

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

HEARING
May 18, 2001
Jefferson City, Missouri
Volume 1

In the Matter of the Application)
of The Empire District Electric)
Company and White River Valley)
Electric Cooperative for Approval) Case
of a Written Territorial) No. EO-2001-491
Agreement Designating the)
Boundaries of Each Electric)
Service Supplier Within the White)
Oaks Subdivision of the City of)
Branson, Taney County, Missouri.)

BEFORE:

KEVIN A. THOMPSON, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.

REPORTED BY:

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1 P R O C E E D I N G S

2 (EXHIBIT NOS. 1 AND 2 WERE MARKED FOR
3 IDENTIFICATION.)

4 (Written Entries of Appearance filed.)

5 JUDGE THOMPSON: Good afternoon. We're here
6 for the hearing in the matter of the application of
7 The Empire District Electric Company and White River
8 Valley Electric Cooperative for approval of a written
9 territorial agreement designating the boundaries of
10 each electric service supplier within the White Oaks
11 Subdivision of the City of Branson, Taney County,
12 Missouri, Case No. EO-2001-491.

13 My name is Kevin Thompson, and I will be
14 presiding over this hearing in place of Judge Nancy
15 Dippell, who is out of state.

16 Let's take entries of appearance, please.

17 Let's start with you, Mr. Duffy.

18 MR. DUFFY: Gary W. Duffy, Brydon,
19 Swearengen & England, P.C., P.O. Box 456, Jefferson
20 City, Missouri, appearing for The Empire District
21 Electric Company.

22 JUDGE THOMPSON: Thank you.

23 Mr. Meyer.

24 MR. MEYER: David Meyer, Associate General
25 Counsel, Public Service Commission, P.O. Box 360,

1 Jefferson City, Missouri, 65102, representing the
2 Staff of the Missouri Public Service Commission.

3 JUDGE THOMPSON: Ms. O'Neil.

4 MS. O'NEIL: Ruth O'Neil, appearing for John
5 Coffman on behalf of the Office of the Public Counsel,
6 P.O. Box 7800, Jefferson City, Missouri, 65102.

7 JUDGE THOMPSON: Sir.

8 MR. WIDGER: My name is Rod Widger. I'm an
9 attorney with the firm of Andereck, Evans, Milne,
10 Peace & Johnson. Our address is 1111 South Glenstone,
11 P.O. Box 4929, Springfield, Missouri, 65808.

12 I'm here today representing White River
13 Valley Electric Cooperative.

14 JUDGE THOMPSON: Okay. We will proceed in
15 the following fashion: The parties will be permitted
16 to make opening statements, essentially presentations,
17 informing the Commission about the agreement and why
18 it should be approved, questions from the Bench, and
19 then closing statements in lieu of briefs.

20 Questions? Comments?

21 Do you anticipate any witnesses?

22 MR. DUFFY: Yes. We have two people
23 available for witnesses because it was our impression
24 that we had to have a hearing and that that meant a
25 witness.

1 JUDGE THOMPSON: We'll go ahead and after we
2 do opening statements, you can put your witnesses on.
3 Okay?

4 Why don't we go ahead and get started.
5 Empire District Electric Company.

6 MR. DUFFY: Your Honor, as the joint
7 application filed in March indicates, this is a --
8 this case involves a territorial agreement between The
9 Empire District Electric Company and White River
10 Electric Cooperative. It applies to one subdivision
11 in Taney County, Missouri, which is also within the
12 city limits of Branson.

13 The agreement provides that White River is
14 allowed to serve any electrical loads within that
15 subdivision exclusively. Empire will not serve anyone
16 in there. This agreement does not require anyone to
17 change their current suppliers.

18 And I would note that all of the parties
19 submitted a Unanimous Stipulation and Agreement on
20 May 1st in which all of the parties agree that the
21 Commission should approve this agreement.

22 I have with me today Mike Palmer on behalf
23 of The Empire District Electric Company, who I would
24 intend to put on the stand as a witness who can also
25 support the agreement or perhaps answer any questions

1 that the Bench might have. Thank you.

