

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 31st day of July, 2019.

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)

File No. EO-2019-0381

**REPORT AND ORDER APPROVING
THIRD TERRITORIAL AGREEMENT**

Issue Date: July 31, 2019

Effective Date: August 30, 2019

This order approves the Third Territorial Agreement (“Agreement”) between Empire District Electric Company (“Empire”) and Ozark Electric Cooperative (“Ozark Electric”) (collectively, “Joint Applicants”). Empire has a franchise with the city of Ozark (the “City”), Christian County, Missouri, to provide electric service to structures within the City’s limits. The Agreement designates a parcel of land (the “parcel”) within that area to be exclusively served by Ozark Electric.

Findings of Fact

1. Ozark Electric is a rural electric cooperative organized under Chapter 394 RSMo, with its headquarters in Mount Vernon, Christian County, Missouri. Ozark Electric provides electricity service to its members in Christian and other Missouri counties.
2. Empire is a Kansas corporation with its principal offices in Joplin, Missouri. Empire provides electricity and water services in Missouri.

3. Empire has a franchise with the City to provide electric service to structures within its limits, and the parcel which is the subject of the territorial agreement is in the City.

4. Ozark Electric has been providing electric service to structures on the parcel since October 1980, prior and subsequently to its annexation into the City's limits.

5. Ozark Electric has received a request to provide electricity for a sign on the parcel, but this sign is a new structure.

6. Although Empire services the structures surrounding the parcel, Empire would have to install more than 200 feet of extension to get electricity to the new sign. Ozark Electric can provide the service with a simple line drop from existing facilities.

7. Addressing these circumstances, the joint applicants have entered into the Agreement¹ as follows:

- the Agreement gives Ozark Electric an exclusive right to provide permanent service to all structures now or in the future located on the parcel;²
- the Agreement contains the parcel's legal description;³
- the Agreement defines "permanent service" to carry the meaning as found in Section 394.315, RSMo;⁴
- the Agreement defines "structure" to carry the meaning found in Section 394.315, RSMo, in effect at the relevant time or, in the absence of such

¹ Appendix A of the Joint Application

² Section 3a of the Agreement

³ Section 1 of the Agreement

⁴ Section 2b of the Agreement

statutory definition, to mean “anything using or designed to use electricity that is located in the [parcel]”;⁵

- the Agreement defines “new structure” with respect to the Agreement’s effective date;⁶
- the Agreement’s “effective date” is 12:01 a.m. on the effective date of the Commission’s Report and Order approving the Agreement, unless the order is challenged as set out in detail in the Agreement;⁷
- the Agreement’s initial term is thirty-five years, with automatic renewals for successive ten-year periods absent notification to the parties, the Commission, and the Office of Public Council at least a year before the end of a period;⁸

8. The Agreement allows the parties to maximize the use of their respective facilities and avoid duplicative facilities, while still providing the requested electric service to the new sign.

9. The Agreement includes no exchange of electric facilities or current customers. The Staff of the Commission states and the Commission finds that the joint applicants will continue serving all of their current customers even if those customers “should lie in an exclusive service territory of the other electric service provider.”⁹

10. The parties filed their Joint Application on June 4, 2019. On June 6 and June 10, 2019, the Commission issued its Orders Directing Notice, Setting Intervention

⁵ Section 2a of the Agreement

⁶ Section 2c of the Agreement

⁷ Section 2d of the Agreement

⁸ Section 7 of the Agreement

⁹ Staff Recommendation, Appendix A, pp. 1-2

Deadline and Directing Staff Recommendation. No requests to intervene have been filed. On July 15, 2019, Staff filed a recommendation that the Commission approve the Agreement and order Empire to file revised tariff sheets reflecting service to the parcel. The Office of Public Counsel has not objected to the Application.

Conclusions of Law

A. Section 394.312, RSMo 2016, gives the Commission jurisdiction over the Agreement.

B. Empire is an electrical corporation subject to the jurisdiction of the Commission per Chapters 386 and 393, RSMo.

C. Although the Commission has limited jurisdiction over rural electrical cooperatives, because the Commission has jurisdiction over all territorial agreements, Ozark Electric is subject to the Commission's jurisdiction in this case.¹⁰

D. Despite the franchise agreement between Empire and the City, Ozark Electric has retained its electric service rights to the current structures on the parcel located within the City's limits.¹¹

E. Ozark Electric and Empire must enter into the Agreement and obtain the Commission's approval because the sign which Ozark Electric and its customer want Ozark Electric to service is a new structure.¹²

¹⁰ Section 394.312.4, RSMo, states, in relevant part: "[B]efore becoming effective, all territorial agreements entered into under the provision of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligation of any party to an agreement, shall receive the approval of the public service commission by report and order. . . ."

¹¹ Section 394.315.2, RSMo, states, in relevant part: "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. . . ." (emphasis added).

¹² See *id.*

F. Pursuant to subsections 394.312.3 and .5 RSMo 2016, the Commission may approve the Agreement's service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.

G. Section 394.312.5, RSMo 2016, provides that the Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing. Since the Agreement has been reached and no hearing has been requested, none is necessary for the Commission to make a determination.¹³ Based upon the uncontroverted verified pleadings and Staff's recommendation, the Commission now determines that all material facts are in accordance with its decision.

Decision

Rather than Empire's running a new line 200 or so feet onto Ozark Electric's parcel to service a new sign there, the Agreement allows Ozark Electric simply to drop a line from its existing facilities, thus allowing for more efficient electric service to the sign. Thus, the Agreement does not require Empire to extend service or provide new facilities to new areas and forces no customer to change service providers. The Commission concludes that the Agreement's service area designation is in the public interest and that the Agreement in total is not detrimental to the public interest. The Commission will approve it.

¹³ *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

THE COMMISSION ORDERS THAT:

1. The Third Territorial Agreement set out as Appendix A in the Joint Application filed on June 7, 2019, of Empire District Electric Company and Ozark Electric Cooperative is approved.
2. The Empire District Electric Company and Ozark Electric Cooperative are authorized to perform the Third Territorial Agreement and legal acts and things necessary to performance.
3. The Empire District Electric Company shall file revised tariff sheets to reflect the Third Territorial Agreement.
4. This order shall be effective on August 30, 2019.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and
Coleman, CC., concur.

Graham, Regulatory Law Judge

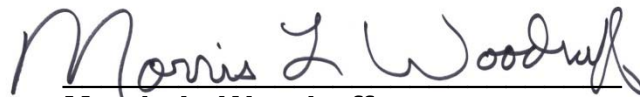
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission,
at Jefferson City, Missouri, this 31st day of July 2019.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

July 31, 2019

File/Case No. EO-2019-0381

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



Morris L. Woodruff
Secretary

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.