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APPEAL OF TRI-COUNTY ELECTRIC
COOPERATIVE, INC. FROM RESOLUTION
AND ORDER OF THE CITY OF AZLE, TEXAS,
AND COMPLAINT AGAINST TEXAS ELECTRIC
SERVICE COMPANY

PUBLIC UTILITY COMMISSION
OF TEXAS

INTERIM ORDER

Opinion

This case was initiated on April 7, 1977 when Tri-County Electric Cooperative, Inc. (Tri-County) filed a petition for review of an ordinance of the City of Azle which required Texas Electric Service Company (TESCO) to serve all persons within the city limits requesting such service, including existing Tri-County customers. The petition also contained a complaint against TESCO for extending service to such customers. A prehearing conference and preliminary hearing was held on April 28, 1977, at which Tri-County, TESCO and Azle appeared. The Commission General Counsel participated on behalf of the Staff, and the Texas Municipal League made an appearance to state its position although not intervening in the matter.

At the preliminary hearing it became apparent through the evidence taken that a large number of Tri-County customers are anxious to switch service to TESCO due to the latter's less expensive total rates. The Cooperative has approximately 436 customers within the city limits, of which 175 to 200 have made application to TESCO to switch. As of the hearing date approximately 30 to 35 customers had actually transferred their service. Of those who wish to switch but have not done so yet, many have removed the Tri-County facilities from their property themselves due to the fact that Tri-County refuses to remove its lines and meters even when requested to do so. The evidence indicates that several persons have cut the lines to their houses while energized, creating a potentially dangerous situation. Also, a number of families are currently without electricity, having removed the Tri-County facilities from their homes and awaiting TESCO service which takes from three to four weeks to receive. In short, the situation is one calling for immediate attention.

The threshold issue in this case concerns the Commission's jurisdiction over the matter. The City and the Texas Municipal League contend this is a service question and the City has exclusive original jurisdiction over service since the Public Utility Regulatory Act (PURA) is silent as to Commission appellate jurisdiction from any type of case other than rates. Tri-County and the General Counsel alleged that the Commission has at least appellate service jurisdiction inside the City. TESCO did not take a firm position on Commission jurisdiction. The Examiner finds that the Commission has original jurisdiction over this matter pursuant to Section 58 of the PURA as well as the Commission's inherent certification jurisdiction through Article VII of the Act. Section 58 deals with the terms of service a utility must render under a certificate and as a certificate matter such an issue is clearly within the Commission's jurisdiction. Article VII of the Act confers a number of obligations on utilities as certificate holders, and since this article of the Act is the exclusive province of the Commission, the latter can determine whether service to consumers already receiving service from another utility is a condition of a certificate holder under Section 58.

The next question concerns the merits of Tri-County's request for interim relief to prevent the switchovers from continuing. As indicated earlier, about twenty-five to thirty of these have occurred and requests are being received almost daily by TESCO. However, the latter is not embarking on a crash program to effectuate such transfers, taking about three to four weeks to process the application and construct the necessary lines and facilities. With this in mind and with a quick hearing date of May 18, 1977 set for final hearing, the Examiner finds that there is no existing immediate need to issue the order as requested by Tri-County without all parties being offered the opportunity of a full evidentiary hearing on the merits. The Examiner is further of the opinion that the most practical solution to the problems of all involved would be the sale of Tri-County facilities in the City to TESCO, concerning which negotiations are currently underway. In the event that such negotiations prove successful between the date of this order and the final Commission order on the subject, the need for immediate relief by Tri-County could be reassessed. At that time relief could be granted to Tri-County pending final approval of the sale by the Commission and the Rural Electrification Administration, in order that the negotiated settlement between the parties not be eroded by further transfers. Until that time, however, the Examiner feels that the immediate relief should not be granted until a full hearing is held.

