

SECOND TERRITORIAL AGREEMENT

BETWEEN

OZARK ELECTRIC COOPERATIVE

AND

THE EMPIRE DISTRICT ELECTRIC COMPANY

SECOND TERRITORIAL AGREEMENT

THIS SECOND TERRITORIAL AGREEMENT is made and entered into as of the 7th day of September, 2010, between Ozark ELECTRIC COOPERATIVE (hereinafter "Ozark") and THE EMPIRE DISTRICT ELECTRIC COMPANY (hereinafter "Empire").

WHEREAS, Ozark and Empire desire (1) to promote the orderly development of retail electrical service within portions of Christian County; (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; and

WHEREAS, this Territorial Agreement does not require any customer of either Ozark or Empire to change its supplier.

RECITALS

- A. Ozark is authorized by law to provide electric service within the State of Missouri, including portions of Christian County;
- B. Empire is authorized by law to provide electric service within the State of Missouri, including portions of Christian County;
- C. The Missouri Legislature by Section 394.312, RSMo, has authorized electrical corporations and rural electric cooperatives to enter into written territorial agreements;
- D. Now, Ozark and Empire desire to promote the orderly development of the retail electric service within Christian County, Missouri; and
- E. Ozark and Empire desire to reduce the wasteful duplication of Customer Service Equipment.

AGREEMENT

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1.

DEFINITIONS

- 1.1 **Agreement** shall mean this document including any appendices or exhibits hereto.

- 1.2 **Customer** shall mean any person, partnership, corporation, company, political subdivision, or any agency, board, department or bureau of the state or federal government, or any other legal entity that has requested or is receiving electric service. Any Customer who has requested or is receiving electric service at one structure shall be a new and different Customer at each structure at which electric service has been requested.
- 1.3 **Effective Date** of this Agreement shall be the effective date of the order issued by the Commission pursuant to Section 394.312, RSMo, approving this Agreement.
- 1.4 **Electric Power Provider** shall mean any other third party electric corporation and/or rural electric cooperative.
- 1.5 **Existing Structure** shall mean any structure that receives electric energy from either party prior to or on the Effective Date of this Agreement. "Existing Structure" shall also mean:
1. Any replacement of an Existing Structure ("Replacement Structure"), provided said Replacement Structure is (1) located completely within the boundary of the property on which the Existing Structure is located, (2) used for the Same Purpose as the Existing Structure it is replacing, and (3) that the Existing Structure is totally removed from the property within six months of completion of the Replacement Structure.
 2. Any maintenance, repair, remodeling, or partial replacement of an Existing Structure.
- 1.6 **New Outbuilding** shall mean, if the Existing Structure's Purpose is residential, a New Structure that is a detached garage, detached storage building, gazebo, detached porch, or similar structure that is not attached to the Existing Structure in question and is not a residence. If the Existing Structure's Purpose is agricultural, a "New Outbuilding" is a New Structure that is a detached garage, barn, well, silo, grain bin, or similar structure that is not attached to an Existing Structure in question and is not a residence.
- 1.7 **New Structure** shall mean (i) any structure that did not receive electric energy from either party prior to or on the effective date of this Agreement and (ii) the replacement of an existing structure with a structure that does not satisfy the definition of Existing Structure set forth herein.
- 1.8 **Structure** shall have the same meaning as the statutory definition of the term "structure" found in Sections 393.106 and 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 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, and shall mean: an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus but shall not include customer-owned meter wiring. A structure shall include an original structure and any contiguous addition to or expansion thereto, but shall not include a metering device or customer-owned meter wiring.

- 1.9 **Laws and Regulations** shall mean all applicable statutes, regulations, codes, laws, licenses, decisions, interpretations, policy statements, regulatory guides, rules, criteria, all license requirements enforced or issued by any government, federal, state, or local, or any governmental agency, authority, or body, and industry-recognized guidelines and professional standards.
- 1.10 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.

ARTICLE 2.

