

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

In the Matter of the Joint Application of Evergy        )  
Missouri West, Inc. and City of Higginsville for        )  
for Approval of a Written Territorial Agreement        )        EO-2021-0388  
designating the boundaries of each electric service        )  
supplier in portions of Lafayette County, Missouri.        )

**AMENDED JOINT APPLICATION**

COMES NOW, Evergy Missouri West Inc. d/b/a Evergy Missouri West (“Evergy Missouri West”) and the City of Higginsville, Missouri, (“Higginsville), hereinafter referred to collectively as “Applicants,” and for their *Amended Joint Application* (“Amended Application”) to the Missouri Public Service Commission (“Commission”), pursuant to and in support of their Amended Application state:

**APPLICANTS**

1. Evergy Missouri West is a Missouri corporation with its principal office and place of business at 1200 Main Street, Kansas City, Missouri 64105. Evergy Missouri West is primarily engaged in the generation, transmission, distribution, and sale of electricity in western Missouri and eastern Kansas, operating primarily in the Kansas City metropolitan area. Evergy Missouri West is an “electrical corporation” and “public utility” under Section 386.020 (15) and (43) and is subject to the jurisdiction, supervision and control of the Commission under Chapters 386 and 393. Evergy Missouri West provided its Certificate of Good Standing in Case No. EF-2017-0242 which is incorporated herein by reference in accordance with 4 CSR 240-2.060(1)(G).

2. Higginsville is a Missouri city of the fourth class organized and established under Missouri law pursuant to section 79.010, RSMo., with its principal office and place of business located at 1922 Main Street, P.O. Box 110, Higginsville, MO 64037. It owns, operates and

maintains an electric distribution system within its corporate limits to serve customers in its municipal service area.

3. Correspondence, communications, and orders in regard to this Amended Application should be directed to:

Roger Steiner  
Evergy Missouri West  
1200 Main – 16<sup>th</sup> Floor  
Kansas City, Missouri 64105  
Phone: (816) 556-2791  
Fax: (816) 556-2110  
E-mail: [roger.steiner@evergy.com](mailto:roger.steiner@evergy.com)

Terry Jarrett  
Healy Law Offices, LLC  
3010 East Battlefield, Suite A  
Springfield, Missouri 65804  
Phone: (573) 415-8379  
Fax: (573) 415-8379  
Email: [terry@healylawoffices.com](mailto:terry@healylawoffices.com)

### **FACTS**

4. Higginsville approached Evergy Missouri West about acquiring two customers in an area immediately adjacent to its city limits. Both customers are at the same location of the East, NE ¼ of Section 35, Township 49N, Range 26W (Legal description PT OF SE ¼ of NE ¼ ; 655-349, 2019SU0053) in Lafayette County, MO. See Revised Exhibit A. Both customers have agreed to change service providers to Higginsville. See Exhibit B. Higginsville prefers to not annex the area but instead acquire just these two customers.

5. Higginsville has agreed to pay Evergy Missouri West for the first customer, Public Water Supply District, the sum of two years of bills from the Public Water Supply District electric account for cost recovery. The second customer has been inactive for some time.

6. Evergy Missouri West and Higginsville have mutually agreed, subject to the Commission’s approval, that Higginsville should serve as the electric provider in the territory described in paragraph 4.

7. Subject to the terms and conditions of an Agreement, know as the “Territorial Agreement” between Evergy Missouri West and Higginsville, Applicants have specifically

designated the boundaries of the exclusive electric service area of each electric service provider for service of new structures in portions of Lafayette County, which are more particularly described in the Territorial Agreement. Applicants have attached a copy of the Territorial Agreement to this Amended Application as **Exhibit C**.

8. The Territorial Agreement is in the public interest because it establishes exclusive service territories for the two electric suppliers. This Territorial Agreement also minimizes a duplication of utility facilities to this particular tract. The establishment of exclusive service territories will prevent future duplication of electric service facilities, promote economic efficiencies and benefit the public safety and aesthetics of the community.

9. This territorial agreement will also allow the affected service customers to know with certainty the supplier of their electricity will remain the same for any new structures on a particular parcel.

10. There is no other person or entity, corporate, municipal or otherwise that requires notice of this Amended Application.