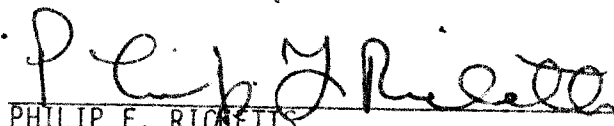
The last matter concerns the potentially dangerous situation caused by individuals in the City removing Tri-County lines and facilities from their property after the Cooperative refuses to remove such. The Examiner is unaware of any legal ground upon which Tri-County can rely in refusing to remove its lines from a property owner's premises. Further, Section 58(c) of the Act provides that any discontinuances or reduction of service to a certified service area or any part thereof by a certificate holder shall be subject to conditions, restrictions or limitations as the Commission shall prescribe. This authority again falls within the Commission's certification jurisdiction under Article VII of the PURA, and accordingly it grants to the Commission the necessary authority to deal with the potentially hazardous situation in this case. The Examiner thus finds that there is an immediate need for the Commission to exercise its jurisdiction under this provision and require Tri-County to remove all lines and facilities from an individual's property within ten days of a request to do so. The Examiner feels that the failure of Tri-County to do this may result in injury to an individual removing such facilities himself.

Accordingly, the Examiner issues the following Interim Order in this matter:


1. The Commission has jurisdiction over the complaint filed by Tri-County pursuant to its general certification jurisdiction, art. 1446c, Article VII, V.A.C.S., and more specifically pursuant to art. 1446c, § 58, V.A.C.S.
2. There is no immediate necessity to issue an order as requested by Tri-County, prohibiting TESCO from serving customers currently served by Tri-County and requesting service by TESCO.
3. Pursuant to art. 1446c, § 58(c), V.A.C.S., Tri-County is ORDERED to orderly remove its facilities from the premises of an individual within the City of Azle requesting it to do so within ten days of such a request. This order is necessary to protect the safety, health or welfare of the public in this matter.
4. This Order is issued pursuant to Commission Rule 052.01.00.067 and shall be effective upon receipt by the parties pending a final or further order of the Commission.

Entered this 5th day of May, 1977.

PUBLIC UTILITY COMMISSION OF TEXAS


PHILIP F. RICKETTS
HEARINGS EXAMINER

APPROVED BY:


ROY J. HENDERSON
COMMISSION SECRETARY
AND DIRECTOR OF HEARINGS

APPEAL OF TRI-COUNTY ELECTRIC
COOPERATIVE, INC. FROM RESOLUTION
AND ORDER OF THE CITY OF AZLE, TEXAS,
AND COMPLAINT AGAINST TEXAS ELECTRIC
SERVICE COMPANY

PUBLIC UTILITY COMMISSION OF TEXAS

ORDER

On May 18 and 19, 1977 the Commission met in a public meeting to consider the above styled case. It was announced by all parties to the matter that an agreement and stipulation had been reached whereby Tri-County Electric Coop., Inc. (Tri-County) and Texas Electric Service Company (TESCO) have entered into a contract for the sale of all electric utility facilities within the present city limits of the City of Azle owned by Tri-County. The agreement and contract of the parties were entered into the record as Staff Exhibit 1-A and TESCO Exhibit 2. The parties further stipulated that the contract was executed subject to the approval of all necessary authorities including this Commission, the Rural Electrification Administration, and Brazos Electric Power Coop., Inc., and if such approvals are not received by September 12, 1977 TESCO has the option of cancelling the contract and agreement. After consideration of the proposed agreement and stipulation the Commission finds that the terms of the contract are fair and reasonable and that the public interest is protected by such. Accordingly, the following order is entered:

1. The Commission has jurisdiction over this matter pursuant to art. 1446c, § 63, V.A.C.S.;
2. The parties to this sale are specifically encouraged to complete the transaction and obtain all further approvals required as soon as possible;
3. Pending completion of all terms of the contract TESCO is ordered to not extend service to any consumer currently served by Tri-County within the present city limits of the City of Azle;
4. All parties are directed to inform the City of Azle and the Commission Staff on the status of efforts to obtain the necessary approvals for completion of the contract and any other matters relating to the proposed transfer of facilities;
5. The Commission Staff through the Engineering and Enforcement Division shall monitor all further developments in the proposed transaction; and
6. The contract as set out in Staff Exhibit 1-A and TESCO Exhibit 2 is in the public interest and its terms are specifically approved pursuant to art. 1446c, § 63, V.A.C.S.

