

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 30th day of
April, 2025.

In the Matter of the Joint Application of The Empire)
District Electric Company d/b/a Liberty and)
Southwest Electric Cooperative for Approval of)
Second Territorial Agreement Designating the)
Boundaries of Exclusive Service for Each Near the)
City of Bolivar, Missouri)

File No. EO-2025-0223

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT

Issue Date: April 30, 2025

Effective Date: May 10, 2025

On February 14, 2025,¹ The Empire District Electric Company d/b/a Liberty and Southwest Electric Cooperative (Southwest) (collectively, Joint Applicants), jointly filed an application seeking Commission approval of a second territorial agreement. The territory subject to the second territorial agreement concerns two parcels of land located near the City of Bolivar, Missouri. The application also requested a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017 and requested expedited treatment of their application.

Joint Applicants state in their application that approval of the *Second Territorial Agreement* would not be detrimental to the public interest because the Agreement prevents duplication of electric service facilities, no existing customers would be affected by the territorial agreement, no other territorial agreements are affected and the affected

¹ Unless otherwise indicated, all dates refer to the year 2025.

parties, City of Bolivar, Southwest and Liberty, have all requested that Southwest serve these parcels.²

On February 14, the Commission issued an *Order Directing Notice, Setting Intervention Deadline, and Directing Staff Recommendation*. No applications to intervene were received. Staff filed a Status Report on March 13 requesting an extension to file its recommendation by April 18. Staff filed its *Staff Recommendation* on April 15.

Staff recommends that the Commission find that the territorial agreement is not detrimental to the public interest and that the Commission approve the territorial agreement. Staff also recommends that the Commission waive the 60-day notice requirement. No party filed a response to Staff's recommendation nor to the Application.

FINDINGS OF FACT

1. Liberty is a Missouri corporation, organized and existing under the laws of Missouri, with its principal office and place of business in Joplin, Missouri. Liberty is primarily engaged in the business of providing electric utility service to the public in its certificated areas in Missouri.³

2. Southwest is a rural electric cooperative, organized and existing under the laws of Missouri, with its principal office in Bolivar, Missouri. Southwest is engaged in the distribution of electric energy and service to its members within certain Missouri counties.⁴

3. The territorial agreement specifically designates the boundaries of exclusive electric service areas near Bolivar, Missouri. The territorial agreement does not

² *Joint Application for Approval of Second Territorial Agreement and Request for Waiver of 60-Day Notice and Expedited Treatment*, pp. 3-4 (filed February 14, 2025).

³ *Joint Application for Approval of Second Territorial Agreement and Request for Waiver of 60-Day Notice and Expedited Treatment*, p. 1 (filed February 14, 2025).

⁴ *Joint Application for Approval of Second Territorial Agreement and Request for Waiver of 60-Day Notice and Expedited Treatment*, p. 2 (filed February 14, 2025).

include an exchange of customers or facilities between the Joint Applicants. There are no other known electric service providers in the area. Under the territorial agreement, each applicant will continue to have service responsibilities outside of the boundaries specified in the territorial agreement, and the territorial agreement does not impair each applicant's ability, in the provision of electric service, to build generation, transmission, or distribution facilities within the exclusive service area of the other applicant.

4. The *Second⁵ Territorial Agreement* would allow Southwest to serve two parcels of land located in the rights-of-way of Highways 13, 32, and 83 that lie within the city limits of Bolivar, Missouri in Polk County. Parcel 1 is located southeast of Highways 13 and 83 within the highways' rights-of-way, where the City of Bolivar desires to establish service to a pre-existing billboard that it owns.⁶ Parcel 2 is located northwest of Highways 13 and 32 within the highways' rights-of-way, where the City of Bolivar desires to establish service to another billboard that it owns.⁷

5. Liberty's closest facilities are located approximately 2,000 feet from Parcel 1 and 600 feet from Parcel 2. Southwest's closest facility is located 550 feet from Parcel 1 and 325 feet from Parcel 2.⁸ Southwest is able to provide electric service to the billboard more economically and efficiently than Liberty.

