

**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	)	Case No. EO-2005-0275
First Addendum to the Parties' Second Territorial	)	
Agreement Designating Service for a New	)	
Structure Located in Branson, Missouri	)	

**STAFF RECOMMENDATION**

Comes now the Staff of the Missouri Public Service Commission (Staff) and files its Staff Recommendation that the Missouri Public Service Commission (Commission) should approve the First Addendum To Second Territorial Agreement between the Empire District Electric Company (Empire) and White River Valley Electric Cooperative (White River) as being not detrimental to the public interest, pursuant to Section 394.312.4 RSMo 2000. In support thereof, the Staff states as follows:

1. On February 16, 2005, Empire and White River, pursuant to the terms of the Second Territorial Agreement in Case No. EO-96-176, filed a Joint Motion For Approval Of First Addendum (Joint Motion). The only reference to statutes in the Joint Motion cites the extensive definition section of the Public Service Commission Law, Section 386.020 RSMo.

2. The heading for paragraph 10 on page 4 of the Joint Motion is "Addendum is in the Public Interest." In paragraph 10 on page 4 of the Joint Motion, there appears the statement "it is in the public interest to avoid having two different suppliers providing electrical service to the adjoining structures."

3. In the "Wherefore" clause on page 5 of the Joint Motion, Empire and White River request that the Commission issue an Order finding that the exclusive provision of electric

service by Empire to the new structure, the Belair Theater, is “not detrimental to the public interest.”

4. The First Addendum To Second Territorial Agreement, Appendix B to the Joint Motion, states in paragraph 4 on page 3 that “Empire and White River will cooperate in presenting a joint application to the Commission demonstrating that this First Addendum is in the public interest.”

5. The legal standard for the Commission approving an application for a territorial agreement is stated in various ways in Section 394.312. After evidentiary hearings, the Commission may approve an application for a territorial agreement for which no matter is in dispute, if it determines that “approval of the territorial agreement in total is not detrimental to the public interest.” Section 394.312.4.<sup>1</sup> The Commission’s rule on territorial agreements, 4 CSR 240-3.130, identifies the legal standard as “in the public interest,” 4 CSR 240-3.130(1)(C).

6. The Missouri anti-flip-flop/change of electric supplier statutes are Sections 91.025, 393.106 and 394.315. These statutory sections state, in part, that “[t]he public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential.” The Commission’s rule on change of electric suppliers, 4 CSR 240-3.140, identifies the legal standard as “in the public interest,” 4 CSR 240-3.140(1)(G).

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<sup>1</sup> Where parties cannot agree on the boundaries of the electric service area of each electric service supplier, they may, by mutual consent of all parties involved, petition the Commission to designate the boundaries, and the Commission, after evidentiary hearings, “shall base its final determination upon a finding that the commission’s designation of electric service areas is in the public interest.” Section 394.312.2. The Commission has jurisdiction to entertain and hear complaints involving Commission approved territorial agreements. If, after hearing, the Commission determines the territorial agreement is “not in the public interest,” it has the authority to suspend or revoke the territorial agreement. If the Commission determines that the territorial agreement is still “in the public interest,” the territorial agreement shall remain in effect. Section 394.312.6.

7. The instant case arguably involves Section 394.312.4 RSMo, a territorial agreement regarding which no matter is in dispute, and not Section 394.315 RSMo, change of electric supplier from the provision of service by a rural electric cooperative to the provision of service by an investor owned utility. The service in question that is to be provided is to a new structure that has never received electric service previously. Thus, how could there be a change of electric service suppliers when the structure that is to receive service is new and has never received service from any electric service supplier previously? In that the Staff Memorandum Recommendation, which follows as Attachment 1, finds that it is in the public interest for the structure in question, the Belair Theater, to receive service from Empire, rather than from White River, it is also not detrimental to the public interest for the structure in question to receive service from Empire, rather than from White River.

Wherefore the Staff recommends that the Commission, pursuant to Section 394.312.4 RSMo 2000, approve the Joint Motion of Empire and White River, respecting the First Addendum To Second Territorial Agreement, by issuing an Order finding that the exclusive provision of electric service by Empire to the new structure, the Belair Theater, in Branson, Missouri is “not detrimental to the public interest.”

Respectfully submitted,

DANA K. JOYCE  
General Counsel

**/s/Steven Dottheim**

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 7th day of April 2005.

