

**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 Agreement Designating the ) **File No. EO-2011-0085**  
Boundaries of Exclusive Service Areas within )  
Christian County. )

**STAFF RECOMMENDATION  
TO APPROVE TERRITORIAL AGREEMENT**

**COMES NOW**, the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”) and for its recommendation states as follows:

1. On September 20, 2010, the Empire District Electric Company (“Empire”) and Ozark Electric Cooperative (“Ozark”), collectively (“Applicants”), filed with the Missouri Public Service Commission a joint application seeking approval of their second Territorial Agreement.
2. On October 26, 2010, the Commission ordered Staff to file a pleading informing the Commission of a date by which Staff will file its recommendation.
3. Staff has reviewed and investigated the Applicants’ *Application* and is presently able to file its *Recommendation*, which is incorporated herein as Exhibit A, the attached Memorandum prepared by Alan J. Bax.
4. Empire is an electric corporation subject to the jurisdiction of the Commission as specified, in part, by Chapters 386 and 393, RSMo<sup>1</sup>.
5. Ozark is organized under Chapter 394 RSMo, to provide electric service to its members located in various Missouri counties, including Christian County; rural electric

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<sup>1</sup> Statutory references are to RSMo. 2000, unless otherwise noted.

cooperatives such as Ozark are subject to the Commission's jurisdiction under Section 394.312 RSMo. 2000.

6. As stated in the Staff's memorandum, Empire and Ozark provide electric utility service to their customers and members, respectively, in and about Christian County, Missouri. These utilities have entered into two territorial agreements in the past. The Commission approved one of those agreements in Case No. EO-2008-0043 and rejected the other in Case No. EO-2007-0029. If the Commission approves it this will be their second Commission-approved territorial agreement. The agreement contains a map depicting the proposed exclusive service area of each Applicant, which mainly includes groups of customers currently served by the respective Applicant, the exception being, existing businesses or subdivisions under construction within the proposed Empire service area that have already contracted with Ozark for electric service. Further the agreement contains a provision allowing the Applicants, by mutual agreement, to serve customers in the exclusive territory of the other on a case-by-case basis.

7. Section 394.312.4, RSMo. 2000, establishes the standard of "not detrimental to the public interest" for Commission review of territorial agreements.

8. As stated in Exhibit A, this agreement between Empire and Ozark will prevent future duplicative service, will allow electric service customers in the areas to know with certainty their supplier, and allow the Applicants to avail themselves of prior investment and planning for serving the public. Each Applicant has sufficient facilities to provide reliable electric service within their respective exclusive service territories as depicted and described in the Agreement. Each Applicant has sufficient facilities to serve any additional customers or members in their respective proposed exclusive service areas. Each Applicant retains its

respective rights to build generation, transmission, or distribution facilities within the designated exclusive service area of the other in their provision of electric service.

9. For all the foregoing reasons approval of the agreement is not detrimental to the public interest.

10. The Staff also recommends that if the Commission approves the Second Territorial Agreement, the Commission order that Empire be directed to file a revised tariff sheet to reflect the limitations this Agreement places on its service area.

**WHEREFORE**, the Staff respectfully recommends to the Commission that it grant the joint application of The Empire District Electric Company and Ozark Electric Cooperative for approval of their Second Territorial Agreement, and order The Empire District Electric Company to file revised tariff sheets to reflect the limitations this Agreement places on its service area.

Respectfully submitted,

/s/ Meghan McClowry  
Meghan E. McClowry  
Legal Counsel  
Missouri Bar No. 63070

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Missouri Public Service Commission  
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#### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 5<sup>th</sup> day of November, 2010.

/s/ Meghan McClowry

## **MEMORANDUM**

TO: Missouri Public Service Commission Official Case File  
Case No. EO-2011-0085, Joint Application of the Empire District Electric Company and Ozark Electric Cooperative Requesting Approval of their 2<sup>nd</sup> Written Territorial Agreement Designating Boundaries of Exclusive Service Areas for Each Applicant in Christian County, MO as Not Detrimental to the Public Interest

FROM: Alan J. Bax, Energy Department – Engineering Analysis

<hr style="width: 80%; margin: 0 auto;"/> Energy Department	<hr style="width: 80%; margin: 0 auto;"/> Meghan McClowry General Counsel’s Office
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SUBJECT: Staff Recommendation

DATE: November 5, 2010

## **OVERVIEW**

On September 20, 2010, the Empire District Electric Company (Empire) and Ozark Electric Cooperative (Ozark or Cooperative), referred to collectively as the “Joint Applicants,” filed an Application with the Missouri Public Service Commission (Commission) seeking approval of their second Territorial Agreement (Agreement). This Agreement designates exclusive service area boundaries in Christian County, MO, as these areas pertain to the Joint Applicants, predominantly within the city limits of Clever, MO. The Applicants assert that approval of the Agreement will prevent future duplication of electric service facilities and allow respective customers to know with certainty who will be their electric service provider. In addition, approval of the agreement will allow the Applicants to avail themselves of prior investments. Each of the Applicants will continue to have service rights and responsibilities beyond the boundaries defined in this Agreement. The Agreement does not require an exchange of any customers or facilities.

On September 27, 2010, an Order was issued to provide notice of the application to potential interested parties and allow the opportunity for intervention no later than October 17, 2010. No applications for intervention were received.

