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January 14, 2004

**VIA HAND DELIVERY**

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**FILED**

**JAN 14 2004**

Missouri Public  
Service Commission

**Re: Case No. EO-2004-0246**

Dear Mr. Roberts:

On behalf of The Empire District Electric Company, I deliver herewith an original and eight (8) copies of a Motion for Substitution Concerning Proposed Fourth Territorial Agreement, for filing with the Commission in the referenced matter. I would appreciate it if you would see that copies are distributed to the appropriate Commission personnel.


I have also enclosed an extra copy which I request that you stamp "Filed" and return to the person delivering them to you.

Thank you for your attention in this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

  
Gregory C. Mitchell

GCM/ccp

Enclosures

cc: Office of the Public Counsel

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED

JAN 14 2004

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 )  
Within the Canyon Springs of Branson )  
Residential Development Near Branson, )  
Missouri )

Missouri Public  
Service Commission

Case No. EO-2004-0246

**MOTION FOR SUBSTITUTION CONCERNING PROPOSED FOURTH  
TERRITORIAL AGREEMENT**

COME NOW The Empire District Electric Company ("Empire") and White River Valley Electric Cooperative ("White River"), ("Applicants"), by and through their respective counsel, and for their Motion for Substitution Concerning Fourth Territorial Agreement, respectfully state as follows:

1. On December 5, 2003, Applicants filed a Joint Application for approval of a proposed Fourth Territorial Agreement, designating exclusive service areas for each within the Canyon Springs of Branson Residential Development near Branson, Missouri. Applicants attached thereto, as Appendix B, their proposed Fourth Territorial Agreement which consisted of eleven (11) pages of text with two lettered exhibits.

2. On December 11, 2003, the Commission issued its Order Directing Notice which, among other things, scheduled a prehearing conference for January 7, 2004 in order to discuss procedural and scheduling matters.

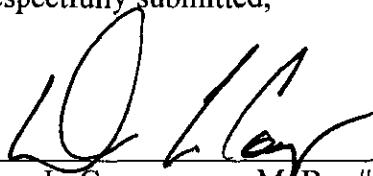
3. During an off the record discussion with Staff regarding preliminary matters, Staff noted its concern with provision 6(C)(vii) on page 8 of the proposed Fourth Territorial

Agreement. Following discussion among the undersigned counsel and Staff, the parties agreed to an amendment to provision 6(C)(vii) as shown on the amended page 8 of the proposed agreement, attached hereto. Specifically, in compliance with Staff's objections, this provision was amended to avoid the result of the Commission being "deemed" to have approved any Addendum to the Fourth Territorial Agreement in the absence of any affirmative pleading on its part.

4. The requested substitution, as set forth in provision 6(C)(vii) on the attached amended page 8, makes no substantive change regarding the rights of the parties thereto, and avoids the possibility of the proposed agreement being found in violation of the Commission's holding in *Re Grundy Electric Cooperative, Farmers Electric Cooperative and Northwest Missouri Electric Cooperative*, Case No. EO-96-188, 4 Mo.P.S.C.3d 363, Report And Order (1996), in which the Commission disapproved of such provisions which operate to presume Commission approval.

WHEREFORE, for good cause shown, applicants respectfully request that the attached Amended Page 8 be substituted in the Commission's record for the present page 8 of the proposed Fourth Territorial Agreement, attached to the Joint Application as Appendix B.

Respectfully submitted,



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ATTORNEYS FOR THE EMPIRE DISTRICT  
ELECTRIC COMPANY

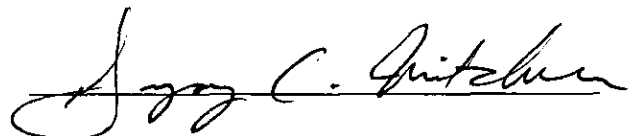


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ATTORNEYS FOR WHITE RIVER VALLEY  
ELECTRIC COOPERATIVE

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was served by hand delivery this 14 day of January 2004 upon the Office of the Public Counsel and the Office of the General Counsel.



6. Structures Coming Into Existence After the Effective Date

A. After the Effective Date, Empire shall have the exclusive right, as between Empire and White River, to provide permanent service to new structures within Phase I.

B. After the Effective Date, White River shall have the exclusive right, as between Empire and White River, to provide permanent service to new structures within Phases II and III.

C. Boundary Structures. Notwithstanding the provisions in paragraphs 6.A. and 6.B., Empire and White River may subsequently agree in writing, on a case by case basis, to allow any new structure in either Service Area established by this Agreement to receive service from one party even though the new structure would be required to be served by the other party pursuant to this Agreement, when the interests of both parties and the owner of the new 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 permanent service on the Effective Date.

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 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 Staff and Office of Public Counsel. 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