

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

3

4 TRANSCRIPT OF PROCEEDINGS

5 HEARING

6 January 7, 2005

7 Jefferson City, Missouri

8 Volume 1

9

10 In the Matter of the Application of)
11 Gascosage Electric Cooperative and)
12 Three Rivers Electric Cooperative)
13 for Approval of a Written Territorial) Case No.
14 Agreement Designating the Boundaries) E0-2005-0122
15 of Each Electric Service Supplier)
16 within Camden, Cole, Franklin,)
17 Gasconade, Maries, Miller, Moniteau,)
18 Osage, Phelps & Pulaski Counties,)
19 Missouri.)

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19 RONALD D. PRIDGIN,
20 REGULATORY LAW JUDGE.
21 CONNIE MURRAY,
22 LINWARD "LIN" APPLING,
23 COMMISSIONERS.

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1 P R O C E E D I N G S

2 JUDGE PRIDGIN: Good morning. We are on the
3 record. This is the hearing in Case No. EO-2005-0122 in the
4 matter of Gascosage and Three Rivers Co-ops and their proposed
5 Territorial Agreement.

6 I am Ron Pridgin. I am the regulatory law
7 judge assigned to preside over this hearing. It's being held
8 in the Governor's Office Building in Jefferson City, Missouri
9 on January 7th, 2005. The time is 10:10 in the morning.

10 At this time I would like to get oral entries
11 of appearance from counsel beginning with Staff, please.

12 MR. BERLIN: Your Honor, appearing on behalf of
13 the Staff, Bob Berlin and Steve Dottheim, the Staff of the
14 Missouri Public Service Commission, Post Office Box 360,
15 Jefferson City, Missouri 65102.

16 JUDGE PRIDGIN: Mr. Berlin, thank you.

17 On behalf of the Office of the Public Counsel,
18 please.

19 MS. O'NEILL: Good morning. Ruth O'Neill
20 appearing on behalf of the Office of the Public Counsel. My
21 mailing address is PO Box 2230, Jefferson City, Missouri
22 65102.

23 JUDGE PRIDGIN: Thank you.

24 On behalf of the applicant, Gascosage and Three
25 Rivers, please.

1 MR. SCOTT: Victor Scott and Lisa Chase of the
2 law firm of Andereck, Evans, Milne, Peace and Johnson, PO Box
3 1438, Jefferson City, Missouri 65102 representing both
4 Intervenors, Gascosage Electric Cooperative and Three Rivers
5 Electric Cooperative.

6 JUDGE PRIDGIN: Mr. Scott, thank you.

7 On behalf of AmerenUE, please.

8 MR. BOBNAR: Yes, your Honor. William Bobnar,
9 Ameren Services Company, appearing on behalf of Union Electric
10 Company, which is doing business as AmerenUE. Our address is
11 One Ameren Plaza, PO Box 66149, St. Louis, Missouri 63166.

12 JUDGE PRIDGIN: Mr. Bobnar, thank you. And
13 could I trouble you to double check your microphone, make sure
14 that you're on? And if you're having any trouble, please let
15 me know and we'll have somebody check.

16 MR. BOBNAR: Your Honor, is that fine?

17 JUDGE PRIDGIN: That's great. Thank you very
18 much.

19 I understand that instead of proceeding with
20 the procedural schedule that had been given to me before, that
21 we have some sort of announcement; is that correct?

22 MR. BOBNAR: Yes, your Honor. That is correct.

23 JUDGE PRIDGIN: Mr. Bobnar.

24 MR. BOBNAR: May it please the Commission.

25 AmerenUE is pleased to --

1 JUDGE PRIDGIN: Could you check the mic?

2 MR. BOBNAR: Or just come up there?

3 JUDGE PRIDGIN: That's fine. You could come up
4 to the podium, if you would please, sir.

5 MR. BOBNAR: This one's definitely live.

6 JUDGE PRIDGIN: Yes, thank you.

7 MR. BOBNAR: Thank you again. May it please
8 the Commission.

9 AmerenUE is pleased to announce that after long
10 discussions with the joint applicants in this case, AmerenUE
11 has decided to withdraw its opposition to the Territorial
12 Agreement. We believe that the Commission should, in fact,
13 find the Territorial Agreement not detrimental to the public
14 interest and we will be withdrawing from any further actions
15 in this case.

16 JUDGE PRIDGIN: All right. Mr. Bobnar, thank
17 you very much.

18 That being the case, will there be any need
19 from the parties for any of AmerenUE's witnesses -- and I
20 believe that would just be the one witness, Mr. Merry?

21 MR. BERLIN: No, your Honor. Staff has no
22 need.

23 MS. O'NEILL: No, your Honor.

24 MR. SCOTT: No, your Honor.

25 JUDGE PRIDGIN: All right. Thank you very

1 much.

2 Will the Commission have any questions for
3 Mr. Merry?

4 COMMISSIONER APPLING: I have none.

5 JUDGE PRIDGIN: All right. Thank you.

6 If Mr. Merry is here, he can certainly be
7 excused. But if you would please stay with us just in case.

8 All right. That being the case, let me go
9 through and kind of revise the schedule and see if I can get
10 everybody's agreement on how to proceed. We can take opening
11 statements, and then if Mr. Merry is not needed, we can
12 proceed with Mr. Ryan, Mr. Greenlee and Mr. Bax in much the
13 same way and have cross-examination much the same way that the
14 parties had anticipated. Is that what the parties had
15 anticipated?

16 MR. BERLIN: Yes, your Honor.

17 JUDGE PRIDGIN: All right. Any exhibits that
18 need to be marked before we take opening statements?

19 MR. BERLIN: Your Honor, I do have a map that I
20 will use in my opening statement.

21 JUDGE PRIDGIN: All right. Do you need to mark
22 that as an exhibit? Do you plan on introducing that?

23 MR. BERLIN: Yes, your Honor, I would. I'd
24 like to -- your Honor, I have a map of the electric service
25 territories in Case No. EO-2005-0122 that I think will serve

1 as an aid to explain the Territorial Agreement.

2 JUDGE PRIDGIN: We'll call that Exhibit No. 1
3 for identification purposes.

4 (Exhibit No. 1 was marked for identification.)

5 MS. O'NEILL: Your Honor, at this time Office
6 of the Public Counsel would waive opening statement and waive
7 cross-examination on the remaining witnesses. At this time I
8 would also ask if I can be excused from this proceeding.

9 JUDGE PRIDGIN: Ms. O'Neill, thank you. Any
10 objection from any of the parties?

11 MR. SCOTT: No objection, your Honor.

12 JUDGE PRIDGIN: Commissioner Murray?

13 COMMISSIONER MURRAY: Ms. O'Neill, just for
14 clarification, I assume there's still some disagreement
15 between Staff and the applicants here. And is Office of the
16 Public Counsel taking any position?

17 MS. O'NEILL: It's my understanding that
18 whatever positions we would have taken I think are going to be
19 cleared up by the fact that AmerenUE is withdrawing. So I
20 don't believe we're going take any positions on any of the
21 remaining issues.

22 COMMISSIONER MURRAY: Thank you.

23 JUDGE PRIDGIN: All right. If there's nothing
24 further from the Bench or the parties, Ms. O'Neill, thank you.
25 You may be excused. And we'll note that your

1 cross-examination and opening is waived.

2 MS. CHASE: Your Honor, we have brought copies
3 of the Direct Testimony of Mr. Ryan and Mr. Greenlee and
4 Surrebuttal Testimonies of Mr. Ryan and Mr. Greenlee that we
5 can mark as exhibits. And we've brought extra copies for the
6 Commissioners and Judge.

7 JUDGE PRIDGIN: All right. If that's something
8 you plan to introduce, if you could get those marked, please.

9 MS. CHASE: We also have a copy of the
10 agreement that we will render.

11 COMMISSIONER MURRAY: Judge, are these
12 different than the pre-filed testimony?

13 JUDGE PRIDGIN: These are the same as the
14 pre-filed testimony?

15 MS. CHASE: Yes, that is correct.

16 COMMISSIONER MURRAY: I don't think that the
17 Commissioners need copies. I mean, I speak for myself.

18 JUDGE PRIDGIN: We certainly have copies, but I
19 mean, if you wanted to introduce one to the court reporter for
20 her to mark and receive, that would be great.

21 MS. CHASE: Your Honor, did you need a copy of
22 any of these?

23 JUDGE PRIDGIN: I don't need a copy. Thank
24 you.

25 MR. BERLIN: Your Honor, Staff has pre-filed

1 testimony. Do we wish to mark it now?

2 JUDGE PRIDGIN: That would be great. And,
3 Ms. Chase, could I get you to announce what numbers you have,
4 please?

5 MS. CHASE: I guess Exhibit No. 2 would be the
6 Territorial Agreement without the maps. The Territorial
7 Agreements with the maps has been filed in this case.
8 Number 3 would be the Direct Testimony of John Greenlee; No. 4
9 would be the Direct Testimony of Walt Ryan; No. 5 would be the
10 Surrebuttal Testimony of John Greenlee; and No. 6 would be the
11 Surrebuttal Testimony of Walt Ryan.

12 (Exhibit Nos. 2 through 6 were marked for
13 identification.)

14 JUDGE PRIDGIN: All right. Ms. Chase, thank
15 you.

16 Mr. Berlin?

17 MR. BERLIN: Your Honor, Staff has the Rebuttal
18 Testimony of Staff Witness Alan Bax and the Cross-Surrebuttal
19 Testimony of Staff Witness Alan Bax to mark into evidence.

20 JUDGE PRIDGIN: All right. I'll show Mr. Bax's
21 Rebuttal Testimony as Exhibit No. 7 for identification
22 purposes and Mr. Bax's Cross-Surrebuttal as Exhibit No. 8 for
23 identification purposes.

24 (Exhibit Nos. 7 and 8 were marked for
25 identification.)

1 JUDGE PRIDGIN: Any other exhibits, Mr. Berlin?

2 MR. BERLIN: Not at this time, your Honor.

3 JUDGE PRIDGIN: Mr. Bobnar?

4 MR. BOBNAR: No, your Honor.

5 JUDGE PRIDGIN: Any further exhibits? Anything
6 further before we proceed to opening statements?

7 All right. Hearing none, we'll hear from the
8 applicants. Ms. Chase or Mr. Scott?

9 MR. SCOTT: If it may please the Commission.
10 Again, good morning. My name is Victor Scott and I'm the
11 attorney for Gascosage and Three Rivers Electric Cooperative.

12 This is a Territorial Agreement between two
13 electric cooperatives. While Territorial Agreements are not
14 new to the Commission, it should be highlighted that it is
15 somewhat unusual for electric cooperatives to actually enter
16 into Territorial Agreements. In fact, there's only one
17 current Territorial Agreement that was approved in
18 approximately 1996, 1997 between three electric cooperatives
19 in the northwest corner part of the state.

20 This is only the second one that I know of
21 between electric cooperatives. And there's a reason for that.
22 And the reason for that is, is historically electric
23 cooperatives have what they deem as their quote/unquote
24 traditional service areas. And those traditional service
25 areas have been set out on maps and provided to the public and

1 I believe the Commission Staff has had several of those
2 throughout the years.

3 And those traditional service boundaries were
4 set up when the electric cooperatives were first organized in
5 the late thirties and early forties. Normally those boundary
6 lines were established because of some natural feature and/or
7 some community relations between the actual incorporators.
8 And so there wasn't a whole lot of competition between
9 electric cooperatives when they were first established. So
10 you have some defined boundary lines.

11 Now, the interesting part of this Territorial
12 Agreement is that Gascoage is a member of Show-Me Electric
13 Cooperative, its transmission and power supplier, which is
14 located down in Marshfield, Missouri. And they serve the
15 southeastern part of the state as the GNT. Three Rivers' GNT
16 is Central, which is located here in Jeff City.

17 Because those two cooperatives are members of
18 different GNTs, even though they have quote/unquote
19 traditional service boundaries, they are not what you would
20 call part of their own GNT family. So there's not as much
21 communication between the two entities regarding what they
22 believe their traditional service territories are, even though
23 they have lines that you can see from the road, etc., etc.
24 It's still not, I will say, discussed in their monthly
25 meetings and the other things so that when you're part of the

1 GNT family, you're not trying to duplicate the facilities,
2 you're trying to minimize those costs, those discussions kind
3 of get bypassed just over time.

4 And what we have found is, is the cooperatives
5 that neighbor other cooperatives who are members of other
6 GNTs, we are noticing more and more competition along those
7 boundary lines as people from the city move out to more rural
8 America. And especially along I-44, in and around the -- I-44
9 and between Rolla and this corridor in Maries County. And
10 we've been noticing that over the last five or ten years.

11 And that was the impetus of this agreement
12 between Three Rivers and Gascosage, because they had some
13 customers coming along that Maries County and wanting service
14 from one or the other. And Three Rivers began serving
15 customers where Gascosage believed was its traditional service
16 area. So that was the impetus that started the discussions
17 for why a Territorial Agreement ought to happen between these
18 two utilities.

19 Well, when you look at and when they come to
20 their counsel and say, okay, should we do a Territorial
21 Agreement, there's three things that we look at to see and
22 determine and recommend to our clients why a Territorial
23 Agreement has value to them and to the public.

24 The first is, is the elimination of current
25 competition, because that's part of what the statute says is

1 the parties can eliminate competition between them. Well,
2 that elimination of competition has multiple benefits that we
3 have found over the years: The elimination of duplication of
4 facilities, which then enhances safety, enhances the
5 anesthetic abilities of -- within the communities and those
6 are all the things that we have found that are beneficial when
7 you eliminate competition.

8 The second thing is future competition along
9 that boundary line. We have found that once you establish
10 this line, it gives the cooperative the ability to answer
11 questions to new members or new customers when they come into
12 the service area of saying, okay, here's where we serve, where
13 do you want to build your house or what house are you buying?
14 Especially in the rural areas because more than likely you're
15 going to be a buying a 5- or 10-acre lot. And so we've found
16 that by having these lines, it's a benefit.

17 But the most beneficial thing of a Territorial
18 Agreement, which we have learned actually from history, is the
19 third part of the Territorial Agreement. And that is, is
20 establishing a large enough area to eliminate future
21 competition in what the cooperative believes its traditional
22 service area.

23 And what I mean by what we've learned from
24 history, I point to the Commission of AmerenUE's Territorial
25 Agreement with Quiver River Electric Cooperative that was

1 entered into in the early 1980-- 1990's. In that agreement
2 Quiver River took a large part of the area, which is part
3 of -- out by Lake St. Louis and even farther out. And the
4 first several years of that agreement, there was no growth in
5 Quiver River area. But today, along that I-70/I-40 corridor
6 is where all the growth is happening. And Quiver River is now
7 benefiting from the Territorial Agreement that it entered into
8 over 10 years ago.

