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June 14, 2002

Secretary of PSC
Missouri Public Service Commission
P. O. Box 360
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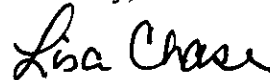
Re: Case No. EO-2002-458

Dear Secretary:

Enclosed for filing please find an original and eight (8) copies of the Direct Testimony of Thomas W. Howard in the above-referenced matter on behalf of Callaway Electric Cooperative.

Thank you for seeing this filed.

Sincerely,



Lisa Cole Chase

LCC:tr

Enc.

cc: Thomas W. Howard
Bill Bobnar
Office of Public Counsel
PSC General Counsel

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EXHIBIT NO. _____
ISSUE: PUBLIC INTEREST
WITNESS: THOMAS W. HOWARD
TYPE OF EXHIBIT: DIRECT
TESTIMONY
SPONSOR: CALLAWAY ELECTRIC
COOPERATIVE
CASE NO. EO-2002-458

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Joint Application of Union Electric)
Company and Callaway Electric Cooperative for an Order)
Approving the Change in Electric Supplier for Certain)
Customers for Reasons in the Public Interest;)
Authorizing the Sale, Transfer, and Assignment of)
Certain Electric Distribution Facilities and Easements) Case No. EO-2002-458
from Union Electric Company to Callaway Electric)
Cooperative; and Approving the Territorial Agreement)
between Union Electric Company and Callaway Electric)
Cooperative in Audrain, Boone, Callaway, Montgomery,)
and Warren Counties.)

DIRECT TESTIMONY

OF

THOMAS W. HOWARD

JEFFERSON CITY, MISSOURI

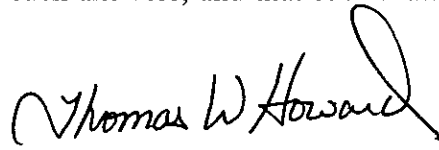
JUNE 14, 2002

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AFFIDAVIT OF THOMAS W. HOWARD


STATE OF MISSOURI)
) ss.
COUNTY OF CALLAWAY)

Thomas W. Howard, of lawful age, on my oath states, that I have participated in the preparation of the foregoing direct testimony in question and answer form, consisting of _____ pages, to be presented in this case; that the answers in the foregoing testimony were given by me; that I have knowledge of the matters set forth in such answers; and that such matters are true to the best of my knowledge and belief.



Thomas W. Howard

Subscribed and sworn to before me this 13 day of June, 2002.



Notary Public

My Commission Expires: 5-8-2004

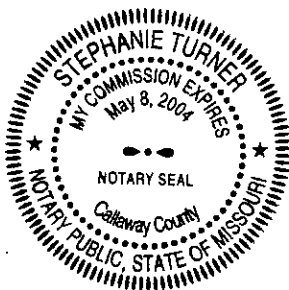


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CASE NO. EO-2002-458

1 Q. WHAT IS YOUR NAME?

2 A. Thomas W. Howard.

3 Q. BY WHOM ARE YOU EMPLOYED?

4 A. Callaway Electric Cooperative.

5 Q. IN WHAT CAPACITY ARE YOU EMPLOYED?

6 A. I am the CEO/General Manager.

7 Q. WHAT ARE YOUR JOB DUTIES AS GENERAL MANAGER?

8 A. I am in charge of daily operations and am the chief executive officer of the
9 Cooperative.

10 Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

11 A. I have a B.S. degree in Agriculture Mechanization and Agricultural Economics
12 from the University of Missouri-Columbia.

13 Q. WHAT IS YOUR EMPLOYMENT HISTORY?

14 A. Manager of Callaway Electric Cooperative since May 1, 1996; Director, Member
15 Services of Callaway Electric Cooperative June 1985 to April 30, 1996.

16 Q. ARE YOU AUTHORIZED ON BEHALF OF THE COOPERATIVE TO FILE
17 TESTIMONY IN THIS MATTER?

18 A. Yes, I am.

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1 Q. WHAT RELIEF ARE THE APPLICANTS IN THIS MATTER REQUESTING
2 FROM THE COMMISSION?

3 A. Callaway Electric Cooperative ("Cooperative" or "Callaway") and AmerenUE
4 ("Company") request that the Commission issue an Order pursuant to Sections 393.106, 393.170,
5 393.190, 394.312 and 394.315 RSMo. 2000: 1) approving a change of supplier for approximately
6 800 structures in Audrain, Boone, Callaway, Montgomery and Warren counties from Company
7 to Cooperative; 2) approving a change of supplier for approximately 600 structures in the same
8 counties from Cooperative to Company; 3) approving the sale of certain electric distribution
9 facilities, easements, and other rights that were used to serve the transferred customers as set
10 forth in the contract for purchase and sale of distribution facilities between Company and
11 Cooperative dated March 22, 2002 (the "Contract"); 4) approving a territorial agreement
12 between Company and Cooperative dated March 22, 2002 (the "Territorial Agreement"); 5)
13 approving a waiver of certain provisions of the Utility Billing and Practices Rule 4 CSR 240-
14 13.010 et. seq.; 6) granting Company a Certificate of Convenience and Necessity authorizing it
15 to own, control, manage, and maintain an electric power system for the public in certain portions
16 of Audrain county; and 7) granting such other relief as deemed necessary to implement the sale,
17 transfer of customers, and assignment of facilities, easements and other rights contemplated by
18 the Joint Application. This testimony is filed to support the Contract and Agreement, and to
19 demonstrate that the Contract and Agreement are in the public interest and should be approved.

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1 Q. ARE YOU FAMILIAR WITH THE CONTENTS OF THAT CONTRACT AND
2 TERRITORIAL AGREEMENT?

3 A. Yes. I was involved in the negotiation of the boundary lines and number of
4 customers to be exchanged between the Cooperative and Company. I also assisted in the
5 preparation and review of the Application, Contract, and Agreement. It will also be my
6 responsibility to see that the contract and agreement are followed. I have attached a copy of the
7 Contract and the Territorial Agreement as **Attachments 1 and 2**, respectively, to my testimony,
8 without the Exhibits and schedules because they have already been filed with the Commission.

9 Q. WHAT WERE THE CONSIDERATIONS THAT WENT INTO DIVIDING THE
10 TERRITORY BETWEEN AMERENUE AND CALLAWAY ELECTRIC COOPERATIVE?

11 A. I believe four main issues were taken into consideration. First, both Company
12 and the Cooperative saw that continued duplication of power lines was not efficient; (2)
13 Company's desire to be more efficient by centralizing its service in areas in which it had better
14 servicing capabilities; (3) the Cooperative's desire to centralize and increase customer density;
15 and (4) the Cooperative's desire to plan and construct its distribution system in an organized and
16 efficient manner.

