

Exhibit No.	_____
Issue:	_____
Witness:	Sterling Moody
Sponsoring Party:	
Type of Exhibit:	Direct Testimony
Case No.	EC-2002-112

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

DIRECT TESTIMONY

OF

STERLING MOODY

ST. LOUIS, MISSOURI

**DIRECT TESTIMONY OF
STERLING MOODY**

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**DIRECT TESTIMONY OF
STERLING MOODY
ON BEHALF OF STERLING'S MARKET PLACE
CASE NO: EC-2002-112**

1 Q. **PLEASE STATE YOUR NAME AND ADDRESS.**

2 A. My name is Sterling Moody. My address is 11363 Tobaggon, Florissant, Missouri
3 63033.

4 Q. **WERE YOU THE OWNER OF STERLING'S MARKET LOCATED ON 8350 N.
5 BROADWAY?**

6 A. Yes.

7 Q. **DURING WHAT PERIOD OF TIME WAS STERLING'S MARKET IN
8 OPERATION?**

9 A. From September 1999 – October 2001.

10 Q. **HOW WAS ELECTRICITY PROVIDED TO YOUR STORE BY AMERENUE?**

11 A. There were three meters numbered 70593313, 01859502 and 50688215. These meters
12 were assigned to two accounts, number 70593313 and account number 52300-02426

13 Q. **WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

14 A. The purpose of my testimony is to:

- 15 1. Describe how the operation of Sterling's Market Place is set up.
- 16 2. Discuss how Sterling's Market is metered for electric service.
- 17 3. Relate my experiences in dealing with AmerenUE and its employees between
18 July 1998 and May 2001, leading up to the termination of electric service.
- 19 4. Demonstrate that Sterling's Market Place I never received proper notice that our
20 service would be disconnected for nonpayment.

1 5. Describe efforts put forth to have the electricity restored.

2 6. Discuss the impact of the termination of electric service to Sterling's Market

3 Place I.

4 Q. **WHAT IS YOUR BACKGROUND IN THE GROCERY STORE BUSINESS?**

5 A. I worked for National Super Markets for 22 years. I started off as a bagger and worked

6 myself up to be Vice President of Sales and Marketing.

7 Q. **WHAT WERE YOUR DUTIES AT STERLING'S MARKET PLACE?**

8 A. I was the owner and manager of operations. I would oversee the daily operations of the

9 business and supervise 48 employees with average sales of \$200,000/month. The store

10 also had an inventory of \$300,000.

11 Q. **WHO'S RESPONSIBILITY WAS IT TO PAY THE UTILITIES BILLS?**

12 A. Mine.

13 Q. **WHAT METHODS OF PAYMENT WOULD YOU USE TO PAY THESE BILLS?**

14 A. Checks, personal money orders, cashier's checks.

15 Q. **WHAT ACCOUNTS WOULD THESE CHECKS BE WRITTEN ON?**

16 A. Sterling's Market Place.

17 Q. **WHO'S SIGNATURE WOULD APPEAR ON THESE CHECKS?**

18 A. Mine.

19 Q. **WOULD THESE PERSONAL MONEY ORDERS HAVE YOUR SIGNATURE**

20 **ON THEM AS THE SENDER?**

21 A. Yes.

22 Q. **WOULD YOU BE THE ONE TO GET THE CASHIER'S CHECKS AND HAVE**

23 **THEM DELIVERED?**

A. Yes.

1 Q. **WHEN DID YOU BEGIN TO SUSPECT THAT SOMETHING WAS WRONG**
2 **WITH YOUR ELECTRIC BILL?**

3 A. In August of 2000.

4 Q. **HOW WAS THIS DISCOVERED?**

5 A. Bert Schoenlau told me that the electric bills for the grocery store included usage for
6 other stores on the mall.

7 Q. **WHAT DID YOU DO?**

8 A. I contacted Leroy Ettling, Senior Credit Manager at AmerenUE and expressed concerns
9 about the accuracy of my bills.

10 Q. **WHAT HAPPENED AFTER YOU EXPRESSED YOUR CONCERN TO**
11 **AMEREN ABOUT YOUR BILLS?**

12 A. In February, 2001, Ameren sent an inspection crew to the store to investigate how the
13 store was wired.

14 Q. **WHAT DID THEY FIND?**

15 A. They found that Sterling's Market Place was being billed for service that was being
16 provided to several other stores on the premises.

