

THIRD TERRITORIAL AGREEMENT

THIS THIRD TERRITORIAL AGREEMENT is made and entered into as of this 17th day of May, 2019, by and between OZARK ELECTRIC COOPERATIVE (hereinafter "Ozark") and THE EMPIRE DISTRICT ELECTRIC COMPANY (hereinafter "Empire").

WITNESSETH:

WHEREAS, Empire and Ozark desire 1) to promote the orderly development of retail electrical service within a portion of the City of Ozark, Christian County, Missouri, 2) to avoid unnecessary and wasteful duplication of electrical facilities therein, and 3) to most effectively avail themselves of prior investment and planning for serving the public.

WHEREAS, this Third Territorial Agreement does not require any customer of either Ozark or Empire to change its supplier; and

WHEREAS, Empire and Ozark are authorized by law to provide electric service within certain areas of Missouri, including portions of Christian County; and

WHEREAS, Sections 394.312 and 416.041 RSMo., provide that competition to provide retail electrical service as between rural electric cooperatives, such as Ozark, and electrical suppliers, such as Empire, may be displaced by written territorial agreements.

NOW, THEREFORE, Empire and Ozark, 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 only to one parcel of land in the City of Ozark, Christian County, Missouri. A legal description of the parcel is as follows and shall herein after be referred to as “tract”:

PROPERTY DESCRIPTION OF THE KISSEE REPEATER STATION PARCEL (2526.5 Sq Ft, 0.058 ACRES): A PART OF THE NORTHEAST QUARTER (NE1/4) OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION 3, TOWNSHIP TWENTY—SEVEN NORTH (T27N), RANGE TWENTY—ONE WEST (R21W) OF THE 5th PRINCIPAL MERIDIAN IN CHRISTIAN COUNTY, MISSOURI, THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT AN IRON PIN WITH AN ALUMINUM CAP SET AT THE NORTHWEST CORNER OF SAID SECTION 3; THENCE S01°07'59"E, ALONG THE WEST LINE OF SAID SECTION 3, A DISTANCE OF 1488.40 FEET TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3; THENCE CONTINUING S01°07'59"E, ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3, A DISTANCE OF 1323.02 FEET TO THE SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3, (SAID CORNER ALSO BEING THE WEST QUARTER CORNER OF SAID SECTION 3); THENCE N89°35'40"E, ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3, A DISTANCE OF 1319.11 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3; THENCE S01°11'20"E, ALONG THE WEST LINE OF SAID NE1/4 OF THE SW1/4 OF SAID SECTION 3, A DISTANCE OF 43.61 FEET TO THE POINT OF INTERSECTION OF THE WEST LINE OF SAID NE1/4 OF THE SW1/4 OF SAID SECTION 3 WITH THE SOUTH BOUNDARY LINE OF MODOT HIGHWAY "J"; THENCE S01°11'20"E, ALONG THE WEST LINE OF SAID NE1/4 OF THE SW1/4 OF SAID SECTION 3, A DISTANCE OF 16.52 FEET TO A 5/8" Dia. IRON PIN (PLS-2199) SET 56.51 FEET RIGHT OF MODOT Hwy CENTERLINE STATION 207+72.05, SAID POINT BEING AT THE SOUTHWEST CORNER OF A TRIANGULAR PARCEL THAT WAS ACQUIRED BY MODOT BY GENERAL WARRANTY DEED DATED 11 JULY 2014 THAT IS RECORDED IN THE CHRISTIAN COUNTY RECORDER DEED RECORDS IN BOOK 2014 AT PAGE 8486, AND SAID SET IRON PIN MARKS THE TRUE POINT OF BEGINNING OF THE KISSEE REPEATER STATION PARCEL; THENCE S01°11'20"E, ALONG THE WEST LINE OF SAID NE1/4 OF THE SW1/4 OF SAID SECTION 3, A DISTANCE OF 33.88 FEET TO A 5/8" Dia. IRON PIN (PLS-2199) SET IN SAID LINE AT THE SOUTHWEST CORNER OF THE KISSEE REPEATER STATION PARCEL; THENCE N87°34'16"E, ALONG THE SOUTH LINE OF SAID KISSEE REPEATER STATION PARCEL, A DISTANCE OF 53.00 FEET TO A 5/8" Dia. IRON PIN (PLS-2199) SET AT THE SOUTHEAST CORNER OF SAID KISSEE REPEATER STATION PARCEL; THENCE N01°16'42"W, ALONG THE EAST LINE OF SAID KISSEE REPEATER STATION PARCEL, A DISTANCE OF 51.74 FEET TO A 5/8" Dia. IRON PIN (PLS-2199) THAT IS SET 40 FEET RIGHT OF MODOT Hwy "J" CENTERLINE STATION 208+25.66 IN THE SOUTH BOUNDARY LINE OF MODOT HIGHWAY "J" AT THE NORTHEAST