6. The City of Bolivar as well as the Joint Applicants have all requested that Southwest serve these parcels.⁹

⁵ Joint Applicants initially filed an application to amend the First Territorial Agreement in File No. EO-2025-0188, however, this was withdrawn and a Second Territorial Agreement was filed upon finding the First Territorial Agreement covered only "a portion of Greene County, Missouri." Bolivar, as well as Polk County, Missouri, were not covered in the first agreement at all.

⁶ *Staff Recommendation, Memorandum*, p. 2 (filed April 15, 2025).

⁷ *Staff Recommendation, Memorandum*, p. 2 (filed April 15, 2025).

⁸ *Staff Recommendation, Memorandum*, p. 3 (filed April 15, 2025).

⁹ *Staff Recommendation, Memorandum*, p. 3 (filed April 15, 2025).

7. As both parcels are within highway rights-of-way, there are currently no customers, other than the City of Bolivar, and there are no expected future customers that would be transferred between Joint Applicants. Accordingly, no changes of suppliers are requested in the application.

8. On June 7, 2002, Joint Applicants entered into a territorial agreement (“Territorial Agreement”), which was approved by the Commission on August 27, 2002, in File No. EO-2002-1119. Paragraph 6(C) of the Territorial Agreement allows the Joint Applicants to agree, on a case-by-case basis and through an addendum to the Territorial Agreement, to allow a structure to receive service from one party though the structure is located in the electric service territory of the other.

9. The territorial agreement allows each of the applicants to serve customers located in the exclusive service territory of the other on a case-by-case basis, provided that each agree and the Commission grants the specific request.¹⁰

10. No existing customers of either Liberty or Southwest will be affected by this territorial agreement.¹¹

11. Staff recommends that the Commission find that the territorial agreement is not detrimental to the public interest and that the Commission approve the territorial agreement.¹²

12. With their Application, Joint Applicants filed verified declarations that they had no communication with the Commission regarding substantive issues likely to arise in this file within 150 days before filing its application.

¹⁰ *Joint Application, First Territorial Agreement*, p. 4 (filed June 10, 2002).

¹¹ *Staff Recommendation, Memorandum*, p. 3 (filed April 15, 2025).

¹² *Staff Recommendation, Memorandum*, p. 3 (filed April 15, 2025).

CONCLUSIONS OF LAW

A. Liberty is a corporation providing electrical services in Missouri and is subject to the jurisdiction of the Commission per Chapters 386 and 393, RSMo.¹³

B. Southwest is a rural electric cooperative organized under Chapter 394, RSMo, to provide electric service to its members in Missouri.

C. Section 394.312.1, RSMo 2016, authorizes territorial agreements between rural electric cooperatives and electrical corporations. Before becoming effective, territorial agreements must receive Commission approval by report and order.¹⁴

D. The Commission need not hold a hearing if, after proper notice and opportunity to intervene, no party requests such a hearing.¹⁵ The Commission may approve the application if it determines that approval of the territorial agreement, in total, is not detrimental to the public interest.¹⁶

E. Commission Rule 20 CSR 4240-4.017(1) requires that any person intending to file a case before the Commission file notice of the intended filing at least 60 days before the case is filed. Commission Rule 20 CSR 4240-4.017(1)(D) provides that the Commission may waive the 60-day notice filing requirement for good cause, including the affirmation of the parties that they have not had contact with the Commission about the application within 150 days before filing the application.

F. Pursuant to Commission Rule 20 CSR 4240-2.080(18), a pleading may be amended within ten days of filing, unless a responsive pleading has already been filed,

¹³ Section 386.020(15), RSMo (Supp. 2024).

¹⁴ Section 394.312.4, RSMo 2016.

¹⁵ *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

¹⁶ Section 394.312.5, RSMo 2016.

or at any time by leave of the Commission. Under the rule, parties are allowed ten days from the amended pleading filing date in which to respond.

DECISION

No existing customers of either Liberty or Southwest will be affected by this territorial agreement. No parties oppose approval of the agreement, and no requests to intervene have been filed. No party has requested a hearing; therefore, none is necessary for the Commission to make a determination on the application.

The Commission finds that approval of the territorial agreement is not detrimental to the public interest in that it prevents future installations of duplicative electric service facilities, Southwest can provide electric service to the parcels more economically and efficiently than Liberty, and the affected parties, City of Bolivar, Southwest and Liberty, have all requested that Southwest serve these parcels. Accordingly, the Commission will approve the territorial agreement.

