

**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 Second)
Amendment of a Written Territorial Agreement)
Designating the Boundaries of Exclusive Service)
Areas for Each Applicant within the Missouri)
Counties Of Stone and Taney)

Case No. EO-2013-0313

STAFF RECOMMENDATION TO APPROVE JOINT APPLICATION

COMES NOW the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”), by and through counsel, and for recommendation respectfully states:

1. On November 29, 2012, the Empire District Electric Company (“Empire”) and White River Valley Electric Cooperative (“White River”) (collectively, “Applicants”), filed a *Joint Motion for Approval of a Second Amendment to the Fifth Territorial Agreement*, seeking Commission approval to allow White River to provide electric service to three tracts of land owned by the Branson School District in Stone and Taney counties.

2. On November 30, the Commission ordered Staff to file a recommendation or status report no later than December 31, 2012.

3. Section 394.312 RSMo. authorizes territorial agreements to displace competition to provide retail electric service, as between rural electric cooperatives, electrical corporations and municipally owned utilities. The Commission may approve territorial agreements or amendments “if it determines that approval of the territorial agreement in total is not detrimental to the public interest.”¹

¹ Section 394.312.4 and 394.312.5 RSMo.

4. Staff's *Memorandum* is attached here as Appendix A and incorporated herein by reference. As explained in Staff's *Memorandum*, the Fifth Territorial Agreement between Empire and White River provides for addendums to address new structures built near the exclusive electric service boundaries created by the territorial agreement. In this case, the Branson School District—which receives electric service from White River—has acquired and developed three adjoining tracts of land located in the exclusive service area of Empire. The Applicants' *Joint Motion* would allow White River to serve the school's expansion on the three tracts of land. The *Joint Motion* includes a statement from the Superintendent of the Branson School District supporting the amendment to the territorial agreement.

5. Staff recommends the Commission determine that the Applicants' requested amendment to the territorial agreement is not detrimental to the public interest because it allows the most efficient use of existing electric facilities and prevents duplication of electric facilities.

6. Rural Electric Cooperatives, such as White River, are not required to pay assessment fees or to file annual reports. Empire is current on all assessment fees and annual report filings. The Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

WHEREFORE, Staff recommends that the Commission issue an order approving the Second Amendment to the Fifth Territorial Agreement as described in the Applicants' *Joint Motion*, and authorizing the Applicants to perform according to the terms of the Second Amendment.

Respectfully Submitted,

**STAFF OF THE MISSOURI
PUBLIC SERVICE COMMISSION**

/s/ John D. Borgmeyer

John D. Borgmeyer
Legal Counsel
Missouri Bar No. 61992

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Missouri Public Service Commission
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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 21st day of December, 2012.

/s/ John D. Borgmeyer

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. EO-2013-0313, Joint Application of the Empire District Electric Company and White River Valley Electric Cooperative for Approval of a Second Amendment to the Fifth Territorial Agreement Designating the Boundaries of Exclusive Service Areas for Each Applicant within Stone and Taney Counties, MO

FROM: Alan J. Bax - Tariff, Safety, Economic and Engineering Analysis

/s/ Alan J. Bax 12/21/12 /s/ John Borgmeyer 12/21/12
Energy Department / Date Staff Counsel's Office / Date

SUBJECT: Staff Memorandum Recommending Approval of Joint Application

DATE: December 31, 2012

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 (“Empire”) and White River Valley Electric Cooperative (“White River”), collectively referred to as the Applicants (“Applicants”), of the Second Amendment (“Amendment”) to the Fifth Territorial Agreement (“TA”), finding the transaction is not detrimental to the public interest pursuant to Section 394.312 RSMo 2000, 4 CSR 240-2.060 and 4 CSR 240-3.130.

