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JAN 24 2005

Missouri Public Service Commission
December 27, 2004

FILED

DEC 27 2004

EUGENE E. ANDERECK (1923-2004)
GREGORY C. STOCKARD (1904-1993)
PHIL HAUCK (1924-1991)

Secretary
Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Missouri Public Service Commission

Re: 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

Dear Secretary:

Enclosed for filing please find an original and eight copies of the Surrebuttal Testimony of Walter R. Ryan in the above referenced case.

If you have any questions, please contact me at the number listed above.

Sincerely,

Lisa Cole Chase
Lisa Cole Chase

LCC:lw

Encl.

CC: Steve Dottheim, Staff
John Coffman, OPC
Bill Bobnar, AmerenUE
Walt Ryan, Three Rivers
John Greenlee, Gascosage

Exhibit No. 16
Case No(s) EO-2005-0122
Date 1-7-05 Rptr TU

FILED³

JAN 24 2005

Missouri Public
Service Commission

Exhibit No.:

Issues:

Three Rivers Electric
Cooperative / Gascoage
Territorial Agreement -- All

Witness:

Walter R. Ryan

Type of Exhibit:

Surrebuttal Testimony

Sponsoring Party:

Three Rivers Electric Cooperative

Case No.:

EO-2005-0122

Date Testimony Prepared:

FILED

DEC 27 2004

SURREBUTTAL TESTIMONY

Missouri Public
Service Commission

OF

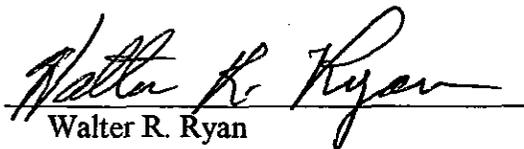
WALTER R. RYAN

JEFFERSON CITY, MISSOURI

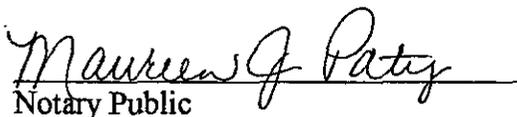
AFFIDAVIT OF WALTER R. RYAN

STATE OF MISSOURI)
) SS
COUNTY OF OSAGE)

Walter R. Ryan, of lawful age, on his oath states that he has participated in the preparation of the following Surrebuttal Testimony, in question and answer form, consisting of _____ pages to be presented in the above case; that the answers in the following 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.

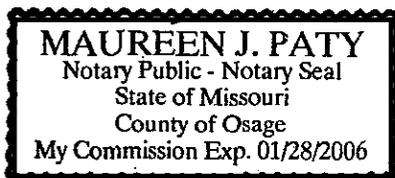

Walter R. Ryan

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


Notary Public

(seal)

My commission expires: 1/28/06



1 Q. Please state your name.

2 A. Walter R. Ryan

3 Q. Are you the same Walter R. Ryan who previously submitted direct testimony
4 in this case?

5 A. Yes, I am.

6 Q. Have you reviewed the Rebuttal Testimony of AmerenUE witness Larry D.
7 Merry which was pre-filed in this case?

8 A. Yes, I have.

9 Q. At page 3, Mr. Merry is asked what impact the proposed Territorial
10 Agreement will have on AmerenUE. After reviewing Mr. Merry's answer do you have a
11 response?

12 A. Yes. Mr. Merry's chief concern is the language contained in Article 4 of the
13 Territorial Agreement, which provides that Three Rivers may serve within municipalities that are
14 located in Three Rivers' Exclusive Service Area. Mr. Merry states that in my direct testimony I
15 tacitly admit that Three Rivers intends to do an end run around Missouri law regarding a
16 cooperative's ability to serve in a non-rural area, by stating that "[w]hat AmerenUE is suggesting
17 is that it ought to be free from competition with Three Rivers Electric Cooperative in non-rural
18 areas" (page 6, line 3). My testimony is not a tacit admission of the intention of Three Rivers to
19 deliberately violate Missouri law, but is a statement of fact based on AmerenUE's Response to
20 Applicants Suggestions in Opposition to Intervene wherein, AmerenUE states that: "Commission
21 approval of the proposed Territorial Agreement in its current form will change eliminate the
22 limitations imposed by Missouri Law, destructive competition inside municipalities such as
23 Jefferson City would result, and AmerenUE's ability to plan its system and to optimally utilize

1 its facilities inside municipalities such as Jefferson City would be adversely impacted by
2 competition by Three Rivers, competition the existing Missouri Law prevents.” Mr. Merry
3 further emphasizes in his testimony at page 7, lines 8-10, that his position is to avoid
4 competition, wherein he states: “Inside municipalities with populations greater than fifteen
5 hundred inhabitants there is no competition because TR's ability to serve is limited by current
6 Missouri law.”

