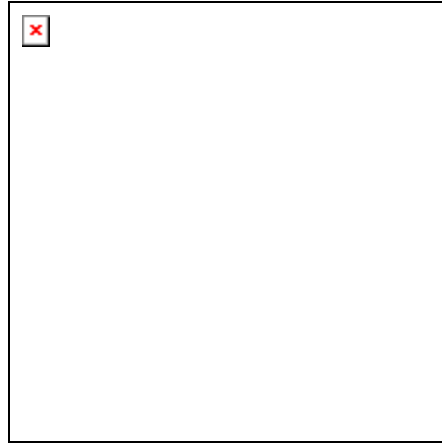


**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



In the Matter of the Application of The Empire District )  
Electric Company and White River Valley Electric )  
Cooperative for Approval of a Written Territorial )  
Agreement Designating the Boundaries of Exclusive ) **Case No. EO-2004-0246**  
Service Areas for Each Within the Canyon Springs )  
of Branson Residential Development Near Branson, )  
Missouri. )

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**REPORT AND ORDER**

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**Issue Date: March 16, 2004**

**Effective Date: March 26, 2004**

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OF THE STATE OF MISSOURI**

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Electric Company and White River Valley Electric )  
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Service Areas for Each Within the Canyon Springs )  
of Branson Residential Development Near Branson, )  
Missouri. )

**APPEARANCES**

**Gregory C. Mitchell**, Brydon, Swearingen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102, for The Empire District Electric Company.

**Rodric A. Widger**, Andereck, Evans, Milne, Peace & Johnson, L.L.C., 1111 South Glenstone, Post Office Box 4929, Springfield, Missouri 65808-4929,

and

**Lisa Cole Chase**, Andereck, Evans, Milne, Peace & Johnson, L.L.C., 700 East Capitol Avenue, Jefferson City, Missouri 65101, for White River Valley Electric Cooperative, Inc.

**John Coffman**, Public Counsel, Office of the Public Counsel, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

**Steven Dottheim**, Chief Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

**REGULATORY LAW JUDGE:** Nancy Dippell, Senior Regulatory Law Judge.

**REPORT AND ORDER**

Syllabus: This order approves the territorial agreement between The Empire District Electric Company and White River Valley Electric Cooperative.

**Procedural History**

The Empire District Electric Company and White River Valley Electric Cooperative filed a joint application on December 5, 2003, under Section 394.312, RSMo 2000,<sup>[1]</sup> asking

the Missouri Public Service Commission to approve a territorial agreement. The proposed territorial agreement is attached to this Report and Order as Attachment A.

The Commission issued an Order Directing Notice on December 11, 2003, directing parties wishing to intervene in the case to do so by December 31, 2003. No applications to intervene were filed. A prehearing conference was held on January 7, 2004, and on January 14, 2004, Empire filed a motion requesting to substitute an amended page to the territorial agreement. That amendment is attached to this order as Attachment B.

On February 9, 2004, Empire, White River, the Office of the Public Counsel, and the Staff of the Missouri Public Service Commission filed a Unanimous Stipulation and Agreement stating that the territorial agreement is not detrimental to the public interest and should be approved. A copy of the Unanimous Stipulation and Agreement is attached to this order and incorporated herein as Attachment C.

The Commission held an evidentiary hearing on March 9, 2004. All parties were represented at the evidentiary hearing.

### **Discussion**

Empire is a public utility engaged in providing electric service to the public in the state of Missouri, subject to the jurisdiction of the Commission. Empire's principal place of business is located in Joplin, Missouri. White River is a rural electric cooperative corporation engaged in distributing electric energy and service to its members in Taney County, Missouri, and in other Missouri counties. White River's principal place of business is located in Branson, Missouri. White River is not subject to Commission regulation of its service or rates.

