

Exhibit No.:  
Issues: Territorial Agreement  
Witness: Alan J. Bax  
Sponsoring Party: MO PSC Staff  
Type of Exhibit: Cross-Surrebuttal  
Testimony  
Case No.: EO-2005-0122  
Date Testimony Prepared: December 27, 2004

**MISSOURI PUBLIC SERVICE COMMISSION**

**UTILITY OPERATIONS DIVISION**

**CROSS-SURREBUTTAL TESTIMONY**

**OF**

**ALAN J. BAX**

**FILED<sup>3</sup>**  
JAN 24 2005  
Missouri Public  
Service Commission

**GASCOSAGE ELECTRIC COOPERATIVE  
AND THREE RIVERS ELECTRIC COOPERATIVE**

**CASE NO. EO-2005-0122**

**Jefferson City, Missouri  
December 2004**

Exhibit No. 8  
Case No(s). EO-2005-0122  
Date 1-7-05 Rptr RL

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE 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 )  
Electric Service Supplier within Camden, )  
Cole, Franklin, Gasconade, Maries, )  
Miller, Moniteau, Osage, Phelps, and )  
Pulaski Counties, Missouri )

Case No. EO-2005-0122

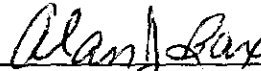
**AFFIDAVIT OF ALAN J. BAX**

**STATE OF MISSOURI** )

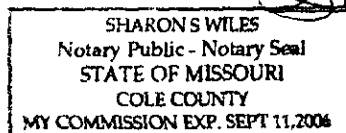
) ss

**COUNTY OF COLE** )

Alan J. Bax, of lawful age, on his oath states: that he has participated in the preparation of the following Cross Surrebuttal Testimony in question and answer form, consisting of 7 pages of Cross Surrebuttal Testimony to be presented in the above case, that the answers in the following Cross Surrebuttal 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.

  
\_\_\_\_\_  
Alan J. Bax

Subscribed and sworn to before me this 27th day of December, 2004.



  
\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

1                                   **CROSS-SURREBUTTAL TESTIMONY**

2  
3                                   **OF**

4  
5                                   **ALAN J. BAX**

6  
7                                   **GASCOSAGE ELECTRIC COOPERATIVE**

8                                   **AND THREE RIVERS ELECTRIC COOPERATIVE**

9                                   **CASE NO. EO-2005-0122**  
10

11           Q.     Please state your name and business address?

12           A.     Alan J. Bax, P.O. Box 360, Jefferson City, Missouri, 65102.

13           Q.     By whom are you employed and in what capacity?

14           A.     I am employed by the Missouri Public Service Commission (Commission)  
15 as a Utility Engineering Specialist III in the Energy Department of the Utility Operations  
16 Division.

17           Q.     Are you the same Alan Bax who previously filed Rebuttal Testimony in  
18 this case (EO-2005-0122)?

19           A.     Yes.

20           Q.     What is the purpose of your Cross-Surrebuttal Testimony in Case No.  
21 EO-2005-0122?

22           A.     The purpose of this Cross-Surrebuttal Testimony is to address certain  
23 aspects of the Rebuttal Testimony of Union Electric Company, d/b/a AmerenUE  
24 (AmerenUE), Witness Mr. Larry Merry. Mr. Merry has recommended the  
25 Missouri Public Service Commission (Commission) not approve the Territorial  
26 Agreement as it is currently proposed, because of the language contained in Article 4 of  
27 the Territorial Agreement. As noted in my Rebuttal Testimony, a number of legal issues

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1 appear to be essential elements to this case. Although these items may be noted in my  
2 Cross-Surrebuttal Testimony, I will leave it to Staff counsel to provide Staff's legal  
3 position.

4 Q. Is Mr. Merry's concern similar to the ones you raised in your Rebuttal  
5 Testimony?

6 A. For the most part, yes, however, when comparing the matters raised in our  
7 Rebuttal Testimonies, there is not a total resemblance.

8 Q. What seems to be Mr. Merry's concern?

9 A. His concern seems to be that Three Rivers Electric Cooperative (Three  
10 Rivers), one of the two rural electric cooperatives (RECs) that are the parties to the  
11 proposed Territorial Agreement, will be authorized, should the Commission approve the  
12 proposed Territorial Agreement, to provide retail electric service in non-rural areas within  
13 the exclusive service area defined for Three Rivers in the proposed Territorial  
14 Agreement.