7 It should be noted that in AmerenUE’s rebuttal to the Joint Applicant’s Response to
8 AmerenUE’s Motion to Intervene, at footnote No.1, AmerenUE states that pursuant to Section
9 315.312.2 RSMo. 2000, the proposed Territorial Agreement, if approved by the Commission,
10 would grant to Three Rivers the power to serve within municipalities with population in excess
11 of 1,500 inhabitants notwithstanding the provisions of Sections 394.020 and 394.080 RSMo
12 2000 to the contrary. What Section 394.312.2 actual states is:

13 “2. Such territorial agreements shall specifically designate the boundaries of the electric
14 service area of each electric service supplier subject to the agreement, any and all powers
15 granted to a rural electric cooperative by a municipality, pursuant to the agreement, to
16 operate within the corporate boundaries of that municipality, notwithstanding the
17 provisions of section 394.020 and of section 394.080 to the contrary, ...

18 AmerenUE’s omission of the actual language of § 394.312.2 in not an insignificant oversight.
19 Based on the language of §394.312.2 Three Rivers cannot, as suggested by AmerenUE, start
20 serving in a municipality over 1,500 inhabitants, without receiving authority from the city to
21 serve inside the city's limits. The approval of a territorial agreement and subsequent city
22 authority can not be an end run around existing Missouri law, if Missouri law permits an electric
23 cooperative to serve in nonrural areas as setout in §394.312.2.

1 **Q. Does Mr. Merry opine as to whether the proposed Territorial Agreement will**
2 **be in the public interest?**

3 A. Yes. Mr. Merry's testimony is riddled with statements and conclusions that the
4 territorial agreement is not in the public interest because of the possibility of competition
5 between Three Rivers and AmerenUE, in the limited areas of cities with a population over 1,500.
6 But the increased competition that AmerenUE speaks of, currently, only applies to 3 cities over
7 1,500 (Jefferson City, Eldon, and New Haven) and possibly 4 other towns (Belle, Linn, St.
8 Martins, and Wardsville) that may go over 1,500 at the next census. With regards to Jefferson
9 City, Eldon, and New Haven, the likelihood of Three Rivers serving a large portion of any of
10 these towns, if the cities would even grant the power to the Cooperative to serve inside the city
11 limits, is further limited by the basic facts that the cost to construct duplicate facilities to serve,
12 say in downtown Jefferson City, would be cost prohibitive and not in the best interest of Three
13 Rivers' member owners. Furthermore, Three Rivers would either have to obtain private
14 easements, if possible, or obtain a franchise from the City's citizens to use the public right of
15 way in placing its poles and lines. In order to serve what? Section 394.315, and Section
16 393.106, (the anti flip-flop statutes) prohibit customers from switching electric service providers,
17 unless approved by the Commission, for reasons other than a rate differential. As noted in Mr.
18 Merry's testimony, Three Rivers and AmerenUE currently compete in the rural areas in and
19 around these cities, and this is where the majority of the current competition and duplication
20 exist between Three Rivers and AmerenUE. I do not anticipate that the Territorial Agreement
21 with Gascosage, or lack of a Territorial Agreement, will effect this situation. If the Commission
22 approves the Territorial Agreement, and a city grants the authority to Three Rivers to serve
23 inside the city limits, the existing relationship and competition between Three Rivers and

1 AmerenUE simply remains the same as if there was no Territorial Agreement, because of
2 prohibitive cost of extending the Cooperative's facilities beyond their existing locations. Three
3 Rivers' current facilities are on the out skirts of the city limits as well as in the areas most likely
4 to be annexed by Eldon, Jefferson City and New Haven.

5 With regards to Belle, Linn, St. Martins, and Wardsville, AmerenUE, regardless of this
6 Agreement, will continue to compete with Three Rivers for new customers in these areas, until
7 such time as these cities go over 1,500 inhabitants after a census. Then it will have to be
8 determined if Three Rivers is the predominant supplier in these cities, and if so, then the
9 Cooperative can continue to serve in these cities. The Cooperative's ability to serve does not
10 limit AmerenUE's ability to serve these same areas.

11 Moreover, since a municipality has to grant a cooperative the power to serve inside a
12 municipality, it can determine whether or not it wants competition between a cooperative and a
13 public utility, and whether or not, it wants duplication of facilities along its right of ways. The
14 municipality is in the best position to determine what is in the public interest for its citizens when
15 determining whether to grant or deny an electric cooperative the ability to serve inside a
16 municipality. Contrary to the assertions of AmerenUE, if the Commission approves the
17 proposed Territorial Agreement, Three Rivers will not be able to automatically begin competing
18 with AmerenUE in a city over 1,500 inhabitants, without first obtaining approval from a city.
19 The mere existence of statutory authority of a city to grant to a rural electric cooperative the
20 ability to serve inside the city, does not make a territorial agreement detrimental to the public
21 interest, simply because there is the potential for competition between a party to a territorial
22 agreement and a nonparty.

