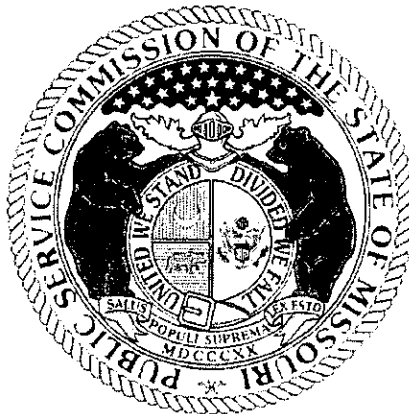


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



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 Each)
Electric Service Supplier Within the White Oaks)
Subdivision of the City of Branson, Taney County,)
Missouri.)

Case No. EO-2001-491

REPORT AND ORDER

Issue Date: June 27, 2001

Effective Date: July 7, 2001

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 Each) **Case No. EO-2001-491**
Electric Service Supplier Within the White Oaks)
Subdivision of the City of Branson, Taney County,)
Missouri.)

APPEARANCES

Gary W. Duffy, Brydon, Swearingen & England, P.C., 312 East Capital Avenue, Post Office Box 456, Jefferson City, Missouri 65102, for The Empire District Electric Company.

Rodric A. Widger, Andereck, Evans, Milne, Peace & Johnson, LLC, 1111 South Glenstone, Post Office Box 4929, Springfield, Missouri 65808, for White River Valley Electric Cooperative.

John B. Coffman, Deputy Public Counsel, and **M. Ruth O'Neill**, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

David A. Meyer, Associate 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

Procedural History

The Empire District Electric Company (Empire) and White River Valley Electric Cooperative (White River) filed a joint application on March 16, 2001, under

Section 394.312, RSMo 2000¹, 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 and Notice on March 28, 2001, directing parties wishing to intervene in the case to do so by April 17, 2001. No applications to intervene were filed. On May 1, 2001, 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 B.

The Commission held an evidentiary hearing on May 18, 2001. 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 service area for new structures in the White Oaks Subdivision of

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

Branson, Missouri, located in Taney County. The agreement is designed to avoid duplication of facilities and to give more certainty to the electric services 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 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 White River'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 White River will continue serving existing structures located in the subdivision and that Empire currently serves no customers in the subdivision. No party indicated any concern or presented any evidence questioning the ability of White River to provide adequate service to the customers in this exclusive service area.

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 and

will also enhance certainty in whom to call for service 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 and safety, and reduce customer confusion.

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 pursuant to Section 386.250 and Chapter 393, RSMo. The Commission does not have jurisdiction over the services, activities, and rates of rural electric cooperatives such as White River except as specified in Section 394.160, RSMo.

When a cooperative enters into a territorial agreement with a regulated public utility the agreement must be approved by the Commission after hearing. Section 394.312, RSMo. The Commission may approve a territorial agreement if the agreement in total is not detrimental to the public interest. Section 394.312.4, RSMo. 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 Territorial Agreement attached to this order as Attachment A and signed by The Empire District Electric Company and White River Valley Electric Cooperative 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 Territorial Agreement 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 Territorial Agreement.

5. This Report and Order shall become effective on July 7, 2001.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Dale Hardy Roberts".

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 27th day of June, 2001.

THIRD TERRITORIAL AGREEMENT

THIS AGREEMENT, made and entered into as of this 21st day of February, 2001, by and between The Empire District Electric Company, a Kansas corporation, with its principal office located in Joplin, Missouri ("Empire") and White River Valley Electric Cooperative, a Missouri rural electric co-operative organized and existing pursuant to Chapter 394, RSMo, with its offices located on East Highway 76, Branson, Missouri ("White River").

WITNESSETH:

WHEREAS, Empire and White River are authorized by law to provide electric service within certain areas of Missouri, including Taney County; and

WHEREAS, Section 394.312, RSMo.1994, provides that competition to provide retail electrical service as between rural electric cooperatives such as White River and electrical corporations such as Empire may be displaced by written territorial agreements; and

WHEREAS, Empire and White River entered into a Territorial Agreement dated February 19, 1993, involving a subdivision in Taney County known as "The Falls," which was approved by the Missouri Public Service Commission ("Commission") by order dated June 11, 1993; and

WHEREAS, Empire and White River entered into a Second Territorial Agreement dated April 11, 1995, involving several parcels in Taney County, which was approved by the Commission by order dated March 8, 1995; and

