

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

In the Matter of the Application of The	)	
Empire District Electric Company d/b/a	)	
Liberty and Ozark Electric Cooperative for	)	<b><u>File No. EO-2025-0253</u></b>
Approval of a Written Territorial Agreement	)	
Designating Boundaries of Exclusive	)	
Service Areas for Each in Christian County	)	

**STAFF’S RECOMMENDATION**

Comes now the Staff of the Missouri Public Service Commission, by and through its undersigned attorney, and makes the following recommendation.

1. On March 20, 2025,<sup>1</sup> The Empire District Electric Company d/b/a Liberty (“Liberty”) and Ozark Electric Cooperative Inc. (“Ozark Electric”), (collectively referenced as the “Joint Applicants”) filed a Joint Application requesting approval of a First Addendum to their Third Territorial Agreement (“TA3”). The Joint Applicants seek to add fifteen parcels to the scope of TA3. Eleven of these parcels will be served exclusively by Liberty, and the remaining four will be served exclusively by Ozark Electric.

2. On March 20, the Commission issued its Order Directing Notice, Setting Intervention Deadlines, and Directing Staff Recommendation. After further procedures, the Commission has set May 15 as the deadline for Staff’s Recommendation.

3. Staff’s Report is attached hereto and incorporated as **Appendix A**. Therein Staff describes fully and in detail its investigation, findings, conclusions and recommendations. As explained in Staff’s Report, the implementation of the

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<sup>1</sup> All date references will be to 2025 unless otherwise stated.

Addendum to TA3 will make the most efficient use of currently available facilities and should reduce the likelihood of future facility duplication. Liberty has three-phase facilities bordering both the east and west sides of the eleven parcels it will serve and has the needed available capacity for the anticipated load increase. Likewise, Ozark Electric has three-phase facilities and an available substation on the west side of the four parcels that it will serve and has the needed available capacity to service the anticipated new load from those parcels.

4. Section 394.312.5, RSMo, states that where the matter of a territorial agreement has been resolved by a stipulation and agreement, the Commission “may approve the application if it determines that approval of the territorial agreement in total is not detrimental to the public interest.”

5. Based upon Staff’s investigation, findings, and conclusions as set out in its Report, Staff concludes that approval of the territorial agreement in total is not detrimental to the public interest.

6. While Staff does not oppose the Commission’s granting the Joint Application with the conditions set out in Staff Report, Staff does have concerns about some procedures. TA3 was approved on July 31, 2019, in File EO-2019-0381. The parcel subject to TA3 was within the City of Ozark and Liberty had a franchise with the city to provide electric services to structures within its limits. Ozark Electric had been providing electric service to structures on the parcel since October 1980, prior and subsequently to the parcel’s annexation into the city’s limits. The initial impetus for TA3 was a request to Ozark Electric to provide electricity for a single sign on the parcel where the sign was to be a new structure. Although Liberty did service structures surrounding

this parcel, Liberty would have had to install more than 200 feet of extension to get electricity to the new sign, whereas Ozark Electric could provide the service with a simple line drop from existing facilities. Thus, at the end of the day, TA3 concerned one parcel and a sign requiring only a line drop from existing facilities. In addressing the question of granting the application for TA3, the Commission found as a “Finding of Fact”:

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.’<sup>2</sup>

In its Decision Approving TA3, the Commission stated:

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 Application for TA3 contained a legal description of the subject parcel, duly prepared by a surveyor, and an aerial map locating and showing in its **Exhibit A** the sign structure in question. **Exhibit A** is attached hereto. Comparing it to the map which the Joint Applicants have provided in the case now before the Commission illustrates the magnitude of the proposed addendum to TA3 and raises the procedural question: Is the application before the Commission not in fact something far more than simply an “amendment”?