1 **Q. Do you agree with the statements made by Mr. Merry at page 7, lines 20-21,**
2 **and page 8 lines 1-10 of his testimony, wherein he states: "Further, this agreement defines a**
3 **boundary in Miller and Maries counties that will reduce future duplication in an area that**
4 **is rural in nature. It also permits TR to serve in "municipalities that are located in the**
5 **Three Rivers Exclusive Service Area" per Section 4 of the Territorial Agreement. If**
6 **approved this provision will result in duplication of facilities inside municipalities with**
7 **populations in excess of fifteen hundred inhabitants in Cole, Miller, Maries, Osage, and**
8 **Franklin counties, such as Jefferson City and AmerenUE's ability to plan its system and to**
9 **optimally utilize its facilities inside said municipalities would be negatively impacted. Over**
10 **time, since urban areas develop faster than rural ones, the Territorial Agreement will**
11 **actually increase duplication of facilities, which in turn will result in congested lines in**
12 **urban areas, increased unsafe conditions, inefficient use of existing facilities, more complex**
13 **system planning and ultimately higher costs to both TR and AmerenUE. Thus, for these**
14 **reasons, the Territorial Agreement is not in the public interest." ?**

15 **A. No. First, AmerenUE's concerns extend only to three cities out of a territory**
16 **service area that encompasses 7 counties. Approval of the Territorial Agreement will not, in of**
17 **itself, result in an increase of existing duplication of facilities inside municipalities with**
18 **populations in excess of fifteen hundred inhabitants. As I stated above, its just simply**
19 **uneconomical to duplicate expensive electric lines to serve only one or two customers. In**
20 **addition, the fact that a municipality has to grant the Cooperative the ability to serve inside the**
21 **municipal limits also serves as a barrier to competition. The municipality will not grant such**
22 **authority unless it deems such service to be in the public interest. The real competition that**

1 AmerenUE speaks of is in those areas along the borders of the cities and in those areas that are
2 annexed into a city which are not fully developed with a utility infrastructure.

3 Mr. Merry states one of his concerns that: "Over time, since urban areas develop faster
4 than rural ones, the Territorial Agreement will actually increase duplication of facilities, which in
5 turn will result in congested lines in urban areas, increased unsafe conditions, inefficient use of
6 existing facilities, more complex system planning and ultimately higher costs to both TR and
7 AmerenUE. Thus, for these reasons, the Territorial Agreement is not in the public interest."

8 (page 8, lines 6-10), But this concern can be addressed by a territorial agreement between Three
9 Rivers and AmerenUE. A result contemplated by §394.312.1, wherein the legislative intent was
10 to allow retail electric providers to displace competition by entering into written territorial
11 agreements.

12 **Q. Has Three Rivers and AmerenUE discussed entering into a territorial**
13 **agreement?**

14 **A. Yes. Several times over the past 5 to 10 years Three Rivers and AmerenUE have**
15 **met and tried to define boundary lines. But the parties have been unable to agree on territorial**
16 **service areas.**

17 **Q. Do you have any comments about page 4, lines 12-16 of Mr. Merry's**
18 **testimony, wherein he states: "Mr. Ryan also states "if those laws are violated I expect**
19 **AmerenUE would then have a legal issue they could bring before the Missouri Courts."**
20 **(page 6, line 6) It is my opinion that any territorial agreement that contains language so**
21 **vague that it would require a court of law to rule on whether the agreement permits an end**
22 **run around existing Missouri law is not in the public interest."?**

1 A. Yes. I disagree with the notion expressed by Mr. Merry. The language of Article
2 4 is not vague, it is clear, concise and accurately reflects the understanding of the Parties as to
3 their ability to serve in municipalities. Article 4 does not state that Three Rivers can serve in
4 only municipalities over 1,500 or under 1,500. The language of Article 4 is merely a statement
5 of the Parties understanding of what the Missouri law is. If the language is vague, as AmerenUE
6 suggests, then this very same "vague" language is contained in a majority of AmerenUE's
7 territorial agreements with other cooperatives. Mr. Merry has been using "vague" language for
8 his territorial agreements with other cooperatives. If there is a question as to the legal ability for
9 a cooperative to serve in a municipality over 1,500 inhabitants under section 394.312.2, that is a
10 legal issue for the Courts to determine. However, it does not appear that this language is in
11 dispute. As stated earlier, AmerenUE acknowledges this statutory authority in footnote 1 of its
12 Rebuttal to the Joint Applicant's Response to AmerenUE's Motion to Intervene; AmerenUE just
13 failed to point out the additional competitive barrier to the Cooperative which is the need for
14 municipal authority. Thus, section 294.312.2 RSMo is just one more statutory exception that
15 allows a rural electric cooperative to serve in a non-rural area.

