

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

In the Matter of the Application of White	)	
River Valley Electric Cooperative, Inc. for	)	
Approval of Designated Service Boundaries	)	<b><u>File No. EO-2025-0228</u></b>
Within Portions of Christian County, Missouri	)	

**STAFF’S RECOMMENDATION**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and states as follows:

1. On February 19, 2025, White River Valley Cooperative, Inc. (“White River”) filed an application for an order approving designated service boundaries (the “Application”), pursuant to Section 386.800.3, RSMo, and 20 CSR 4240-20.045. Also on February 19, 2025, White River filed a Motion for Waiver of the 60-day notice requirement of 20 CSR 4240-4.017.

2. On February 27, 2025, the Commission issued its *Order and Notice*, which set a March 13, 2025, deadline for applications to intervene, and which set a March 28, 2025, deadline for Staff to file a Recommendation (the “Order”).

3. On March 11, 2025, White River filed its *Motion for Expedited Treatment*, requesting that the Commission rule on the Application no later than May 20, 2025.

4. On March 13, 2025, The Empire District Electric Company d/b/a Liberty (“Liberty”) filed its *Motion to Intervene*, stating in part that Liberty “would be the electric service supplier to the property which is the subject of the Application ... absent a Commission decision in favor of White River in this docket”.

5. On March 26, 2025, Staff filed a *Status Report*, indicating that Staff anticipated it could file a Recommendation on or by April 21, 2025, assuming complete

data request (DR) responses were timely received or that the Parties could agree to a shorted DR response deadline.

6. On March 27, 2025, the Commission issued its *Order Directing Procedural Schedule*, directing the Parties to provide the Commission with a procedural schedule no later than April 3, 2025. Also on March 27, 2025, the Commission granted Liberty's intervention in the case.

7. On April 3, 2025, Staff filed a *Motion for Extension*, stating that the Parties were communicating regarding the proposed procedural schedule, and requested until April 8, 2025, to file a proposed procedural schedule; the Commission granted this request.

8. On April 8, 2025, Staff filed a *Second Motion for Extension*, stating that Staff had been in near-daily communication with the Parties, but the Parties had not yet been able to agree to all procedural dates; Staff requested the Parties be granted until April 14, 2025, to file the proposed procedural schedule.

9. On April 9, 2025, the Commission issued its *Order Setting Prehearing Conference*, directing the Parties to attend a Prehearing Conference scheduled for April 10, 2025.

10. A Prehearing Conference was held on April 10, 2025.

11. On April 11, 2025, the Commission issued its *Order Directing Filing*, which directed the Parties to file a proposed procedural schedule no later than April 14, 2025.

12. On April 14, 2025, a Joint Proposed Procedural Schedule was filed by the Parties. On April 18, 2025, the Commission entered its *Order Setting Procedural Schedule*, which set May 5 as the date on which Staff would file its Staff Report.

13. White River filed its Application following an annexation by which the City of Ozark expanded its boundaries approximately 26 acres. Following White River's and Liberty's failure to reach a territorial agreement ("TA") per Section 386.800.2, RSMo, White River filed a Section 386.800.3, RSMo, service boundary case seeking approval of designated service boundaries inside the approximately 26 acres.

14. Section 386.800.2, RSMo, covers the special situation where a municipality annexes territory to include areas where another electric supplier is not providing permanent service but a rural electric cooperative can do so per the statute's capability requirements.<sup>1</sup> In that event, Section 386.800, RSMo, gives the rural electric cooperative an opportunity to compete to serve the annexed area. As to the annexed property, this statute imposes standards for approval additional to the "not detrimental" standard set out in Section 394.312, RSMo. More particularly, Section 386.800.2, RSMo, states in part:

Any municipally owned electric utility may extend, pursuant to lawful annexation, its electric service territory to include areas where another electric supplier currently is not providing permanent service to a structure. If a rural electric cooperative has existing electric service facilities with adequate and necessary service capability located in or within one mile outside the boundaries of the area proposed to be annexed, a majority of the existing developers, landowners, or prospective electric customers in the area proposed to be annexed may, anytime within forty-five days prior to the effective date of the annexation, submit a written request to the governing body of the annexing municipality to invoke mandatory good faith negotiations under section 394.312 to determine which electric service supplier is best suited to serve all or portions of the newly annexed area. In such negotiations the following factors shall be considered, at a minimum:

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<sup>1</sup> Section 386.800.2, RSMo, provides in part:

"Any municipally owned electric utility may extend, pursuant to lawful annexation, its electric service territory to include areas where another electric supplier currently is not providing permanent service to a structure. If a rural electric cooperative has existing electric service facilities with adequate and necessary service capability located in or within one mile outside the boundaries of the area proposed to be annexed..."

