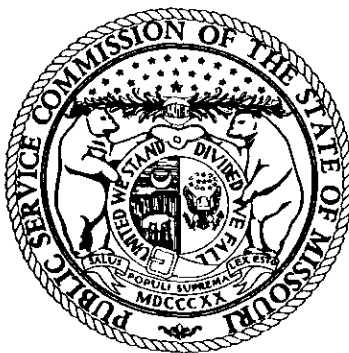


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Joint Application)
of the City of Poplar Bluff, Missouri,)
and Ozark Border Electric Cooperative)
for Approval of a Territorial Agreement)
Involving Three Areas in Butler County,)
Missouri.)

Case No. EO-98-143

REPORT AND ORDER

Issue Date: December 31, 1997

Effective Date: January 13, 1998

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of the City of Poplar Bluff, Missouri,)
and Ozark Border Electric Cooperative)
for Approval of a Territorial Agreement)
Involving Three Areas in Butler County,)
Missouri.)

Case No. EO-98-143

APPEARANCES

Gary W. Duffy, Attorney at Law, Brydon, Swearingen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102-0456, for City of Poplar Bluff, Missouri and Ozark Border Electric Cooperative.

Mark A. Kennedy, Attorney at Law, Kennedy & Kennedy, 1165 Cherry Street, P.O. Box 696, Poplar Bluff Missouri 63902, for City of Poplar Bluff, Missouri and Ozark Border Electric Cooperative.

John B. Coffman, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

William K. Haas, Senior Counsel, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY

LAW JUDGE:

Joseph A. Derque III.

REPORT AND ORDER

Procedural History

On October 3, 1997, the City of Poplar Bluff, Missouri (the City) and Ozark Border Electric Cooperative (Ozark Border) filed a joint application with the Commission pursuant to Section 394.312, RSMo 1996, requesting approval of a territorial agreement between the joint

applicants. A copy of the written territorial agreement and a map depicting that agreement were filed with the joint application.

The proposed agreement sets out areas, designated as zones one, two and three, and provides the terms and conditions between the joint applicants for the provision of service in those areas. The designated areas all surround the corporate city limits of the City. The agreement does not require a change of service by any customer between the joint applicants but does contemplate that possible changes of supplier may occur in the designated zones upon annexation by the City.

Section 393.312, RSMo 1994, requires both notice and an evidentiary hearing before the Commission may approve this agreement. Unless good cause exists, the Commission is required to issue its Report and Order in this matter no later than January 30, 1998.

The Commission issued its notice of this application on October 10. No applications to intervene were filed. On December 23 the evidentiary hearing of this matter was held. In that hearing testimony and the territorial agreement and attached map were entered into evidence. The territorial agreement is appended to this order and incorporated herein as Attachment A. The map is too large to attach but rather is incorporated by reference.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The Commission notes that no party to this proceeding opposed the approval of the proposed territorial agreement.

The City, operating through its municipal utilities, provides electric, water and sewer utilities and serves customers in an area of

approximately 37 square miles in and around the City and is municipally-owned by the City. Ozark Border Electric Cooperative (Ozark Border) is a member-owned cooperative serving eleven counties in southeastern Missouri.

The joint application proposes a territorial agreement between the City and Ozark Border for a period of 20 years and defines service territories for an area of Butler County, Missouri around the City of Poplar Bluff. The proposed agreement establishes three zones, zones one, two and three, and designates which provider will supply electric service to new customers in each zone. The territorial agreement also contains provisions in which the joint applicants agree on the transfer of customers in the event the city annexes property in zones one and two. Ozark Border has the right to provide service to customers in zone three throughout the term of the agreement.

The territorial agreement does not require any current customer to change electrical supplier and existing customers will remain with their current suppliers. In areas in zones one and two that may be annexed by the City during the course of the agreement, provision is made for the sale of facilities and transfer of customers to the City.

Specifically, in zone one, the City will have the exclusive right to provide electric service to all new customers after the effective date of the agreement. Upon annexation Ozark Border agrees to sell its facilities to the City.

In zone two Ozark Border will have the exclusive right to provide service to all new customers after the effective date of the agreement with the exception of parcels annexed by the City. Upon annexation the Ozark Border agrees to sell its facilities to the City.

In zone three Ozark Border will have the exclusive right to provide service to all new customers after the effective date of the agreement. The City will have no right to serve new customers in zone three for the term of the agreement.

The Staff of the Commission (Staff), in its testimony, recommended approval of the proposed agreement as being not detrimental to the public interest. The Staff is of the opinion that defining the service areas of the respective applicants will reduce future duplication of facilities and allow both joint applicants to plan their distribution systems in a rational manner. In addition, the Staff is of the opinion that the proposed agreement was designed to reduce future potential disputes between the joint applicants and will, in fact, serve to reduce potential conflicts.

The Commission has reviewed the joint application, proposed territorial agreement, and testimony in this matter and finds that the proposed agreement is not detrimental to the public interest and should be approved.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

Pursuant to Section 394.312, RSMo 1994, after proper notice, submission of testimony, and evidentiary hearing, the Commission finds that the territorial agreement, appended to this Report and Order as Attachment A, complies with the provisions of the above-cited section and that approval of the proposed territorial agreement is not detrimental to the public interest. Therefore, the proposed territorial agreement will be approved.

IT IS THEREFORE ORDERED:

1. That the territorial agreement, entered into by and between the City of Poplar Bluff, Missouri and Ozark Border Electrical Cooperative on August 22, 1997, and appended to this Report and Order as Attachment A, is hereby approved.

2. That this order shall become effective on January 13, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray,
and Drainer, CC., concur.

Dated at Jefferson City, Missouri,
on this 31st day of December, 1997.

