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OF COUNSEL  
RICHARD T. CIOTTONE

December 5, 2003

**FILED**

DEC 05 2003

Missouri Public  
Service Commission

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

RE: *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 Boundaries of Exclusive Service Areas for Each Within the Canyon Springs of Branson, Missouri*

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter are the original and eight (8) copies of the Joint Application of The Empire District Electric Company and White River Valley Electric Cooperative. Also enclosed please find a check from White River Valley Electric Cooperative in the amount of \$500, in accordance with 4 CSR 240.3.135.

Thank you for your attention to this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

Dean L. Cooper

DLC/jar

Enclosures

cc: Dana K. Joyce, General Counsel  
Office of the Public Counsel  
Rodrick A. Widger

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

**FILED**

DEC 05 2003

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 Boundaries )  
of Exclusive Service Areas for Each )  
Within the Canyon Springs of Branson )  
Residential Development Near Branson, )  
Missouri )

Missouri Public  
Service Commission

Case No. EA-200

**JOINT APPLICATION**

COME NOW The Empire District Electric Company ("Empire") and White River Valley Electric Cooperative ("White River"), hereinafter referred to collectively as "Applicants," by and through their respective counsel, and for their Joint Application to the Missouri Public Service Commission ("Commission"), pursuant to 4 CSR 240-3.130, 4 CSR 240-3.135, and section 394.312 RSMo 2000, for an order approving Applicants' Fourth Territorial Agreement, respectfully state as follows:

1. **The Applicants** - Empire is a Kansas corporation with its principal office and place of business at 602 Joplin Street, Joplin, Missouri 64801. Empire is engaged in the business of providing electrical 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 those terms are defined in § 386.020 RSMo. 2000, and is subject to the jurisdiction and supervision of the Commission as provided by law. Empire has no pending or final unsatisfied

judgments or decisions against it from any state or federal agency or court which involve customer service or its rates, which have occurred within the three years immediately preceding the filing of this application. Empire has no overdue Commission annual reports or assessment fees. Empire's documents of incorporation have been previously filed with the Commission in Case No. EF-94-39 and said documents are incorporated herein by reference in accordance with 4 CSR 240-2.060(1)(G). A Certificate of Authority from the Missouri Secretary of State to the effect that Empire, a foreign corporation, is duly authorized to do business in the State of Missouri was filed with the Commission in Case No. EM-2000-369 and is incorporated herein by reference.

2. White River is a rural electric cooperative organized and existing under the laws of Missouri and has its principal office on East Highway 76, Branson, Missouri. It is a Chapter 394 rural electric cooperative corporation engaged in the distribution of electric energy and service to its members within certain Missouri Counties. White River has no pending or final judgments or decisions against it from any state or federal agency or court which involve its customer service or rates within the three years immediately preceding the filing of this Joint Application. A copy of a Certificate of Good Standing from the Office of the Missouri Secretary of State for White River is attached hereto as **Appendix A.**

3. **Correspondence and Communication** - Correspondence, communications, and orders in regard to this Application should be directed to

Dean L. Cooper  
Brydon, Swearingen & England, P.C.  
312 E. Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102  
573-635-7166 (telephone)  
573-635-3847 (fax)  
[dcooper@Brydonlaw.com](mailto:dcooper@Brydonlaw.com)

Rodric A. Widger  
Andereck, Evans, Milne, Peace & Johnson, L.L.C.  
1111 S. Glenstone Ave.  
P.O. Box 4929  
Springfield, MO 65808-4929  
(417) 864-6401 (Telephone)  
(417) 864-4967 (fax)

4. **The Territorial Agreement** - Subject to the terms and conditions of an Agreement, known as the "Fourth Territorial Agreement" between Empire and White River, Applicants have specifically designated the boundaries of two exclusive electric service areas within a residential development known as Canyon Springs of Branson, located within the City of Branson, Missouri, which are more particularly described in the Agreement. Applicants have attached a copy of the Agreement to this Application as **Appendix B**, which is incorporated by reference into this Application and made a part hereof for all purposes. A metes and bounds description of the two exclusive service areas and maps depicting the service areas are a part of the Agreement and are incorporated by reference into this Application and made part hereof for all purposes. The Fourth Territorial Agreement establishes separate exclusive service territories for Empire and White River within the Canyon Springs of Branson development.

5. **No Changes of Suppliers.** The Fourth Territorial Agreement does not require transfer of any facilities or customers between the Applicants, so no list of persons whose utility service would be changed by the agreement, as required by 4 CSR 240-3.130(1)(D), is included.

6. **Authority** -- Empire already has a certificate of public convenience and necessity to provide utility service in this portion of Taney County, Missouri. As a result, Empire has not included with this application an "illustrative tariff" reflecting proposed changes to its certification, as required by 4 CSR 240-3.130(1), since there will be no changes in the present boundaries of its certificated area as a result of this proceeding.

7. **Other Electric Suppliers** – To Applicants' knowledge and belief there are no other electric suppliers serving in the area covered by this Fourth Territorial Agreement.

8. **Agreement is in the Public Interest** - The Fourth Territorial Agreement is in the public interest because it establishes exclusive service obligations for new structures as between the Joint Applicants in the described area. The establishment of exclusive service territories will prevent future duplication of electric service facilities and will also allow electric service customers within the area to know with certainty the supplier of their electric service.

9. Each Applicant will continue to have service responsibilities beyond the boundaries of the Agreement unaffected by the terms of the Fourth Territorial Agreement.

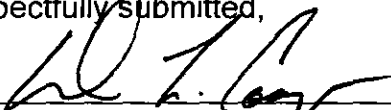
10. **Application Fee** - The Commission's filing fee required by 4 CSR 240-3.135(1) and 4 CSR 240-3.130(1)(E) is submitted herewith, as reflected in the check from Applicant White River in the amount of \$500.00.

WHEREFORE, Applicants respectfully request that the Commission issue its order:

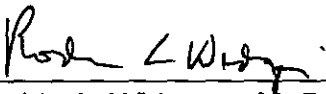
(a) Finding that the designation of electric service area is not detrimental to the public interest and approving the Applicants' Fourth Territorial Agreement; and

(b) Authorizing Applicants to perform in accordance with the terms and conditions of the Agreement.