EXCLUSIVE RIGHT TO SERVE

- 2.1 Each party shall be entitled to continue serving those Existing Structures it was serving as of the date of this Agreement, wherever those Structures are located. Unless the parties agree otherwise, a New Structure shall be served by the party in whose exclusive service area (described in Articles 3 and 4 of this Agreement) the New Structure is located. Pursuant to Section 394.312, RSMo, this Agreement designates the boundaries of the electric service area of Ozark and Empire for the territories described herein. In this Agreement, Empire agrees not to serve New Structures in an area described in Article 3, hereinafter referred to as the Exclusive Service Area of Ozark and Ozark agrees not to serve New Structures in an area described in Article 4, hereinafter referred to as the Exclusive Service Area of Empire.. Because Section 394.312, RSMo, permits electric suppliers to displace competition only by a written agreement, parties that are not signatories to this Agreement are in no way affected by the terms of this Agreement, including but not limited to, the exclusive service area boundaries set forth herein. This Agreement shall have no affect whatsoever upon service by Ozark or Empire in any areas other than those specifically described herein.

- 2.2 After the Effective Date, as between the parties, Ozark shall have the exclusive right to furnish electric service to all New Structures located within its Exclusive Service Area described in Article 3 of this Agreement, regardless of the size of the load or the characteristics of the customer's requirements. Except as provided expressly herein, Empire may not furnish, make available, render, or extend electric service to New Structures or for use within the exclusive service area of Ozark, either directly, indirectly, through a parent, affiliate, or subsidiary of Empire, whether said parent, affiliate, or subsidiary be a corporation, limited liability company, partnership, or company.
- 2.3 After the Effective Date, as between the parties, Empire shall have the exclusive right to furnish electric service to all New Structures located within its Exclusive Service Area described in Article 4 of this Agreement, regardless of the size of the load or the characteristics of the customer's requirements. Except as provided expressly herein, Ozark may not furnish, make available, render, or extend electric service to New Structures or for use within the exclusive service area of Empire, either directly, indirectly, through a parent, affiliate, or subsidiary of Ozark, whether said parent, affiliate, or subsidiary be a corporation, limited liability company, partnership, or company.
- 2.4 Both Parties retain the right to furnish electric service to all Existing Structures that they are serving by either permanent or temporary electric service on the Effective Date of this Agreement, regardless of their location.
- 2.5 During the time period between the filing date of this Agreement with the Commission and the Effective Date of the Agreement, if a customer requests new electric service for a Structure located in the Exclusive Service Area of one party from the other party, the parties will meet and determine the party and means to serve the Structure.
- 2.6 The parties recognize and agree that this Agreement places limits on the party's abilities to distribute retail electric energy. In the event that retail wheeling of unbundled electric energy becomes available in the territory affected by this Agreement, (i.e. retail customers are permitted to choose their suppliers of electric energy), nothing in this Agreement shall be construed to limit in any way the ability of either party to furnish electric energy to Structures located in the Exclusive Service Area of the other party; provided, however, that the electric energy shall be delivered to said Structures by means of the electric distribution facilities of the party in whose Exclusive Service Area the Structures are located. Further, in the event changes in this Agreement are required due to retail wheeling of unbundled electric energy becoming available in the territory affected by this Agreement, both parties agree to negotiate in good faith changes to this Agreement and the parties shall cooperate in obtaining approval of the modified agreement by participating in the joint application requesting Missouri Public Service Commission (Commission) approval, if required.

ARTICLE 3.

EXCLUSIVE SERVICE AREA OF OZARK

The Exclusive Service Area of Ozark shall be those portions of Christian County, Missouri, as identified in **Exhibit A** to this Agreement. A map of the service territories of Ozark and Empire is attached hereto as **Exhibit C**. Exhibits A and C shall be incorporated herein by reference and made a part of this Agreement as if fully set out verbatim.

ARTICLE 4.

EXCLUSIVE SERVICE AREA OF EMPIRE

The Exclusive Service Area of Empire shall be those portions of Christian County, Missouri, as identified in **Exhibit B** to this Agreement. A map of the service territories of Ozark and Empire is attached hereto as **Exhibit C**. Exhibits B and C shall be incorporated herein by reference and made a part of this Agreement, as if fully set out verbatim.