TERRITORIAL AGREEMENT

THIS AGREEMENT, made and entered into this 22 day of August, 1997, by and between The City of Poplar Bluff, Missouri, operating through its Municipal Utilities, with offices located at 101 Oak Street, Poplar Bluff, Missouri ("City"), and Ozark Border Electric Cooperative, a Missouri cooperative organized and existing pursuant to Chapter 394, RSMo., with its offices located on U.S. Highway 67 South, Poplar Bluff, Missouri ("Cooperative").

WITNESSETH:

WHEREAS, City and Cooperative are authorized by law to provide electrical service within Butler County, Missouri; and,

WHEREAS, Section 394.312, RSMo. 1994, provides that competition to provide retail electrical service as between rural electric cooperatives such as Ozark Border and municipally owned utilities such as City may be displaced by written territorial agreements; and,

WHEREAS, City and Cooperative desire 1) to promote the orderly development of retail electrical service within a portion of Butler County, Missouri, 2) to avoid unnecessary duplication of electrical facilities therein; and, 3) to assist in minimizing potential territorial disputes among themselves;

NOW, THEREFORE, City and Cooperative, in consideration of the mutual covenants and agreements herein contained ("this Agreement"), the adequacy and sufficiency of which are hereby acknowledged, agree as follows:

1. GENERAL DESCRIPTION AND SCOPE OF AGREEMENT:

A. This Agreement pertains only to the three areas in Butler County, Missouri, which are described by metes and bounds as shown in Appendices A, B and C and depicted in the map contained in Appendix D to this Agreement. This Agreement shall have no effect whatsoever upon electrical service by Cooperative or City in any other area.

B. This Agreement establishes three "Zones" (designated Zone 1, Zone 2, and Zone 3) as electric service areas or territories in which the respective rights of City and Cooperative relative to the provision of retail electrical service to present and future structures have been agreed to by City and Cooperative for a period of twenty (20) years as provided in Paragraph 12 ("the Term").

C. This Agreement has no effect on the provision of service to customers or structures within the corporate limits of the City as they are constituted on the Effective Date. Furthermore, this Agreement has no affect on the Cooperative's provision of service to its customers or structures that are not located within any of the territory assigned to either party under this Agreement.

D. This Agreement does not require any current customer of either City or Cooperative to change their supplier of retail electrical energy upon the approval of the Agreement. However, this Agreement contemplates that if there are future annexations by City within the areas designated as Zones 1 and 2, then present and future customers of Cooperative in those areas will be transferred to the City upon the completion of such future annexations by the City and upon completion of a purchase of said facilities upon payment of fair and reasonable compensation pursuant to Section 386.800.5, RSMo., 1994. Except as hereinafter set forth in Paragraph 6-E, and pursuant to statute, the term "*fair and reasonable compensation*" shall mean the following:

- (1) The present-day reproduction cost, new, of the properties and facilities serving the annexed areas, less depreciation computed on a straight-line basis; and,
- (2) An amount equal to the reasonable and prudent cost of detaching the facilities in the annexed areas and the reasonable and prudent cost of constructing any necessary facilities to reintegrate the system of the affected electric supplier outside the annexed area after detaching the portion to be transferred to the municipally owned electric utility; and,
- (3) Four hundred percent (400%) of gross revenues less gross receipts taxes received by the affected electric supplier from the twelve-month period preceding the approval of the municipality's governing body under the provisions of subdivision (2) of sub-section 3 of this section, normalized to produce a representative usage from customers at the subject structures in the annexed area; and,
- (4) Any federal, state and local taxes which may be incurred as a result of the transaction, including the recapture of any deduction or credit; and,
- (5) Any other costs reasonably incurred by the affected electric supplier in connection with the transaction, including relocation costs; and,
- (6) Those factors delineated in Section 386.800.7, sub-paragraphs 1, 2, 3 and 4.

For purposes of this Agreement, a "completed annexation" shall be any annexation legally accomplished by the City of Poplar Bluff pursuant to Section 71.012 or Section 71.015, RSMo, and which is not successfully challenged in any court or the Public Service Commission during the time limitation provided therefore in Sections 71.012 or 71.015, RSMo. Cooperative shall

have the exclusive right to provide permanent electrical service to all existing structures in Zone 3 which are receiving permanent electrical service from the Cooperative on the Effective Date and City shall not have any right to provide such service to such structures during the Term of this Agreement.

E. This Agreement in no way limits the right or ability of the City to pursue annexation in any area or the rights of the City pursuant to Section 386.800, RSMo. in any area.

2. DEFINITIONS:

A. References to "structure" shall have the same meaning as the definition of the term "structure" found in Sections 91.025, 393.106 and 394.315, RSMo. in effect at the relevant time. In the event no such statutory definitions exist or are not otherwise applicable, the term shall be defined as it appeared in Section 91.025, RSMo. 1994, and liberally construed to give effect to the intent of this Agreement, which is to designate an exclusive provider, as between the parties hereto, of retail electrical service for anything using or designed to use electricity which is located within the respective service areas described herein.

B. The terms "electrical service" and "retail electrical service" shall encompass all aspects of the provision of such service, including, but not limited to, the construction, provision and operation of electrical conductors to distribute electrical power and energy to the structure and the generation or procurement of the electrical power and energy itself. While City and Cooperative each retain the right to generate or procure the electrical power and energy inherent in the provision of such service, each may, if it chooses, assign that right or contract with others to provide that particular aspect of the service, but such assignment or contract shall not affect the rights to provide service to the structure as contemplated herein.

C. The term "permanent service" shall have the same meaning as the definition of "permanent service" found in Sections 91.025, 393.106 and 394.315, RSMo., in effect at the relevant time. If no such statutory definitions exist, the term shall be defined as it appeared in Section 91.025, RSMo. 1994, and shall be liberally construed to give effect to the expressed intent of this Agreement.