Respectfully Submitted,



Dean L. Cooper MoBar #36592  
Brydon, Swearengen & England, P.C.  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102-0456  
573-635-7166 (telephone)  
573-635-3847 (fax)  
Email: [dcooper@Brydonlaw.com](mailto:dcooper@Brydonlaw.com)  
ATTORNEYS FOR THE  
EMPIRE DISTRICT ELECTRIC COMPANY

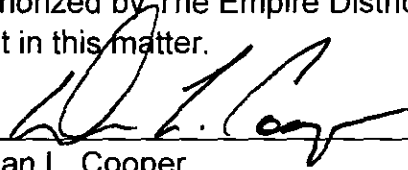


Rodric A. Widger MoBar #31458  
Andereck, Evans, Milne, Peace & Johnson, L.L.C.  
1111 S. Glenstone Ave.  
P.O. Box 4929  
Springfield, MO 65808-4929  
(417) 864-6401 (Telephone)  
(417) 864-4967 (fax)  
ATTORNEYS FOR WHITE RIVER VALLEY  
ELECTRIC COOPERATIVE

### VERIFICATION

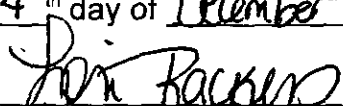
STATE OF MISSOURI     )  
                                      )ss  
COUNTY OF COLE        )

Being first duly sworn, Dean L. Cooper states as follows: that he has read the foregoing application and the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief and that the law firm of Brydon, Swearingen & England P.C. is authorized by The Empire District Electric Company to make this filing and represent it in this matter.

  
\_\_\_\_\_  
Dean L. Cooper

Subscribed and sworn to before me this 4<sup>th</sup> day of December, 2003.

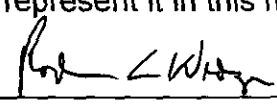


  
\_\_\_\_\_  
Lori Rackers, Notary Public

### VERIFICATION

STATE OF MISSOURI     )  
                                      )ss  
COUNTY OF GREENE     )

Being first duly sworn, Rodric A. Widger states as follows: that he has read the foregoing application and the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief and that the law firm of Andereck, Evans, Milne, Peace & Johnson, L.L.C. is authorized by White River Valley Electric Cooperative to make this filing and represent it in this matter.

  
\_\_\_\_\_  
Rodric A. Widger

Subscribed and sworn to before me this 19<sup>th</sup> day of November, 2003.



DEAN L. COOPER  
Cole County  
My Commission Expires  
November 13, 2006

  
\_\_\_\_\_  
Dean Cooper, Notary Public

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing application was served by hand delivery this 5<sup>th</sup> day of December, 2003 upon the Office of the Public Counsel and the Office of the General Counsel

  
\_\_\_\_\_  
Dean L. Cooper



# STATE OF MISSOURI



Matt Blunt  
Secretary of State


**CORPORATION DIVISION  
CERTIFICATE OF GOOD STANDING**

I, MATT BLUNT, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

**WHITE RIVER VALLEY ELECTRIC COOPERATIVE, INCORPORATED  
Q00062105B**

was created under the laws of this State on the 10th day of February, 1939, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and an imprinted the GREAT SEAL of the State of Missouri, on this, the 12th day of November, 2003

  
Secretary of State



Certification Number: 6213911-1 Page 1 of 1 Reference:

## **FOURTH TERRITORIAL AGREEMENT**

THIS AGREEMENT is made and entered into as of this 15<sup>th</sup> day of November, 2003, by and between The Empire District Electric Company, a Kansas corporation, with its principal office located at 602 Joplin Street, Joplin, Missouri ("Empire") and White River Valley Electric Cooperative, a Missouri rural electric co-operative organized and existing pursuant to Chapter 394, RSMo, with its offices located on East Highway 76, Branson, Missouri ("White River").

WITNESSETH:

WHEREAS, Empire and White River are authorized by law to provide electric service within certain areas of Missouri, including portions of Taney County; and

WHEREAS, Section 394.312, RSMo. 2000, provides that competition to provide retail electrical service as between rural electric cooperatives such as White River and electrical corporations such as Empire may be displaced by written territorial agreements; and

WHEREAS, Empire and White River desire 1) to promote the orderly development of retail electrical service within a portion of Taney County, Missouri, 2) to avoid unnecessary duplication of electrical facilities therein, and 3) to assist in minimizing territorial disputes between themselves; and

WHEREAS, this Fourth Territorial Agreement does not require any customer of either Empire or White River to change its supplier;

NOW, THEREFORE, Empire and White River, in consideration of the mutual covenants and agreements herein contained, the adequacy and sufficiency of which are hereby acknowledged, agree as follows:

1. Description of Territory Affected.

A. This Agreement pertains only to three parcels of land in Taney County, Missouri, which collectively comprise the residential development to be known as "Canyon Springs of Branson." For purposes of this Agreement, one parcel shall be referred to as "Phase I," and the remaining two parcels shall be referred to as Phases II and III."

B. The legal description of the Canyon Springs of Branson development is, in its entirety, as recorded in Book 0353, at Page 8117 of the Recorder of Deeds on August 28, 1998, as follows:

(322 Acres)

A tract of land situated in the SW1/4 and the SE1/4 of Section 27; the NE1/4 of the NW1/4 and the NE1/4 of Section 34; ALL in Township 23 North, Range 22 West, Taney County, Missouri, being more particularly described as follows: Beginning at the Northwest corner of SW1/4 of said Section 27; thence North 89° 59' 59" East along the North line of said

