



*Commissioners*

SHEILA LUMPE  
Chair

M. DIANNE DRAINER  
Vice Chair

CONNIE MURRAY

KELVIN L. SIMMONS

STEVE GAW

**Missouri Public Service Commission**

POST OFFICE BOX 360  
JEFFERSON CITY, MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.psc.state.mo.us>

May 1, 2001

BRIAN D. KINKADE  
Executive Director

WESS A. HENDERSON  
Director, Utility Operations

ROBERT SCHALLENBERG  
Director, Utility Services

DONNA M. KOLILIS  
Director, Administration

DALE HARDY ROBERTS  
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE  
General Counsel

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

**FILED<sup>3</sup>**

MAY 01 2001

Missouri Public  
Service Commission

**RE: Case No. EO-2001-491**

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of an **UNANIMOUS STIPULATION AND AGREEMENT**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

David A. Meyer  
Associate General Counsel  
(573) 751-8706  
(573) 751-9285 (Fax)

DAM/lb  
Enclosure  
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>  
MAY 01 2001

Missouri Public  
Service Commission

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 ) Case No. EO-2001-491  
Boundaries of Each Electric Service Supplier )  
Within the White Oaks Subdivision of the City )  
of Branson, Taney County, Missouri. )

**UNANIMOUS STIPULATION AND AGREEMENT**

COME NOW the undersigned parties to this proceeding and for their Unanimous Stipulation and Agreement ("Stipulation and Agreement"), respectfully state as follows:

**I. Procedural History**

1. On March 16, 2001, The Empire District Electric Company ("Empire"), a regulated utility, and White River Valley Electric Cooperative ("White River"), collectively known as "the Applicants," filed a Joint Application requesting that the Commission: 1) approve a Territorial Agreement between the Applicants, based on a finding that it is not detrimental to the public interest; 2) authorize the Applicants to perform in accordance with the terms and conditions of the Territorial Agreement; and 3) find that the Territorial Agreement shall not impair Empire's certificates of convenience and necessity other than by the Agreement's own terms.

2. On March 28, 2001, the Commission issued an Order directing that a procedural schedule be filed in this case by April 27, 2001, with the hearing to be held no later than June 1, 2001; that notice be sent to interested parties; and that any applications to intervene be filed by April 17, 2001. No applications to intervene were filed during the permissible time period.

3. In the Joint Application, Empire and White River seek Commission approval of the Territorial Agreement. White River desires to provide electric service to new structures in the White Oaks Subdivision of Branson, Missouri. The legal description of the area containing the new structures is included in the Territorial Agreement in numbered paragraph 1, and a plat map illustrating the affected area is attached as Exhibit A to the Territorial Agreement. The Territorial Agreement establishes an exclusive service territory for White River in a single subdivision, and does not entail the transfer of any facilities or customers between Applicants, so no list of persons whose utility service would be changed by the agreement (as required by 4 CSR 240-2.060(13)) is included as part of this Stipulation. There are no other electric suppliers providing permanent service in the area covered by the Territorial Agreement. Empire and White River have agreed to displace competition between them in the pertinent section of Taney County, as allowed by Section 394.312 RSMo 2000, and have set out the terms of the Territorial Agreement, which is attached to the Joint Application and marked as Appendix A.

4. On April 20, 2001, the Commission issued an order setting a procedural schedule, setting filing of a Stipulation and Agreement for May 4, 2001, and an evidentiary hearing on the Territorial Agreement for May 18, 2001 at 1:30 P.M.

5. The Staff of the Commission, the Office of the Public Counsel, Empire, and White River (hereinafter collectively known as "the Parties"), having reviewed the Joint Application and associated Territorial Agreement and having considered the position of the Parties and the issues to be resolved in this case, have entered into this Stipulation and Agreement.

## **II. The Parties Have Reached the Following Stipulation and Agreement:**

6. The Parties assert and, in consideration of the promises and covenants herein contained, state that the Territorial Agreement between Empire and White River is not detrimental to the public interest and therefore should be approved.

7. Empire agrees that within 30 days of the effective date of an Order approving the Territorial Agreement, Empire will file for review and approval revised tariff sheets for the Empire service area in Taney County, stating the effect of the Territorial Agreement on the rights and obligations of Empire to provide service and state the effect of the Territorial Agreement on the service area. Specifically, Empire will file revised tariff sheets containing either a legal description or plat of areas in Taney County that are restricted by this Territorial Agreement, as well as any previous Territorial Agreement.

