

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

In the Matter of the Application of The Empire)
District Electric Company and Ozark Electric)
Cooperative for Approval of a Written Territorial) **Case No. EO-2019-0381**
Agreement Designating the Boundaries of)
Exclusive Service Areas within Christian County)

STAFF RECOMMENDATION

COMES NOW Staff of the Missouri Public Service Commission, and in support of its *Staff Recommendation* (which is attached hereto and incorporated herein by reference) states as follows:

1. On June 4, 2019, The Empire District Electric Company (“Empire”) and Ozark Electric Cooperative (“Ozark Electric”) (collectively the “Joint Applicants”) filed an application requesting approval of a third territorial agreement (“TA”) which would designate a small parcel of land located within the city limits of Ozark, Missouri, in Christian County, Missouri, as the exclusive electric service area of Ozark Electric.

2. However, on June 6, 2019, Staff filed a motion that identified deficiencies in the application filed by the Joint Applicants on June 4, which included among other things the failure of the Joint Applicants to include with the application a copy of the actual TA for which approval was sought. On June 7, 2019, the Joint Applicants filed another application (the “Amended Application”), which addressed the deficiencies noted in Staff’s motion.

3. Thereafter, on June 10, 2019, the Commission issued its *Second Order Directing Notice, Setting Intervention Deadline and Directing Staff Recommendation*

("Second Order")¹ in which the Commission established a revised deadline of June 28, 2019 for any party desiring to intervene in this case and also revised the due date for Staff to file a recommendation to July 15, 2019.

4. As ordered in the Second Order, Staff hereby submits its Staff Recommendation, in memorandum form, which is attached hereto and incorporated herein by reference. As stated in Staff's Recommendation memorandum Staff recommends the Commission approve the Amended Application (and associated territorial agreement). Approval of the TA will allow both Empire and Ozark Electric to more efficiently and effectively use their existing facilities in the applicable area and thereby limit duplicative facilities.

5. In addition, if the Commission determines that the Amended Application and associated territorial agreement should be approved, Staff recommends that the Commission order Empire to file revised tariff sheets with the Commission as required by 4 CSR 240-3.130(1) and (2).²

WHEREFORE, Staff submits the attached *Staff Recommendation* as ordered by the Commission.

¹ The Commission had previously issued an *Order Directing Notice, Setting Intervention Deadline and Directing Staff Recommendation* on June 6, 2019.

² 4 CSR 240-3.130(2) provides that "All required information shall be furnished prior to the granting of the authority sought."

Respectfully submitted,

/s/ Jeffrey A. Keevil

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Attorney for the Staff of the

Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record this 15th day of July, 2019.

/s/ Jeffrey A. Keevil

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
File No. EO-2019-0381 – In the Matter of the Application of The Empire District Electric Company and Ozark Electric Cooperative for Approval of a Written Territorial Agreement Designating the Boundaries of Exclusive Service Areas within Christian County

FROM: Alan J. Bax – Engineering Analysis

/s/ Daniel I. Beck, PE / 06-28-19 /s/ Jeffrey A. Keevil /06-28-19
Engineering Analysis / Date Staff Counsel’s Office / Date

SUBJECT: Staff Memorandum Recommending Approval of Amended Application

DATE: July 15, 2019

STAFF RECOMMENDATION

The Staff of the Missouri Public Service Commission (“Staff”) recommends that the Missouri Public Service Commission (“Commission”) approve the Amended Application (“Application”) of The Empire District Electric Company (“Empire”) and Ozark Electric Cooperative (“Ozark Electric”), collectively referenced as the Joint Applicants (“Joint Applicants”), which requests approval of their Third Territorial Agreement (“TA”) that designates a parcel of land within the City of Ozark, Christian County, Missouri, to be exclusively served electrically by Ozark Electric, finding that the transaction is not detrimental to the public interest, pursuant to 394.312 and 416.041 RSMo, 4 CSR 240-2.060, and 4 CSR 240-3.130.