16 It has been noted that Gascosage has a Territorial Agreement with AmerenUE that covers
17 Pulaski County, where the city of Waynesville has a municipal utility. If Gascosage attempts to
18 serve inside Waynesville in violation of Missouri law then a court action would be appropriate to
19 determine Gascosage's service rights. Callaway Electric Cooperative has a Territorial
20 Agreement with AmerenUE, that Mr. Merry helped to negotiate, that grants the city limits of
21 Fulton to the Cooperative. The City of Fulton has a municipal utility. Boone Electric
22 Cooperative has a Territorial Agreement with AmerenUE, that Mr. Merry helped to negotiate,
23 that grants the city limits of Columbia to the Cooperative. The City of Columbia has a municipal

1 utility. Again, if either cooperative attempts to serve inside the city's limits, in violation of
2 Missouri law, the respective municipality could bring a court action to determine the legal ability
3 of the Cooperative to serve inside the city limits. It should be further noted that in each of these
4 cases, both Cooperatives and AmerenUE represented to the Municipalities that pursuant to
5 §394.312.5, that the territorial agreements shall in no way affect or diminish the rights and duties
6 of any supplier not a party to the territorial agreement.

7 Legal disputes between electric providers as to the provision of retail electric service is
8 not exclusively a problem associated with territorial agreements, but is a problem that arises
9 almost always between cooperatives and public utilities, or a municipal utility and a cooperative
10 where there are no territorial agreements in place.

11 **Q. Do you agree with Mr. Merry's testimony that: "In agreements between an**
12 **electrical corporation and a rural electric cooperative, it is always necessary to include**
13 **provisions that grant additional rights to the rural electric cooperative to serve within**
14 **municipal boundaries within its exclusive service area." (page 5, line 11-13)?**

15 **A. No.** As I understand the territorial agreement statute, an electric provider either
16 has the ability to serve in the designated service area as set out in the agreement or they don't. A
17 territorial agreement cannot grant additional authority to an electric provider that is not contained
18 in §394.312. Mr. Merry's analogy why the parties use certain language in the Consolidated
19 Territorial Agreement ignores the issue raised by AmerenUE in *this* proceeding --- that neither
20 AmerenUE or Consolidated Electric Cooperative is free from competition from other electric
21 service providers not a party to the agreement. The City could establish a municipal utility to
22 compete against both the Cooperative and AmerenUE, or another public utility could seek
23 authorization from the commission to provide service in the area designated as Consolidated's

1 exclusive service area, and the commission shall give no consideration or weight of an existing
2 territorial agreement between Consolidated and AmerenUE. (see §394.312.5).

3 **Q. Do you agree with the comments made by Mr. Merry in his testimony at**
4 **page 7, lines 10-14, wherein he states: "Commission approval of the proposed Territorial**
5 **Agreement in its current form will essentially eliminate the limitations imposed by**
6 **Missouri law, duplication of facilities inside municipalities such as Jefferson City would**
7 **result, and AmerenUE's ability to plan its system and to optimally utilize its facilities inside**
8 **said municipalities would be adversely impacted."?**

9 A. No. The Commission approval of the proposed Territorial Agreement will not in
10 and of itself eliminate the current limitations imposed by current Missouri law. The
11 municipality, such as Jefferson City, has to grant Three Rivers authority to serve within its city
12 limits. Without such additional authorization, there can be no "explosion of construction" on
13 Three River's part to construct duplicate facilities to compete with AmerenUE or for
14 AmerenUE's ability to plan its system to be adversely effected. Section 394.312 permits the
15 Commission to approve a territorial agreement that alters current Missouri law regarding the
16 provision of retail electric service. Current Missouri law acknowledges competition as the norm.
17 Section 394.312 alters this "norm" by displacing competition as between the parties to the
18 Territorial Agreement. Thus, competition remains between a party to a territorial agreement and
19 a non-party. Therefore, the complaint from Mr. Merry that the Commission approval of the
20 proposed Territorial Agreement adversely effects AmerenUE's ability to plan its system and to
21 optimally utilize its facilities, is not a factor to be considered by the Commission when §394.312
22 contemplates competition between parties to a territorial agreement and non-parties.

