

**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)
Seventh Written Territorial Agreement)
Designating the Boundaries of Exclusive)
Service Areas within Christian and Taney)
Counties)

File No. EO-2012-0192

STAFF RECOMMENDATION TO APPROVE TERRITORIAL AGREEMENT

COMES NOW the Staff (Staff) of the Missouri Public Service Commission (Commission), and for its *Staff Recommendation To Approve Territorial Agreement* states:

1. On December 20, 2011, The Empire District Electric Company (Empire) and White River Valley Electric Cooperative (White River) filed a Joint Application with the Commission seeking approval of their *Seventh Territorial Agreement* (Agreement) designating the boundaries of exclusive service areas within Christian and Taney counties.

2. On December 21, 2011, the Commission issued an order to provide notice of the Joint Application and to set an intervention date of January 20, 2012. The Commission received no applications to intervene.

3. On February 3, the Commission ordered Staff to file its recommendation on the Joint Application no later than February 17, 2012.

4. The Territorial Agreement designates the service area boundary between White River and Empire regarding structures in certain parts of the cities of Sparta and Forsyth. Specifically, the Agreement gives White River the exclusive right (as between White River and Empire) to serve an area that includes a new sewer lift station near a high school in Sparta, and to serve structures in a residential housing development in Forsyth.

5. Because the populations of Sparta and Forsyth exceed 1,500 as of the 2010 Census, White River is not authorized to serve inside those city limits, absent the Commission's approval of this Agreement.

6. In Sparta, White River served the high school prior to the 2010 census. White River has existing facilities to serve the new sewer lift station near the school, whereas Empire would need to invest a reported \$50,000 to serve the lift station.

7. In Forsyth, White River has existing customers adjacent to the new residential development. White River can serve the development more efficiently than Empire, which would need to install duplicative infrastructure to serve the development.

8. The city councils of both Sparta and Forsyth have passed ordinances granting White River authority to use the cities' respective rights-of-way to provide electric service in the areas in their respective cities where White River is to serve exclusive of Empire. Those ordinances have been filed with the Commission.

9. The Agreement allows each Applicant to serve customers in the exclusive service territory of the other covered in the Agreement on a case-by-case basis, with Commission approval. There are no other known electric service providers in the area; the Agreement will have no effect on any other electric service provider.

10. Consequently, the Agreement will prevent the wasteful and potentially unsafe duplication of utility infrastructure, and will conserve utility resources. White River has adequate facilities to provide the service as described in the Agreement. Therefore the Agreement, in total, is not detrimental to the public interest pursuant to § 394.312.5 RSMo.

11. The Joint Application meets the filing requirements of 4 CSR 240-3.060 and 4 CSR 240-3.130.

12. As a cooperative organized under Chapter 394 RSMo, White River is not required to provide annual reports or assessments to the Commission.

13. Empire is current on filings of annual reports and assessment dues. Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

WHEREFORE, Staff recommends the Commission issue an Order: 1) approving the Seventh Written Territorial Agreement designating boundaries of exclusive service areas within Christian and Taney counties and 2) ordering Empire to file revised tariff sheets that reflect the approved Agreement.

Respectfully Submitted,

**STAFF OF THE MISSOURI
PUBLIC SERVICE COMMISSION**

/s/ John D. Borgmeyer

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were served electronically to all counsel of record this 17th day of February, 2012.

/s/ John D. Borgmeyer

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. EO-2012-0192, Joint Application of the Empire District Electric Company and White River Valley Electric Cooperative Requesting Approval of a Seventh Written Territorial Agreement Designating Boundaries of Exclusive Service Areas within Christian and Taney Counties in Missouri as Not Detrimental to the Public Interest

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

<u>Dan Beck 02/17/12</u> Energy Department / Date	<u>John D. Borgmeyer 02/17/12</u> General Counsel’s Office / Date
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SUBJECT: Staff Memorandum Recommending Approval of Seventh Territorial Agreement

DATE: February 17, 2012

STAFF RECOMMENDATION

The Staff of the Missouri Public Service Commission (Staff) recommends that the Missouri Public Service Commission (Commission) grant the Joint Application of the Empire District Electric Company (Empire) and White River Valley Electric Cooperative (White River), (collectively, Applicants) and approve their Seventh Territorial Agreement (Agreement). Staff finds that the Agreement is not, in total, detrimental to the public interest pursuant to Section 394.312, RSMo 2000. The Joint Application meets the filing requirements of 4 CSR 240-3.060 and 4 CSR 240-3.130. Staff also recommends the Commission order Empire to file revised tariff sheets to reflect this Agreement.

OVERVIEW

On December 20, 2011, Empire and White River filed a Joint Application with the Commission seeking approval of their Seventh Territorial Agreement. This Agreement designates exclusive service area boundaries in Christian and Taney counties,

Missouri, as these service area boundaries pertain to the Applicants, predominantly within the city limits of Sparta and Forsyth respectively. The Applicants assert that approval of the Agreement will avoid future duplication of electric service facilities and allow prospective customers to know with certainty their electric service provider. In addition, approval of the Agreement will allow the Applicants to avail themselves of prior investments. Both Empire and White River will continue to have service rights and responsibilities beyond the boundaries defined in this Agreement. The Agreement does not include an exchange of any customers or facilities.

On December 21, 2011, the Commission issued an Order providing notice of this Joint Application to potential interested parties and allowing the opportunity for intervention no later than January 20, 2012. The Commission received no applications for intervention.

White River is organized under Chapter 394, RSMo 2000, to provide electric service to its members located in all or parts of five Missouri counties, including Christian and Taney counties, which contain the areas in the Agreement. The Commission has limited jurisdiction over rural electric cooperatives, such as White River, as specified in Chapter 394, RSMo 2000. For the purpose of this case, White River is subject to the jurisdiction of the Commission under Section 394.312, RSMo 2000.¹

¹ Section 394.312 states, in relevant part, that “...Such territorial agreements shall specifically designate the boundaries of the electric service area of each electric service supplier subject to the agreement, any and all powers granted to a rural electric cooperative by a municipality, pursuant to the agreement, to operate within the corporate boundaries of that municipality... . The commission may approve the application if it determines that approval of the territorial agreement in total is not detrimental to the public interest... .”

Given that 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 an electrical corporation subject to the jurisdiction of the Commission as specified, in part, by Chapters 386 and 393, RSMo 2000. Empire is current on filings of annual reports and its assessment dues. Staff is not aware of any unsatisfied judgments or decisions against Empire in any state or federal agency or court involving customer service or rates within the last three years that would have bearing on the immediate Case. The Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

DISCUSSION

Rural Electric Cooperatives, such as White River, generally serve customers in “rural areas.” Section 394.020.3, RSMo 2000, defines a “rural area” as having a population of less than 1,500 inhabitants.² The population of Sparta, Missouri has historically been less than 1,500, and White River has long served structures within and around Sparta. However, according to the results of the 2010 decennial census, the population of Sparta rose above 1,500 inhabitants by 2010, via a combination of growth and annexations. As a consequence, White River no longer has a right to provide electric service to new structures built within the city limits of Sparta, because it does not fall within one of the exceptions in Section 394.080.2, RSMo 2000.

² Section 394.020.3 states, in relevant part, that ““Rural area" shall be deemed to mean any area of the United States not included within the boundaries of any city, town or village having a population in excess of fifteen hundred inhabitants... .”

The Sparta School District built a new high school that White River served prior to the 2010 census. The Sparta School District has added an associated sewer lift station that it wishes White River to serve as well. However, the lift station is within the city limits of Sparta, and thus White River currently cannot lawfully serve the new structure. White River has facilities readily available to provide the desired electric service requirements, unlike Empire, which would need to invest a reported \$50,000 to provide the same service. In part, to address the School District's concerns, the Applicants negotiated this Agreement.³

In addition to defining, between the Applicants, who will provide electric service in parts of Sparta, the Agreement similarly defines who will provide electric service to specific properties within Forsyth, Taney County, Missouri. Absent this Agreement, White River is not authorized to provide electric service to these properties because the population of the City of Forsyth has long exceeded 1,500 inhabitants. Furthermore, Empire has a franchise agreement with the City of Forsyth. Thus, these properties, described in the Joint Application as "The Reserve on Skyline and Shoal Bend – Phases 1, 2 and 3", are within the service territory of Empire. However, like the property described earlier in Sparta, White River not only currently has customers in this immediate area, but also has adequate facilities capable of providing the desired service to these properties. Empire would need to install otherwise unnecessary duplicate

³ Initially, to address the concerns of the Sparta School District, the Applicants filed a request with the Commission for a Change in Electric Service Providers to allow White River to provide electric service to a sewage lift station (EO-2012-0063). However, in ensuing discussions with Staff, it was determined that a territorial agreement was the preferred/necessary method to attain the desired result in lieu of a Change of Supplier Request. The subsequent Agreement contains not only the original property in Christian County involving the Sparta School District, but also the properties in Taney County.

infrastructure in order to provide the same service at considerable expense and create an avoidable safety concern with these duplicated facilities.

The Agreement, included in the Joint Application, contains maps depicting the boundaries of the proposed exclusive service areas for White River, as defined in the Agreement, as well as the associated legal descriptions of these areas as required by 4 CSR 240-3.130(1)(A). The Agreement does not include an exchange of facilities or customers between the Applicants. The Joint Application did not include revised tariffs; however, Staff recommends Empire file a revised tariff. Empire's Rules and Regulations specifically identify its electric service territory, including areas subject to territorial agreements. Therefore, should the Commission approve this Joint Application, the Commission should also require Empire to file revised tariff sheets, (tariff section entitled Description of Territory), illustrating its preference of White River providing service to new structures in these areas of Christian and Taney counties, Missouri, as defined in the Agreement.

Each Applicant will continue to have service responsibilities outside of the boundaries specified in the Agreement and each Applicant retains its right to build generation, transmission, or distribution facilities within its designated service areas in their provision of electric service. The Agreement also contains terms that allow each Applicant to serve customers in the exclusive service territory of the other on a case-by-case basis, provided that each agree and the Commission grants the specific request. There are no other known electric service providers in the area; the proposed Agreement is strictly between the Applicants and will have no effect on any other prospective provider.

Although not included in the Joint Application, the Applicants have since filed ordinances passed by the City of Sparta and the City of Forsyth. The cities expressly consent to White River the use of their respective public rights-of-way necessary in the provision of electric service.

CONCLUSION

Staff believes the Commission should approve the Applicants' request for their Seventh Territorial Agreement, which allows White River to provide electric service to new structures built within specified areas of Christian and Taney counties, Missouri, further described in the Joint Application, as not being detrimental to the public interest as required under Sections 394.312.4, RSMo 2000, and 4 CSR 240-3.130.

Staff agrees with the Joint Applicants, who have stated that designating exclusive service territories, as described in the Agreement, will prevent future duplicative electric service facilities, will allow electric service customers in the areas to know with certainty their electric service provider and will allow the Applicants to avail themselves of prior investment and planning for serving the public. White River has sufficient facilities to provide reliable electric service to new structures within its exclusive service territory as depicted and described in the Agreement. The Agreement contains a procedure which will allow either Applicant to serve a customer located in the service territory of the other should the need arise. The Agreement also does not preclude either Applicant from adding generation, transmission, or distribution facilities within the exclusive service territory of the other if necessary. This Agreement only pertains to Empire and White River; it has no effect on any other electric service provider.

Empire's Description of Territory in its tariffs filed with the Commission specifically identifies its electric service territory. Empire states that approval of this Agreement will not change the boundaries of its certificated area, and therefore, the Joint Application did not include revised tariffs. Nonetheless, Empire should be ordered to file revised tariff sheets that illustrate these limitations in their described service territory of Christian and Taney counties, Missouri, respectively.