OVERVIEW

On June 4, 2019, the Joint Applicants filed an application requesting approval of their third TA that would designate a parcel of land in Christian County, Missouri, located within the city limits of Ozark, Missouri, as an exclusive electric service area of Ozark Electric. The terms of the TA apply only to the Joint Applicants; these terms have no effect on any other electric service provider. The terms of the TA do not include any request for an exchange of electric facilities or current customers/members. Thus, the Joint Applicants

will continue serving all their current customers/members even if these customers should lie in an exclusive service territory of the other electric service provider should the TA be approved by the Commission. The reasons cited for seeking approval of this TA include avoiding an otherwise necessary duplication of electric facilities in this specified area and allowing the Joint Applicants to make the most efficient and effective use of their existing resources.

On June 6, 2019, the Commission issued an *Order Directing Notice, Setting Intervention Deadline and Directing Staff Recommendation* in which the Commission directed the Data Center to send a copy of this Joint Application and this Commission Order to the County Commission of Christian County, Missouri, and directed its Public Information Office to make notice of this Order available to the members of the General Assembly representing Christian County, Missouri, as well as to newspapers that serve Christian County, Missouri. In this *Order*, the Commission also established a deadline of June 21, 2019 for any party desiring to intervene in this case and also directed Staff to file a recommendation by July 8, 2019.

However, on June 6, 2019, Staff filed a motion that identified deficiencies in the application filed by the Joint Applicants on June 4, which included the lack of a copy of the actual TA being included with the application. On June 7, 2019, the Joint Applicants filed their Amended Application, which addressed the deficiencies noted in Staff's motion.

On June 10, 2019, the Commission issued its *Second Order Directing Notice, Setting Intervention Deadline and Directing Staff Recommendation* ("*Second Order*") in which the Commission again directed its Data Center to send a copy of the Amended Application and this *Second Order* to the County Commission of Christian County, Missouri, and its Public Information Office to make notice of this *Second Order* available to the members of the General Assembly representing Christian County, Missouri, and to newspapers that serve Christian County, Missouri. This *Second Order* also established a revised deadline of June 28, 2019 for any party desiring to intervene in this case and also revised the due date for Staff to file a recommendation to July 15, 2019.

Ozark Electric is a rural electric cooperative organized under Chapter 394 RSMo to provide electric service to its members in all or parts of nine Missouri counties, including Christian County, in which lays the area that is the subject of the Amended Application. Although the Commission has limited jurisdiction over rural electric cooperatives, Ozark Electric is subject to the jurisdiction of the Commission in this case under Section 394.312 RSMo¹.

As a rural electric cooperative, Ozark Electric is not required to file annual reports or pay assessment fees. Further, Staff is not aware of any pending or final unsatisfied judgments against Ozark Electric from any state or federal court involving customer service or rates within three years of the date of this filing.

Empire is an electrical corporation subject to the jurisdiction of the Commission as specified, in part, by Chapters 386 and 393, RSMo. Empire is authorized to provide electricity around the area that is the subject of this Joint Application.

Empire is current on all assessment fees and annual report filings. The Staff is not aware of any other matter before the Commission that affects or is affected by this filing; nor is Staff aware of any pending or final unsatisfied decision against Empire from any state or federal court involving customer service or rates within the last three years that would affect or is affected by this filing.

DISCUSSION

Ozark Electric indicates it has been providing electric service to this parcel of land, the legal description of which is included in Section 1 of the TA attached to the Amended Application, since October 1980, at which time this parcel was in an unincorporated portion of Christian County, Missouri. This parcel was subsequently annexed into the city limits of Ozark, Missouri, which has a franchise agreement with Empire to provide electric service to structures within its city limits. A copy of this franchise agreement was provided

¹ Section 394.312.4 states, in relevant part, that "...before becoming effective, all territorial agreements entered into under the provisions of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligations of any party to an agreement, shall receive the approval of the public service commission by report and order..."

in Empire's Response to Staff Data Request No. 1. However, despite this franchise agreement with Empire, per 394.315.2 RSMo², Ozark Electric has maintained its electric service supplied to the current structures on this parcel.