**/s/ Steven Dottheim**

## **MEMORANDUM**

TO: Missouri Public Service Commission Official Case File  
Case No. EO-2005-0275, Joint Application of the Empire District Electric  
Company and White River Valley Electric Cooperative, Inc for Approval  
of a First Addendum to the Parties' Second Territorial Agreement  
Designating Service for a New Structure Located in Branson, Missouri

FROM: Alan J. Bax, Energy Department – Engineering Analysis

/s/Warren Wood 4-7-05                      /s/ Steven Dottheim 4-7-05  
Energy Department / Date                      General Counsel's Office / Date

SUBJECT: Staff Recommendation

DATE: April 7, 2005

## **OVERVIEW**

On February 16, 2005, the Empire District Electric Company (Empire) and White River Valley Electric Cooperative, Inc. (White River), referred to collectively as the “Applicants”, filed a Joint Application with the Missouri Public Service Commission (Commission) seeking approval of the First Addendum to the Applicants' Second Territorial Agreement for a specific structure located at 1600 West State Highway 76 in Branson, Missouri to be named the Belair Theater (Belair Theater). This Application was filed per the terms contained in Section 5C of the Second Territorial Agreement, which was filed by the Applicants with the Commission in November 1995 (Case No. EO-96-176) and approved by the Commission on March 19, 1996. This agreed to and approved procedure includes filing this Application using the original case number of the Second Territorial Agreement.

On February 18, 2005, an Order was issued in Case No. EO-2005-0275 that assigned an intervention period and required either a procedural schedule to be filed or, in the alternative, a pleading explaining why a hearing would not be necessary.

On March 21, 2005, a Joint Response was filed expanding upon the reasons why an evidentiary hearing, necessary in Territorial Agreement amendment cases per Section 394.312.4 RSMo 2000, is not necessary in the present addendum situation. Furthermore, per the terms contained in Section 5C of the Second Territorial Agreement, since there were no objections by any party to this case, the Staff of the Missouri Public Service Commission (Staff) should file a recommendation requesting approval of this Application.

On March 24, 2005, the Commission issued an Order that Staff should file a recommendation per Paragraph 5C of the Second Territorial Agreement by April 7, 2005.

### **DISCUSSION**

Included in the Joint Application was a map that depicted the general area that encompassed the specific structure that is the subject of this filing. This general area, in which the Belair Theater is being constructed, is illustrated via a “cross-hatched” pattern on the map. The map, in its entirety, is identified as the “Dr. Schmoll Property”. The applicable metes and bounds description of the “Dr. Schmoll Property”, in its entirety or of the “cross-hatched” area only, was not included with that filing. The metes and bounds description is included in the documentation incorporated with the original filing of the Second Territorial Agreement. Attached to this recommendation in Schedule 1 is the metes and bounds description of the aforementioned “cross-hatched” area as described in the Second Territorial Agreement. A depiction of the property known as the Belair Theater in relation to this “cross-hatched” area is included as well. This information was received by the Staff on April 6, 2005.

The Staff visited the property in question on March 18, 2005. Temporary power was being supplied to the property, as allowed in paragraph 5.C.viii of the Second Territorial Agreement, and a significant portion of the foundation is in place. The Belair Theater lies predominantly within the boundaries of the exclusive service territory of White River, as defined and agreed to in the Second Territorial Agreement between the Applicants and approved by the Commission. However, the Belair Theater will adjoin an existing structure already being served by Empire, described in the Joint Application as the “California Bar and Grill”, that lies within Empire’s exclusive service territory approved in the Second Territorial Agreement between the Applicants. As shown on Schedule 1, a portion of the structure known as the Belair Theater lies in Empire’s exclusive service territory. The Applicants agree that it is in the public interest to avoid having different electric service providers to the adjoining structures in this situation. Having Empire provide electrical service to the Belair Theater will prevent the otherwise necessary duplication of facilities, and provide certainty to the Belair Theater of its electrical service provider. It will also enhance public safety by reducing the time necessary to cut off the electricity in the event of a fire by not having different electric service providers to these adjoining structures.

#### **STAFF RECOMMENDATION**

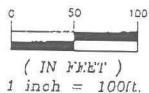
The Staff recommends that the Commission approve the First Addendum to the Second Territorial Agreement as being in the public interest. The Staff has included the metes and bounds description of the “cross hatched” area of the map attached to the Joint Application as Schedule 1. This schedule also depicts the structure known as the Belair Theater in relation to the “cross-hatched” area, attempting to make it clear that the

Application does not refer to the entire “cross-hatched” area illustrated on the map provided in the Joint Application. With Empire being the electric service provider to these adjoining structures, public safety is enhanced and an otherwise necessary duplication of facilities is prevented.