ARTICLE 5.

LOCATION OF A STRUCTURE

- 5.1 The location of a Structure for purposes of this Agreement shall be the geographical location at which electric energy is used, regardless of the metering point or point of delivery.
- 5.2 The first owner of a New Structure who requests and receives electric service at said Structure which is located on or crossed by any mutual boundary line, as described in Articles 3 or 4, defining the Exclusive Service Area of the Parties shall be permitted to choose either party for permanent electric service; provided that the Customer's meter is installed within that party's Exclusive Service Area. Thereafter, that party shall exclusively serve that Structure.
- 5.3 A party may provide electric service to a New Outbuilding located in the Exclusive Service Area of the other party, so long as (i) the New Outbuilding is located within the contiguous tract of land on which that party's customer's Structure is located and the New Outbuilding shall not be used for commercial or industrial purposes or (ii) the other party consents in writing. This section shall not apply to a customer who receives electric service from both Ozark and Empire on the same tract of land,

and requests additional electric service. The New Outbuildings for these customers shall be served by the designated exclusive service provider, unless the customer, Ozark, and Empire agree otherwise and follow the procedures set out in Article 6.

ARTICLE 6.

RIGHT TO CONSTRUCT FACILITIES

This Agreement shall in no way affect either party's right to construct such electric generation, distribution and transmission facilities within the designated Exclusive Service Area of the other as that party deems necessary, appropriate or convenient to provide electric service to its customers not inconsistent with the terms of this Agreement and as otherwise allowed by law.

ARTICLE 7.

CASE-BY-CASE EXCEPTION PROCEDURE

- 7.1 The parties may agree on a case-by-case basis, by Addendum hereto, to allow a new Structure (a structure not receiving permanent service as of the Effective Date of this Agreement) located near the boundary created by this territorial agreement to receive service from one party although the Structure is located in the Exclusive Service Area of the other party, when the interests of both parties and the owner of the structure are advanced thereby.
- 7.2 Such Addendum shall be filed with the Executive Secretary of the Commission in the same manner as a motion or other pleading, with a copy submitted to the Commission Staff, directed to the Utility Services Division director, and the Office of the Public Counsel. There will be no filing fee for these addenda.
- 7.3 Such Addendum shall be accompanied by a notarized statement that the two affected electric service providers support the Addendum and a notarized statement, signed by the customer to be served, in which the customer acknowledges receipt of notice of the contemplated electric service to be provided and that the Addendum represents an exception to the then existing territorial boundaries approved by the Commission, and that the customer consents to be served by the service provider contemplated in the Addendum.
- 7.4 Each Addendum shall consist of a statement identifying the Structure, the party to serve the Structure, the justification for the Addendum, and indicating that the parties jointly support the Addendum.

- 7.5 Each Addendum shall contain a statement in bold uppercase typeface indicating that the Staff and Office of the Public Counsel have forty-five (45) days to oppose the Addendum. If the Commission Staff or Office of the Public Counsel do not submit a pleading objecting to the Addendum within forty-five (45) days of the filing thereof, the Commission Staff and Office of the Public Counsel shall be deemed to have no objection to the Addendum. If such a pleading is filed, then the Commission should schedule an evidentiary hearing to determine whether the Addendum should be approved. The parties expressly understand that any and all future Addendums must be approved or rejected by the Commission pursuant to the Commission's rules.
- 7.6 Each party, pursuant to an executed Addendum, shall have the right to provide temporary service, as defined in Section 394.315 RSMo. (2000), until the Commission approves or disapproves the Addendum. No party shall be required to remove any facilities installed pursuant to an agreement until the effective date of an Order of the Commission or a court regarding the removal of same.

ARTICLE 8.

TERM AND CONDITIONS OF PERFORMANCE

8.1 **Term of Agreement.**

The initial term of this Agreement shall be twenty-five (25) 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.

