

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

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**

**STAFF RECOMMENDATION**

**COMES NOW** the Staff of the Missouri Public Service Commission, through counsel, and states as follows.

1. On November 10, 2021 The Empire District Electric Company d/b/a Liberty (Empire) and White River Valley Electric Cooperative (White River) (collectively Applicants) filed a *Joint Application* (Application) requesting approval of a *Second Amendment to the Sixth Territorial Agreement* to more specifically describe recently-platted lots in the Rainbow Shoals Subdivision in Taney County.

2. The Commission approved the Applicants' *Sixth Territorial Agreement* on June 10, 2009 in Case No. EO-2009-0284, which designates White River as the exclusive service provider for two electric service areas in the Rainbow Shoals Subdivision. Applicants do not request a change to the certificated area's boundaries in this Application.<sup>1</sup>

3. On November 12, 2021, Applicants requested a waiver from the requirements of 20 CSR 4240-4.017 for this Application. Staff does not oppose this request.

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<sup>1</sup> Application, §8.

4. On November 16, 2021 the Commission ordered Staff to file a recommendation regarding the Application by December 16, 2021.

5. White River is a rural electric cooperative, organized under Chapter 394, RSMo, providing electric service to its members in Taney County. While this Commission does not regulate rural electric cooperatives, the Commission has jurisdiction over territorial agreements between electric corporations, such as Empire, and rural electric cooperatives.<sup>2</sup>

6. Staff reviewed the Applicants' filing and submits its recommendation in the accompanying *Staff Memorandum*. Staff finds that the Applicants followed the amendment procedure in their *Sixth Territorial Agreement*. Staff recommends that the Commission determine that the Applicants' request is not detrimental to the public interest and approve their *Second Amendment to the Sixth Territorial Agreement*. If approved, Staff recommends that Empire file revised tariffs incorporating the subject properties' updated metes and bounds.

Respectfully submitted,

**/s/ Karen E. Bretz**

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<sup>2</sup> §394.312.4., RSMo.

**CERTIFICATE OF SERVICE**

I certify that the foregoing has been emailed to counsel of record on this 16<sup>th</sup> day of December, 2021.

**/s/ Karen E. Bretz**

## MEMORANDUM

TO: Missouri Public Service Commission Official Case File  
Case No. EO-2022-0132, In the Matter of the Application of 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 for Each Applicant Within the Rainbow Shoals Subdivision in Taney County, Missouri

FROM: Alan J. Bax – Associate Engineer, Engineering Analysis

/s/ Claire M. Eubanks, PE 12/16/2021      /s/ Karen Bretz 12/16/2021  
Manager, Engineering Analysis / Date      Staff Counsel’s Office / Date

SUBJECT: Staff Memorandum Recommending Approval of Joint Application

DATE: December 16, 2021

### STAFF RECOMMENDATION

The Staff of the Missouri Public Service Commission (“Staff”) recommends that the Missouri Public Service Commission (“Commission”) approve the Joint Application (“Application”) of the Empire District Electric Company d/b/a Liberty (“Empire”) and White River Valley Electric Cooperative (“White River”), collectively referred to as the Joint Applicants, of the Second Amendment to their Sixth Territorial Agreement (“Second Amendment to Sixth TA”), finding the transaction is not detrimental to the public interest pursuant to Sections 394.312 and 416.041 RSMo 2016, as well as 20 CSR 4240-2.060 and 20 CSR 4240-3.130.

### OVERVIEW

On November 10, 2021, Empire and White River filed an Application with the Commission requesting approval to allow White River to provide electric service to certain recently platted lots within the Rainbow Shoals Subdivision located in Taney County, Missouri per the terms of the Second Amendment to their Sixth TA. The Joint Applicants’

Sixth Territorial Agreement (“Sixth TA”) was approved by the Commission in a *Report and Order Approving Territorial Agreement*, filed in Case No. EO-2009-0284, on June 10, 2009. The Joint Applicants assert that White River providing electric service to these recently platted lots within Rainbow Shoals Subdivision would prevent an otherwise necessary duplication of electric facilities as White River is said to have adequate existing facilities to serve anticipated load growth in the Rainbow Shoals Subdivision. On November 12, 2021, the Commission issued a *Notice of Deficiency* in which the Commission identified that the Joint Applicants had neither provided a 60 day notice of its intent to file their Application, as required by 20 CSR 4240-4.017, nor had they requested a waiver from such requirement, available per 20 CSR 4240-4.017-(D). The Joint Applicants addressed this deficiency later on November 12, 2021, by requesting a waiver from such requirement.

Subsequently, on November 16, 2021, the Commission issued an *Order Directing Notice, Setting Intervention Deadline, and Directing Staff Recommendation*. In this *Order*, the Commission directed its Data Center to provide a copy of this Order and Application to the County Commission of Taney County, Missouri and its Public Information Office to provide the same documents to members of the General Assembly representing Taney County, Missouri and to news media that serve Taney County, Missouri. The *Order* also set an intervention period until December 1, 2021, for any party desiring to intervene and directed Staff to file a Recommendation on the Application no later than December 16, 2021.