Commission Rule 20 CSR 4240-3.130 (4) requires a \$500 filing fee for an application or petition for a territorial agreement. Subsection (5) states that no filing fee is required for the “review of proposed amendment(s) to an existing territorial

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<sup>2</sup> Order, paragraph 9.

agreement . . .” The Commission’s rule regarding filing fees was pretty clearly promulgated to address the question of the administrative expenses attendant upon processing territorial agreements. That the Commission then also distinguished between territorial agreements and the “review of amendments” thereto, requiring fees for the former and none for the latter, strongly reinforces the conclusion that the filing fee was for cases potentially requiring significant administrative resources. In the case before the Commission, do we have an “amendment,” a “supplemental agreement,” or a “territorial agreement”? If the answer is a “supplemental agreement,” is it subject to a filing fee? The problem is with the language of the rule. Unfortunately, to our question we will get different well-reasoned arguments based on definitions, grammar, logic, and statutory construction maxims, but all ultimately guided by what each party wants the answer to be.

That the Commission promulgated a rule requiring filing fees and cut out an exception for amendments does not support a conclusion that the Commission intended that a filing fee for cases increasing the scope of a TA from a dropped electrical line on one parcel to 15 more parcels could be avoided with the simple expediency of interpolating the words “addendum” or “amendment” into the title of a pleading; or that the Commission intended that a filing fee would depend on the outcome of an argument about the difference between pleading titles, or upon a detailed preliminary review of the scope of the final result—e.g., how many customers, what counties and what electrical facilities would be involved. In short, whether a filing fee is required at the start of a case should not be a “case by case” matter with broad discretion both ways. And a full, detailed case by case analysis involving significant administrative time at the initial filing to decide

whether the case may be even filed without a fee quite literally “puts the cart before the horse” and defeats the purpose of the filing fee rule.

7. All parties as well as the Commission have an interest in saving administrative expenses, and so it is no surprise that where the language of a rule invites the parties to find ways to save administrative expenses, they do so. And that they do so should not hold up the forward progress of a case. Because granting the application is not detrimental to the public interest, the Staff recommends approval of the application subject to the condition that Liberty file revised tariff sheets reflecting the area covered by the approved addendum.

**WHEREFORE**, Staff prays that the Commission accept the Staff’s Report and Recommendation as compliant with the Commission’s Orders.

Respectively Submitted,

/s/ *Paul T. Graham*

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**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 as reflected on the certified service list maintained by the Commission in its Electronic Filing Information System this 15<sup>th</sup> day of May, 2025.

/s/ *Paul T. Graham*

## **MEMORANDUM**

TO: Missouri Public Service Commission Official Case File  
Case No. EO-2025-0253 – In the Matter of the Application of  
The Empire District Electric Company d/b/a Liberty and Ozark Electric  
Cooperative for Approval of a Written Territorial Agreement Designating  
the Boundaries of Exclusive Service Areas For Each in Christian County

FROM: Alan J. Bax, Associate Engineer, Engineering Analysis Dept.

/s/ Alan J. Bax      05/15/2025  
Industry Analysis Division / Date

SUBJECT: Staff Memorandum Recommending Approval of Application

DATE: May 15, 2025

## **STAFF RECOMMENDATION**

Staff of the Missouri Public Service Commission (“Staff”) recommends that the Missouri Public Service Commission (“Commission”) approve the Application of The Empire District Electric Company d/b/a Liberty (“Liberty”) and Ozark Electric Cooperative Inc. (“Ozark Electric”), (collectively referenced as the “Joint Applicants”), that requests approval of the Joint Applicants’ First Addendum to their Third Territorial Agreement (“Joint Application”), concluding that the Joint Application is not detrimental to the public interest per Section 394.312 RSMo (2021) and 20 CSR 4240-3.130. The Joint Application contains the required documentation as specified in 20 CSR 4240-2.06 and 20 CSR 4240-3.130. Approval of this Joint Application would allow Liberty and Ozark Electric to solely provide electric service to new structures installed on eleven and four parcels respectively, as between them, as these parcels are legally described in the Joint Application. Approval of the Joint Application will allow Joint Applicants to most efficiently utilize available capacity on their existing facilities located in or near their respective designated parcels, which also limits the possibility of future duplication of facilities. While the Joint Applicants requested an expedient implementation of Addendum No. 1 to their Third Territorial Agreement in their Joint Application, contending there were customers awaiting to receive permanent electric service in a timely manner, the Joint Applicants failed to initially provide a detailed, illustrative map that

depicted the parcels described in their Joint Application. This deficiency was addressed with such a map being filed on May 5, 2025, in Liberty's Response to Staff Data Request No. 3.<sup>1</sup> The Joint Applicants also requested a Waiver of the 60-day notice requirement specified in Commission Rule 20 CSR 4240-4.017 for good cause shown. While the Joint Applicants assert that there are no other electric service providers in the area, Staff notes that White River Electric Cooperative Inc. ("White River") serves in Christian County, Missouri near the city limits of Ozark.<sup>2</sup> The Joint Application only applies to Liberty and Ozark Electric as White River is not a party to the Joint Applicants' Third Territorial Agreement.