OVERVIEW

On November 29, 2012, Empire and White River filed an Application with the Commission requesting approval to allow White River to provide electric service to three additional tracts that lie within the exclusive service territory of Empire per the terms of the Fifth Territorial Agreement, which was approved by the Commission in Case No. EO-2007-0161, as amended, on January 11, 2007. The Applicants assert that White River providing electric service to these additional tracts will prevent an otherwise necessary duplication of electric facilities in providing service to the Branson School District.

On November 30, 2012, the Commission issued an Order directing Staff to file a Recommendation on the Joint Application by December 31, 2012.

DISCUSSION

The Fifth Territorial Agreement between Empire and White River was approved by the Commission in January 2007. Article 7 of this TA addresses the situation that Addendums may be filed to allow new structures, which are located near the exclusive electric service boundaries created by the TA, to receive electric service from one party despite the new structure being built in the exclusive service territory of another party. Schedule 1, attached to this Staff Recommendation, depicts the exclusive service territory of Empire per the terms included in the TA. Included in the exclusive service territory of Empire is Sections 8 and 17, of Township 23, Range 21W. However, terms of the TA allowed White River to provide electric service to a tract, owned by the Branson School District, located in the Northwest Quadrant of Section 17, identified as Tract 1, on the attached Schedule 2.

The Branson School District has recently expanded, and has acquired an adjacent parcel to Tract 1 in the Northwest Quadrant of Section 17 (illustrated as Tract A in the Application) and two adjoining parcels in the Southwest Quarter of Section 8 (illustrated as Tract B and C in the Application). Schedule 3, which was attached as "Schedule A" to the Application, shows these three new tracts and their related location within the contiguous quadrants of Sections 8 and 17 respectively.

The Branson School District has reportedly constructed new facilities on these new tracts. White River believed that by connecting these new facilities to an existing meter, it was not obligated to amend the applicable Territorial Agreement. This Application is meant to appropriately amend the TA and alleviate this error. The Applicants have identified this requested amendment, the addition of three additional tracts owned by the Branson School District, as "Exhibit B7 to the TA". The Application included a notarized statement from the Superintendent of the Branson School District stating their desire to have White River be its electric service provider to these tracts.