SW1/4, 959.84 feet, to the Northwest corner of the Old Shepherd's Campground, as per the survey recorded in Plat Book 1, page 100 of the Taney County Recorder's Office; thence South 34° 37' 29" West along boundary 499.50 feet; thence South 21° 08' 54" East along boundary 208.46 feet; thence South 52° 31' 54" East along boundary 124.74 feet; thence North 50° 52' 06" East along boundary 155.74 feet; thence North 89° 29' 21" East along boundary 132.78 feet; thence South 62° 06' 28" East along boundary 272.68 feet; thence North 88° 50' 08" East along boundary 1139.01 feet; thence North 37° 52' 08" West along boundary 78.92 feet to the Southwest corner of Lot 3, Mutton Hollow Estates, a subdivision per the recorded plat thereof, Plat Book 10, page 75 of the Taney County Recorder's Office; thence North 73° 48' 59" East along the South line of said subdivision 123.72 feet; thence North 62° 48' 59" East along the South line of said subdivision, 197.40 feet, to the Southeast corner of Lot 1, Mutton Hollow Estates; thence North 27° 11' 01" West 150.00 feet to the Northeast corner of said Lot 1, said being a point on the South R/W of a platted road; thence Northeasterly along South R/W on a 20.7518° segment of a curve to the right, 97.26 feet (said segment having a chord bearing and distance of North 72° 54' 29" East 96.76 feet and having a radius of 276.10 feet); thence North 82° 59' 59" East along South R/W 41.01 feet; thence Easterly along South R/W on a 11.9277° curve to the left, 77.53 feet (said curve having a radius of 51.19 feet) to a point on the Westerly R/W of M.S.H.D. Route 76; thence Easterly along Westerly R/W on a 10.6362° segment of a curve to the right, 506.08 feet (said segment having a chord bearing and distance of South 65° 44' 51" East 487.67 feet and having a radius of 538.69 feet); thence South 38° 50' 02" East along Westerly R/W 625.11 feet; thence Southeasterly along Westerly R/W on a 9.5132° curve to the right, 328.67 feet (said curve having a radius of 602.27 feet); thence South 07° 34' 02" East along Westerly R/W 230.97 feet; thence South 82° 25' 58" West along Westerly R/W 10.00 feet; thence South 07° 34' 02" East along Westerly R/W 20.61 feet; thence North 82° 25' 58" East along Westerly R/W 10.00 feet; thence Southerly along Westerly R/W on a 7.6214° segment of a curve to the left, 572.07 feet (said segment having a chord bearing and distance of South 29° 22' 02" East 558.37 feet and having a radius of 751.78 feet); thence South 51° 10' 02" East along Westerly R/W 124.11 feet; thence Southeasterly along Westerly R/W on a 10.6362° curve to the right, 497.05 feet (said curve having a radius of 538.69 feet); thence South 01° 42' 00" West along Westerly R/W 392.86 feet; thence Southerly along Westerly R/W on a 10.6362° curve to the right, 358.46 feet (said curve having a radius of 538.69 feet); thence North 50° 10' 13" West along Westerly R/W 10.00 feet; thence Southwesterly along Westerly R/W on a 10.8374° segment of a curve to the right, 18.43 feet (said segment having a chord bearing and distance of South 40° 49' 31" West 18.43 feet and having a radius of 528.69 feet); thence South 48° 10' 33" East along Westerly R/W 10.00 feet; thence Southwesterly along Westerly R/W on a 10.6362° segment of a curve to the right, 81.72 feet (said segment having a chord bearing and distance of South 46° 10' 11" West 81.64 feet and having a radius of 538.69 feet); thence South 54° 14' 27" West along Westerly R/W 153.91 feet; thence South 50° 30' 56" West along Westerly R/W 381.37 feet; thence Southwesterly along Westerly R/W on a 13.3849° curve to the left, 104.63 feet (said curve having a radius of 428.06 feet); thence North 53° 29' 20" West along Westerly R/W 10.00 feet; thence Southwesterly along Westerly R/W on a 13.0794° segment of a curve to the left, 228.72 feet (said segment having a chord bearing and distance of South 21° 33' 13" West 226.13 feet and having a radius of 438.06 feet); thence South 83° 24' 13" East along Westerly R/W 5.00 feet; thence Southerly along Westerly R/W on a 13.2304° segment of a curve to the left, 651.89 feet (said segment having a chord bearing and distance of South 36° 31' 38" East 592.06 feet and having a radius of 433.06 feet); thence South 79° 39' 04" East along Westerly R/W 131.77 feet; thence Easterly along Westerly R/W on a 10.9408° curve to the right, 209.16 feet (said curve having a radius of 523.69 feet); thence South 56° 46' 04" East along Westerly

R/W 218.29 feet; thence Easterly along Westerly R/W on a 9.1866° curve to the left, a distance of 154.33 feet, (said curve having a radius of 623.69 feet); thence North 19° 03' 15" East along Westerly R/W 5.00 feet; thence Easterly along Westerly R/W on a 9.2609° segment of a curve to the left, 199.51 feet (said segment having a chord bearing and distance of South 80° 11' 02" East 198.65 feet and having a radius of 618.69 feet); thence North 00° 34' 40" East along Westerly R/W 10.00 feet; thence Easterly along Westerly R/W on a 9.4130° segment of a curve to the left, 223.23 feet (said segment having a chord bearing and distance of North 80° 04' 18" East 221.98 feet and having a radius of 608.69 feet); thence North 69° 33' 56" East along Westerly R/W 27.69 feet; thence Easterly along Westerly R/W on a 10.6362° curve to the right, 158.81 feet (said curve having a radius of 538.69 feet); thence South 03° 32' 35" East along Westerly R/W 15.00 feet; thence Easterly along Westerly R/W on a 10.9408° segment of a curve to the right, 7.03 feet (said segment having a chord bearing and distance of North 86° 50' 30" East 7.03 feet and having a radius of 523.69 feet) to a point on East line of SE1/4 of the NE1/4 of said Section 34; thence South 00° 19' 04" West along said East line 205.80 feet; thence South 51° 12' 19" West 281.35 feet to a point on the Northerly R/W of M.S.H.D. No. 376; thence Westerly along said Northerly R/W on a 9.2718° segment of a curve to the left, 16.51 feet (said segment having a chord bearing and distance of South 68° 22' 15" West 16.51 feet and having a radius of 617.96 feet); thence South 67° 36' 20" West along Northerly R/W 135.00 feet; thence Westerly along Northerly R/W on a 4.1297° curve to the right, 1135.66 feet (said curve having a radius of 1387.39 feet); thence North 65° 29' 40" West along Northerly R/W 737.07 feet; thence Northwesterly along Northerly R/W on a 9.2718° curve to the left, 494.49 feet (said curve having a radius of 617.96 feet) to a point on the West line of the SW1/4 of the NE1/4 of said Section 34; thence North 00° 16' 45" East along said West line, 750.30 feet, to the Southeast corner of NE1/4 of the NW1/4 of said Section 34; thence North 89° 35' 43" West along the South line of said NE1/4 of the NW1/4, 1310.71 feet, to the Southwest corner of said NE1/4 of the NW1/4; thence North 00° 11' 18" East along the West line of said NE1/4 of the NW1/4, 1325.78 feet, to the Northwest corner of said NE1/4 of the NW1/4; thence North 89° 44' 39" West along the South line of said Section 27, 1311.85 feet, to the Southwest corner of said Section 27; thence North 00° 09' 40" West along the West line of said Section 27, 2644.84 feet, to the point of beginning; containing 322.71 acres of land, more or less.

Except the following tracts

(3 Acres) (As recorded in Book 370, at Page 3938 of the Recorder of Deeds on June 6, 2000.)

A tract of land situated in the SE1/4 of the NE1/4 of Section 34, Township 23 North, Range 22 West, Taney County, Missouri, being more particularly described as follows: Beginning at the Southeast corner of said SE1/4 of the NE1/4; thence North 00° 19' 04" East, along the East line of said SE1/4 of the NE1/4 a distance, of 482.30 feet for a New Point of Beginning; thence South 51° 12' 19" West, leaving said East line a distance of 281.35 feet to a point on the Northerly right-of-way line of M.S.H.D. #376; along the Northerly right-of-way line of M.S.H.D. #376 as follows; thence Westerly along a 9.2718° segment of a curve to the left 16.51 feet (said segment having a chord bearing and distance of South 68° 22' 15" West, 16.51 feet and having a radius of 617.96 feet); thence South 67° 36' 20" West, a distance of 135.00 feet; thence Westerly along a 4.1297° segment of a curve to the right 48.03 feet (said segment having a chord bearing and distance South 68° 35' 50" West, 48.03 feet and having a radius of 1387.39 feet); thence North 00° 19' 15" West, leaving the Northerly right-of-way line of M.S.H.D. #376 a distance of 380.90 feet to a point on the Southerly right-of-way line of M.S.H.D. #76 as follows; thence North 00° 34' 40" East, a distance of 10.00 feet; thence Easterly along a 9.4130° segment of a curve to

the left 223.23 feet (said segment having a chord bearing and distance of North 80°04'18" East, 221.98 feet and having a radius of 608.69 feet); thence North 69°33'56" East, a distance of 27.69 feet; thence Easterly along a 10.6362° segment of a curve to the right 158.81 feet (said segment having a chord bearing and distance of North 78°00'31" East, 158.29 feet and having a radius of 538.69 feet); thence South 03°32'35" East, a distance of 15.00 feet; thence Easterly along a 10.9408° segment of a curve to the right 7.03 feet (said segment having a chord bearing and distance of North 86°50'30" East, 7.03 feet and having a radius of 523.69 feet) to a point on the East line of said SE1/4 of the NE1/4; thence South 00°19'04" West, leaving said Southerly right-of-way line and along said East line a distance of 205.80 feet to the new point of beginning.