1 I suspect that AmerenUE operates similarly as Three Rivers does, in that an electric
2 utility uses its current facilities to extend service to new customers based on a customer's request
3 and the location of the structure. That fact doesn't change with the approval of a territorial
4 agreement. Again, AmerenUE is seeking to have its current monopoly protected by the rejection
5 of this territorial agreement, to which it is not a party. As I understand Missouri law, there is no
6 provision that contemplates that an electric utility is to be free of competition. This is evidenced
7 by the fact that the Missouri Legislature passed § 394.312, which displaces competition.
8 Additionally there are other circumstances in which electric providers can compete. Such as the
9 situation where the Cooperative is the predominate supplier in a city that goes over 1,500 and
10 AmerenUE's right to continue to serve in the same area is not limited. Despite the proposed
11 Territorial Agreement between Three Rivers and Gasco-Three Rivers, AmerenUE could still face
12 competition from any city that establishes its own municipal utility. And if that were the case,
13 all of the complaints that AmerenUE has with regards to the approval of this Territorial
14 Agreement, would be the same problems that it would face in the event that a city establishes its
15 own electric utility. Again, just one more example that Missouri law does not prohibit
16 competition as suggested by Mr. Merry and AmerenUE.

17 The Commission in determining if the proposed Territorial Agreement is in total not
18 detrimental to the public interest, should look at the agreement in its entirety, considering the
19 proposed exclusive service areas of both Three Rivers and Gasco-Three Rivers, and the parties ability to
20 provide service to its members in these proposed exclusive service areas and not just focus on the
21 cities of Eldon, Jefferson City, and New Haven and the request to be free of potential
22 competition as suggested by AmerenUE.

1 **Q. Have you reviewed the proposed language change to Article 4 by Mr. Merry**
2 **located at page 8, lines 13 -21 and page 9, lines 1-4?**

3 A. Yes, I have.

4 **Q. What are your comments regarding the proposed language changes?**

5 A. First off, the proposed Territorial Agreement is not an end run around existing
6 Missouri law regarding Three Rivers ability to serve in municipalities over 1,500 inhabitants. As
7 noted by AmerenUE and as stated above, §394.312 allows a city to grant to a cooperative the
8 ability to serve inside its city's limits. As for the actual proposed language, I find it
9 unacceptable, especially the clause that: "Three Rivers may serve within all or part of any
10 municipality regardless of its population that is located in the Three Rivers Exclusive Service
11 Area, as defined in this Agreement, if all other electric suppliers cannot serve in that area as a
12 result of Missouri law or an approved Territorial Agreement." This provision smacks in the face
13 of the provisions continued in §394.312.5 that provides that Territorial Agreements do not effect
14 nonparties. What AmerenUE is asking the Parties to adopt, and/or have the Commission grant
15 its request to include, is language that benefits a nonparty to a territorial agreement.
16 Furthermore, the proposed clause is so broad that it implies that Three Rivers wouldn't even be
17 able to serve existing members in municipalities or existing members in areas that are annexed
18 into a city.

19 The last clause regarding the situation where a municipality is being served by both Three
20 Rivers and Gascosage can continue being served by both Cooperatives, goes against the intent of
21 Three Rivers and Gascosage in establishing the exclusive service areas. Furthermore, there is no
22 situation where both Three Rivers and Gascosage serve in and around a municipality over 1,500
23 inhabitants. Therefore, the clause is simply not necessary. I believe that AmerenUE's attempt to

1 draft language for Article 4 shows how difficult it is to craft language for a territorial agreement
2 when you are not a party to the negotiations or the agreement itself. Possibly that could be yet
3 one more reason why the Legislature specifically stated that nonparties to territorial agreements
4 are not effected by the agreements.

5 **Q. Have you reviewed the Rebuttal Testimony of Missouri Public Service**
6 **Commission Staff witness Alan J. Bax which was pre-filed in this case?**

7 A. Yes, I have.

8 **Q. At page 2, lines 20 and 21, Mr. Bax states that: "A number of legal issues**
9 **appear to be essential elements to this case." Do you know what Mr. Bax is talking about?**

10 A. No. As I understand the Territorial Agreement statute, the Commission may
11 approve the application for a Territorial Agreement if after hearing, it is determined that the
12 approval of the agreement in total is not detrimental to the public interest. Based on the statute, and
13 a reading of Mr. Bax's testimony, I am not sure what legal issues Mr. Bax is referring to that makes
14 the proposed Territorial Agreement detrimental to the public interest.