15 Q. Does Mr. Merry have a similar concern with Gascosage Electric  
16 Cooperative (Gascosage), the other party to the proposed Territory Agreement?

17 A. No. Although the same contentious language that is contained in Article 4  
18 regarding Three Rivers also appears in Article 3 of the proposed Territorial Agreement  
19 regarding Gascosage, Mr. Merry says there is not a similar concern because AmerenUE  
20 has a filed Territory Agreement with Gascosage that alleviates this concern.

21 Q. Please discuss the concern raised by Mr. Merry in his Rebuttal Testimony?

22 A. In his Rebuttal Testimony, beginning on page 5, line 20 and ending on  
23 page 6, line 11, Mr. Merry describes a scenario involving a municipality with a

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1 population in excess of fifteen hundred inhabitants. There is an existing territorial  
2 agreement between AmerenUE and a REC, which serves an area adjoining this  
3 municipality. In his hypothetical, Mr. Merry has AmerenUE lawfully providing electric  
4 service to the municipality on the basis of both current Missouri law and the territorial  
5 agreement. Presumably, though not specifically mentioned by Mr. Merry, the area  
6 adjoining the municipality is within AmerenUE's certificated area by virtue of a  
7 certificate of convenience and necessity (CCN) from the Commission. AmerenUE, by  
8 the terms contained in the territorial agreement, has apparently foregone its statutory  
9 rights to serve the adjoining area lying outside the city limits of said municipality,  
10 essentially creating a situation that the area immediately outside of the city limits is now  
11 an exclusive service territory of the REC per the terms of the territorial agreement.

12 Mr. Merry states in his Rebuttal Testimony that we are to assume that the  
13 municipality annexes a certain area outside of the city limits that is in the REC's  
14 exclusive service territory given the terms of the territorial agreement between the REC  
15 and AmerenUE. In his description, Mr. Merry is concerned that, upon annexation, it  
16 would be a violation of the territorial agreement if AmerenUE were to serve new  
17 customers in the annexed area and the REC would be violating Missouri law if it served  
18 any new customers because the population of the municipality is in excess of fifteen  
19 hundred inhabitants. Mr. Merry states at page 6, lines 6-7, "the rural electric cooperative  
20 cannot serve the area without violating Missouri law." In making this statement,  
21 presumably Mr. Merry is referring to Sections 394.020 (3) and 394.080 (2), RSMo 2000,  
22 which limit RECs to providing electric service to cities, towns, and villages with

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1 populations of less than fifteen hundred inhabitants. Mr. Merry cites these statutory  
2 sections in his Rebuttal Testimony at page 3, lines 9, 13, and 19 and at page 4, line 2.

3 Mr. Merry says at page 6, lines 7-11 of his Rebuttal Testimony that in order to  
4 remedy this situation, AmerenUE includes language in its territorial agreements that  
5 mirrors the language contained in Article 4 of the proposed Territorial Agreement. This  
6 language would allow the REC, in this specific situation, to lawfully serve load in the  
7 annexed area.

8 On page 5, lines 11-13 and 19-21, page 6, lines 8-11, and page 7, lines 1-2 of his  
9 Rebuttal Testimony, Mr. Merry references AmerenUE giving additional rights to the  
10 REC that is a party to the territorial agreement. These additional rights include allowing  
11 the REC to serve within the municipal boundaries within AmerenUE's exclusive service  
12 area, i.e., rights that the REC would not otherwise have. Mr. Merry seems to be  
13 addressing Sections 394.080.1 (4) and 394.315 RSMo 2000 and various Missouri judicial  
14 decisions, including Missouri Public Service Commission v. Platte-Clay Cooperative,  
15 Inc., 407 S.W.2d 883 (Mo. 1966). Staff counsel will speak to these statutory provisions  
16 and cases. However, after reviewing the aforementioned references and other statutes  
17 and judicial decisions and following discussions with Staff counsel, I would note the  
18 following excerpt from Section 394.315.2 RSMo 2000, with particular attention to the  
19 portion in italics:

20 *Once a rural electric cooperative, or its predecessor in interest,*  
21 *lawfully commences supplying retail electric energy to a structure*  
22 *through permanent service facilities, it shall have the right to*  
23 *continue serving such structure, and other suppliers of electrical*  
24 *energy shall not have the right to provide service to the structure*  
25 *except as might be otherwise permitted in the context of municipal*  
26 *annexation, pursuant to section 386.800, RSMo, and section*  
27 *394.080, or pursuant to a territorial agreement approved under*