(7.92 Acres Total) (As recorded in Book 390, at Page 7959 of the Recorder of Deeds on December 11, 2001.)

(2.20 Acres)

A tract of land situated in the SE1/4 of the NE1/4 of Section 34, Township 23 North, Range 22 West, Taney County, Missouri, being more particularly described as follows: Beginning at the Southeast corner of the SE1/4 of the NE1/4 of said Section 34; thence North 00° 19' 04" East, along the East line of said SE1/4 of the NE1/4 a distance of 228.75 feet; thence North 89° 40' 56" West, leaving said East line a distance of 402.76 feet to a point on the Northerly Right-of-Way line M.S.H.D #376 for a New Point of Beginning; thence Westerly along said Northerly Right-of-Way line along a 4.1298° segment of a curve to the Right 235.37 feet (said segment having a chord bearing and distance of South 74° 26' 56" West, 235.09 feet and having a radius of 1387.39 feet); thence North 00° 19' 15" West, leaving said Northerly Right-of-Way line a distance of 429.58 feet; thence South 64° 59' 00" East, a distance of 22.04 feet; thence North 25° 01' 00" East, a distance of 58.47 feet to a Point on the Southerly Right-of-Way line of M.S.H.D. #76; thence Easterly along said Southerly Right-of-Way line along a 9.2608° segment of a curve to the left 185.08 feet (said segment having a chord bearing and distance of South 80° 51' 07" East, 184.40 feet and having a radius of 618.69 feet); thence South 00° 19' 15" East, leaving said Southerly Right-of-Way line a distance of 380.90 feet to the New Point of Beginning. Containing 2.20 acres of land, more or less.

(5.72 Acres)

A tract of land situated in the S1/2 of the NE1/4 of Section 34, Township 23 North, Range 22 West, Taney County, Missouri, Being more particularly described as follows: Beginning at the Southeast corner of the S1/2 of the NE1/4 of Section 34; Thence North 00° 25' 08" East, along the East line of the S1/2 of the NE1/4, a distance of 346.55 feet to a point on the Northerly right-of-way line of M.S.H.D. Route 376, said point being on a non-tangent curve; along the Northerly right-of-way line of M.S.H.D. Route 376 as follows: Thence Westerly along a non-tangent 9.2718° segment of a curve to the left, 240.59 feet (said segment having a chord bearing and distance of South 78° 45' 32" West, 239.07 feet and having a radius of 617.96 feet); Thence South 67° 36' 20" West, a distance of 135.00 feet; Thence Westerly along a 4.1297° curve to the right, 283.40 feet (said curve having a radius of 1387.39 feet) to the NEW POINT OF BEGINNING; Thence continuing Westerly along said 4.1297° curve to the right, 281.87 feet (said curve having a radius of 1387.39 feet) to a point on a compound curve to the right; Thence Northerly leaving the Northerly right-of-way line of M.S.H.D. Route 376, along a 114.5916° curve to the right, 81.10 feet (said curve having a radius of 50.00) to a point of reverse curvature Thence Northerly along a 13.1021° curve to the left, 425.65 feet (said curve having a radius of 437.30 feet); Thence North 16° 08' 49" East, along a non-tangent line, a distance of 325.57 feet,

to a point on the Southerly right-of-way line of M.S.H.D. Route 76, said point being on a non-tangent curve; Along the Southerly right-of-way line of M.S.H.D. Route 76 as follows: Thence Easterly along a non-tangent  $10.9408^\circ$  segment of a curve to the right, 124.77 feet (said segment having a chord bearing and distance of South  $63^\circ 35' 36''$  East, 124.48 feet and having a radius of 523.69 feet); Thence South  $56^\circ 46' 04''$  East, a distance of 218.29 feet; Thence Southeasterly along a  $9.1866^\circ$  curve to the left, 144.77 feet (said curve having a radius of 623.69 feet); Thence South  $25^\circ 01' 00''$  West, leaving the Southerly right-of-way line of M.S.H.D. Route 76, along a non-tangent line, a distance of 50.91 feet; Thence South  $64^\circ 59' 00''$  East, a distance of 1.28 feet; Thence South  $00^\circ 19' 15''$  East, a distance of 429.58 feet, to the NEW POINT OF BEGINNING; Containing 5.72 acres of land, More or Less.

It is understood by the parties that this legal description incorporates all of Phases I, II, and III.