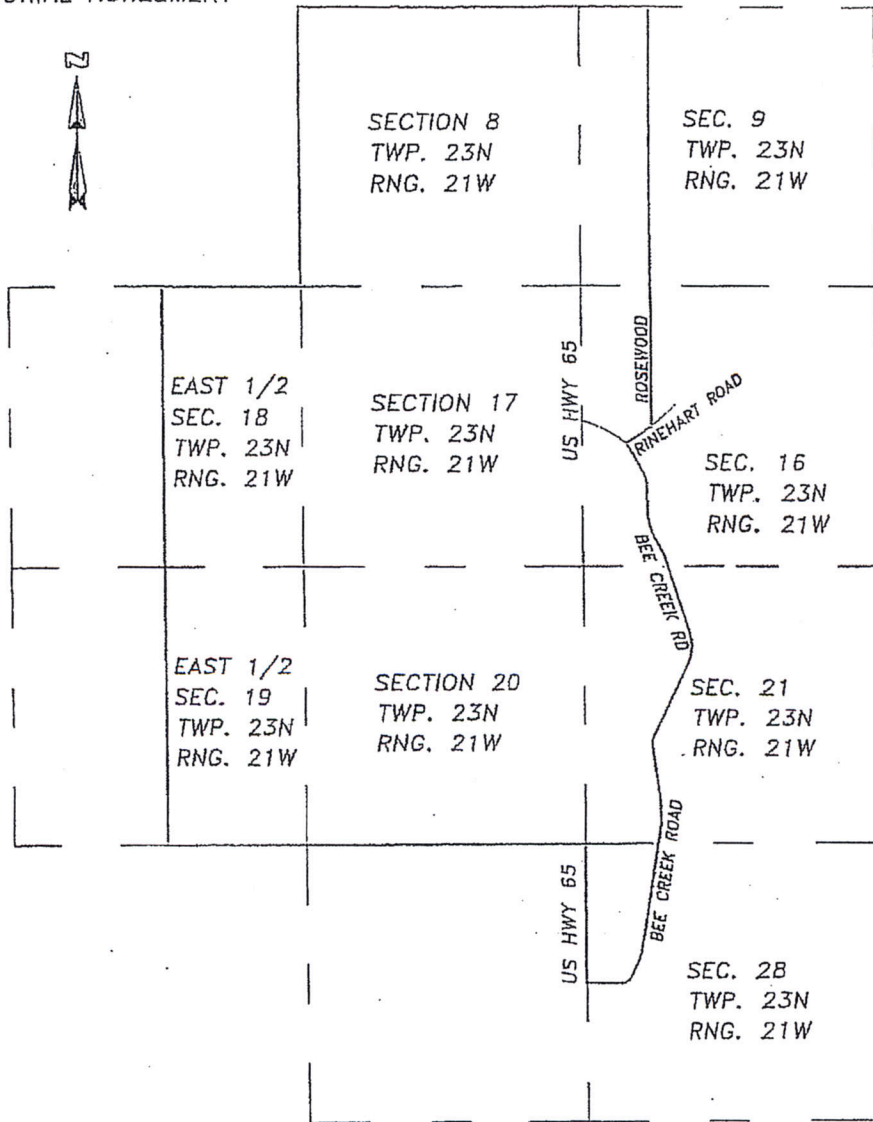
CONCLUSION

As previously noted, Staff recommends that the Commission approve the Applicants' request to amend their Fifth Territorial Agreement by allowing White River to provide electric service to three additional tracts located within the exclusive service area of Empire per the terms contained in the TA. The Branson School District has recently expanded and desires to maintain White River as its sole electric service provider in this area of Taney County. The Staff recommends the Commission determine that this request is not detrimental to the public interest pursuant to Section 394.312 RSMo 2000, 4 CSR 240-2.060 and 4 CSR 240-3.130 as it allows the most efficient use of the existing

electric facilities in this area and prevents an otherwise necessary duplication of facilities if Empire provides the desired electric service of the Branson School District. Rural Electric Cooperatives, such as White River, are not required to pay assessment fees or to file annual reports. Empire is current on all assessment fees and annual report filings. The Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

EXHIBIT

TERRITORIAL AGREEMENT




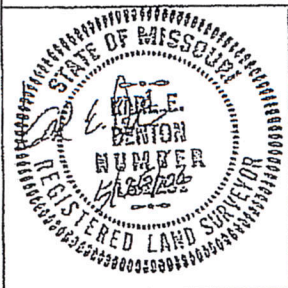
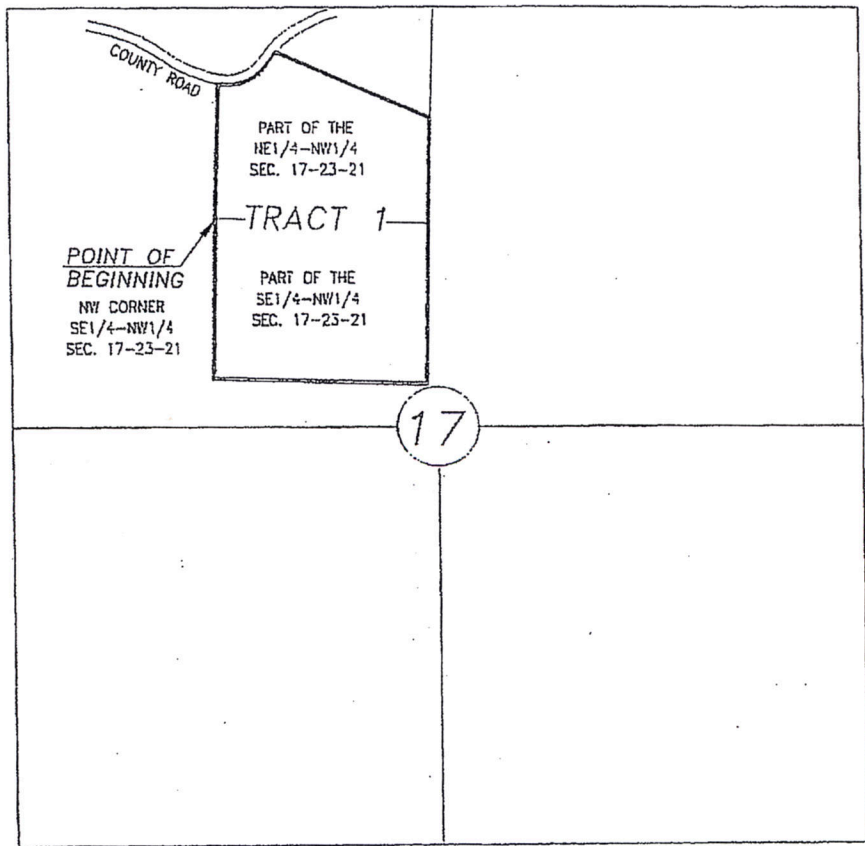
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|--|-------------|---|------------------|
|  LEDBETTER, CORNER & ASSOCIATES, INC. Consulting Engineers & Architects | | PREPARED FOR: WHITE RIVER VALLEY ELECTRIC COOPERATIVE | |
| P.O. BOX 10062 2200 E. SUNSHINE, SUITE 205 SPRINGFIELD, MISSOURI 65804 | | TERRITORIAL BOUNDARY AGREEMENT LCA #0146529 | |
| DWN. BY: KD | CKD. BY: KD | DATE: 05/23/06 | SCALE: 1"= 3000' |