D. The term "Effective Date" shall mean 12:01 a.m. on the date on which the Report and Order of the Missouri Public Service Commission approving this Agreement, as submitted or as may be modified by agreement between City and Cooperative prior to the issue date of such Report and Order, is effective pursuant to the terms of such Report and Order. If the Report and Order does not approve the Agreement as submitted, or as modified prior to the issuance of the Report and Order by agreement between City and Cooperative, or if some entity files an application for rehearing of the Report and Order pursuant to Section 386.500, RSMo. 1994, then there shall be no Effective Date of this Agreement until City and Cooperative both execute a document which establishes an Effective Date for purposes of this Agreement.

E. The phrase "receiving permanent service" shall mean physically connected to the facilities of the applicable supplier through facilities which are permanently installed in or on the structure, and such facilities are capable of delivering electrical power and energy for the anticipated permanent needs of the structure, whether or not any electric current is actually flowing or being used on the customer's side of the meter.

F. The term "existing structure" shall mean one which is complete and therefore not under construction as of the Effective Date.

G. The term "new structure" shall mean one on which construction has not commenced by the Effective Date, or one on which construction has commenced but the structure is not complete from the standpoint that permanent wiring for the electrical power and energy to be utilized by or within the structure has not been permanently installed or for which the respective electrical inspection authority has not granted a permit.

H. The term "customer" is used herein to describe a natural person, corporation, partnership, limited liability company, firm, association, trust, governmental agency or unit, political subdivision, or any other entity which has entered into a relationship with City or Cooperative to receive permanent electrical service at a structure.

3. ATTRIBUTES OF ZONE 1:

A. A legal description of the boundaries of Zone 1 is contained in Appendix A.

B. City shall have the exclusive right to provide permanent electrical service to all existing structures in Zone 1 which are receiving permanent service from the City on the Effective Date.

C. Cooperative shall have the exclusive right to provide permanent electrical service to all existing structures in Zone 1 which are receiving permanent service from Cooperative on the Effective Date, except as specified in Paragraph 3-F or Paragraph 4.

D. On and after the Effective Date, City shall have the exclusive right to provide permanent electrical service to any and all new structures in Zone 1 for which permanent service may be initiated. Therefore, Cooperative shall have no right to initiate permanent electrical service to any new structure in Zone 1 on or after the Effective Date.

E. On or after the Effective Date, if permanent electrical service is interrupted to an existing structure in Zone 1 due to 1) damage or destruction from fire, storm, or other unintended catastrophe, or 2) as a result of the intentional abandonment of the premises by the tenant or owner, but the structure continues to exist in an unoccupied state, then the supplier who was serving the structure immediately prior to the interruption shall be entitled to resume provision of such service to the structure once it is repaired, rebuilt or reoccupied.

F. If Cooperative was serving a structure in Zone 1 prior to the Effective Date with permanent electrical service, but the structure is intentionally demolished on or after the Effective Date, the City shall have the right to provide such service to any new structure constructed on the premises.

G. This Agreement does not purport to establish the rights of City or Cooperative to provide permanent electrical service in Zone 1 after expiration of the Term of this Agreement.

4. ANNEXATION BY CITY WITHIN ZONE 1:

A. The parties agree that the City shall continue to have the right, pursuant to the statutes of the State of Missouri governing municipal annexations, to annex some or all of the parcels within the boundaries of Zone 1 either in a single proceeding or multiple proceedings during the Term of this Agreement, and that nothing in this Agreement shall be construed to place any restrictions upon such statutory rights of the City either in Zone 1 or anywhere else.

B. If the City annexes a parcel or parcels located within Zone 1, the City shall, within sixty (60) days after the effective date of annexation, 1) provide the notice by publication in a newspaper of general circulation, and 2) provide written notice to Cooperative of City's intent to include any structure served by Cooperative within the annexed area into the City's service territory, as provided in Section 386.800, RSMo. 1994.

C. If the City annexes a parcel or parcels located within Zone 1, the City shall, within six (6) months after the effective date of the annexation, as provided in Section 386.800.3(2), RSMo. 1994, obtain the approval of the governing body of the City to begin negotiations with Cooperative on a territorial agreement. However, because of the existence of this Agreement as to property located in Zone 1, the negotiations called for in Section 386.800.4, RSMo., shall not be required to address a new territorial agreement between City and Cooperative, the grant of a franchise to Cooperative, authority for Cooperative to continue providing service in Zone 1, or the provision of wholesale service by Cooperative, but instead shall focus on the transfer of Cooperative's facilities in Zone 1 to the City, the compensation to be paid Cooperative therefor, and the establishment of the relevant portion of Zone 1 as an exclusive service territory for the City, as provided further herein. All other adjacent parcels so annexed shall be subject to the procedures outlined in Section 386.800.4, RSMo., this Agreement notwithstanding.

D. If the City annexes a parcel or parcels located within Zone 1, Cooperative hereby agrees to sell its properties and facilities used in serving the annexed parcel(s), free and clear of any and all liens or liabilities, to City. Cooperative waives any objections to the City being authorized by the Missouri Public Service Commission (PSC") as the exclusive service provider within the annexed area and agrees to cooperate with City in any application to the PSC necessary to accomplish such transfer. Cooperative agrees to sell the affected facilities within Zone 1 for the "fair and reasonable compensation" delineated in Section 386.800.5, RSMo., and as previously defined herein:

(i) So that this provision may be administered, Cooperative shall provide to City, within thirty (30) days from the date City notifies the Cooperative that it intends to purchase, pursuant to Section 386.800 and this Agreement, the Cooperative's facilities in the newly annexed area, a list identifying by name and address, all of the Cooperative's members/customers who are located within the newly annexed area that will be transferred to the City.