17 Q. WHAT DO YOU MEAN WHEN YOU SAY THAT YOUR ARE TRYING TO
18 PLAN YOUR DISTRIBUTION SYSTEM IN A MORE EFFICIENT MANNER

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1 A. Callaway Electric is a distribution cooperative that currently serves approximately
2 11,738 customers in Central Missouri. Cooperative currently serves in and near municipalities
3 that exceed 1,500 inhabitants, which is considered a non-rural area. Each time a municipality
4 annexes new territory into its city limits, the Cooperative can no longer serve any new facilities.
5 The Cooperative's facilities can only be used to serve its then existing members. This territorial
6 agreement with AmerenUE will establish a service area for Callaway Electric Cooperative that
7 will definitively define a service area for the Cooperative. Callaway will be able to minimize its
8 investment in and around the Holts Summit area, in exchange for the service area in the
9 communities of Williamsburg, Stephens, and Mokane. Having a defined service area pursuant to
10 this territorial agreement enables Callaway to make long-term plans for its facilities by properly
11 locating future substations, adding 3-phase lines and facilities, and establishing loop services
12 which will provide better quality of service to our members.

13 Q. WHAT PUBLIC INTEREST BENEFITS ARE ADVANCED BY THE
14 CONTRACT AND AGREEMENT?

15 A. The Territorial Agreement is in the public interest because it establishes exclusive
16 service territories for new structures for the two electric suppliers. The establishment of
17 exclusive service territories will prevent future duplication of electric service facilities, will
18 result in economic efficiencies and future cost savings, and will benefit the safety and
19 community aesthetics. With two suppliers operating in the same area, it is difficult for

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1 emergency personnel to determine who owns the utility facilities in the area even with a map.
2 Firefighter and emergency personnel responding to emergency situations have to guess which
3 supplier owns the utilities surrounding an accident scene when determining who to contact for
4 assistance, and this is costly in time when time is of the essence. The exchange of facilities and
5 customers will add certainty to who owns the utility facilities in an area, and will be in the public
6 interest by aiding firefighters and emergency personnel in responding to emergency situations.
7 Currently, with both applicants operating in the same service area, there is duplication of
8 facilities on donated right-of-way. The establishment of exclusive service territories is in the
9 public interest because it will eliminate this duplication and thereby lessen the amount of right-
10 of-way the public will need to donate in the future for expansion of the Utility's distribution
11 system. The exchange of facilities and customers will aid both Applicants in the consolidation of
12 facilities, bringing efficiencies and future savings to Company's customers and Cooperative's
13 members. The Territorial Agreement will also allow customers to know with certainty the
14 supplier of their electric service.

15 In general, Applicants believe that it is in the public interest to transfer the customers
16 listed in **Exhibits A and B of Exhibit 1** and their associated electric service facilities at this
17 time, because the transfer (i) would improve electric service reliability, as some feeder lines will
18 be supplied by substations that are more strategically located to provide better service, (ii)
19 emergency personnel will have certainty in contacting either Company or Cooperative, (iii)

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1 permits Company and Cooperative to prudently employ their capital resources, (iv) will limit the
2 duplication of facilities; (v) improves efficiency by decreasing travel time to operate and
3 maintain facilities, which will result in shorter outage periods.

4 Presently, the communities of Williamsburg, Stephens, and Mokane are served by
5 Company through long radial lines. After the transfer, the Cooperative will serve these
6 communities from sources closer to the communities, which should improve reliability. In
7 addition, there is extensive duplication of electric service facilities, and this agreement will
8 mitigate the effects of this duplication. The above will result in lower costs to the customers
9 over time.

10 Q. DO YOU HAVE ANY UNDERSTANDING IF AMERENUE WILL NEED
11 ANY ADDITIONAL CERTIFICATES OF CONVENIENCE AND NECESSITY TO SERVE
12 THE TERRITORY AS SET OUT IN THIS TERRITORIAL AGREEMENT?

13 A. I understand that AmerenUE will need new Certificates to be issued by the
14 Commission to serve in the area as described in this territorial agreement. It is my understanding
15 that AmerenUE will need a certificate of public convenience and necessity to install, own,
16 acquire, operate, manage, and maintain an electric power system for the public portions of the
17 Missouri Counties of Audrain and Callaway.

18 We believe it will be in the public interest for the Commission to approve the Certificates
19 as they relate to these areas. After approval of the Territorial Agreement and implementation of

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1 the customer transfer, Cooperative will no longer be providing electrical service in the area
2 sought to be certificated. While other cooperatives operate within the area covered by the
3 Territorial Agreement, they do not provide electric service in the area sought to be certificated.
4 In addition, no other regulated electric supplier provides electric service in the area sought to be
5 certificated.

6 Q. IS THIS THE BEST AGREEMENT THAT COULD BE REACHED BETWEEN
7 THE PARTIES?

8 A. This Agreement was the result of lengthy negotiations between the parties with
9 both sides making concessions. It took about three (3) years to establish the boundary lines of
10 the agreement and identify the customers to be exchanged. We believe it will be beneficial to
11 both parties and the public involved. We look forward to working with the Agreement. We feel
12 the Agreement is fair to both parties and will serve both the Cooperative and AmerenUE well.

13 Q. DOES THE AGREEMENT PROVIDE FOR THE EXCHANGE OF ANY
14 CUSTOMERS OR FACILITIES?

15 A. Yes. Those customers being affected are shown on **Exhibits A and B of Exhibit**
16 **1** to the Application. Approximately 600 structures, and customers associated with those
17 structures, in Audrain, Boone, Callaway, Montgomery, and Warren Counties are being
18 exchanged to AmerenUE, and approximately 800 structures and associated customers in those
19 same counties are being exchanged to the Cooperative. After numerous meetings and a review

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1 and the boundary lines, and the location of the party's facilities, the current agreement and its
2 boundary lines were established. The Cooperative's Board of Directors carefully considered the
3 exchange of even just one customer, but the Territorial Agreement and customer/facility
4 exchange has many benefits and savings to the remaining Cooperative members, therefore the
5 Board determined that it was in the Cooperative's best interest to enter into the Territorial and
6 Exchange Agreement with AmerenUE.

7 Q. WHAT ACTIONS WERE TAKEN BY THE COOPERATIVE IN ANALYZING
8 THE TERRITORIAL AGREEMENT AND ITS EFFECT ON THE COOPERATIVE?

