

**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 Written Territorial)
Agreement Designating The Boundaries)
Of Exclusive Service Areas For Each)
Within The Canyon Springs Of Branson)
Residential Development Near Branson,)
Missouri.)

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Exhibit No. 2
Case No(s). EO-2004-0246
Date 2-17-04 **Rptr** vt

Case No. EO-2004-0246

FILED

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UNANIMOUS STIPULATION AND AGREEMENT **Missouri Public
Service Commission**

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

I. Procedural History

1. On December 5, 2003, The Empire District Electric Company ("Empire), a regulated public utility, and White River Valley Electric Cooperative ("White River"), an electric cooperative, (collectively known as "the Applicants") filed a Joint Application requesting that the Commission: (1) approve a Fourth Territorial Agreement between the Applicants, based on a finding that it is not detrimental to the public interest; and (2) authorize the Applicants to perform in accordance with the terms and conditions of the Fourth Territorial Agreement.

2. On December 11, 2003, the Commission issued an Order Directing Notice directing that a prehearing conference be held on January 7, 2004; that an expedited procedural schedule be filed in this case by January 14, 2004; that notice be sent to interested persons; and that any applications to intervene be filed within twenty (20) days of December 11, 2003. No applications to intervene were filed during the time period directed by the Commission.

3. Empire and White River desire to provide electric service to new structures in two separate, exclusive electric service areas within a residential development known as Canyon

Springs of Branson located within the City of Branson, Missouri. The metes and bounds legal description of the two separate, exclusive service areas containing the new structures is included in the Fourth Territorial Agreement, and maps depicting the affected areas are part of the Fourth Territorial Agreement. The Fourth Territorial Agreement establishes two separate, exclusive service areas for Empire and White River in a single residential development, and does not entail the transfer of any facilities or customers between Applicants, so no list of persons whose utility service would be changed by the agreement (as required by 4 CSR 240-3.130(1)(D)) is included as part of this Stipulation And Agreement. To the Applicants' knowledge and belief, there are no other electric suppliers providing service in the area covered by the Fourth Territorial Agreement.

4. Empire and White River have agreed to displace competition between them in the pertinent section of Taney County, as allowed by Section 394.312 RSMo. 2000, and have set out the terms of the Fourth Territorial Agreement, which is attached to the Joint Application and marked as Appendix B. The Applicants believe that the Fourth Territorial Agreement is not detrimental to the public interest, as is required by Section 394.312, and the establishment of these two separate, exclusive service areas will prevent future duplication of electric service facilities and also will allow future electric service customers within the affected area to know, with certainty, the supplier of their electric service.

5. A prehearing conference occurred on January 7, 2004. Empire, White River, the Staff and the Office of the Public Counsel ("Public Counsel") (hereinafter referred to collectively as the "Parties") appeared and participated.

6. On January 14, 2004, the Applicants filed a Motion For Substitution Concerning Proposed Fourth Territorial Agreement (Motion For Substitution) to address a concern raised by the Staff that the proposed Fourth Territorial Agreement contained language in paragraph

6(c)(vii), that if the Commission did not submit a pleading objecting to a proposed Addendum to the Fourth Territorial Agreement within sixty (60) days of the filing of the Addendum, the Addendum would be deemed approved by the Commission. The Parties agree that the Amended Page 8 to the Fourth Territorial Agreement, filed by the Applicants, addresses the concern expressed by the Staff, and that the Amended Page 8 should be approved by the Commission in substitution for the original page 8 of the Fourth Territorial Agreement filed on December 5, 2003 by the Joint Applicants.

7. On January 14, 2004, the Staff filed its Staff Response To Order Directing Filing Of Proposed Procedural Schedule. The Staff indicated that it was working with Empire and White River toward filing a Stipulation And Agreement with the Commission, and requested that February 17, 2004 be reserved as the hearing date for an on-the-record presentation.