E. In consideration of Cooperative's agreement to sell its applicable facilities in Zone 1 to the City upon a completed annexation by City within Zone 1 as provided herein, Cooperative further agrees not to sell, lease, transfer or otherwise dispose of or transfer any interest in its facilities located within Zone 1 during the Term of this Agreement without the prior written consent of City. The City recognizes that all of the Cooperative's facilities owned and located, now or in the future, within Zone 1 are subject to a mortgage and security interest in favor of Rural Utilities Service (RUS) of the Department of Agriculture of the United States Government and NRECFC. Any transfers of Cooperative's facilities pursuant to this Agreement are subject to approval and partial release of liens by RUS and CFC. Additionally, to accomplish the contemplated sale(s) of Cooperative's facilities pursuant to this Agreement, Cooperative agrees to obtain the consent to such sale, or waiver of any objections to such sale, or purchase the interest of any third party that may have an interest in any of Cooperative's facilities in Zone 1 by reason of mortgage or otherwise, such consent, waiver or purchase to be made effective within a reasonable period of time considering the federal agencies involved. It is further understood by and between the parties that upon a sale of Facilities to City pursuant to this Section, that Cooperative will immediately begin the process of obtaining partial lien releases from RUS or NRECFC as soon as possible and will at all times continue to pay any and all liens and forever hold City harmless therefor until partial lien releases are obtained. Both parties acknowledge that considering the federal agencies involved, some time may elapse before the partial releases are obtained. Cooperative will make every effort within its power to obtain said releases as soon as practicable. In no case should the lien release period exceed eighteen (18) months from full payment by the City.

F. In consideration of Cooperative's agreement to sell its applicable facilities in Zone 1 to the City upon any annexation by City within Zone 1 as provided herein, Cooperative further agrees to maintain facilities used in providing service within Zone 1 in the same manner that it maintains its other facilities used in providing service to its customers and to not allow such facilities within Zone 1 to deteriorate or become unsafe, normal wear and tear excepted.

5. ATTRIBUTES OF ZONE 2:

A. A legal description of the boundaries of Zone 2 is contained in Appendix B.

B. City shall have the exclusive right to provide permanent electrical service to all existing structures in Zone 2 which are receiving permanent electrical service from the City on the Effective Date and Cooperative shall not have any right to provide such service to such structures.

C. Except as provided in Paragraph 6, Cooperative shall have the exclusive right to continue to provide permanent electrical service to all existing structures in Zone 2 which are receiving permanent electrical service from Cooperative on the Effective Date and the City shall not have the right to provide such service to such structures.

D. Except as provided in Paragraph 6, Cooperative shall have the exclusive right to provide permanent electrical service to any and all new structures in Zone 2 for which permanent electrical service is initiated on or after the Effective Date. Except as provided in Paragraph 6, City shall have no right to initiate permanent electrical service to any new structure in Zone 2 after the Effective Date.

E. Except as provided in Paragraph 6, on or after the Effective Date, if permanent electrical service is interrupted to an existing structure 1) as a result of damage or destruction due to fire, storm, or other unintended catastrophe, or 2) as a result of the intentional abandonment of the premises by the tenant or owner, but the structure continues to exist in an unoccupied state, then the supplier who was serving the structure immediately prior to the interruption shall be entitled to provide such service to the structure once it is repaired, rebuilt or reoccupied.

F. Except as provided in Paragraph 6, if a structure in Zone 2 is intentionally demolished subsequent to the Effective Date, Cooperative shall have the right to provide service to any new structure constructed on the premises.

G. This Agreement does not purport to establish the rights of City or Cooperative to provide permanent electrical service in Zone 2 after expiration of the Term of this Agreement.

6. ANNEXATION BY CITY WITHIN ZONE 2:

A. The parties agree that the City shall continue to have the right, pursuant to the statutes of the State of Missouri, to annex some or all of the parcels within the boundaries of Zone 2, either in a single proceeding or multiple proceedings during the Term of this Agreement, and that nothing in this Agreement shall be construed to place any restrictions upon such statutory rights of the City in Zone 2 or anywhere else.

B. On the Effective Date of the annexation by City of any parcel or parcels located within Zone 2, the exclusive right of Cooperative to provide permanent electrical service to any new structure in Zone 2 as provided in Paragraph 5-D shall cease with regard to the annexed area. On and after the effective date of such annexation, the City shall have the exclusive right to provide permanent electrical service to any structure within the annexed area which requires the initiation of permanent electrical service.

C. If the City annexes a parcel or parcels located within Zone 2, the City shall, within sixty (60) days after the effective date of the annexation, 1) provide notice by publication in a newspaper of general circulation, and 2) provide written notice to Cooperative of City's intent

to include any structure served by Cooperative within the annexed area into the City's service territory, as provided in Section 386.800, RSMo. 1994.

D. If the City annexes a parcel or parcels located within Zone 2, the City shall, within six (6) months after the effective date of the annexation, as provided in Section 386.800.3(2), RSMo. 1994, obtain the approval of the governing body of the City to begin negotiations with Cooperative on a territorial agreement. However, because of the existence of this Agreement, the negotiations called for in Section 386.800.4, RSMo., shall not be required to address a new territorial agreement between City and Cooperative, the grant of a franchise to Cooperative, authority for Cooperative to continue providing service in Zone 2, or the provision of wholesale service by Cooperative, but instead shall focus on the transfer of Cooperative's facilities in Zone 2 to the City, the compensation to be paid Cooperative therefor, and the establishment of the relevant portion of Zone 2 as an exclusive service territory for the City, as provided further herein. All other adjacent parcels so annexed shall be subject to the procedures outlined in Section 386.800.4, RSMo., this Agreement notwithstanding.