8.2 **Conditions of Performance.** Performance of the parties is contingent upon all of the following having occurred, unless such condition is waived, extended or modified by agreement, in writing, signed by an officer of each party hereto:

- A. All required approvals of Ozark and Empire;

- B. Approval of this Territorial Agreement by the Commission with no changes, which shall, as a minimum, consist of an order (i) approving this Agreement and (ii) a finding that this Agreement does not impair Empire's certificates of convenience and necessity, except as specifically limited by the Agreement. 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.
- 8.3 Ozark and Empire agree to undertake all actions reasonably necessary to implement this Agreement. Ozark and Empire will cooperate in presenting a joint application showing this Agreement, in total, not to be detrimental to the public interest. Ozark and Empire will share equally in the costs assessed by the Commission for seeking administrative approval of this Agreement. All other costs will be borne by the respective party incurring the costs.

ARTICLE 9.

TERMINATION

- 9.1 **Termination Events.** Notwithstanding the terms of Article 7.1, this Agreement and the transactions contemplated by this Agreement may be terminated by mutual consent of Ozark and Empire.
- 9.2 **Effective Date of Termination.** The termination of this Agreement shall be effective on the date the Commission receives a notice signed by both Ozark and Empire of their decision to terminate this Agreement.
- 9.3 **Effect of Termination.** If this Agreement is terminated as provided herein, each party shall pay the costs and expenses incurred by it in connection with such termination, and no party (or any of its officers, directors, employees, agents, attorneys, representatives, or shareholders) shall be liable to any other party for any costs, expenses, or damages; except as provided herein, neither party shall have any liability or further obligation to the other party to this Agreement.

ARTICLE 10.

NOTICES

All notices, reports, records, or other communications which are required or permitted to be given to the parties under this Agreement shall be sufficient in all respects if given in writing and delivered in person, by fax, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to the receiving party at the following address:

For Ozark:
Patrick L. Prewitt
Manager
Highway 39 North
P.O. Box 420
Mt. Vernon, MO, 65712
417-466-2144
FAX: 417-466-7239

For Empire Electric:
Mr. Mike Palmer
Vice President, Commercial
Operations
602 Joplin Street
P.O. Box 127
Joplin, MO 64802
(417) 625-4250
(417) 625-5153 (fax)

or to such other address as such party may have given to the other by notice pursuant to this Section. Notice shall be deemed given on the date of delivery, in the case of personal delivery or fax, or on the delivery or refusal date, as specified on the return receipt, in the case of overnight courier or registered or certified mail.

ARTICLE 11.

ASSIGNMENT

- 11.1 This Agreement shall be binding on the successors and assigns of both Ozark and Empire. Neither party shall make any assignment of any of its rights or interests under this Agreement without the written consent of the other party, which consent shall not be unreasonably withheld. No assignment shall be legally operative unless approved by the Commission.
- 11.2 Notwithstanding the foregoing, in the event of a merger, corporate reorganization, or corporate restructuring of a party, said party may assign this Agreement to the corporate entity responsible for providing distribution level electric service in the area covered by this Agreement and the consent of the other party shall be deemed to be given. The consent party or party whose consent is deemed to be given shall cooperate in obtaining approval of the assignment by (a) participating in the joint application requesting Commission approval of the assignment and (b) providing an affidavit, stating that it consents to the Assignment, for inclusion in such application.

