

Exhibit No.:
Issues: Three Rivers Electric
Cooperative/ Gascosage Territorial
Agreement- All
Witness: Larry D. Merry
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: Union Electric Company
d/b/a AmerenUE
Case No.: EO-2005-0122
Date Testimony Prepared: December, 2004

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EO-2005-0122

REBUTTAL TESTIMONY

OF

LARRY D. MERRY

ON

BEHALF OF

**UNION ELECTRIC COMPANY
d/b/a AmerenUE**

JEFFERSON CITY, MISSOURI

December 20, 2004

**MISSOURI PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

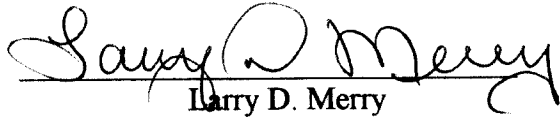
In the matter of the Application of Gascosage)	
Electric Cooperative and Three Rivers Electric)	
Cooperative for Approval of a Written Territorial)	
Agreement Designating the Boundaries of Each)	Case No. EO-2005-0122
Electric Service Supplier within Camden, Cole,)	
Franklin, Gasconade, Maries, Miller, Moniteau,)	
Osage, Phelps & Pulaski Counties, Missouri)	

AFFIDAVIT OF LARRY D. MERRY

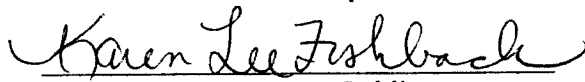
STATE OF MISSOURI)
) SS
COUNTY OF COLE)

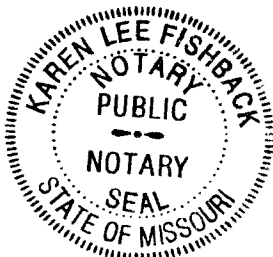
Larry D. Merry, being first duly sworn on his oath, states:

1. My name is Larry D. Merry. I work in the City of Jefferson City, Missouri, and I am District Manager of Capital and Lakeside Districts of Union Electric Company d/b/a AmerenUE.
2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony, consisting of pages 1 through 9, inclusive, which has been prepared in written form for introduction into evidence in the above-referenced docket.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct.


Larry D. Merry

Subscribed and sworn to before me this 16th day of December 2004.


Notary Public



KAREN LEE FISHBACK
NOTARY PUBLIC, STATE OF MISSOURI
COUNTY OF CALLAWAY
My Commission Expires Sept. 24, 2005

**REBUTTAL TESTIMONY
OF
LARRY D. MERRY**

MISSOURI PUBLIC SERVICE COMMISSION
Case No. EO-2005-0122

Q. PLEASE STATE YOUR NAME.

A. Larry Merry.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by Union Electric Company, which is doing business as AmerenUE, (“AmerenUE”) as District Manager of the Capital and Lakeside Districts.

Q. PLEASE SUMMARIZE YOUR PRIOR WORK EXPERIENCE AT AMERENUE.

A. I have held the following positions with AmerenUE:

Engineer Dec. 1971 - Aug. 1983

Senior Engineer	Aug. 1983 - Dec. 1983
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Supervising Engineer Dec. 1983 - Jan. 1993

District Manager Jan. 1993 - present

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. My educational background is as follows:

BS Electrical Engineering: University of Missouri - Rolla

MS Engineering Management: University of Missouri - Rolla

1 **Q. ARE YOU FAMILIAR WITH THE SUBJECT MATTER OF THIS CASE?**

2 A. Yes, I am. This case involves the Missouri Public Service Commission's review of the Joint
3 Application of Three Rivers Electric Cooperative (“TR”) and Gascosage Electric Cooperative
4 (“GEC”) requesting that the Missouri Public Service Commission (“Commission”) issue an order
5 approving territorial agreement (“Territorial Agreement”) pursuant to Sections 394.312 RSMo.
6 2000.

7 **Q. ARE YOU PERSONALLY FAMILIAR WITH TERRITORIAL AGREEMENTS**
8 **AND THEIR APPROVAL PROCESS**

9 A. Yes, I am. I have personally negotiated numerous territorial agreements with rural electric
10 cooperatives whose service areas abut my districts, including territorial agreements with Intercounty
11 Electric Cooperative, which was approved by the Commission in Case No. EO-2000-774,
12 Gascosage Electric Cooperative, which was approved by the Commission in Case No. EO-98-
13 279, and Callaway Electric Cooperative, which was approved by the Commission in Case No.
14 EO-2002-458. I have testified as a witness in these and other cases before the Commission.

15 **Q. WHAT IS AMERENUE’S STANDING IN THIS CASE?**

16 A. On November 24, 2004, AmerenUE filed a request to intervene in this proceeding in order
17 to protect its interests, interests that could be adversely impacted by a final order arising from the
18 case. On December 9, 2004, the Commission issued an order granting AmerenUE’s application to
19 intervene. Thus, AmerenUE is a party in this case.