2 JUDGE THOMPSON: Thank you, Mr. Duffy.

3 White River.

4 MR. WIDGER: Yes, sir.

5 This agreement is -- at least, is the third
6 between the same parties. The scope of this
7 particular agreement is not particularly large, but it
8 is still very important because it allows both
9 suppliers to do things in compliance with the law.

10 I concur with what Mr. Duffy has represented
11 about the agreement. I would add by saying that the
12 reasons for the necessity of this relate to lawful
13 compliance with our statutes.

14 The agreement deals with one subdivision.
15 That subdivision has been pretty well developed with
16 service by my client; however, now it is annexed by
17 the City of Branson, so under -- under the statutory
18 limitations the Cooperative cannot serve new loads in
19 that subdivision absent the action of the Commission
20 here today.

21 I would say that it is still important,
22 though, because it deals not only with whatever loss
23 may be still left in that subdivision, but also it
24 would apply to structures that might be built on an
25 existing lot. There is -- there is an ambiguity in

1 the law, maybe an unambiguity, but there may be a
2 limitation in that if, for example, a house was burnt
3 in that subdivision and we presently serve it, a
4 question could be raised about whether we could serve
5 a house built on that old foundation because we have
6 to deal with the language which restricts us to the
7 structures. There is some structure language in the
8 statute.

9 So even though this is a small scale
10 agreement, it is a very important agreement in that it
11 shows our company is acting within the law.

12 Our witness today will be John Bruns from
13 White River who is the manager of operation and
14 technology for that company.

15 JUDGE THOMPSON: Thank you, Mr. Widger.
16 Mr. Meyer.

17 MR. MEYER: We have no opening statement.

18 JUDGE THOMPSON: Thank you, Mr. Meyer.

19 Ms. O'Neil.

20 MS. O'NEIL: Yes, your Honor.

21 The Office of Public Counsel, in reviewing
22 the application and participating in the discussion
23 which resulted in the Unanimous Stipulation, believes
24 the Commission should adopt the Stipulation and
25 proceed accordingly. There are no customers at this

1 point who will be affected which this change. We
2 believe it is in the public interest.

3 JUDGE THOMPSON: Very well. Thank you.

4 Mr. Duffy, call your first witness.

5 MR. DUFFY: I would call Mike Palmer to the
6 stand.

7 JUDGE THOMPSON: If you would raise your
8 right hand, sir.

9 (Witness sworn.)

10 JUDGE THOMPSON: Please take your seat and
11 spell your name for the reporter, if you would.

12 THE WITNESS: Michael, M-i-c-h-a-e-l,
13 Palmer, P-a-l-m-e-r.

14 JUDGE THOMPSON: Thank you, Mr. Palmer.

15 Mr. Duffy.

16 MR. DUFFY: Thank you.

17 MICHAEL PALMER testified as follows:

18 DIRECT EXAMINATION BY MR. DUFFY:

19 Q. Would you state your name for the record,
20 please.

21 A. Michael Palmer.

22 Q. By whom are you employed?

23 A. The Empire District Electric Company.

24 Q. In what capacity?

25 A. Vice-president of Commercial Operations.

1 Q. Mr. Palmer, are you familiar with a document
2 entitled, "Third Territorial Agreement," that was
3 filed with the Commission on or about March 16th of
4 this year?

5 A. Yes.

6 Q. Did you participate in the negotiations
7 involved in that agreement?

8 A. Yes.

9 Q. Are you also familiar with a Unanimous
10 Stipulation and Agreement that was filed in this case
11 on or about May 1 of this year involving that
12 Territorial Agreement?

13 A. Yes.

14 Q. And what is the position of The Empire
15 District Electric Company with regard to whether the
16 Commission should adopt and approve this Third
17 Territorial Agreement?