### **OVERVIEW**

The Joint Applicants filed their Joint Application on March 20, 2025. Attachments to the Joint Application included a copy of the Joint Applicants' Third Territorial Agreement ("3<sup>rd</sup> TA"), which was approved by the Commission in its *Report and Order Approving Third Territorial Agreement* filed on July 31, 2019, along with a copy of their 1<sup>st</sup> Amendment to 3<sup>rd</sup> TA ("1<sup>st</sup> Amendment"). The Joint Applicants desire to add fifteen additional parcels to the lone parcel that was the sole subject of the 3<sup>rd</sup> TA. Eleven of these fifteen parcels would be exclusively served by Liberty and the remaining four would be exclusively served by Ozark Electric should the Commission approve their request made in the Joint Application.

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 lies the parcels that are the subject matter of this Joint Application. 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

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<sup>1</sup> A copy of this map is attached to this Staff Recommendation as Schedule AJB-1.

<sup>2</sup> White River currently has an open case before the Commission (EO-2025-0228) in which it is requesting to be the sole electric service provider to an approximate 26-acre parcel that has been recently annexed into the city limits of Ozark and is located within a mile of a portion of the parcels identified in the current Joint Application.

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.

Liberty is an electrical corporation subject to the jurisdiction of the Commission as specified, in part, by Chapters 386 and 393, RSMo. Liberty 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 Liberty 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.<sup>3</sup>

### **DISCUSSION**

The Joint Applicants requested approval of their 3<sup>rd</sup> TA on June 7, 2019. The 3<sup>rd</sup> TA only considered a single, small parcel that had recently been annexed into the city limits of Ozark, Missouri (“Ozark”).<sup>4</sup> The owner of the property desired Ozark Electric to provide electric service to a repeater station and sign, citing Ozark Electric had an existing electric line routed across his small parcel. However, since the property had been annexed into the City of Ozark, which has a franchise agreement with Liberty, it was necessary to file a Territorial Agreement to allow Ozark Electric to be considered the electric service provider to the parcel and the repeater station despite Ozark Electric’s existing line routed across the property.

Ordinarily, when an amendment to a territorial agreement is sought, the parties to the territorial agreement will be requesting for an alternative result from the explicit terms defined in the territorial agreement associated with the specific parcels that were originally identified in the territorial agreement. Rarely have parties to territorial agreements requested to amend such agreements by desiring to add additional parcels to those previously specifically identified and included and approved by the Commission.<sup>5</sup>

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<sup>3</sup> Staff notes that there is an on-going investigation currently before the Commission concerning billing issues involving Liberty in Case No. OO-2025-0233.

<sup>4</sup> Attached to this Staff Recommendation as Schedule\_AJB-2 is an illustration of the repeater station and associated sign on the small island parcel that was the sole subject of the 3<sup>rd</sup> TA.

<sup>5</sup> Staff notes that such a request was made on one other occasion. The City of St. Robert and Laclede Electric Cooperative Inc. filed to add a second subdivision, located on the southwest side of the City of St. Robert, in Case No. EO-2022-0143 as an Amendment to a Territorial Agreement. This Territorial Agreement had been



However, that is the situation in the current case. The Joint Applicants are requesting Amendment No. 1, desiring to add fifteen parcels to the original single, small parcel that was the sole subject of the Joint Applicants' 3<sup>rd</sup> TA.<sup>6</sup> Unlike most territorial agreements filed with the Commission historically, the 3<sup>rd</sup> TA does not contain a provision of amending the document in the future, presumably because the subject matter of the 3<sup>rd</sup> TA was merely a small single parcel, which offered little, if any reason, to contemplate future such amendments.<sup>7</sup>

Nonetheless, the Joint Applicants seek to add fifteen parcels to the 3<sup>rd</sup> TA instead of presenting, for Commission approval, a new territorial agreement. Staff Counsel advises that requesting the 1<sup>st</sup> Amendment is a viable alternative and will explain this further in the Cover Pleading that will accompany this Staff Recommendation. Hence, in evaluating these fifteen parcels included in the Joint Application, eleven of the fifteen parcels would be exclusively served by Liberty and the remaining four parcels would be exclusively serviced by Ozark Electric, as between them, should the Joint Application be approved.