9 So the third part of the Territorial Agreement
10 is the most valuable. It takes thinking, it takes foresight
11 and it takes a lot of effort from the cooperatives to make the
12 determination of what they believe the future will hold. And
13 we're not talking about the immediate benefits of eliminating
14 current competition. We're actually talking about 10, 15, 20
15 years down the road. And that's why when these agreements are
16 perpetual, as is this one, that the area is so large.

17 And that goes with respect to the Staff's
18 comment with regards to Moniteau county. Why in the world
19 would Three Rivers want all of Moniteau County? Well, one is
20 they have current facilities there. Two, is, is in the
21 future, we don't know how Three Rivers will expand its system.
22 Whether or not they'll go further or deeper into Moniteau
23 County, we don't know. Only based on the drive that we
24 receive from customer requests to serve in Moniteau County
25 will we know what the -- what -- where we will extend our

1 facilities.

2 But it's clear under Missouri law a rural
3 electric cooperative can serve in any rural area. And there
4 is no law prohibiting Gascosage from serving in Moniteau
5 County except for the approval of this Territorial Agreement.

6 So if you're going to spend time and effort to
7 do a Territorial Agreement, one recommendation we make to our
8 client is, is where are your current facilities? How do you
9 believe you may expand? And if you think you may expand
10 further than what your existing line is today, then you
11 probably ought to try to negotiate that part out of the
12 Territorial Agreement.

13 That is one reason why Moniteau and Franklin
14 County and some of these outlying counties are part of this
15 agreement is to benefit Three Rivers so that Gascosage doesn't
16 hop over one county to begin serving a large commercial load
17 if the price is right and take away the benefit of what Three
18 Rivers believes it getting from the Territorial Agreement.
19 And the same for Gascosage.

20 Based on the testimony of Mr. Greenlee and
21 Mr. Ryan, the testimony is very standard. It's the testimony
22 presented in other Territorial Agreement cases, which is, is
23 they have sufficient facilities, sufficient electric power
24 supply from its GNT and its parent -- or and its power
25 producer, Associated Electric Cooperative, to provide electric

1 power and energy to any member who requests service from them
2 in this territory.

3 Now, a key part of when you analyze a
4 Territorial Agreement is whether or not this agreement is not
5 detrimental to the public interest. Even though this area is
6 being set aside as being these two electric power suppliers,
7 AmerenUE is also competing with these two providers and/or
8 other electric cooperatives are also in this area. And so the
9 Commission, in deciding to approve this agreement, does not
10 take into consideration those parties and the effect this
11 agreement has on those parties.

12 But, again, you know, I would stress that the
13 cooperatives have the ability to serve those customers that
14 they're asked to serve. Those customers aren't required to
15 ask the cooperatives to serve them, it's just that we have the
16 ability -- and the testimony will show that we, in fact, do
17 have the ability, which means that this agreement is not
18 detrimental to the public interest. Thank you.

19 JUDGE PRIDGIN: Mr. Scott, thank you.

20 Mr. Berlin, any opening?

21 MR. BERLIN: Yes, your Honor. Good morning
22 your -- excuse me.

23 Good morning your Honor. May it please the
24 Commission.

25 As the applicants have just pointed out, this

1 case involves a Territorial Agreement that has been negotiated
2 by two rural electric cooperatives, Gascosage Electric
3 Cooperative and Three Rivers Electric Cooperative. And, of
4 course, AmerenUE, which had intervened in this case has now
5 withdrawn its opposition.

6 This Commission is being asked by the
7 applicants to approve the TA, or Territorial Agreement,
8 pursuant to the Commission's jurisdiction under Missouri
9 Statute 394.312.4; that is, the Commission may approve the
10 application if, after hearing, the Commission determines that
11 its approval of the Territorial Agreement in total is not
12 detrimental to the public interest.

13 And before I go any further in my opening
14 statement, I would like to refer to the premarked Exhibit
15 No. 1, which is a map of the area in question that was
16 prepared by Staff Witness Alan Bax. Because as the saying
17 goes, a picture is worth a thousand words. I believe that the
18 map overview may provide a useful aid to understanding the
19 geography and territory that is the subject of this
20 Territorial Agreement and this case.

21 I'd like to take a moment to explain what
22 you're looking at on the map. First, the map shows all
23 10 counties that are included in this Territorial Agreement.
24 Secondly, you can see by the two-color red and purple line
25 boundaries, that those lines show the electrical service

1 territories of Three Rivers, which is the red line, and
2 Gascosage, which is the purple line. And, third, the green
3 crosshatching shows the certificated area of AmerenUE.

4 And I should point out that the proposed
5 Territorial Agreement includes in it the entire counties of
6 Moniteau, Pulaski and Phelps, even though the applicants now
7 currently serve only a portion of each county.

8 With regard to counties of Camden, Miller,
9 Maries, Gasconade and Franklin, the metes and bounds
10 descriptions that are in the Territorial Agreement are
11 specifically drawn around the current service territory
12 boundaries of each co-op. And that is to say that these
13 electric service territory boundaries are drawn around the
14 co-ops' customers that exist today.

15 And I think by way of some further explanation
16 of this map and the Territorial Agreement, with regard to
17 Camden County, only a small narrow portion of that county is
18 in the Gascosage service territory, which comprises the same
19 boundary for the Territorial Agreement.

20 And as for Miller and Maries Counties, both
21 Gascosage and Three Rivers serve in both of those counties as
22 you can see by the purple and red lines of their service
23 territories on the map. Only a portion of Gasconade, Franklin
24 Counties are served by Three Rivers, as you see by the red
25 line. And that is the same boundary for the Territorial

1 Agreement.

2 And as a note of explanation, I think it's
3 important to note that each rural electric cooperative is free
4 to set its own electric service territory boundaries.

5 Finally, I'd like to point out that this map is
6 only intended to present an area overview; and as such, it is
7 an accurate representation of the boundaries -- or is as
8 accurate as a drawing of this scale would permit.

9 With regard to the issues of Staff's concern,
10 Staff first believes that the central issue here is whether
11 the Commission should approve the Territorial Agreement
12 between Three Rivers and Gascoy as not detrimental to the
13 public interest.

14 Staff is prepared to recommend that the
15 Commission approve this TA, or Territorial Agreement, between
16 Gascoy and Three Rivers as not detrimental to the public
17 interest if the Commission directs the applicants to amend
18 their Territorial Agreement to address the concerns raised by
19 Staff and the Commission addresses Staff's concerns in its
20 Findings of Fact and Conclusions of Law in its Report and
21 Order.

22 Now, the witnesses in this case, through their
23 prepared testimony, have amplified some concerns and questions
24 that need to be addressed and hopefully clarified and answered
25 as a result of this evidentiary hearing. In particular, Staff

1 Witness Alan Bax, in his testimony, is more of an effort to
2 draw out the issues and positions of the parties to this case
3 and reflects an effort on the part of Staff to understand the
4 true nature that was previously the dispute between the
5 parties.

6 Now, in so doing, we have, if you will, shined
7 a light on the issues and the statutes and have raised some
8 concerns with the approval of this Territorial Agreement that
9 we believe the Commission should be informed of. With regard
10 to the Commission's approval of this Territorial Agreement,
11 there is a concern that because of reasons due to the case of
12 State ex. rel. Ozark Border Electric Cooperative v. PSC -- and
13 the cite of that is 924 S.W. 2d 597 -- that is, the case law
14 may affect the rights and duties of any supplier that is not a
15 party to the agreement.

16 Now, what that means is that the Ozark Border
17 case represents that the decisions of the Commission are final
18 and conclusive and are, therefore, immune to collateral
19 attack. As a result, for Ozark Border in that case to
20 successfully attack a Commission final order, Ozark would have
21 had to allege a change in circumstances to get past a
22 collateral attack challenge of the final Commission order.

23 Now, even though Section 394.312.5 provides
24 statutory protections to suppliers who are not parties in the
25 agreement, Staff asks that should the Commission decide to

1 approve this Territorial Agreement, that the Report and Order
2 should state that the Commission's approval of the Territorial
3 Agreement is not in any way to affect or diminish the rights
4 and duties of any supplier that is not a party to the
5 agreement or of any electrical corporation that is authorized
6 by law to provide service within the boundaries as designated
7 in such Territorial Agreement.

8 The Staff has a concern with the vagueness of
9 the language in Article 4 of the Territorial Agreement that
10 sets forth the service area of Three Rivers: Specifically --
11 and I quote, Three Rivers may serve within municipalities that
12 are located in the Three Rivers exclusive service area
13 pursuant to an this agreement, unquote.

14 Specifically, Staff's concern goes to the
15 intent of Three Rivers to compete in those areas. And Staff
16 has a similar concern with the same language in Article 3,
17 which addresses Gascoage serving within municipalities;
18 however, because Gascoage has a Territorial Agreement with
19 AmerenUE that addresses this situation, this Article 3
20 language is not in a direct issue.

21 While rural electrical cooperative service to
22 municipalities, particularly those municipalities that are
23 greater than 1,500 in population, are limited by Missouri law,
24 the Article 4 language does not distinguish between present
25 and new customers.

1 Also, neither Gascosage nor Three Rivers have
2 identified in their Territorial Agreement, as is arguably
3 required under Section 394.312.2, any municipalities in their
4 service areas that are greater than 1,500 in population that
5 have granted either co-op a franchise to operate within the
6 corporate boundaries of that municipality that is within the
7 area covered by the Territorial Agreement.

8 And furthermore, under Section 394.312.2 it can
9 be argued that if either Three Rivers or Gascosage, subsequent
10 to the Commission's approval of this agreement, obtains a
11 franchise from a municipality that is greater than 1,500 in
12 population, that either Three Rivers or Gascosage would need
13 to amend the Territorial Agreement and to obtain Commission
14 approval of the amendment in order to lawfully provide
15 electrical energy service in the corporate boundaries of the
16 granting municipality.

17 Therefore, Staff suggests that the Commission's
18 statute -- or that the Commission state in its Report and
19 Order whether the Commission is intending, by its approval of
20 this Territorial Agreement, to authorize either co-op to serve
21 in municipalities that are not identified in the Territorial
22 Agreement which have granted or may in the future grant to
23 either co-op the authority to operate within the municipality
24 boundaries.

25 A final, perhaps less important, concern of

1 Staff pertains to the termination of this Territorial
2 Agreement, even though it is a perpetual agreement.
3 Article 11 of the Territorial Agreement provides for the
4 termination of the Territorial Agreement by mutual consent of
5 the cooperatives and that termination becomes effective on the
6 date that the Commission would receive notice that is signed
7 by both Gascosage and Three Rivers of their decision to
8 terminate the Territorial Agreement.

9 While no explicit language exists in the
10 Missouri statutes requiring Commission approval of the
11 termination of the Territorial Agreement, if the Commission
12 believes that approval should be required for the Territorial
13 Agreement to be terminated, perhaps as a result of the public
14 interest determination, the Commission should address this
15 matter in its Report and Order.

16 And, your Honor, that concludes my opening
17 statement. I would like to move into evidence the admittance
18 of Exhibit No. 1, which is the map that I used in my opening
19 statement.

20 JUDGE PRIDGIN: All right. Exhibit No. 1 has
21 been offered. Any objections?

22 MR. SCOTT: Yes, your Honor. We object to the
23 title, the Electric Service Territories. That's an inaccurate
24 statement of the map itself. The problem is, is what he shows
25 on here for Gascosage as its boundary lines as part of this

1 agreement as well as this Territorial Agreement with AmerenUE,
2 the red line for Three Rivers Electric Cooperative is that
3 line where its current facilities are and the rest of the map
4 are county maps.

5 I'd be happy to change the title, but for
6 record purposes -- as he said, this is an overview, but the
7 title itself kind of tends to blur the actual purpose of this
8 map.

9 JUDGE PRIDGIN: Mr. Berlin?

10 MR. BERLIN: Well, your Honor, this is, as I
11 mentioned, not meant to be the definitive description of the
12 particular service territory or the Territorial Agreement. It
13 is meant merely to provide an overview of the geography in
14 question and that is the subject of this case.

15 JUDGE PRIDGIN: Mr. Scott, could I get you to,
16 I guess, restate your objection in legal terms?

17 MR. SCOTT: Yes. Your Honor, the title is
18 Electric Service Territories, Case No. EO-2005-0122. The
19 title of the document infers that this is an overview of the
20 boundary lines being proposed in this agreement. And the
21 objection I have is, is the red line is not the Territorial
22 Agreement boundary line of Three Rivers.

23 And so my legal objection is, is it's an
24 inaccurate statement of the facts of Case No. EO-225-- 0122 of
25 what Three Rivers is requesting. All I'm suggesting is that

1 the title be changed.

2 MR. BERLIN: Well, your Honor, I'm not
3 indicating with this map that the red line is meant to
4 represent the boundary of the Territorial Agreement. I think
5 I covered that in my opening statement, that it's a depiction
6 of the current electrical service territory.

7 MR. SCOTT: The problem is, is from a neutral
8 reading of the record when this evidence comes before another
9 body besides this Commission, how will it be viewed? That's
10 all I'm suggesting, is that the title is inaccurate.

11 JUDGE PRIDGIN: All right. I'm going to
12 overrule the objection and let it into evidence, but
13 Mr. Scott, obviously you're free to make your record on
14 whether you think this is accurate. This is simply Staff's
15 evidence.

16 (Exhibit No. 1 was received into evidence.)

17 JUDGE PRIDGIN: Anything further, Mr. Berlin?

18 MR. BERLIN: No, your Honor.

19 COMMISSIONER MURRAY: Judge?

20 JUDGE PRIDGIN: Commissioner Murray?

21 COMMISSIONER MURRAY: I have a couple questions
22 and they're legal questions. And I understand that Staff does
23 not have a legal expert as a witness so could I ask Mr. Berlin
24 those questions?

25 JUDGE PRIDGIN: Certainly.

1 COMMISSIONER MURRAY: Mr. Berlin, if a co-op
2 gets a municipal franchise absent a Territorial Agreement with
3 another co-op, does the co-op have to come to this Commission
4 to get permission to serve within that municipality?

5 MR. BERLIN: Commissioner Murray, are you
6 asking about Territorial Agreement or -- if you could restate
7 the question.

8 COMMISSIONER MURRAY: Well, I understood you to
9 say that Staff feels that if either co-op got a municipal
10 franchise in the future, that they should have to come back to
11 this Commission for approval. And my question to you is, when
12 a co-op is granted a franchise by a municipality and there's
13 no Territorial Agreement with another co-op, does the co-op
14 have to come here and get approval to serve within that
15 municipality?