C. The legal description of Phase I, is as follows:

Beginning at the southwest corner of the northeast quarter of the northwest quarter of section 34, township 23 north, range 22 west, Taney County, Missouri; thence  $N00^\circ 11' 18'' E$  along the west line of said northeast quarter of the northwest quarter, 817.04 feet; thence  $N89^\circ 58' 00'' E$ , 279.28 feet; thence  $N48^\circ 26' 17'' E$ , 348.66 feet; thence  $S31^\circ 39' 47'' E$ , 251.20 feet; thence  $N75^\circ 05' 44'' E$ , 308.30 feet; thence  $N19^\circ 36' 00'' E$ , 366.75 feet; thence  $S70^\circ 24' 00'' E$ , 202.87 feet; thence along a curve to the right having a radius of 350.00 feet an arc distance of 425.32 feet (chord bears  $S35^\circ 35' 17'' E$ , a chord distance of 399.63 feet); thence  $N89^\circ 13' 30'' E$ , 100.00 feet; thence along a curve to the left having a radius of 450.00 feet an arc distance of 108.34 feet (chord bears  $N07^\circ 40' 20'' W$ , a chord distance of 108.08 feet); thence  $N75^\circ 25' 51'' E$ , 342.81 feet; thence  $S79^\circ 45' 00'' E$ , 304.74 feet; thence  $S28^\circ 02' 49'' E$ , 687.15 feet to the westerly right-of-way of state highway no. 76; thence  $S50^\circ 30' 56'' W$ , 94.09 feet; thence along a curve to the left having a radius of 428.06 feet an arc distance of 104.63 feet (chord bears  $S43^\circ 30' 51'' W$ , a chord distance of 104.37 feet); thence  $N53^\circ 29' 17'' W$ , 10.00 feet; thence along a curve to the left having a radius of 438.06 feet an arc distance of 228.72 feet (chord bears  $S21^\circ 33' 16'' W$ , a chord distance of 226.13 feet); thence  $S83^\circ 24' 13'' E$ , 5.00 feet; thence along a curve to the left having a radius of 433.06 feet an arc distance of 651.89 feet (chord bears  $S36^\circ 31' 38'' E$ , a chord distance of 592.06 feet); thence  $S79^\circ 39' 04'' E$ , 131.77 feet; thence along a curve to the right having a radius of 523.69 feet an arc distance of 84.53 feet (chord bears  $S75^\circ 01' 37'' E$ , a chord distance of 84.44 feet); thence leaving the westerly right-of-way line of state highway No. 76,  $S16^\circ 08' 49'' W$ , 325.57 feet; thence along a curve to the left having a radius of 50.00 feet an arc distance of 81.10 feet (chord bears  $S42^\circ 35' 00'' E$ , a chord distance of 72.50 feet) to the northerly right-of-way of state highway no. 376; thence northwesterly along a curve to the right having a radius of 1387.39 feet an arc distance of 570.39 feet (chord bears  $N77^\circ 16' 20'' W$ , a chord distance of 566.38 feet); thence  $N65^\circ 29' 40'' W$ , 737.07 feet; thence along a curve to the left having a radius of 617.96 feet an arc distance of 500.98 feet (chord bears  $N88^\circ 43' 09'' W$ , a chord distance of 487.37 feet); thence leaving the northerly right-of-way line of state highway no. 376,  $N00^\circ 16' 45'' E$ , 750.30 feet; thence  $N89^\circ 35' 43'' W$ , 1310.71 feet to the point of beginning, containing 83.40 acres.

A copy of the plat map depicting Phase I of the Canyon Springs of Branson development is attached as **Exhibit A**.

D. For purposes of this Agreement, the legal description for Phases II and III shall collectively be that portion of the Canyon Springs of Branson development which does not incorporate the property described above as being within Phase I of the development.

E. A copy of a map showing the relative location of Phases I, II, and III of the Canyon Springs of Branson development is attached as **Exhibit B**.

F. This Agreement shall have no effect whatsoever upon service by White River or Empire in any areas other than Phases I, II, and III of the Canyon Springs of Branson Development.

G. The Canyon Springs of Branson development is located within the corporate limits of the City of Branson, Missouri, and thus is not a "rural area" as defined by Section 394.020(3) RSMo 2000.

## 2. Definitions

A. For purposes of this Agreement, the references to "structure" have the same meaning as the statutory definition of the term "structure" found in Sections 393.106 and 394.315 RSMo in effect at the relevant time. In the event no such statutory definitions exist or are not otherwise applicable, the term shall be construed to give effect to the intent of this agreement which is to designate an exclusive provider, as between the parties hereto, of retail electric service for anything using or designed to use electricity that is located within the Service Areas described herein.

B. The term "permanent service" shall have the same meaning as the definition of "permanent service" found in Sections 393.106 and 394.315 RSMo, in effect at the relevant time. If no such statutory definitions exist, the term shall be defined as it appeared in section 393.106 RSMo 2000, and shall be liberally construed to give effect to the expressed intent of this Agreement.

C. The term "new structure" shall mean (i) one on which construction has not commenced by the Effective Date, or (ii) one on which construction has commenced by the Effective Date but on the Effective Date it is not complete from the standpoint that permanent wiring for the electrical power and energy to be utilized by or within the structure has not been permanently installed and permanently energized by physical connection to the facilities of an electrical supplier, or (iii) one for which the respective electrical inspection authority has not granted a permit by the Effective Date for it to be energized, or (iv) one for which the respective building authority has not granted an occupancy permit by the Effective Date.

D. The term "Effective Date" shall mean 12:01 a.m. of the date on which the Report and Order of the Commission approving this Agreement is effective pursuant to the terms of such Report and Order, unless a writ of review or other proceeding is taken challenging the Report and Order, in which case there shall be no Effective Date of this Agreement until Empire

and White River both execute a document which establishes an Effective Date for purposes of this Agreement.

3. Exclusive Service Areas Established

A. White River, pursuant to this Fourth Territorial Agreement, shall be entitled to provide permanent service to all structures now located within Phases II and III of the Canyon Springs of Branson development and all new structures within Phases II and III of the Canyon Springs of Branson development and therefore it shall be considered the exclusive Service Area of White River, as between Empire and White River. Empire does not now serve any structures, and shall not be allowed to serve any new structures, within Phases II and III of the Canyon Springs of Branson development.

B. Empire, pursuant to this Fourth Territorial Agreement, shall be entitled to provide permanent service to all structures it is now serving and all new structures within Phase I of the Canyon Springs of Branson development and therefore it shall be considered the exclusive Service Area of Empire, as between Empire and White River. White River shall not be allowed to serve any new or existing structures within Phase I of the Canyon Springs of Branson development.

C. This Agreement does not purport to affect the rights of any electric supplier not a party to this Agreement.

4. Condition Precedent - Regulatory Approvals. This Agreement is conditioned upon receipt of approval of it by the Commission with no changes, or those changes which have been expressly agreed to by Empire and White River. Either party may file an application for rehearing or other document with the Commission prior to the effective date of a Commission order approving this Agreement if the party objects to the form or content of the Commission's order approving the Agreement. If neither party files such an application for rehearing or document prior to the effective date of the Commission order approving this Agreement, it shall be presumed that the approval is satisfactory in form and content to both parties.

5. Service to Structures Receiving Service as of the Date of this Agreement.

A. There is currently one structure located within Phase I on the date of this Agreement which is receiving permanent service from Empire. To the knowledge of Empire and White River, there are no other suppliers of electricity providing permanent service within Phase I. There are currently one or more illuminated billboards located within Phases II and III which are currently receiving permanent service from White River.

B. It is the intent of the parties that, subject to the terms of this Agreement, permanent service to the existing structures in Phase I shall remain with Empire, its successors or assigns, and that permanent service to the existing structures in Phases II and III shall remain with White River, its successors or assigns, for the term of this Agreement. This provision is not to be construed as meaning that service to the present structures cannot be changed during the term of this Agreement. It simply means that no changes are a prerequisite to the approval of this Agreement and neither party is requesting that a change occur at this time as a result of this Agreement or its approval by the Commission.



6. Structures Coming Into Existence After the Effective Date

A. After the Effective Date, Empire shall have the exclusive right, as between Empire and White River, to provide permanent service to new structures within Phase I.

B. After the Effective Date, White River shall have the exclusive right, as between Empire and White River, to provide permanent service to new structures within Phases II and III.