Liberty has three-phase facilities bordering on both the east and west sides of the eleven parcels that would be designated as their exclusive service territory with available capacity for serving additional anticipated load in the short term installed on these eleven parcels. Comparatively, Ozark Electric has three-phase facilities routed along the west side of the four parcels that would be designated as their exclusive service territory along with a substation within a half-mile of the four parcels that have sufficient available capacity to serve anticipated new load installed on these parcels in the short term. Making the most efficient use of a currently available facilities should reduce the possibility of future duplication.

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approved by the Commission fifteen years prior in Case No. EO-2007-0315, which only specifically identified a subdivision located on the northeast side of the City of St. Robert.

<sup>6</sup> The Joint Application was filed as an amendment to an existing territorial agreement rather than identifying the associated fifteen parcels in a request for a new territorial agreement.

<sup>7</sup> While the 3<sup>rd</sup> TA does not contain a provision specifically addressing "amendments" in the future, it does contain a section relating to "Modifications" under the "General Terms" section of the agreement. Section 9. c. states:

Modification. Neither the boundaries described in the is 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.

Considering the recent map provided in Liberty's Response to Staff Data Request No. 3, in tandem with other previously provided information, the Joint Applicants have now provided all the required information in regard to processing their request made in the Joint Application, including the necessary waiver from filing a necessitated 60-day notice of their Joint Application, per 20 CSR 4240-4.017, for good cause shown, as illustrated in Appendices E and F respectively for Liberty and Ozark Electric.

The Joint Applicants mention that there are no other electric service providers in the area as required by 20 CSR 4240 3.130. However, Staff notes that White River provides electric service to its members in Christian County, Missouri, including those near the city limits of Ozark. Moreover, there is a case currently open before the Commission in which White River is seeking Commission approval to be the exclusive service provider to proposed future development on an approximate 26-acre property that has recently been annexed into the city limits of Ozark in Case No. EO-2025-0228.<sup>8</sup>

### **CONCLUSION**

For the reasons stated above, Staff is of the opinion that the Commission should approve the Joint Application, finding that the request for Amendment No. 1 to their 3<sup>rd</sup> TA between Liberty and Ozark Electric is not detrimental to the public interest, pursuant to Sections 394.312 and 416.041 RSMo (2021), 4 CSR 240-2.060, and 4 CSR 240-3.130. Commission approval of the Joint Application will allow Liberty and Ozark Electric to solely provide electric service to new structures installed on eleven and four parcels respectively, as between them, in Christian County, Missouri just north of the city limits of Ozark. The Joint Applicants provided detailed legal descriptions of the associated parcels in their Joint Application and depicted the parcels sufficiently on the illustrative map provided by Liberty in its Response to Staff Data Request No. 3. Approval of the Joint Application will allow both Liberty and Ozark Electric to most efficiently and effectively use their existing facilities in the applicable area and thereby limiting the possibility of duplicative facilities in the future. Should the Commission

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<sup>8</sup> This approximate 26-acre property lies less than a mile south of parcels identified in the Joint Application.

approve the Joint Application, Staff recommends that the Commission order Liberty to file revised tariff sheets with the Commission reflecting the area included in the Joint Application.

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of the Application of The Empire     )  
District Electric Company d/b/a Liberty and     )  
Ozark Electric Cooperative for Approval of a     ) File No. EO-2025-0253  
Written Territorial Agreement Designating     )  
Boundaries of Exclusive Service Areas for Each     )  
in Christian County     )

**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.

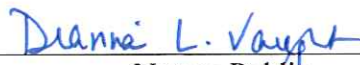
Further the Affiant sayeth not.