As depicted on a recent image of this parcel, which is attached as Schedule AJB-1 to this Staff Recommendation, Ozark Electric is currently providing electric service to the CenturyLink building illustrated on this parcel. Recently, Ozark Electric says it received a request to provide lighting for the sign that is shown on said image. Despite Ozark Electric's provision of service to this CenturyLink building on this parcel, Ozark Electric may not legally provide electric service to any new structures because of the City of Ozark, Missouri's franchise agreement with Empire. Empire does serve the structures that surround this parcel, but it would be necessary to install a 200+ foot extension in order to provide lighting to this sign. Ozark Electric, with its existing line and service on the parcel, could provide the requested service of lighting to this sign with a simpler drop from its existing line. However, in order for Ozark Electric to provide service to any additional structures on this property, it was necessary for Ozark Electric and Empire to enter into a territorial agreement, an arrangement that was finalized on May 17, 2019.

As mentioned before, Section 1 of this TA contains the legal description of the lone parcel of land that is the subject of this Amended Application. Section 2 defines certain terminology that is contained in the TA. In Section 3, the Joint Applicants express their desire to have Ozark Electric be the exclusive service provider to this tract of land for all current structures and any future structures as well. The Joint Applicants also assert in Section 3 that this TA will not affect the rights of any other supplier of electricity not included in the TA. Section 4 identifies the structures which are currently receiving electric service from Ozark Electric, while Section 5 explains the intentions of the Joint Applicants regarding any structure that would request electric service prior to the Amended Application being approved by the Commission.

² Section 394.315.2 states, in relevant part, that "Once a rural electric cooperative, or its predecessor in interest, lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure..."

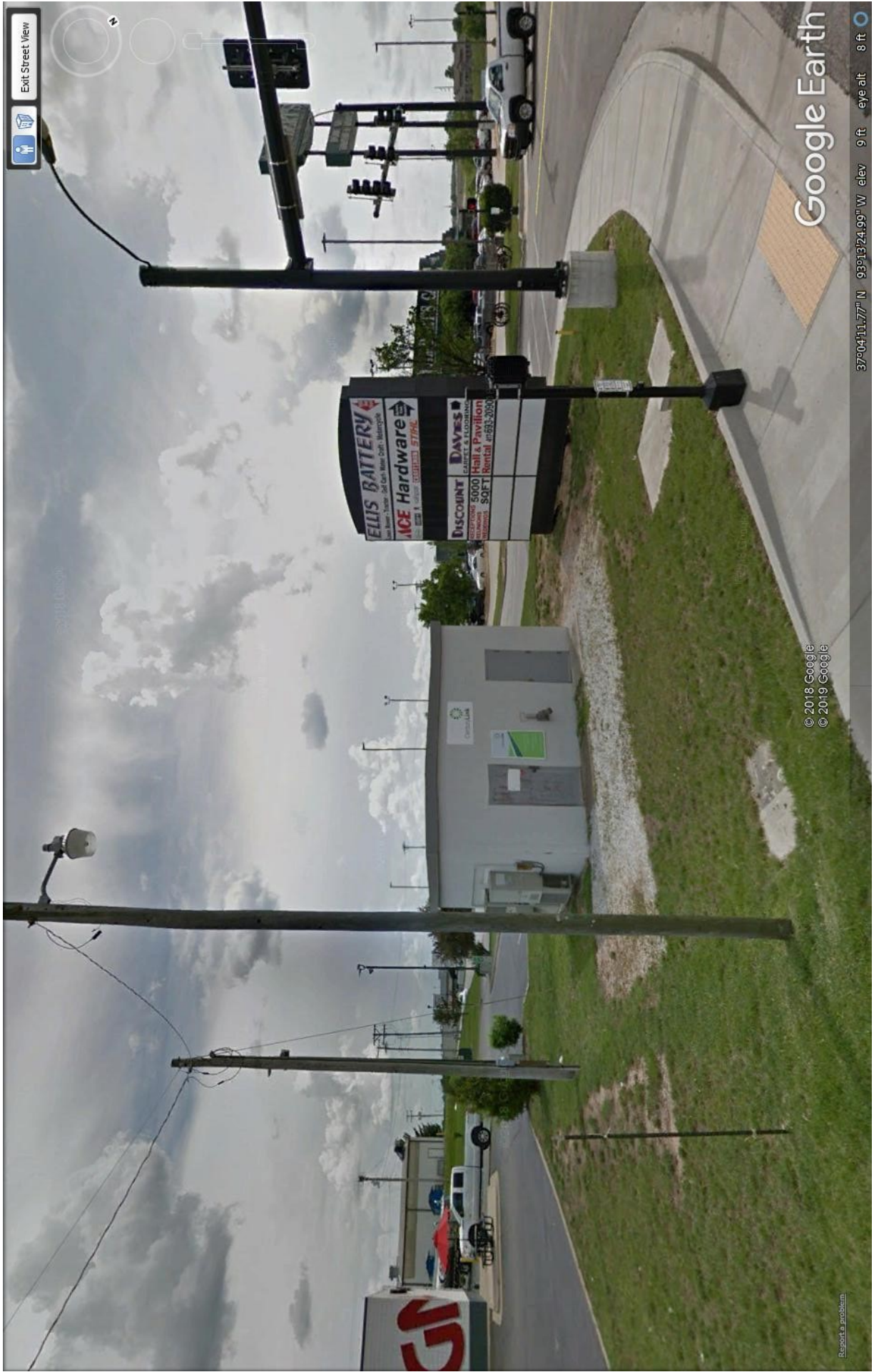
Section 6 describes the prohibition intended to be placed on either Ozark Electric or Empire in providing electric service to any structure on this parcel through an affiliate, another third party entity, a metering service, or any other indirect means. Section 7 stipulates that this TA, if approved, has an initial term of thirty-five years, and shall automatically be renewed for successive ten year periods unless notification is provided by Empire or Ozark Electric to the other in addition to the Commission and the Office of the Public Council at least one year prior to the TA's expiration date. Section 8 indicates that the Joint Applicants will pay in equal proportions any fees associated with seeking administrative approval of this TA with the Commission. Section 9 describes a number of general terms associated with the TA, while Section 10 addresses what effects possible future legislative actions might have on the Joint Applicants regarding the terms of this TA.