The Cooperative is organized under Chapter 394 RSMo 2000 to provide electric service to its members located in all or parts of nine Missouri counties including Christian County in which lies the area that is the subject of Joint Application. Rural electric cooperatives, such as Ozark, are subject to the jurisdiction of the Commission as specified in Chapter 394 RSMo 2000. For the purpose of this case, the Cooperative is subject to the jurisdiction of the Commission under Section 394.312, RSMo 2000<sup>1</sup>.

Empire is an electrical corporation subject to the jurisdiction of the Commission as specified, in part, by Chapters 386 and 393, RSMo 2000.

### **DISCUSSION**

Rural Electric Cooperatives (RECs), such as Ozark, generally serve customers in “rural areas.” Section 394.020.3 RSMo 2000 defines a “rural area” as having a population of less than 1500 inhabitants. The population of Clever, MO has historically been less than 1,500, and been treated as a competitive area as to the provision of electric service between the Applicants. However, Empire anticipates that the results of the decennial 2010 census will indicate the population will have risen above 1,500, via a combination of growth and annexations. As a consequence, Empire would have the right to provide electric service to all new structures built within the city limits of Clever, MO,

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<sup>1</sup> Section 394.312 states, in relevant part, that “...Such territorial agreements shall specifically designate the boundaries of the electric service area of each electric service supplier subject to the agreement, any and all powers granted to a rural electric cooperative by a municipality, pursuant to the agreement, to operate within the corporate boundaries of that municipality... The commission may approve the application if it determines that approval of the territorial agreement in total is not detrimental to the public interest...”

per Section 394.080.2 RSMo 2000. Based upon this forecast, Empire purportedly approached Ozark seeking to negotiate a Territorial Agreement that would be satisfactory to both parties.

The Agreement included in the Joint Application contains a map depicting the proposed exclusive service areas of each Applicant as well as the associated legal description of those areas. The borders of these service areas illustrated on this map mostly encompass groups of customers currently served by the respective Applicant. The exceptions noted are typically either existing businesses or subdivisions in various levels of construction for which the developer has already contracted with Ozark to be the electric service provider in an area that is being proposed to be in the exclusive service area of Empire. Ozark has predominantly installed facilities in these subdivisions to accommodate the full complement of residences proposed by the respective developer. Should the results of the decennial 2010 census indicate that the population of Clever, MO, is greater than 1,500 inhabitants, Empire would then be the default service provider to any new occupants in these subdivisions. Ozark would remain the electric service provider to current customers. In this scenario, Empire would then seemingly need to either purchase the corresponding facilities from Ozark, or install duplicative facilities, which would effectively strand the existing investment of Ozark. Neither of these choices is desired; therefore, as an alternative, the Applicants are seeking to avoid potential situations like this by entering into this Agreement.

Each Applicant has sufficient facilities to serve any additional customers in their respective proposed exclusive service areas. However, if necessary, each Applicant retains their respective right to build generation, transmission, or distribution facilities

within the designated exclusive service area of the other in their provision of electric service. The Agreement also contains a provision allowing the Applicants to serve customers in the exclusive service territory of the other on a case-by-case basis should an appropriate situation arise. There are no other known electric service providers in the area; the proposed Agreement is strictly between the Applicants and will have no effect on any other prospective provider.

### **STAFF RECOMMENDATION**

Staff believes the Commission should approve the Applicants' request for a Territorial Agreement, which displaces competition amongst the Applicants in an area of Christian County, MO, further described in the Joint Application, as not being detrimental to the public interest as is required under Sections 394.312.4 RSMo 2000, as well as 4 CSR 240-3.130.

Staff agrees with the Joint Applicants, who have stated that designating exclusive service territories as described in the Agreement, will prevent future duplicative electric service facilities, will allow electric service customers in the areas to know with certainty their supplier and allow the Applicants to avail themselves of prior investment and planning for serving the public. Each Applicant has sufficient facilities to provide reliable electric service to customers within their respective exclusive service territories as depicted and described in the Agreement. The Agreement contains a procedure which will allow either Applicant to serve a customer located in the exclusive service territory of the other should the need arise. The Agreement also does not preclude either Applicant from adding generation, transmission, or distribution facilities within the

exclusive service territory of the other if necessary in the future. This Agreement only pertains to Empire and Ozark; it has no effect on any other electric service provider.

Empire's Rules and Regulations specifically identify its electric service territory. Staff recommends that should the Agreement be approved, then Empire should be directed to file a revised tariff sheet to reflect the limitations this Agreement places on its service area. Staff points out the following tariff sheet: Empire P.S.C. Mo. No. 5 Section B, Original Sheet No. 17.

Given that Ozark is a rural electric cooperative, the Commission does not require annual reports or assessment fees. Further, Ozark does not have pending or final unsatisfied decisions against it from any state or federal court involving customer service or rates within three years of the date of filing this Joint Application.

Empire is current on filings of annual reports and its P.S.C. assessment dues. Staff is not aware of any unsatisfied judgments or decisions against Empire in any state or federal agency or court involving customer service or rates within the last three years that would have bearing on the immediate Case. The Staff is not aware of any other matter before the Commission that affects or is affected by this filing.



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Case No. EO-2011-0085

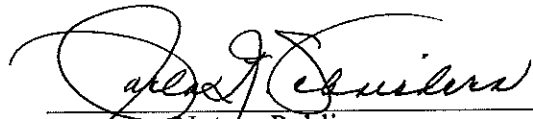
**AFFIDAVIT OF ALAN J. BAX**

STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF COLE     )

Alan J. Bax, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was provided to him; that he has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of his knowledge and belief.

  
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Alan J. Bax

Subscribed and sworn to before me this 5<sup>th</sup> day of November, 2010.

  
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Notary Public