E. If the City annexes a parcel or parcels located within Zone 2, Cooperative hereby agrees to sell its properties and facilities used in serving the annexed parcel(s), free and clear of any and all liens or liabilities, to City. Cooperative waives any objections to the City being authorized by the PSC as the exclusive service provider within the annexed area and agrees to cooperate with City in any application to the PSC necessary to accomplish such transfer. Cooperative agrees to sell the affected facilities within Zone 2 for the "fair and reasonable compensation" delineated in Section 386.800.5, RSMo., with the following exception: Cooperative hereby waives the right to receive "four hundred percent (400%) of gross revenues less gross receipts taxes received by the affected electric supplier from the twelve (12) month period preceding the approval of the municipality's governing body" under the provisions of subdivision (2) of subsection 3 of Section 386.800, "normalized to produce a representative usage from customers at the subject structures in the annexed area" for those structures which are permanently connected to Cooperative's facilities in Zone 2 after the Effective Date of this Agreement. Instead of the compensation as set forth in 386.800.5(3), (four hundred percent (400%) of gross revenues less gross receipts taxes received by Cooperative from the twelve (12) month period preceding the approval of the City's governing body), Cooperative hereby agrees to a sale at two hundred percent (200%) for those structures that are either connected to Cooperative's facilities or begin receiving permanent service from Cooperative in Zone 2 after the Effective Date of this Agreement. All structures that were either connected to Cooperative's facilities or receiving permanent service from Cooperative in Zone 2 on the Effective Date of this Agreement, however, will be priced at the four hundred percent (400%) amount specified in Section 386.800.5(3).

(i) So that this provision may be administered, Cooperative shall provide to City, within thirty (30) days of the Effective Date of such annexation, a list identifying by name, address, and account number, all of Cooperative's customers within Zone 2 on the Effective Date.

(ii) If the PSC determines, for whatever reason, that it does not have the authority to modify the provisions of Section 386.800.5(3), RSMo., to give effect to the bargain reached between Cooperative and City which is reflected in Paragraph 6-E above, the failure of the PSC to give effect to such provision shall be considered as an impossibility of performance by both parties and this Agreement shall be null and void and of no consequence, it being understood by and between the parties that this Agreement must be approved by the Missouri Public Service Commission to have any legal effect.

F. In consideration of Cooperative's agreement to sell its applicable facilities in Zone 2 to the City upon a completed annexation by City within Zone 2 as provided herein, Cooperative further agrees not to sell, lease, transfer or otherwise dispose of or transfer any interest in its facilities located within Zone 2 during the Term of this Agreement without the prior written consent of City. The City recognizes that all of Cooperative's facilities owned and located, now or in the future, within Zone 2 are subject to a mortgage and security interest in favor of Rural Utilities Service (RUS) of the Department of Agriculture of the United States Government and NRECFC. Any transfers of Cooperative's facilities pursuant to this Agreement are subject to approval and partial release of liens by RUS and CFC. Additionally, to accomplish the contemplated sale(s) of Cooperative's facilities pursuant to this Agreement, Cooperative agrees to obtain the consent to such sale, or waiver of any objections to such sale, or purchase the interest of any third party that may have an interest in any of Cooperative's facilities in Zone 2 by reason of mortgage or otherwise, such consent, waiver or purchase to be made effective within a reasonable period of time considering the federal agencies involved. It is further understood by and between the parties that upon a sale of Facilities to City pursuant to this Section, that Cooperative will immediately begin the process of obtaining partial lien releases from RUS or NRECFC as soon as possible and will at all times continue to pay any and all liens and forever hold City harmless therefor until partial lien releases are obtained. Both parties acknowledges that, considering the federal agencies involved, some time may elapse before the partial releases are obtained. Cooperative will make every effort within its power to obtain said releases as soon as practicable. In no case should the lien release period exceed eighteen (18) months from full payment by the City.

G. In consideration of Cooperative's agreement to sell its applicable facilities in Zone 2 to City upon any annexation by City within Zone 2 as provided herein, Cooperative further agrees to maintain its facilities used in providing service within Zone 2 in the same manner that it maintains its other facilities used in providing service to its customers and to not allow such facilities within Zone 2 to deteriorate or become unsafe, normal wear and tear excepted.

7. ATTRIBUTES OF ZONE 3:

A. A legal description of the boundaries of Zone 3 is contained in Appendix C.

B. Cooperative shall have the exclusive right to provide permanent electrical service to all existing structures in Zone 3 which are receiving permanent electrical service from the Cooperative on the Effective Date and City shall not have any right to provide such service to such structures during the Term of this Agreement.

C. City is providing permanent electrical service to less than ten (10) existing structures in Zone 3 as of the date this Agreement is executed by City. City shall have the exclusive right to provide permanent electrical service to all such existing structures in Zone 3 and Cooperative shall not have any right to provide such service to such structures during the Term of this Agreement.

D. Cooperative shall have the exclusive right to provide permanent electrical service to any and all new structures in Zone 3 for which permanent electrical service is initiated on or after the Effective Date. City shall have no right to initiate permanent electrical service to any new structure in Zone 3 after the Effective Date and continuing through the Term of this Agreement. This Agreement does not purport to establish the rights of City or Cooperative to provide permanent electrical service in Zone 3 after expiration of the Term of this Agreement.

E. On or after the Effective Date and during the Term of this Agreement, if permanent electrical service is interrupted to an existing structure in Zone 3, 1) as a result of damage or destruction due to fire, storm or other unintended catastrophe, or 2) as a result of the intentional abandonment of the premises by the tenant or owner but the structure continues to exist in an unoccupied state, then the supplier who was serving the structure immediately prior to the interruption shall be entitled to provide such service to the structure once it is repaired, rebuilt or reoccupied.