9 A. Like I said earlier, the Board of Directors weighed the difference of keeping 600,
10 good, loyal Cooperative members, versus exchanging these 600 members, and receiving 800
11 new members from AmerenUE. The net difference to the Cooperative is 200 new members,
12 about the same amount of service territory, with a small increase in facilities, plus an increase in
13 the number of members per mile of line. Enhanced public safety, less right-of-way for line
14 duplication, and the ability to better plan for future growth outweighed the loss of these
15 members.

16 Q. HOW WILL THE COOPERATIVE HANDLE ANY PROBLEMS ARISING
17 FROM TRANSFER OF THOSE MEMBERS AND CUSTOMERS?

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1 A. To a great extent, we believe we already have. Prior to entering into the
2 agreement, the Cooperative and AmerenUE sent notices to all customers affected by the
3 proposed changes of suppliers.

4 Customers were notified of this proposed transfer from Company to Cooperative on or
5 about November 9 2001. Enclosed with the notification letter were brochures explaining the
6 proposed exchange and providing information about the Company and Cooperative. The
7 notification letter invited customers to meet representatives of the Applicants on November 27,
8 2001, from 3 to 7 p.m. at Callaway Electric Cooperative's Community Room in Fulton and on
9 November 29, 2001 from 5 to 7 p.m. at Montgomery County High School in New Florence.
10 **Attachment 3** is a copy of a typical customer notification letter.

11 Q. HOW WILL THE TRANSFER OF CUSTOMERS BETWEEN THE TWO
12 SUPPLIERS BE HANDLED?

13 A. The existing supplier will issue a final bill to that consumer and offset or refund
14 any deposit as appropriate. The Cooperative will charge a \$5.00 membership fee as with any
15 new member, however, the Cooperative is waiving the deposit fee for customers exchanged from
16 the Company to the Cooperative that the Cooperative would normally charge a new member. For
17 those members being exchanged from the Cooperative to the Company, the Cooperative will
18 issue their capital credit refund. The customers will then be accepted by the new supplier the

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1 same as any other customer subject to the new supplier's service rules or tariffs. The actual
2 transfer of service will be done so as to minimize inconvenience to the consumer.

3 Q. ARE YOU REQUESTING A WAIVER OF PROVISIONS OF THE UTILITY
4 BILLING PRACTICES RULE, 4 CSR 240-13.010 ET SEQ.?

5 A. Yes. The Contract contains a provision that appoints the Company to act as
6 collection agent for Cooperative to assure payment of cooperative's final bill for customers
7 transferred to Company. In the event that any Cooperative member transferred to Company fails
8 to pay his final bill, the Cooperative and Company desire that Company would have the ability to
9 disconnect electric service to any Cooperative member transferred to Company that fails to pay
10 his final bill to the Cooperative without having to comply with the provisions of the Utility
11 Billing Practices Rule, 4 CSR 240-13.010 et seq., which would prohibit Company from
12 discontinuing service for a Customer's failure to pay a delinquent account owed to the
13 Cooperative. The Company and Cooperative have good cause for this request. Company is the
14 only electrical cooperation affected. The waiver is limited, since it will only affect the members
15 transferred from Cooperative to Company. Without the waiver, the Cooperative will have no
16 effective method of collecting its overdue accounts.

17 Q. WILL THE CUSTOMERS TRANSFERRED TO CALLAWAY ELECTRIC BE
18 REQUIRED TO BECOME MEMBERS OF THE COOPERATIVE?

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1 A. Yes, under Section 394.080 RSMo. a cooperative may only serve its members,
2 governmental entities, and other persons not exceeding ten percent of its members. The
3 cooperatives in Missouri have always chosen to only serve members. The primary reason for
4 this is the cooperative principle under which Callaway operates. All consumers are members
5 and have an equal say and influence on cooperative activities. Callaway has no interest in
6 creating a class of customers with different rights and responsibilities than its members. In
7 addition, the Cooperative is exempt from Federal income tax if it receives 85% of its revenues
8 from its members. Not having the consumers transferred from AmerenUE become members of
9 the cooperative would risk violating all of these principles.

10 Q. WHAT RESOURCES DOES CALLAWAY HAVE THAT WILL PERMIT IT
11 TO PROPERLY AND EFFECTIVELY SERVE THE TERRITORY SET ASIDE TO IT IN THE
12 TERRITORIAL AGREEMENT.

13 A. The Cooperative has 36 full time employees along with adequate equipment and
14 office facilities. The territorial agreement increases the geographic service area covered by the
15 cooperative by a small fraction, and it adds customers who must be adequately served. To do
16 this the Cooperative is prepared to add any additional new employees and purchase any
17 necessary equipment to: (1) read meters of the newly acquired members who are unable to read
18 their meters; (2) enhance service to the new members as well as to existing members. In fact, the
19 Cooperative has committed to purchasing an automatic meter reading system, which it intends to

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1 fully implement within three years. The Cooperative retains Central Electric Power Cooperative
2 for engineering expertise and consultation when necessary. Callaway currently has two (2)
3 electric contractor crews building and extending new lines as well as retiring and replacing old
4 lines. Callaway also has three (3) contract right of way crews to perform the Cooperative's right
5 of way clearing. The Cooperative is familiar with contract construction procedures and
6 supervision required and would not hesitate to use them if necessary during the initial upgrading
7 period.

8 Callaway is a member of the rural electric cooperative system in Missouri. The electric
9 cooperatives in Missouri have banded together to create an economic entity comprised of a
10 generation cooperative, six transmission cooperatives and forty distribution cooperatives in
11 Missouri. Callaway is a distribution cooperative. Distribution cooperatives deliver electricity at
12 retail to their member consumers who are end users of electricity. Cooperative has over 11,738
13 accounts, 36 employees, over 2,084 miles of energized line, and over \$32,066,438.00 in total
14 assets. Cooperative has a long term all requirements contract with Central Electric Power
15 Cooperative ("Central Electric") under which Central Electric is responsible to deliver all of
16 Cooperative's bulk power requirements. Central Electric has eight members including Callaway,
17 all of whom are distribution electric cooperatives. Central Electric has 106 employees, over
18 1570 miles of transmission line at voltages of 69 kv or higher, and approximately \$160,000,000
19 in assets. Central Electric has a long term all requirements contract with Associated Electric

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1 Cooperative, Inc. under which Associated is responsible to provide all of the bulk power
2 requirements Central Electric may need to serve Central Electric's member cooperatives.
3 Associated has six members all of whom are transmission cooperatives like Central Electric.
4 Associated has approximately 700 employees, over 4,031 megawatts of generation capacity, and
5 over \$2,000,000,000 in assets. Under the all requirements contracts and the investments made by
6 the rural electric cooperatives in Missouri, Cooperative is well situated to be able to provide for
7 all of the foreseeable electric power needs in the area set aside to it under the Territorial
8 Agreement with Union Electric Company. Cooperative is a borrower from the Rural Utilities
9 Service of the Department of Agriculture and from the National Rural Utilities Cooperative
10 Finance Corporation. Between these two entities Cooperative has available all the financial
11 resources necessary to fund any expansion of plant needed by Cooperative. The Cooperative has
12 available on a long term basis all the financial, transmission, generation, and other resources
13 needed to serve the electric needs of its current and future members.

