

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 First Addendum to the)
Parties' Second Territorial Agreement Designating)
Service for a New Structure Located in Branson,)
Missouri)

Case No. EO-2005-0275

ORDER APPROVING FIRST ADDENDUM TO SECOND TERRITORIAL AGREEMENT

Syllabus: This order approves the First Addendum to the parties' Second Territorial Agreement.

Procedural History

On February 16, 2005, The Empire District Electric Company and White River Valley Electric Cooperative filed a Joint Motion for Approval of First Addendum. Empire and White River ask the Commission to allow Empire to serve a new structure that is within White River's territory.

On February 18, the Commission issued its Order and Notice, setting an intervention deadline. There were no intervention requests.

Also on February 18, the Commission ordered the parties to file a proposed procedural schedule, or, in the alternative, explain why a hearing would not be necessary. On March 20, Empire, White River, the Staff of the Commission, and the Office of the Public Counsel filed their Joint Response to the Commission's Order and Notice. The

parties state that no hearing is necessary because the Commission already held a hearing before approving Empire's and White River's Second Territorial Agreement in Case No. EO-96-176. Also, the parties state that no hearing is necessary because no party objects to the relief that Empire and White River want.

On April 7, Staff filed its Staff Recommendation. Staff stated that the new structure to be served, the Belair Theater, is predominately within White River's service territory. But the Belair Theater will adjoin an existing structure, the California Bar and Grill, that is within Empire's service territory. Empire currently serves the California Bar and Grill. Staff states that it is in the public interest to allow Empire to serve the Belair Theater so as to avoid duplication of facilities. Staff further states that public safety would be enhanced by having one electrical supplier for both structures because electricity could be cut off more quickly in the event of a fire.

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. Evidence or arguments not specifically referred to here were considered, but were not dispositive.

The Applicants:

Empire is an electrical corporation and a public utility as defined in Section 386.020, RSMo, and is subject to Commission regulation as provided in Section 386.250. Empire's principal place of business is 602 Joplin Street, Joplin, Missouri 64801.

White River is a rural electric cooperative as defined in Chapter 394. White River is not subject to Commission regulation except for purposes of the application and as

specified in Section 394.312. White River's principal place of business is East Highway 76, Branson, Missouri.

The First Addendum:

Empire and White River already have a Commission-approved territorial agreement in Case No. EO-96-176. That agreement sets out the parties' service boundaries within Taney County.

Paragraph 5C of that agreement states that the parties may agree which party will serve "boundary structures" on a case-by-case basis via an Addendum. The parties filed the First Addendum to the Second Territorial Agreement under Paragraph 5C.

The new structure to be served, the Belair Theater, is predominately within White River's service territory. But the Belair Theater will adjoin an existing structure, the California Bar and Grill. The California Bar and Grill is within Empire's service territory, and Empire currently serves it. If approved, the First Addendum would allow Empire to serve the Belair Theater. Empire, White River, Staff, and Public Counsel ask that the Commission approve the First Addendum without an evidentiary hearing.

Conclusions of Law

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

The Territorial Agreement

The Commission has jurisdiction over the territorial agreement concerning the sale and distribution of electricity under Section 394.312. The Commission already

approved the parties' Second Territorial Agreement after hearing in Case No. EO-96-176. The Commission concludes that approving the First Addendum would serve the public interest by avoiding duplication of facilities, and by making fire protection to the Belair Theater and the California Bar and Grill more efficient.

The Necessity for an Evidentiary Hearing

Section 394.312.4 states:

[T]he commission *shall hold evidentiary hearings* to determine whether such territorial agreements should be approved or disapproved. The commission may approve the application if it shall *after hearing* determine that approval of the territorial agreement in total is not detrimental to the public interest. [emphasis added]

In support of their request that the Commission not hold an evidentiary hearing, the parties state that the Commission already held a hearing before it approved the Second Territorial Agreement. Because the Commission already held a hearing before it approved the underlying agreement, and because the parties waive their hearing rights, the Commission concludes that an evidentiary hearing is unnecessary.¹

Conclusion

Having considered the pleadings in this matter, the Commission concludes that the First Addendum to the Second Territorial Agreement between Empire and White River is in the public interest and should be approved. The Commission will also approve the Joint Motion for Approval of First Addendum. Lastly, the Commission concludes that the requirement for an evidentiary hearing has been met.

¹ See also In the Matter of the City of Centralia, Case No. WO-2005-0084 (Report and Order, November 23, 2004).

IT IS THEREFORE ORDERED:

1. That the Joint Motion for Approval of First Addendum filed by The Empire District Electric Company and White River Valley Electric Cooperative is approved.
2. That the First Addendum to the Second Territorial Agreement is approved.
3. That the exclusive provision of electric service by The Empire District Electric Company to the Belair Theater is not detrimental to the public interest.
4. That The Empire District Electric Company and White River Valley Electric Cooperative shall perform in accordance with the terms and conditions of the First Addendum to the Second Territorial Agreement.
5. That this order shall become effective on April 23, 2005.
6. That this case may be closed on April 24, 2005.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Ronald D. Pridgin, Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 13th day of April, 2005.