C. Boundary Structures. Notwithstanding the provisions in paragraphs 6.A. and 6.B., Empire and White River may subsequently agree in writing, on a case by case basis, to allow any new structure in either Service Area established by this Agreement to receive service from one party even though the new structure would be required to be served by the other party pursuant to this Agreement, when the interests of both parties and the owner of the new structure are advanced thereby. Such situations shall be dealt with on a case by case basis, and shall not be deemed to be precedent for any future situations even if the facts may be similar.

i. Each such agreement shall be treated as an Addendum to this Agreement and a copy thereof shall be submitted to the Staff of the Commission, directed to the Utility Services Division director, and a copy submitted to the Office of the Public Counsel.

ii. There will be no filing fee for the submission of such Addendums.

iii. The Addendums subject to this process apply to new structures only, and not to structures receiving permanent service on the Effective Date.

iv. Each Addendum shall be accompanied by a notarized statement indicating that the two affected electric service providers support the Addendum.

v. Each Addendum shall be accompanied by a notarized statement, signed by the customer to be served, which acknowledges such customer's receipt of notice of the contemplated electric service to be provided and that the Addendum represents an exception to the territorial boundaries approved by the Commission, and shall indicate the customer's consent to be served by the service provider contemplated by the Addendum.

vi. Each Addendum shall include, or be accompanied by an explanation of the justification that electric service should be provided in the agreed manner.

vii. If the Staff of the Commission, or the Office of the Public Counsel, or the Commission on its own motion, does not submit a pleading objecting to the Addendum within sixty (60) days of the filing thereof, the Addendum shall be deemed approved by the Commission. If such a pleading is filed, then the Commission shall schedule an evidentiary hearing at the earliest reasonable opportunity to determine whether the Addendum should be approved.

viii. Each party, pursuant to an executed Addendum, shall have the right to provide temporary service, as defined in section 393.106 RSMo., until the Commission approves or disapproves the Addendum. No party shall be required to remove any facilities installed

pursuant to an Addendum until the effective date of a final and non-appealable order of the Commission or a court regarding the removal of same.

D. During the interim period between the date of execution of this Agreement and the Effective Date, the parties shall not be bound by the territorial division provisions of this Agreement and may provide service to any customer seeking service if the supplier can lawfully provide such service in the particular location. Pending the issuance of a decision by the Commission either granting or denying approval of this agreement, however, neither party shall construct primary or secondary electric facilities within the territory assigned exclusively to the other pursuant to this Agreement, unless (i) ordered to do so by the Commission or a court of competent jurisdiction or (ii) as a necessary part of the provision of service to its customers in other areas and such construction is within a previously established easement obtained for the purpose of providing service in other areas. In the interim before this Agreement is approved by the Commission, if a new structure should come into existence on one side of the proposed boundary and request service from the party on the opposite side of the boundary, and that party has the existing right to provide such service, the parties agree to submit the matter to the Commission for determination in the case docketed for approval of this Agreement. The parties agree to propose to the Commission in such case that the party which will have the exclusive right to serve the customer if this Agreement is approved by the Commission should have the exclusive right and obligation to serve the customer in the interim.

7. Indirect Provision of Service to Structures Not Permitted. The intent of this Agreement is to designate an exclusive provider of electric service for structures or anything else using or designed to use electricity to be located within the described areas. Neither party shall furnish, make available, assist in providing, render or extend electric service to a structure, which that party would not be permitted to serve directly pursuant to this Agreement, by indirect means such as through a subsidiary corporation, through another entity, or by metering service outside of the area for delivery within the area. This shall not be construed to otherwise prohibit sales of electric power and energy between the parties to this Agreement.

8. Term. The initial term of this Agreement shall be twenty (20) years from and after the Effective Date ("initial term"). Thereafter, this Agreement shall be automatically renewed for successive five (5) year terms ("renewal terms") commencing on the anniversary of the Effective Date ("renewal date") unless either party hereto shall notify the other party in writing of its intent to terminate this Agreement at least one (1) year in advance of any such renewal date. The parties agree that a copy of any notice of termination of this Agreement shall be simultaneously served upon the Executive Secretary of the Commission and the Office of the Public Counsel. Termination of this Agreement shall eliminate the exclusive service territories provided for herein, but shall not entitle a party to provide service to a structure lawfully being served by the other party, or allow a change of supplier to any structure in the other's Service Area hereunder, unless such a change is otherwise permitted by law.

9. Cooperation. Empire and White River agree to undertake all actions reasonably necessary to implement this Agreement. Empire and White River will cooperate in presenting a joint application to the Commission demonstrating that this Agreement is in the public interest. White River shall pay all the costs assessed by the Commission for seeking administrative approval of this Agreement. All other costs, including but not limited to the attorneys fees of each party, will be borne by the respective party incurring the costs.

10. General Terms

A. Land Descriptions: The land descriptions utilized in this Agreement are assumed by the parties to be accurate and reliable and to match the maps being submitted; however, where there are maps and the map does not correspond with the metes and bounds description, the map shall be controlling.

B. No Constructive Waiver: No failure of Empire or White River to enforce any provision hereof shall be deemed to be a waiver.

C. Modifications: Neither the boundaries described in this Agreement nor any provision of this Agreement may be modified or repealed except by a signed writing of the parties which is approved by all applicable regulatory authorities.

D. Survival: This Agreement shall inure to the benefit and be binding upon the parties, their respective successors and assigns.

E. Lack of Approval or Termination: If the Commission or any other regulatory authority having jurisdiction does not approve this Agreement, or if the Condition Precedent is not fulfilled, this Agreement shall be nullified and of no legal effect between the parties. If this Agreement is terminated pursuant to its terms, it shall thereafter be nullified and of no further legal effect except as may be necessary to govern disputes concerning situations existing prior to such termination. Further, if any part of this Agreement is declared invalid or void by a court or agency of competent jurisdiction, then the parties shall replace such provision as similarly as possible to the provision which was declared invalid or void so as to return each of them, as much as practical, to the status quo prior to the declaration.

F. This Agreement shall not be construed to prevent either party from obtaining easements or right of way through or in any part of the Service Area of the other if the acquisition of such easement or right of way is reasonably necessary to or desirable for the performance of the party's duties to provide electric service to its customers in other areas.

G. The subsequent platting, re-platting, subdividing, re-subdividing, or re-naming of any parcel or subdivision covered by this Agreement shall not affect the respective rights of Empire or White River established by this Agreement.