17 Q. **DID AMEREN DO ANYTHING TO RECTIFY THE PROBLEM OR SUGGEST**
18 **HOW TO FIX IT?**

19 A. No.

20 Q. **WERE YOU ABLE TO KEEP UP WITH THE BILLS?**

21 A. No.

22 Q. **WHAT HAPPENED?**

1 A. In April 2000, Leroy Ettling, Senior Credit Manager, began to contact the store about the
2 outstanding bills.

3 Q. **WHO WOULD MR. ETTLING SPEAK WITH WHEN HE CALLED?**

4 A. He would speak to either Ms. JoAnn Ghirardi, Mr. Lou Biernbaum or myself.

5 Q. **WHAT WOULD MR. ETTLING SAY TO YOU?**

6 A. He said that we were getting behind and that I needed to get a payment in.

7 Q. **WOULD HE TELL YOU HOW MUCH TO BRING?**

8 A. Yes.

9 Q. **WOULD YOU THEN SEND IN A PAYMENT?**

10 A. Yes.

11 Q. **WOULD YOU TELL HIM THAT YOU BELIEVED THAT THERE WAS A**
12 **PROBLEM WITH THE BILLS?**

13 A. Yes.

14 Q. **WHAT WOULD HE SAY?**

15 A. He would say that he agreed with me but he did not know what we were going to do
16 about it.

17 Q. **DID AMEREN MAKE ANY ATTEMPT TO RESOLVE THE ISSUE WITH THE**
18 **METERS?**

19 A. No.

20 Q. **HOW OFTEN WOULD YOU BE CONTACTED BY MR. ETTLING?**

21 A. 2 or 3 times a week.

22 Q. **DURING THESE CONTACTS, WOULD YOU MAKE PAYMENT**
23 **ARRANGEMENTS TO PAY ON THE BILL?**

1 A. Yes.

2 Q. PLEASE DESCRIBE WHAT THE NATURE OF THESE PAYMENT
3 ARRANGEMENTS WOULD BE?

4 A. Mr. Ettling and I would come up with an agreed on amount and a certain time to bring it
5 in.

6 Q. DID MR. ETTLING OR ANYONE FROM AMERENUE EVER TELL YOU
7 THAT PARTIAL PAYMENTS WOULD NOT BE ACCEPTED?

8 A. No.

9 Q. HOW WOULD THE PAYMENTS BE MADE?

10 A. In February 2001 Mr. Lou Biernbaum began delivering payments for service to the
11 Ameren offices on Chouteau. Mr. Biernbaum would meet Mr. Ettling and give him the
12 payment or sometimes I would deliver the payment or other Sterling Market Place
13 employees would deliver the payment to Mr. Ettling.

14 Q. PRIOR TO THE TERMINATION OF ELECTRIC SERVICE DID ANYONE
15 EVER TELL YOU NOT TO BRING PAYMENTS TO THE MAIN OFFICE?

16 A. No.

17 Q. HOW MUCH WOULD THE PAYMENTS BE FOR?

18 A. Generally the payments would be in the amount of \$1,000 or more.

19 Q. SOMETIMES WOULD THE PAYMENTS BE FOR LESS THAN \$1,000?

20 A. Yes. Each time Mr. Ettling called we would bring down whatever he would accept.

21 Q. PRIOR TO FIRST TERMINATION, DID MR. ETTLING TELL YOU THAT IF
22 YOU DIDN'T PAY THE ARREARAGE THAT THE SERVICE WOULD BE
23 TERMINATED?

1 A. No.

2 Q. **IN REGARDS TO THE FIRST TERMINATION, DID YOU RECEIVE ANY**
3 **NOTICE FROM AMERENUE STATING THAT THE SERVICE WOULD BE**
4 **TERMINATED IF YOU DID NOT PAY THE ARREARAGE WITHIN 48**
5 **HOURS?**

6 A. No.

7 Q. **DESCRIBE WHAT HAPPENED ON THE DAY OF THE FIRST**
8 **TERMINATION?**

9 A. It was about 11:30 a.m. and we were getting ready for the Easter weekend and going over
10 our sales plan when all of a sudden the lights went out. I immediately got on the phone
11 and called Mr. Ettling. Mr. Ettling told me that he did not give the order for the power to
12 be shut off and that he would get it back on.

13 Q. **ON THE DAY OF THE TERMINATION DID SOMEONE FROM UE COME TO**
14 **STERLING'S MARKET PLACE?**

15 A. Yes. After the power was shut off a lady showed up with an envelope and approached
16 me at the desk and said that there is no need of me giving you this to because the power
17 is already off.

18 Q. **WHAT HAPPENED NEXT?**

19 A. I offered to get Mr. Ettling on the phone so he could let her know that he was ordering the
20 power back on and she stated that she would call Ettling from the car and she left the
21 store.