1 **Q. WHAT IS THE IMPACT OF THE PROPOSED TERRITORIAL AGREEMENT**
2 **ON AMERENUE?**

3 A. Section 4 of the Territorial Agreement sets forth the exclusive service area of TR under the
4 Territorial Agreement and states “Three Rivers may serve within municipalities that are located in the
5 Three Rivers Exclusive Service Area, pursuant to this Agreement.” While Company has included
6 language similar to that cited above in territorial agreements with rural electric cooperatives, this
7 language is problematic in an agreement between two rural electric cooperatives. The ability of rural
8 electric cooperatives to serve municipalities is strictly limited by Missouri Law. Rural electric
9 cooperatives may serve in rural areas, which Section 394.020 RSMo 2000 defines as “any area of
10 the United States not included within the boundaries of any city, town, or village having a population
11 in excess of fifteen hundred inhabitants....” Rural electric cooperatives may also serve in cities,
12 towns, and villages having populations in excess of fifteen hundred inhabitants if they can meet the
13 requirements of Section 394.080.2 RSMo 2000 and within the boundaries of their electric service
14 pursuant to written territorial agreements that have been approved by the Commission in
15 accordance with Section 394.312 RSMo 2000.

16 AmerenUE presently is the exclusive electric service provider to new structures in Jefferson
17 City, Eldon and New Haven, cities with a population in excess of fifteen hundred inhabitants that are
18 within the proposed exclusive service area of TR. Because Jefferson City, Eldon, and New Haven
19 are not “rural areas” and TR does not satisfy the requirements Section 394.080.2 RSMo 2000 with
20 respect to them, TR is presently prevented from serving within their boundaries. Further, the cities
21 of Belle, Linn, St. Martins, and Wardsville are also served by AmerenUE, and within the proposed

1 exclusive service area of TR. These municipalities may go over fifteen hundred inhabitants after the
2 next census and it is unclear whether TR will meet all the requirements of Section 394.080.2 RSMo
3 2000 at the time of the census; requirements which must be satisfied for TR to serve new structures
4 within these municipalities.

5 AmerenUE is concerned that given the present wording of Article 4 of the Territorial
6 Agreement, TR may argue after Commission approval that the Territorial Agreement grants them
7 the right to serve within Jefferson City, Eldon, New Haven, and any other city in their proposed
8 exclusive service area that in the future exceeds fifteen hundred inhabitants. The fact that in his
9 direct testimony, Walter Ryan in referring to our application to intervene states, “[w]hat AmerenUE
10 is suggesting is that it ought to be free from competition with Three Rivers Electric Cooperative in
11 non-rural areas” (page 6, line 3) is a tactic admission that TR plans to utilize the Territorial
12 Agreement as an end run around existing Missouri law. Mr. Ryan also states “if those laws are
13 violated I expect AmerenUE would then have a legal issue they could bring before the Missouri
14 Courts.” (page 6, line 6) It is my opinion that any territorial agreement that contains language so
15 vague that it would require a court of law to rule on whether the agreement permits an end run
16 around existing Missouri law is not in the public interest.

1 **Q. DOES THE TERRITORIAL AGREEMENT CONTAIN SIMILAR LANGUAGE**
2 **WITH RESPECT TO GEC?**

3 A. Article 3 of the Territorial Agreement contains a similar municipal service provision with
4 respect to the electric service area of GEC. However, that provision does not affect AmerenUE
5 because AmerenUE has an approved Territorial Agreement with GEC.

6 **Q. YOU HAVE STATED IN YOUR TESTIMONY THAT AMERENUE HAS**
7 **INCLUDED LANGUAGE SIMILAR TO ARTICLE 4 IN TERRITORIAL**
8 **AGREEMENTS WITH RURAL ELECTRIC COOPERATIVES, CAN YOU PLEASE**
9 **ELABORATE ON THIS STATEMENT?**

10 A. The purpose of a territorial agreement is to define exclusive service area for the electric
11 suppliers that are stable over their term. In agreements between an electrical corporation and a
12 rural electric cooperative, it is always necessary to include provisions that grant additional rights to
13 the rural electric cooperative to serve within municipal boundaries within its exclusive service area.
14 For example, in our territorial agreement with Consolidated Electric Cooperative, which was
15 approved by the Commission in Case No. EO-97-493, the parties agreed to a boundary line that
16 went through the city limits of Mexico, a city with a population in excess of fifteen hundred
17 inhabitants. Thus, it was necessary to include language to permit Consolidated Electric Cooperative
18 to serve within the city limits of Mexico to implement that agreement.

19 Provisions that grant additional rights to the rural electric cooperative to serve within
20 municipal boundaries are also necessary to prevent future service problems. Assume a hypothetical
21 territorial agreement exists between AmerenUE and a rural electric cooperative. There is a city with

1 a population in excess of fifteen hundred inhabitants, which at the time the agreement is signed is
2 located exclusively in the electric service area of AmerenUE. Because AmerenUE has the right to
3 serve in that municipality under Missouri law and the territorial agreement, there is no problem
4 initially. Assume now in the future said city annexes a tract of land located in the exclusive service
5 area of the cooperative. We now have a problem. AmerenUE cannot serve the area without
6 violating the territorial agreement and the rural electric cooperative cannot serve the area without
7 violating Missouri law. This problem can be solved by including language in the territorial agreement
8 that gives the rural electric cooperative the right to serve under these circumstances. Therefore, to
9 prevent current and future problems due to the restrictions placed on the rural electric cooperative
10 by Missouri law, AmerenUE has included language similar to that cited from Article 4 of the
11 Territorial Agreement in its agreements with cooperatives.