ARTICLE 12

MISCELLANEOUS

- 12.1 **Other Products and Services Not Affected.** This Agreement is limited to the distribution of electricity and shall in no way affect either party's right to offer other products and services, including but not limited to, the sale of distributed generation equipment, natural gas service, propane service, fiber optic communication service, satellite television service and other communication services, to customers located in the Exclusive Service Area of the other party. Neither shall this Agreement limit, in any way, a party's right to construct such non-electric distribution facilities within the designated Electric Service Area of the other as that party deems necessary, appropriate or convenient to provide other non-electric distribution service to its customers.
- 12.2 **Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with, and its validity shall be determined under, the laws of the State of Missouri.
- 12.3 **Amendments.** No modification, amendment, deletion, or other change in this Agreement or the boundaries described in the Agreement shall be effective for any purpose unless specifically set forth in writing and signed by both parties and approved by the Commission.
- 12.4 **Headings.** Headings and title contained in this Agreement are included for convenience only and shall not be considered for purposes of interpretation of this Agreement.
- 12.5 **Filing Fee and Impact of Commission or Court Orders.** The filing fee for this application pursuant to 4 CSR 240-3.130(3) shall be split between the parties. If the Commission does not approve the provisions of this Agreement as described in Article 8.2B, then it shall be nullified and of no legal effect between the parties. Further, if any part of this Agreement is declared invalid or void by a Court or agency of competent jurisdiction, then the whole Agreement shall be deemed invalid and void.
- 12.6 **Survival.** Obligations under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive termination, cancellation or expiration of this Agreement.
- 12.7 **No Waiver.** If a party has waived a right under this Agreement on any one or more occasions, such action shall not operate as a waiver of any right under this Agreement on any other occasion. Likewise, if a party has failed to require strict performance of an obligation under this Agreement, such action shall not release the other Party from any other obligation under this Agreement or the same obligation on any other occasion.

- 12.8 **Further Assurances.** The parties shall execute such other documents and perform such other acts as may reasonably be necessary in order to give full effect to this Agreement.
- 12.9 **Expenses.** Except as otherwise expressly provided herein, all expenses incurred by the parties hereto in connection with or related to the authorization, preparation and execution of this Agreement and the closing of the transactions contemplated hereby, including, without limitation, the fees and expenses of agents, representatives, counsel and accountants employed by any such party, shall be borne solely and entirely by the party which has incurred same.
- 12.10 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to the allocation of service rights in the territories described herein.
- 12.11 **Easements and Rights-of-Way.** This Agreement shall not be construed to prevent either party from obtaining easements or rights-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 and other services to its customers in other areas.

In Witness Whereof, The parties have entered into this Agreement as evidenced below by the signature of their duly authorized representatives as of the date set forth on the first page hereof.

OZARK ELECTRIC COOPERATIVE

By: *Patrick L. Prewitt*

[Signature]

PATRICK L. PREWITT

[Name Printed]

MANAGER

[Title]

9/1/2010

[Date]

ATTEST:

By: *Rob L. Wynn*

Title: GENERAL COUNSEL

**THE EMPIRE DISTRICT ELECTRIC
COMPANY**

By: *Michael E. Palmer*

[Signature]

MICHAEL E. PALMER

[Name Printed]

VP. COMMERCIAL OPERATIONS

[Title]

9-15-10

[Date]

ATTEST:

By: *Janet Watson*

Title: Secretary - Treasurer

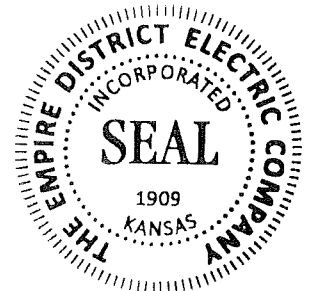


EXHIBIT A

EXCLUSIVE SERVICE AREA OF OZARK

Ozark Electric Cooperative Territory

Tract 1 S18 T27 R23

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Tract 2 S17 T27 R23

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Tract 3 S16 T27 R23

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Tract 4 S19 T27 R23

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Tract 5 S20 T27 R23

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Tract 6 S21 T27 R23

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Tract 7 S29 T27 R23

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EXHIBIT B

EXCLUSIVE SERVICE AREA OF EMPIRE

Empire District Electric Company Territory

Tract 1 S18 T27 R23

None

Tract 2 S17 T27 R23

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Tract 3 S16 T27 R23

None

Tract 4 S19 T27 R23

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Tract 5 S20 T27 R23

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Tract 6 S21 T27 R23

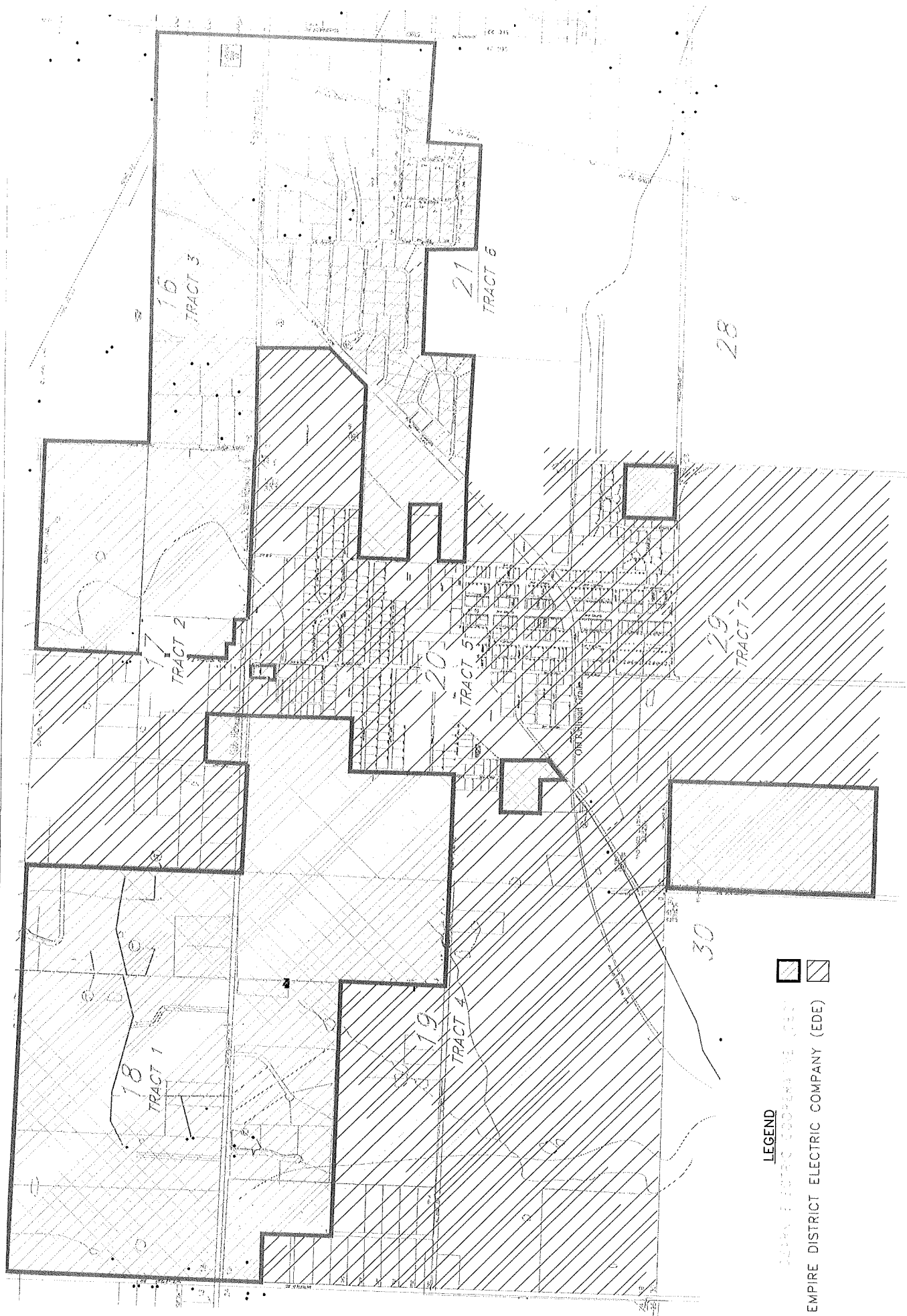
NW $\frac{1}{4}$ NW $\frac{1}{4}$ North and West of Mop Road and W $\frac{1}{2}$ W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$

Tract 7 S29 T27 R23

E $\frac{1}{2}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$

EXHIBIT C

MAP OF EXCLUSIVE SERVICE AREAS



LEGEND



EMPIRE ELECTRIC COOPERATIVE (EEC)
EMPIRE DISTRICT ELECTRIC COMPANY (EDE)

CITY OF CLEVER TERRITORY AGREEMENT MAP