WHEREAS, Empire and White River desire 1) to promote the orderly development of retail electrical service within another portion of Taney County, Missouri, 2) to avoid unnecessary duplication of electrical facilities therein, and 3) to assist in minimizing territorial disputes;

NOW, THEREFORE, Empire and White River, in consideration of the mutual covenants and agreements herein contained, the adequacy and sufficiency of which are hereby acknowledged, agree as follows:

1. Description of Territory Affected.

A. This Agreement pertains only to the subdivision in Taney County, Missouri, known as "White Oak Estates Subdivision" which is particularly described as follows: All of the White Oak Estates Subdivision located in the Northeast quarter of the Northwest quarter of Section 7, Township 22 North, Range 21 West, Taney County, Missouri, said subdivision being a replat of Lot 1 of Camp White Oak as recorded in Cabinet B, Slide 421 in

the Taney County Recorder's Office, the perimeter of said White Oak Estates subdivision being more particularly described as follows: Beginning at the Northeast Corner of said Lot 1 of Camp White Oak at a set iron pin located .30 feet West of the waterline of Lake Taneycomo, thence N 89 degrees, 57 minutes, 00 seconds West 718.22 feet to a set iron pin; thence South 01 degrees, 24 minutes, 00 seconds East a distance of 308.57 to a set iron pin, thence South 89 degrees, 41 minutes, 14 seconds East 753.61 feet to the waterline of Lake Taneycomo, thence in a Northwesterly direction along said waterline a distance of 314 feet, more or less, to the point and place of beginning.

B. A copy of a plat map depicting White Oak Estates Subdivision is attached as **Exhibit A**.

C. This Agreement shall have no effect whatsoever upon service by White River or Empire in any area other than White Oak Estates Subdivision.

D. White Oak Estates Subdivision is located within the corporate limits of the City of Branson, Missouri, and thus is not a "rural area."

2. Definitions

A. For purposes of this Agreement, the references to "structure" have the same meaning as the statutory definition of the term "structure" found in Sections 393.106 and 394.315 RSMo in effect at the relevant time. In the event no such statutory definitions exist or are not otherwise applicable, the term shall be construed to give effect to the intent of this agreement which is to designate an exclusive provider, as between the parties hereto, of retail electric service for anything using or designed to use electricity that is located within the Service Area described herein.

B. The term "permanent service" shall have the same meaning as the definition of "permanent service" found in Sections 393.106 and 394.315 RSMo, in effect at the relevant time. If no such statutory definitions exist, the term shall be defined as it appeared in section 393.106 RSMo 1994, and shall be liberally construed to give effect to the expressed intent of this Agreement.

3. Exclusive Service Area. White River under this Third Territorial Agreement shall be entitled to provide permanent service to all structures now or in the future located within the "White Oak Estates Subdivision" ("the Subdivision") referred to above and therefore the Subdivision, as described above, shall be considered the exclusive Service Area of White River, as between Empire and White River. Empire shall not be allowed to serve any structures within the Subdivision. This Agreement does not purport to affect the rights of any electric supplier not a party to this Agreement.

4. Condition Precedent - Regulatory Approvals. This Agreement is conditioned upon receipt of approval of it by the Commission, with such approval being satisfactory in form and content to Empire and White River. If neither party notifies the other in writing within thirty (30) days after the effective date of a final order of the Commission approving this Agreement, it

shall be presumed that the approval is satisfactory in form and content to both parties.

5. Service to Structures Receiving Service as of the Date of this Agreement. There are structures located within the Subdivision on the date of this Agreement which are being, or have been, served with permanent service by White River. There are no structures within the Subdivision currently being served with electricity by Empire. It is the understanding of the parties that permanent service to all existing structures is in accordance with the exclusive Service Area established herein so that no customer at an existing structure will be required to change suppliers to be in compliance with this Agreement.

6. New Structures After Approval of this Agreement.

A. After the date of approval of this Agreement by the Commission, White River shall have the exclusive right to provide permanent service to structures within the Subdivision.