8. On February 4, 2004, the Commission issued an Order Setting Procedural Schedule, wherein it directed that no later than February 9, 2004, the Parties shall file either their unanimous stipulation and agreement resolving all issues to this case or a proposed procedural schedule. The Commission also set February 17, 2004, at 1:00 p.m., for the presentation of any unanimous stipulation and agreement.

9. The Parties having reviewed the Joint Application, the proposed Fourth Territorial Agreement and the Amended Page 8 to the Fourth Territorial Agreement filed on January 14, 2004, by the Applicants, and having considered the positions of the Parties and the issues to be resolved in this case, have entered into this Stipulation And Agreement.

II. The Parties Have Reached the Following Stipulation And Agreement

10. The Parties assert and, in consideration of the promises and covenants herein contained, state that the Fourth Territorial Agreement between Empire and White River, with the

substitution of Amended Page 8 filed on January 14, 2004, is not detrimental to the public interest and therefore should be approved by the Commission.

11. Empire agrees that within thirty (30) days of the effective date of an Order approving the Fourth Territorial Agreement, with the substitution of Amended Page 8, Empire will file, for review and approval, revised tariff sheets for the Empire service area in Taney County, stating the effect of the Fourth Territorial Agreement, with the substitution of Amended Page 8, on the rights and obligations of Empire to provide service and state the effect of the Fourth Territorial Agreement, with the substitution of Amended Page 8, on the Empire service territory. Specifically, Empire will file revised tariff sheets containing either a legal description or plat of areas in Taney County that are restricted by this Fourth Territorial Agreement, with the substitution of Amended Page 8, as well as any previous Territorial Agreement.

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

III. General Matters

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

14. In the event the Commission accepts the specific terms of this Stipulation And Agreement, the Parties waive, with respect to the issues resolved herein: their respective rights, pursuant to Section 536.080 RSMo. 2000, to present testimony, to cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript

by the Commission pursuant to Section 536.080.2 RSMo. 2000; their respective rights to seek rehearing pursuant to Section 386.500 RSMo. 2000; and their respective rights to seek judicial review pursuant to Section 386.510 RSMo. 2000. Notwithstanding the foregoing, each party may present oral testimony at the evidentiary hearing supporting the fact that the Fourth Territorial Agreement, with the substitution of Amended Page 8, is not detrimental to the public interest. The Parties agree to cooperate with each other in presenting for approval to the Commission this Stipulation And Agreement, and will take no action, direct or indirect, in opposition to the request for approval of this Stipulation And Agreement.

15. The Staff shall file suggestions or a memorandum in support of this Stipulation And Agreement and the other Parties shall have the right to file responsive suggestions.

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

17. None of the Parties to this Stipulation And Agreement shall be deemed to have approved or acquiesced in any ratemaking principle or any method of cost determination or cost allocation underlying or allegedly underlying the Stipulation And Agreement, except as the Commission finds that the Fourth Territorial Agreement, with the substitution of Amended Page 8, is not detrimental to the public interest. Further, the Parties recommend that the Commission

reserve the right to consider the ratemaking treatment, if any, to be afforded this transaction in any future ratemaking proceeding.

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

A. Finding that the designated two separate, exclusive electric service areas are not detrimental to the public interest and approving the Fourth Territorial Agreement, Appendix B to the Joint Application, with the substitution of Amended Page 8;

B. Authorizing Empire and White River to perform in accordance with the terms and conditions of the Fourth Territorial Agreement, with the substitution of Amended Page 8;

C. Directing that Empire file, within thirty (30) days of the effective date of the Commission Order approving this Stipulation And Agreement, revised tariff sheets with respect to its service area in Taney County to reflect the Fourth Territorial Agreement, with the substitution of Amended Page 8, and any previous territorial agreements; and

D. Approving all of the terms of this Stipulation And Agreement.

Respectfully submitted,

/s/ Gregory C. Mitchell by SD

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record, as shown on the attached service list, this 9th day of February 2004.

/s/ Steven Dottheim

**Service List for
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