

**BEFORE THE PUBLIC SERVICE COMMISSION
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)	<u>Case No. EO-2009-0284</u>
Territorial Agreement Designating the Boundaries of)	
Exclusive Service Areas within Taney County)	

STAFF RECOMMENDATION TO APPROVE APPLICATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and, for its recommendation on the application of The Empire District Electric Company and White River Valley Electric Cooperative, states:

1. On February 3, 2009, The Empire District Electric Company and White River Valley Electric Cooperative filed a joint application seeking approval of a territorial agreement.

2. Staff's investigation found that Lot 313 of Lake Taneycomo Acres (Exhibit A3) was part of a previous territorial agreement between Empire and White River under their Second Territorial Agreement the Commission approved in Case No. EO-96-176. That agreement contained case-by-case provisions for boundary structures by which a lot may be served by the other provider if Empire, White River and the property owner agree that the interest of all parties are advanced thereby.

3. On May 28, 2009, Empire filed the First Amendment to the Sixth Territorial Agreement. This amendment seeks to eliminate Lot 313 of Lake Taneycomo Acres from the exclusive areas addressed in the Sixth Territorial Agreement, so that it may be addressed by Addendum to the Second Territorial Agreement between the parties.

4. On May 28, 2009, Empire filed a Joint Motion for Approval of Second Addendum in Case No. EO-2009-0428 to address Lot 313 removed by the First Amendment to the Sixth Territorial Agreement. Electric service to Lot 313 is now the subject of the addendum addressed in Case No. EO-2009-0428.

5. According to Section 394.312.4 RSMo (2008), “Unless otherwise ordered by the commission for good cause shown, the commission shall rule on such applications not later than one hundred twenty days after the application is properly filed with the secretary of the commission.” The 120-day deadline contemplated by the statute would have run on June 3, 2009.

6. On June 3, 2009, the Commission determined there was good cause to extend the 120-day deadline beyond June 3, 2009, and ordered the Staff of the Commission to file its recommendation no later than 5:00 p.m. on June 9, 2009.

7. In its Memorandum, attached hereto as Appendix A, the Staff, for the reasons stated therein, recommends the Commission approve the Joint Application for the Sixth Territorial Agreement between Empire and White River as amended by the First Amendment to the Sixth Territorial Agreement as being in the public interest.

8. The areas subject to this Agreement which would designate White River as the electric service provider can be easily and economically served by White river. Furthermore, each electric utility will be better able to plan for the future needs of its customers and duplication of electric facilities can be avoided.

WHEREFORE, the Staff recommends that the Commission approve the Joint Application, as amended on May 28, 2009, for the Sixth Territorial Agreement between Empire and White River as amended by the First Amendment to the Sixth Territorial Agreement, as being in the public interest.

Respectfully submitted,

/s/ Samuel D. Ritchie

Samuel D. Ritchie

Legal Counsel

Missouri Bar No. 61167

Attorney for the Staff of the

Missouri Public Service Commission

P. O. Box 360

Jefferson City, MO 65102

(573) 751-4140 (Telephone)

(573) 751-9285 (Fax)

samuel.ritchie@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed with first-class postage, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 9th day of June, 2009.

/s/ Samuel D. Ritchie

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. EO-2009-0284, 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 Service Areas for Each Applicant within Taney County

FROM: James L. Ketter, Energy Department – Engineering Analysis

<u>/s/ Lena M. Mantle 6/8/09</u> Energy Department / Date	<u>/s/ Sam Ritchie 6/8/09</u> General Counsel's Office / Date
--	--

Subject: Staff Recommendation

Date: June 8, 2009

OVERVIEW

On February 3, 2009, The Empire District Electric Company (Empire) and White River Valley Electric Cooperative (White River) (collectively, Applicants) filed a Joint Application for approval of the Sixth Territorial Agreement (Agreement). This Agreement specifically designates boundaries, as between the Applicants, of exclusive service areas within portions of Taney County, Missouri for all new structures. Each Applicant will continue to have service responsibilities beyond the boundaries of the Agreement.

On February 4, 2009, an Order was issued to provide notice of the application and allow the opportunity for intervention no later than March 6, 2009. No applications for intervention were filed. On March 30, 2009, the Staff was directed to file its recommendation no later than April 17, 2009.

On April 17, 2009, Staff filed its Status Report that identified Lot 313 of Lake Taneycomo Acres as part of a previous territorial agreement between Empire and White River (Case No. EO-96-176). On May 28, 2009, Applicants filed a Supplement to Joint Application to remove Lot 313 from the Sixth Territorial Agreement. Electric service to Lot 313 is now addressed in Case No. EO-2009-0428.

DISCUSSION

This application seeks to establish exclusive service areas as to Empire and White River within portions of Taney County, Missouri. The Agreement filed February 3, 2009, specifically designated the boundaries of three (3) exclusive electric service areas which are illustrated in Appendix A of the application. Exhibit A1 (Rainbow Shoals Block A Lots 1A – 4A and Block C Lots 5 and 6), Exhibit A2 (Sanctuary, Tract 1 and 2)

and Exhibit A3 (Lot 313 Lake Taneycomo Acres) show the areas designated in the Agreement as the exclusive service area of White River for all new structures. On May 28, 2009, the Application was amended to remove Lot 313 from the Sixth Territorial Agreement. Applicants stated that electric service to that lot would be addressed within the scope of the Second Territorial Agreement.