F. If Cooperative was serving a structure in Zone 3 prior to the Effective Date with permanent electrical service, but the structure is intentionally demolished subsequent to the Effective Date but during the Term of this Agreement, Cooperative shall have the right to provide such service to any new structure constructed on the premises.

G. If City was serving a structure in Zone 3 prior to the Effective Date with permanent electrical service, but the structure is intentionally demolished subsequent to the Effective Date but during the Term of this Agreement, Cooperative shall have the right to provide such service to any new structure constructed on the premises.

H. This Agreement does not purport to establish the rights of City or Cooperative to provide permanent electrical service in Zone 3 after the expiration of the Term of this Agreement.

8. MATERIAL BREACH BY PARTIES:

If, after ten (10) day's advance written notice from Cooperative to desist, and such notice references this paragraph of this Agreement, City intentionally continues to provide permanent service to any structure which this Agreement does not allow City to serve but does allow Cooperative to serve, such conduct by City shall be a material breach of this Agreement and City shall pay to Cooperative liquidated damages in the amount of Ten Thousand Dollars (\$10,000.00), together with all attorney's fees and costs necessary to enforce this contract and, at the option of the non-breaching party, this Agreement shall immediately become null and

void.

If, after ten (10) day's advance written notice from City to desist, and such notice references this paragraph of this Agreement, Cooperative intentionally continues to provide permanent service to any structure which this Agreement does not allow Cooperative to serve, but does allow City to serve, such conduct by Cooperative shall be a material breach of this Agreement and Cooperative shall pay to City liquidated damages in the amount of \$10,000.00, together with all attorney's fees and costs necessary to enforce this contract, and, at the option of the non-breaching party, this Agreement shall immediately become null and void.

9. CONDITION PRECEDENT - REGULATORY APPROVALS:

This Agreement is conditioned upon receipt of approval by the PSC by Report and Order, the National Rural Electric Cooperative Financial Corporation, and the Rural Utility Services, with such approval being satisfactory in form and content to City and Cooperative. If neither party notifies the other in writing within ten (10) days after the effective date of a final order of the PSC approving this Agreement, or the approval of the National Rural Electric Cooperative Financial Corporation, or Rural Utility Services, it shall be presumed that all approvals are satisfactory in form and content to both parties. It is further understood that the approval of National Rural Electric Cooperative Financial Corporation and Rural Utility Services are conditions precedent to this Agreement, said approval being necessary to eventually obtain partial lien releases hereunder. In the event that National Rural Electric Cooperative Financial Corporation or Rural Utility Services would not, for whatever reason, give approval to this Agreement prior to its filing with PSC, then and in such event this Agreement shall be null and void and of no consequence. It is further understood that approval of this Agreement by Rural Utility Services and National Rural Electric Cooperative Financial Corporation is confirmation that those lenders will give partial lien releases to release any facilities sold and transferred pursuant to the formulas contained herein which determine fair and reasonable compensation.

10. PROCEDURE PRIOR TO APPROVAL BY PSC OF THIS AGREEMENT:

During the interval between the date of execution of this Agreement and the date it is approved by the PSC pursuant to Section 394.312, RSMo., the parties shall not be bound by the territorial division provisions of this Agreement and may provide service to any customer seeking service if the supplier can lawfully provide such service to the particular location. Pending the issuance of a decision either approving or denying approval of this Agreement by the PSC, however, neither Cooperative nor City shall construct primary or secondary electric facilities within the territory assigned exclusively to the other pursuant to this Agreement, unless ordered to do so by the PSC or a court of competent jurisdiction, unless mutually agreed to by the parties. If in the interim before this Agreement is approved by the PSC a new customer should locate on one side of a proposed boundary and request service from the party on the opposite side of the boundary, and the party has the existing right to provide such service, the parties agree to submit the matter to the PSC for determination in the docket set up for approval

of this Agreement. The parties agree to propose to the PSC in such case that the party which will have the exclusive right to serve the customer if this Agreement is approved by the PSC should have the exclusive right and obligation to serve the customer in the interim.

11. INDIRECT PROVISION OF SERVICE TO STRUCTURES NOT PERMITTED:

The intent of this Agreement is to designate an exclusive provider of retail electric service for structures or anything else using or designed to use electricity to be located within the described areas. Neither party shall furnish, make available, assist in providing, render or extend permanent electrical 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 service 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.

12. TERM:

The Term of this Agreement shall be twenty (20) years from and after the Effective Date. The expiration of the Term of this Agreement shall eliminate the exclusive service territories provided for herein, but shall not, in and of itself, entitle a party to provide service to a structure lawfully being served by the other party, or allow a change of suppliers to any structure in the other's then-effective service areas, unless such a change is otherwise permitted by law.

13. COOPERATION:

City and Cooperative agree to undertake all actions reasonably necessary to implement this Agreement. City and Cooperative shall cooperate with each other in presenting a joint application to the PSC demonstrating that this Agreement is in the public interest. City and Cooperative shall share equally in the costs assessed by the PSC for seeking administrative approval of this Agreement. All other costs incurred by the parties in seeking administrative approval of this Agreement will be borne by the respective party incurring the costs.

14. GENERAL TERMS:

A. Land Descriptions: The legal descriptions in the Appendices to this Agreement are assumed by the parties to be accurate and reliable and to match the map. Where the map does not correspond with the metes and bounds description, the map shall control.

B. No Constructive Waiver: No failure of City or Cooperative 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 hereto, their respective successors and assigns, during the Term hereof.

