

**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 for Approval of a Written) Case No. EO-2007-0161
Territorial Agreement Designating the Boundaries of)
Exclusive Service Areas for Each Applicant within the)
Missouri Counties of Stone & Taney.)

**STAFF RECOMMENDATION
TO APPROVE TERRITORIAL AGREEMENT**

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) and, for its recommendation that the Commission grant the joint application of The Empire District Electric Company (“Empire”) and White River Valley Electric Cooperative (“White River”), and approve their Fifth Territorial Agreement, as amended by the First Amendment to the Fifth Territorial Agreement, states:

1. In the attached Memorandum, which is labeled Appendix A, the Staff recommends the Missouri Public Service Commission grant the joint application of Empire and White River, and approve their Fifth Territorial Agreement, as amended by the First Amendment to the Fifth Territorial Agreement.

2. As stated in the Staff’s memorandum, Empire and White River provide electric utility service to their customers and members in and about Branson, Missouri. These utilities have entered into territorial agreements in the past that this Commission has approved. This is the fifth territorial agreement between them. In this agreement they set aside between them exclusive services areas comprised of sections and parts of sections in Taney and Stone Counties, Missouri. Empire’s exclusive territory lies in Taney County and Whiter River’s lies in

both Taney and Stone Counties. The exclusivity pertains only to new customers; therefore, there will be no change of suppliers to existing customers, or members.

3. Section 394.312.4, RSMo 2000, establishes the standard of “not detrimental to the public interest” for Commission review of territorial agreements. The Staff found no Missouri case law applying this standard in this context; however, based on how it has been interpreted in the context of changes in utility ownership as discussed following, this standard includes a consideration of the broad public interest, not merely affected utilities and their customers and their members. In a change of ownership case in the mid-1980’s this Commission, applied the standard of “not detrimental to the public interest,” and approved the sale of steam operations from a regulated utility to an unregulated subsidiary of the Bi-State Development Agency. The sale was part of a plan by the Bi-State Development Agency to ultimately use refuse to fuel the steam generation and included an immediate rate increase. In its opinion on review of the Commission’s decision, the Missouri Supreme Court stated:

The Commission's decision and order shows that concern for the public interest was predominant in its deliberations. It considered not only the interest of its customers, but the interest of the St. Louis metropolitan area in solving its refuse problems. The thought of using refuse to produce worthwhile energy is certainly appealing. The Commission is justified in looking at the broad picture.¹

The Missouri Supreme Court, in *State ex rel. City of St. Louis v. Public Service Commission*,² includes a statement of the standard of “not detrimental to the public”:

. . . The whole purpose of the act is to protect the public. The public served by the utility is interested in the service rendered by the utility and the price charged therefore; investing public is interested in the value and stability of the securities issued by the utility. *State ex rel. Union Electric Light & Power Co. v. Public Service Commission et al.* (Mo. Sup.) 62 S.W. (2d) 742. In fact the act itself declares this to be the purpose. Section 5251, R.S. 1929 Mo. Stat. Ann. Section 5251, p. 6674), in part reads: “The provisions of this chapter shall be liberally

¹ *Love 1979 Partners, et al. v. Public Serv. Comm’n*, 715 S.W.2d 482, 490 (Mo.banc 1986).

² 73 S.W.2d 393, 399-400 (Mo.banc 1934).

construed with a view to the public welfare, efficient facilities and *substantial justice between patrons and public utilities.*” (Italics ours.)

The state of Maryland has an identical statute with ours, and the Supreme Court of that state in the case of *Electric Public Utilities Co. v. Public Service Commission*, 154 Md. 445, 140 A. 840, loc. cit. 844, said: “To prevent injury to the public good in the clashing of private interest with the public good in the operation of public utilities, is one of the most important functions of Public Service Commissions. It is not their province to insist that the public shall be benefited, as a condition to change of ownership, but their duty is to see that no such change shall be made as would work to the public detriment. ‘In the public interest,’ in such cases, can reasonably mean no more than ‘not detrimental to the public.’”

4. As stated in Appendix A, Empire and White River have duplicative electric facilities in the area around Branson. They have overhead facilities that cross each other and, in many places, both have electric facilities running along the same street. This territorial agreement will eliminate and ameliorate the perpetuation of crossing facilities and duplication of facilities between these utilities in their exclusive service areas established by the territorial agreement. Such duplication reduces safety by exposing both workmen and the general public to more dangerous facilities than what efficient engineering design would require to serve demand for electricity. Both Empire and White River have sufficient distribution facilities to serve customers and member in their exclusive service areas established by the territorial agreement. Each has existing capacity to serve their exclusive service areas and each is preparing for anticipated load growth. Establishing these exclusive service areas will assist these utilities in anticipating the electric needs of their customers and members, and will also assist emergency responders to identify which electric service provider to notify, if the emergency event involves electric facilities.

5. For all the foregoing reasons, the Staff believes that approval of the agreement, as amended, is not detrimental to the public interest.

6. The Staff also recommends that, if the Commission approves the Fifth Territorial Agreement between Empire and White River, as amended by the First Amendment to the Fifth Territorial Agreement, the Commission order Empire to file revised tariff sheets to add a map and legal description of the exclusive territory it obtains from this agreement to those it already has for prior Commission-approved territorial agreements that Empire has entered into.

WHEREFORE, the Staff respectfully recommends to the Commission that it grant the joint application of The Empire District Electric Company and White River Electric Cooperative for approval of their Fifth Territorial Agreement, as amended by the First Amendment to the Fifth Territorial Agreement, and order The Empire District Electric Company to file revised tariff sheets to add a map and legal description of the exclusive territory it obtains from this agreement to those it has for prior Commission-approved territorial agreements that Empire has entered into.