12 **Q. WHY IS THIS SIMILAR LANGUAGE NOW A PROBLEM IN THIS**
13 **AGREEMENT?**

14 A. The answer is simple; there are the differences among the territorial agreements discussed
15 above and the Territorial Agreement. In its territorial agreements with cooperatives, AmerenUE
16 was the sole electrical corporation operating in the areas subject to the territorial agreements. On
17 an individual agreement basis, in addition to the cooperative that entered into the territorial
18 agreement with Ameren, other cooperatives often operated in the area subject to the territorial
19 agreement. In general there was little duplication of service areas among these cooperatives
20 because cooperatives tended to remain in their respective “historical service areas” and they were
21 not competing to serve new structures within municipalities with populations in excess of fifteen

1 hundred inhabitants. While the territorial agreements gave additional rights to cooperatives that
2 were parties, there was little or no risk of destructive competition among cooperatives inside a
3 municipality with populations in excess of fifteen hundred inhabitants as a result of these older
4 territorial agreements and the territorial agreements eliminated competition between the cooperatives
5 and AmerenUE.

6 Here, the agreement is between two cooperatives and AmerenUE provides electric service
7 in many of the areas covered by this agreement. In fact, AmerenUE and TR actively compete for
8 customers in the rural areas, areas with less than fifteen hundred inhabitants. Inside municipalities
9 with populations greater than fifteen hundred inhabitants there is no competition because TR's ability
10 to serve is limited by current Missouri law. Commission approval of the proposed Territorial
11 Agreement in its current form will essentially eliminate the limitations imposed by Missouri law,
12 duplication of facilities inside municipalities such as Jefferson City would result, and AmerenUE's
13 ability to plan its system and to optimally utilize its facilities inside said municipalities would be
14 adversely impacted.

15 **Q. DO YOU THINK THAT THE COMMISSION SHOULD FIND THAT THE**
16 **TERRITORIAL AGREEMENT IS IN THE PUBLIC INTEREST?**

17 A. As written, no. As I stated earlier, any territorial agreement that contains language so vague
18 that it would require a court of law to rule on whether the agreement permits an end run around
19 existing Missouri law governing where rural electric cooperatives may serve is not in the public
20 interest. This is one of those agreements. Further, this agreement defines a boundary in Miller and
21 Maries counties that will reduce future duplication in an area that is rural in nature. It also permits

1 TR to serve in “municipalities that are located in the Three Rivers Exclusive Service Area” per
2 Section 4 of the Territorial Agreement. If approved this provision will result in duplication of
3 facilities inside municipalities with populations in excess of fifteen hundred inhabitants in Cole, Miller,
4 Maries, Osage, and Franklin counties, such as Jefferson City and AmerenUE’s ability to plan its
5 system and to optimally utilize its facilities inside said municipalities would be negatively impacted.
6 Over time, since urban areas develop faster than rural ones, the Territorial Agreement will actually
7 increase duplication of facilities, which in turn will result in congested lines in urban areas, increased
8 unsafe conditions, inefficient use of existing facilities, more complex system planning and ultimately
9 higher costs to both TR and AmerenUE. Thus, for these reasons, the Territorial Agreement is not in
10 the public interest.

11 **Q. WHAT CAN BE DONE TO THE AGREEMENT IN YOUR OPINION TO**
12 **MAKE IT IN THE PUBLIC INTEREST?**

13 A. Change Section 4 of the Territorial Agreement. For example, a provision like the following
14 would eliminate the end run around existing Missouri law while retaining the necessary flexibility to
15 implement the agreement.

16 “Three Rivers may serve within municipalities that are located in the Three Rivers Exclusive
17 Service Area, as defined in this Agreement, pursuant to Missouri law. In addition to its
18 rights under Missouri law, Three Rivers may serve within all or part of any municipality
19 regardless of its population that is located in the Three Rivers Exclusive Service Area, as
20 defined in this Agreement, if all other electric suppliers cannot serve in that area as a result
21 of Missouri law or an approved Territorial Agreement. Further, in the event a municipality

1 is being served by both Three Rivers and Gascosage at the time an official census
2 determines its population exceeds fifteen hundred inhabitants, both parties shall have the
3 right to continue to serve within the boundary of said municipality pursuant to this
4 Agreement.”

5 **Q. ARE YOU ASKING THAT THE COMMISSION REJECT THE TERRITORIAL**
6 **AGREEMENT AS PRESENTED?**

7 A. Yes, I am.

8 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

9 A. Yes, it does

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail, to the following parties on the 20th day of December, 2004.

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