

**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 Written) **Case No. EO-2007-0161**
Territorial Agreement Designating the Boundaries)
of Exclusive Service Areas for Each Applicant)
within the Missouri Counties of Stone & Taney)

REPORT AND ORDER

Issue Date: January 21, 2007

Effective Date: January 22, 2007

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APPEARANCES

Dean L. Cooper, Brydon, Swearingen & England, P.C., 312 East Capitol Avenue, P.O. Box 456, Jefferson City, Missouri 65102, for The Empire District Electric Company.

Christiaan D. Horton, Neale & Newman, L.L.P., 1949 E. Sunshine, Suite 1-130, Springfield, Missouri 65808, for White River Valley Electric Cooperative.

Nathan Williams, Deputy General Counsel, Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Harold Stearley, Judge.

REPORT AND ORDER

Syllabus: This Report and Order approves the joint application for approval of a territorial agreement, as amended. The Report and Order also directs The Empire District Electric Company to file revised tariff sheets providing a map and legal description of the exclusive territory it obtains from this agreement.

Procedural History

On October 18, 2006, The Empire District Electric Company and White River Valley Electric Cooperative (“Applicants”) filed a verified joint application for approval of a territorial agreement. This is the fifth territorial agreement the parties have executed, the prior four having been approved by the Commission.

On October 24, 2006, the Commission issued an order directing that notice of the application be given to the general public and to other potentially interested parties. That order also set an intervention deadline of November 20, 2006. There were no requests to intervene and no requests for an evidentiary hearing.

On December 7, following discussion between the Applicants and Staff, the Applicants sought leave to file a supplement to the application that included its First Amendment to the Fifth Territorial Agreement. The Commission granted leave and the application was subsequently amended. On December 27, the Commission’s Staff filed its recommendation and verified memorandum in support of approving the joint application, as amended. No party filed a response to Staff’s Recommendation and memorandum within the deadline established by the Commission.

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.

The Applicants

The Empire District Electric Company (“Empire”) is a Kansas Corporation, with its principal office and place of business located at 602 Joplin Street, Joplin, Missouri, 64801. Empire provides electric and water utility services in Missouri to customers in its service areas and has a certificate of service authority to provide certain telecommunications services. Empire is an “electrical corporation,” a “water corporation,” a “telecommunications company” and a “public utility,” as defined in Section 386.020, RSMo 2000,¹ and is subject to the jurisdiction and supervision of the Commission. Empire also has a wholly owned subsidiary that is a “gas corporation.”

White River Valley Electric Cooperative (“White River”) is a rural electric cooperative organized and existing pursuant the laws of the State of Missouri. Specifically, it is a Chapter 394 rural electric cooperative engaged in the distribution of electric energy and service to its members within Stone and Taney Counties. Its principal office and place of business is on East Highway 76, Branson, Missouri 65616.

The Proposed Territorial Agreement

In their Joint Application, the Applicants submit a territorial agreement entitled “Fifth Territorial Agreement between White River Valley Electric Cooperative and The Empire District Electric Company” (“Agreement”) for the Commission’s approval. Concurrent with

¹ All statutory references are to RSMo 2000 unless otherwise noted.

the filing of the Joint Application, the Applicants submitted the fee required by Section 394.312.7 and delineated in Commission Rule 4 CSR 240-3.130(3).

The Agreement specifically designates the boundaries of two exclusive electric service areas of Empire and the White River within portions of Stone and Taney Counties. The Agreement establishes separate exclusive service territories for Empire and White River for all new structures for more orderly future development of electric service to the public. Empire and White River will continue to have service responsibilities beyond the boundaries of the territorial agreement unaffected by the terms of the agreement.

A copy of the Agreement was included with the Applicants' application as Appendix A. Legal descriptions of the two exclusive service areas and maps depicting the service areas are a part of the Agreement, as required by 4 CSR 240-3.130(1)(A), and appear in Exhibits A and B of Appendix A. The electric service of existing customers will not be changed by the Agreement, and the Agreement states that there are no other electric suppliers serving in the areas covered by the agreement.

Staff, Empire, and White River all agree that the joint application and the territorial agreement meet the requirements of the applicable statutes as well as applicable Commission Rules.² These participating parties further agree that the territorial agreement is not detrimental to the public interest. Although the Office of the Public Counsel was a party to this action, it filed no pleadings in this matter.

If the Commission approves the Fifth Territorial Agreement between Empire and White River, as amended by the First Amendment to the Fifth Territorial Agreement, then

² Sections 394.312 and 416.041.3; 4 CSR 240-2.060 and 4 CSR 240-3.130.

Staff recommends that the Commission order Empire to file revised tariff sheets to add the map and legal description of the exclusive territory it obtains from the agreement to those it has from prior Commission approved territorial agreements.

Conclusions of Law

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

The Territorial Agreement

Section 394.312 gives the Commission jurisdiction over territorial agreements concerning the sale and distribution of electricity. Under Section 394.312.4, the Commission may approve such a territorial agreement if the agreement is not detrimental to the public interest. Based on a thorough examination of the Joint Application and Staff's recommendation and verified memorandum, the Commission finds the territorial agreement will not be detrimental to the public interest.

The Necessity for an Evidentiary Hearing

Although Section 394.312.4 provides that the Commission is to hold an evidentiary hearing to determine whether a territorial agreement is to be approved, no party has requested a hearing. The Commission agrees that pursuant to the holding of *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*,³ the requirement for a hearing was met when the opportunity for hearing was provided and no proper party requested the opportunity to present evidence.

³ 776 S.W. 2d 494 (Mo. App. W.D. 1989).

Decision

Having considered the Applicants' Joint Application and Staff's recommendation and verified memorandum in support of approval, which are hereby admitted into evidence, the Commission concludes that the territorial agreement between The Empire District Electric Company and White River Valley Electric Cooperative is in the public interest. The Commission shall approve the Joint Application. Furthermore, the Commission concludes that no evidentiary hearing is required.

IT IS ORDERED THAT:

1. The Fifth Territorial Agreement between White River Valley Electric Cooperative and The Empire District Electric Company, entered into by The Empire District Electric Company and White River Valley Electric Cooperative, is approved, as amended by the First Amendment to the Fifth Territorial Agreement.

2. Any modifications in, or amendments to, the Fifth Territorial Agreement between White River Valley Electric Cooperative and The Empire District Electric Company, as amended by the First Amendment to the Fifth Territorial Agreement, must be reviewed and approved by the Commission.

3. No later than 30 days after effective date of this order The Empire District Electric Company shall file with the Missouri Public Service Commission revised tariff sheets to add the map and legal description of the exclusive territory it obtains from the Fifth Territorial Agreement between White River Valley Electric Cooperative and The Empire District Electric Company, as amended by the First Amendment to the Fifth Territorial Agreement to those it has from prior Commission approved territorial agreements.

4. This order shall become effective on January 21, 2007.
5. This case may be closed on January 22, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC.,
concur and certify compliance with the provisions
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 11th day of January, 2007.