11. Subsequent Legislation. This Agreement is reached between the parties based upon their understanding of the current state of the law in Missouri under sections 393.106 and 394.315 RSMo 2000, which allows an electrical supplier, once it lawfully commences supplying retail electric energy to a structure through permanent service facilities, to have the right to continue serving such structure. Further, the concept of service under those sections at the current time contemplates not only the physical provision of conductors to provide an electrical path and connection between the structure and the conductors of the electrical supplier, but also the provision of electrical power and energy through such conductors. In the event the law in Missouri is changed during any term of this Agreement to provide that the provider of the electrical facilities (i.e. conductors) within the Service Area is not also required or assumed to be the provider of electrical power and energy (i.e., the electricity), and thereby give customers a

choice as to who provides their electricity, as contrasted with who owns the wires over which such electricity is provided, then nothing in this Agreement shall be construed to prohibit Empire from providing electrical power and energy to structures within the Service Area of White River established by this Agreement, or White River from providing electrical power and energy to structures within the Service Area of Empire established by this Agreement, under the terms of such future legislation, notwithstanding the terms of this Agreement to the contrary. However, if either § 393.106, § 394.315, or § 394.312 RSMo are repealed and not reenacted in a form substantially equivalent to their status on the Effective Date, this Agreement shall terminate, coincident with the effective date of the elimination of the current content of § 393.106, § 394.315, or § 394.312, as the case may be.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 15<sup>th</sup> day of November, 2003.

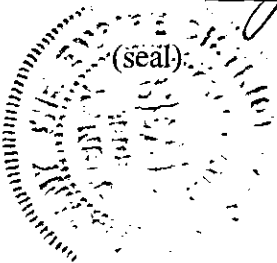
THE EMPIRE DISTRICT  
ELECTRIC COMPANY

By: MB Felmer

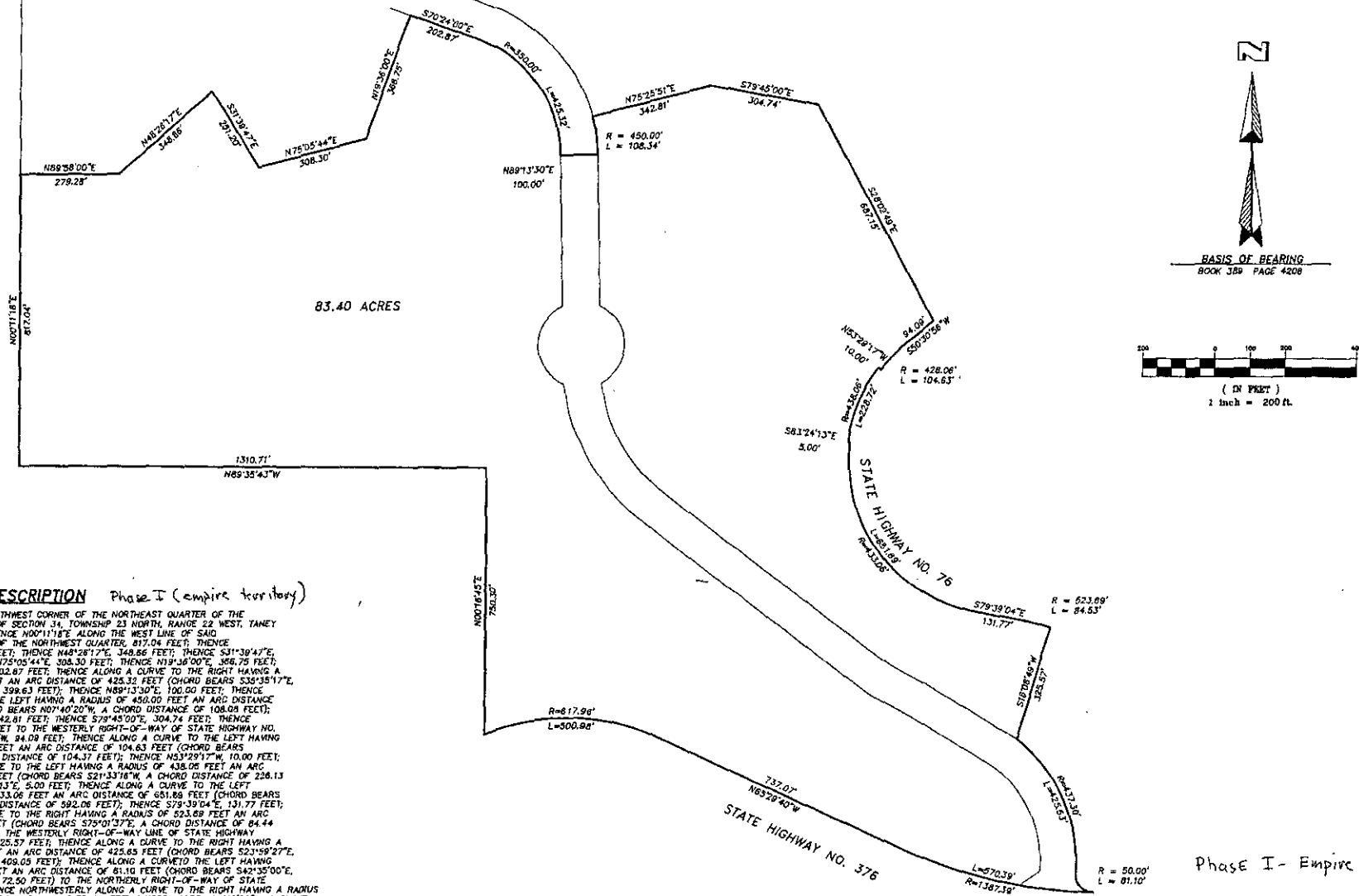
WHITE RIVER  
ELECTRIC COOPERATIVE

By: Chris Harmon  
CEO / GENERAL MANAGER

Attest: J. Watson  
(seal)



Attest: \_\_\_\_\_  
(seal)