B. Boundary Structures. Notwithstanding the provision in paragraph 6.A., Empire and White River may subsequently agree in writing, on a case by case basis, to allow any new structure in the Subdivision to receive service from Empire even though the structure is served, or required to be served, by White River, when the interests of both parties and the owner of the structure are advanced thereby. Such situations shall be dealt with on a case by case basis, and shall not be deemed to be precedent for any future situations even if the facts may be similar.

i. Each such agreement shall be treated as an Addendum to this Agreement and a copy thereof shall be submitted to the Staff of the Commission, directed to the Utility Services Division director, and a copy submitted to the Office of the Public Counsel.

ii. There will be no filing fee for the submission of such Addendums.

iii. The Addendums subject to this process apply to New Structures only, and not to structures receiving service on the effective date of the Commission's order approving the Agreement.

iv. Each Addendum shall be accompanied by a notarized statement indicating that the two affected electric service providers support the Addendum.

v. Each Addendum shall be accompanied by a notarized statement, signed by the customer to be served, which acknowledges such customer's receipt of notice of the contemplated electric service to be provided and that the Addendum represents an exception to the territorial boundaries approved by the Commission, and shall indicate the customer's consent to be served by the service provider contemplated by the Addendum.

vi. Each Addendum shall include, or be accompanied by an explanation of the justification that electric service should be provided in the agreed manner.

vii. If the Staff of the Commission, or the Office of the Public Counsel, or the Commission on its own motion, does not submit a pleading objecting to the Addendum within sixty (60) days of the filing thereof, the Addendum shall be deemed approved by the Commission. If such a pleading is filed, then the Commission shall schedule an evidentiary hearing at the earliest reasonable opportunity to determine whether the Addendum should be approved.

viii. Each party, pursuant to an executed Addendum, shall have the right to provide temporary service, as defined in section 393.106 RSMo., until the Commission

approves or disapproves the Addendum. No party shall be required to remove any facilities installed pursuant to an Addendum until the effective date of a final and non-appealable order of the Commission or a court regarding the removal of same.

C. During the interim period between the date of execution of this Agreement and the date it is approved by the Commission pursuant to Section 394.312, RSMo, the parties shall not be bound by the territorial division provisions of this Agreement and may provide service to any customer seeking service if the supplier can lawfully provide such service in the particular location. Pending the issuance of a decision either approving or denying approval of this agreement by the Commission, however, Empire shall not construct primary or secondary electric facilities within the territory assigned exclusively White River pursuant to this Agreement, unless ordered to do so by the Commission or a court of competent jurisdiction. If in the interim before this Agreement is approved by the Commission a new customer should locate on one side of the proposed boundary and request service from the party on the opposite side of the boundary, and the party has the existing right to provide such service, the parties agree to submit the matter to the Commission for determination in the case set up for approval of this Agreement. The parties agree to propose to the Commission in such case that the party which will have the exclusive right to serve the customer if this Agreement is approved by the Commission should have the exclusive right and obligation to serve the customer in the interim.

7. Indirect Provision of Service to Structures Not Permitted. The intent of this Agreement is to designate an exclusive provider of electric service for structures or anything else using or designed to use electricity to be located within the described area. Neither party shall furnish, make available, assist in providing, render or extend electric service to a structure, which that party would not be permitted to serve directly pursuant to this Agreement, by indirect means such as through a subsidiary corporation, through another entity, or by metering service outside of the area for delivery within the area. This shall not be construed to otherwise prohibit sales of electric power and energy between the parties to this Agreement.

8. Term. The initial term of this Agreement shall be thirty-five (35) years from and after the effective date of an order of the Commission approving this Agreement ("initial term"). Thereafter, this Agreement shall be renewed for successive five (5) year terms ("renewal terms") unless either party hereto shall notify the other party in writing of its intent to terminate this Agreement at least one (1) year in advance of any such renewal date. The parties agree that a copy of any notice of termination of this Agreement shall be simultaneously served upon the Executive Secretary of the Commission and the Office of the Public Counsel. Termination of this Agreement shall eliminate the exclusive service territories provided for herein, but shall not entitle a party to provide service to a structure lawfully being served by the other party, or allow a change of suppliers to any structure in the other's service area hereunder, unless such a change is otherwise permitted by law.

9. Cooperation. Empire and White River agree to undertake all actions reasonably necessary to implement this Agreement. Empire and White River will cooperate in presenting a joint application to the Commission demonstrating that this Agreement is in the public interest. White River shall pay all the costs assessed by the Commission for seeking administrative

approval of this Agreement. All other costs will be borne by the respective party incurring the costs.

10. General Terms

A. Land Descriptions: The land descriptions utilized in this Agreement are assumed by the parties to be accurate and reliable and to match the plats or diagrams; however, where there are maps and the map does not correspond with the metes and bounds description, the map shall be controlling.

B. No Constructive Waiver: No failure of Empire or White River to enforce any provision hereof shall be deemed to be a waiver.