Empire and White River jointly applied for approval of a territorial agreement that would designate the exclusive service area for new and existing structures in the Canyon Springs of Branson development located in Branson, Missouri. The agreement is designed to avoid duplication of facilities and to give more certainty to the electric service customers in the area as to which company is the electric supplier for the area. The agreement designates the boundaries of the exclusive electric service area for service of new and existing structures. The territorial agreement does not require the transfer of any facilities

or customers.

Before approving the proposed territorial agreement the Commission must determine that it is not detrimental to the public interest. The first factor the Commission will consider in deciding the appropriateness of this territorial agreement is the extent to which the agreement eliminates or avoids unnecessary duplication of facilities. The Applicants stated in their application and Empire's witness testified that the territorial agreement would eliminate any future duplication of facilities in the subdivision.

Second, the Commission will consider the ability of each party to the territorial agreement to provide adequate service to the customers in its exclusive service area. And, the third area for Commission concern is the effect of approval of the territorial agreement on customers of the Applicants. The Applicants state that there will be no exchange of customers or facilities as a result of the agreement. The Applicants further state in the territorial agreement that Empire will continue serving existing structures located in Phase I of the development and that White River will continue to serve structures in Phases II and III of the development. No party indicated any concern or presented any evidence questioning the ability of Empire or White River to provide adequate service to the customers in their exclusive service areas.

Fourth, the Commission will consider a category of other cost and safety benefits attributed to the proposed territorial agreement. The parties presented evidence that the agreement will promote efficiency by avoiding the duplication of distribution facilities within the designated territories. The parties stipulated that the agreement is not detrimental to the public interest.

### **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. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence,

but indicates rather that the omitted material was not dispositive of this decision.

The Commission finds that approval of the territorial agreement signed by Empire and White River would avoid future duplication of facilities. The Commission finds that the Empire and White River are capable of adequately and safely providing the electric power supply, service, and maintenance needs of the customers in their service areas as designated in the proposed territorial agreement. The Commission further finds that the overall effect of the proposed territorial agreement would not be harmful to ratepayers, that the agreement would promote efficiency.

The Commission further finds that the approval of this territorial agreement will not impair Empire's existing certificates of public convenience and necessity except as specifically limited by the territorial agreement.

### **Conclusions of Law**

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

The Missouri Public Service Commission has jurisdiction over the services, activities, and rates of Empire.<sup>[2]</sup> The Commission does not have jurisdiction over the services, activities, and rates of rural electric cooperatives such as White River except with regard to the construction, operation, and maintenance of its lines<sup>[3]</sup> and with regard to territorial agreements.<sup>[4]</sup>

When a cooperative enters into a territorial agreement with a regulated public utility the agreement must be approved by the Commission after hearing.<sup>[5]</sup> The Commission may approve a territorial agreement if the agreement in total is not detrimental to the public interest.

<sup>[6]</sup> Based on the findings of fact it has made, the Commission concludes that the territorial agreement proposed by Empire and White River is not detrimental to the public interest and should be approved.

### **IT IS THEREFORE ORDERED:**

1. That the Fourth Territorial Agreement as amended and attached to this order as Attachments A and B is approved.

2. That the Unanimous Stipulation and Agreement of the parties is approved.

3. That no more than 30 days after the effective date of this order, The Empire District Electric Company shall file revised tariff sheets in compliance with the Fourth Territorial Agreement as amended and approved in Ordered Paragraph 1.

4. That The Empire District Electric Company and White River Valley Electric Cooperative are authorized to perform in accordance with the terms and conditions of the Fourth Territorial Agreement.

5. This Report and Order shall become effective on March 26, 2004.

**BY THE COMMISSION**

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Nancy Dippell, Senior Regulatory Law  
Judge, by delegation of authority pursuant  
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 16th day of March, 2004.

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[1] All further statutory references are to the Revised Statutes of Missouri 2000 unless otherwise indicated.

[2] Section 386.250 and Chapter 393, RSMo.

[3] Section 394.160, RSMo.

[4] Section 394.312, RSMo.

[5] *Id.*

[6] *Id.*