14 Q. WHAT DID YOU DO TO NOTIFY YOUR MEMBERS OF THE
15 TERRITORIAL AGREEMENT?

16 A. Prior to the execution of the Agreement the parties mailed notices to all customers
17 affected and also held public meeting at which the affected members could ask questions.

18 Q. ARE THERE ANY CUSTOMERS OF THE COOPERATIVE IN THE
19 TERRITORY ASSIGNED TO AmerenUE UNDER THE AGREEMENT AND VICE VERSA?

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1 A. Yes. There are various pockets of customers that will continue to be served by
2 their existing power supplier, as the line segment may extend through to service areas of the
3 other party, still be needed by the other party or it would have been too expensive to extend lines
4 to these customers, so therefore it was agreed upon that the customers would not be exchanged at
5 this time.

6 Q. ARE THERE ANY PROVISIONS IN THE TERRITORIAL AGREEMENT TO
7 HANDLE EXCEPTIONS TO THE SERVICE TERRITORIES ALLOTTED?

8 A. Yes. It has an addendum procedure similar to that approved by the Commission
9 in Case No. EO-95-400.

10 Q. HOW WILL EXCEPTIONS BE HANDLED.

11 A. Article 10 of the Agreement provides that the parties may agree on a case by case
12 basis by an addendum to the Agreement to allow a structure to receive service from one party
13 even though the structure is located in the electric service area of the other party. Any addendum
14 will be filed with the Missouri Public Service Commission with a copy to the Office of Public
15 Counsel. Each addendum will be accompanied by a notarized statement indicating that the party
16 in whose territory the structure will be located and the party who will serve the structure support
17 the addendum. Each addendum will be accompanied by a statement, signed by the customer to
18 be served, which acknowledges such customer's receipt of notice of the contemplated electric
19 service to be provided, and that the Addendum represents an exception to the territorial

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1 boundaries approved by the Commission and shall indicate the customer's consent to be served
2 by the service provider contemplated by the Addendum. If the Staff and Office of Public
3 Counsel do not submit a pleading objecting to the addendum within 45 days of the filing, the
4 addendum shall be deemed approved by the Staff and Office of Public Counsel.

5 If a pleading in opposition to the addendum is filed, then the Commission shall schedule
6 an evidentiary hearing at the earliest opportunity to determine whether the addendum should be
7 approved.

8 Pending approval of the addendum, each party shall have the right to provide temporary
9 service so that a consumer is not left without service while the addendum is being acted upon.

10 These addenda would only apply to new structures and not to structures receiving service
11 as of the effective date of the Commission's order approving this proposed Territorial
12 Agreement.

13 It is my understanding that the Commission has approved this addendum procedure in
14 other cases and is the Commission's preferred method for handling case by case exceptions to
15 territorial agreements.

16 I do not expect very many exceptions to arise.

17 Q WHAT OTHER POWER SUPPLIERS HAVE ELECTRIC DISTRIBUTION
18 FACILITIES IN THE AREA COVERED BY THIS AGREEMENT?

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1 A. The other power suppliers in the area are Boone Electric Cooperative,
2 Consolidated Electric Cooperative, Cuivre River Electric Cooperative, and the Cities of Fulton,
3 Columbia, Vandalia, and Centralia operate municipal electric supply systems within the area
4 covered by the Territorial Agreement.

5 Q. HAVE YOU DISCUSSED THIS PROPOSED TERRITORIAL AGREEMENT
6 WITH ANY OF THOSE POWER SUPPLIERS?

7 A. Yes. I contacted the other electric cooperatives and personally discussed the
8 proposed Agreement with them, including the area it covers, the proposed exchange of
9 customers and facilities and the fact that it was my understanding that the Agreement would have
10 no effect upon their rights and authority to serve. I have also discussed the proposed Agreement
11 with the City of Fulton before and after the agreement was filed. I did not speak with the Cities
12 of Columbia, Vandalia or Centralia as they are not directly affected by the territorial agreement's
13 proposed service area for Callaway.

14 Q. HAS ANY PARTY INTERVENED OR OTHERWISE PARTICIPATED IN
15 THIS PROCEEDING.

16 A. No.

17 Q. WHAT EXACTLY ARE YOU ASKING THE COMMISSION TO DO?

18 A. We are asking the Commission to issue an Order pursuant to Sections 393.106,
19 393.170, 393.190, 394.312 and 394.315 RSMo. 2000: 1) approving a change of supplier for

EXHIBIT NO. _____
ISSUE: PUBLIC INTEREST
WITNESS: THOMAS W. HOWARD
TYPE OF EXHIBIT: DIRECT
TESTIMONY
SPONSOR: CALLAWAY ELECTRIC
COOPERATIVE
CASE NO. EO-2002-458

1 approximately 800 structures in Audrain, Boone, Callaway, Montgomery and Warren counties
2 from Company to Cooperative; 2) approving a change of supplier for approximately 600
3 structures in the same counties from Cooperative to Company; 3) approving the sale of certain
4 electric distribution facilities, easements, and other rights that were used to serve the transferred
5 customers as set forth in the contract for purchase and sale of distribution facilities between
6 Company and Cooperative dated March 22, 2002 (the "Contract"); 4) approving a territorial
7 agreement between Company and Cooperative dated March 22, 2002 (the "Territorial
8 Agreement"); 5) approving a waiver of certain provisions of the Utility Billing and Practices
9 Rule 4 CSR 240-13.010 et. seq.; 6) granting Company a Certificate of Convenience and
10 Necessity authorizing it to own, control, manage, and maintain an electric power system for the
11 public in certain portions of Audrain county; and 7) granting such other relief as deemed
12 necessary to implement the sale, transfer of customers, and assignment of facilities, easements
13 and other rights contemplated by the Joint Application.

14 Q. ARE YOU ASKING THAT THE COMMISSION APPROVE THE ENTIRE
15 CONTRACT AND AGREEMENT AS PRESENTED?

16 A. Yes.

17 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY.