16 MR. BERLIN: If there's no Territorial
17 Agreement, I don't believe so, if that's your question.

18 COMMISSIONER MURRAY: So then I'm having
19 trouble following why it is you're making the argument that if
20 a municipality in the future granted either one of these
21 co-ops a franchise to serve within that municipality, that
22 that should require coming back here to the Commission.

23 MR. BERLIN: Commissioner Murray, I'm referring
24 to the Statute 394.312.2. And if I may read --

25 COMMISSIONER MURRAY: Which is for Territorial

1 Agreements?

2 MR. BERLIN: That is correct. If I understand,
3 are you asking about whether there is a Territorial Agreement
4 in effect or that there is no Territorial Agreement in effect?

5 COMMISSIONER MURRAY: Well, I'm asking you why
6 this Territorial Agreement, if we approve it, should require
7 either one of these co-ops to come back to us if a
8 municipality in the future grants a franchise? And I believe
9 that's what you said. Maybe I misunderstood you.

10 MR. BERLIN: Okay. Yes. I believe that an
11 interpretation under Section 2 of 394.312 states that, The
12 Territorial Agreement shall specifically designate the
13 boundaries of the electric service area of each electric
14 service supplier subject to the agreement.

15 Any and all powers granted to a rural electric
16 cooperative by a municipality, pursuant to the agreements, to
17 operate within the corporate boundaries of that municipality,
18 notwithstanding the provisions of Section 394.020 and Section
19 394.080 to the contrary, and any and all powers granted to a
20 municipality-owned utility pursuant to the agreement to
21 operate in the areas beyond the corporate municipal boundaries
22 of its municipality.

23 So we believe that in the Territorial Agreement
24 the applicants need to include those municipalities that have
25 been granted a franchise by a municipality that is greater

1 than 1,500 in population. But the concern that we have is in
2 the future, should a municipality that is greater than 1,500
3 grant such a franchise to a cooperative that is a -- that is
4 in a Territorial Agreement, that there is an argument that
5 this particular Territorial Agreement would need to be
6 amended.

7 COMMISSIONER MURRAY: And the language in
8 Article 4, which says, Three Rivers may serve within
9 municipalities that are located in Three Rivers' exclusive
10 service area pursuant to this agreement, appears to me to at
11 least be designed to indicate that should a franchise be
12 granted by the municipalities located within the Three Rivers'
13 exclusive area, according to this agreement, that it's
14 presumed that those areas are included here. Is your
15 objection with that language in Article 4?

16 MR. BERLIN: Yes, Commissioner Murray, we do
17 have a concern with regard to the vagueness of the language.

18 COMMISSIONER MURRAY: And what would be the
19 purpose of having it amended? I'm just trying to see what
20 harm would come if -- although they don't have the franchises
21 right now, if franchises were granted in the future within
22 Three Rivers' exclusive territory that's set out between
23 Gascosage and Three Rivers, what would be the harm if they
24 didn't come in and amend the agreement?

25 MR. BERLIN: Commissioner Murray, we believe

1 that it goes to the idea that -- of the competition within the
2 particular area and the intent of the statute.

3 COMMISSIONER MURRAY: The municipality is the
4 entity that determines whether there is competition within
5 that municipal territory; is that correct? It's not the
6 Commission?

7 MR. BERLIN: That is correct.

8 COMMISSIONER MURRAY: So why do we care whether
9 the Territorial Agreement between the two co-ops is amended?
10 Does the Commission have any authority over who provides
11 service within that municipality?

12 MR. BERLIN: If I could, Commissioner Murray,
13 just take a minute on that.

14 MR. DOTTHEIM: Commissioner Murray, I think the
15 concern is, is that without the Territorial Agreement, it
16 would not be lawfully authorized if they had competition. In
17 particular, be --

18 COMMISSIONER MURRAY: Stop just a second. What
19 competition would not be lawfully authorized?

20 MR. DOTTHEIM: Within that municipality.
21 Because the concern is regarding municipalities in excess of
22 1,500 inhabitants. That the Territorial Agreement itself
23 is -- as approved by the Commission, would make that
24 competition lawfully authorized, assuming there's a municipal
25 franchise.

1 COMMISSIONER MURRAY: I'm sorry. The
2 Territorial Agreement sets out an exclusive service area for
3 Three Rivers; is that correct? If there is a municipal
4 franchise within that municipality?

5 MR. DOTTHEIM: And it's the exclusive service
6 territory amongst the parties --

7 COMMISSIONER MURRAY: Correct.

8 MR. DOTTHEIM: -- too, which, for example, at
9 one point the Staff had thought that -- and seemingly, the
10 concern of AmerenUE has been resolved and the Staff is not
11 aware of the particulars of how AmerenUE's concerns have been
12 resolved.

13 But, for example, the Staff believed AmerenUE
14 was expressing concerns regarding municipalities in which it
15 is providing service being open to competition and
16 municipalities in excess of 1,500 inhabitants being opened to
17 competition for rural electric cooperatives.

18 COMMISSIONER MURRAY: And I understand that's
19 no longer a concern of Ameren.

20 MR. DOTTHEIM: That's no longer a concern of
21 Ameren. We're not -- the Staff is not certain the particulars
22 of how that's been resolved. The Staff is raising that though
23 still as a question.

24 Subsequently, if the Staff would become aware
25 as to how AmerenUE and the rural electric cooperatives have

1 addressed that concern, the Staff may no longer have any
2 concern.

3 COMMISSIONER MURRAY: Well, Mr. Dottheim,
4 neither co-op, as I understand it, can serve within the
5 municipality unless the municipality grants the franchise; is
6 that correct?

7 MR. DOTTHEIM: Also, there's a limitation on
8 the size of the municipality is --

9 COMMISSIONER MURRAY: And it's the size that
10 we're speaking of here?

11 MR. DOTTHEIM: Yes, Commissioner.

12 COMMISSIONER MURRAY: And the municipality
13 controls whether or not either co-op can serve within its
14 boundaries; is that correct?

15 MR. DOTTHEIM: I think the Commission also
16 plays a role in that also by these various statutes.

17 COMMISSIONER MURRAY: Well, I hope that will
18 be -- are we having a briefing, Judge, on this?

19 JUDGE PRIDGIN: Certainly plan to.

20 COMMISSIONER MURRAY: Because I don't think
21 that's at all clear and --

22 MR. DOTTHEIM: Commissioner Murray --

23 COMMISSIONER MURRAY: -- I'd like to see some
24 more legal --

25 MR. DOTTHEIM: -- and, in part, that is why the

1 Staff has raised that. AmerenUE raised it at one time. The
2 Staff has continued to raise it because of the lack of
3 clarity, and that is what the Staff is seeking to obtain. So
4 the Staff welcomes the opportunity to try to clarify that as
5 best as it can be for purposes of the Commissioners.

6 COMMISSIONER MURRAY: All right. And I have
7 one more legal question. I don't know which one of you would
8 like to attempt to answer it, but there was the statement made
9 by Mr. Berlin that the Commission would need to approve -- or
10 should look at whether it would need to approve the
11 termination of the agreement.

12 And my question is, why would we need to
13 approve the termination, because wouldn't the termination of
14 the agreement just place the parties back in their position
15 that they're currently in under Missouri law; that is, each
16 could serve in any rural area?

17 MR. DOTTHEIM: Yes. And the Staff was not
18 making a definitive statement on that matter. That's another
19 area where the law is not entirely clear. The Staff was
20 raising that as an issue or raising it as a concern to
21 highlight it for purposes of the Commissioners, that is there
22 is provision for notice in the Territorial Agreement that the
23 termination becomes effective upon notice to the Commission.
24 The Staff was raising that just to highlight that so that
25 that's an item that would become -- would not, excuse me, an

1 item that would not become lost in the process.

2 COMMISSIONER MURRAY: Okay. Thank you.

3 Thank you, Judge.

4 JUDGE PRIDGIN: Thank you, Commissioner.

5 Commission Appling?

6 COMMISSIONER APPLING: I was intending to catch
7 Mr. Dottheim before he left, but Mr. Berlin, maybe you can
8 answer this question for me. Just one question.

9 Do you think that the Commission has the
10 authority to impose conditions on the agreement or can we only
11 vote it up or down as written? What are your thoughts on
12 that? Do we have that authority?

13 MR. DOTTHEIM: Commissioner, that's an open
14 question too. There's no -- I'm trying to remember offhand.
15 I don't believe that there is a specific reference to
16 conditions. A complaint can be brought -- once there is a
17 Territorial Agreement --

18 COMMISSIONER APPLING: Right.

19 MR. DOTTHEIM: -- a complaint can be brought to
20 the Commission. And in that instance, the Commission can
21 terminate a Territorial Agreement that's not exactly --

22 COMMISSIONER APPLING: Based on the complaint?

23 MR. DOTTHEIM: Based upon the complaint, yes,
24 and matters raised by the complaint.

25 COMMISSIONER APPLING: That just kind of leaves

1 me hanging then. I don't know whether we have the authority
2 to do this or not.

3 MR. DOTTHEIM: Generally, the Staff has taken
4 the position that the Commission can impose conditions. There
5 are other statutory provisions that set out the Commission
6 jurisdiction that does not provide for conditions for which
7 the Commission has set conditions.

8 For example, in Section 393.190.1, which is
9 mergers, acquisitions, transfers of assets, there's no
10 specific reference to the Commission setting conditions, but
11 historically, the Commission has set conditions in
12 transactions of that nature.

13 Offhand, the statutory section for which
14 conditions are specifically identified as the Commission
15 having the authority to set conditions is for certificates of
16 convenience and necessity, Section 393.170. It's one of the
17 subsections. Offhand I'm not recalling whether it's
18 subsection .2 or .3.

19 From a practical aspect, if the Commission
20 would take the position that it doesn't have the jurisdiction
21 to set conditions, the Commission, in an instance of that,
22 could reject an application if the Commission believes that
23 the legal standard is not met -- not set conditions, but
24 indicate in its author-- excuse me.

25 The Commission could indicate in its order that

1 if the applicant would re-file its application addressing the
2 Commission's concerns, then the Commission would consider
3 authorizing -- approving the application.

4 In that instance, the applicants would have the
5 choice of either submitting an amended or a changed
6 application addressing the Commission's concerns in order to
7 obtain approval or just not resubmitting the approval and the
8 application having been rejected by the Commission.

9 So the practical effect I think is the same,
10 but I think if the Commission were to decide that it could not
11 set conditions, the Commission could achieve the same effect
12 by rejecting the application but indicating under what terms,
13 if resubmitted, the Commission would approve the application.

14 COMMISSIONER APPLING: Thank you, sir.

15 MR. DOTTHEIM: Certainly.

16 MR. SCOTT: Your Honor, is it possible for me
17 to respond to the Commissioner's question?

18 JUDGE PRIDGIN: That's certainly fine with me.

19 MR. SCOTT: Commissioner, the applicant's
20 position is a little bit different. We believe that the
21 Territorial Agreement statute specifically provides for an up
22 or down vote. And that's for two reasons.

23 One is, is the statute itself says if the
24 parties cannot agree onto a Territorial Agreement, that one of
25 the options we have is to come to the Commission, submit a

1 Territorial Agreement and ask the Commission to decide what
2 terms and conditions can't be agreed upon and have you guys --
3 and have the Commission has the final arbitrators. So we
4 believe, because that provision's in there, that eliminates
5 Section 393 and other sections regarding the Commission's
6 ability to set terms and conditions.

7 Secondly, I would point out that Section 14.5
8 of the agreement between the parties also states that if the
9 Commission doesn't approve this agreement as presented, then
10 it's deemed null and void. And, again, that's nothing more
11 than a recitation of what we believe the statute requirement
12 is.

13 The other reason we believe it's an up and down
14 vote is because the standard is, is not detrimental to the
15 public interest. So if the Commission believes that a certain
16 paragraph of the agreement is detrimental to the public
17 interest, we believe that the Findings of Fact, Conclusions of
18 Law and Order would have to specifically state what paragraph
19 you found objectionable, what evidence was objectionable and
20 then set out specifically why you're then denying the
21 agreement.

22 I would agree with Mr. Dottheim at that point
23 in time, the parties would know what the concerns of the
24 Commission are and that we could re-file the agreement with
25 the appropriate language or some forum to try to satisfy the

1 Commission's concerns based on that one paragraph. So if you
2 did not find that the agreement in total was not detrimental
3 to the public interest, it would be based on those specific
4 Findings of Fact.

5 COMMISSIONER APPLING: Thank you, Mr. Scott.

6 JUDGE PRIDGIN: Mr. Scott, thank you.

7 Mr. Bobnar, any opening on behalf of AmerenUE?

8 MR. BOBNAR: No, your Honor.

9 JUDGE PRIDGIN: And, Mr. Bobnar, I'm certainly
10 glad for you to participate in the hearing, but I don't want
11 to keep beating a dead horse. Will you be cross-examining
12 witnesses or anything of the like?

13 MR. BOBNAR: Your Honor, may it please the
14 Commission.

15 We would waive all our cross-examination of
16 witnesses in this case --

17 JUDGE PRIDGIN: Thank you.

18 MR. BOBNAR: -- and further participation.

19 JUDGE PRIDGIN: Then I will not call on you any
20 further. Thank you.

21 Anything else before we proceed on to
22 witnesses?

23 All right. Hearing nothing, I see the first
24 witness on the list is Walter Ryan. Mr. Ryan, if you would,
25 please come forward to be sworn.

1 I'm sorry. If you would come over here by the
2 court reporter and be sworn.

3 (Witness sworn.)