The Commission will grant Joint Applicants' request for waiver of the 60-day case filing notice requirement under Commission Rule 20 CSR 4240-4.017. The Commission finds good cause exists for waiver based on Joint Applicants' verified declarations that they had no communication with the Commission regarding substantive issues likely to arise in this case within 150 days before filing their application.

So that the territorial agreement may be enacted as soon as possible, the Commission will grant the request for expedited treatment. Therefore, the Commission finds it reasonable to make this report and order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. The territorial agreement between the Joint Applicants, attached to the *Joint Application for Approval of Second Territorial Agreement and Request for Waiver of 60-Day Notice and Expedited Treatment*, as Appendix C, and attached to this Order, is approved.
2. No later than May 15, 2025, Liberty shall file revised tariff sheets that reflect the change in its certificated electric service area in Polk County resulting from this Order.
3. No ratemaking determinations are made as part of this Order.
4. The 60-day notice of case filing requirement is waived for good cause found pursuant to 20 CSR 4240-4.017(1)(D).
5. This order shall be effective on May 10, 2025.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Hahn, Ch., Coleman, Kolkmeier,
and Mitchell CC., concur.

Fewell, Regulatory Law Judge

SECOND TERRITORIAL AGREEMENT

THIS SECOND TERRITORIAL AGREEMENT is made and entered into as of this 13th day of February, 2025, by and between SOUTHWEST ELECTRIC COOPERATIVE (hereinafter "Southwest") and THE EMPIRE DISTRICT ELECTRIC COMPANY d/b/a LIBERTY (hereinafter "Liberty").

WITNESSETH:

WHEREAS, Liberty and Southwest desire 1) to promote the orderly development of retail electrical service in the City of Bolivar, Polk 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 Second Territorial Agreement does not require any customer of either Southwest or Liberty to change its supplier; and

WHEREAS, Liberty and Southwest are authorized by law to provide electric service within certain areas of Missouri, including portions of Polk 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 Southwest, and electrical suppliers, such as Liberty, may be displaced by written territorial agreements.

NOW, THEREFORE, Liberty and Southwest, 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 two parcels of land in the City of Bolivar, Polk County, Missouri. A description of the parcels is as follows and shall herein after be referred to as "tracts":

Northbound exit ramp at Hwy 13 and Hwy 83 between Hwy 13 and the deceleration lane.

Southbound exit ramp at Hwy 13 and Hwy 32 between Hwy 13 and the deceleration lane.

b. Maps of the above described tracts are attached hereto and marked as **Exhibits 1 &**

2.

c. This Agreement shall have no effect whatsoever upon service by Southwest or Liberty in any other area.

d. The described tracts are located within the corporate limits of the City of Bolivar, 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 Missouri Public Service Commission ("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 Liberty and Southwest both execute a document which establishes an Effective Date for purposes of this Agreement.

3. Exclusive Service Areas Established.

- a. Southwest, pursuant to this Territorial Agreement, shall be entitled to provide permanent service to all structures now located within the tracts described in Paragraph l(a) above and all new structures that may be built therein and therefore it shall be considered the exclusive Service Area of Southwest, as between Liberty and Southwest. Liberty does not now serve any structures, and shall not be allowed to serve any new structures, within the tracts.
- 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. There are billboards, designed to be electronic, within the tracts which is not currently being served by electricity. To the knowledge of Liberty and Southwest, 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, Southwest shall have the exclusive right, as between Liberty and Southwest, to provide permanent service to new structures within the tracts 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. Liberty and Southwest agree to undertake all actions reasonably necessary to implement this Agreement. Liberty and Southwest will cooperate in presenting a joint application to the Commission demonstrating that this Agreement is in the public interest. Liberty

agrees to pay the filing fee 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 Liberty or Southwest 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 Liberty or Southwest 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 Liberty from providing electrical power and energy to structures within the Service Area of Southwest established by this Agreement, or Southwest from providing electrical

power and energy to structures within the Service Area of Liberty 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.