**WHEREFORE**, Applicants respectfully request that the Commission issue its order finding the designated electric service areas not to be detrimental to the public interest and approve the Territorial Agreement; and authorizing Applicants to perform in accordance with the terms and conditions of the Territorial Agreement.

Respectfully submitted,

*/s/ Roger W. Steiner*

Roger W. Steiner, MBN 39586  
Phone: (816) 556-2314  
E-mail: [roger.steiner@evergy.com](mailto:roger.steiner@evergy.com)  
Evergy  
1200 Main – 16<sup>th</sup> Floor  
Kansas City, Missouri 64105  
Fax: (816) 556-2110

**ATTORNEY FOR EVERGY MISSOURI  
WEST**

*/s/ Terry M. Jarrett*

Terry M. Jarrett, #45663  
3010 E. Battlefield, Suite A  
Springfield, MO 65804  
[terry@healylawoffices.com](mailto:terry@healylawoffices.com)

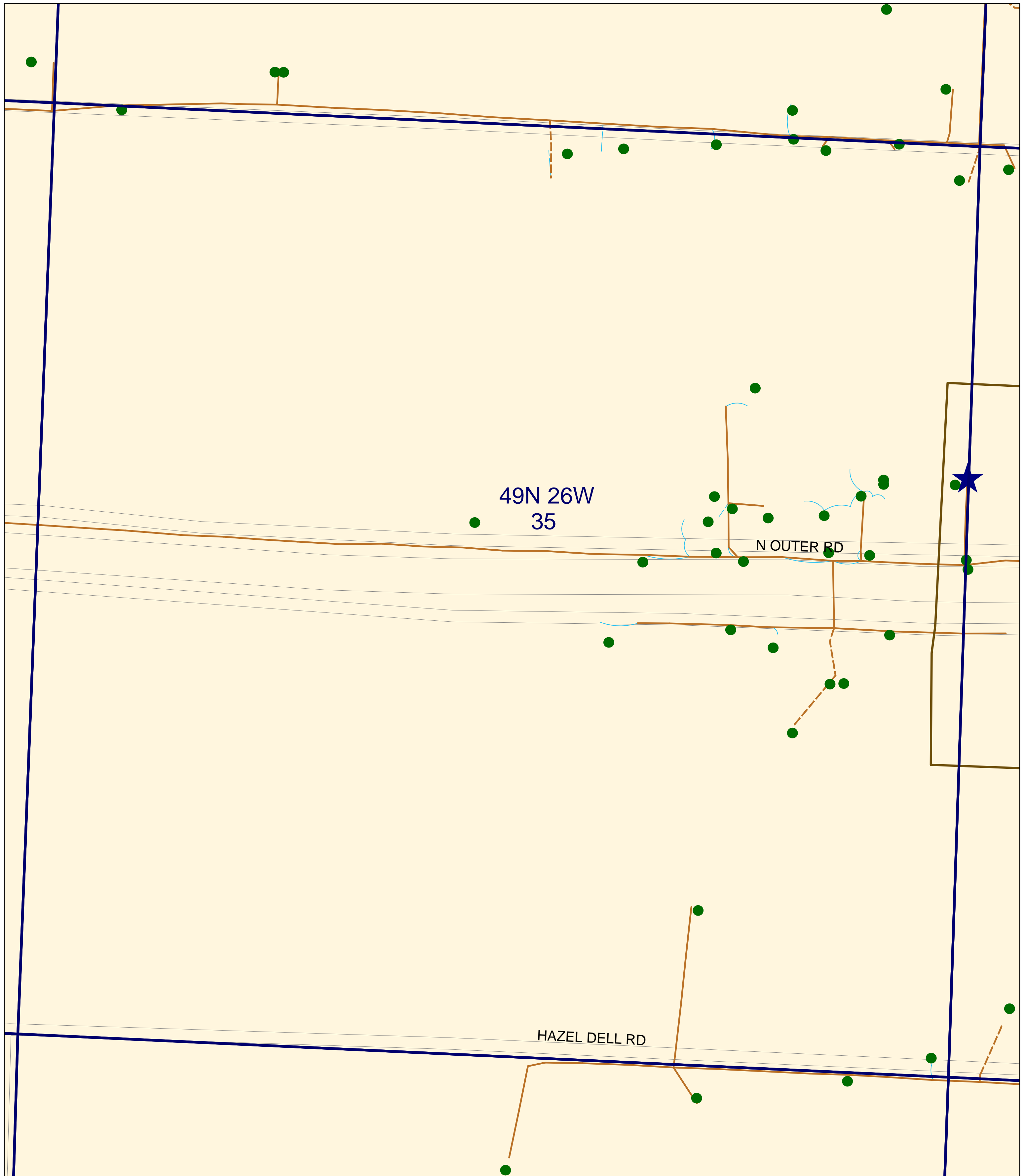
**ATTORNEY FOR CITY OF  
HIGGINSVILLE**

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served on counsel of record for all parties via electronic mail this 29<sup>th</sup> day of June 2021.

*/s/ Roger W. Steiner*

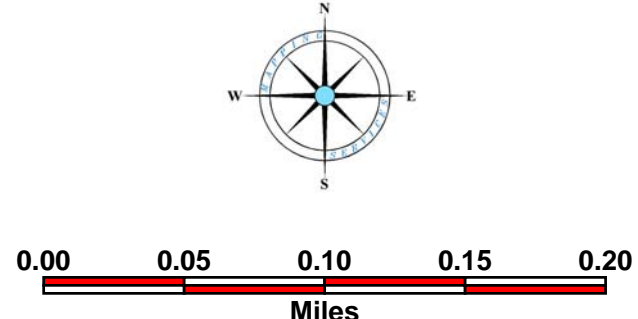
Roger W. Steiner



- Legend**
- ★ 19939 Outer Rd
  - Point of Service
  - OH Primary
  - - UG Primary
  - OH Secondary
  - - UG Secondary
  - Property Line
  - City Limits
  - Township/Range
  - Henrietta Service Ctr
  - Warrensburg Service Ctr

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Prior to any excavation call for verification of exact locations.  
For Missouri facilities call 1-800-344-7483  
For Kansas facilities call 1-800-344-7233.



19939 Outer Rd  
Higginsville, MO



September 16, 2020

RLC/Mapping







1922 Main Street, P O Box 110  
Higginsville, MO 64037  
660.584.2106

July 21, 2020

Robert M. Nuelle, and Phyllis J. Nuelle