ENTERED AT AUSTIN, TEXAS on the 19th day of MAY, 1977.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: Garrett Morris

GARRETT MORRIS

SIGNED: Alan R. Erwin

ALAN R. ERWIN

SIGNED: George M. Cowden

GEORGE M. COWDEN

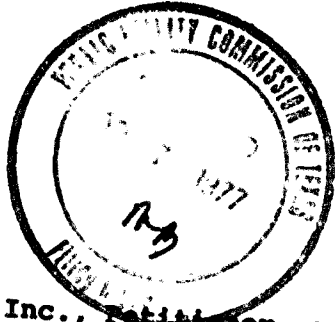
ATTEST:

Roy J. Henderson
ROY J. HENDERSON
COMMISSION SECRETARY
AND DIRECTOR OF HEARINGS

IN RE: APPEAL OF TRI-COUNTY
ELECTRIC COOPERATIVE, INC.
FROM RESOLUTION AND ORDER
OF THE CITY OF AZLE, TEXAS,
AND COMPLAINT AGAINST TEXAS
ELECTRIC SERVICE COMPANY

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BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS



PETITION FOR REVIEW
AND COMPLAINT

TO SAID HONORABLE COMMISSION:

COMES NOW Tri-County Electric Cooperative, Inc., Petitioner, complaining of an order and resolution issued and adopted by the City of Azle, Texas (the City), on March 15, 1977, and of actions taken by Texas Electric Service Company (TESCO) in response to such order and resolution. In support hereof, Petitioner would show the following:

1.

On March 15, 1977, at a regular meeting of the City Council of the City of Azle, the City adopted the following order and resolution:

"Councilman Clark made a motion to the Council to instruct Texas Electric Service Company to serve whoever requested to be served within the city limits. Councilman Carpenter seconded the motion and it was unanimous."

Since the adoption of that order and resolution, the City has taken several actions to require TESCO to serve consumers who have been receiving service from Tri-County but who now want to switch service from Tri-County over to TESCO. Such actions by the City include official notification and instruction to TESCO that TESCO must serve customers of TriCounty who request service from TESCO and the threat of litigation by the City against TESCO to require TESCO to comply with the above quoted resolution and order. In response to such actions by the City, TESCO has advised the City that it will make its service available to customers of Tri-County in accordance with its filed tariffs, and has advised Tri-County that service is and will be extended to certain Tri-County customers.

2.

In Docket No. EM-C184-76 before this Commission, Petitioner was granted a certificate of convenience and necessity for service within the boundaries of the City of Azle, a town in which Petitioner has been furnishing electric service for many years. In that proceeding, upon

was also granted a certificate for service within the City of Azle. Both utilities, Tri-County and TESCO, were also certificated under the grandfather provisions of Section 53, Article 1446c, pursuant to Rule .052.02.05.056 of the Commission's Substantive Rules.

In order to provide electric service in the City of Azle, Petitioner, over the years, has made a substantial investment in lines, facilities, apparatus and services in the City. Virtually, all of Tri-County's lines, facilities and services in the City were in existence on September 1, 1975, and are protected by the provisions of Section 53, Article 1446c, and other applicable provisions of that statute. The effect of the March 15 resolution of the City, its implementation by the City and compliance therewith by TESCO will be to destroy the rights of Tri-County with respect to its utility system in Azle and will ultimately render that system useless. For these reasons, Petitioner is an affected person as defined by Article 1446c and has the right to bring this appeal with respect to the actions of the City complained of herein and to complain of TESCO's actions taken pursuant to such order and resolution.