4 JUDGE PRIDGIN: Thank you very much, sir.

5 Any direct?

6 MR. SCOTT: Yes, your Honor.

7 JUDGE PRIDGIN: If you'd approach the podium,
8 please.

9 MR. SCOTT: I request that the witness be
10 handed Exhibit No. 2, or may I approach the witness?

11 JUDGE PRIDGIN: You may.

12 WALTER RYAN testified as follows;

13 DIRECT EXAMINATION BY MR. SCOTT:

14 Q. Mr. Ryan, could you please state your full name
15 for the record?

16 A. My name is Walter Roscoe Ryan.

17 Q. And who are you employed by?

18 A. Three Rivers Electric Cooperative.

19 Q. And what is your role with the cooperative?

20 A. I'm the general manager.

21 Q. Okay. I've handed you what has been marked as
22 Exhibit No. 4. Could you take a look at that, please?

23 A. Yes, sir. Direct Testimony.

24 Q. Is that your Direct Testimony?

25 A. That's correct.

1 Q. And do you have any additions or corrections to
2 your testimony today?

3 A. No, sir, I don't.

4 Q. Okay. And if I asked you those same questions
5 today, would your answers be substantially the same?

6 A. Yes, sir.

7 Q. Okay. Now, moving onto Exhibit No. 6, could
8 you please take a look at Exhibit No. 6?

9 A. Surrebuttal Testimony.

10 Q. Is that your Surrebuttal Testimony?

11 A. Yes, it is.

12 Q. And if I asked you the questions that are
13 contained in there, would your answers be substantially the
14 same?

15 A. I think so, as lengthy as it is.

16 Q. And do you have any additions or corrections to
17 that testimony today?

18 A. No, I don't.

19 Q. With regards to Exhibit No. 2, is that the
20 Territorial Agreement without maps?

21 A. Territorial Agreement without what?

22 Q. Without the maps.

23 A. Without the maps. Okay. Yes, it is.

24 Q. Okay. Even though that Territorial Agreement
25 does not contain the maps, it does contain the written legal

1 descriptions of the service territories of the parties?

2 A. Yes, sir.

3 Q. And did you have a hand in negotiating that
4 agreement?

5 A. Yes, sir.

6 Q. Okay. And do you believe the terms and
7 conditions of that agreement are fair and reasonable to both
8 parties?

9 A. I believe so.

10 Q. And do you believe that that agreement is total
11 not detrimental to the public interest?

12 A. I certainly do.

13 Q. And you are asking the Commission to approve
14 the agreement as presented today?

15 A. Yes, I am.

16 MR. SCOTT: And no direct -- no further direct
17 at this time.

18 JUDGE PRIDGIN: All right. Thank you.

19 Let me proceed with cross-examination, I
20 believe Mr. Berlin or Mr. Dottheim.

21 MR. BERLIN: Yes, your Honor.

22 CROSS-EXAMINATION BY MR. BERLIN:

23 Q. Morning, Mr. Ryan.

24 A. Good morning.

25 Q. Mr. Ryan, I have a map of Missouri Electric

1 Cooperatives that I'd like to present to you and see and --
2 understand if you've ever seen this map before.

3 MR. BERLIN: Your Honor, may I approach the
4 witness?

5 JUDGE PRIDGIN: You may.

6 THE WITNESS: Yes. I have, Mr. Berlin. I have
7 seen this map before.

8 MR. BERLIN: Okay. I have copies of this map,
9 your Honor. May I approach the Bench?

10 JUDGE PRIDGIN: You may.

11 MR. BERLIN: Your Honor, what I did was I
12 passed out a two-part copy of the map that I presented to
13 Mr. Ryan, so it's the same map. The second piece is a color
14 representation to aid in interpreting the map because Mr. Ryan
15 has a color copy of that map in front of him.

16 BY MR. BERLIN:

17 Q. Mr. Ryan, could you please identify this map
18 for me?

19 A. This map is a map of the state of Missouri.
20 Map is produced by the Association of Missouri Electric
21 Cooperatives, I believe. And it generally shows the electric
22 cooperatives and generally shows their territories.

23 Q. So are the boundaries of this map indicative of
24 Territorial Agreements or would they be indicative of service
25 areas of the cooperatives?

1 A. I don't think it would be indicative of
2 Territorial Agreements at all. It's just a general area of
3 service and it does not have the scope nor the detail to be
4 considered a definitive map of service territories.

5 Q. Who makes the determination on the boundaries
6 that are shown on this map?

7 A. Sir, I don't know. Our state association puts
8 it out just as a general information article. It is not an
9 engineering type map.

10 Q. Do the boundaries that reflect the service
11 territories of Three Rivers and Gasconsage, do they appear
12 accurate?

13 MR. SCOTT: Judge, at this time I'm going to
14 object as irrelevant. The issue before the court is whether
15 or not the boundary lines in the Territorial Agreement,
16 whether or not they're not detrimental to the public interest.
17 Whether or not a map produced by our statewide association and
18 whether or not it represents the boundary lines of electric
19 cooperatives which are not regulated by any statute in the
20 state is just simply not relevant to this proceeding.

21 JUDGE PRIDGIN: Mr. Berlin, what's the
22 relevance of this?

23 MR. BERLIN: Well, your Honor, I believe it's
24 relevant because we're trying to understand just the -- who
25 the cooperatives are, who the players are that may be affected

1 in this particular Territory Agreement or surrounding the
2 particular Territory Agreement geography.

3 MR. SCOTT: Again, I'll renew my objection
4 because the Territorial Agreement statute specifically states
5 that other electric providers aren't affected by a Territorial
6 Agreement.

7 JUDGE PRIDGIN: I guess I'll overrule your
8 objection at least for now. I don't believe it's been offered
9 into evidence. If and when this is offered, I'll certainly
10 take your objection. But I mean, there's still -- if you're
11 objecting to a question, I guess I could rule on that, but if
12 I understand your objection, Mr. Scott, you're objecting to
13 these documents and they've not been not been offered.

14 MR. SCOTT: No, I'm objecting to the question.
15 The question is irrelevant.

16 JUDGE PRIDGIN: I'll overrule, but, Mr. Berlin,
17 I'm not sure that I follow your theory. You can continue, but
18 I'm paying attention to where you're going with this.

19 MR. BERLIN: Actually, your Honor, I have no
20 further questions on this particular map. I merely wanted to
21 see if Mr. Ryan can identify the map. It's a map that the
22 Staff has that appears to be from the Association of Missouri
23 Electric Cooperatives. So I have no further questions on this
24 map.

25 JUDGE PRIDGIN: Okay.

1 BY MR. BERLIN:

2 Q. Mr. Ryan, do you have a copy of the map that I
3 used in my opening statement that was prepared by Staff
4 Witness Mr. Bax?

5 A. Sir, I don't think I have.

6 Q. Okay. I can give you a copy.

7 MR. BERLIN: May I approach the witness?

8 JUDGE PRIDGIN: You may.

9 BY MR. BERLIN:

10 Q. Mr. Ryan, is Mr. Bax's county map a fair
11 overview of the electric service territory boundaries of Three
12 Rivers and Gasconage?

13 A. It's the first time that I have observed this
14 map and I -- I believe it appears to be generally so. I --
15 you have to understand you're incapac-- encompassing a large
16 area, several counties. And it appears to be generally --
17 generally accurate. It may not be accurate in detail the
18 exact locations, understand.

19 Q. All right. Thank you, Mr. Ryan.

20 Shifting gears, Mr. Ryan, are you familiar with
21 Missouri Statute 394.312.2?

22 A. Yes, I am.

23 Q. And you cited it in your Surrebuttal Testimony?

24 A. Yes. I hope you won't ask me to recite it
25 here.

1 Q. Actually, what I'd like to do is refer you to
2 page 2, line 7 of your Surrebuttal. Do you have it?

3 A. Page 2?

4 Q. Yes.

5 A. Line 7, is that what you --

6 Q. It would be page 2 -- actually, I'd probably
7 refer you to line 12. Are you there?

8 A. All right. I'm here.

9 Q. Mr. Ryan, if you would, please, just read that
10 particular section of 394.312.2 that you cite beginning on
11 line 12 and just going through line 17.

12 A. What section -- what Section 394.312.2 actually
13 states is, 2, such Territorial Agreements shall specifically
14 designate the boundaries of the electric service area of each
15 electric service supplier subject to the agreement and all
16 powers granted to rural electric cooperative by -- to a rural
17 electric cooperative by a municipality pursuant to the
18 agreement to operate within the corporate boundaries of a
19 municipality notwithstanding the reasons of 394.20 --
20 correction, 394.020 and of Section 394.080 to the contrary.

21 Q. Thank you, Mr. Ryan.

22 Does your proposed Territorial Agreement
23 designate the boundaries of the electric service area of each
24 electric service supplier that's subject to your Territorial
25 Agreement?

1 A. It designates the boundaries of Gascosage
2 Electric Cooperative and Three Rivers Electric Cooperative,
3 and those are the only two suppliers who this agreement is
4 between.

5 Q. Does your proposed Territorial Agreement
6 designate or include evidences of any grants of authority to
7 Three Rivers by any municipality?

8 A. I'm sorry. I don't understand what you're --

9 Q. Does your Territorial Agreement include any
10 grants of authority given to Three Rivers by any municipality?
11 In other words, have you included in your Territorial
12 Agreement a list of any grants of authority to Three Rivers by
13 any municipality?

14 A. We've listed municipalities that are within the
15 area, but it does not include any grants of authority is my
16 understanding.

17 Q. Okay.

18 A. Now, legal -- there is a legal question here.
19 Statutes apply as far -- as grants of authority.

20 Q. But to the best of your knowledge --

21 A. Yeah.

22 Q. -- your Territorial Agreement does not include
23 a list of or reference to any municipalities that have issued
24 a grant of authority to Three Rivers to provide electrical
25 service?

1 A. Well, there are several municipalities that
2 have granted franchise -- we are under franchise tax
3 arrangements with them and -- for the areas that they have --
4 that we serve that are -- have been annexed into their --
5 their areas. Is that what you're asking? I don't know
6 what -- I don't know what you're asking here.

7 Q. Well, in the Territorial Agreement, did you
8 include any reference or list -- let me just say any list of
9 franchises that have been granted to Three Rivers by a
10 municipality?

11 A. I can't read them off, of course, or I can't
12 state from memory. Yes, there are municipalities in there and
13 as far as the -- as far as the agreement between Three Rivers
14 and Gascosage goes.

15 Q. Let me restate the question then. Did you
16 include in your proposed Territorial Agreement any grants of
17 authority by a municipality?

18 A. The Territorial Agreement is between Gascosage
19 and Three Rivers. The municipalities are not involved in the
20 Territorial Agreement as -- there are just two people
21 involved, Gascosage and Three Rivers so --

22 Q. Does Three Rivers have any grants of authority
23 from any municipality to operate within the boundaries of that
24 municipality?

25 A. Only as I stated before. We don't serve any

1 municipalities proper, just the areas that are -- have been
2 annexed in and we pay franchise tax. Is that what you're
3 asking? If we franchised those areas?

4 Q. I'd like to know if Three Rivers has any
5 franchises that have been granted by any municipalities.

6 A. My answer remains the same, sir. Anywhere we
7 serve, we've been granted franchise through the taxing
8 mechanism, franchise tax.

9 Q. I'm not referring to --

10 A. We're permitted to serve on those city streets
11 by the franchise.

12 Q. Is Three Rivers negotiating now with any
13 municipality greater than 1,500 in population to provide
14 electric service?

15 A. I'm sorry?

16 Q. Is Three Rivers negotiating now with any
17 municipality that is greater than 1,500 in population to
18 provide electric service?

19 A. No.

20 Q. In your Surrebuttal on page 3, you stated that,
21 AmerenUE's concern with the proposed Territorial Agreement is
22 possibly -- or is the possibility of competition with AmerenUE
23 and Three Rivers in the limited areas of cities with a
24 population over 1,500.

25 A. What part are you referring to?

1 Q. It's your Surrebuttal on page 3.

2 Have you had a chance to look at it?

3 A. I have it in hand. Go ahead.

4 Q. Okay. Was it your belief that the specific
5 cities in controversy were the ones with populations over
6 1,500; that is, Jefferson City, Eldon and New Haven? Is that
7 a correct --

8 A. Yes, they are, I'm sure.

9 Q. And possibly the cities of Belle, Linn,
10 St. Martins and Wardsville that could go over 1,500 at the
11 time of the next census?

12 A. That's possible, yes.

13 Q. Okay. And that portion of your Surrebuttal is
14 an accurate reflection of the concerns that you have?

15 A. I think so, yes.

16 MR. BERLIN: I thank you, Mr. Ryan, for your
17 time this morning. I have no further questions.

18 JUDGE PRIDGIN: Mr. Berlin, thank you.

19 Let me see if we have any questions from the
20 Bench. Commissioner Murray?

21 COMMISSIONER MURRAY: Thank you.

22 QUESTIONS BY COMMISSIONER MURRAY:

23 Q. Good morning, Mr. Ryan.

24 A. Good morning.

25 Q. Do you have a copy of the Territorial Agreement

1 with you?

2 A. Yes, I have it in hand.

3 Q. Would you look at paragraph -- or Article 4 on
4 pages 5 and 6?

5 A. Yes, ma'am.

6 Q. And on page 6 the last sentence in that
7 article, Three Rivers may serve within municipalities that are
8 located in Three Rivers' exclusive service area pursuant to
9 this agreement.

10 What is the purpose of that sentence?

11 A. The agreement is between Gascosage and Three
12 Rivers Electric Cooperative. And the purpose is that we have
13 all -- service built all around those cities or towns.
14 Understand, most of these are real small towns. And Three
15 Rivers has THE rural service in the rural area around them and
16 Three Rivers and Gascosage have agreed that each will stay out
17 of each other's physical territory with this agreement. And
18 that would include, the way I understand the agreement and the
19 legalese, if you will, on it -- that would include these
20 areas.

21 Q. And are you speaking about municipalities with
22 a population over 1,500?

23 A. We're thinking about all the municipalities and
24 with idea that some time in the future they could come over
25 1,500 population.

1 Q. So are you speaking about municipalities that
2 are already over 1,500 in population where your Territorial
3 Agreement overlaps those as well as areas that may become
4 greater than 1,500 in population that are not currently that
5 size?

6 A. We have about three right now that probably are
7 over 1,500 population in our service area. And --

8 Q. Excuse me. Let me stop you there. Do you have
9 franchises to operate in those areas?

10 A. Yes. Franchise or a similar agreement to pay
11 the franchise tax in order to use their roads and
12 right-of-ways.

13 Q. And did you include those -- just a second.
14 Let me get my question asked properly here.

15 Anyway, within your Territorial Agreement, did
16 you include the information about those franchises?

17 A. I do not think they were detailed, no.

18 Q. So I think that's what Mr. Berlin was talking
19 about earlier, that the statute says should be set out within
20 the Territorial Agreement?

21 A. It's anticipated that that will change over
22 time I think, as has been earlier pointed out. So it's
23 difficult to know exactly, you know, what will happen there,
24 but --

25 Q. Okay. Let's go back to the sentence in

1 Article 4, Three Rivers may serve within municipalities that
2 are located in Three Rivers' exclusive service area pursuant
3 to this agreement.

4 When you're speaking of Three Rivers' exclusive
5 service area, you're speaking of the exclusivity between Three
6 Rivers and Gasconage; is that correct?

7 A. That's correct. Understand, there are other
8 utilities serving in those areas. Other utilities serve most
9 of those towns probably.

