

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

In the Matter of the Application of James	)	
And Denise Haston for Change of Electric	)	<u>File No. EO-2020-0163</u>
Supplier	)	

STAFF RESPONSE AND RECOMMENDATION FOR DISMISSAL

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Staff Response and Recommendation for Dismissal*, states as follows:

1. On December 11, 2019, James and Denise Haston (“Hastons”) filed a verified Application with the Commission requesting a change of their electric supplier from Ozark Electric Cooperative, Inc. (“Ozark”) to the City of Monett, Missouri (“City”).

2. The Hastons’ Application stated that James and Denise Haston own property at the address 603 Farm Road 2240, which is under construction, and which has been annexed into the City in order for the Hastons’ to obtain electric, sewer, trash, police and fire services. The Applicants further stated that the property has not been occupied in over 30 years; but, noted that there is a well on the property that is not currently receiving electric service. Attached to the Application was a letter from Ozark, dated November 19, 2019, and addressed to Mr. James Hast[on] stating that Ozark was disappointed it did not get the “opportunity to serve [the Hastons’] new structure at this address as it is within in your rights to do so” but further stated in that same letter that Ozark “has the legal right to maintain its existing service to the well structure under the laws of the State of Missouri”. Ozark enclosed in the letter to Mr. Haston an Application for Change of Electric Service Provider form and stated Mr. Haston must submit such an Application to the PSC for approval prior to switching the well service to the City.

3. On December 13, 2019, the Commission issued an order that directed notice, joined Ozark and the City as parties to the proceeding, and directed each to file a response to the Application no later than January 13. In addition, Staff was directed to file its recommendation on the Application no later than January 31. The City filed its Motion to Dismiss and Response on January 13, in compliance with the Commission's December 13 Order, and cited Sections 394.315 and 386.800 RSMo as grounds for the Commission to dismiss the Application. Ozark did not file a motion or response to the Commission's December 13 Order. On January 22, the Commission directed Staff and Ozark to respond to the City's motion to dismiss no later than January 29.

4. Staff reviewed the Hastons' Application and attached documents that includes a verified statement signed by James Haston; the Motion to Dismiss and Response filed by the City that includes a verified statement signed by Skip Schaller, the Superintendent of Utilities for the City; and conducted its own investigation by asking questions of both parties. Based on Staff's review and investigation, including Staff Counsel's review of the relevant law, Staff recommends the Commission dismiss the Hastons' Application as requested by the City.

5. First, Commission rule 20 CSR 4240-2.116(4) allows for dismissal of a case "for good cause found by the commission after a minimum ten (10) days notice to all parties involved." As mentioned, in the City's Motion to Dismiss and Response filed on January 13, the City cites specific statutory provisions¹ to support its argument that the City may legally provide electric service to the well house in question on the Hastons' property without approval of a change of supplier request from the Commission, and

¹ Sections 394.315.1.(2) and 386.800.2. RSMo.

therefore, the Application should be dismissed for failure to state a claim on which relief may be granted. Staff agrees the Hastons' do not need Commission approval to allow the City to provide electric service to the Hastons' well house, pursuant to the following provisions of Missouri law:

394.315. Definitions — rural electric cooperative exclusive right to serve structures, exception — change of suppliers, procedure.

2. **Once a rural electric cooperative**, 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** and section 394.080, or pursuant to a territorial agreement approved under section 394.312.....
(Emphasis added.)

386.800. Municipally owned electrical supplier, services outside boundaries prohibited — exceptions — annexation — negotiations, territorial agreements, regulations, procedure — fair and reasonable compensation defined — assignment of sole service territories — commission jurisdiction.

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.
(Emphasis added.)

6. As cited above, Section 394.315.2. RSMo permits a rural electric cooperative that lawfully commenced electric service to a structure to continue to exclusively service that structure with a few listed exceptions. One of the cited exceptions is municipal annexation pursuant to Sections 386.800 and 394.080 RSMo, of which only Section 386.800.2. RSMo is relevant and cited above because it permits any municipally owned electric utility to extend its service territory to any structure located within the newly

annexed area that has not received permanent service² from another supplier within ninety days prior to the annexation.