Given White River is a rural electric cooperative, the Commission does not require annual reports or assessment fees. Further, White River does not have pending or final unsatisfied decisions against it from any state or federal court involving customer service or rates within three years of the date of filing this Joint Application. Empire is current on its required annual report filings and assessment fees. The Staff is not aware of any other matter before the Commission that affects or is affected by this filing; however, the following cases involving Empire are open:

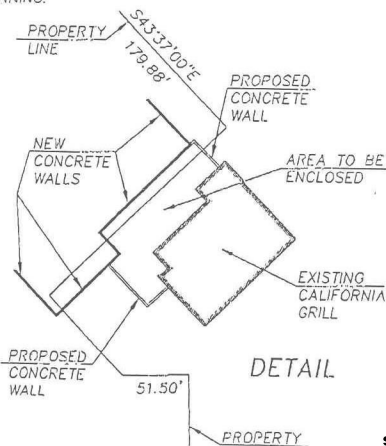
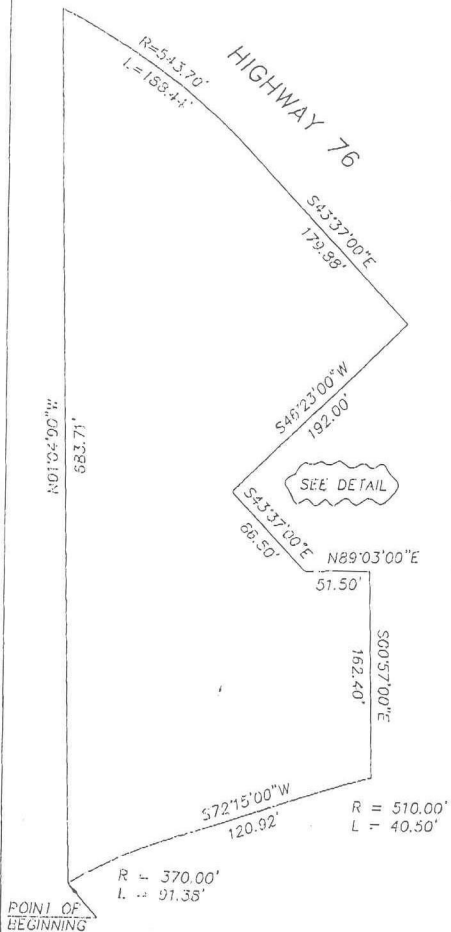
1. ER-2004-0570 – General Rate Increase Case
2. EO-2005-0263 – Proposed Regulatory Plan

# EXHIBIT



## METES & BOUNDS DESCRIPTION

PART OF LOT 9, BLOCK 1, OF THE REPLAT OF BRANSON HEIGHTS SUBDIVISION, SITUATED IN SECTION 6, TOWNSHIP 22 NORTH, RANGE 21 WEST, LYING SOUTH OF MISSOURI STATE HIGHWAY 76 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
BEGINNING AT THE SOUTHWEST CORNER OF LOT 9, BLOCK 1 OF THE REPLAT OF BRANSON HEIGHTS SUBDIVISION; THENCE N01°04'00"W, 683.71 FEET TO THE SOUTH RIGHT-OF-WAY OF MISSOURI STATE HIGHWAY 76; THENCE SOUTHEASTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 543.70 FEET AN ARC DISTANCE OF 188.44 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY S43°37'00"E, 179.88 FEET; THENCE S46°23'00"W, 192.00 FEET; THENCE S43°37'00"E, 86.50 FEET; THENCE N89°03'00"E, 51.50 FEET; THENCE S00°57'00"E, 162.40 FEET TO THE NORTH RIGHT-OF-WAY OF FALL CREEK ROAD; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 510.00 FEET AND ARC DISTANCE OF 40.50 FEET; THENCE S72°15'00"W, 120.92 FEET; THENCE SOUTHWESTERLY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 370.00 FEET AN ARC DISTANCE OF 91.38 FEET TO THE POINT OF BEGINNING.



DETAIL

CERTIFICATION

SCHEDULE 1