10 Q. And is that sentence -- is the purpose of that
11 sentence to prevent having to go to a municipality for a
12 franchise?

13 A. To what?

14 Q. To prevent having to go to a municipality for a
15 franchise? That's not the purpose of that sentence, is it?

16 A. No, no. We would have to do that. We have to
17 do it now. Whenever we're annexed into a municipality, we
18 have to pay their franchise tax. We keep the services we --
19 we have, we don't -- we can't expand other services, you
20 understand.

21 Q. Well, if it's an area that's -- if it's a
22 municipality with a population greater than 1,500, do you have
23 to --

24 A. Pay all applicable taxes, franchise and use
25 and -- use taxes.

1 Q. You have to have been granted by the
2 municipality a franchise to supply electric energy within that
3 municipality; is that correct?

4 A. I think that -- that's correct.

5 Q. And that's not changed by the language in this
6 Territorial Agreement in any way?

7 A. No, no. It would not be.

8 Q. So I'm still not clear on what is the purpose
9 of that sentence.

10 A. That just sets down the agreement between
11 Gascosage and Three Rivers Electric Cooperatives, that you
12 have this service area, Three Rivers, and we have this service
13 area. And we're not going to serve in your service area and
14 you're not going to serve in ours.

15 Understand that there have been a lot of
16 changes in the industry recently in recent years and there are
17 probably many more changes. And we don't know what kind of
18 rules and regulations that are going to come down the pike.
19 So this basically gives us some security from each other.

20 Q. Okay. Well, let me pursue this a little bit
21 further. You've got a Territorial Agreement that sets out
22 areas that are exclusive between the two of you; is that
23 correct?

24 A. That's correct.

25 Q. And some of those areas overlap municipalities;

1 is that correct?

2 A. Yes.

3 Q. But regardless of where they are, your
4 Territorial Agreement sets out between you -- between the two
5 parties which areas are exclusive to one or the other; is that
6 correct?

7 A. That's correct, uh-huh.

8 Q. So if you have an area that is set out that is
9 currently within a municipality of a population greater than
10 1,500 and you don't -- let's say you don't have a franchise to
11 serve that today, but in the future you get one, even without
12 this sentence in your Territorial Agreement, your Territorial
13 Agreement between the two parties would provide exclusivity
14 there, would it not?

15 A. I'm not sure I understand your question, but I
16 think the answer is it would only as far as the two
17 cooperatives. We would still have to -- other state statutes
18 that apply would govern what we do there as far as -- and, of
19 course, we would have to have permission from the municipal to
20 serve there.

21 Q. But you can't, in a Territorial Agreement,
22 change your statutory requirements, can you?

23 A. That's getting down to the legal -- legal
24 questions. I'd have to refer that to the attorney. But it's
25 my understanding that this agreement between the two

1 cooperatives would only affect the two cooperatives and other
2 statutes would still apply. Territorial Agreements with other
3 utilities might change that.

4 COMMISSIONER MURRAY: Okay. I'd like for the
5 counsel, in their briefing, to indicate what is the purpose of
6 that sentence. I'm very unclear as to what the purpose of
7 that sentence is, what it actually does, what it may relieve
8 either party of or, you know, what purpose it serves.

9 BY COMMISSIONER MURRAY:

10 Q. And, Mr. Ryan, on page 18 of your Surrebuttal
11 Testimony, you talk about Articles 5.2B and 5.4B of the
12 Territorial Agreement; is that correct?

13 A. Surrebuttal -- what was that page? 18?

14 Q. Yes.

15 A. Okay. Yes, ma'am, I have it here.

16 Q. In looking at Article 5 -- well, let's take
17 your testimony here. You say in Article 5.2A, If the electric
18 provider has a Territorial Agreement with a non-purchasing
19 cooperative, the purchasing cooperative gets the benefit of
20 the electric provider's Territorial Agreement with the
21 non-purchasing cooperative, thus, increasing the purchasing
22 cooperative's service territory under this agreement.

23 Now, in trying to determine what that means,
24 the non-purchasing cooperative would be Gascoage; is that
25 correct? And then the purchasing cooperative would be Three

1 Rivers?

2 A. It could be either cooperative. I think -- I
3 think the scenario set forth here was that if I'm -- if the --
4 yeah, if one cooperative purchased the Territorial Agreement
5 of the other.

6 Q. Well, if you look at the Article 5.2 of the
7 Territorial Agreement -- unless it's set out somewhere else
8 differently, Article 5.2 says, Following a purchase, merger or
9 other acquisition of any other electric power provider's
10 facilities by Three Rivers.

11 A. Yes. This is the -- 5.2 applies to Three
12 Rivers. I believe 5.2B applies to Gascosage. I'm not sure.
13 I can look and see real quick, but -- yes.

14 Q. Well, I'm not sure I'm reading it that way.
15 And let's walk through it because maybe I'm wrong. But 5.2
16 says, The purchase, merger or other acquisition by Three
17 Rivers.

18 Where is there anything that talks about the
19 purchase, merger or acquisition of any other electric
20 provider's facilities by Gascosage?

21 Okay. I guess there is that reference in 5.4?

22 A. 5.4, yes.

23 Q. And those provisions are -- do they mirror one
24 another so that actually both parties are getting --

25 A. I believe they do. It actually just provides

1 for if one is doing purchasing with the other or so forth --

2 Q. Okay.

3 A. -- again, just between the two cooperatives.

4 Q. But this would -- the practical effect of these
5 clauses would be that if an electric provider -- another
6 electric provider has a Territorial Agreement with whichever
7 co-op is the non-purchasing co-op, then the purchasing co-op
8 gets the benefit of that Territorial Agreement; is that right?

9 A. I'm not sure.

10 Q. Well, the question that I'm leading to, and
11 maybe this is another question that needs to be briefed, but
12 doesn't the electric provider have a say in that? Can these
13 two co-ops contract to receive the benefit of another
14 contract? In other words, you know, one of the co-ops has a
15 Territorial Agreement with another provider and here in this
16 agreement these two co-ops are agreeing to pass the benefit
17 along to one or the other. And I'm just not sure they can do
18 that.

19 MR. SCOTT: Your Honor, may I address that
20 question because I think I can clarify it real quickly?

21 JUDGE PRIDGIN: That's fine with me.

22 MR. SCOTT: Commissioner?

23 COMMISSIONER MURRAY: Sure.

24 MR. SCOTT: 5.1 and 5.2 were originally put in
25 these agreements about 10 years ago when AmerenUE and the

1 cooperatives began doing these agreements. And the reason it
2 was put in there was in the event that AmerenUE ever bought a
3 different system, whether it be a municipal system or another
4 public utility. And the concern at that time that this
5 paragraph was put in there is, is that the system that was
6 bought would encompass multiple cooperative territories.

7 And so you're absolutely right that this
8 paragraph allows the purchasing utility the benefit of an
9 existing Territorial Agreement between the cooperative and
10 that other power provider. And the reason that is, is because
11 these agreements have merger and assignment provisions.

12 And so part of the negotiations is, is if I'm
13 going to do a Territorial Agreement with you, if I buy another
14 power provider and you, cooperative, have a more restrictive
15 Territorial Agreement, then I want you to abide by that
16 Territorial Agreement when I buy, say, UtiliCorp because
17 that's what you've already agreed to. So I would like you to
18 agree that when I buy UtiliCorp, that you'll still be bound by
19 the UtiliCorp Territorial Agreement. That's paragraph 5.2A.

20 5.2B takes into consideration that if there was
21 no Territorial Agreement, then the Territorial -- then this
22 Territorial Agreement between Gascoisage and Three Rivers would
23 be amended so as to remove those sections that the other power
24 provider, in this case AmerenUE, has to be actually removed
25 from the agreement to allow competition just as if it never

1 existed.

2 COMMISSIONER MURRAY: I was going to say, that
3 would put them back in their original position?

4 MR. SCOTT: Put them back in their original
5 position. But the nice thing about this paragraph is as you
6 look at C, is that nothing in the section prohibits the
7 amendment from the exclusive service area of the parties
8 renegotiating.

9 And so it's always been the attorney's position
10 to our clients if this matter ever comes up, you've already
11 lived by the benefits of the Territorial Agreement; more than
12 likely, you would renegotiate the boundaries to continue
13 receiving those benefits.

14 But the essential part of this paragraph -- and
15 it's been explained to Mr. Ryan a couple times. The problem
16 is, is it is very legalistic and has a specific concern
17 regarding future purchases. Now, it may never happen, but
18 again, it was written by lawyers and we apologize for that.
19 But again, that's what we're trying to do.

20 We're trying to allow the purchasing entity the
21 benefit of the bargain. And that is one -- again, it's just
22 part of the negotiation process, that that may happen, allow
23 the purchaser the benefit of the bargain, we will do certain
24 things with this agreement to allow that to happen.

25 Now, I will mention, because it is set out in

1 Mr. Ryan's testimony at page 18 is, is that you will note in
2 5.2B, the municipals aren't taking out of the Territorial
3 Agreement. So one of the -- so one of the things we agree to
4 do is, is we'll remove all the competition in all the rural
5 areas that are surrounding if you don't have a Territorial
6 Agreement, but we won't remove these municipalities.

7 Well, part of the reason that is, is the
8 municipalities normally have a higher density, especially
9 around the areas and everything else. That section in and of
10 itself doesn't give the cooperative any greater authority as
11 Mister -- you know, Mr. Ryan testifies.

12 It doesn't give any greater authority for the
13 cooperative serving that municipality. All we're saying in
14 this section is, is we won't take it out so as to have to
15 compete with you wherever your facilities are. It doesn't
16 prohibit the person seeing -- the utility from serving in that
17 municipality. It just prohibits them from serving new
18 structures as of the date of the acquisition. Thank you, your
19 Honor.

20 COMMISSIONER MURRAY: Thank you.

21 I believe that's all I have, Judge. Thank you.

22 JUDGE PRIDGIN: Commissioner Murray, thank you.
23 Commissioner Appling?

24 COMMISSIONER APPLING: No questions, thank you.

25 JUDGE PRIDGIN: Thank you. I don't believe I

1 have any questions.

2 If there are no further questions from the
3 Bench, see if we have any recross-examination, Mr. Berlin?

4 MR. BERLIN: Yes, your Honor. Your Honor, I
5 do have one question for Mr. Ryan based on Commissioner
6 Murray's question from the Bench.

7 RECROSS-EXAMINATION BY MR. BERLIN:

8 Q. Mr. Ryan, are there any municipalities in
9 excess of 1,500 inhabitants where Three Rivers does not
10 presently serve for which Three Rivers in the future will seek
11 to serve?

12 A. I have -- I can't answer for the future.
13 There's none right now. I can't speculate on the future. I'm
14 sorry, but --

15 MR. BERLIN: All right. Thank you.

16 JUDGE PRIDGIN: Mr. Berlin, thank you.

17 Any redirect, Mr. Scott?

18 MR. SCOTT: Very briefly, your Honor.

19 REDIRECT EXAMINATION BY MR. SCOTT:

20 Q. Mr. Ryan, could you look at Exhibit 1, please?
21 The red line on Exhibit 1, is that roughly a representation of
22 where your existing facilities are today?

23 A. That's true. As I testified earlier, that's
24 generally roughly.

25 Q. Okay. And are you aware of any statute that

1 prohibits you from extending your lines beyond this red line?

2 A. No.

3 Q. And so, in fact, you could serve in any part of
4 Moniteau County or any part of Franklin County if you chose to
5 do so?

6 A. Certainly as long as it wasn't a municipality
7 over 1,500 population.

8 Q. Is that part of the reason why you included all
9 of Moniteau and all of Franklin County in your Territorial
10 Agreement?

11 A. Yes, it is. It's a rural area and it makes
12 sense to include it.

13 Q. Okay. With regards to Article 4, that last
14 sentence, do you have the ability to serve in any municipality
15 under 1,500 today?

16 A. Yes, we do.

17 Q. And do you have the ability to serve in a town
18 over 1,500 if you were the predominant supplier as of the last
19 decennial census?

20 A. Yes, we would.

21 Q. And so one interpretation of that last sentence
22 in Article 4 would be nothing more than a restatement of what
23 the current law is with regards to your ability to serve in
24 certain municipalities?

25 A. Yes, sir, I think so.

1 Q. Okay. And you're not suggesting to the
2 Commission that if Section 394(2) required some additional
3 grant of authority from a municipality to serve in a
4 municipality over 1,500, that you wouldn't file that and
5 follow the proper statutory procedures to obtain that
6 authority, are you?

7 A. That -- that's correct.

8 MR. SCOTT: Okay. Nothing further at this
9 time, your Honor.

10 JUDGE PRIDGIN: Mr. Scott, thank you.

11 Any further questions? Commissioner Murray?

12 COMMISSIONER MURRAY: I hate to do this, but I
13 do want to follow up briefly with Exhibit 1.

14 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

15 Q. And this was an exhibit that Staff provided.
16 And the lines that -- as they show on there now that are
17 outlined in red for Three Rivers and purple for Gascoisage are
18 the areas that both co-ops are currently serving; is that
19 correct?

20 A. That -- that's correct.

21 Q. And the counties that are shown here are -- is
22 the outside outline of all of these counties, is that the area
23 in which the co-ops are attempting to agree to exclusive
24 territories within that entire area?

25 A. Between the two cooperatives, yes.

1 Q. Okay. And the purpose in expanding beyond
2 where you are currently serving is to allow for future
3 planning, future growth without having to come back to the
4 Commission to designate which areas each co-op will serve; is
5 that right?

6 A. I think that's correct, yes

7 COMMISSIONER MURRAY: Okay. Thank you.

8 JUDGE PRIDGIN: Commissioner Murray, thank you.

9 Any further questions?

10 COMMISSIONER APPLING: Just for a second on my
11 part so I'll get my five cent worth in here too.

12 QUESTIONS BY COMMISSIONER APPLING:

13 Q. Mr. Ryan, how are you doing?

14 A. I'm doing fine. Stumbling over the whole
15 legalese, but --

16 Q. Good. To the best of your knowledge, do you
17 anticipate -- and I know you'll probably be hoping, but do you
18 anticipate a lot of demand and growth in the territory? Are
19 you expecting an explosion someplace in this location?

20 A. If -- it all depends on the economy. We've
21 seen a -- quite a bit of explosion, if you want to call it
22 that, in new house building, new homes spurred by low interest
23 rates and etc. But most of the building is taking place
24 around the larger cities, which is Jefferson City, Eldon and
25 areas like that. The rural counties are seeing growth that

1 they haven't seen before, but it's not nearly like it is
2 around urbanized areas.