(1) The preference of landowners and prospective electric customers;

(2) The rates, terms, and conditions of service of the electric service suppliers;

(3) The economic impact on the electric service suppliers

(4) Each electric service supplier's operational ability to serve all or portions of the annexed area within three years of the date the annexation becomes effective;

(5) Avoiding the wasteful duplication of electric facilities;

(6) Minimizing unnecessary encumbrances on the property and landscape within the area to be annexed; and

(7) Preventing the waste of materials and natural resources.

15. The statute covers both the situations where the municipality owns an electric utility and where, instead, a regulated utility provides the municipal area with service. Section 386.800.3, RSMo, states in part:

In the event an electrical corporation rather than a municipally owned electric utility lawfully is providing electric service in the municipality, all the provisions of subsection 2 of this section shall apply equally as if the electrical corporation were a municipally owned utility, except that if the electrical corporation and the rural electric cooperative are unable to negotiate a territorial agreement pursuant to section 394.312 within forty-five days, then either electric service supplier may file an application with the commission for an order determining which electric service supplier should serve, in whole or in part, the area to be annexed.

16. In the attached Staff memorandum, marked as Appendix A, Staff concludes that the Application contains the required documentation as specified in Sections 386.800.2 and 386.800.3, RSMo, 20 CSR 4240-2.060 and 20 CSR 4240-20.045, and that White River has provided good cause for requesting a variance from the 60-day notice requirement of 20 CSR 4240-4.017. Additionally, it is

Staff's understanding that on Tuesday, April 29, 2025, White River mailed a check for the \$500.00 filing fee as described by Section 386.800.9 and required by 20 CSR 4240-3.130.

17. As explained in Appendix A, Staff's evaluation of the seven factors listed in Section 386.800.2, RSMo, favors White River being the electric service provider to the Property, based on the preference stated by the property owner and the greater improvements to customer density.

18. Staff further recommends that, should the Commission approve the Application, that the Commission note in its order that Liberty should file revised tariff sheets that reflect corresponding changes to its approved electric service territory in Christian County, Missouri.

**WHEREFORE,** Staff respectfully submits this Staff Recommendation, and recommends that the Commission issue an order approving the Application, and for such other and further relief as the Commission considers just and reasonable under the circumstances.

Respectfully submitted,

**/s/ Alexandra Klaus**

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**Attorney for the Staff of the  
Missouri Public Service Commission**

### **CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing were mailed, electronically mailed, or hand-delivered to all counsel of record on this 5<sup>th</sup> day of May, 2025.

**/s/ Alexandra Klaus**

## **MEMORANDUM**

TO: Missouri Public Service Commission Official Case File  
File No. EO-2025-0228 – In the Matter of the Application of White River  
Valley Electric Cooperative, Inc. For Approval of Designated Service  
Boundaries Within Portions of Christian County, Missouri.

FROM: Alan J. Bax – Engineering Analysis Dept. / Industry Analysis Division

/s/ <i>Alan J. Bax</i>	05-05-2025
Associate Engineer	Date

SUBJECT: Staff Memorandum Recommending Approval of Application

DATE: May 5, 2025

### **STAFF RECOMMENDATION**

Staff of the Missouri Public Service Commission (“Staff”) recommends that the Missouri Public Service Commission (“Commission”) approve the Application of White River Valley Electric Cooperative, Inc. (“White River”) requesting to be the exclusive electric service provider to an approximate 26-acre property located at 1505 S. 17th Street, Ozark, Missouri, and situated at the northeast corner of the intersection of South Street and Highway 65 in Christian County (“the Property”). Staff recommends the Commission approve White River’s Application, concluding that its Application is not detrimental to the public interest per Sections 386.800.2 and 386.800.3, RSMo. Staff also recommends the Commission approve White River’s request for a variance from filing a 60-day notice of filing the Application per 20 CSR 4240-4.017. The Application contains the required documentation as specified in 386.800.2 and 386.800.3, RSMo, which includes information specified in 20 CSR 4240-20.045,<sup>1</sup> as well as 20 CSR 4240-2.060 and 20 CSR 4240-3.130. Commission approval of this Application would allow White River to be the sole electric service provider to a proposed development known as Elk Valley, LLC, on the aforementioned 26-acre property. While White River asserts in its Application that the Empire District Electric Company,

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<sup>1</sup> Section 386.800.3, RSMo, requires that such Applications shall be made pursuant to the rules and regulations of the commission governing applications for certificates of public convenience and necessity.

d/b/a Liberty Utilities (“Liberty”) is the only other electric service provider in this area, Staff notes that Ozark Electric Cooperative Inc. (“Ozark”) serves in Christian County, Missouri, in and near the City of Ozark.<sup>2</sup>

### **OVERVIEW**

White River filed its Application on February 19, 2025, along with its Motion requesting a variance from providing a 60-day notice of said Application and a Motion for a Protective Order. As discussed further below, White River cited revised Statute 386.800, RSMo, as its main source in supporting its request to be the sole electric service provider to the Property.