C. Modifications: Neither the boundaries described in this Agreement nor any provision of this Agreement may be modified or repealed except by a signed writing of the parties which is approved by all applicable regulatory authorities.

D. Survival: This Agreement shall inure to the benefit and be binding upon the parties, their respective successors and assigns.

E. Lack of Approval or Termination: If the Commission or any other regulatory authority having jurisdiction does not approve this Agreement, or if the Condition Precedent is not fulfilled, or if this Agreement is terminated pursuant to its terms, this Agreement shall be nullified and of no legal effect between the parties. Further, if any part of this Agreement is declared invalid or void by a court or agency of competent jurisdiction, then the parties shall replace such provision as similarly as possible to the provision which was declared invalid or void so as to return each of them, as much as practical, to the status quo prior to the declaration.

F. This Agreement shall not be construed to prevent either party from obtaining easements or right of way through or in any part of the service area of the other if the acquisition of such easement or right of way is reasonably necessary to or desirable for the performance of the party's duties to provide electric service to its customers in other areas.

G. The subsequent platting, replatting, subdividing, resubdividing, or renaming of any parcel or subdivision covered by this Agreement shall not affect the respective rights of Empire or White River established by this Agreement.

11. Subsequent Legislation. This Agreement is reached between the parties based upon their understanding of the current state of the law in Missouri under sections 393.106 and 394.315 RSMo 1994, which allows an electrical supplier, once it lawfully commences supplying retail electric energy to a structure through permanent service facilities, to have the right to continue serving such structure. Further, the concept of service under those sections at the current time contemplates not only the physical provision of conductors to provide an electrical path and connection between the structure and the conductors of the electrical supplier, but also the provision of electrical power and energy through such conductors. In the event the law in

Missouri is changed during the term of this Agreement to provide that the provider of the electrical facilities (i.e. conductors) within the Subdivision is not also required or assumed to be the provider of electrical power and energy (i.e., the electricity), and thereby give customers a choice as to who provides their electricity, as contrasted with who owns the wires over which such electricity is provided, then nothing in this Agreement shall be construed to prohibit Empire from providing electrical power and energy to structures within the Subdivision under the terms of such future legislation, notwithstanding the terms of this Agreement to the contrary. However, if sections 393.106 and 394.315, or section 394.312 RSMo are repealed and not reenacted in a form substantially equivalent to their status on the date this Agreement is approved by the Commission, this Agreement shall terminate, coincident with the effective date of the elimination of the current content of sections 393.160 and 394.315, or section 394.312, as the case may be.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 21st day of February, 2001.

THE EMPIRE DISTRICT
ELECTRIC COMPANY

By:

William L. Lysen

Attest:

Janet L. Lysen

(seal)