18 A. Yes, it does.
19

CONTRACT FOR
PURCHASE AND SALE
OF DISTRIBUTION FACILITIES

between

UNION ELECTRIC COMPANY d/b/a AMERENUE

and

CALLAWAY ELECTRIC COOPERATIVE

**CONTRACT FOR PURCHASE
AND SALE
OF DISTRIBUTION FACILITIES**

THIS AGREEMENT ("Agreement") made and entered into the 22nd day of March, 2002, by and between UNION ELECTRIC COMPANY d/b/a/ AmerenUE, a Missouri corporation, (hereinafter referred to as "Company") and CALLAWAY ELECTRIC COOPERATIVE, a Missouri corporation, (hereinafter referred to as "Cooperative").

RECITALS

- A. Company and Cooperative are authorized by law to provide electric service within the State of Missouri, including all or portions of Audrain, Boone, Callaway, Montgomery, and Warren Counties.
- B. Company now serves certain customers, which are identified in Exhibit A attached hereto, and the parties agree that these customers would be more reliably served by the Cooperative and thus benefit the public interest.
- C. Cooperative now serves certain customers, which are identified in Exhibit B attached hereto, and the parties agree that these customers would be more reliably served by the Company and thus benefit the public interest.
- D. Company presently owns and operates certain 12 kV distribution facilities and related secondary and service facilities (hereinafter referred to as the "Facilities"), which are more particularly described in Exhibit C attached hereto. The Facilities are situated upon right-of-way and easements (hereinafter, referred to as "Easements").
- E. Except for those Facilities expressly excluded on Exhibit D attached hereto, Company desires to sell and to transfer the Facilities and to assign, to the extent that it may legally and contractually do so, its rights under the Easements related to the Facilities to

Cooperative, and Cooperative desires to purchase and accept same, all pursuant to the terms, conditions and provisions hereof.

- F. Cooperative presently owns and operates certain Facilities, which are more particularly described in Exhibit E attached hereto. The Facilities are situated upon right-of-way and Easements.
- G. Except for those Facilities expressly excluded on Exhibit F attached hereto, Cooperative desires to sell and to transfer the Facilities and to assign, to the extent that it may legally and contractually do so, its rights under the Easements related to the Facilities to Company, and Company desires to purchase and accept same, all pursuant to the terms, conditions and provisions hereof.

AGREEMENT

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE I **DEFINITIONS**

In addition to terms defined elsewhere herein, when used herein, the following terms shall have the definitions set forth below. Words importing persons include corporations or other entities, as applicable, and words importing on the singular include the plural and vice versa when the context requires.

- A. The term "Agreement" shall mean this Agreement in its entirety, which is comprised of the following:
1. All written modifications and amendments to this Agreement.
 2. This Agreement executed by Company and Cooperative.
 3. Exhibit A List of Structures and Customers to Be Transferred to Callaway Electric Cooperative.
 4. Exhibit B List of Structures and Customers to Be Transferred to Union Electric Company.

5. Exhibit C Union Electric Company Facilities to Be Purchased by Callaway Electric Cooperative.
6. Exhibit D Union Electric Company Facilities Not to Be Purchased by Callaway Electric Cooperative.
7. Exhibit E Callaway Electric Cooperative Facilities to Be Purchased by Union Electric Company.
8. Exhibit F Callaway Electric Cooperative Facilities Not to Be Purchased by Union Electric Company.

All Exhibits referenced herein are hereby incorporated by reference into the Agreement, as if fully set out verbatim. The documents making up this Agreement are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with electric power industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the documents making up this Agreement, the documents shall take precedence in the order in which they are listed above.

- B. **Customer** shall mean any person, partnership, corporation, limited liability company, political subdivision, or any agency, board, department or bureau of the state or federal government, or any other legal entity that has requested or is receiving electric service. Any Customer who has requested or is receiving electric service at one structure shall be a new and different Customer at each structure at which electric service has been requested.
- C. **Effective Date** of this Agreement shall be the effective date of the order issued by the Missouri Public Service Commission ("Commission") pursuant to Sections 393.106, and 394.315, RSMo. 2000, approving this Agreement.
- D. **Structure** shall mean an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus but shall not include customer-owned meter wiring. A Structure shall include an original structure and any contiguous addition to or expansion thereto. Structure shall not include a metering device or customer-owned meter wiring.

- E. **Laws and Regulations** shall mean all applicable statutes, regulations, codes, laws, licenses, decisions, interpretations, policy statements, regulatory guides, rules, criteria, all license requirements enforced or issued by any government, federal, state, or local, or any governmental agency, authority, or body, and industry-recognized guidelines and professional standards.
- F. **Period of Implementation** shall mean that time period that begins on the Effective Date of this Agreement and ends on the date when all transfers required under this Agreement have been completed. The Period of Implementation shall include the beginning and ending dates.
- G. **Transferee** shall mean the party receiving any and all interest in Customer Service Equipment and any and all rights to serve Customers. Any reference herein to Transferee shall apply to both Company and Cooperative when acting in their capacity accepting such transfer.
- H. **Transferor** shall mean the party granting, conveying, or assigning any and all interest in the Customer Service Equipment and any and all rights to serve Customers. Any reference herein to Transferor shall apply to both Company and Cooperative when acting in their capacity in effecting such transfer.

ARTICLE II

PURCHASE PRICE

- A. **Company Agrees to Sell and Cooperative Agrees to Purchase.** Company hereby agrees to sell and to transfer to Cooperative, and Cooperative hereby agrees to purchase and to accept from Company, all of Company's Facilities as set forth and described on Exhibit C and all rights, privileges and obligations pursuant to Easements and associated with said Facilities, except for those items that are listed on Exhibit D, which are thereby expressly excluded, excepted and/or reserved. The Company shall also assign, to the extent that it may legally and contractually do so, its rights under its existing franchise with the city of Mokane to Cooperative.

- B. **Cooperative Agrees to Sell and Company Agrees to Purchase.** Cooperative hereby agrees to sell and to transfer to Company, and Company hereby agrees to purchase and to accept from Cooperative, all of Cooperative's Facilities as set forth and described on Exhibit E and all rights, privileges and obligations pursuant to Easements and associated with said Facilities, except for those items that are listed on Exhibit F, which are thereby expressly excluded, excepted and/or reserved.
- C. **Purchase Price.** As additional consideration for the Facilities received from Company, Cooperative shall pay to Company the agreed upon purchase price as stated in the letter from Thomas W. Howard to Larry D. Merry dated March 1, 2002 (hereinafter "Purchase Price"). Cooperative shall pay the Purchase Price by wire transfer to an account designated by Company, in writing, prior to the closing date, without deduction for bank-related fees or service charges, on the Closing Date.