White River is organized under Chapter 394 RSMo 2016 to provide electric service to its members located in all or parts of five Missouri counties, including Taney County, in which lies the properties identified in the Application. The Commission has limited jurisdiction over rural electric cooperatives, such as White River, as specified in part in Chapter 394 RSMo 2016. For the purpose of this case, White River is subject to the jurisdiction of the Commission under Section 394.312.4 RSMo 2016.<sup>1</sup>

Rural electric cooperatives, such as White River, are not required to pay assessment fees or to file annual reports with the Commission. Staff is not aware of any unsatisfied judgments or decisions against White River 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.

Empire is an electrical corporation subject to the jurisdiction of the Commission as specified, in part, by Chapters 386 and 393, RSMo 2016. Empire is current on its filing of annual reports and payments of its assessment dues. Staff is currently not aware of any unsatisfied judgments or decisions against Empire in any state or federal agency or court involving customer service or rates 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.

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<sup>1</sup> Section 394.312.4 RSMo 2016 states in relevant part, “The provisions of sections 386.310 and 393.106 and sections 394.160 and 394.315 to the contrary notwithstanding, before becoming effective, all territorial agreements entered into under the provisions of this section, including any subsequent amendments to such agreements shall receive the approval of the public service commission by report and order..”

## DISCUSSION

The Sixth TA between Empire and White River, dated October 14, 2008, was filed with the Commission in February 2009 in Case No. EO-2009-0284 and approved by the Commission in an *Order* issued on June 10, 2009. Article 3 of the Sixth TA describes the areas within Taney County, Missouri that are in the exclusive service territory of White River. As illustrated in Exhibit 1 of the Sixth TA, a portion of the Rainbow Shoals Subdivision, located in the NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 12-Township 22 North-Range 22 West, was identified as being ready for development in the near future.

In the current Application, subject to the terms included in the Second Amendment to their Sixth TA, the Applicants desire to more specifically describe the platted areas within the Rainbow Shoals Subdivision that are expected to be developed in the future. The Applicants have illustrated these requested changes as part of the Second Amendment to the Sixth TA by including metes and bounds descriptions of these specific plats along with descriptive maps of said platted areas within the Rainbow Shoals Subdivision, as required by 20 CSR 4240-3.130-(1).

The Joint Applicants filed their request for a Second Amendment to the Sixth TA per the procedure contained in Article 6 of their Sixth TA, which is entitled “Case-By-Case Exception Procedure.” The data proscribed to be included in a subsequent addendum/amendment request, as detailed in Article 6, is shown along with the aerial views of the respective platted properties attached to the proposed Second Amendment to the Sixth TA. Staff agrees with the Joint Applicants that these additional platted properties in the Rainbow Shoals Subdivision are best served by White River, considering White River has adequate available facilities currently installed to serve the anticipated

new load and this will negate the otherwise necessary duplication of facilities if Empire would provide electric service to these properties in question.

### **CONCLUSION**

As described above, Staff recommends that the Commission approve the request of the Joint Applicants' Second Amendment to their Sixth TA, which would allow White River to be the exclusive electric service provider to newly platted areas of the Rainbow Shoals Subdivision located in Taney County, Missouri per the terms contained in the Second Amendment of the Sixth TA. The Staff recommends the Commission determine that the Joint Applicants' request is not detrimental to the public interest pursuant to Sections 394.312 and 416.041 RSMo 2016, as well as 20 CSR 4240-2.060 and 20 CSR 4240-3.130, because it would allow the most efficient use of the existing electric facilities in this area and prevents an otherwise necessary duplication of facilities if Empire provides the anticipated/desired electric service. In recommending approval of this request, Staff recommends the Commission note that no ratemaking determinations are being made as a part of its order in this case. In addition, Staff recommends Empire file revised illustrative tariffs in this case reflecting the new, more distinct, metes and bounds descriptions of the properties located in the Rainbow Shoals Subdivision identified in the Application.



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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**

**AFFIDAVIT OF ALAN J. BAX**

STATE OF MISSOURI    )  
                                  ) ss.  
COUNTY OF COLE     )

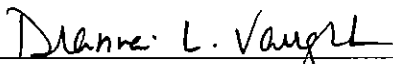
**COMES NOW ALAN J. BAX**, and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff Recommendation, in Memorandum form*; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

  
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**ALAN J. BAX**

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 16<sup>th</sup> day of December, 2021.

  
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Notary Public

DIANNA L. VAUGHT  
Notary Public - Notary Seal  
State of Missouri  
Commissioned for Cole County  
My Commission Expires: July 18, 2023  
Commission Number: 15207377