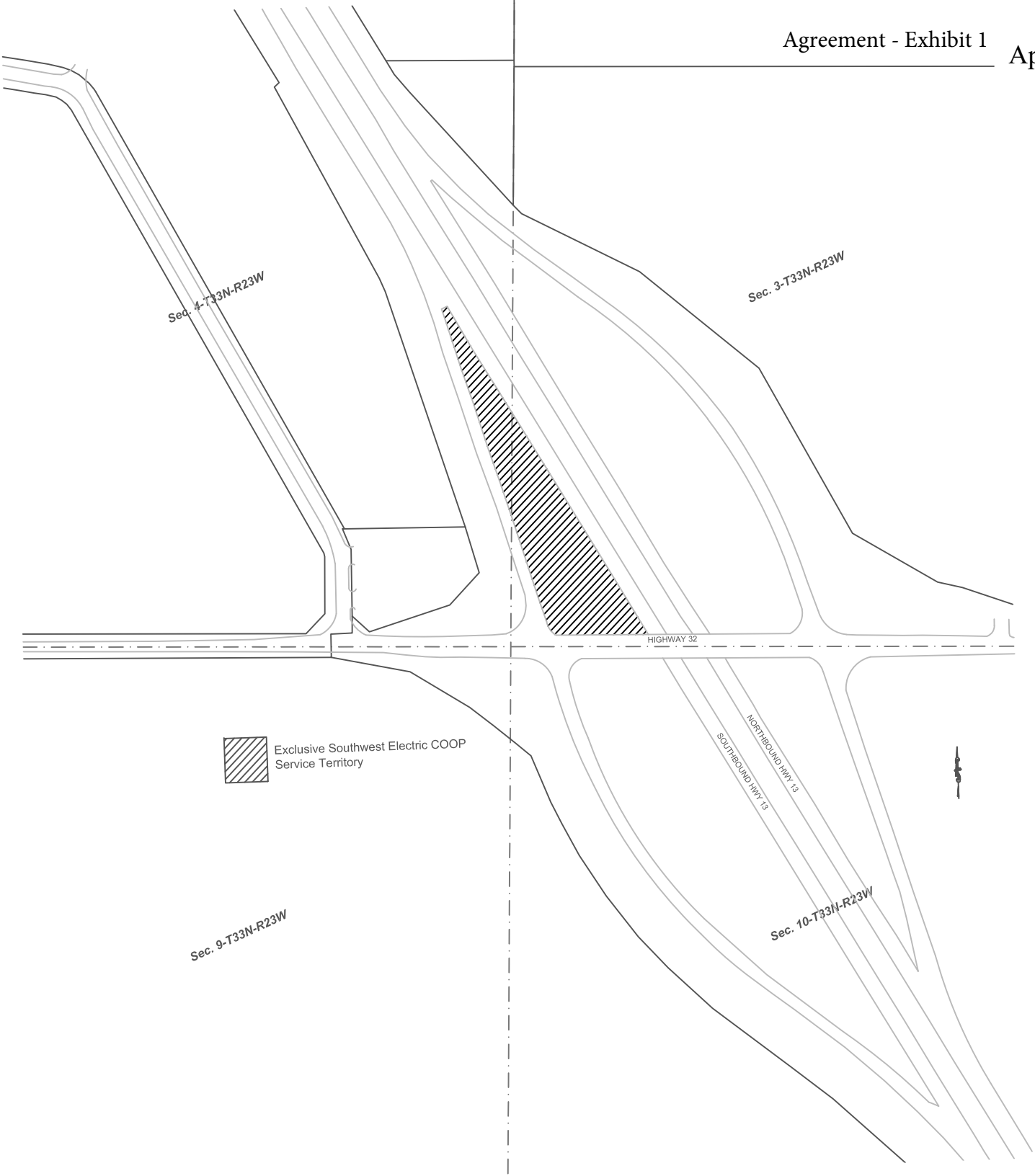
IN WITNES WHEREOF, the parties have executed this Agreement as of this 13 day of February, 2025.