WHITE RIVER VALLEY
ELECTRIC COOPERATIVE

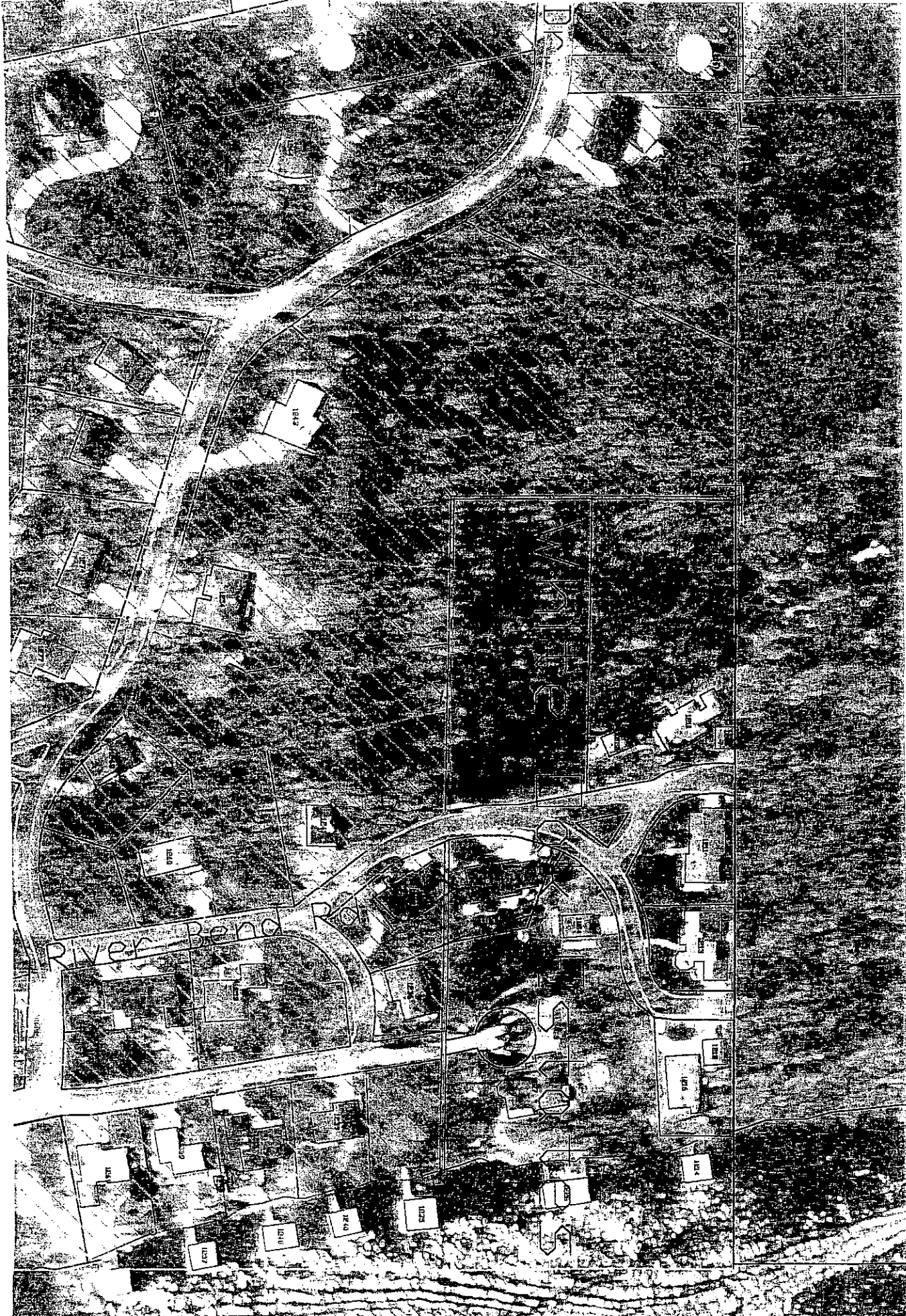
By:

[Signature]

Attest:

Debie J. Jorgensen

(seal)



BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

MAY 01 2001

Missouri Public
Service Commission

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) Case No. EO-2001-491
Boundaries of Each Electric Service Supplier)
Within the White Oaks Subdivision of the City)
of Branson, Taney County, Missouri.)

UNANIMOUS STIPULATION AND AGREEMENT

COME NOW the undersigned parties to this proceeding and for their Unanimous Stipulation and Agreement ("Stipulation and Agreement"), respectfully state as follows:

I. Procedural History

1. On March 16, 2001, The Empire District Electric Company ("Empire"), a regulated utility, and White River Valley Electric Cooperative ("White River"), collectively known as "the Applicants," filed a Joint Application requesting that the Commission: 1) approve a Territorial Agreement between the Applicants, based on a finding that it is not detrimental to the public interest; 2) authorize the Applicants to perform in accordance with the terms and conditions of the Territorial Agreement; and 3) find that the Territorial Agreement shall not impair Empire's certificates of convenience and necessity other than by the Agreement's own terms.

2. On March 28, 2001, the Commission issued an Order directing that a procedural schedule be filed in this case by April 27, 2001, with the hearing to be held no later than June 1, 2001; that notice be sent to interested parties; and that any applications to intervene be filed by April 17, 2001. No applications to intervene were filed during the permissible time period.

3. In the Joint Application, Empire and White River seek Commission approval of the Territorial Agreement. White River desires to provide electric service to new structures in the White Oaks Subdivision of Branson, Missouri. The legal description of the area containing the new structures is included in the Territorial Agreement in numbered paragraph 1, and a plat map illustrating the affected area is attached as Exhibit A to the Territorial Agreement. The Territorial Agreement establishes an exclusive service territory for White River in a single subdivision, and does not entail the transfer of any facilities or customers between Applicants, so no list of persons whose utility service would be changed by the agreement (as required by 4 CSR 240-2.060(13)) is included as part of this Stipulation. There are no other electric suppliers providing permanent service in the area covered by the Territorial Agreement. Empire and White River have agreed to displace competition between them in the pertinent section of Taney County, as allowed by Section 394.312 RSMo 2000, and have set out the terms of the Territorial Agreement, which is attached to the Joint Application and marked as Appendix A.