**RE: Notice of Proposed Electric Provider Change**

To whom it may concern,

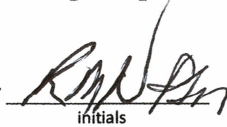
We are proud to announce the City of Higginsville electric department is planning an electric 3-phase line extension project near the Interstate 70/MO 13 Highway Junction area of Higginsville. The City of Higginsville is working with Evergy to acquire a small number of Evergy customers in said area. We are contacting you to notify you that you are one of the few customers potentially impacted by this transition in service providers.

This document is to provide you notice of our intent to acquire your service from Evergy. The City of Higginsville and Evergy are committed to making the conversion as seamless as possible for the customers affected. Contact information for both utilities is provided below should you have questions or concerns.

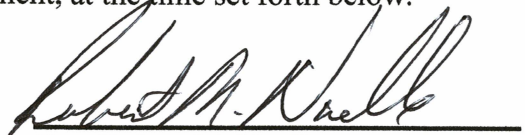
Evergy  
Justin Campbell  
Manager, Wholesale Customer Solutions  
818 S. Kansas Avenue  
Topeka, KS 66612  
785-575-1950

City of Higginsville  
Johnathan Wallace  
Electric Superintendent  
1922 Main Street  
Higginsville, MO 64037  
660-584-2106

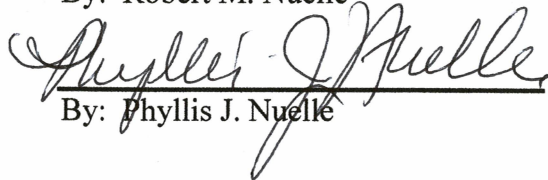
If you are in favor of the proposed change in electric service provider please indicate so below by checking the appropriate box, sign in front of a notary public and return this document to The City of Higginsville. This does not guarantee a change in service provider will in fact take place. This is to determine the willingness of the parties to participate in such change of provider.

I/We are in favor of the proposed change in electric service provider   
initials

In witness whereof, the parties hereto execute this instrument, at the time set forth below.