7. The Application does not state a date upon which the Hastons' property had been annexed into the City. The City's Motion to Dismiss and Response states, in paragraph 5, that "[t]he annexation of the [Hastons'] property into the City was approved by the City Council on August 20, 2019, and recorded in Barry County on September 6, 2019". The City attached Mr. Schaller's affidavit but did not include any records or documents of the annexation. Staff reached out to the City and further inquired on the Hastons' property's annexation. Attached and labeled as Appendix A is a copy of the ordinance accepting and approving the annexation of the Hastons' property and containing a passed and approved date of August 20, 2019, which the City provided to Staff in response to Staff's inquiry.

8. The Application states that the well house is currently "not electrified" and the City's Motion to Dismiss and Response states, in paragraph 9, that according to the City's knowledge "it has been at least ten years since Ozark has provided electric service to the well and well house, and could be even longer than that." Staff reached out to Ozark

² Chapter 386 does not provide a definition for "permanent service". Chapter 394, specifically Section 394.315.1.(1) RSMo, contains a definition for "permanent service" but the definition is limited to use in that Section. However, given that Section 394.315 RSMo cross references Section 386.800 RSMo and both address the same subject matter, Staff Counsel finds it reasonable to use the definition in Section 394.315.1.(1) RSMo as guidance for analyzing "permanent service" in Section 386.800.2. RSMo. The language in Section 394.315.1. RSMo defines "permanent service" as "electrical service provided through facilities which have been permanently installed on a *structure....*" (*Emphasis added.*). Section 394.315.1(2) RSMo defines "structure" as "an agricultural, residential, commercial, industrial or other building or mechanical installation, machinery or apparatus at which *retail electric energy is being delivered through a metering device.....*" (*Emphasis added.*). As contained in paragraph 8 of this document, Staff is relying on information provided by Ozark that the well house in question has not received metered-service since 2004 when a previous owner disconnected service with Ozark. Therefore, the well house, which can reasonably be viewed as a structure as defined in Section 394.315 RSMo, has not has not been receiving retail electric energy delivered through a metering device and was not receiving "permanent service" as contemplated in Section 386.800.2. RSMo.

and inquired on the date at which Ozark last provided service to the Hastons' well house. Attached and labeled as Appendix B is a response Ozark provided to Staff's inquiry stating that service has been inactive on the account in question (the Hastons' well house) since 2004 when a previous owner disconnected service.

9. Based on the foregoing, Staff finds it reasonable to conclude that Ozark had not been providing electrical service to the Hastons' well house within ninety days prior to the annexation of the Hastons' property into the City. Therefore, pursuant to Sections 394.315 and 386.800.2. RSMo, the City may properly provide service to the newly annexed Hastons' property, including the Hastons' well house, without Commission approval. Thus, Staff recommends the Commission dismiss the Hastons' Application.

10. Staff notes that in recommending the Commission dismiss the Hastons' Application, Staff has provided its recommendation on the Application to the Commission, as directed in the Commission's December 13 Order. Staff requests the Commission accept this instant filing as both Staff's response, which Staff was directed to file no later than January 29 in the Commission's January 22 Order, and Staff's recommendation, which Staff was directed to file no later than January 31 in the Commission's December 13 Order.

WHEREFORE, Staff respectfully submits this *Staff Response and Recommendation for Dismissal*, and requests the Commission grant the City's request to dismiss the Application in this matter for the reasons stated above and further requests the Commission accept this *Staff Response and Recommendation for Dismissal* as complying with the Commission's Orders issued on December 13, 2019, and

January 22, 2020, directing the filing of Staff's recommendation and response; and grant such other and further relief as the Commission finds appropriate in the circumstances.