The terms of the TA would allow Ozark Electric to be the exclusive service provider to this parcel of land only. The TA does not include a request to sell and/or transfer any electric facilities or customers/members, as both Empire and Ozark Electric will maintain their existing customer/member base and associated facilities. In Staff's opinion, the TA enables both Empire and Ozark Electric to maximize utilization of their respective facilities and prevent an otherwise duplicative extension of facilities in order to provide requested lighting service to a sign. Should the Commission approve the Amended Application, the Staff suggests that the Commission order Empire to update its applicable tariff reflecting the terms of this TA.

CONCLUSION

For the reasons stated above, Staff is of the opinion that the Commission should approve the Amended Application, finding that this third TA between Empire and Ozark Electric, dated May 17, 2019, is not detrimental to the public interest, pursuant to Sections 394.312 and 416.041 RSMo, 4 CSR 240-2.060, and 4 CSR 240-3.130. Therefore, Staff recommends that the Commission approve the Amended Application, which will allow Ozark Electric to be the exclusive electric service provider, for current and future

structures, to a specific parcel of land located within the City of Ozark, in Christian County, Missouri. The legal description of said parcel is described in Section 1 of the Joint Applicants' TA that is attached to the Amended Application. Approval of the TA will allow both Empire and Ozark Electric to most efficiently and effectively use their existing facilities in the applicable area and thereby limit duplicative facilities. Should the Joint Application be approved, the Staff recommends that the Commission order Empire to file revised tariff sheets with the Commission reflecting the area included in the Joint Applicants' TA.



Google Earth

37°04'11.77" N 93°13'24.99" W elev 9 ft eye alt 8 ft

Case No. EO-2019-0381
Schedule AJB-1

**BEFORE THE PUBLIC SERVICE COMMISSION
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In the Matter of the Application of The Empire)
 District Electric Company and Ozark Electric)
 Cooperative for Approval of a Written Territorial)
 Agreement Designating the Boundaries of)
 Exclusive Service Areas Within Christian County)


File No. EO-2019-0381

AFFIDAVIT OF ALAN J. BAX

State of Missouri)
) ss.
 County of Cole)

COMES NOW Alan J. Bax and on his oath declares that he is of sound mind and lawful age; that he contributed to the attached *Staff Recommendation* in Memorandum form; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.



 Alan J. Bax

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 15th day of July, 2019.

D. SUZIE MANKIN Notary Public - Notary Seal State of Missouri Commissioned for Cole County My Commission Expires: December 12, 2020 Commission Number: 12412070
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 NOTARY PUBLIC