E. Lack of Approval or Termination: If the PSC or any other regulatory authority having jurisdiction does not approve this Agreement, or if the Condition Precedent is not fulfilled, this Agreement shall be nullified and of no legal effect between the parties. 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. Easements and Rights-of-Way: This Agreement shall not be construed to hinder or prevent either party from obtaining easements or rights-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 electrical service to its customers in other areas.

G. Future Subdivision Changes: The subsequent platting, re-platting, subdividing, re-subdividing, or renaming of any parcel or subdivision covered by this Agreement shall not affect the respective rights of either City or Cooperative established by this Agreement.

H. Governing Law: This Agreement shall be governed and controlled by the laws of the State of Missouri.

15. PARTIES TO EXERCISE GOOD FAITH IN IMPLEMENTING AGREEMENT:

It is understood by both parties hereto, that from time to time questions may arise regarding specific situations and the impact of this Agreement upon the electrical service to be provided to some particular customer or prospective customer. The parties hereto agree that they shall at all times communicate with one another in the good faith implementation of this Agreement, it being the goal of the parties to work with one another to give a reasonable and practical interpretation of the contents of this Agreement in any given situation. If differences arise concerning the interpretation of any portion of this Agreement that cannot be resolved by the parties, all parties agree to jointly seek an informal opinion of the Public Service Commission to resolve any such issues as soon as possible. Nothing herein shall invalidate any other portion of this Agreement during the process of reaching a resolution of a particular issue.

CITY OF POPLAR BLUFF, MISSOURI

By: _____

Chris Rushin, Mayor

ATTEST:

Pamela S. Kearley
Deputy City Clerk

(Seal)

OZARK BORDER ELECTRIC COOPERATIVE

By: _____

Bob Griffin, President

ATTEST:

Virgil Wagner
Virgil Wagner, Secretary

(Seal)

**OZARK BORDER - POPLAR BLUFF TERRITORIAL AGREEMENTS
POPLAR BLUFF ZONE 1**

All of that part of Sections 20, 21, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35 of Township 25 North, Range 6 East, and all that part of Sections 2, 3, 4, 5, 6, 8, 9, 10, 11, 14, 15, 16, and 17 of Township 24 North, Range 6 East of the Fifth Principal Meridian, Butler County, Missouri, described as follows: The POINT OF BEGINNING being the point of intersection of the North line of Section 26, Township 26 North, Range 5 East, with the Easterly right-of-way line of the Missouri Pacific Railroad; thence, Westerly along and with the North line of Sections 26, 27, and 28 to the one-quarter corner of Sections 21 and 28; thence, Northerly, along and with the East line of the Southwest Quarter of Section 21 to the Northeast corner of the Southwest Quarter of Section 21; thence, West along and with said North line and the North line of the South one-half of Section 20 to the West line of Section 20; thence, South along and with said West line to the Northeast corner of Section 30; thence, West along and with the North line of Section 30 to the Northwest Corner of the East one-half of the West one-half of the Northeast Quarter; thence, South along and with the West line of the East one-half of the West one-half of the Northeast Quarter to the Northeast Corner of property described in book 564 at page 151 in the Butler County Deed Records; thence, West along and with said North line a distance of 490.6 feet; thence, Southerly along and with the West line of said property a distance of 65.0 feet; thence, Westerly along and with the North line of property described in Book 730 at page 14 a distance of 134.0 feet to the Northwest Corner thereof; thence, Southerly parallel to the West line of the Northeast Quarter of said Section 30 and the West line of said property a distance of 479.5 feet to the Northerly right-of-way line of Oak Grove Road (County Road 438); thence, Easterly along and with said right-of-way line to the Westerly right-of-way line of the proposed U.S. Highway 67 By-pass; thence, Southerly along and with said Westerly right-of-way line through Sections 30 and 31, Township 25 North, Range 6 East, and through part of Section 6 Township 24 North, Range 6 East to the centerline line of Butler County Road number 450; thence, Easterly along and with said centerline to the West line of Section 5; thence, South along and with said West line to the Southwest corner of Section 5; thence, East along and with the South line of said Section 5 to the Southeast Corner of the Southwest Quarter of Section 5, Township 24 North, Range 6 East; thence, South along and with the centerline of Sections 8, and 17 to the Southwest corner of the East Half of Section 17; thence, East along and with the South line of Sections 17, 16, and 15 to the Southeast corner of Section 15; thence, North along and with the East line of said Section 15 to the Southwest Corner of the Northwest Quarter of the Northwest Quarter of Section 14; thence, East along and with the South line of said Northwest Quarter of the Northwest Quarter to the Southeast Corner of the West one-half of the Northwest Quarter of the Northwest Quarter; thence, North along and with the East line of the West one-half of the Northwest Quarter of the Northwest Quarter to the South line of Section 11; thence, East along and with said South line to the Southeast Corner of Section 11; thence, Northerly along

and with the East line of Sections 11 and 2 to the Northeast Corner of Section 2; thence, Westerly along and with the North line of Section 2 to the Southeast Corner of Section 35, Township 25 North, Range 6 East; thence, North along and with the East line of Section 35 to the Northeast Corner of the Southeast Quarter of Section 35; thence, West along and with the North line of the Southeast Quarter to the left bank of Black River; thence, Southwesterly along and with said left bank to the South line of the North one-half of the Southeast Quarter of said Section 35; thence, Westerly along and with said South line to the Easterly right-of-way line of the Missouri Pacific Railroad; thence, Northerly along and with said Easterly right-of-way line to The POINT OF BEGINNING, EXCEPTING THEREFROM, all of Deerfield Estates as filed in the Butler County Recorders's office and lying in the Southwest Quarter of Section 32, Township 25 North, Range 6 East, and also except Lots 1, 2, 5, 6, 7, and 8 of Minters Subdivision of part of the Northwest Quarter of the Northeast Quarter of Section 17, Township 24 North, Range 6 East.