Exhibit A

EXHIBIT
TERRITORIAL AGREEMENT




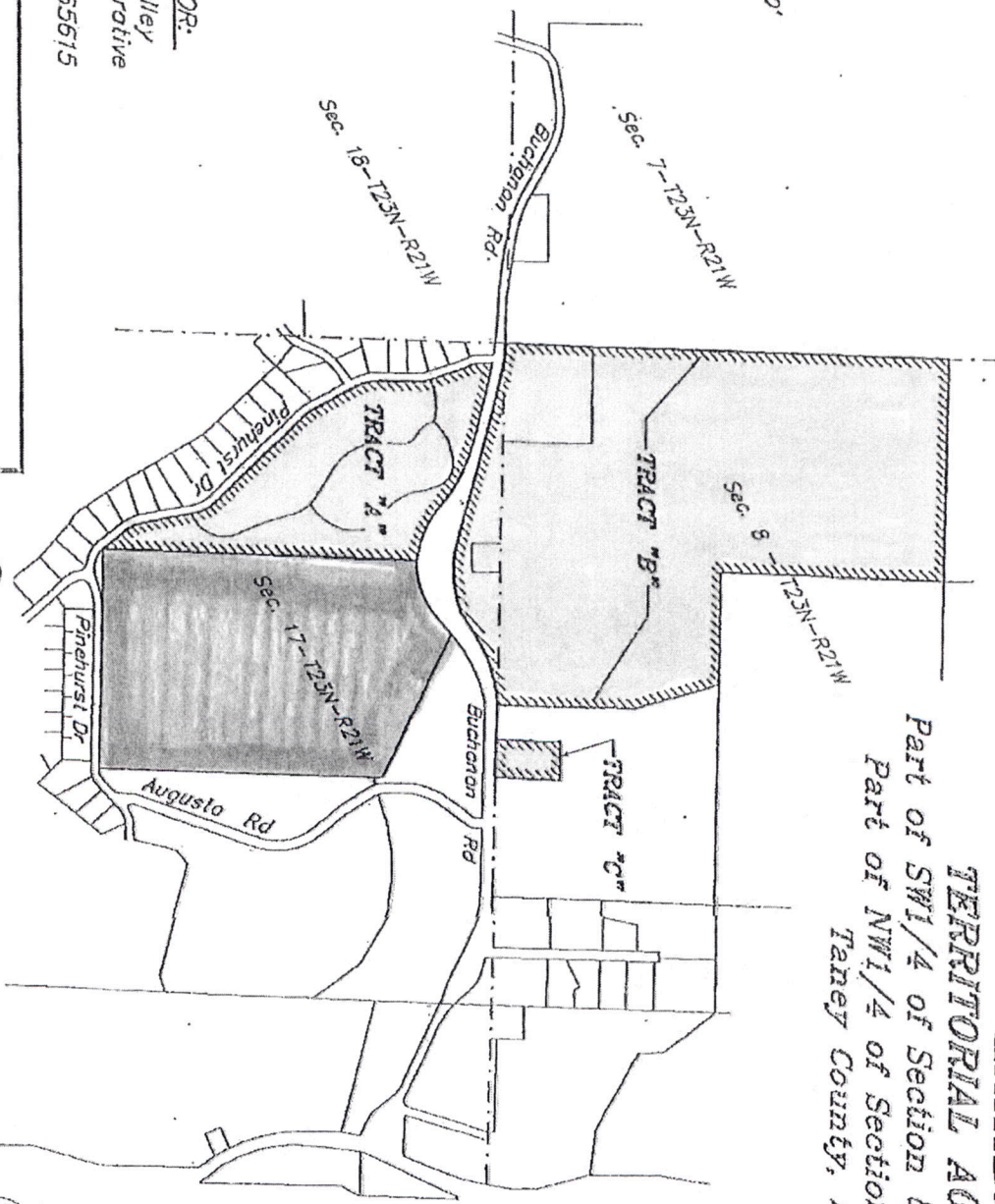
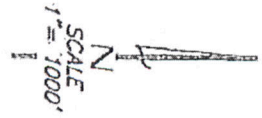
| | | | |
|---|-------------|---|------------------|
|  LEDBETTER, CORNER & ASSOCIATES, INC. Consulting Engineers & Architects | | PREPARED FOR: WHITE RIVER VALLEY ELECTRIC COOPERATIVE BRANSON R-IV SCHOOL DISTRICT | |
| P.O. BOX 10062 2200 E. SUNSHINE, SUITE 206 SPRINGFIELD, MISSOURI 65804 | | TERRITORIAL BOUNDARY AGREEMENT LCA #0146529 | |
| DWN. BY: KD | CKD. BY: KD | DATE: 05/12/06 | SCALE: 1"= 1000' |

EXHIBIT
TERRITORIAL AGREEMENT
 Part of SW1/4 of Section 8-T23N-R21W and
 Part of NW1/4 of Section 17-T23N-R21W
 Taney County, Missouri



U.S. HWY 65

PREPARED FOR:

White River Valley
 Electric Cooperative
 P.O. Box 959
 Branson, MO 65615

HDR ENGINEERING, INC.



187 E. DAVID, P.O. BOX 969, FORSYTH, MO 65665
 Phone: 417-546-3218, Fax: 417-546-5324
 MO. C.O.A. #000856 - JOB NO. 177447.014

(New Exhibit
 B7 to 5th TA)

SCHEDULE
 "A"



Date: 7-09-12

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

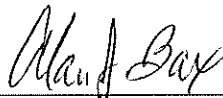
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Empire District Electric Company and)
White River Valley Electric Cooperative for)
Approval of a Written Territorial Agreement)
Designating the Boundaries of Exclusive)
Service Areas for Each Application within)
the Missouri Counties of Stone and Taney.)

Case No. EO-2013-0313

AFFIDAVIT OF ALAN J. BAX

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Alan. J. Bax, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was provided to him; that he has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of his knowledge and belief.



Alan J. Bax

Subscribed and sworn to before me this 21~~st~~ day of December, 2012.



Notary Public

