that the Applicants' request for continuance should not be granted. The Commission has attempted to accommodate the Applicants by scheduling three separate hearing dates, and by extending the deadline for ruling on the joint application upon good cause shown. As it does not appear likely that the Applicants will reach agreement in the near future, the Commission finds that it would not be a wise use of resources to reschedule the matter and set a fourth hearing date.

Since prepared testimony was previously filed in this case, pursuant to 4 CSR 240-2.110(7) Applicants may not voluntarily dismiss their application without leave of the Commission or written consent of the adverse parties. The Commission is of the opinion that it would be appropriate to grant the Applicants' alternative request to dismiss their joint application without prejudice. As the Commission has on more than one occasion expressed its general

support for territorial agreements, it strongly encourages the Applicants to continue their negotiations, and to file a subsequent application in the event they are able to reach agreement.

As Applicants have voluntarily requested the dismissal of their application, the Commission need not pass upon the sufficiency of the designated boundary contained in Applicants' original Boundary Agreement. However, the Commission notes that the statutory provisions pertaining to territorial agreements between rural electric cooperatives are found in Section 394.312, RSMo Supp. 1993. Section 394.312.2, RSMo Supp. 1993 states as follows: "Such territorial agreements shall specifically designate the boundaries of the electric service area of each electric service supplier subject to the agreement..." In addition, Section 394.312.3, RSMo Supp. 1993 also states: "Applications for commission approval shall be made and notice of such filing shall be given to other electrical suppliers pursuant to the rules and regulations of the commission governing applications for certificates of public convenience and necessity."

The Commission's rules regarding applications for certificates of public convenience and necessity are found at 4 CSR 240-2.060(2). These rules require that a metes and bounds description of the area to be certificated must be provided, as well as a plat drawn to a scale on one-half (1/2") inch to the mile on maps comparable to county highway maps issued by the Missouri Highway and Transportation Commission or a plat drawn to a scale of two thousand feet (2000') to the inch. See 4 CSR 240-2.060(2)(A)6 and 4 CSR 240-2.060(2)(A)7. The Commission is therefore of the opinion that the designated boundaries of a territorial agreement must be as specific as the boundaries designated in an application for certificate of public convenience and necessity.

IT IS THEREFORE ORDERED:

1. That the joint application of Grundy Electric Cooperative, Inc. and North Central Missouri Electric Cooperative, Inc. for approval of a Boundary Agreement be and is hereby dismissed without prejudice at the request of the Joint Applicants.

2. That this Order shall become effective on October 12, 1994.

BY THE COMMISSION



David L. Rauch
Executive Secretary

(S E A L)

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