By: Robert M. Nuelle



By: Phyllis J. Nuelle

STATE OF MISSOURI     )  
                                          )SS.  
COUNTY OF LAFAYETTE )

On this 3<sup>rd</sup> day of August, 2020, before me personally appeared Robert M. Nuelle, and Phyllis J. Nuelle who executed the within Notice of Proposed Electric Provider Change and acknowledged to me that they executed the same for the purposes therein stated.

In witness whereof, I have set my hand and affixed my notarial seal the day and year above mentioned.

(SEAL)

SHERI TIEMAN  
Notary Public - Notary Seal  
State of Missouri  
Commissioned for Lafayette County  
My Commission Expires: January 03, 2021  
Commission Number: 17313215

  
NOTARY PUBLIC





**1922 Main Street, P O Box 110  
Higginsville, MO 64037  
660.584.2106**

July 21, 2020

Consolidated Public Water Supply  
District No. 2 of Lafayette, Johnson  
& Saline Counties, Missouri

**RE: Notice of Proposed Electric Provider Change**

To whom it may concern,


We are proud to announce the City of Higginsville electric department is planning an electric 3-phase line extension project near the Interstate 70/MO 13 Highway Junction area of Higginsville. The City of Higginsville is working with Evergy to acquire a small number of Evergy customers in said area. We are contacting you to notify you that you are one of the few customers potentially impacted by this transition in service providers.

This document is to provide you notice of our intent to acquire your service from Evergy. The City of Higginsville and Evergy are committed to making the conversion as seamless as possible for the customers affected. Contact information for both utilities is provided below should you have questions or concerns.

Evergy  
Justin Campbell  
Manager, Wholesale Customer Solutions  
818 S. Kansas Avenue  
Topeka, KS 66612  
785-575-1950

City of Higginsville  
Johnathan Wallace  
Electric Superintendent  
1922 Main Street  
Higginsville, MO 64037  
660-584-2106

If you are in favor of the proposed change in electric service provider please indicate so below by checking the appropriate box, sign in front of a notary public and return this document to The City of Higginsville. This does not guarantee a change in service provider will in fact take place. This is to determine the willingness of the parties to participate in such change of provider.

I/We are in favor of the proposed change in electric service provider  initials

In witness whereof, the parties hereto execute this instrument, at the time set forth below.

Consolidated Public Water Supply  
District No. 2 of Lafayette, Johnson  
& Saline Counties, Missouri

Debbie Lueck  
By: Debbie Lueck, President

STATE OF MISSOURI        )  
                                          )SS.  
COUNTY OF LAFAYETTE )

On this 17<sup>th</sup> day of August, 2020, before me personally appeared  
Debbie Lueck, President of Consolidated Public Water Supply District No. 2 of Lafayette,  
Johnson and Saline Counties who executed the within Notice of Proposed Electric Provider  
Change and acknowledged to me that she executed the same for the purposes therein stated.

In witness whereof, I have set my hand and affixed my notarial seal the day and year above  
mentioned.

(SEAL)



MANDY RENEE THALLER  
My Commission Expires  
December 25, 2022  
Lafayette County  
Commission #18634808

Mandy Thaller  
NOTARY PUBLIC

## TERRITORIAL AGREEMENT

THIS AGREEMENT is made and entered into as of this 16<sup>th</sup> day of April, 2021, by and between the CITY OF HIGGINSVILLE, MISSOURI, a political subdivision of the 3<sup>rd</sup> Class organized and existing under the laws of Missouri with its principal office located at 1922 Main Street, , Higginsville, Missouri (“Higginsville”) and EVERGY MISSOURI WEST, INC., an “electrical corporation” and “public utility” as those terms are defined in Mo. Rev. Stat. § 386.020 (2000), with its office located at 1200 Main Street, Kansas City, Missouri (“Evergy”).

WITNESSETH:

WHEREAS, Higginsville and Evergy are authorized by law to provide electric service within certain areas of Missouri, including portions of Lafayette County; and

WHEREAS, Sections 394.312 and 416.041 RSMo. 2000, provides that competition to provide retail electrical service as between electrical corporations such as Evergy and municipal electrical suppliers such as Higginsville may be displaced by written territorial agreements;

WHEREAS, Higginsville and Evergy desire 1) to promote the orderly development of retail electrical service in an area adjacent to Higginsville in Lafayette County, Missouri, 2) to avoid unnecessary duplication of electrical facilities therein, and 3) to most effectively avail themselves of prior investment and planning for serving the public.

