

**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**

- ★ 1993 Outer Rd
- Part of Service
- OH Primary
- - - UG Primary
- OH Secondary
- - - UG Secondary
- Property Line
- City Limit
- ▭ Township Range
- ▭ Merietta Service Co
- ▭ Wrensburg Service Co

0.00 0.05 0.10 0.15 0.20  
Miles

This map was prepared by the Merietta Service Company and Wrensburg Service Company for the purpose of showing the location of the 1993 Outer Rd. The map is not intended to be used for any other purpose. The map is not a legal document and should not be used as such. The map is not a warranty of any kind. The map is not a representation of any kind. The map is not a guarantee of any kind. The map is not a promise of any kind. The map is not a contract of any kind. The map is not a statement of any kind. The map is not a declaration of any kind. The map is not a confession of any kind. The map is not an admission of any kind. The map is not a concession of any kind. The map is not a withdrawal of any kind. The map is not a correction of any kind. The map is not a confirmation of any kind. The map is not a completion of any kind. The map is not a continuation of any kind. The map is not a correction of any kind. The map is not a confirmation of any kind. The map is not a completion of any kind. The map is not a continuation of any kind.

19939 Outer Rd  
Higginsville, MO

September 16, 2020