15 **Q. At page 3, line 14, Mr. Bax was asked: "Q. Why is a territorial agreement**
16 **being sought in the present case?" Do you agree with his response?**

17 A. Not entirely. The first sentence of Mr. Bax's response states that: "The
18 Applicants desire to define a boundary, predominantly in Miller and Maries Counties, that
19 Gascosage and Three Rivers will not compete with one another in providing electric service to
20 new customers within the area designated as the exclusive service territory of the other." While
21 Three Rivers and Gascosage spent considerable time, effort, and money establishing the
22 boundary line in Maries County, the Territorial Agreement was not entered into by Three Rivers
23 with the sole solution of addressing the issue of serving new customers in Maries County. The

1 Miller County line was drawn using Gascosage's service area set out in its Territorial Agreement
2 with AmerenUE. As I tried to explain to Mr. Bax, establishing a broad service territory would
3 prohibit Gascosage from serving in any area that has been Three Rivers' traditional service area.
4 That has more value to Three Rivers than establishing a boundary line in Maries County,
5 especially since Three Rivers was approached by Gascosage to enter into a territorial agreement
6 to address, among other issues, the service issue to new members along the border between the
7 two Cooperative's existing electric facilities, in Maries County. I also explained that Three
8 Rivers, in negotiating its designated service territory as set out in the agreement, was attempting
9 to limit Gascosage's ability to purchase additional AmerenUE facilities that are located in what
10 could be considered Three Rivers' traditional service area.

11 **Q. At page 4, lines 10 through 14, Mr. Bax states that: "The Staff would note that**
12 **the Applicants have, apparently, only previously competed for new customers in a portion**
13 **of Miller and Maries Counties. Therefore, the boundaries included in the Joint Application**
14 **within Miller and Maries Counties would seem to be the true area of concern. Miller and**
15 **Maries Counties comprise the area in which the Applicants overlap each other in the**
16 **provision of electric service." Do you agree with Mr. Bax's statement?**

17 **A. No.** As I stated in my previous answer, the competition for new customers along the
18 Maries County boundary line was not the "true area of concern" of Three Rivers when it negotiated
19 and entered into the Territorial Agreement with Gascosage. The Territorial Agreement addresses
20 the much broader, long-term issues of competition with Three Rivers within the Gascosage service
21 area, and vice versa. Three Rivers and Gascosage in negotiating the Territorial Agreement
22 considered the long term effects of the agreement throughout the entire traditional service areas so

1 that the Agreement would not have to be renegotiated each time there was a change in
2 circumstances. That would be a waste of time and money for both parties.

3 It appears that Mr. Bax's testimony is focusing on only one part for the parties entering into
4 the Territorial Agreement. The Territorial Agreement between Three Rivers and Gascosage was
5 not only designed to meet current issues, but was also designed to address potential future issues as
6 well. Particularly, since this agreement is perpetual and can only be terminated by both parties
7 agreeing to file with the Commission a notice of termination, and there is no law prohibiting
8 Gascosage from serving or attempting to serve any customer in Three River's traditional service
9 area, it was just as important to Three Rivers to exclude Gascosage from all of its traditional service
10 area as it was to establish a boundary line in Maries County that kept existing customers of each
11 respective Cooperative in its designated service area while determining which Cooperative had
12 distribution facilities closest to the proposed line. In Miller County there was little if any
13 competition between Three Rivers and Gascosage, but Miller County was included in this
14 agreement because that is where Gascosage purchased a large number of customers from
15 AmerenUE, thus providing service to an area larger than Gascosage's traditional service area.
16 Again, Three Rivers had the objective when negotiating the agreement to limit Gascosage from
17 providing electric service in Three River's traditional service area.

18 With respect to Mr. Bax's statement that Miller and Maries Counties comprise the area in
19 which the Applicants overlap each other in the provision of electric service, it is not entirely correct.
20 In fact, there is no overlap of service. The discussion regarding a Territorial Agreement was first
21 brought up by Gascosage when Three Rivers' extended electric service to a new member that was
22 located just inside what Gascosage believed to be its traditional service area.

1 **Q. Does setting forth the service area, to include counties other than Maries and**
2 **Miller Counties meet Three Rivers' objective of ensuring that it can make long term plans**
3 **without the concern of Gascosage extending its service into Three Rivers' designated service**
4 **territory as set-out the Territorial Agreement?**

5 A. Yes.

6 **Q. At page 4, line 17, Mr. Bax raises an issue about a Camden County designation**
7 **is missing on the Application. Do you have a response?**

8 A. Yes. Mr. Bax points out that the Joint Application, in the first paragraph,
9 inadvertently omitted Camden County from the list of counties that Gascosage serves in. The
10 omission simply appears to me as an oversight, when the Recitals of the Territorial Agreement
11 contains Camden County as one of the Counties being served by Gascosage. While Camden
12 County was inadvertently omitted in paragraph 1 of the Application, the omission is not material to
13 the approval of the Territorial Agreement.