Respectfully Submitted,

/s/ Jamie S. Myers

Jamie S. Myers, Mo. Bar No. 68291

Legal Counsel

Attorney for the Staff of the

Missouri Public Service Commission

P. O. Box 360

Jefferson City, MO 65102

(573) 526-6036 (Telephone)

(573) 751-9285 (Fax)

Email: jamie.myers@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand delivered, transmitted by facsimile or electronically mailed to all counsel of record this 29th day of January, 2020.

/s/ Jamie S. Myers

BILL NO. 8710

ORDINANCE NO. 8710

AN ORDINANCE ACCEPTING AND APPROVING THE
ANNEXATION PETITION OF
JAMES HASTON

WHEREAS, The City Council of the City of Monett deems it necessary and desirable that the City annex unincorporated real property into the existing limits of the City of Monett.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Monett, Missouri, as follows:

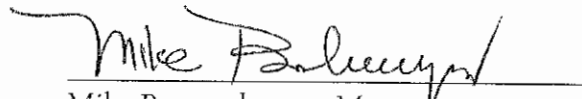
SECTION ONE: The City Council hereby approves and accepts petition and consent to annexation submitted by James Haston, and finds that said property is contiguous and compact to the existing corporate limits of the City of Monett. Petitioner requests the property be accepted with agriculture zoning.

SECTION TWO: A copy of said petition along with the real property description is attached hereto marked Exhibit "A" and made a part hereof.

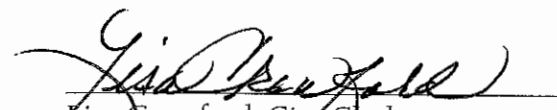
SECTION THREE: This ordinance is hereby adopted and authorized in a special and emergency meeting of the City Council of the City of Monett.

SECTION FOUR: This ordinance is hereby deemed an emergency legislation and hereby becomes effective on the date of signing herein.

PASSED AND APPROVED this 20 day of August, 2019.


Mike Brownsberger, Mayor

Attest:


Lisa Crawford, City Clerk



BEFORE THE CITY COUNCIL
IN THE CITY OF MONETT, MISSOURI

ANNEXATION REQUEST BY: James Haston
(name and address of petitioner)
303 Highland Ave Monett MO 65708

1. Pursuant to RSMo 71.012 JAMES HASTON
petitions the City of Monett, Missouri, to annex the following described unincorporated
real estate, which is contiguous and compact to the existing corporate limits of the City of
Monett, Missouri. The description of the property is legally described as follows:

(legal description)

See Attached

2. Your petitioner is the owner of all of the fee interests of record in the above referenced
tract of real estate located within the area proposed to be annexed.

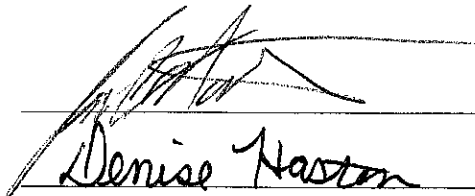
3. Your petitioner respectfully submits that this petition for annexation is in proper form
and that a hearing should be held within not less than fourteen (14) nor more than sixty
(60) days after the petition is received and the City should proceed with the annexation.

4. Your petitioner requests that the above described real estate be zoned:

Residential Agriculture (per JAMES HASTON 7-17-19)

Wherefore, pursuant to RSMo 71.012, and related statutes, the City of Monett, Missouri
is hereby requested to conduct such procedures and hearings as may be necessary and file
such plans that may be necessary to complete the annexation of the above described real
estate into the corporate city limits of the City of Monett, Missouri.

Signatures of petitioners:


Denise Haston

Acknowledgement

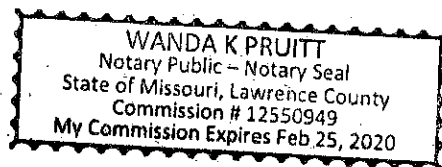
State of Missouri)
) ss.
County of BARRY)

On this 15th day of July, 2019, before me, a notary public, personally appeared James R. Haston to me known to be the person(s) described in and who executed the foregoing petition of annexation, and acknowledged that they executed the same as their free act and deed.