Respectfully submitted,

/s/ Nathan Williams

Nathan Williams
Deputy General Counsel
Missouri Bar No. 35512

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 27th day of December 2006.

/s/ Nathan Williams
Nathan Williams

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. EO-2007-0161, 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 Applicant within the
Missouri Counties of Stone and Taney

FROM: James L. Ketter, Energy Department – Engineering Analysis

/s/Lena M. Mantle 12/27/06 /s/Nathan Williams 12/27/06
Energy Department / Date General Counsel’s Office / Date

Subject: Staff Report and Recommendation

Date: December 27, 2006

OVERVIEW

On October 18, 2006, The Empire District Electric Company (Empire) and White River Valley Electric Cooperative (White River) (collectively, Applicants) filed a Joint Application for approval of the Fifth Territorial Agreement (Agreement). This Agreement specifically designates boundaries, as between the Applicants, of exclusive service areas within portions of Stone and Taney Counties, Missouri for all new structures. Each Applicant will continue to have service responsibilities beyond the boundaries of the Agreement.

On December 7, 2006, Empire sought leave to supplement the Joint Application and filed its First Amendment to the Fifth Territorial Agreement. The Commission approved the supplement to the Agreement in an Order Granting Leave to Supplement Application issued December 8, 2006.

DISCUSSION

The Agreement proposes to establish exclusive service areas as to Empire and White River within portions of Taney and Stone Counties in Southwest Missouri. Under terms of the Agreement, Empire would be the exclusive supplier in Taney County in an area north of Branson along Highway 65 which will include a major residential and commercial development. This exclusive territory of Empire is identified in Exhibit A of the Agreement. The exclusive territory of White River is outlined in Exhibit B and includes six tracts located in Taney and Stone Counties in areas where White River has existing customers or where it is in position to serve new customers. The terms apply to new structures in the designated territories after the effective date of an order by the

Commission approving this Agreement. No existing customers will be transferred as a result of the Agreement.

Growth in the Branson area over the years has required the expansion of electric facilities to serve the needs of new customers. Duplication of facilities has occurred as Empire and White River sought new customers. The establishment of exclusive service territories will prevent future duplication and will allow electric service customers within these areas to know with certainty the supplier of their electric service. This will also assist emergency responders to identify which electric service provider to notify if accidents involve electric facilities. Duplication of electric facilities exposes workmen and the public to more facilities than is necessary as compared to areas where electric providers serve in exclusive territories.

Exclusive service territories will aid Empire and White River in the long range planning of electric facilities. Each supplier will be able to plan for the electric needs of geographic areas where it is the exclusive supplier of electric service. Economic benefits are apparent because the supplier will have all the new customers and the density of the load will be maximized because the other provider in the agreement is not authorized to serve in that exclusive service territory.

STAFF INVESTIGATION

The supplement to the Agreement satisfies issues brought by the Staff concerning the case-by-case exception procedure for serving new customers located near the boundary of the exclusive territories. Staff supports the Agreement as amended.

The Staff has conducted a field investigation of the proposed service territories and observed the existing duplication of electric facilities that competition for electric customers has fostered in the area around Branson. Empire and White River overhead facilities cross over the other utility and in many areas, each utility has constructed electric facilities along a street.

Empire and White River have distribution facilities to serve customers in their exclusive territories as defined by the Agreement. Each utility has existing capacity to serve their exclusive service areas and are making plans for the load growth expected in the future. The establishment of exclusive service territories will help each electric utility in its ability to anticipate the electric needs of its customers.

Empire's Rules and Regulations specifically identify electric service territory added and areas subject to territorial agreements. Approval by the Commission of this territorial agreement should also include a requirement to file a revised tariff sheet to identify the area exclusively served by Empire.

STAFF RECOMMENDATION

The Staff recommends that the Commission approve the Joint Application for the Fifth Territorial Agreement between Empire and White River, as amended by the First Amendment to the Fifth Territorial Agreement, as being in the public interest. Staff further recommends that, if the Commission approves the amended agreement, Empire be

directed to file revised tariff sheets identifying, by map and legal description, its exclusive territory pursuant to this agreement. With an approved agreement, each electric utility will be better able to plan for the future needs of its customers in each exclusive service territory. Duplication of electric facilities can be avoided which will reduce the public and worker exposure to additional overhead electric facilities.

Empire states that it has no pending or final unsatisfied judgments or decisions against it from any state or federal agency which involve customer service or rates. Empire has no overdue Commission annual reports or assessment fees. White River is a rural electric cooperative and no annual reports or assessments are required from the Commission. The Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

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

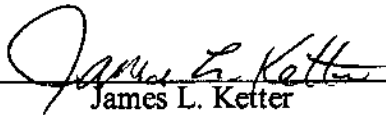
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Agreement Designating the Boundaries)
of Exclusive Service Areas for Each)
Applicant within the Missouri Counties)
of Stone and Taney)

Case No. EO-2007-0161

AFFIDAVIT OF JAMES L. KETTER

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

James L. Ketter, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Report and Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Report and Investigation was given by him; that he has knowledge of the matters set forth in such Staff Report and Investigation; and that such matters are true to the best of his knowledge and belief.


James L. Ketter

Subscribed and sworn to before me this 27th day of December, 2006.



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #08942086


Notary Public

My commission expires 9-21-10