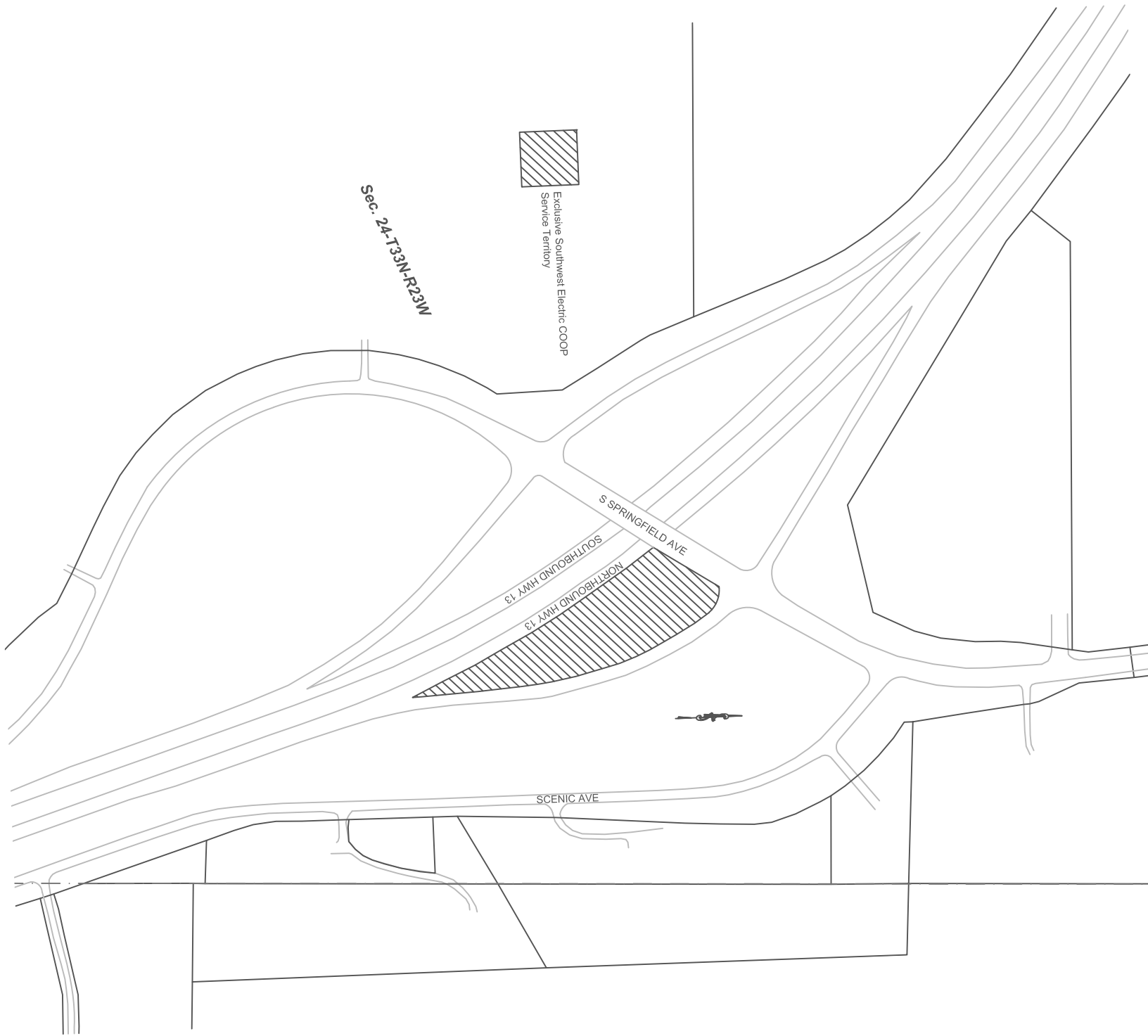
THE EMPIRE DISTRICT ELECTRIC
COMPANY d/b/a Liberty

SOUTHWEST ELECTRIC COOPERATIVE

By: [Signature]
Title: President-CR Electric
Attest: Sherri Blalock

By: James Ashwood
Title: CEO/GM
Attest: Sarah H. Wagon



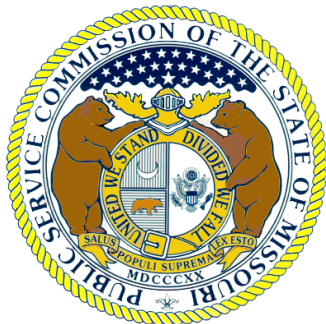


STATE OF MISSOURI

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 30th day of April 2025.



Nancy Dippell

Nancy Dippell
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

April 30, 2025

File/Case No. EO-2025-0223

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

Sincerely,



**Nancy Dippell
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.