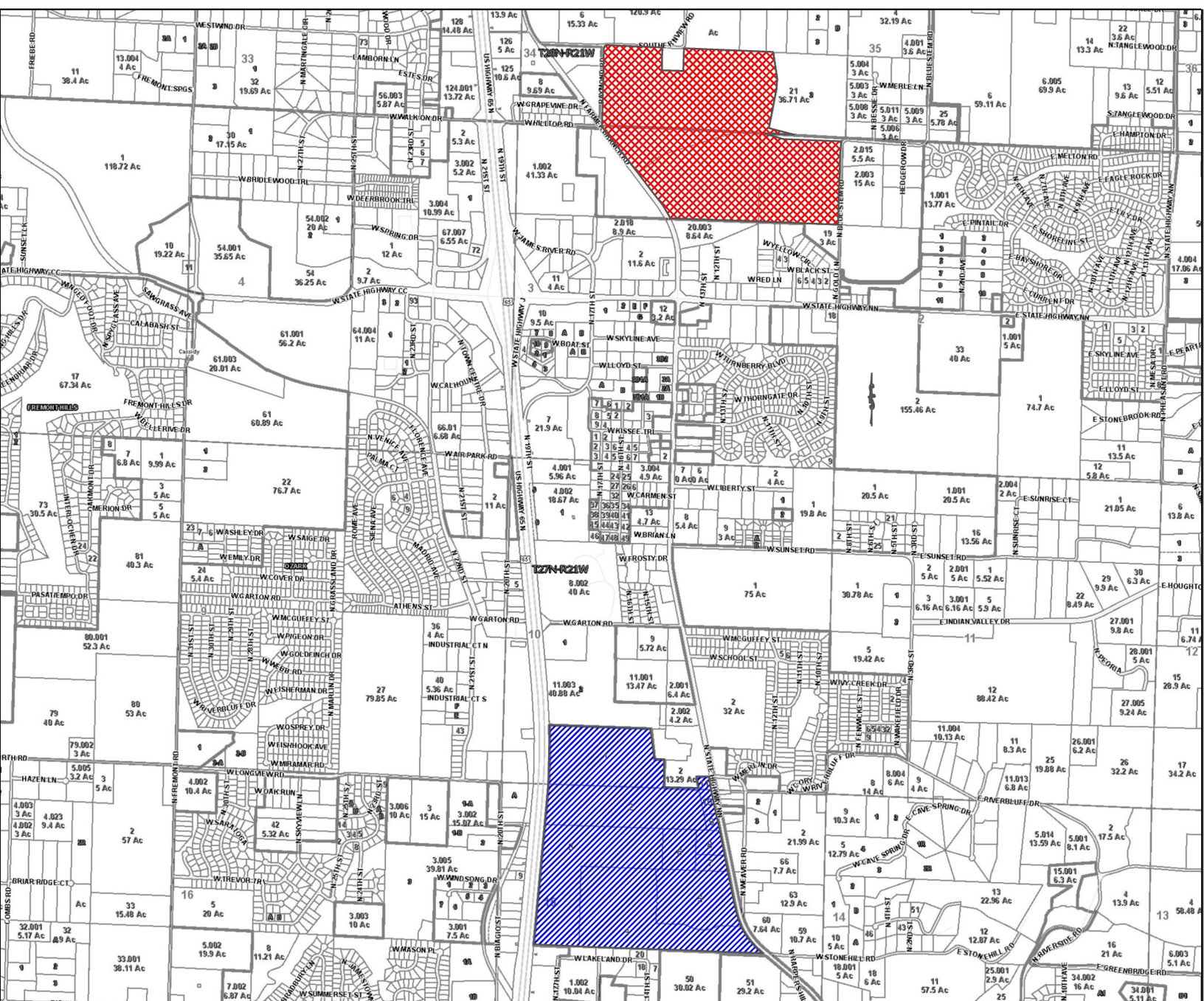
  
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**ALAN J. BAX**

**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 15<sup>th</sup> day of May 2025.

DIANNA L. VAUGHT Notary Public - Notary Seal State of Missouri Commissioned for Cole County My Commission Expires: July 18, 2027 Commission Number: 15207377
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Notary Public



LEGEND

- OZARK ELECTRIC COOPERATIVE (OEC) 
- EMPIRE DISTRICT ELECTRIC COMPANY (EDE) 

CITY OF OZARK TERRITORY AGREEMENT MAP



