

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

**In the Matter of the Application of The Empire District Electric
Company and White River Valley Electric Cooperative**

Cause No. EO-2004-0246

ORIGINAL

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HEARING

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Public Service Commission***

FEBRUARY 17, 2004

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STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS
HEARING

FEBRUARY 17, 2004
Jefferson City, Missouri
Volume 2

In the Matter of the Application of)
The Empire District Electric Company)
and White River Valley Electric) Case No.
Cooperative for Approval of a Written) EO-2004-0246
Territorial Agreement Designating the)
Boundaries of Exclusive Service Areas)
for Each Within the Canyon Springs of)
Branson Residential Development Near)
Branson, Missouri.

BEFORE:

NANCY DIPPELL, Presiding,
SENIOR REGULATORY LAW JUDGE.

REPORTED BY:

TRACY L. THORPE, CSR, CCR
ASSOCIATED COURT REPORTERS

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1 (Exhibits Nos. 1, 2 and 3 were marked for
2 identification.)

3 JUDGE DIPPELL: This is Case No. EO-2004-0246
4 in the matter of the application of Empire District Company
5 and White River Valley Electric Cooperative for approval of
6 a written territorial agreement designating the boundaries
7 of exclusive service areas for each within the Canyon
8 Springs of Brandon Residential Development near Branson,
9 Missouri.

10 My name is Nancy Dippell, and I'm the
11 regulatory law judge assigned to this matter. And we're
12 here today basically for a stipulation hearing regarding
13 this territorial agreement. I would like to begin with
14 entries of appearance and if Staff would begin.

15 MR. DOTTHEIM: Steven Dottheim, Post Office
16 Box 360, Jefferson City, Missouri 65102 appearing on behalf
17 of the Staff of the Missouri Public Service Commission.

18 JUDGE DIPPELL: Thank you.
19 Public Counsel?

20 MR. COFFMAN: John B. Coffman appearing on
21 behalf of the Office of the Public Counsel , PO Box 2230,
22 Jefferson City, Missouri 65102.

23 MR. MICHEEL: Greg Mitchell on behalf of
24 Empire District Electric Company with the law first of
25 Brydon, Swearngen and England, 312 East Capitol Avenue,

1 Jefferson City, Missouri.

2 MS. CHASE: Lisa Chase on behalf of White
3 River Valley Electric Cooperative with the law firm of
4 Andereck, Evans, Milne, Peace and Johnson, 700 East Capitol,
5 Jefferson City, Missouri 65102.

6 JUDGE DIPPELL: Okay. The parties have
7 reached a stipulation in this matter, but I'm going to go
8 ahead and begin and see.

9 Mr. Dottheim, would you like to begin with a
10 general opening statement or --

11 MR. DOTTHEIM: Judge, I really don't have an
12 opening statement other than noting that there is a
13 Unanimous Stipulation and Agreement that was reached by all
14 parties in the case.

15 There was a substitution of one page in the
16 territorial agreement, which was material to reaching that
17 Unanimous Stipulation and Agreement. And the Staff has
18 filed a Staff memorandum in support of the Unanimous
19 Stipulation and Agreement. So the Staff would recommend
20 approval of the amended territorial agreement as meeting the
21 legal standard of not detrimental to the public interest.

22 JUDGE DIPPELL: Thank you.

23 Would the company like to -- or either of the
24 companies like to make any opening remarks?

25 MR. MITCHELL: I have no opening remarks at

1 this time, your Honor. Thank you.

2 MS. CHASE: I have no opening remarks, your
3 Honor.

4 JUDGE DIPPELL: Public Counsel?

5 MR. COFFMAN: I have nothing further to add
6 either.

7 JUDGE DIPPELL: All right. Mr. Mitchell,
8 would you like to begin? I see you've brought a witness
9 today to present the Stipulation and Agreement. Would you
10 like to go ahead and call your first witness then?

11 MR. MITCHELL: Yes. I would like to call
12 Mr. Randy Caruthers to the stand, please.

13 (Witness sworn.)