14 **Q. At page 4, lines 18-22, Mr. Bax raises an issue about the metes and bounds**
15 **description in Phelps county. Have you checked the agreement to determine if Mr. Bax is**
16 **correct?**

17 A. Yes, I went and looked at the agreement and §46.130 RSMo. to determine that Mr.
18 Bax is incorrect. The description of Phelps County was taken directly from §46.130. RSMo. If Mr.
19 Bax had asked about this perceived discrepancy, I could have explained to him how and where the
20 legal description for Phelps County was obtained.

21 **Q. At page 5, lines 3 through 8, Mr. Bax raises an issue regarding Three Rivers**
22 **service territory including all of Moniteau County. Do you agree with Mr. Bax's assertion**
23 **raised in his testimony?**

1 A. No. While Three Rivers currently only serves a small area in the Southeast area of
2 Moniteau County, I don't believe that Mr. Bax or Staff has the foresight to determine what Three
3 Rivers, or Gascosage will or will not do under this perpetual agreement. In fact, I can not even say
4 at this point in time what the business plan of Three Rivers will be in 10, 20 or 30 years with regard
5 to its plans for expansion in not only Moniteau County, but all of the counties covered by this
6 Agreement. Furthermore, I take issue with Mr. Bax's statement at page 5, lines 12 through 15 that:
7 "Emphasis should be placed on the boundary descriptions in Miller and Maries Counties, the
8 only counties included in the Joint Application in which both Applicants currently provide
9 electric service and compete with each other for new customers." Such a statement is
10 shortsighted and ignores the other considerations that the parties under took when the Territorial
11 Agreement was negotiated and later entered into. Mr. Bax's testimony ignores the reality that
12 business plans and the business environment can and do change over time. Limiting the
13 agreement, as Mr. Bax suggests, to only Maries and Miller Counties because those are the only
14 counties that the Cooperatives currently compete in, is not only inaccurate, but further illustrates
15 Mr. Bax's misunderstanding about the process that the Parties went through in negotiating the
16 territorial agreement and why the other counties were included in the agreement.

17 **Q. At page 6, lines 7 through 10, Mr. Bax states that Staff verified much of the**
18 **proposed boundary identified in the Application located within Maries and Miller**
19 **Counties, which Staff believes is the area that the Territorial Agreement should principally**
20 **address. Do you agree with Mr. Bax's assertion that the Territorial Agreement should**
21 **principally address Maries and Miller Counties?**

22 A. No. As I stated in my previous answer, Mr. Bax and Staff are ignoring the factors
23 that went into the negotiations of the entire Territorial Agreement between the parties. An approved

1 Territorial Agreement is the only way two electric service providers can displace competition as
2 between them. We cannot define a competition-free area with Gascosage unless there is a
3 Commission approved Territorial Agreement. If there is no approved Territorial Agreement, then
4 either Cooperative can serve where it decides, which makes long-term planning as between the two
5 cooperatives much more challenging, and increases the costs to each cooperative and its members.
6 The desire to ensure that Gascosage doesn't jump over boundary lines in Maries and Miller
7 Counties is, as I stated earlier, just as important to Three Rivers as establishing the boundary line in
8 Maries County to reduce and eliminate the possibility of duplication of facilities.

9 **Q. At page 7, lines 10 through 12, Mr. Bax states that: "Mr. Ryan should clarify**
10 **his direct testimony in which he seems to imply that Three Rivers may compete with**
11 **AmerenUE for customers in non-rural areas. Sections 394.020.3 and 394.080.2 RSMo 2000**
12 **appear to be relevant to this discussion." Do you understand what Mr. Bax is asking you to**
13 **clarify in your Surrebuttal Testimony?**

14 **A. No. Looking at Mr. Bax's testimony on pages 7 and 8, I am not entirely sure what**
15 **Mr. Bax is asking me to clarify with regards to my Direct Testimony. However, based on Mr.**
16 **Bax's citation to Sections 394.020.3 and 394.080.2, I will attempt, even though I am not a lawyer,**
17 **to clarify my Direct Testimony based on my understanding of Missouri law. Section 394.020.3, as**
18 **pointed out in Mr. Merry's Rebuttal Testimony, allows rural electric cooperatives to serve in any**
19 **rural area, which is defined as any area not included within the boundaries of any city, town, or**
20 **village having a population in excess of fifteen hundred inhabitants. Section 394.080.2 provides an**
21 **electric cooperative shall have the power to supply electric energy at retail and serve in cities,**
22 **towns, or villages having a population in excess of fifteen hundred inhabitants if the cooperative**
23 **was the predominant supplier of retail electric energy within the city at the time the city goes over**

1 1,500 inhabitants. Based on § 394.080.2, Three Rivers and AmerenUE could compete in a town
2 over 1,500 inhabitants, if Three Rivers was the predominant supplier when the town went over
3 1,500. Therefore, as I stated in my Direct Testimony, “The parameters under which an electric
4 cooperative may serve in a non-rural area has been established by law.”