NOW, THEREFORE, Higginsville and Evergy, 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 to one parcel of land in Lafayette County, Missouri. The legal description of the incorporated tract is, in its entirety, as follows:

The tract of land is located in the East, NE ¼ of Section 35, Township 49N, Range 26W in Lafayette County, MO.

B. A map of the above described area is attached to this Agreement. See Exhibit A. In the event that the legal description and the map are in conflict, the map shall be deemed to control the intent of the parties.

C. Higginsville approached Evergy about acquiring two customers in the area described in paragraph 1.A. Both customers have agreed to change service providers to Higginsville. See Exhibit B.

D. Evergy and Higginsville have mutually agreed, subject to the Commission's approval, that Higginsville should serve as the electric provider in the territory described in paragraph 1.A.

E. This Agreement shall have no effect whatsoever upon service by Evergy or Higginsville in any other area.

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 91.025 and 393.106 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 Section 91.025 RSMo., in effect at the relevant time. The term 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 is not complete from the standpoint that permanent wiring for the electrical power and energy to be utilized by or within in 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 Higginsville and Evergy both execute a document which establishes an Effective Date for purposes of this Agreement.

3. Exclusive Service Areas Established.

A. Higginsville, pursuant to this Territorial Agreement, shall be entitled to provide permanent electric service to all structures now located within the area described in Paragraph 1.A. above and all new structures that may be built therein and therefore it shall be considered the exclusive Service Area of Higginsville, as between Higginsville and Evergy.

B. 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 Higginsville and Evergy. 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. Structures within the subject service area are being served currently by Evergy. To the knowledge of Higginsville and Evergy, there are no other suppliers of electricity providing permanent electric service within the tract.



6. Structures Coming Into Existence After the Effective Date.

A. After the Effective Date, Higginsville shall have the exclusive right, as between Higginsville and Evergy, to provide permanent service to all structures within the tract.

B. During interim period between the date of execution of this Agreement and the Effective Date, the parties shall abide by the territorial division provisions of this Agreement and may provide provisional service to any customer seeking service. 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 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 area. 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 services 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. Franchise Authority. As consideration for the rights and privileges conferred by this Agreement, Higginsville has agreed to pay Evergy for the first customer, Public Water Supply District, the sum of two years of bills from the Public Water Supply District electric account for cost recovery. Such payment will be made to Evergy within 60 days of the Commission’s approval of this Territorial Agreement. The second customer has been inactive for some time.

13. Cooperation. Higginsville and Evergy agree to undertake all actions reasonably necessary to implement this Agreement. Higginsville and Evergy will cooperate in presenting a joint application to the Commission demonstrating that this Agreement is in the public interest. Higginsville 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 attorney’s fees of each party, will be borne by the respective party incurring the costs.

14. 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 any 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 Higginsville or Evergy 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, 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 Higginsville or Evergy established by this Agreement.

15. Subsequent Legislation. This agreement is reached between the parties based upon their understanding of the current state of the law in Missouri under Section 91.025 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 contemplate not only the physical provision of the 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 Higginsville from providing electrical power and energy to structures within the Service Area of Evergy established by this Agreement, or Evergy from providing electrical power and energy to structures within the Service Area of Higginsville established by this Agreement, under the terms of such future legislation, notwithstanding the terms of this Agreement to the contrary. However, if sections 91.025 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 § 91.025 or § 394.312, as the case may be.

CITY OF HIGGINSVILLE, MISSOURI

EVERGY MISSOURI WEST, INC.

By: Jeanette Bolson

By: Bradley D. Lutz

Title: City Adm.

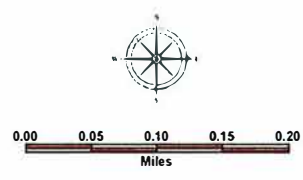
Title: Directory, Regulatory Affairs



**Legend**

- ★ 19939 Outer Rd
- Point of Service
- OH Primary
- UG Primary
- OH Secondary
- UG Secondary
- Property Line
- City Limit
- Township Range
- Merietta Service Co
- Warsaw Service Co

NOT TO SCALE  
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19939 Outer Rd  
Higginsville, MO

September 16, 2020