14 JUDGE DIPPELL: Thank you. You can go ahead.

15 MR. MITCHELL: Thank you.

16 RANDY CARUTHERS testified as follows:

17 DIRECT EXAMINATION BY MR. MITCHELL:

18 Q. Would you first state your name for the
19 record, please?

20 A. Randy Caruthers.

21 Q. And by whom are you currently employed?

22 A. Empire District Electric Company.

23 Q. And in what capacity right now?

24 A. Director of commercial operations.

25 Q. Okay. What kind of duties do you fulfill for

1 the company in that capacity?

2 A. Fulfill the -- basically the outside
3 operations, keep the lights on, and then also community
4 relations.

5 Q. Okay. Thank you.

6 Are you familiar with a document titled the
7 Fourth Territorial Agreement, which is dated November 15th,
8 2003?

9 A. Yes, I am.

10 Q. Okay. Did you participate in the negotiations
11 which led to the execution of that agreement?

12 A. Yes, I did.

13 Q. Okay. Are you generally familiar with the
14 contents of the Fourth Territorial Agreement?

15 A. Yes.

16 Q. And right now I'm going to hand you --

17 MR. MITCHELL: If I may approach, your Honor.

18 JUDGE DIPPELL: Yes.

19 BY MR. MITCHELL:

20 Q. I'm going to hand you what's been marked as
21 Exhibit 3. If you would just take a look at that for a
22 moment. Do you recognize that document?

23 A. Yes, I do.

24 Q. Is that the Fourth Territorial Agreement at
25 issue in this matter?

1 A. Yes, it is.

2 Q. Okay. Is that a territorial agreement which
3 was entered between White River Valley Electric Cooperative
4 and the Empire District Electric Company?

5 A. Yes.

6 Q. Okay. Has Empire entered into previous
7 territorial agreements with other rural electric
8 cooperatives?

9 A. Yes, we have.

10 Q. And is this, in fact, the fourth territorial
11 agreement that Empire has reached with White River Valley
12 Electric Cooperative?

13 A. Yes.

14 Q. Can you briefly explain for the Hearing
15 Examiner the background and the circumstances that led to
16 the execution of the Fourth Territorial Agreement that
17 you're looking at?

18 A. Basically, we were approached by the developer
19 to consider the territorial agreement. And after we got to
20 looking at our facilities and the co-op's facilities, in an
21 effort to not duplicate facilities, it seemed to make sense,
22 so --

23 Q. Okay. And this was a product of negotiation
24 with White River Valley Cooperative?

25 A. Yes.

1 Q. Do the terms of the agreement as it's
2 presented indicate that it pertains to three separate phases
3 of a residential and commercial development that's going to
4 be known as the Canyon Springs of Branson Development, which
5 is near Branson, Missouri?

6 A. Yes.

7 Q. Does the agreement provide for Empire to be
8 the exclusive provider of electrical service in one of those
9 phases and for White River Valley to be the exclusive
10 provider in the other two phases?

11 A. Yes.

12 Q. Does the agreement purport to require any
13 person or any customer to change their supplier of electric
14 service from what it presently is?

15 A. No, it does not.

16 Q. Do you agree with the statements which were
17 made in our application presented to the Commission, that
18 the Fourth Territorial Agreement is not detrimental to the
19 public interest and, in fact, is in the public interest?

20 A. Yes.

21 Q. Would you agree that the territorial agreement
22 avoids an unnecessary duplication of service being provided
23 to the areas that it involves?

24 A. Yes.

25 Q. Is Empire equipped and qualified to provide

1 excellent service to customers in its exclusive service
2 territory under this Fourth Territorial Agreement?

3 A. Yes, we are.

4 Q. Does Empire want the Commission to issue an
5 order approving the agreement?

6 A. Yes, we do.

7 Q. If the agreement is approved by the Commission
8 and if so ordered, will Empire be willing to file tariff
9 sheets in cooperation with the Staff of the Commission to
10 indicate its existence and its boundaries under this
11 agreement?

12 A. Yes.

13 MR. MITCHELL: I believe that's all I have at
14 this time, your Honor.

15 JUDGE DIPPELL: All right. Are there any
16 additional questions for Mr. Caruthers from the Staff?

17 MR. DOTTHEIM: No questions.

18 JUDGE DIPPELL: From White Rivers?

19 MS. CHASE: No questions, your Honor.

20 JUDGE DIPPELL: Public Counsel?

21 MR. COFFMAN: No questions.

22 JUDGE DIPPELL: All right. I believe that's
23 all the questions for you then, Mr. Caruthers. You may be
24 excused. Thank you.