5 **Q. Mr. Bax request clarification of Articles 5.2(B) and 5.4(B) of the Territorial**
6 **Agreement at page 9, lines 1-4. Can you clarify these two provisions?**

7 A. I will try. Article 5 deals with the situation where one party to the Territorial
8 Agreement purchases another electric provider. In Article 5.2(A), if the electric provider has a
9 territorial agreement with the nonpurchasing cooperative, the purchasing cooperative gets the
10 benefit of the electric provider’s territorial agreement with the non-purchasing cooperative, thus
11 increasing the purchasing cooperative’s service territory under this Agreement.

12 In Article 5.2(B), if there is no territorial agreement between the nonpurchasing
13 cooperative and the electric provider, then this agreement is modified by deleting from this
14 agreement those sections, and adjacent sections – except for sections that contain municipal
15 limits of any municipality whose population is in excess of 1,500 or the statutory limit as set out
16 in Chapter 394 RSMo. (2000). The exception of municipals over 1,500 from being removed
17 from this agreement allows the non-purchasing cooperative to retain the benefits of the original
18 territory set out in this Territorial Agreement, but compromises with the purchasing cooperative
19 and allows it to compete for new customers in those sections that the electric provider had
20 facilities or customers. Nothing in Sections 5.2(B) and 5.4(B) grants either cooperative
21 additional service rights in municipals over 1,500 above their legal ability to serve in such
22 municipalities.

1 **Q. Mr. Bax, at page 9, lines 16 through 18, is asked if the Applicants have the**
2 **capability to provide electric service to the customers in what would be their respective**
3 **exclusive service territories as described in this proposed Territorial Agreement, and**
4 **answers the question by stating that: "A. Yes, to the extent that the Staff believes the**
5 **Territorial Agreement predominantly concerns the boundaries proposed in Miller and**
6 **Maries Counties and that the Territorial Agreement would apply only to the Joint**
7 **Applicants." Do you agree with Mr. Bax's testimony?**

8 **A. No. Three Rivers, as I stated in my Direct Testimony, has the ability and**
9 **infrastructure to serve new members and customers throughout the service territory as described**
10 **in the Territorial Agreement. I am sure that Gascosage, could likewise serve any new members**
11 **or customers that request service from them. The Cooperatives' infrastructure and facilities**
12 **don't start and stop at the Maries and Miller County boundary lines.**

13 **Q. It appears at page 10, lines 1 through 4, that Mr. Bax is recommending the**
14 **approval of the Territorial Agreement by defining a boundary in Maries and Miller Counties,**
15 **but ignores the remaining service territory as set out in the Agreement. Do you have a**
16 **response to Mr. Bax's testimony?**

17 **A. It appears that Mr. Bax has focused on only one issue that this Territorial**
18 **Agreement was designed to address. In speaking with Mr. Bax about the broader scope of the**
19 **Territorial Agreement, discussions were held regarding the goals that Three Rivers was attempting**
20 **to achieve. In our discussions, Mr. Bax indicated that he felt this was a simple Territorial**
21 **Agreement that was in the public interest, but there was some suggestion that if the Territorial**
22 **Agreement were limited to Maries and Miller Counties that all of the problems raised by**
23 **AmerenUE would go away.**

1 While Mr. Bax's testimony doesn't clearly recommended the approval of the Territorial
2 Agreement as presented, it is my understanding that the Commission is to determine whether the
3 Territorial Agreement should be approved if it is found that the Territorial Agreement "in total is not
4 detrimental to the public interest."

5 **Q. Do you believe that this Territorial Agreement in total is not detrimental to the**
6 **public interest?**

7 A. Yes, I do. This Territorial Agreement establishes parameters for each Cooperative,
8 and ensures both that the other will not serve new loads in the territory of the other. Such
9 assurances enable our planning, engineering, and operational decisions to be simplified and our
10 investments are not driven by competition for new loads in our entire traditional service area, not
11 just the boundary lines of Maries and Miller Counties, as suggested by Mr. Bax and Staff.

12 **Q. Are you asking that the commission approve the Territorial Agreement, as**
13 **presented?**

14 A. Yes.

15 **Q. Does this conclude your Surrebuttal testimony?**

16 A. Yes.