3 Q. But people are looking these days to get
4 further away from the bigger cities if they possibly can?

5 A. Yes. Like I said, I think that's been spurred
6 by low interest rates. It may be curtailed by high
7 transportation costs too.

8 Q. And the price of fuel?

9 A. Uh-huh.

10 COMMISSIONER APPLING: Thank you very much,
11 sir.

12 JUDGE PRIDGIN: May this witness be excused?

13 Mr. Ryan, thank you very much. You are
14 excused.

15 And I believe, Mr. Scott, you referred to
16 Exhibits 4 and 6. Would you like to offer those?

17 MR. SCOTT: Yes, your Honor. At this time we'd
18 offer -- we move to offer Exhibits 2, 4 and 6.

19 JUDGE PRIDGIN: And also 2, thank you.

20 Any objections to those exhibits?

21 Exhibits 2, 4 and 6 are admitted without
22 objection.

23 (Exhibit Nos. 2, 4 and 6 were received into
24 evidence.)

25 JUDGE PRIDGIN: This looks to be the perfect

1 time to break for lunch. Let's resume at one o'clock and we
2 will go off the record.

3 (A recess was taken.)

4 JUDGE PRIDGIN: All right. We're back on the
5 record. We just completed the testimony of Walter Ryan.

6 Mr. Scott, any further witnesses on behalf of
7 the applicants?

8 MR. SCOTT: Yes, your Honor. At this time we'd
9 call Mr. Greenlee to the stand.

10 JUDGE PRIDGIN: Mr. Greenlee, if you would,
11 please come forward to be sworn.

12 (Witness sworn.)

13 JUDGE PRIDGIN: Thank you very much, sir. If
14 you would, please have a seat there.

15 And, Ms. Chase, when you're ready.

16 MS. CHASE: Thank you, your Honor,
17 Commissioner.

18 JOHN WILLIAM GREENLEE testified as follows:

19 DIRECT EXAMINATION BY MS. CHASE:

20 Q. Mr. Greenlee, would you please state your full
21 name for the record, please?

22 A. John William Greenlee.

23 Q. Okay. And who are you employed by?

24 A. Gascosage Electric Cooperative.

25 Q. And what is your position there?

1 A. General manager.

2 MS. CHASE: And may I approach the witness?

3 JUDGE PRIDGIN: You may.

4 BY MS. CHASE:

5 Q. Mr. Greenlee, I've handed you what has been
6 marked as Exhibit 3. And that is your -- is that the Direct
7 Testimony that you filed in this proceeding?

8 A. That is correct.

9 Q. And do you have any additions or corrections
10 that you would make to that?

11 A. No, I don't.

12 Q. If I were to ask you the same questions today,
13 would your answers be the same?

14 A. Yes, they would.

15 Q. Okay. And with respect to Exhibit 5, is that
16 the Surrebuttal Testimony that you have filed in this matter?

17 A. That is correct.

18 Q. Okay. And do you have any additions or
19 corrections you'd like to make to that?

20 A. No, I do not.

21 Q. And if I ask you the same questions today,
22 would your answers be the same?

23 A. Yes, they would.

24 MS. CHASE: Okay. I have no further questions.

25 JUDGE PRIDGIN: Ms. Chase, thank you.

1 Mr. Berlin, any cross?

2 MR. BERLIN: Your Honor, Staff has no
3 questions.

4 JUDGE PRIDGIN: All right. Thank you.

5 THE WITNESS: Yes, thank you.

6 JUDGE PRIDGIN: Let's see if we have any
7 questions from the Bench in that case. Commissioner Murray?

8 COMMISSIONER MURRAY: Just give me a second,
9 Judge.

10 JUDGE PRIDGIN: Certainly.

11 QUESTIONS BY COMMISSIONER MURRAY:

12 Q. Mr. Greenlee, good afternoon.

13 A. Good afternoon.

14 Q. You were here earlier, were you not?

15 A. Yes, I was.

16 Q. Could you explain the meaning of that sentence
17 in --

18 A. Article 3?

19 Q. -- Article 4 of the Territorial Agreement?

20 A. Article 4 and 3 are basically the same.

21 Article 3 applies to us, I believe. Do you have the
22 Territorial Agreement that I may see?

23 Q. I'm having trouble finding my copy --

24 A. Okay. Article 3 describes the exclusive
25 service area of Gascosage and Article 4 describes the

1 exclusive service area of Three Rivers.

2 Q. Okay.

3 A. The last sentence I believe is the one that
4 seems to have caused all the stir. And, quite frankly, in our
5 discussions and negotiations with Three Rivers, that had never
6 even come up and we've never asked the counsel as to what that
7 meaning of that particular sentence was. These agreements was
8 basically tailored after the AmerenUE/Gascosage agreement.

9 Q. Okay. And that language was in there, do you
10 know?

11 A. Yes, it was.

12 Q. But there is a Territorial Agreement?

13 A. Gascosage entered into a Territorial Agreement
14 with AmerenUE. And these -- after we got through negotiating
15 the boundary, it was agreed upon between Three Rivers and
16 Gascosage that we would try to adopt as much as we could the
17 language that was in their agreement so that we would not have
18 any controversy with -- with Ameren, which is the largest
19 power supplier around us. And so that's why it comes up.

20 There has been no attempt, as far as I know, to
21 ever give us any more rights than what we already have. And I
22 think that was some of the questions that I -- I kind of
23 understood this morning that was leading to.

24 Q. Okay. So it's your testimony that this doesn't
25 grant you any -- grant either co-op any ability to serve any

1 additional load in the municipalities other than what you
2 would --

3 A. Nothing -- nothing more or nothing less than
4 what the rights we have now under the statutes to serve. And
5 I -- I'll give you an example. The town of Dixon, I believe,
6 is -- is either over or approaching the 1,500 mark. We are
7 the prominent, the dominant supplier in that town and the only
8 supplier in that town. We will continue to serve that.

9 But part of our negotiations was my concern
10 that sitting within 3 miles of that town is Central's
11 substation, which serves Three Rivers. Three Rivers could
12 theoretically come out of that substation with a three-phase
13 or two or three three-phase lines and come down through my
14 territory and serve whoever they want, picking up that town of
15 1,500 or close to 1,500.

16 So part of our negotiations is not only to
17 exclude the boundary line of Maries County, but to keep them
18 from leapfrogging over and getting down into the heart of
19 the -- the meat of my territory. And that's where my
20 headquarters sits is within that town.

21 Q. Okay. And when you are the predominant
22 supplier within an area that becomes a population greater than
23 1,500, that means you can serve new load as well as current
24 load; is that right?

25 A. My understanding from what counsel has told me

1 and what I've read of the statute, if I'm the predominant
2 supplier when that comes over 1,500, I'm allowed to continue
3 to serve that town.

4 Q. Okay. And without the language that seems to
5 be creating the problem here, that one sentence that is in
6 Article 3 for Gascosage, how would this -- if that were
7 removed, how would that affect the Territorial Agreement?

8 A. I have no idea. I would have to allow counsel
9 to speak to that issue, because like I said, we were never --
10 that never came up and we did not discuss that.

11 Q. Okay. So you don't know what it does, if
12 anything?

13 A. That's correct.

14 COMMISSIONER MURRAY: All right. Thank you.

15 THE WITNESS: You're welcome.

16 JUDGE PRIDGIN: Commissioner Murray, thank you.

17 Commissioner Appling, do you need a moment to
18 review?

19 COMMISSIONER APPLING: No questions.

20 JUDGE PRIDGIN: Thank you. And I don't believe
21 I have any questions. If there are no further questions from
22 the Bench, any recross, Mr. Berlin?

23 MR. BERLIN: No, your Honor.

24 JUDGE PRIDGIN: All right. Thank you.

25 Ms. Chase, any redirect?

1 MS. CHASE: No redirect. We'd like to move to
2 have Exhibits 3 and 5 admitted.

3 JUDGE PRIDGIN: Three and five have been
4 offered. Any objections?

5 MR. BERLIN: No objection, your Honor.

6 JUDGE PRIDGIN: Hearing no objection, Exhibits
7 3 and 5 are admitted.

8 (Exhibit Nos. 3 and 5 were received into
9 evidence.)

10 JUDGE PRIDGIN: Any further questions for this
11 witness? May this witness be excused?

12 Mr. Greenlee thank you very much. You are
13 excused.

14 Ms. Chase or Mr. Scott, any further witnesses?

15 MR. SCOTT: No, your Honor.

16 JUDGE PRIDGIN: All right. Hearing none, we'll
17 move to the next witness.

18 Mr. Berlin, any witnesses?

19 MR. BERLIN: Yes, your Honor. Staff Witness
20 Alan Bax.

21 JUDGE PRIDGIN: All right. Mr. Bax, if you
22 would, please come forward to be sworn, sir.

23 (Witness sworn.)

24 JUDGE PRIDGIN: All right. Thank you very
25 much. If you would, please have a seat.

1 And, Mr. Berlin, when you're ready, sir.

2 ALAN BAX testified as follows:

3 DIRECT EXAMINATION BY MR. BERLIN:

4 Q. Mr. Bax, would you state your full name for the
5 record, please?

6 A. Alan John Bax.

7 Q. And how are you employed?

8 A. I'm employed as a utility engineering
9 specialist III with the Public Service Commission.

10 Q. And how long have you been employed by the
11 Commission?

12 A. Five years.

13 Q. Mr. Bax, I'm going to ask you a question about
14 Exhibit 1, which is a map overview previously admitted into
15 evidence. Do you have a copy of it?

16 A. Exhibit 1?

17 Q. Yes, Exhibit 1.

18 A. Yes.

19 Q. Mr. Bax, did you prepare the map marked as
20 Exhibit 1?

21 A. For the most part, yes.

22 Q. Could you explain how you prepared the map?

23 A. Yes. The -- this is a -- a map of the -- an
24 outline of the counties -- of the 10 counties that are
25 included in the Territorial Agreement. And I've tried to give

1 an assemblance of the service territories of the -- of the
2 applicants and of the intervenor, in this case Gascosage/Three
3 Rivers and AmerenUE, respectively laid out on these -- on
4 these 10 counties.

5 Q. All right. Thank you.

6 Mr. Bax, did you cause to be prepared for this
7 case in a question and answer format Rebuttal Testimony dated
8 December 20th, 2004 previously marked as Exhibit 7, and
9 Cross-Surrebuttal Testimony dated December 27th, 2004 marked
10 as Exhibit 8?

11 A. Yes.

12 Q. Do you have any corrections that you wish to
13 make to your testimony?

14 A. I would -- no, I would only note that the metes
15 and bounds description that I -- a concern that I had, had
16 been resolved and was not included in the list of issues.

17 Q. Are the answers that you provided in your
18 Rebuttal Testimony and your Cross-Surrebuttal Testimony true
19 and correct to the best of your knowledge, information and
20 belief?

21 A. Yes.

22 MR. BERLIN: Your Honor, I tender the witness
23 for cross-examination.

24 JUDGE PRIDGIN: Mr. Berlin, thank you.

25 Any cross, Ms. Chase or Mr. Scott?

1 MR. SCOTT: Yes, your Honor.

2 CROSS-EXAMINATION BY MR. SCOTT:

3 Q. Mr. Bax, with regards to Exhibit No. 1, what
4 was the purpose in you making this exhibit?

5 A. Only -- the purpose of that exhibit was to give
6 a -- try to give a high-level view of the -- of the area of
7 the 10 counties and the -- and try to -- in an attempt to give
8 an assemblance of what was included -- the territory included
9 in the TA.

10 Q. Then why did you include the red line for Three
11 Rivers and the purple/maroon line for Gasco Sage Electric
12 Cooperative?

13 A. Just to show what the -- what the current
14 encompassing -- the areas encompassing current facilities as
15 I -- as I know them.

16 Q. Okay. And do you know of any statutory
17 provision which would prohibit Three Rivers or Gasco Sage from
18 serving outside of the lines that you mark?

19 A. No.

20 Q. And are you suggesting to the Commission today
21 that they limit their order or condition their Report and
22 Order on approval of the Territorial Agreement based on the
23 red or maroon lines?

24 A. The Ter-- Territorial Agreement is between
25 the -- is between -- I believe is between the two parties.

1 Q. And so my question is, you're not taking a
2 position on what the appropriate boundary lines ought to be
3 then?

4 A. Right.

5 Q. Okay. With regard to your Rebuttal Testimony,
6 you state on page 10 -- page 9 and 10, excuse me, that, I
7 recommend the Commission approve the Territorial Agreement
8 depending on the applicant's clarification of the outstanding
9 questions that I have addressed in my testimony or that will
10 be a draft -- addressed by Staff counsel.

11 Can you please summarize the concerns you have
12 with regards to this Territorial Agreement?

13 A. I had -- I had sought clarification as to -- I
14 tried to lay out in my -- in my testimonies what I -- what I
15 felt were the outstanding issues or the issues that I thought
16 needed clarification, which from -- from what I deemed from
17 the AmerenUE's testimony and -- and that the -- trying to get
18 a clarification of exactly what -- as I highlighted, certain
19 aspects of the Territorial Agreement, the language contained
20 in Article 4 and 5.2B, 5.4B.

21 Q. And are there any -- and again, I understand
22 that was your intent of your testimony. My question is, is do
23 you have any specific recommendations to make to the
24 Commission today?

25 A. I have -- I believe I have said that the -- as

1 long as the -- it is understood that the Territorial Agreement
2 is deemed only between the -- is affected only between the two
3 parties, that I am in favor of the Territorial Agreement.

4 Q. And that would be nothing more than the
5 Commission reciting what the statutory provision already
6 states; is that correct?

7 A. That is my interpretation.

8 Q. Okay. Well, I mean, looking at the statute,
9 doesn't the statute specifically say that the Territorial
10 Agreement does not affect any provider not a party to the
11 agreement?

12 A. It would seem to, yes.

13 Q. Okay. With regards to the termination
14 provision, you mention in your Rebuttal Testimony that in
15 Article 11 the agreement has a termination provision. Are you
16 recommending to the Commission today that a different
17 Article 11.2 have a different termination provision?

18 A. I -- I wanted to bring to the attention that
19 the -- to the Commission that the Territorial Agreement, as it
20 is written, says that the -- seems to indicate that upon --
21 that upon joint consent, that a notice will be sent to the
22 Commission and if they so -- so desire, they -- they may want
23 to -- the Commission may, in my mind, may want to change
24 the -- have a question about that.

25 Q. And my question to that is why?

1 A. The -- there have been the -- in Territorial
2 Agreements that I've -- that I've seen, there have been
3 varying -- there have been varying Territorial -- Territorial
4 Agreement language used in terminations. And to -- and in
5 just providing -- and I was simply just curious to see if the
6 Commission would want to in the -- instead of just receiving a
7 notice, would rather view in the -- if the termination was in
8 the public interest.

9 Q. But, again, that is why? Because doesn't the
10 statute say that the Territorial Agreement is approved if not
11 detrimental to the public interest? That's the standard for
12 approval. Am I correct?

13 A. That's correct.

14 Q. So why does it matter what the termination
15 provision states if all you're doing is returning to the
16 parties their pre-Territorial Agreement status of competing
17 between one another? Where's the public interest in that?

18 A. If the -- if the Territorial Agreement was --
19 was approved based upon the -- the merits as in the
20 non-duplication of facilities, that the customers would know
21 for -- with more assurance of who their service provider may
22 be, perhaps they'd like to -- perhaps they would like to see
23 what the -- be given more than just a notice to see what --
24 what the reason for termination is.

25 Q. And do you have any statutory authority for

1 that position?

2 A. There -- not that I -- not to my knowledge is
3 there statutory language about terminating Territorial
4 Agreements.

5 Q. Okay. And so the provision contained in the
6 agreement does, in fact, give notice to the Commission -- at
7 least the paragraph contained in this Territorial Agreement
8 does provide the Commission with least notice that the parties
9 are terminating the Territorial Agreement; is that correct?

10 A. Yes, it does.

11 Q. And if the termination is -- if notice of the
12 termination is provided to the Commission, isn't that also
13 notice to the general public that the Territorial Agreement no
14 longer exists between the parties?

15 A. Yes.

16 Q. And so notice to the world would be given --
17 just as notice to the world is given when the agreement is
18 approved, notice to the world is given that the agreement is
19 now being terminated?

20 A. Correct.

21 Q. And that would be more of just straight
22 contractual law versus Commission approval of the agreement as
23 contemplated by the statute?

24 A. I guess I -- that calls for a legal opinion,
25 but that could be, yes.

1 Q. Okay. With your comments regarding paragraphs
2 5.2 and 5.4B, after hearing the testimony and my explanation
3 to Commissioner Murray, do you have any other comments
4 regarding that paragraph?

5 A. I'd have to read the transcript, but that was
6 a -- that was definitely more sufficient than what had
7 previously been provided, your explanation earlier.

8 Q. And regarding my explanation, did you ever ask
9 Gascosage or Three Rivers to give you their understanding or
10 ask them to have their counsel contact you with regards to the
11 interpretation of paragraph 5.2?

12 A. I had -- I had asked in my Rebuttal Testimony
13 to -- for clarification of Article 5.2 and 5.4B.

14 Q. I understand that. But my question is, prior
15 to your Rebuttal Testimony, did you ever seek the opinions of
16 the applicants and/or their counsel for an explanation prior
17 to your filing of your testimony?

18 A. No.

19 Q. And with regard to see any of the positions
20 you're asking that the parties clarify, did you ever contact
21 the parties regarding their position so that they may be
22 clarified prior to your filing of your Rebuttal Testimony?

23 A. I had -- I had paid a visit to the -- to the
24 area to -- and did have discussions on not all, but some of
25 the concerns I had.

1 Q. Okay. But you didn't mention the termination
2 agreement -- the termination provision in the contract?

3 A. No, I didn't.

4 Q. Okay. And when you met with the two parties
5 regarding the Territorial Agreement and the boundaries, what
6 were your conversations with the managers at the time?

7 A. I was trying to get an idea of the -- in
8 general, why they -- the merits of the Territorial Agreement
9 and get a better understanding of the -- of the Territorial
10 Agreement itself.

11 Q. Okay. Based on those discussions and
12 interview, do you believe that the two cooperatives have the
13 ability to serve the customers in the exclusive service areas?

14 A. Yes, I do.

15 Q. Okay. And do you believe that the agreement in
16 total is not detrimental to the public interest?

17 A. As long as it's only -- as long as it's only
18 between the two parties, I do, yes.

19 MR. SCOTT: Okay. Nothing further at this
20 time.

21 JUDGE PRIDGIN: Mr. Scott, thank you.

22 See if we have any questions from the Bench.
23 Commissioner Murray?

24 COMMISSIONER MURRAY: Thank you.

25 QUESTIONS BY COMMISSIONER MURRAY:

1 Q. Good afternoon, Mr. Bax.

2 A. Good afternoon, Commissioner Murray.

3 Q. Would you just list all of your concerns that
4 Staff has with this particular Territorial Agreement?

5 A. Well, the -- essentially the -- essentially it
6 was the clarification of -- I tried to set forth what I
7 thought were the concerns that -- that Ameren had brought up
8 as well as that Staff -- that myself or the Staff counsel
9 had --

10 Q. Okay. I want specifics. And I want to know if
11 now that Ameren has withdrawn its objections, if you still are
12 objecting to those same things that Ameren was objecting to
13 originally?

14 A. I -- I certainly have not seen the agreement
15 that was reached and -- between the applicants and AmerenUE,
16 so I could not respond in that fashion.

17 Q. So does that mean yes, you are still objecting
18 or you just don't know?

19 A. Well, the -- I believe that the -- the further
20 clarifications of some specific statutory sections and --

21 Q. Specifically, which ones?

22 A. As in -- that the 394.312.5, that the -- that
23 the Territorial Agreement -- that the Territorial Agreement is
24 only between the parties to the agreement and will not have
25 any -- and does not have any affect on any non-party in any

1 way, shape or form.

2 Q. Okay. That's what the statute says; is that
3 right?

4 A. Well, it -- that's not exactly what it --

5 Q. Okay. Which language are you referencing in
6 the statute?

7 A. I'm currently referencing Section 394.312.5.

8 Q. Which part of .5?

9 A. And that would be the -- the initial sentence
10 there.

11 Q. Okay. And that says -- would you read it,
12 please?

13 A. Commission approval of any Territorial
14 Agreement entered into under the provisions of this section
15 shall in no way affect or diminish the rights and duties of
16 any supplier not a party to the agreement or of any electrical
17 cooperation authorized by law to provide service within the
18 boundaries designated in such Territorial Agreement.

19 Q. Okay. And what is your concern? That you
20 don't understand the meaning of that sentence or what is --
21 I'm trying to understand what it is Staff is asking be
22 clarified.

23 A. It -- it seemed that the -- it seemed that the
24 intervenor in this case, AmerenUE, may have thought that
25 the -- in the testimony was thinking that the Territorial

1 Agreement would be used in -- in lieu of other statutory
2 requirements.

3 Q. And are you taking the position that in spite
4 of what 394.312.5 says, that could be the case?

5 A. No, I'm not taking that position.

6 Q. Well, but you have a concern about that wording
7 in that statute?

8 A. Well, I was -- I was -- I wanted to -- it
9 seemed that that was a -- it seemed that that was a concern
10 that was emulated by the -- by the intervenor.

11 Q. Okay. I want to know what Staff's concern is.
12 That's what I'm asking you.

13 A. The -- the Staff concern goes back to, in part,
14 the Statute 394.312.2.

15 Q. And what is your concern with .2?

16 A. That it says that the Staff counsel had --
17 had -- had -- that we needed a clarification on the -- that
18 the -- notwithstanding the provisions of Section 394.020 and
19 Section 394.080 to the contrary.

20 Q. Now, you're saying you didn't want that, but
21 Staff counsel wanted that?

22 A. It was -- it was my -- my understanding when
23 reading 394.312.2 is that -- well, 394.312, in general, the
24 statute is that a Territorial Agreement is a procedure to
25 displace competition among the parties to the agreement. The

1 parties to a Territorial Agreement may be an electric
2 cooperative, electric corporation such as an investor-owned
3 utility as AmerenUE or municipally-owned utilities.

4 Now, when I read this, I was making no -- I was
5 making no distinction between the term "municipality" and
6 "municipally-owned utility," that the -- that since this
7 was -- I was looking at this strictly as a Territorial
8 Agreement as between the parties to the -- to the agreement.

9 Q. Okay. I'm really confused. You generally
10 don't object to Territorial Agreements is my understanding; is
11 that right?

12 A. That's correct.

13 Q. So what is it about this one that's causing you
14 to question this language in 394.312.2?

15 A. It was -- it -- in the testimonies of -- in the
16 testimony of Walt Ryan in the -- both in the Direct and in the
17 Surrebuttal, the -- he made -- he was -- in response to -- in
18 response to Ameren, he was saying that the -- he just made a
19 mention in general to -- that there is -- to Missouri law as
20 to -- as to the reasons that are stipulated to serve in a
21 non-rural area.

22 Ameren seemed, in my mind, to have -- Ameren
23 seemed, in my mind, to have thought that -- and I -- thought
24 to have -- that the Territorial Agreement language may indeed
25 go against those -- this Missouri statute laws. And I was

1 bringing to the -- bringing to the attention that as long as
2 the Territorial Agreement only affected the parties, I did
3 not -- I really -- I did not think that that was going to be a
4 concern.

5 Q. Okay. So that's not a concern of Staff's; is
6 that correct? I'm just asking you what are Staff's concerns.
7 Is that or is that not a concern of Staff, the interpretation
8 of 394.312.2 in this Territorial Agreement?

9 A. That has -- that was in the list of issues,
10 yes.

11 Q. List of Staff's issues?

12 A. List of Staff's issues.

13 Q. But I though you just said that you weren't
14 concerned about it. I'm just trying to get some clarification
15 here. It's important that we know what the parties' positions
16 are. And as I understand it, it's only you and the applicants
17 that have any disagreement at this point and I'd like to know
18 what your positions are.

19 A. Well, given that the -- given that the -- and I
20 have not seen it. Given that AmerenUE has withdrawn their --
21 has seemingly withdrawn their opposition --

22 Q. Let me stop you there. Because are you saying
23 that prior to their withdrawal of their opposition, you had
24 adopted their position -- Ameren's positions?

25 A. No, I'm not -- I'm not saying that.

1 Q. So why does that matter in formulating your
2 positions? What are Staff's positions as to this Territorial
3 Agreement as it is being presented to us today?

4 A. The -- the list of -- in the list of issues,
5 as -- as filed.

6 Q. Would you go through those, please?

7 A. Yes. Should the -- No. 1, Should the
8 Commission approve the Territorial Agreement between Three
9 Rivers and Gascosage is not detrimental to the public
10 interest?

11 Q. Staff's position?

12 A. And Staff position was the Commission should
13 approve the Territorial Agreement between Three Rivers and
14 Gascosage as not being detrimental to the public interest if
15 the Commission in its Report and Order directs Three Rivers
16 and Gascosage to amend their Territorial Agreement to address
17 those concerns raised by Staff that the Commission adopt as
18 being well taken.

19 Q. Okay. Let's get to those concerns. What are
20 those concerns? That's what I'm trying to get to.

21 A. The -- as was discussed earlier today, the
22 language that was contained in 5.2 -- in 5.2B and 5.4B of the
23 Territorial Agreement seems to have been somewhat alleviated
24 by what Mr. Scott had said earlier.

25 Q. And is it true that you didn't ask for that

1 interpretation earlier?

2 A. I had -- yeah, I only asked for that in my --
3 in my -- in my Rebuttal Testimony.

4 Q. And you really didn't have any discussion or
5 counsel didn't have any discussion with the other counsel
6 about it?

7 A. Not that I -- I'm not -- not that I'm aware of.

8 Q. I wonder why they would not have if that was a
9 concern and it was a legal question about the meaning of the
10 language.

11 A. It -- it seemed to come down to a -- it was --
12 much of it was a legal interpretation of the language, yes.

13 Q. And, to your knowledge, Staff counsel didn't
14 attempt to discuss that with other legal counsel?

15 A. I would -- they -- I'm sure -- I know that
16 Staff had -- had been in contact with counsel -- the various
17 counsels in this proceeding. I don't know -- I don't know
18 what they discussed.

19 Q. Okay. That's fair enough.

20 Go ahead. Keep addressing Staff's concerns.
21 What was the next one?

22 A. The -- the language in article -- the language
23 in Article 4 seemed to -- that it -- the language contained in
24 Article 4 that -- it seemed to be that it might be addressed
25 that that was -- in part, that that -- that due to cause --

1 cause maybe to question if this -- the Ter-- in the
2 Territorial Agreement whether the participants and the -- and
3 their providing electric -- provision in providing electric
4 service to non-rural areas.

5 Q. I'm sorry. They're able to provide electric
6 service to non-rural areas right now without any kind of a
7 Territorial Agreement, are they not?

8 A. Yes, they are.

9 Q. So what was your concern about non-rural areas
10 that was created by this language?

11 A. The -- in the -- in the -- in the testimony of
12 Walt Ryan, it was talking about -- it referred to that rural
13 electric cooperatives can now serve in non-rural areas by
14 statutory law, but it did not -- I wanted a clarification
15 on -- I wanted a further clarification. I had asked for
16 further clarification on exact-- on more exactly what he's
17 referring -- what statutory law he's referring to.

18 Q. You weren't aware that they had that ability to
19 serve in non-rural areas?

20 A. No. I had -- I have -- I had given in my
21 testimony -- I had given some statutory references that
22 would -- would seem to -- I was implying that I was attempting
23 to address Mr. Ryan's referring -- reference to statutory law
24 in giving what I thought those references were, that --

25 Q. And that --

1 A. -- did allow --

2 Q. Okay. I'm sorry, but how does that create a
3 position of Staff or a concern of Staff that this Territorial
4 Agreement is not in the public interest? How is that concern
5 related to the public interest of this Territorial Agreement?

6 A. The -- it -- it does -- it seems that the -- it
7 does come down to -- a lot of it does come down to a legal
8 interpretation. And I had mentioned in my testimony that
9 there would be -- that that would be addressed by the Staff
10 counsel.

11 Q. We're being asked to decide whether this
12 Territorial Agreement -- whether we should approve this
13 Territorial Agreement. And it appears that Staff is taking
14 the position that, well, there may be some concerns, but we
15 can't really explain what they are, but Staff counsel will
16 address them. And that leaves me, as a Commissioner here, not
17 knowing what your position is.

18 I'm asking you as Staff's witness -- and as I
19 understand it, you're Staff's only witness in this
20 proceeding -- what is Staff's position as to this Territorial
21 Agreement and whether this Commission should approve it?

22 A. In my -- I have -- I wish to -- not -- Staff
23 has said that the Territorial Agreement should be approved as
24 being not detrimental to the public interest, that the -- that
25 the merits of the Territorial Agreement -- that the -- would

1 result in the non-duplication of facilities, the -- given
2 customers in the -- in the area more assurance of their -- of
3 who their electric provider is, that would provide an
4 additional safety enhancement.