22 Q. **WAS THE SERVICE RESTORED THAT DAY?**

23 A. Yes the service was restored within 3 hours.

1 **Q. WHEN DID THE SECOND TERMINATION OCCUR?**

2 A. On April 17, 2001.

3 **Q. PLEASE DESCRIBE WHAT HAPPENED THAT DAY.**

4 A. It was about 1:30 pm when a representative from AmerenUE came to the store and
5 informed me that he was coming to shut the service off. I asked him if he would allow
6 me to call down to Ameren office since I did not have a notice that the service was going
7 to be cut off. He then told me that he was told not to come into the building and that he
8 was instructed to cut the service off and leave. I asked him if he would allow me enough
9 time to get the customers and employees out of the building. He called someone on his
10 two-way radio and then told me that he would give us 15 minutes.

11 **Q. DID YOU CONSIDER 15 MINUTES ENOUGH TIME TO EVACUATE THE**
12 **BUILDING?**

13 A. No because I had to get 12 employees and 35 customers out of the building.

14 **Q. DID THIS EMPLOYEE GIVE YOU A NOTICE FOR THIS TERMINATION?**

15 A. No.

16 **Q. DID YOU CONTACT THE AMEREN OFFICE ABOUT THIS TERMINATION?**

17 A. Yes. I immediately contacted Mr. Ettling and told him that someone was there to
18 terminate the service. Mr. Ettling told me that he did not know anything about it that
19 Ameren had taken the Sterlings file from him and that I would have to contact Mike Foy,
20 Supervisor of Credit and Collections.

21 **Q. DESCRIBE WHAT HAPPENED WHEN YOU CONTACTED MIKE FOY.**

22 A. That same day, I contacted Mr. Foy before the service was disconnected and told him
23 that the service was about to be disconnected and asked him what could be done to

1 prevent the termination? He told me that there was nothing that could be done unless I
2 had \$265,000.

3 Q. **PRIOR TO THE SERVICE BEING DISCONNECTED DID ANYONE GIVE YOU**
4 **A NOTICE STATING THAT THE SERVICE WOULD BE DISCONNECTED?**

5 A. No.

6 Q. **PRIOR TO ANY OF THESE TERMINATIONS DID ANYONE FROM THE**
7 **STATE OF MISSOURI CONTACT AMERENUE ON YOUR BEHALF?**

8 A. Yes. Mr. Dennis Rodiemier with the State Department of Economic Development
9 contacted Ameren to let them know that the State was working on funding for Sterling
10 Market Place to help with financial assistance.

11 Q. **AFTER THE SECOND SHUTOFF ON APRIL 17, 2001 DID COMMUNITY**
12 **LEADERS AND PUBLIC OFFICIALS CONTACT AMERENUE IN AN EFFORT**
13 **TO GET THE SERVICE RESTORED?**

14 A. Yes.

15 Q. **PLEASE DESCRIBE THOSE EFFORTS.**

16 A. State Representative Louis Ford contacted Mike Foy on our behalf in an effort to get the
17 power restored. Congressman William L. Clay, Jr. also contacted Mike Foy in an effort
18 to get the power restored. Ms. Julie Gibson, Chief of Staff to Governor Bob Holden
19 contacted Mike Foy in an effort to get the power restored. Former State Senator J. B. Jet
20 Banks contacted Mike Foy in an effort to get the power restored. Joe Driskil, Director of
21 the Department of Economic Development contacted Mike Foy in an effort to get the
22 service restored. Mr. Harold Crumpton, Senior Vice President of the NAACP contacted
23 Mike Foy in an effort to get the service restored.

1 Q. **WHAT WAS THE RESULT OF ALL OF THESE CONTACTS?**

2 A. Mike Foy told each of these individuals that Sterling's Market Place owed Two Hundred
3 and Sixty-Five Thousand Dollars and that this was the amount needed to get the service
4 on. He also told me that I should stop calling him until I had \$265,000.

5 Q. **WHEN DID AMERENUE INDICATE THAT IT WOULD BE WILLING TO**
6 **TURN THE SERVICE ON FOR AN AMOUNT LOWER THAN THE \$265,000?**

7 A. On or about May 8th, Senator Jet Banks contacted me and said that Mike Foy contacted
8 him and said that he would cut the power on for a \$25,000 deposit. Two days later I
9 called Mike Foy and told him that I had the \$25,000. Foy then told me that things had
10 changed and that I needed \$45,000 and someone to successor the account.

