

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 12th day of January, 2022.

In the Matter of the Application of The)
Empire District Electric Company d/b/a)
Liberty and White River Valley Electric)
Cooperative for Approval of the Second)
Amendment to their Sixth Territorial)
Agreement, as amended, Designating the)
Boundaries of Exclusive Service Areas of)
Each Applicant Within the Rainbow Shoals)
Subdivision in Taney County, Missouri)

File No. EO-2022-0132

**REPORT AND ORDER APPROVING SECOND AMENDMENT TO SIXTH
TERRITORIAL AGREEMENT**

Issue Date: January 12, 2022

Effective Date: February 11, 2022

This order approves the Second Amendment to the Sixth Territorial Agreement between The Empire District Electric Company d/b/a Liberty (Empire) and White River Valley Electric Cooperative (White River) (collectively, the Applicants) to more specifically describe recently-platted lots in the Rainbow Shoals Subdivision in Taney County, Missouri.

Procedural History

On November 10, 2021, the Applicants filed a Joint Application (Application) to approve their Second Amendment to the Territorial Agreement (Amendment). On November 12, the Applicants jointly filed a *Request for Waiver of Notice*, requesting waiver of notice required by 20 CSR 4240-4.017(1), pursuant to 20 CSR 4240-4.017(1)(D), affirming that they had not had contact with the Commission about the subject of the application within the 150 days before filing the application. On

November 16, 2021, the Commission issued its Order Directing Notice, Setting Intervention Deadline, and Directing Staff Recommendation. On December 16, 2021, the Commission's Staff filed its Staff Recommendation, recommending approval of the Amendment. No persons have sought intervention or requested a hearing, nor have the Joint Applicants responded to Staff's Recommendation.

Findings of Fact

1. White River is a rural electric cooperative organized and existing under the laws of Missouri with its principal office in Branson, Missouri. It is a Chapter 394 rural electric cooperative corporation engaged in the distribution of electric energy and service to its members in Taney County. White River is in good standing under the laws of the State of Missouri.

2. Empire is a Kansas Corporation with its principal office and place of business in Joplin, Missouri. Empire is engaged in the business of providing electrical services in Missouri to customers in its service areas. Empire is an electrical corporation and public utility as defined in Section 386.020, RSMo,¹ and is subject to the jurisdiction and supervision of the Commission as provided by law.

3. The Applicants' Sixth Territorial Agreement was approved on June 10, 2009 in File Number EO-2009-0284.

4. The Amendment assigns certain newly platted parcels of land in Taney County, within the Rainbow Shoals subdivision, to the exclusive service area of White River.

¹ All references to the Missouri Revised Statutes will be to 2016.

5. White River has existing facilities within location of the lots identified in the Amendment which will provide for a more orderly future development of electric service to the public.

6. No existing customers of either Empire or White River will have their electric service changed by the proposed Second Amendment.

7. Neither Empire, nor White River had any communication with the Commission about the subject of the application within one hundred fifty days before filing the application.

Conclusions of Law

1. White River is a rural electric cooperative organized under Chapter 394 RSMo, to provide electric service to its members in Missouri.

2. Empire is a Kansas Corporation providing electrical services in Missouri that is subject to the jurisdiction of the Commission per chapters 386 and 393, RSMo. ²

3. Under Section 394.312.1, RSMo, the Commission has jurisdiction over territorial agreements between electric corporations and rural electric cooperatives, thus, White River is subject to the Commission's jurisdiction in this case. ³

4. Under Sections 394.312.3 and 5, RSMo, the Commission may approve the territorial agreement's service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.

² Section 386.020 (15), RSMo 2016.

³ Section 394.312.4, RSMo, states, in relevant part: "[B]efore becoming effective, all territorial agreements entered into under the provision of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligation of any party to an agreement, shall receive the approval of the public service commission by report and order. . . ."

5. Under Section 394.312.5, RSMo, the Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing.

6. Commission Rule 20 CSR 4240-4.017(1) requires that any person intending to file a case before the Commission file notice of the intended filing at least sixty days before the case is filed. Commission Rule 20 CSR 4240-4.017(1)(D) provides that the Commission may waive the sixty-day notice filing requirement for good cause, including the affirmation of the parties that they have not had contact with the Commission about the application within 150 days before filing the application.

Decision

No existing customers of either Empire or White River will be affected in this transaction. Since an agreement has been reached and no hearing has been requested, none is necessary for the Commission to make a determination.⁴ Based on the uncontroverted verified pleadings and Staff's recommendation, the Commission determines all material facts support the following determinations and decisions.

The Commission determines that the Amendment is in the public interest and not detrimental to the public interest in that White River has existing facilities within the location of the lots identified in the Amendment, which will provide for a more orderly future development of electric service to the public, making the most efficient use of the existing facilities and preventing the duplication of facilities.

It is the Commission's decision that the Amendment is in the public interest as a whole and is not detrimental to the public interest. The Commission will approve the

⁴ *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

Amendment and will order Empire to file revised tariffs incorporating the subject properties' updated metes and bounds. The Commission will waive the sixty-day notice provisions of Commission Rule 20 CSR 4240-4.017(1), as permitted by 20 CSR 4240-4.017(1)(D).

THE COMMISSION ORDERS THAT:

1. The Commission waives the sixty-day notice requirements of Commission Rule 20 CSR 4240-4.017(1).
2. The Second Amendment to the Sixth Territorial Agreement, filed on November 10, 2021, is approved.
3. Empire shall file revised tariffs incorporating the subject properties' updated metes and bounds.
4. This order shall be effective on February 11, 2022.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeier CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Keeling, Regulatory Law Judge


STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 12th day of January, 2022.





Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

January 12, 2022

File/Case No. EO-2022-0132

**Missouri Public Service
Commission**

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**White River Valley Electric
Cooperative, Inc.**

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.