In Testimony, Whereof, I have set my hand and affixed my seal at my office in Monett,
Missouri, on the day and year first above written.

Kanda K. Pruitt
Notary Public

My commission expires: 02/25/2020





Fidelity National Title Group

Transaction Identification Data for reference only:

Issuing Agent: Randall, Masri & Randall, PC
 Issuing Office: 405 E. Broadway, PO Box 151, Monett, MO 65708-2331
 ALTA® Universal ID: 1056630
 Loan ID Number:
 Commitment Number: BA714602A
 Issuing Office File Number: BA714602A
 Property Address: 603 Farm Road 2240, Monett, MO 65708
 Revision Number:

SCHEDULE A

1. Commitment Date: April 22, 2019
2. Policy to be issued:
 - (a) ALTA Own. Policy (06/17/06)
 Proposed Insured: James R. Haston and Denise Haston, husband and wife
 Proposed Policy Amount: \$ 88,000.00
 - (b) ALTA Loan Policy (06/17/06)
 Proposed Insured: Community National Bank, its successors and/or assigns as their respective interests may appear.
 Proposed Policy Amount: \$ 70,400.00
3. The estate or interest in the Land described or referred to in this Commitment is Fee Simple.
4. Title to the Fee Simple estate or interest in the Land is at the Commitment Date vested in:
 Dan Bremer, a single person
5. The Land is described as follows:
 The Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section Thirty-six (36), Township Twenty-six (26), Range Twenty-eight (28), Barry County, Missouri, Except for the East 25 acres thereof. Subject to restrictions recorded on October 12, 2004 in Book 04 at Page 7851, Recorder's Office, Barry County, Missouri. Subject to any easements, rights of way, restrictions, reservations and covenants of record or fact.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Fidelity National Title Group. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; and Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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ALTA Commitment for Title Insurance 8-1-16 w- KS MO Mod



(BA714602APFD/BA714602A/3)

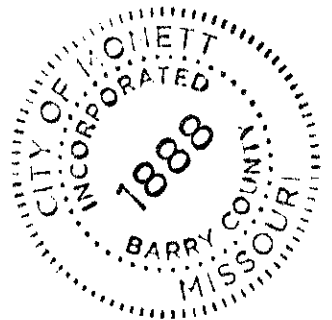
CERTIFICATION OF CITY DOCUMENTS

I hereby certify the attachments hereto are true copies of original documents as found in the Monett City records in the City Clerk's office at Monett, Missouri.

Dated this 4 day of September, 2019.



Lisa Crawford, City Clerk



From: Ken Raming
Sent: Monday, December 23, 2019 11:14 AM
To: Bax, Alan
Subject: Re: Order issued for Case No. EO-2020-0163 (Delegation)

Alan,
[CONFIDENTIAL INFORMATION REMOVED] It has been inactive since 2004 when the previous owner disconnected it.
Ken

Ken Raming, P.E.
Division Manager of Engineering
Ozark Electric Cooperative
"Owned by those we serve"

Important: This email is intended for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you have received this email in error, you are hereby notified that we do not consent to any reading, dissemination, distribution, or copying of this email. We request that you notify us immediately by telephone (800 947 6393); and return the email to us at the following address: Ozark Electric Cooperative, Inc. P.O. Box 420, Mount Vernon, MO. 65712.

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

In the Matter of the Application of)
James and Denise Haston for)
Change of Electric Supplier)

Case No. EO-2020-0163

AFFIDAVIT OF ALAN J. BAX

State of Missouri)
County of Cole) ss.
County of Cole)

COMES NOW Alan J. Bax and on his oath declares that he is of sound mind and lawful age; that he contributed to the attached *Staff Response and Recommendation for Dismissal*; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.



Alan J. Bax

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 29th day of January, 2020.



NOTARY PUBLIC