On March 13, 2025, Liberty filed a Motion to Intervene, stating, in part, that “...its interest in this case arises from the fact that it would be the electric service supplier to the property which is the subject of the Application of White River absent a Commission decision in favor of White River in this docket...”. Liberty’s request to intervene was approved by the Commission in its *Order Granting Application to Intervene* filed on March 27, 2025. Subsequently, a Procedural Schedule was established by the Commission in its *Order Setting Procedural Schedule* filed on April 18, 2025, in which Staff is ordered to file a report on the Application on May 5, 2025.

White River is a rural electric cooperative organized under Chapter 394, RSMo, to provide electric service to its members in all or parts of five Missouri counties, including Christian County, in which lies the Property that is the subject of the Application. As a rural electric cooperative, White River is not required to file annual reports or pay assessment fees. Further, Staff is not aware of any pending or final unsatisfied judgments against White River from any state or federal court involving customer service or rates within three years of the date of filing this Application.

Liberty is an electrical corporation subject to the jurisdiction of the Commission as specified, in part, by Chapters 386 and 393, RSMo. Liberty is current on its filing of annual reports and payments of its assessment dues. Staff is currently not aware of any unsatisfied

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<sup>2</sup> Case No. EO-2025-0253 involves Ozark and includes parcels within 4000 feet of this 26-acre property that is the subject of this Case.

judgments or decisions against Liberty in any state or federal agency or court involving customer service or rates that would have bearing on the immediate case.

### **DISCUSSION**

In August 2021, the Missouri Legislature approved an amendment to Section 386.800, RSMo. This revised statute allowed an electric cooperative to serve new customers within the corporate limits of a city that either has a municipally owned electric utility or an electrical corporation lawfully providing electric service within the particular city or municipality. The revised statute states that if a rural electric cooperative has existing facilities with adequate and necessary service capability located in or within one mile outside the boundaries of an area proposed to be annexed, a majority of the existing developers, landowners, or prospective customers in the area proposed to be annexed may, at any time within forty-five days prior to the effective date of the annexation, submit a written request to the governing body of the annexing municipality to initiate good faith negotiations, under Section 394.312, RSMo, in determining which electric service provider is best suited to serve all or portions of the annexed area.<sup>3</sup> If the municipality is lawfully served by an electrical corporation, rather than a municipally owned electric utility, then all of the provisions of Section 386.800.2, RSMo, apply equally as if the electrical corporation were a municipally owned electric utility. If the electrical corporation and the rural electric cooperative are unable to negotiate a territorial agreement, pursuant to Section 394.312, RSMo, within forty-five days of annexation, then either electric service provider may file an application with the Commission seeking an order that determines which electric service provider should serve, in whole or in part, the area to be annexed.<sup>4</sup>

In order to comply with the aforementioned revised statute, the owner of the Property, Joe Warren, who is also the Managing Member of Elk Valley LLC, sent a letter dated October 24, 2024,<sup>5</sup> to White River, Liberty, and the City of Ozark (“Ozark”). This letter indicated the Property that would be annexed and requested Ozark to initiate good faith

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<sup>3</sup> Section 386.800.2, RSMo (2021).

<sup>4</sup> Section 386.800.3, RSMo (2021).

<sup>5</sup> Attached to the Application as Appendix A.

discussions between White River and Liberty regarding who would be the electric service provider to the Property. The letter specifically stated Mr. Warren's preference that White River be selected as the electric service provider. The Property was subsequently annexed into the corporate limits of Ozark with an effective date of November 4, 2024.<sup>6</sup>

White River and Liberty were unable to agree upon terms of a territorial agreement that included the provider of electric service to the Property within the time frame specified in Section 386.800, RSMo, and White River proceeded to file its Application with the Commission citing Section 386.800.3, RSMo,<sup>7</sup> seeking to be the exclusive electric service provider to the Property.

In making a determination as to who will be the electric service provider to the Property, the Commission must consider seven factors that are listed in Section 386.800.2, RSMo. These seven factors are as follows:

- (1) The preference of landowners and prospective electric customers;
- (2) The rates, terms, and conditions of service of the electric service suppliers;
- (3) The economic impact on the electric service suppliers;
- (4) Each electric service supplier's operational ability to serve all or portions of the annexed area within three years of the date the annexation becomes effective;
- (5) Avoiding the wasteful duplication of electric facilities;
- (6) Minimizing unnecessary encumbrances on the property and landscape within the area to be annexed; and
- (7) Preventing the waste of materials and natural resources.