8. This Stipulation and Agreement shall be binding upon the successors and assigns of Empire and White River.

## **III. General Matters**

9. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation and Agreement in total, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the signatories to take other positions in other proceedings.

10. In the event the Commission accepts the specific terms of this Stipulation and

Agreement, the Parties waive, with respect to the issues resolved herein: their respective rights, pursuant to §536.080 RSMo. 2000, to present testimony, to cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2 RSMo. 2000; their respective rights to seek rehearing pursuant to §386.500 RSMo. 2000; and their respective rights to seek judicial review pursuant to §386.510 RSMo. 2000. Notwithstanding the foregoing each party may present oral testimony at the evidentiary hearing supporting the fact that the Territorial Agreement is not detrimental to the public interest. The Parties agree to cooperate with each other in presenting for approval to the Commission this Stipulation and Agreement, and will take no action, direct or indirect, in opposition to the request for approval of this Stipulation and Agreement.

11. The Staff shall have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.

12. None of the Parties to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any rate-making principle or any method of cost determination or cost allocation underlying or allegedly underlying the Stipulation and Agreement, except as the Commission finds that the Territorial Agreement is in the public interest. Further, the parties

recommend that the Commission reserve the right to consider the rate-making treatment, if any, to be afforded this transaction in any future rate-making proceeding.

**WHEREFORE**, the Parties respectfully request the Commission to issue its Order:

- A. Finding that the designated electric service area is not detrimental to the public interest and approving the Third Territorial Agreement (Appendix A to the Joint Application);
- B. Authorizing Empire and White River to perform in accordance with the terms and conditions of the Third Territorial Agreement;
- C. Finding that the Third Territorial Agreement does not impair Empire's certificates of convenience and necessity, except as specifically limited by the Third Territorial Agreement;
- D. Directing that Empire file, within thirty days of the effective date of the Commission Order, revised tariff sheets with respect to its service area in Taney County to reflect the Third Territorial Agreement and any previous Territorial Agreements;
- E. Approving all of the terms of this Stipulation and Agreement; and
- F. Granting such other relief as deemed necessary to accomplish the purposes of the Joint Application that are not inconsistent therewith.

Respectfully submitted,



Gary W. Duffy, Mo. Bar No. 24905  
Brydon, Swearingen & England, P. C.  
312 East Capitol Avenue  
P. O. Box 456  
Jefferson City, MO 65102-0456  
(573) 635-7166 (Telephone)  
(573) 635-3847 (Fax)

Attorney for The Empire District Electric  
Company



Rodric A. Widger, Mo. Bar No. 31458  
1111 S. Glenstone  
P. O. Box 4929  
Springfield, MO 65808  
(417) 864-6401 (Telephone)  
(417) 864-4967 (Fax)

Attorney for White River Valley Electric  
Cooperative



David A. Meyer, Mo. Bar No. 46620  
Associate General Counsel  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-8706 (Telephone)  
(573) 751-9285 (Fax)  
dmeyer@mail.state.mo.us

Attorney for the Staff of the  
Missouri Public Service Commission

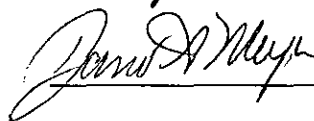


John Coffman, Mo. Bar No. 36591  
Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102  
(573) 751-5565  
(573) 751-5562 (fax)

Attorney for the  
Office of the Public Counsel

### CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 1th day of <sup>May</sup> April, 2001.



**Service List for  
Case No. EO-2001-491  
May 1, 2001 (lb)**

**Office of the Public Counsel  
PO Box 7800  
Jefferson City, MO 65102**

**Gary W. Duffy/James C. Swearengen  
Brydon, Swearengen & England, P.C.  
312 Capitol Avenue, P.O. Box 456  
Jefferson City, MO 65102**

**Rodric A. Widger  
Andereck, Evans, Milne, Peace & Johnson, LLC  
1111 South Glenstone  
PO Box 4929  
Springfield, MO 65808**

**Terry Dody  
City Administrator  
110 W. Maddux  
PO Box 1309  
Branson, MO 65615**

**Presiding Commissioner  
Taney County Courthouse  
PO Box 156  
Forsyth, MO 65653**