ARTICLE III **CONDITIONS**

Except as otherwise provided herein, the Agreement is contingent upon the following conditions:

1. Approval of this Agreement by the Commission including, but not limited to, receipt of an order from the Commission (i) approving the Agreement; (ii) authorizing the sale of the Facilities; (iii) authorizing a change in supplier for 1400 structures, more or less, within and around the communities of Holts Summit, Mokane, New Florence, New Bloomfield, Kingdom City, Williamsburg, Hams Prairie, Stephens, Auxvasse, Lindberg, and Fulton; and (iv) a waiver of provisions of the Utility Billing Practices Rule, 4 CSR 240-13.010 et seq., which would prohibit Company from discontinuing service for a Customer's failure to pay a delinquent account owed to the Cooperative.
2. Approval of the Board of Directors of Company.
3. Approval of the Board of Directors of Cooperative.

4. Approval by the Security and Exchange Commission, if required.
5. Approval of the Territorial Agreement between Company and Cooperative dated March 22, 2002 (the "Territorial Agreement") by the Commission including, but not limited to, receipt of an order from the Commission approving the Territorial Agreement.

ARTICLE IV **TAXES**

- A. **Taxes Upon Transfer.** Transferor shall be responsible for transfer taxes prior to the transfer of the Facilities to Transferee hereunder. Transferee shall be responsible for transfer taxes, coincident with and subsequent to, the transfer of the Facilities to Transferee hereunder including, without any limitations, any sales tax imposed on the sale or transfer.
- B. **Property Taxes.** Transferee and Transferor shall prorate the property taxes associated with the Facilities for the calendar year of the closing, based upon the Closing Date.
- C. **Other Taxes.** Transferor shall be responsible for paying all license, gross receipts, and franchise taxes owed to the appropriate governmental agency on service to a customer until said customer is transferred to Transferee's facilities. Transferee shall be responsible for paying all such taxes thereafter.
- D. **Penalties and Interest.** Each party shall be solely responsible for any interest and/or penalties assessed as a result of a party failing to pay when due any tax which that party is responsible for paying, as provided herein.

ARTICLE V **CLOSING AND TRANSFER OF FACILITIES AND CUSTOMERS**

- A. **Closing.** Closing shall be on a business day no later than three hundred and sixty-five (365) days after the effective date of the Commission's order approving the Agreement ("Closing Date") and at such time and place as the parties mutually agree. If no

agreement is reached, the closing shall be on the last business day before expiration of said 365-day period during business hours at a location of which Transferor gives Transferee advanced notice.

- B. **Title and Risk of Loss.** The parties intend to implement the transfer of Facilities in phases. The Facilities shall be transferred by identifiable lines or line segments during the Period of Implementation. The exact timing of such transfers shall be in accordance with future agreement of the parties. Title and risk of loss shall pass at the time the Facilities are de-energized by the Transferor.
- C. **Duties.** At closing, Transferor shall (i) deliver the documents of title, including a Bill of Sale to the Facilities; (ii) deliver the assignment agreements and consents thereto, where applicable, for the Easements; and (iii) deliver the release Facilities and the Easements from all liens created by Transferor which are of a definite or ascertainable amount which may be removed by the payment of money, including the lien of its indenture of Mortgage and Deed of Trust, dated June 15, 1937, as amended and supplemented (Company's Mortgage") or all liens held by Rural Utility Services or National Utilities Cooperative Finance Corporation ("CFC") (collectively "Cooperative's Mortgages"), and shall have made a good faith effort to release the Easements from all such liens. Notwithstanding the foregoing, Transferor shall have no obligation to release the following liens and encumbrances: (1) private and public utility and drainage easements; (2) rights-of-way for roads, alleys, streets, and highways; (3) zoning regulations; and (4) building, lines and use or occupancy restrictions, conditions and covenants. At or before closing, Transferee shall wire transfer to the account of Transferor the Purchase Price.
- D. **Recording Fees.** Each party shall bear the costs for recording fees for the instruments that it desires to record.
- E. **Possession.** Cooperative shall have the right of possession of the Facilities identified in Exhibit C (excluding those items as identified in Exhibit D) upon transfer of the Facilities. Company shall have the right of possession of the Facilities identified in

Exhibit E (excluding those items as identified in Exhibit F) upon transfer of the Facilities.

- F. **Customers.** The Customers to be transferred are located in, within, and around the communities of Holts Summit, Mokane, New Florence, New Bloomfield, Kingdom City, Williamsburg, Hams Prairie, Stephens, Auxvasse, Lindberg, and Fulton. The Customers shall be transferred simultaneously with the physical removal of their associated Facilities from Transferor's system and subsequent connection to Transferee's system. Transferor shall also issue to each customer served by the facilities sold pursuant to this Agreement, a final bill, reduced by any applicable deposit.
- G. **Accounts Receivable.** Transferor shall retain all accounts receivable related to Transferor's electric business at the time of closing and through the time that the customers are transferred from Transferor to Transferee. Transferor shall be entitled to receive all money paid to either Transferor or Transferee on said account.
- H. **Time and Method of Transfers of Easements.** Transferor shall transfer all Easements to Transferee on the date of closing by executing an Assignment of Easements. Transferor shall cooperate with Transferee to obtain the consent for such transfer from the granting party, if required.
- I. **Final Bill.** As each Customer is transferred from Transferor to Transferee, Transferor shall read Customers' meters and provide a final bill to them for service received. Security deposits and accrued interest existing at the time of transfer shall be credited to the customer on the final bill. If Transferor does not receive payment of the final bill within sixty (60) days of the date of its remittance, it may identify Transferee as its agent to collect the accounts receivable. Transferee agrees to take all actions as may be necessary to collect the final bill, including but not limited to, the disconnection of service. Any payments on said accounts received by Transferee shall be remitted promptly to Transferor.

ARTICLE VI
INTERIM OPERATIONS

- A. **Responsibilities of Transferee and Transferor.** After Commission approval and until the customers are physically removed from Transferor's system and connected to Transferee's system (hereinafter, the "Interim Period"), Transferor will continue to provide maintenance of the Facilities, electricity, read meters and bill the customers. Upon connection to Transferee's system, the Transferee shall take over these responsibilities. Transferor and Transferee agree to cooperate during this transition period in order to minimize any adverse impact on the customers.
- B. **Emergency Calls.** Transferor shall respond to emergency service calls during the Interim Period. Once facilities are transferred, Transferee shall respond to all emergency service calls associated with the transferred facilities.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES

- A. **Transferor.** Transferor represents and warrants to Transferee and agrees with Transferee as follows:
1. **Title.** Transferor warrants to Transferee that Transferor will transfer to Transferee good and marketable title to facilities transferred under this Agreement, free and clear of any security interest, liens, encumbrances, or adverse claim of any third party.
 2. **Licenses, Permits and Approvals.** Transferor will have applied for and/or obtained in due time before the closing hereunder, all necessary authorizations, licenses, permits, approvals and other official consents as may be required under law and regulation for Transferor's performance of its obligations hereunder.
 3. **Fitness of Property.** The Facilities sold and transferred pursuant to this Agreement are sold by Transferor and purchased by Transferee "AS IS," and

TRANSFEROR DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESSED, OR IMPLIED WITH REGARD TO THE FACILITIES, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. In no event shall

Transferor be liable for any damages including, but not limited to, special, direct, indirect or consequential damages arising out of, or in connection with, the use or performance of the Facilities. Any description of the Facilities contained in this Agreement is for the sole purpose of identifying the Facilities, is not a part of the basis of the bargain, does not constitute a warranty that the Facilities shall conform to that description, and does not constitute a warranty that the Facilities will be fit for a particular purpose. No affirmation of fact or promise made by Transferor, not contained in this Agreement, shall constitute a warranty that the Facilities will conform to the affirmation or promise.

- B. **Transferee.** Transferee represents and warrants to Transferor that Transferee will have applied for and/or obtained in due time before the Closing hereunder, all necessary authorizations, licenses, permits, approvals and other official consents as may be required under law and regulation for Transferor's performance of its obligations hereunder.

ARTICLE VIII

RECORDS

Transferor shall give to Transferee, Transferee's accountants, counsel and other representatives, during normal business hours from the date hereof to the Closing Date, access to books, records, contracts and commitments of Transferor related to this transaction and shall furnish Transferee during such period with information concerning Transferor's affairs as Transferee may reasonably request with respect to the various transactions contemplated hereby. In the event that, after closing, any controversy or claim by or against either party arises out of this transaction or the subject matter hereof, either party shall make available to the other, copies of such relevant records as may reasonably be requested pertaining thereto.

ARTICLE IX
FITNESS OF PROPERTY

Transferor shall repair and maintain the Facilities in good state of repair through the date of transfer of facilities, ordinary wear and tear excepted, and Transferor shall not dispose of any of such items except in the normal course of business without the consent of Transferee. If, between the time this Agreement is executed and the closing, a significant portion of the Facilities are damaged or destroyed beyond normal wear and tear, Transferee and Transferor shall attempt in good faith to achieve a mutually satisfactory agreement for the repair and restoration of such Facilities. In the event that Transferee and Transferor cannot agree upon terms for the repair and restoration of such Facilities, either party shall have the option to submit the dispute to arbitration. If any portion of the Facilities or Easements is taken through condemnation during the period between execution of this Agreement and the closing, Transferee shall be entitled to the condemnation award(s).

ARTICLE X
INDEMNITY AND RELEASE

A. Transferee's Environmental Indemnification and Release.

1. Transferee shall indemnify, defend and save harmless Transferor from and against any suits, actions, legal or administrative proceedings, demands, or against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including interest and attorney's fees, in any way connected with any injury to any person or damage to any property (including cost of studies, surveys, clean-up and any other environmental claim expenses) which arise out of the condition, operation or use of the Facilities or Easements or any loss occasioned in any way by hazardous substances (as defined under any Federal or Missouri law) on the property or by the negligent or intentional activities of Transferee during or after Transferee's acquisition of the property. This indemnity specifically includes the direct obligation of Transferee to perform any remedial or other activities required, ordered, recommended or requested by any agency, government official or third

party, or otherwise necessary to avoid injury or liability to any person, or to prevent the spread of pollution, however it came to be located on the property (hereinafter, the "Remedial Work").

2. After the closing and without limiting its obligations under any other paragraph of this Agreement, Transferee shall be solely and completely responsible for responding to and complying with any administrative notice, order, request or demand, or any third party claim or demand relating to potential or actual contamination on the premises. The responsibility conferred under this paragraph includes, but is not limited to, responding to such orders on behalf of Transferor and defending against any assertion of Transferor's financial responsibility or individual duty to perform under such orders. Transferee shall assume, pursuant to paragraph (1) above, any liabilities or responsibilities which are assessed against Transferor in any action described under this paragraph (2).
3. Transferee hereby waives, releases and discharges forever Transferor from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, present and future, known and unknown, arising out of or in any way connected with the condition, operation or use of the Facilities, Easements or Contractual Arrangements, any condition of environmental contamination on the property, and/or the existence of hazardous substances (as defined under Federal or Missouri law) in any state on the property, however they came to be placed there during or after Transferee's acquisition of property.

B. **Indemnity and Release – Prior to Closing.** The parties desire to permit Transferee to have access to the Facilities prior to closing to aid in the transfer of the Facilities. The parties also agree that Transferee shall assume the risks of loss and liability with respect to the Facilities due to Transferee's access and use of the Facilities prior to closing. Accordingly:

1. Transferor hereby gives Transferee permission to access and use the Facilities as required to assist Transferee in planning and implementing the transfer of the Facilities contemplated by this Agreement;
 2. Transferee hereby agrees to reimburse Transferor, for any loss of or damage to any of the Facilities caused by Transferee's access and use prior to closing; and
 3. Transferee shall indemnify and hold harmless Transferor, the directors, officers, employees, attorneys, and agents of Transferor from and against all liabilities, costs and expenses including, without limitation, reasonable attorney's fees, incurred by Transferor by reason of any injury to or death of any employee of Transferor, employee of Transferee, or third party; or damage to the property of Transferor, Transferee or third party arising out of or involving Transferee's access or use of the Facilities prior to closing. The foregoing release and indemnity shall apply irrespective of whether said loss, damage, personal injury, or death **WAS ALLEGEDLY CAUSED BY THE FACILITIES OR THE NEGLIGENCE OF TRANSFEROR OR ITS EMPLOYEES**. For purposes of the foregoing indemnification, neither party hereto shall be deemed the agent of the other party.
- C. **Estoppel.** The foregoing provisions of this Article may be pled as a full and complete defense to, and may be used as a basis for, enjoining any action, suit, or other proceeding that may be instituted, prosecuted or attempted in breach of the foregoing provisions, except for an action based on a breach of this Agreement.

ARTICLE XI

NOTICES

Notices hereunder may be given by any means reasonably calculated to timely apprise the other party of the subject matter thereof and no notice shall be deemed deficient if in writing, or promptly confirmed in writing, and personally delivered, by express courier, or mailed first-class, postage prepaid to:

If to:	CALLAWAY ELECTRIC COOPERATIVE Mr. Thomas W. Howard General Manager Callaway Electric Cooperative 503 Truman Road, P.O. Box 250 Fulton, MO 65251 Telephone: 573-642-3326 Fax: 573-642-3328	If to:	UNION ELECTRIC COMPANY Mr. William J. Carr Vice President AmerenUE One Ameren Plaza P. O. Box 66149 St. Louis, Missouri 63166-6149 Telephone: 314-554-3990 Fax: 314-554-6454
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or to the attention of such other individuals or at such other addresses of which the parties may give notice from time to time. All communications, notices, and consents given in the manner prescribed in this Article shall be deemed given when received by (or when proffered to, if receipt is refused) the person to whom it is addressed.