4. On April 20, 2001, the Commission issued an order setting a procedural schedule, setting filing of a Stipulation and Agreement for May 4, 2001, and an evidentiary hearing on the Territorial Agreement for May 18, 2001 at 1:30 P.M.

5. The Staff of the Commission, the Office of the Public Counsel, Empire, and White River (hereinafter collectively known as "the Parties"), having reviewed the Joint Application and associated Territorial Agreement and having considered the position of the Parties and the issues to be resolved in this case, have entered into this Stipulation and Agreement.

II. The Parties Have Reached the Following Stipulation and Agreement:

6. The Parties assert and, in consideration of the promises and covenants herein contained, state that the Territorial Agreement between Empire and White River is not detrimental to the public interest and therefore should be approved.

7. Empire agrees that within 30 days of the effective date of an Order approving the Territorial Agreement, Empire will file for review and approval revised tariff sheets for the Empire service area in Taney County, stating the effect of the Territorial Agreement on the rights and obligations of Empire to provide service and state the effect of the Territorial Agreement on the service area. Specifically, Empire will file revised tariff sheets containing a either a legal description or plat of areas in Taney County that are restricted by this Territorial Agreement, as well as any previous Territorial Agreement.

8. This Stipulation and Agreement shall be binding upon the successors and assigns of Empire and White River.

III. General Matters

9. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation and Agreement in total, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the signatories to take other positions in other proceedings.

10. In the event the Commission accepts the specific terms of this Stipulation and

Agreement, the Parties waive, with respect to the issues resolved herein: their respective rights, pursuant to §536.080 RSMo. 2000, to present testimony, to cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2 RSMo. 2000; their respective rights to seek rehearing pursuant to §386.500 RSMo. 2000; and their respective rights to seek judicial review pursuant to §386.510 RSMo. 2000. Notwithstanding the foregoing each party may present oral testimony at the evidentiary hearing supporting the fact that the Territorial Agreement is not detrimental to the public interest. The Parties agree to cooperate with each other in presenting for approval to the Commission this Stipulation and Agreement, and will take no action, direct or indirect, in opposition to the request for approval of this Stipulation and Agreement.

11. The Staff shall have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.

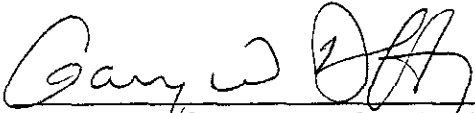
12. None of the Parties to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any rate-making principle or any method of cost determination or cost allocation underlying or allegedly underlying the Stipulation and Agreement, except as the Commission finds that the Territorial Agreement is in the public interest. Further, the parties

recommend that the Commission reserve the right to consider the rate-making treatment, if any, to be afforded this transaction in any future rate-making proceeding.

WHEREFORE, the Parties respectfully request the Commission to issue its Order:

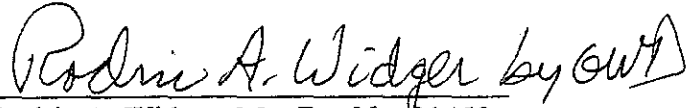
- A. Finding that the designated electric service area is not detrimental to the public interest and approving the Third Territorial Agreement (Appendix A to the Joint Application);
- B. Authorizing Empire and White River to perform in accordance with the terms and conditions of the Third Territorial Agreement;
- C. Finding that the Third Territorial Agreement does not impair Empire's certificates of convenience and necessity, except as specifically limited by the Third Territorial Agreement;
- D. Directing that Empire file, within thirty days of the effective date of the Commission Order, revised tariff sheets with respect to its service area in Taney County to reflect the Third Territorial Agreement and any previous Territorial Agreements;
- E. Approving all of the terms of this Stipulation and Agreement; and
- F. Granting such other relief as deemed necessary to accomplish the purposes of the Joint Application that are not inconsistent therewith.

Respectfully submitted,



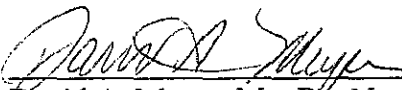
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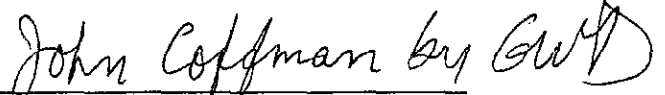
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Attorney for the
Office of the Public Counsel

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 1th day of April, 2001.