# **PROPERTY DESCRIPTION** Phase I (empire territory)

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 23 NORTH, RANGE 22 WEST, TANEY COUNTY, MISSOURI; THENCE N00°11'18"E ALONG THE WEST LINE OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER, 817.04 FEET; THENCE N08°58'00"E, 278.28 FEET; THENCE N48°20'17"E, 348.86 FEET; THENCE S31°30'17"E, 21.20 FEET; THENCE N75°05'44"E, 308.30 FEET; THENCE N39°36'00"E, 368.75 FEET; THENCE S70°24'00"E, 202.87 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 350.00 FEET AN ARC DISTANCE OF 428.06 FEET (CHORD BEARS S55°35'17"E, A CHORD DISTANCE OF 398.63 FEET); THENCE N89°13'30"E, 100.00 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 450.00 FEET AN ARC DISTANCE OF 108.34 FEET (CHORD BEARS N07°40'20"W, A CHORD DISTANCE OF 108.08 FEET); THENCE N05°20'51"E, 342.81 FEET; THENCE S79°48'00"E, 304.74 FEET; THENCE S28°02'49"E, 687.15 FEET TO THE WESTERLY RIGHT-OF-WAY OF STATE HIGHWAY NO. 76; THENCE S50°30'58"W, 84.08 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 428.06 FEET AN ARC DISTANCE OF 104.63 FEET (CHORD BEARS S43°30'51"W, A CHORD DISTANCE OF 104.37 FEET); THENCE N52°29'17"W, 10.00 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 438.06 FEET AN ARC DISTANCE OF 228.72 FEET (CHORD BEARS S21°33'18"W, A CHORD DISTANCE OF 228.13 FEET); THENCE S83°24'13"E, 5.00 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 433.06 FEET AN ARC DISTANCE OF 651.88 FEET (CHORD BEARS S38°31'30"E, A CHORD DISTANCE OF 592.08 FEET); THENCE S79°39'04"E, 131.77 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 523.69 FEET AN ARC DISTANCE OF 84.53 FEET (CHORD BEARS S78°01'37"E, A CHORD DISTANCE OF 84.44 FEET); THENCE LEAVING THE WESTERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY NO. 76, S10°08'49"W, 325.57 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 437.30 FEET AN ARC DISTANCE OF 425.65 FEET (CHORD BEARS S23°59'27"E, A CHORD DISTANCE OF 409.05 FEET); THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 50.00 FEET AN ARC DISTANCE OF 81.10 FEET (CHORD BEARS S42°35'00"E, A CHORD DISTANCE OF 72.50 FEET) TO THE NORTHERLY RIGHT-OF-WAY OF STATE HIGHWAY NO. 376; THENCE NORTHERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1387.39 FEET AN ARC DISTANCE OF 870.38 FEET (CHORD BEARS N77°16'20"W, A CHORD DISTANCE OF 586.38 FEET); THENCE N85°28'40"W, 737.07 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 617.98 FEET AN ARC DISTANCE OF 500.98 FEET (CHORD BEARS N88°43'09"W, A CHORD DISTANCE OF 487.37 FEET); THENCE LEAVING THE NORTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY NO. 376, N00°18'45"E, 750.30 FEET; THENCE N89°35'43"W, 1310.71 FEET TO THE POINT OF BEGINNING, CONTAINING 83.40 ACRES.

## **CERTIFICATION**

THIS IS TO CERTIFY TO WHITE RIVER VALLEY ELECTRIC COOPERATIVE THAT AT THEIR REQUEST LEDBETTER, TOTM & ASSOCIATES HAVE PREPARED AN EXHIBIT AND DESCRIPTION OF THE PROPERTY REQUIRED FOR THE RESULTS ARE SHOWN HEREON. THE INTERIOR PORTION OF THE EXHIBIT WAS



7/7/02  
DATE

LEDBETTER, TOTM & ASSOCIATES  
CONSULTING ENGINEERS

2200 E. SUNSHINE  
SPRINGFIELD, MO. 65808

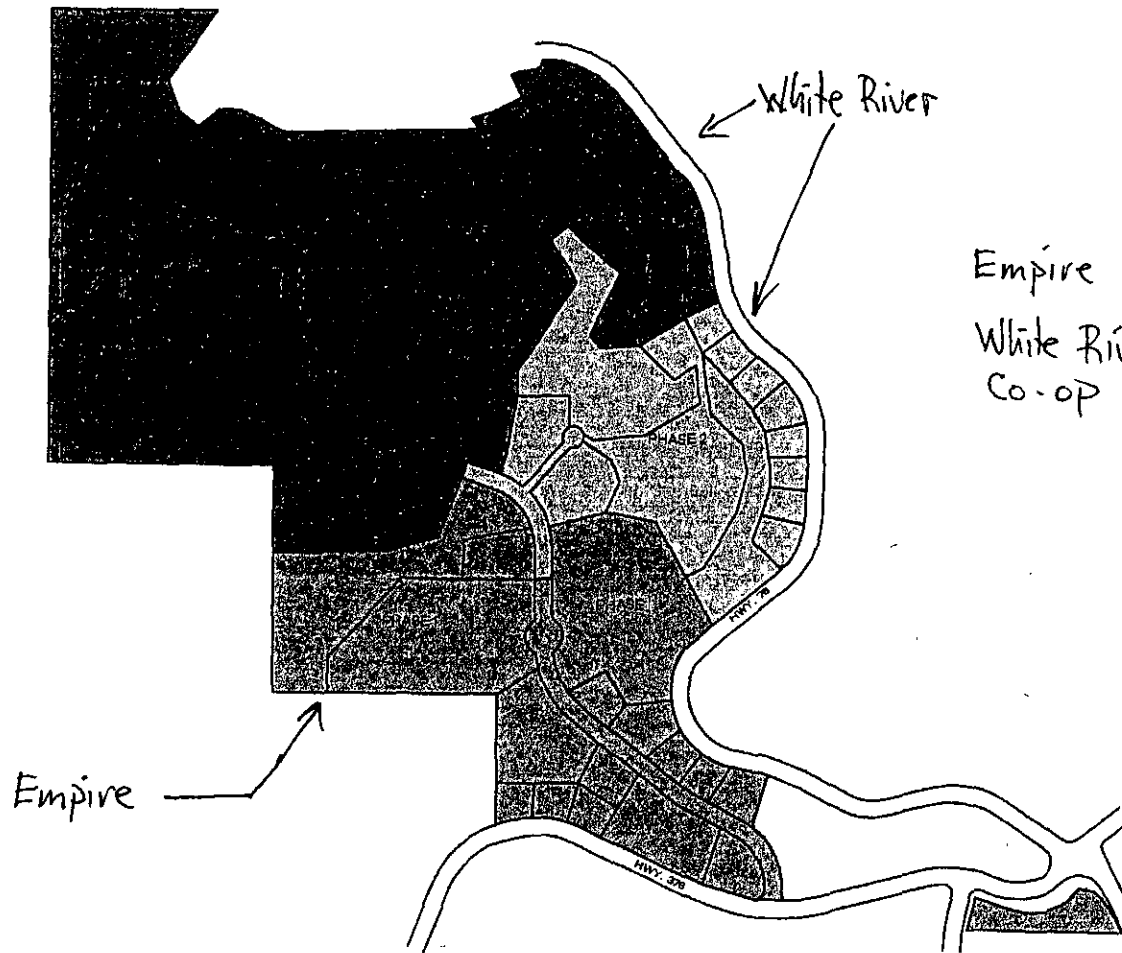
PHONE: (417) 883-7918  
FAX: (417) 882-3580

PREPARED FOR: WHITE RIVER VALLEY ELECTRIC COOPERATIVE

CANYON SPRINGS EXHIBIT

DRAWN BY: KD	CHECKED BY: KD	PROJECT NO.
FIELDWORK BY: KD, WS	DATE: 3/13/03	
CANYON SPRINGS		SHEET 1 OF 1

PHASE 1  
PHASE 2  
PHASE 3



Empire Service Territory - Phase I  
White River Valley Electric - Phase II/III  
Co-op

EXHIBIT B

EXHIBIT K PHASE MAP  
CANYON SPRINGS OF BRANSON