For those lots in Rainbow Shoals Block A and Block C (Exhibit A1), White River has existing electric facilities in place that can provide electric service to these lots. Empire has electric facilities in the area but the customer inquired concerning electric service from White River because of the cost for an extension. An electric extension from Empire's existing facilities would further duplicate the electric facilities in the area. The customer has requested service from White River because of the existing facilities that are in place adjacent to the lot and the lower cost to extend service.

For Tracts 1 and 2 of the Sanctuary (Exhibit A2), Empire's electric facilities are over 3900 feet away as measured in a straight line, but terrain conditions would require a three phase extension of almost a mile. White River has existing facilities in place along the road frontage of the development. These existing electric facilities could serve the development at a lower overall cost and also allow a quicker response for the provision of the electric needs of the development.

Applicants have provided metes and bounds description of the area subject to Agreement. There are no other electric service suppliers in this area and no facilities will be exchanged and no customers will change from their present providers of electric service because this Agreement only applies to new structures.

Applicants state that the Agreement is not detrimental to the public interest and the proposed electric service area designations are in the public interest, because the Agreement establishes exclusive obligations for new structures as between the Applicants in the designated areas. Applicants state the establishment of exclusive service territories will prevent future duplication of electric service facilities, will allow electric service customers within the areas to know with certainty the supplier of their electric service and will allow the Applicants to avail themselves of prior investment and planning for serving the public.

STAFF INVESTIGATION

The areas subject to this Agreement contain lots or developments that have existing White River facilities adjacent or near. The prospective customers and the utilities agree that White River is in the best position be the electric service provider. In addition, further duplication of electric facilities can be minimized. Staff has obtained and reviewed electric distribution maps that show the existing facilities serving the areas subject to this Agreement.

The six (6) lots of Rainbow Shoals Block A and Block C are surrounded by White River electric facilities and can be served more efficiently by White River. Empire electric facilities are near but would duplicate existing facilities. Duplication impacts the esthetics and also necessitates the crossing of overhead lines that introduces additional safety hazards for workmen for construction and maintenance. The customer can benefit from lower costs for extension of service to new structures from White River.

The Sanctuary is a proposed development along Table Rock Lake which would require a three phase extension of electric facilities. Empire would have to build almost a mile of line to serve this development, but White River has existing electric facilities that cross the property. White River is in position to meet the needs of the development, both in capacity and timeliness.

STAFF RECOMMENDATION

The Staff recommends that the Commission approve the Joint Application, as amended on May 28, 2009, for the Sixth Territorial Agreement between Empire and White River, as being in the public interest for Exhibit A1 (Rainbow Shoals Block A Lots 1A – 4A and Block C Lots 5 and 6) and Exhibit A2 (Sanctuary, Tract 1 and 2).

The areas subject to this Agreement which would designate White River as the electric service provider can be easily and economically served by White River. With an approved agreement, each electric utility will be better able to plan for the future needs of its customers in each exclusive service territory. Duplication of electric facilities can be avoided which will reduce the public and worker exposure to additional overhead electric facilities.

Empire's Rules and Regulations specifically identify electric service territory for the company and areas subject to territorial agreements. Staff recommends that if this Agreement is approved that Empire be directed to file a revised tariff sheet to reflect the limitations on the service territory so approved. Staff directs attention to Empire P.S.C. Mo. No. 5, Section B, Original Sheet No. 19 where the limitations of Empire's obligation to serve in Taney County are limited by specific territorial agreements listed therein.

Empire states that it has no pending or final unsatisfied judgments or decisions against it from any state or federal agency which involve customer service or rates. Empire has no overdue Commission annual reports or assessment fees. White River is a rural electric cooperative and no annual reports or assessments are required from the Commission. The Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

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

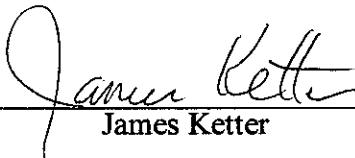
In the Matter of the Application of The)
Empire District Electric Company and)
White River Valley Electric Cooperative)
for Approval of a Written Territorial)
Agreement Designating the Boundaries of)
Exclusive Service Areas for Each)
Applicant within Taney County.)

Case No. EO-2009-0284

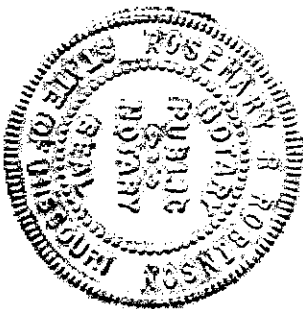
AFFIDAVIT OF JAMES KETTER

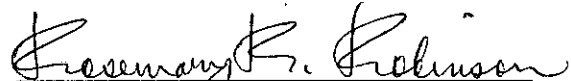
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

James Ketter, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Report in memorandum form, to be presented in the above case; that the information in the Staff Report was provided to him; that he has knowledge of the matters set forth in such Staff Report; and that such matters are true to the best of his knowledge and belief.


James Ketter

Subscribed and sworn to before me this 8th day of June, 2009.




Notary Public

ROSEMARY R. ROBINSON
Notary Public - Notary Seal
State of Missouri
Commissioned for Callaway County
My Commission Expires: September 23, 2012
Commission Number: 08499510