

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

In the Matter of the Application of White River)
Valley Electric Cooperative Inc.'s Approval of)
a Change of Electric Supplier for its Certain)
Member (Elevate Branson) in Taney County,)
Missouri for Reasons in the Public Interest)

Case No. _____

APPLICATION FOR CHANGE OF ELECTRIC SUPPLIER

COMES NOW White River Valley Electric Cooperative, Inc. ("White River" or "Applicant"), and for its Application pursuant to § 394.315, RSMo, § 393.106, RSMo, 20 CSR 4240-2.060 and 20 CSR 4240-3.140, respectfully states as follows:

APPLICANT

White River is a rural electric cooperative organized and existing under the laws of the State of Missouri with its principal place of business and office at 2449 State Highway 76 East, Branson, Missouri 65616. White River is a Chapter 394 rural electric cooperative corporation engaged in the distribution of electric energy and service to its members within certain Missouri counties, namely Christian, Douglas, Ozark, Stone and Taney. White River has no pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates, which action, judgment, or decision has occurred within the three (3) years immediately preceding the filing of this Application. White River has no overdue annual report or assessment fees. A copy of a current Certificate of Good Standing from the Office of the Missouri Secretary of State is attached hereto as **Exhibit A** and is incorporated herein by reference.

INTERESTED ELECTRIC SUPPLIER

1. The Empire District Electric Company d/b/a Liberty ("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 utility services in Missouri to customers in its service areas. Empire is an “electrical corporation” and a “public utility,” as defined in RSMo. §386.020, and Empire is subject to the jurisdiction and supervision of the Commission as provided by law. Empire has a wholly owned subsidiary that is a “gas corporation.”

2. Empire has no pending or final unsatisfied judgments or decisions against it from any state or federal agency or court that involve customer service or rates and that 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 20 CSR 4240-2.060(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.

CORRESPONDENCE AND COMMUNICATION

3. Correspondence, communications, riders and decisions in regard to this Application should be directed to:

Christiaan D. Horton #46003
Carnahan Evans PC
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E: chorton@CarnahanEvans.com

Diana Carter #50527
Liberty Utilities (Central Region)
Director of Legal Services
602 S. Joplin Avenue
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FACTS

4. White River currently provides electrical service to multiple structures for its Member, Elevate Branson, a Missouri Non-Profit Corporation, on developed property that lies within the City of Branson, County of Taney, Missouri as shown on the **Exhibit B-1** drawing and **Exhibit B-2** aerial photograph, said property having a street address of 310 Gretna Road, Branson, MO 65616, with the structures consisting of commercial and retail offices in their present use.

5. The legal description of the property at issue is contained in the deeds and parcel detail attached hereto as **Exhibits C-1** (the developed lot) and **C-2** (the undeveloped lot) (referred collectively herein as the "Affected Property").

6. White River currently has a meter on the Exhibit C-1 developed lot serving existing "structures" with "permanent service" thereon as defined by §§ 394.315.1(1-2), RSMo.

7. Elevate Branson, as owner of the Affected Property, requests that White River continue to serve the existing structures on the Affected Property, those new structures that will be built on the property after demolition of certain structures, and those new structures that will be constructed on the Affected Property as part of its overall campus development.

8. White River will continue to supply its three (3) phase electrical service to the Affected Property and will not need to build new three (3) phase facilities as those facilities are already present and available to serve the property in its entirety.

9. White River's facilities that serve the property include a transformer and the poles and lines reflected in Exhibits B-1 and B-2.

10. White River maintains that it is in the public interest to allow it to continue to serve the Affected Property in its entirety, including any new structures on the property with

permanent service, and to do so without any additional payment to Empire, who may have a claim of right to serve certain new structures on the property with permanent service in accord with § 393.106, RSMo.

STATUTES and NEW LAW for CHOICE

11. Section 394.315.2, RSMo, provides in relevant part that “[t]he Public Service Commission upon application made by an affected party may order a change of suppliers on the basis that it is in the public interest for a reason other than rate differential, and the Commission is hereby given jurisdiction over rural electric cooperatives to accomplish the purpose of this section.” Section 393.106.2, RSMo. sets forth similar provision for Commission jurisdiction involving investor-owned utilities like Empire.

12. In the event that a retail electric supplier is providing service to a structure located within a city, town, or village that has ceased to be a rural area, and such structure is demolished and replaced by a new structure, such retail electric service supplier may provide permanent service to the new structure upon the request of the owner of the new structure. §§ 394.315.3 and 393.106.4, RSMo.

PUBLIC INTEREST

13. Elevate Branson desires to commence a redevelopment of the Affected Property, and in this process will be raising existing structures and replacing them, and will also be building new structures on a portion of its undeveloped and adjacent lot that, at present, has no structures, temporary or permanent, but will, once completed, be part of its overall contiguous campus plan.

14. Elevate Branson seeks permanent underground electric service from White River, *its supplier of choice*, for the Affected Property consisting of (a) its existing lot with permanent underground service currently supplied by White River, and (b) its vacant lot that

has no electric service (See Affidavit of Bryan Stallings attached as **Exhibit D**).