11 Q. **WHAT DID YOU DO NEXT?**

12 A. I pleaded with Mr. Foy to accept the \$25,000 and he said No and instructed me to call
13 him when I had \$45,000.

14 Q. **DID YOU ATTEMPT TO GET A SUCCESSOR FOR THE ACCOUNT?**

15 A. Yes. I contacted Bert Schoenlau and asked him if he would call and get the service
16 turned on in his name since he was the property owner. Mr. Schoenlau called Mr. Ettling
17 to have the service turned on in his name and Ettling told him who to call.

18 Q. **DID YOU GATHER MONEY TOGETHER FOR THE \$45,000 DEPOSIT?**

19 A. Yes, I had Mr. Mark Casen deliver two cashier's checks and one bank check totaling
20 \$45,000 to Mr. Ettling and got a receipt on with the understanding that the electrical
21 service would be restored by 3:00 pm on May 15, 2001. See Exhibit A.

22 Q. **DID AMEREN THEN RESTORE THE SERVICE?**

1 A. No. Mr. Foy refused to restore the service citing that it was their policy to assure that the
2 cashier's check had cleared the bank for payment.

3 Q. **DESCRIBE WHAT HAPPENED NEXT.**

4 A. I contacted Mr. Brian McNamara, President of Gateway Bank and informed him that
5 Ameren was refusing to honor the cashier's check. On or about May 15, 2001, Mr.
6 McNamara contacted Sherry Moschner, Manager Customer Service, to request a meeting
7 to discuss what steps were necessary to get the electric service restored and to guarantee
8 the checks.

9 Q. **DESCRIBE THE MEETING THAT WAS HELD AT AMEREN.**

10 A. On May 15, 2001, a meeting was held at Ameren's office involving Mike Foy, Sherry
11 Moschner, Brian McNamara, Mark Casen and myself. At that meeting, I disputed the
12 \$265,000 bill and pointed out that I was being billed for electric service that was being
13 used by other tenants in the shopping center. I said that the bill could not be over
14 \$89,000. We adjourned the meeting and Ms. Moschner said that they would get back to
15 me.

16 Q. **WHAT HAPPENED AFTER THAT?**

17 A. Two days later a document was faxed to me for my review and Ameren requested that if
18 we wanted service restored at Sterling's Market Place, me and Mr. Schoenlau would
19 have to sign the document in the presence of an Ameren employee.

20 Q. **WHAT DID THIS AGREEMENT PROVIDE?**

21 A. The agreement set the disputed indebtedness at \$89,000 instead of \$265,000. Of the
22 \$45,000 originally demanded by Ameren for the deposit, Ameren applied \$36,000
23 toward the common area account and applied \$9,000 toward the deposit. I was also

1 requested to pay \$2,000.00 per month toward the outstanding balance and pay each
2 month's current bill. See Staff Report – Attachment D.

3 Q. **DID YOU SIGN THE DOCUMENT?**

4 A. Yes. I was losing everything, the store had been closed for over 30 days and I believed
5 that this was the only way to get the service back on. I had no other option.

6 Q. **DESCRIBE THE EFFECT THAT BEING WITHOUT ELECTRIC SERVICE**
7 **FOR OVER 30 DAYS HAD ON YOU AND YOUR BUSINESS.**

8 A. I lost all of my perishables, frozen food, dairy, produce and meat. I also lost all dated
9 items on the shelf. I lost a state contract. I suffered public embarrassment and
10 humiliation, emotional distress, strain of duress and frustration, along with unrecoverable
11 financial losses.

12 Q. **DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

13 A. Yes.

5/14/01

*
Received from MARK KASEN, from Gateway Bank following checks

A) No. # 10 009275 DTD 5/14/01

B) # 4406 4069 72 DTD 5/10/01

C) # 4406 4069 93 DTD 5/14/01

To apply to Successor accounts for
"P. & B. Real Estate"

% ENGELBERT SCHONLAU
8540 N. BROADWAY
ST. LOUIS MO, 63147

— for SERVICE ADDRESSES 8350 N. BROADWAY

signed

[Signature]
SR Credit Advisor

AMERICAN UNION BROTHER CO.

Case No.: EC 2002-112

AFFIDAVIT OF STERLING MOODY

[illegible]

Sterling Moody, of lawful age, on his oath states: that he has participated in the preparation of the foregoing written testimony in question and answer form, consisting of 11 pages of testimony to be presented in the above case, that the answers in the attached written testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.

~~STERLING MOODY~~

Subscribed and sworn to before me this 27th day of April, 2002.

Notary Public

My commission expires:

