

Exhibit No.:
Issues: Territorial Agreement
Witness: Alan J. Bax
Sponsoring Party: MO PSC Staff
Type of Exhibit: Rebuttal Testimony
Case No.: EO-2005-0122
Date Testimony Prepared: December 20, 2004

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

REBUTTAL TESTIMONY

OF

ALAN J. BAX

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

CASE NO. EO-2005-0122

**Jefferson City, Missouri
December 2004**



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REBUTTAL TESTIMONY

OF

ALAN J. BAX

**JOINT APPLICATION OF GASCOSAGE ELECTRIC COOPERATIVE AND
THREE RIVERS ELECTRIC COOPERATIVE FOR A TERRITORIAL
AGREEMENT DESIGNATING THE ELECTRIC SERVICE TERRITORY IN A
PART OF MILLER, MARIES, CAMDEN, COLE, FRANKLIN, GASCONADE,
MONITEAU, OSAGE, PHELPS AND PULASKI COUNTIES, MISSOURI**

CASE NO. EO-2005-0122

Q. Please state your name and business address?

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

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

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

Q. Please describe your educational and work background.

A. I graduated from the University of Missouri - Columbia with a Bachelor of
Science degree in Electrical Engineering in December 1995. Concurrent with my studies,
I was employed as an Engineering Assistant in the Energy Management Department of
the University of Missouri – Columbia from the Fall of 1992 through the Fall of 1995.
Prior to this, I completed a tour of duty in the United States Navy, completing a course of
study at the Navy Nuclear Power School and a Navy Nuclear Propulsion Plant.

1 Following my graduation from the University of Missouri - Columbia, I was employed
2 by The Empire District Electric Company as a Staff Engineer until August 1999, at which
3 time I began my employment with the Staff of the Missouri Public Service Commission
4 (Staff).

5 Q. Are you a member of any professional organizations?

6 A. Yes, I am a member of the Institute of Electrical and Electronic Engineers
7 (IEEE).

8 Q. What is the purpose of your testimony?

9 A. The purpose of this testimony is to address the proposed territorial
10 agreement filed between Gascosage Electric Cooperative (Gascosage) and Three Rivers
11 Electric Cooperative (Three Rivers), referred to together as the Applicants. The
12 Applicants are seeking approval to designate specific areas, pursuant to 394.312 RSMo
13 2000, in which each Applicant agrees not to compete directly with the other in providing
14 electric service to new customers.

15 Q. Do you plan to address the legal issues that seem to be involved in this
16 case?

17 A. In general, I will address the technical issues involved in this case. My
18 work requires that I refer to the rules and statutes that apply to the Commission, and to
19 legal documents. In addition, I confer with attorneys in the General Counsel's Office of
20 the Commission and other attorneys as well. A number of legal issues appear to be
21 essential elements to this case. These items may be noted in my testimony, but I will
22 leave it to Staff counsel to provide Staff's legal position.

23 Q. Has Gascosage and Three Rivers filed testimony in this proceeding?

1 A. Yes. Mr. John W. Greenlee, General Manager of Gascosage, and Mr.
2 Walter R. Ryan, General Manager of Three Rivers, have filed direct testimony.

3 Q. Is a territorial agreement equivalent to a certificate of convenience and
4 necessity?

5 A. No. Rural Electrical Cooperatives (RECs), such as the Applicants in this
6 case, as well as municipally owned electric utilities do not have certificated areas similar
7 to investor owned utilities (IOUs), such as AmerenUE. A certificated area defines the
8 borders within which a particular IOU is authorized by the Missouri Public Service
9 Commission (Commission) to provide electric service as the result of a certificate of
10 convenience and necessity being approved by the Commission. RECs, municipally
11 owned electric utilities and IOUs may seek to define specific boundaries in which to
12 provide electric service via a territorial agreement filed with the Commission, pursuant to
13 394.312 RSMo 2000.

14 Q. Why is a territorial agreement being sought in the present case?

15 A. The Applicants desire to define a boundary, predominantly in Miller and
16 Maries Counties, that Gascosage and Three Rivers will not compete with one another in
17 providing electric service to new customers within the area designated as the exclusive
18 service territory of the other. The Applicants assert that the Territorial Agreement has
19 several attributes, including reducing the likelihood of duplicating facilities, allowing
20 more efficient use of their respective existing facilities, simplifying the planning of future
21 facilities for anticipated load growth, providing greater assurance to customers of
22 knowing the provider of electric service, and limiting disputes between the Applicants on
23 who should serve new customers. The Applicants, according to Article 2.1 of the

1 Territorial Agreement, contend that parties that are not part of this agreement are in no
2 way affected by the terms of the agreement.

3 Q. Have the Applicants provided maps and metes and bounds descriptions of
4 their respective proposed areas in which they seek to define more specific service areas?

5 A. Yes. The Applicants filed maps of each county in which they currently
6 provide electric service and, in general, filed applicable metes and bounds descriptions of
7 each county covered by the Territorial Agreement. Gascosage currently serves customers
8 within Miller, Maries, Camden, Phelps and Pulaski Counties. Three Rivers currently
9 serves customers within Miller, Maries, Cole, Franklin, Gasconade, Moniteau and Osage
10 Counties. The Staff would note that the Applicants have, apparently, only previously
11 competed for new customers in a portion of Miller and Maries Counties. Therefore, the
12 boundaries included in the Joint Application within Miller and Maries Counties would
13 seem to be the true area of concern. Miller and Maries Counties comprise the area in
14 which the Applicants overlap each other in the provision of electric service.

15 Q. Do you agree with the maps, the metes and bounds, or other service area
16 descriptions of the Joint Application?

17 A. No. Camden County was inadvertently not included in the list of counties
18 contained in the description of Gascosage on page 1 of the Joint Application. In Exhibit
19 B, the metes and bounds description of the electric service territory of Gascosage in
20 Phelps County that references "...southeast corner of section thirty-three, township
21 thirty-four, range ten, west" should instead reference "...southeast corner of section thirty
22 four, township thirty-four, range ten, west".

1 Q. Are there additional items you wish to discuss concerning the metes and
2 bounds descriptions?

3 A. Yes. Three Rivers indicates its service area encompasses Moniteau County
4 in its entirety. Three Rivers currently serves a small number of customers in the
5 southeast part of Moniteau County. While it is certainly possible that Three Rivers will
6 increase its presence in Moniteau County, it most likely would not encompass the entire
7 county. Moreover, it is not likely that Gascoage will become an electric service provider
8 in Moniteau County. While Staff disagrees with the metes and bounds description
9 defining the electric service area for Three Rivers to include all of Moniteau County, it is
10 not essential to alter the description in order to recommend approval of the Territorial
11 Agreement as filed in the Joint Application if it is determined the agreement only applies
12 to the Applicants per Section 394.312.5, RSMo 2000. Emphasis should be placed on the
13 boundary descriptions in Miller and Maries Counties, the only counties included in the
14 Joint Application in which both Applicants currently provide electric service and
15 compete with each other for new customers.

16 Q. Does the Joint Application meet the applicable Commission requirements
17 contained in 4 CSR 240-2.060 and 4 CSR 240-3.130?

18 A. Yes. In addition, the Applicants assert to have paid the appropriate fees as
19 specified in 4 CSR 240-3.135.

20 Q. Is there a need for an exchange of customers between the Applicants
21 should the Territorial Agreement be approved?

22 A. No. The Applicants made a concerted effort to determine boundaries that

1 would prevent existing customers of one cooperative from being in the service territory
2 of the other upon consummation of the Territorial Agreement. The result of this effort,
3 accomplished primarily via two thorough surveys conducted within Maries and Miller
4 Counties by the Applicants, was to eliminate the need for a customer exchange between
5 the Applicants due to the Territorial Agreement.

6 Q. Did Staff conduct a visit to the area in question?

7 A. Yes. Dan Beck of the Staff and I made a visit to the area on
8 December 8, 2004. The Staff verified much of the proposed boundary identified in the
9 Application located within Maries and Miller Counties, which Staff believes is the area
10 that the Territorial Agreement should principally address.

11 Q. Have any other electric service providers intervened in this case?

12 A. Yes. Union Electric Company, d/b/a AmerenUE, has intervened in this
13 case.

14 Q. Would approval of this Territorial Agreement have any effect on any other
15 provider of electric service that is not a party to the Territorial Agreement, such as
16 AmerenUE?

17 A. That is neither clear from the Gascosage direct testimony nor from the
18 AmerenUE pleadings. According to page 5, lines 11-13 and page 5, line 23 to page 6,
19 line 6 of the direct testimony of Three Rivers witness Walter R. Ryan, and a literal
20 reading of Section 394.312.5 RSMo 2000, a Territorial Agreement between electric
21 service providers shall in no way affect or diminish the rights or duties of any other
22 supplier of electric service that is not a party to the Territorial Agreement. AmerenUE,
23 which is not a party to this Territorial Agreement, is authorized by law, pursuant to its

1 certificated service territory, to provide service within the boundaries designated in this
2 Territorial Agreement.

3 Nonetheless, AmerenUE, in its December 7, 2004 Rebuttal To The Joint
4 Applicant's Response To AmerenUE's Motion To Intervene, cites a Missouri court
5 decision, Ozark Border Electric Cooperative v. Public Service Commission, 924 S.W.2d
6 597, 601 (Mo.App.1996) that seems to cause concern even considering Section 394.312.5
7 RSMo 2000. I will leave it to Staff counsel to address the legal issues that are raised, as I
8 have previously indicated, but I will continue to comment on the direct testimony filed in
9 this case.

10 Mr. Ryan should clarify his direct testimony in which he seems to imply that
11 Three Rivers may compete with AmerenUE for customers in non-rural areas. Sections
12 394.020(3) and 394.080.2 RSMo 2000 appear to be relevant to this discussion. Mr.
13 Ryan, at page 6, lines 4-5 of his direct testimony states "...The parameters under which
14 an electric cooperative may serve in a non-rural area has been established by law...", and,
15 again on page 6, lines 15-18, Mr. Ryan states, "...While we appreciate AmerenUE's
16 interest in being free from competition with Three Rivers in non-rural areas, we believe
17 that such competition is also in the public interest as it gives growing communities a
18 greater choice in choosing electric service providers when properly done pursuant to the
19 laws of Missouri."

20 AmerenUE addresses this lack of clarity in the Joint Application when it states at
21 page 3, paragraph 4 of its November 24, 2004 Verified Application To Intervene as
22 follows:

1 ... Company presently is the exclusive electric service provider to
2 Jefferson City, Eldon and New Haven, cities with a population in
3 excess of 1500 inhabitants that are within the proposed exclusive
4 service area of Three Rivers. The cities of Belle, Linn, St.
5 Martins, and Wardsville are also served by Company, are within
6 the proposed exclusive service area of Three Rivers, and may go
7 over 1500 inhabitants after the next census. Because Jefferson
8 City, Eldon, and New Haven are not rural areas and Three Rivers
9 does not satisfy the requirements Section 394.080.2 RSMo (2000)
10 with respect to them, Three Rivers is presently prevented from
11 serving within their boundaries. Company is concerned that
12 given the present wording of Article 4 of the Territorial
13 Agreement, Three Rivers may argue after Commission approval
14 of the Territorial Agreements that the Territorial Agreement
15 grants them the right to serve within Jefferson City, Eldon, New
16 Haven, and any other city in their proposed exclusive service area
17 that in the future exceeds 1500 inhabitants.² Therefore, Company
18 seeks intervention in this proceeding in order to protect its
19 interests, interests that could be adversely impacted by a final
20 order arising from the case.

21
22 ² Article 3 of the Territorial Agreement contains a similar municipal service
23 provision with respect to the electric service area of Gasconage. However, that
24 provision does not affect Company because Company has an approved
25 Territorial Agreement with Gasconage.

26
27 AmerenUE further states at pages 3-4 of its December 7, 2004 Rebuttal To The Joint

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29 Applicant's Response To AmerenUE's Motion To Intervene as follows:

30
31 ...Inside municipalities with populations greater than 1500
32 inhabitants there is no competition because Three Rivers' ability
33 to serve is limited by current Missouri Law. Commission
34 approval of the proposed Territorial Agreement in its current
35 form will change eliminate the limitations imposed by Missouri
36 Law, destructive competition inside municipalities such as
37 Jefferson City would result, and AmerenUE's ability to plan its
38 system and to optimally utilize its facilities inside municipalities
39 such as Jefferson City would be adversely impacted by
40 competition by Three Rivers, competition the existing Missouri
41 Law prevents...

42
43 Q. Are there provisions of the Territorial Agreement that are unclear and
44
45 need clarification?
46

Rebuttal Testimony
of Alan J. Bax

1 A. The Applicants need to clarify the meaning and/or intent of Articles 5.2(B)
2
3 and 5.4(B) regarding Gascosage or Three Rivers, respectively, serving a city, town, or
4 village in excess of fifteen hundred inhabitants.

5 Q. Have the Applicants provided a method of handling possible exceptions to
6 this Territorial Agreement should it be approved?

7 A. Yes. Article 9 of the Territorial Agreement describes a procedure that will
8 address exceptions on a case-by-case basis by Addenda.

9 Q. Have the Applicants addressed the matter of a termination date of the
10 Territorial Agreement?

11 A. Yes. Article 11.2 states that “[t]he termination of this Agreement shall be
12 effective on the date the Commission receives a notice of mutual consent, signed by both
13 Gascosage and Three Rivers, of their decision to terminate the Agreement.” Thus, the
14 Applicants propose that Commission authorization would not be necessary to terminate
15 the Territorial Agreement.

16 Q. Do the Applicants have the capability to provide electric service to the
17 customers in what would be their respective exclusive service territories as described in
18 this proposed Territorial Agreement?

19 A. Yes, to the extent that the Staff believes the Territorial Agreement
20 predominantly concerns the boundaries proposed in Miller and Maries Counties and that
21 the Territorial Agreement would apply only to the Joint Applicants.

22 Q. Do you recommend the Commission approve this Territorial Agreement?

23 A. I recommend the Commission approve the Territorial Agreement
24 depending upon the Applicants’ clarification of the outstanding questions that I have

1 addressed in my testimony or that will be addressed by Staff counsel. I believe that
2 defining a boundary in Maries and Miller Counties between the Applicants is in the
3 public interest, as it will limit the duplication of facilities that would otherwise be
4 anticipated. In addition, new or potential customers will know, with greater certainty,
5 who the provider of electric service will be, potential disputes/conflicts among the
6 Applicants concerning who will serve new customers will be reduced. Moreover,
7 consummation of this Territorial Agreement should allow more efficient use of existing
8 facilities, and simplify the planning of future facilities for anticipated load growth.

9 Q. Does this conclude your prepared rebuttal testimony?

10 A. Yes, it does.