15. For those structures currently served by White River with permanent service, the issue of member choice is straight-forward. White River can and will supply such service to meet its member's needs should those structures be demolished and replaced by new structures.

16. However, the issue becomes more complex for the service of new structures on the undeveloped portion of the Affected Property in light of the new law that provides, in part, that, "[n]othing in this section shall be construed to confer any right on an electric supplier to serve new structures on a particular tract of land because it was serving an existing structure on that tract." §§ 394.315.1(2) and 393.106.1(4), RSMo.

17. On information and belief, neither White River nor Empire has provided any permanent electric service to any structure on the Exhibit C-2 vacant lot, but both desire to do so.

18. Furthermore, Elevate Branson plans to combine its Exhibit C-1 and C-2 parcels into one parcel as development proceeds, so the Affected Property will become one single tract of land.

19. The request for White River to serve Elevate Branson's entire development with permanent, underground electric service is in the public interest because White River can continue to provide the Affected Property with three (3) phase permanent electric service utilizing its existing facilities.

20. Empire does have an overhead electric line along the western edge of the Affected Property, but would need to build facilities to allow for underground line extensions, resulting in a duplication of facilities considering that White River has such facilities at the ready.

21. Furthermore, because White River presently serves the property and has facilities, lines and service on location with the capability to loop power delivery to a north and south injection point, the costs for the extension of additional service for the development of the vacant lot are significantly reduced, delivery flexibility is available with dual injection points in case of an outage, and this promotes the economic development of the property by the non-profit entity that owns it.

22. The proposed change of supplier is further in the public interest because it will allow Elevate Branson to receive its electric service from a single electric supplier, improving reliability, safety, emergency response, and service administration.

23. White River contends that the Commission's 10-factor balancing test for "public interest" determinations in cases like this supports the requests made in this Application.

24. No territorial agreement between White River and Empire is impacted by this request and no such agreement between the parties exists for this property.

25. Should Applicant receive a favorable decision in this case, economic development will be fostered by "individual choice", the hallmark of a free-market economy that promotes wise use of limited resources through least-cost alternatives, not governmental mandates.

WHEREFORE, above considered, White River respectfully requests that the Commission issue its order:

A. Finding that the change in electric supplier proposed herein is in the public interest, approving the proposed change in electric supplier, and granting this Application, thereby allowing White River to serve all new structures on the affected property with permanent service, without payment to Empire, based on landowner's choice; and

B. Granting such other relief as is deemed necessary and proper to accomplish the purposes of this Application and rights herein determined.

Respectfully submitted,
CARNAHAN EVANS PC

By


Christiaan D. Horton
Missouri Bar No. 46003

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Attorneys for Applicant White
River Valley Electric Cooperative, Inc.

Exhibits

Exhibit A	Certificate of Good Standing
Exhibit B-1	Drawing of Property Boundaries & Existing Services
Exhibit B-2	Aerial of Property with overlay of Existing Services
Exhibit C-1	Deed with Legal Description of Developed Lot
Exhibit C-2	Deed with Legal Description of Undeveloped Lot
Exhibit D	Affidavit of Bryan Stallings (Elevate Branson)

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served upon:

Missouri Public Service Commission
Staff Counsel Department
200 Madison Street Suite 800
PO Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel
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PO Box 2230
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ATTORNEY FOR THE EMPIRE
DISTRICT ELECTRIC COMPANY
D/B/A LIBERTY:
Diana C. Carter, MBE #50527
The Empire District Electric Company
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Cell Phone: (573) 289-1961
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By email and/or enclosing same in envelopes addressed to the attorneys of record of said parties at their business addresses as disclosed in the case filings of record, with first class postage fully prepaid, and by depositing same in a U.S. Post Office mail box in Springfield, Missouri on the 18th day of March, 2022

ATTORNEY FOR WHITE RIVER
VALLEY ELECTRIC COOPERATIVE

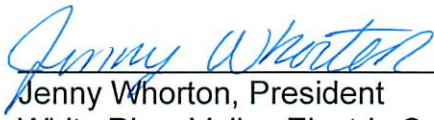
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VERIFICATION

STATE OF MISSOURI)
) ss
COUNTY OF TANEY)

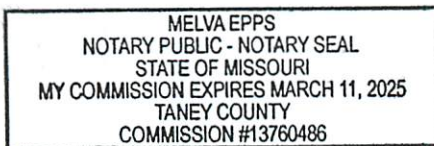
Being first duly sworn, Jenny Whorton states that she is the President of White River Valley Electric Cooperative, Inc. and that she has read the foregoing Application and the facts and allegations contained therein are true and correct to the best of her knowledge, information and belief and that the law firm of Carnahan Evans PC is authorized by White River Valley Electric Cooperative to make this filing and represent White River in this matter.



Jenny Whorton, President

White River Valley Electric Cooperative, Inc.

SUBSCRIBED AND SWORN before this this 17th day of February, 2022.



[stamp above]



Notary Public



Name Printed