18 A. Our position is that the Commission should
19 adopt and approve this Third Territorial Agreement.

20 Q. Do you believe it is in the public interest
21 for the Commission to do so?

22 A. Yes.

23 MR. DUFFY: That's all of the questions I
24 have.

25 I tender the witness for cross-examination.

1 JUDGE THOMPSON: Thank you, Mr. Duffy.
2 Cross-examination. Mr. Widger?
3 MR. WIDGER: No questions.
4 JUDGE THOMPSON: Mr. Meyer?
5 MR. MEYER: No questions.
6 JUDGE THOMPSON: Ms. O'Neil?
7 MS. O'NEIL: No questions.
8 JUDGE THOMPSON: Thank you, sir.
9 You may step down.
10 (Witness excused.)
11 JUDGE THOMPSON: Mr. Duffy, do you have
12 another witness?
13 MR. DUFFY: No, sir.
14 JUDGE THOMPSON: Very well.
15 White River.
16 MR. WIDGER: Yes. We will call John Bruns.
17 While he is taking the stand, I would ask
18 that the --
19 JUDGE THOMPSON: Please raise your right
20 hand, sir.
21 (Witness sworn.)
22 JUDGE THOMPSON: Thank you.
23 Please take your seat and spell your name
24 for the reporter, if you would.
25 THE WITNESS: John, J-o-h-n, Bruns,

1 B-r-u-n-s.

2 JUDGE THOMPSON: Thank you.

3 Mr. Widger, you were saying?

4 MR. WIDGER: On behalf of all of the
5 parties, I would ask that the Stipulation that has
6 been marked as Exhibit 1 be entered into the record.

7 JUDGE THOMPSON: Do I hear any objection to
8 the receipt of Exhibit No. 1?

9 MS. O'NEIL: No objection.

10 MR. MEYER: No objection.

11 JUDGE THOMPSON: Hearing no objections, the
12 exhibit is received and made a part of the record of
13 these proceedings.

14 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)

15 JOHN BRUNS testified as follows:

16 DIRECT EXAMINATION BY MR. WIDGER:

17 Q. Would you state your full name, please?

18 A. John Bruns.

19 Q. And by whom are you employed?

20 A. White River Valley Electric Coop.

21 Q. What is your job with White River?

22 A. Manager of Engineering and Technologies.

23 Q. I'm going to hand you what's been marked as
24 Exhibit 2 in this proceeding.

25 Do you recognize that document?

1 A. Yes, I do.

2 Q. Okay. And would you -- what is it?

3 A. It's an -- a Territorial Agreement with
4 Empire Electric.

5 Q. And are you here today in support of that
6 agreement?

7 A. Yes, I am.

8 Q. Would you describe for the Commission the
9 area that is under consideration in this agreement?

10 A. It's a small cul-de-sac, a pie-shaped piece
11 of ground that they are needing service for sewer
12 treatment.

13 Q. Actually, it relates to a subdivision?

14 A. Subdivision, right.

15 Q. Where is that subdivision located?

16 A. It's located just off of Fall Creek Road
17 which is now in the city limits of Branson.

18 Q. Okay. And, historically, who has -- who has
19 established electric services in that subdivision?

20 A. White River Valley Electric Coop has.

21 Q. And how many lots are left yet to be
22 developed?

23 A. It's an unknown amount, but not very many.

24 Q. How will this territorial agreement serve
25 the public interest?

1 A. It would keep both parties from duplicating
2 their electric lines.

3 Q. Are you -- are you asking on behalf of White
4 River that this agreement be approved?

5 A. Yes, I am.

6 MR. WIDGER: Okay. I have no further
7 questions.

8 JUDGE THOMPSON: Thank you, Mr. Widger.

9 Before you sit down, would you give me a
10 description of Exhibit 1 for the record?

11 MR. WIDGER: Exhibit 1 is the Unanimous
12 Stipulation and Agreement signed by the parties and
13 filed in this proceeding.

14 JUDGE THOMPSON: Thank you, Mr. Widger.

15 MR. WIDGER: And with this witness, as I
16 tender him, I would also offer Exhibit 2 to be entered
17 into the record, which is the actual territorial
18 agreement.

19 JUDGE THOMPSON: Do I hear any objection to
20 the receipt of Exhibit No. 2?

21 MS. O'NEIL: No objection.

22 MR. MEYER: No objection.

23 JUDGE THOMPSON: Hearing no objections,
24 Exhibit No. 2 is received and made a part of the
25 record of these proceedings.