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1            *section 394.312. The public service commission, upon application*  
2            *made by an affected party, may order a change of suppliers on the*  
3            *basis that it is in the public interest for a reason other than a rate*  
4            *differential, and the commission is hereby given jurisdiction over*  
5            *rural electric cooperatives to accomplish to the purpose of this*  
6            *section. The commission's jurisdiction under this section is limited*  
7            *to public interest determinations and excludes questions as to the*  
8            *lawfulness of the provision of service, such questions being*  
9            *reserved to courts of competent jurisdiction...*

10           (Emphasis added.).  
11

12           Mr. Merry continues, beginning on page 6, line 14 and ending on page 7, line 14,  
13           to address why the language in question used in Article 4 of the present Territorial  
14           Agreement alleviates the concern in his hypothetical scenario, when the territorial  
15           agreement is between AmerenUE and a REC, but is problematic when used in a situation  
16           where a territorial agreement is between two or more RECs and does not include  
17           AmerenUE, such as with the current Territorial Agreement. Mr. Merry indicates that in  
18           the territorial agreements that AmerenUE has entered into with individual RECs, often  
19           other RECs have operated in the same area covered by the territorial agreement but "[i]n  
20           general there was little duplication of service areas among these cooperatives because  
21           cooperatives tended to remain in their respective 'historical service areas' and they were  
22           not competing to serve new structures within municipalities with populations in excess of  
23           fifteen hundred inhabitants...[Thus,] there was little or no risk of destructive competition  
24           among cooperatives inside a municipality with populations in excess of fifteen hundred  
25           inhabitants as a result of these older territorial agreements..."

26           In the present case, however, Mr. Merry at page 7, lines 6-11 of his Rebuttal  
27           Testimony, envisions that Three Rivers would be able to utilize the proposed Territorial  
28           Agreement, in its present form, to, in effect, go around current statutory limitations. That  
29           is, whereas Three Rivers is generally barred by current Missouri law from competing in

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1 municipalities having a population of greater than fifteen hundred inhabitants, the  
2 proposed Territorial Agreement, if approved by the Commission absent some alteration  
3 to the language in Article 4, would authorize Three Rivers to compete with AmerenUE in  
4 all areas covered by the Territorial Agreement, including within municipalities with  
5 populations greater than fifteen hundred inhabitants. Mr. Merry states at page 7, lines  
6 12-14, and at page 8, lines 2-9 of his Rebuttal Testimony that all of this would then lead  
7 to unnecessary duplication of electric facilities in municipalities with populations in  
8 excess of 1500 inhabitants, and would adversely impact AmerenUE's ability to plan its  
9 system and optimally utilize its facilities in these municipalities. Moreover, this would  
10 ultimately result in congested lines in urban areas, increased unsafe conditions and higher  
11 costs to Three Rivers and AmerenUE. He asserts at page 8, lines 9-10 of his Rebuttal  
12 Testimony that this would not be in the public interest and therefore the Commission  
13 should reject the Joint Application in its current form respecting Article 4.

14 Finally, on page 8, line 13 to page 9, line 4 of his Rebuttal Testimony, Mr. Merry  
15 proposes language for Article 4 that would permit Three Rivers to serve in municipalities  
16 regardless of the number of inhabitants if AmerenUE and all other electric service  
17 providers cannot serve the municipality as a result of Missouri law or an approved  
18 territorial agreement. In addition, this proposed language would permit both  
19 Three Rivers and Gascosage (Applicants) to continue to serve in municipalities upon its  
20 population exceeding fifteen hundred inhabitants so long as the said municipalities were  
21 historically receiving electric service from the Applicants.

22 Q. Do you agree with Mr. Merry that the Territorial Agreement is not in the  
23 public interest in its current form?

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1           A.     I maintain that the Territory Agreement should be approved as being in the  
2 public interest subject to the Applicants clarifying the outstanding questions raised in my  
3 Rebuttal Testimony, as well as those further addressed in my Cross-Surrebuttal  
4 Testimony and by Staff counsel.

5           Q.     Does this conclude your Cross-Surrebuttal Testimony?

6  
7           A.     Yes.

8