5 And that the -- as long as it is the -- there
6 seemed to some question as to -- there seemed to be some --
7 there seemed to be -- addressed in -- by the parties that --
8 that the Territorial Agreement may -- may indeed come in
9 conflict with existing statutory requirements.

10 Q. Mr. Bax, you are -- Staff is a party. I don't
11 want you to sit here and tell me what there seems to be
12 addressed by parties. I want you to tell me as a party, what
13 it is you are addressing,

14 A. The -- in the -- it would be my -- it would be
15 Staff's -- it would be my position that the Territorial
16 Agreement in whole should be determined not detrimental to the
17 public interest.

18 Q. Period?

19 A. Period.

20 Q. So you have no objections? You have no
21 concerns?

22 A. Well, in my -- in my -- the metes and bounds
23 descriptions that I had -- the concerns that I had -- that I
24 listed as -- were addressed either in testimony or in -- it
25 seems earlier today, so that I -- I feel and, again, Ameren

1 has -- Ameren has reached -- has apparently reached an
2 agreement with the applicants which I have not seen.

3 Q. So, in other words, this is pretty much an
4 agreed upon Territorial Agreement? Nobody's objecting to it;
5 is that correct?

6 A. That would -- that would seem to be the case
7 now, yes.

8 COMMISSIONER MURRAY: Okay. Thank you.

9 JUDGE PRIDGIN: Commissioner Murray, thank you.

10 Commissioner Appling, any questions?

11 QUESTIONS BY COMMISSIONER APPLING:

12 Q. Mr. Bax, in the five years that you've been
13 here at the Commission, have you experienced anything -- is
14 there something out there that would lead you to think that we
15 shouldn't approve this TA as written -- as agreed on by the
16 parties? Is there something in your experience that tips you
17 off here?

18 A. No, sir.

19 Q. So what you're telling me is I should approve
20 this TA?

21 A. Yes. I -- I am in approval of the Territorial
22 Agreement.

23 COMMISSIONER APPLING: Okay. Thank you very
24 much.

25 JUDGE PRIDGIN: Commissioner Appling, thank

1 you.

2 I don't believe I have any questions. Let me
3 see if I have any further questions from counsel. Mr. Berlin
4 or Mr. Dottheim?

5 MR. BERLIN: Yes, your Honor. Just a moment.

6 First, your Honor, just as a matter of
7 housekeeping, I'd like to offer Exhibits 7 and 8 into
8 evidence. Exhibit 7 is the Rebuttal Testimony of Staff
9 Witness Alan Bax and Exhibit 8 is the Cross-Surrebuttal
10 Testimony of Staff Witness Alan Bax. I'd like to move it into
11 evidence.

12 JUDGE PRIDGIN: Exhibits 7 and 8 have been
13 offered. Any objections?

14 MR. SCOTT: No objection to 7. We do object to
15 Exhibit 8 in that this is Cross-Surrebuttal Testimony only
16 dealing with AmerenUE's Direct -- or Rebuttal Testimony and we
17 believe at this time it's irrelevant to the proceeding.

18 JUDGE PRIDGIN: All right. Exhibit 7 will be
19 admitted without evidentiary objection. As to Exhibit No. 8,
20 objection is overruled and Exhibit No. 8 is admitted.

21 (Exhibit Nos. 7 and 8 were received into
22 evidence.)

23 JUDGE PRIDGIN: Mr. Berlin?

24 REDIRECT EXAMINATION BY MR. BERLIN:

25 Q. Mr. Bax, you studied the Territorial Agreement

1 in great detail; is that correct?

2 A. Yes.

3 Q. In the Territorial Agreement, did you find any
4 indication within that document of any municipal franchises
5 that Three Rivers may or may not have?

6 A. No.

7 Q. If you found out, say, pursuant to an
8 evidentiary hearing, that there was a municipal franchise
9 granted to Three Rivers not indicated in the Territorial
10 Agreement, that would be of concern to you?

11 A. Not in regards to the Territorial Agreement.

12 Q. That is, a municipal franchise greater than
13 1,500 inhabitants, if there was an existing franchise out
14 there not included in the Territorial Agreement, is that a
15 concern to you?

16 A. Is it -- is it a concern to me in general that
17 an REC is going to gain a -- is going -- is going to gain a
18 municipal franchise of greater than 1,500?

19 Q. Would an indication of such a franchise in a
20 Territorial Agreement be of a concern to you? Would you look
21 for that?

22 A. Yes, I would.

23 MR. BERLIN: Staff has no further questions,
24 your Honor.

25 JUDGE PRIDGIN: Mr. Berlin, thank you.

1 Mr. Scott?

2 RE CROSS-EXAMINATION BY MR. SCOTT:

3 Q. Mr. Bax, can you please explain to me why it
4 matters if an electrical cooperative has a franchise or not
5 regarding the cooperative's ability to serve in any particular
6 municipality?

7 A. That --

8 Q. Well, let back up. Can you please tell me what
9 a franchise even is? Do you have an understanding what a
10 franchise does and does not do for an electric service
11 company, whether it be a co-op or a public utility?

12 A. It's my understanding that -- that there needs
13 to be -- there needs to be a franchise agreement that -- to
14 enable to serve within a municipality, in general.

15 The -- to answer your -- what I believe your
16 question was -- to answer your question, I would go to Section
17 394.080.2, which part 2 says, The city, town or villages, in
18 addition to all the powers granted in this section, relate to
19 all cooperatives, shall have the power to supply electric
20 energy at retail as long as the city, town or village is
21 granted to the cooperative or franchise to supply electric
22 energy within the city, town or village. That's one of the
23 prerequisites.

24 Q. But that's only if the cooperative is the
25 predominant supplier at the time that town goes over 1,500.

1 Am I correct?

2 A. That's my -- that would -- that's my
3 understanding.

4 Q. Okay. So how does that provision in 080 apply
5 to Territorial Agreements?

6 A. The section in Section 312-- in 394.312.2,
7 there was just a reference made to Statute 394.080.

8 Q. But the reference to 394.080 is notwithstanding
9 the cooperative's ability to serve in a town over 1,500 if
10 it's a predominant supplier. Correct?

11 A. Yes.

12 Q. Okay. So for a Territorial Agreement, a
13 franchise might not be necessary in order for an electric
14 cooperative to serve in a town over 1,500 if you follow the
15 framework of the Territorial Agreement in order to serve
16 inside a municipality?

17 A. Well, on specific -- I don't know if I could
18 comment on specific territorial agreements that --

19 Q. I understand. But I'm going to go back. My
20 basic question is, do you even know what the franchise permits
21 an electric utility to do? Let's start from that premise.

22 A. Supply -- supply electric energy within the
23 municipality is my understanding.

24 Q. Have you reviewed the statutes regarding
25 franchises?

1 A. No.

2 Q. Okay. So you have no understanding that a
3 franchise is nothing more than a grant of a municipality and
4 its citizens to allow a utility, whether it's electric, gas,
5 telephone or anything else, the ability to use its city
6 streets and right-of-way simply to place its facilities on?
7 You have no understanding of that, do you?

8 A. No. That would -- you would need that to
9 supply the electric energy.

10 Q. You would need it to use the city streets and
11 right-of-ways. Correct?

12 A. Yes.

13 Q. So for an electric cooperative if they already
14 have private easements, they might not necessarily need a
15 franchise. Correct?

16 A. Well, I'm -- what I'm thinking is that in a
17 specific Territorial Agreement, the parties involved may
18 give -- the parties -- the parties involved, if it involves an
19 REC, may give -- may be granted other powers which they would
20 not necessarily have had.

21 Q. How do you mean?

22 A. If it -- if the power -- if this was
23 specific -- specifically that if -- with annexed areas --
24 pending annexation.

25 Q. Let me see if I can paraphrase your answer and

1 make sure I understand it. What you're suggesting is, is that
2 the Territorial Agreement may give additional service rights
3 to an electric cooperative if the Territorial Agreement is
4 approved?

5 A. Yes.

6 Q. If that's the case, the cooperative would have
7 to follow the statutory framework within Section 394.312.
8 Correct?

9 A. Yes.

10 Q. And so the lack of a franchise is not
11 necessarily detrimental to the approval or to the effect of a
12 Territorial Agreement between a municipality or a cooperative.
13 Correct?

14 A. Well, I --

15 Q. Under the premise that a franchise is nothing
16 more than a grant of the use of the right-of-way?

17 A. Under the -- under that premise.

18 Q. Okay. But aren't there -- but based on your
19 reading of 394.080, that's also an exception to an electric
20 cooperative's service area of serving in a town that's a
21 non-rural area. Correct?

22 A. Yes.

23 Q. Okay. So doesn't it appear to be a legal
24 question regarding whether or not the Territorial Agreement is
25 nothing more than another statutory provision that is an

1 exception to the general rule that rural electric cooperatives
2 only serve in non-rural areas?

3 A. Specifically to the document -- to a particular
4 document, yes.

5 Q. Okay. And with regards to your five years of
6 employment history here at the Commission, have you seen any
7 other Territorial Agreements that list what franchises the
8 applicants have?

9 A. No.

10 Q. Okay. And with regard to electric
11 cooperatives, an electric cooperative may have a franchise for
12 a town under 1,500; isn't that true?

13 A. That's true.

14 MR. SCOTT: Okay. Nothing further at this
15 time.

16 JUDGE PRIDGIN: Mr. Scott, thank you very much.
17 May this witness be excused?

18 MR. BERLIN: Your Honor --

19 JUDGE PRIDGIN: Mr. Berlin, yes.

20 MR. BERLIN: -- would I have a chance to follow
21 up?

22 JUDGE PRIDGIN: Sure.

23 MR. BERLIN: Just a minute, please, your Honor.

24 FURTHER REDIRECT EXAMINATION BY MR. BERLIN:

25 Q. Mr. Bax, do you have a copy of Staff's list of

1 issues in front of you?

2 A. Yes, I do.

3 Q. If I could direct you to issue No. 3 on page 2.

4 A. Point 3, uh-huh.

5 Q. And if I could, I'd like to ask you to read
6 that first question, please.

7 A. Whether under Section 394.312.2, RSMo 2000, see
8 also Section 394.315.2, RSMo 2000, if the Commission approves
9 the Territorial Agreement between Three Rivers and Gascosage,
10 is either Three Rivers or Gascosage, by virtue of the
11 Territorial Agreement, authorized to serve in any municipality
12 that is not identified in the Territorial Agreement as having
13 granted to Three Rivers or Gascosage authority to operate
14 within the corporate boundaries of that municipality?

15 Q. And referring to the Statute 394.312.2 where it
16 says, Such Territorial Agreements shall specifically designate
17 the boundaries of the electric service area of each electric
18 service supplier subject to the agreement any and all powers
19 granted to a rural electric cooperative by a municipality
20 pursuant to the agreement to operate within the corporate
21 boundaries of that municipality, does that part of the statute
22 concern you with regard to a Territorial Agreement listing any
23 municipalities that may or may not be authorized to -- that
24 the rural co-op may or may not be authorized to provide
25 service to; and that is, a municipality that is greater than

1 1,500 in inhabitants?

2 A. In -- in some -- in some territorial
3 agreements, perhaps.

4 Q. Would that be a concern of yours in this
5 Territorial Agreement?

6 A. The --

7 Q. If there was a municipality greater than 1,500
8 that had authorized a franchise to provide electrical energy
9 service within its boundaries to a rural co-op that was not
10 listed in this agreement, that would be a concern?

11 A. That has not -- that has not been my
12 interpretation.

13 MR. BERLIN: Just a minute, your Honor.

14 Staff has no further questions, your Honor.

15 JUDGE PRIDGIN: Mr. Berlin, thank you.

16 May this witness be excused?

17 All right, Mr. Bax. Thank you very much.

18 Mr. Berlin, I understand Staff has no further
19 witnesses; is that correct?

20 MR. BERLIN: That is correct, your Honor.

21 JUDGE PRIDGIN: All right. And no witnesses
22 from AmerenUE; is that correct?

23 MR. BOBNAR: That's correct.

24 JUDGE PRIDGIN: I see no further witnesses.

25 Anything else before I announce briefing?

1 MR. SCOTT: Yes, your Honor. I would request
2 two minutes for just a short closing.

3 JUDGE PRIDGIN: That's fine. And since you
4 have the burden, I'll let you proceed.

5 MR. SCOTT: Without getting up to the podium,
6 like I said, two minutes, I believe based upon the testimony
7 of Mr. Bax and the questioning of Commissioner Murray, there
8 is no objection to this Territorial Agreement as presented.

9 There is sufficient evidence from the
10 testimony -- Direct Testimony of Mr. Ryan and Mr. Greenlee
11 that this Territorial Agreement is not detrimental to the
12 public interest, that it would reduce competition along the
13 current boundary lines of the parties where they're
14 experiencing competition.

15 That has the benefits of reducing duplication,
16 enhancing safety along that line. And, more importantly, as I
17 said in my opening, gives greater security in the future of
18 each party in establishing these broad Territorial Agreement
19 boundary lines so as to allow them to effectively distribute
20 their electric distribution system and grow within what they
21 believe is their traditional service territory and have it
22 actually codified by the Commission's order as their service
23 territory as between the two parties.

24 So we respectfully request the Commission to
25 approve this Territorial Agreement as presented. Thank you.

1 JUDGE PRIDGIN: Mr. Scott, thank you.

2 Anything further from counsel? Mr. Berlin?

3 MR. BERLIN: Yes, your Honor. I'd like to make
4 a comment. I would like to state that Staff Witness Alan Bax
5 was not offered as a legal witness in this case. He is
6 offered as a technical witness.

7 Staff believes that as a result of testimony
8 that has been prepared, filed and admitted into this case, as
9 well as what has been discussed here at the evidentiary
10 hearing, that there are indeed some legal issues that need to
11 be addressed and Staff would propose that the best way to
12 address those legal issues would be through briefing. No
13 further comments.

14 JUDGE PRIDGIN: All right. Thank you.

15 Anything else from counsel?

16 All right. What I'd like to do then is order
17 briefing. And because of an operation of law date that is
18 approaching, I'd like to just have one round of briefing from
19 counsel. And I'll order that to be done 15 days after the
20 transcript is filed. And I will issue a written order once
21 the transcript is filed in EFIS. I mean, you should be able
22 to see that as well as and just count 15 days thereafter, but
23 I'll confirm it in writing and send a written order ordering
24 briefs 15 days after the transcript is filed.

25 Is there anything further?

1 All right. Hearing nothing else from the
2 parties, that concludes this hearing. Thank you very much.
3 We are now off the record.

4 WHEREUPON, the hearing was adjourned.

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