3.

Petitioner would show that said order and resolution and the implementation thereof, including the actions of TESCO in providing service to customers to whom Tri-County is providing service, are contrary to the public interest, are in violation of Article 1446c and are contrary to the Commission's Substantive Rules in the following respects:

1. Such actions by the City requires TESCO to extend its lines and system so as to interfere with the operation of Tri-County's lines, plant and system, and unless prohibited by the Commission, TESCO will, in compliance with the demands of the City, extend its lines and systems so as to interfere with the operation of Tri-County's lines, plant and system, contrary to the provisions of Section 60, Article 1446c.

2. Such actions by the City conflict with the Commission's Substantive Rule No. 052.02.05.056 which requires a certificate of convenience and necessity by TESCO for extension of its distribution facilities to serve consumers of Tri-County located within the corridor certificated to Tri-County under said Rule.

3. Such actions by the City are contrary to the public interest and defeat the purposes of Article 1446c as set forth in Section 2 thereof. Specifically, because the present differential in the cost of fuel existing between TESCO and Tri-County, the cost of electric service for TESCO is generally lower than it is from Tri-County. Because of that differential, the actions of the City will encourage the wide-scale switching of service from Tri-County to TESCO resulting in additional and duplicating lines and facilities being constructed by TESCO and the attrition of consumers from Tri-County to the extent that its system and investment in Azle will become useless. Such results are not in the public interest and are contrary to the provisions of said Section 2.

4. Such action by the City is an attempt to preempt the power and authority granted the Commission to determine the rights and responsibilities of public utilities within their certificated areas.

4.

WHEREFORE, Petitioner prays that this Honorable Commission immediately enter a preliminary Order:

(a) Setting a hearing to review the actions of the City of Azle, and in particular, its order and resolution dated March 15, 1977, and the implementation thereof and, ordering TESCO to show cause why it should not be ordered to cease and desist from extending service to customers and consumers served by Tri-County, and particularly those included within the corridor areas certificated to Tri-County in Docket No. EM-C184-76;

(b) Ordering TESCO, pending the completion of such hearing, to cease and desist from the implementation of any plans, construction or improvements to extend electric service to customers and consumers served by Tri-County, particularly those located within the corridor areas certificated to Tri-County in said Docket No. EM-C184-76; or, in the alternative, that the Commission, as soon as practicable, commence a prehearing conference and preliminary hearing for the presentation of evidence and arguments relating to the propriety of the Commission's granting an order granting such preliminary relief.

Upon final hearing hereof, Petitioner prays that this Honorable Commission enter its Order disapproving the order and resolution of the City dated March 15, 1977, and declaring the rights and responsibilities of TESCO and Tri-County in providing service in the City of Azle so as to prohibit the extension of service by either utility to customers of the other utility.

Respectfully submitted,

MCGINNIS, LOCHRIDGE & KILGORE
5th Floor, Texas State Bank Bldg.
900 Congress
Austin, Texas 78701

By B. D. St. Clair
B. D. St. Clair

JACK H. BORDEN
BORDEN, HAND, ZELLERS & WESTOFF
123 N. Main
Weatherford, Texas 76086

ATTORNEYS FOR TRI-COUNTY ELECTRIC
COOPERATIVE, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on the following interested parties by mailing a copy of same to them by first class U. S. Mail on this 6th day of April, 1977:

Mr. W. J. Marquart, President
Texas Electric Service Company
115 West 7th Street
Fort Worth, Texas 76102

Mr. C. Y. Rone, Mayor
Azle City Hall
West Main Street
Azle, Texas 76020

and that a copy has been delivered to Mr. John F. Bell, Jr., General Counsel, Public Utility Commission of Texas, 7800 Shoal Creek Blvd., Suite 450N, Austin, Texas.

B. D. St. Clair
B. D. St. Clair