1 (EXHIBIT NO. 2 WAS RECEIVED INTO EVIDENCE.)
2 MR. MEYER: Cross-examination. Mr. Duffy?
3 MR. DUFFY: No questions, your Honor.
4 JUDGE THOMPSON: Mr. Meyer?
5 MR. MEYER: No questions.
6 JUDGE THOMPSON: Ms. O'Neil?
7 MS. O'NEIL: No questions.
8 JUDGE THOMPSON: Thank you.
9 You may step down, sir.
10 Do you have another witness, Mr. Widger?
11 MR. WIDGER: No, sir.
12 JUDGE THOMPSON: Okay. Thank you.
13 Mr. Meyer?
14 MR. MEYER: Your Honor, Staff has present
15 one witness, Jim Ketter, who is available for
16 questions from the Bench or any other parties. If
17 there are no questions, then he won't take the stand.
18 JUDGE THOMPSON: I have no questions for
19 Mr. Ketter. Thank you.
20 MR. MEYER: Okay.
21 JUDGE THOMPSON: Do any of the parties have
22 questions for Mr. Ketter?
23 MR. DUFFY: No.
24 MS. O'NEIL: No, your Honor.
25 JUDGE THOMPSON: Evidently not.

1 MR. MEYER: Thank you, your Honor.
2 JUDGE THOMPSON: Thank you, Mr. Meyer.
3 Ms. O'Neil.
4 MS. O'NEIL: Public Counsel has no witnesses
5 to present today.
6 JUDGE THOMPSON: Very well. Do the parties
7 rest at this time?
8 MR. DUFFY: Empire does, your Honor.
9 MR. WIDGER: White River does.
10 MR. MEYER: Staff will.
11 MS. O'NEIL: Public Counsel rests.
12 JUDGE THOMPSON: Very well. The parties
13 have rested.
14 At this time we will have closing statements
15 in lieu of briefs, unless, of course, someone would
16 like to write a brief.
17 I see no takers.
18 Mr. Duffy.
19 MR. DUFFY: Our closing statement would be,
20 we believe that the Commission should act in
21 accordance with the Stipulation and Agreement that was
22 filed, and approve the Third Territorial Agreement.
23 JUDGE THOMPSON: Thank you, Mr. Duffy.
24 Mr. Widger.
25 MR. WIDGER: I can be more brief.

1 We concur with The Empire District's closing
2 statement.

3 JUDGE THOMPSON: Thank you, Mr. Widger.
4 Mr. Meyer.

5 MR. MEYER: Staff would just ask that the
6 Commission note that Staff was a party to the
7 Unanimous Stipulation and that Staff's concerns have
8 been addressed as part of that stipulation.

9 JUDGE THOMPSON: I assume that Staff will
10 not be writing suggestions in support of the
11 stipulation; is that correct?

12 MR. MEYER: That is correct, unless so
13 ordered by the Commission.

14 JUDGE THOMPSON: Thank you.
15 Ms. O'Neil.

16 MS. O'NEIL: Public Counsel also would ask
17 that the stipulation be approved and adopted by the
18 Commission.

19 JUDGE THOMPSON: Thank you very much.

20 Do the parties have anything else to bring
21 to the attention of the Commission at this time?

22 (No response.)

23 JUDGE THOMPSON: Okay. I have Exhibits
24 No. 1 and 2 offered and received.

25 We will be adjourned. Thank you very much.

1 WHEREUPON, THE HEARING OF THIS CASE WAS
2 CONCLUDED, SUBJECT TO COMMISSION ACCEPTANCE OF THE
3 UNANIMOUS STIPULATION AND AGREEMENT.

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I N D E X

EMPIRE'S EVIDENCE:	
MICHAEL PALMER:	
Direct Examination by Mr. Duffy	8
WHITE RIVER'S EVIDENCE:	
JOHN BRUNS:	
Direct Examination by Mr. Widger	11

E X H I B I T S I N D E X

	Marked	Received
Exhibit No. 1	3	11
Unanimous Stipulation and Agreement		
Exhibit No. 2	3	14
Third Territorial Agreement		