AND ALSO, all of that part of Section 17, Township 24 North, Range 6 East described as follows: The POINT OF BEGINNING being the Northwest Corner of the South one-half of the Northwest Quarter of the Northwest Quarter; thence, South along and with the West line of the Northwest Quarter to the Northerly right-of-way line of existing U.S. highway 67; thence, Northeasterly along and with said right-of-way line to the West line of property described in book 556 at page 110; thence, Northerly along and with said West line and the West line of property described in book 628 at page 710 to the North line of the South one-half of the Northwest Quarter of the Northwest Quarter; thence, West along and with said North line to the POINT OF BEGINNING.

OZARK BORDER - POPLAR BLUFF TERRITORIAL AGREEMENTS
ZONE 2

All of that part of Sections 20, 21, 30, and 31 of Township 25 North, Range 6 East, and all of that part of Sections 6, 7, 8, 14, 17, and 18 of Township 24 North, Range 6 East of the Fifth Principal Meridian, all in Butler County, Missouri, described as follows:

All of the Northwest Quarter of Section 21; all of the North One-Half of Section 20; all of the South One-Half of Section 30 lying West of the proposed U.S. Highway Number 67 By-pass and South of the north right-of-way of Oak Grove Road (County Road 438); all of the Northwest Quarter of Section 30; all of the West One-half of the West One-Half of the Northeast Quarter of Section 30 except Poplar Bluff R-1 School District property described in Book 564 at page 151, Book 321 at page 371, Book 34 at page 26, Book 266 at page 41, and Book 730 at page 14; all of Section 31 lying West of U.S. Highway 67 By-pass; all of the West One-Half of Section 6, Township 24 North, Range 6 East lying North of the centerline of Butler County Road Number 450 and West of the centerline of U.S. Highway 67 By-pass; all of the South One-half of said Section 6 lying East of the centerline of U.S. Highway 67 By-pass and South of the centerline of Butler County Road Number 450; all of Section 7 lying East of the centerline of U.S. Highway 67 By-pass; all of the West One-half of Section 8; all of Section 18 lying East of the centerline of U.S. Highway 67 By-pass; all of the West One-half of Section 17 EXCEPT that part of the Northwest Quarter described as follows: The POINT OF BEGINNING being the Northwest Corner of the South One-half of the Northwest Quarter of the Northwest Quarter; thence, South along and with the West line of the Northwest Quarter to the Northerly Right-of-way line of existing U.S. Highway 67; thence, Northeasterly along and with said right-of-way line to the West Line of property described in Book 556 at page 110; thence, Northerly along and with said West line and the West line of property described in Book 628 at page 710 to the North line of the South One-half of the Northwest Quarter of the Northwest Quarter; thence, West along and with said North line to the POINT OF BEGINNING. AND ALSO all of Section 14, Township 24 North, Range 6 East EXCEPT the West One-half of the Northwest Quarter of the Northwest Quarter.

OZARK BORDER - POPLAR BLUFF TERRITORIAL AGREEMENTS
ZONE 3

All of that part of Sections 21, 22, 23, 26, and 35, Township 25 North, Range 6 East, all of that part of Sections 6, 7, 17, 18, 19, 20, 21, 22, and 23, Township 24 North, Range 6 East, and all of that part of Sections 12, 13, and 24, Township 24 North, Range 5 East of the Fifth Principal Meridian, all in Butler County, Missouri, described as follows:

The POINT OF BEGINNING being the Northeast Corner of Section 23, Township 25 North, Range 6 East; thence, South along and with the East line of Sections 23, 26, and 35 to the Northeast Corner of the Southeast Quarter of Section 35; thence, West along and with the North line of the Southeast Quarter of the Left bank of Black River; thence, Southwesterly along and with said Left bank to the South line of the North One-half of the Southeast Quarter; thence, Westerly along and with said South line to the Easterly right-of-way line of the Missouri Pacific Railroad; thence, Northerly along and with said Easterly right-of-way line to the North line of Section 26 also being the South line of Section 23; thence, Westerly along and with the South line of Sections 23, 22, and 21 to the Southwest Corner of the Southeast Quarter of Section 21; thence, North along and with the West line of the East One-half of Section 21 to the Northwest Corner of the Northeast Quarter of Section 21; thence, Easterly along and with the North line of Sections 21, 22, and 23 to the POINT OF BEGINNING. AND ALSO, all of Lots 1, 2, 5, 6, 7, and 8 of Minters Subdivision of part of the Northwest Quarter of the Northeast Quarter of Section 17, Township 24 North, Range 6 East. AND ALSO, the POINT OF BEGINNING being the point of intersection of the West line of Section 6, Township 24 North, Range 6 East with the centerline of Butler County Road Number 450; thence, Easterly along and with said centerline to the centerline of U.S. Highway Number 67 By-pass; thence, Southerly along and with said centerline to the North line of Section 19; thence, Easterly along and with the North line of Sections 19, 20, 21, 22, and 23 to the Northeast Corner of Section 23; thence, South along and with the East line of Section 23 to the Southeast Corner of Section 23; thence, West along and with the South line of Sections 23, 22, 21, 20, and 19 to the Southwest Corner of Section 19; thence, North along and with the West line of Section 19 to the Southeast Corner of Section 24, Township 24 North, Range 5 East; thence, Westerly along and with the South line of Section 24 to the Southwest Corner of Section 24, Township 24 North, Range 5 East; thence, North along and with the West line of Sections 24, 13, and 12 to the Northwest Corner of Section 12, Township 24 North, Range 5 East; thence, Easterly along and with the North line of Section 12 to the Northeast Corner of Section 12; thence, North along and with the West line of Section 6, Township 24 North, Range 6 East, to the POINT OF BEGINNING.