Based on its current review of information provided, Staff provides the following analyses of these seven factors:

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<sup>6</sup> A request for The Property to be annexed into the City of Ozark was filed on July 29, 2024, as indicated in Appendix B attached to the Application.

<sup>7</sup> Section 386.800.3 states in pertinent part,

In the event an electrical corporation rather than a municipally owned electric utility lawfully is providing electric service in the municipality, all the provisions of subsection 2 of this section shall apply equally as if the electrical corporation were a municipally owned electric utility, except that the if the electrical corporation and the rural electric cooperative are unable to negotiate a territorial agreement pursuant to section 394.312 within forty-five days, then either electric service supplier may file an application with the commission for an order determining which electric service supplier should serve...

**(1) Landowner/Customer Preference**

A timely letter from Joe Warren, as Managing Member of Elk Valley, LLC, the owner of the Property, in which he distinctly expresses his preference for White River to be the exclusive electric service provider to the Property, is attached to the Application in Appendix A. Therefore, this factor favors White River being the electric service provider to the Property.

**(2) Rates, Terms, and Conditions of Service**

Staff reviewed the utility rates, terms, and conditions of both White River and Liberty if they were to provide electric service to the Property. The Property appears to have been divided into thirteen lots that are zoned commercial. Both White River and Liberty commercial and retail rates, charged to members/customers respectively, are readily available on their respective web sites. Both White River and Liberty contend to have nearby facilities with available capacity to serve the anticipated prospective load to be installed on the Property. Both White River and Liberty can design, install, operate and/or maintain any facilities that each respective company has currently installed or any necessary additional facilities should these be required in the future. Therefore, this factor does not favor either White River or Liberty.

**(3) Economic Impact on the Electric Service Suppliers**

While both White River and Liberty would benefit from the revenues associated with the additional load (member/customer base) that is anticipated to be constructed on the Property, given that Liberty has over three times as many customers as compared to members of White River, this factor would favor White River as it stands to gain a larger increase in its member/customer density.

**(4) Operational Ability of Each Electric Service Supplier to Serve the Property**

Staff concludes that this factor does not favor either entity given that both White River and Liberty have the capability of installing any necessary facilities required to serve the associated load requested within a three-year time frame as specified in the applicable statute.

**(5) Prevention of Wasteful Duplication of Electric Facilities**

Based upon current available information, Staff concludes that this factor does not favor either entity because both White River and Liberty have existing facilities nearby that are capable in the near term of providing electric service to the anticipated increased load on the Property. Moreover, both White River and Liberty can install, operate and maintain any additional facilities, as needed, in their respective provision of electric service. Staff further notes that, in Case No. EO-2025-0253, Liberty and Ozark Electric Cooperative Inc. filed for approval of an Addendum to their 3rd Territorial Agreement in Christian County within 1-mile of the Property in this case.

**(6) Minimize Unnecessary Encumbrances on the Area to be Annexed**

Given that White River illustrates in its Application that it has obtained the necessary documentation from Ozark in regard to providing electric service within the corporate limits, both White River and Liberty have the necessary permits, franchise agreements, and easements to enable their respective electric service to the Property. Therefore, Staff concludes that this factor does not favor either White River or Liberty.

**(7) Preventing the Waste of Materials or Natural Resources**

Staff concludes that this factor also does not favor either White River or Liberty, as each entity has similar means and motivations to limit such waste.

**CONCLUSION**

Staff recommends that the Commission approve the Application of White River, allowing it to be the sole electric service provider to the Property, concluding that the request is not detrimental to the public interest per Sections 386.800.2 and 386.800.3, RSMo. White River's Application is mainly based upon adhering to Section 386.800, as recently revised in 2021. Both White River and Liberty are similarly capable in providing electric service to the Property, both in the short term and in the longer term. Staff's evaluation of the seven factors listed in Section 386.800.2, as described above, favors White River being the electric service provider to the Property, based on the preference stated by the property owner

and the greater improvement to customer density. White River has provided the necessary information, as required in applicable statutes and regulations, in its Application, including providing good cause for requesting a variance from providing a 60-day notice of filing its Application per 20 CSR 4240-4.017, a feasibility study per 20 CSR 4240-20.045, and obtaining the necessary permits and requirements to enable providing electric service within the city limits of Ozark. Although it was not filed initially with its Application, it is Staff's understanding that White River is providing a \$500.00 filing fee as described by Section 386.800.9 and required by 20 CSR 4240-3.130.

Additionally, should the Commission approve the Application, Staff recommends that the Commission note in its order that Liberty should file revised tariff sheets that reflect corresponding changes to its approved electric service territory in Christian County, Missouri.

Dianna L. Vaughn  
Notary Public