25 MR. MITCHELL: Thank you.

1 JUDGE DIPPELL: Are there any further
2 witnesses for Empire?

3 MR. MICHEEL: No.

4 JUDGE DIPPELL: Does White River have any
5 witnesses they'd like to present?

6 MS. CHASE: No, your Honor.

7 JUDGE DIPPELL: Staff?

8 MR. DOTTHEIM: No witness other than Mr. James
9 Ketter of the Commission Staff who, if there are any
10 questions from the Bench, Mr. Ketter's findings are
11 mentioned in the Staff memorandum in support of the
12 Unanimous Stipulation and Agreement based upon a field
13 inspection he made of the area covered by the Fourth
14 Territorial Agreement.

15 JUDGE DIPPELL: I think I have just one
16 question for Mr. Ketter, if you'll please come up.

17 (Witness sworn.)

18 JUDGE DIPPELL: Thank you.

19 JAMES KETTER testified as follows:

20 JUDGE DIPPELL: Well, I guess if you'd go
21 ahead and state your name for the record, Mr. Ketter.

22 THE WITNESS: James L. Ketter.

23 DIRECT EXAMINATION BY MR. DOTTHEIM:

24 Q. And, Mr. Ketter, would you please state the
25 position you hold on the Staff of the Missouri Public

1 Service Commission?

2 A. I'm in the -- I'm in the energy department of
3 the Staff operations division, in the energy engineering
4 portion of that department.

5 Q. And, Mr. Ketter, have you performed a field
6 inspection of the area covered by the Fourth Territorial
7 Agreement?

8 A. Yes, I have.

9 JUDGE DIPPELL: Thank you.

10 QUESTIONS BY JUDGE DIPPELL:

11 Q. And, Mr. Ketter, are you familiar with both
12 Empire District Electric Company and the White River Valley
13 Electric Cooperative and their operations?

14 A. Yes.

15 Q. In your opinion, will each of these companies
16 be able to provide adequate service to their customers in
17 their exclusive service areas?

18 A. Yes. I believe they would and they will be
19 able to, in my opinion. Empire serves much of Branson and
20 this is kind of an extension of their -- of their -- their
21 service to the western part of Branson. And White River has
22 facilities through Branson over the development of that city
23 over the years, but also White River is in the western
24 portion of that area that's subject to the territorial
25 agreement. So both the utilities have electric facilities

1 to provide service to this development that's subject of the
2 territorial agreement.

3 JUDGE DIPPELL: Okay. Thank you.

4 Were there any additional questions for
5 Mr. Ketter from either of the companies?

6 MR. MITCHELL: None from Empire, your Honor.

7 JUDGE DIPPELL: Public Counsel?

8 MR. COFFMAN: None, thank you.

9 JUDGE DIPPELL: Thank you. Thank you,
10 Mr. Ketter. You may be excused.

11 Are there any witnesses from Public Counsel?

12 MR. COFFMAN: No, your Honor.

13 JUDGE DIPPELL: All right. Then before we
14 went on the record, I had marked the application as
15 Exhibit 1 and the Stipulation and Agreement in this case as
16 Exhibit 2. Would there be any objection to those documents
17 coming into the record as evidence?

18 All right. Seeing none, then I will admit
19 Exhibits 1 and 2.

20 (Exhibit Nos. 1 and 2 were received into
21 evidence.)

22 JUDGE DIPPELL: And I don't believe we offered
23 the territorial agreement.

24 MR. MICHEEL: We had 3, your Honor, Exhibit 3,
25 the territorial agreement itself with the substitute page.

1 JUDGE DIPPELL: Would there be any objection
2 to Exhibit 3?

3 MR. DOTTHEIM: No objection.

4 JUDGE DIPPELL: Then I will admit Exhibit 3
5 also.

6 (Exhibit No. 3 was received into evidence.)

7 JUDGE DIPPELL: Would there be any further
8 evidence? Anyone like an opportunity to make a closing
9 statement?

10 All right then. That will conclude the
11 hearing. I appreciate your attending. Thank you very much.
12 We can go off the record.

13 WHEREUPON, the hearing was adjourned.

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