CORNER OF SAID KISSEE REPEATER STATION PARCEL; THENCE WESTERLY ALONG THE SOUTHERLY BOUNDARY LINE OF MODOT HIGHWAY "J" THAT IS ALONG A 12317.68 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 00°08'49", A CHORD DISTANCE OF 31.58 FEET, A CHORD BEARING OF S86°04'75"W, AN ARC LENGTH OF CURVE DISTANCE OF 31.58 FEET TO A 5/8" Dia. IRON PIN (PLS-2199) SET IN SAID MODOT HIGHWAY "J" SOUTHERLY BOUNDARY LINE THAT IS 40 FEET RIGHT OF MODOT CENTERLINE STATION 207+94.19; THENCE S49°29'55"W, ALONG THE SOUTHEASTERLY SIDE OF A (176.4 Sq Ft, 0.004 ACRE) TRIANGULAR PARCEL ACQUIRED BY MODOT BY GENERAL WARRANTY DEED DATED 11 JULY 2014 THAT IS RECORDED IN THE CHRISTIAN COUNTY RECORDER DEED RECORDS IN BOOK 2014 AT PAGE 8486, A DISTANCE OF 27.62 FEET TO THE ABOVE MENTIONED TRUE POINT OF BEGINNING. SAID KISSEE REPEATER STATION PARCEL CONTAINS (2526.5 Sq Ft, 0.058 ACRES) AND IS SUBJECT TO ANY EASEMENTS, RESTRICTIONS AND ENCUMBRANCES OF RECORD, IF ANY. ALSO, THIS KISSEE REPEATER STATION PARCEL IS SUBJECT TO AND IS TOGETHER WITH "RIGHT—OF—WAY AND EASEMENTS ACCESS RIGHTS" TO AND FROM A 50 FEET BY 50 FEET SQUARE TRACT OF LAND HAVING TERMS AND CONDITIONS STIPULATED IN ONE CHRISTIAN COUNTY, MISSOURI CIRCUIT COURT CASE No. 3240 DATED THE 13th DAY OF MAY, 1964 BY JUDGMENT DECREE IN FAVOR OF SOUTHWESTERN BELL TELEPHONE COMPANY THAT IS RECORDED IN BOOK 140 AT PAGE 49 IN THE CHRISTIAN COUNTY, MISSOURI RECORDER DEED RECORDS. SAID KISSEE REPEATER STATION PARCEL IS AS SHOWN ON SURVEY JOB No. 19-0411-7 BY D. NELSON MACKAY, PLS-2199, AND SAID SURVEY IS INCORPORATED FULLY HEREIN BY REFERENCE.

- b. A map of the above described tract is attached hereto and marked **Exhibit A**.
- c. This Agreement shall have no effect whatsoever upon service by Ozark or Empire in any other area.
- d. The described tract is located within the corporate limits of the City of Ozark, Missouri, and thus is not a "rural area" as defined by Section 394.020(3) RSMo.

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 Section 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 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 394.315 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 Empire and Ozark both execute a document which establishes an Effective Date for purposes of this Agreement.

3. Exclusive Service Areas Established.

- a. Ozark, pursuant to this Territorial Agreement, shall be entitled to provide permanent service to all structures now located within the tract 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 Ozark, as between Empire and Ozark. Empire does not now serve any structures, and shall not be allowed to serve any new structures, within the tract.
- b. This Agreement does not purport to affect the rights of any electric supplier not a party to this Agreement.

4. Service to Structures Receiving Service as of the Date of this Agreement. Structures within the tract include a building which is currently being served by Ozark Electric Cooperative. There is also a signboard, designed to be electronic, within the tract which is not currently being served by electricity. To the knowledge of Empire and Ozark, there are no other suppliers of electricity providing permanent electric service within the tract.

5. Structures Coming Into Existence After the Effective Date.

- a. After the Effective Date, Ozark shall have the exclusive right, as between Empire and Ozark, to provide permanent service to new structures within the tract described in Paragraph 1(a) above.
- 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 an 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.

6. 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.

7. Term. The initial term of this Agreement shall be thirty-five (35) years from and after the Effective Date (“initial term”). Thereafter, this Agreement shall be automatically renewed for successive ten (10) 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 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.
8. Cooperation. Empire and Ozark agree to undertake all actions reasonably necessary to implement this Agreement. Empire and Ozark will cooperate in presenting a joint application to the Commission demonstrating that this Agreement is in the public interest. Applicants shall pay equal halves of all the costs assessed by the Commission for seeking administrative approval of this Agreement. All other costs, including but not limited to the attorneys’ fees of each party, will be borne by the respective party incurring the costs, unless otherwise agreed by the parties.
9. General Terms.

- a. Land Description. The land description utilized in this Agreement is assumed by the parties to be accurate and sufficiently 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 Empire or Ozark 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 Empire or Ozark established by this Agreement.

10. Subsequent Legislation. This Agreement is reached between the parties based upon their understanding of the current state of the law in Missouri under Sections 394.312 and 394.315 RSMo., which allow 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 contemplates 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 Empire from providing electrical power and energy to structures within the Service Area of Ozark established by this Agreement, or Ozark from providing electrical power and energy to structures within the Service Area of


Empire established by this Agreement, under the terms of such future legislation, notwithstanding the terms of this Agreement to the contrary. However, if Sections 394.312 or 394.315 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 Sections 394.312 and 394.315 RSMo., as the case may be.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 7th day of May, 2019.

**THE EMPIRE DISTRICT
ELECTRIC COMPANY**

OZARK ELECTRIC COOPERATIVE

By: 

By: 

Title: VP - National Customer Serv.
experience

Title: General Manager / CEO

Attest: 

Attest: 

VERIFICATION

STATE OF MISSOURI)

SS

COUNTY OF JASPER

Being first duly sworn, Brent A. Baker states as follows: that he is the Vice President — National Customer Experience of The Empire District Electric Company and that he has read the foregoing application and the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief and that attorney Sarah Knowlton is authorized by The Empire District Electric Company to make this filing and represent the Company in this matter.



Brent A. Baker

Subscribed and sworn to before me this 10 day of May, 2019.



Notary Public