ARTICLE XII **FORCE MAJEURE**

- A. **Force Majeure.** Neither party shall be liable under this Agreement for damages occasioned by delay in performance or failure to perform its obligations under this Agreement, if the delay or failure results from causes beyond its reasonable control and without the fault or negligence of the party so failing to perform or its contractors or agents.
- B. **Notice.** The party whose performance is affected shall immediately notify the other party indicating the cause and expected duration of the event of force majeure and the delay which it will cause and it shall continue to keep the other party notified of the situation.
- C. **Obligations of Affected Party.** The party whose performance is affected by an event of force majeure shall use all reasonable efforts to avoid or minimize the consequences of delay or failure, shall continue with its obligations after the cause of the delay or failure

ceases to exist, but shall not be required to settle a strike, work stoppage, or other labor disputes.

ARTICLE XIII **TERMINATION**

This Agreement may be canceled by mutual written agreement of the parties prior to the first transfer of Facilities for any reason. In the event the parties cancel this Agreement pursuant to this section and the Agreement's approval by the Commission is pending, both parties shall take all actions necessary under 4 CSR 240-2.116 to dismiss any joint application for approval of this Agreement from consideration by the Commission. In the event a party cancels this Agreement pursuant to this section and the Agreement has been approved by the Commission, both parties shall file with the Commission a written notice signed by both parties indicating they are terminating the Agreement. Each party shall pay the costs and expenses incurred by it in connection with this Agreement, and no party (or any of its officers, directors, employees, agents, attorneys, representatives, or shareholders) shall be liable to any other party for any costs, expenses, or damages; except as provided in this Agreement, and neither party shall have any liability or further obligation to the other party to this Agreement.

ARTICLE XIV **NO ASSUMPTION OF LIABILITIES**

Both parties acknowledge that the other party is acquiring Facilities and Easements without any assumption of the transferring party's liabilities, except as expressly assumed in writing prior to the Closing Date by the party acquiring the Facilities and Easements after full disclosure of the nature of liability by the transferring party. Both parties covenant that they shall fully and timely satisfy their liabilities not assumed by the other party hereunder, but relevant to the transactions contemplated hereunder, or the subject matter hereof, including, without limitation, all and any liabilities which shall have accrued prior to the Closing Date.

ARTICLE XV
MISCELLANEOUS


- A. **Amendments.** No modification, amendment, deletion or other change in this Agreement shall be effective for any purpose, unless specifically set forth in writing and signed by both Parties. No modification, amendment, deletion or other change in this Agreement shall be effective for any purpose, unless it is approved by the Commission.
- B. **Headings.** Headings and titles contained in this Agreement are included for convenience only and shall not be considered for purposes of interpretation of this Agreement.
- C. **Joint Application and Impact of Commission or Court Orders.** Each party shall cooperate with the other in obtaining all necessary permits and approvals of regulatory authorities and shall do all such things as are reasonably required to permit the completion of the transactions contemplated herein in an orderly, efficient and timely manner. Transferor shall make a good faith effort to file by April 1, 2002, for the approvals of this sale referred to herein. If the Commission does not approve the provisions of this Agreement, then it shall be nullified and of no legal effect between the parties. Further, if any part of this Agreement is declared invalid or void by a court or agency of competent jurisdiction, then the whole Agreement shall be deemed invalid and void.
- D. **Survival.** Obligations under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive termination, cancellation or expiration of this Agreement. All representations and warranties, and rights and duties hereunder, except for those that are fully executed at the closing, shall survive the closing.
- E. **Expenses.** Except as otherwise expressly provided herein, all expenses incurred by the parties hereto in connection with or related to the authorization, preparation and execution of this Agreement and the closing of the transactions contemplated hereby including, without limitation, the fees and expenses of agents, representatives, counsel

and accountants employed by any such party, shall be borne solely and entirely by the party which has incurred same.

- F. **No Waiver.** If a party has waived a right under this Agreement on any one or more occasions, such action shall not operate as a waiver of any right under this Agreement on any other occasion. Likewise, if a party has failed to require strict performance of an obligation under this Agreement, such action shall not release the other party from any other obligation under this Agreement or the same obligation on any other occasion.
- G. **Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with, and its validity shall be determined under, the laws of the State of Missouri.
- H. **Agreement Binding.** This Agreement shall bind and inure to the benefit of the parties, and their respective successors and assigns, but shall not be assignable by either party without the prior written consent of the other party.

The Parties have entered into this Agreement as evidenced below by the signature of their duly authorized representatives as of the date set forth on the first page hereof.

UNION ELECTRIC COMPANY
d/b/a AmerenUE

By 

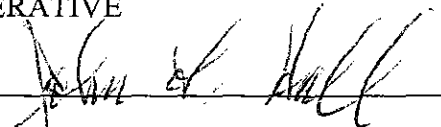
Title Vice President

ATTEST:

By 


Title ASSISTANT SECRETARY

CALLAWAY ELECTRIC
COOPERATIVE

By: 

Title: President

ATTEST:

By: 

Title: Secretary

TERRITORIAL AGREEMENT

Between

UNION ELECTRIC COMPANY

d/b/a AMERENUE

and

CALLAWAY ELECTRIC COOPERATIVE

TERRITORIAL AGREEMENT

This Agreement is made and entered into as of the 22nd day of March, 2002, by and between UNION ELECTRIC COMPANY d/b/a/ AmerenUE (hereinafter "Company") and CALLAWAY ELECTRIC COOPERATIVE (hereinafter "Cooperative").

RECITALS

- A. Company is an electrical corporation authorized by law to provide electric service within the State of Missouri, including portions of Audrian, Boone, Callaway, Montgomery and Warren Counties;
- B. Cooperative is a rural electric cooperative authorized by law to provide electric service within the State of Missouri, including portions of Audrian, Boone, Callaway, Montgomery and Warren Counties;
- C. The Missouri Legislature by Section 394.312 RSMo. 2000, has authorized electrical corporations and rural electric cooperatives to enter into written territorial agreements;
- D. Now, Company and Cooperative desire to promote the orderly development of the retail electric service within Callaway County, and to minimize disputes which may result in higher costs in serving the public; and
- E. Company and Cooperative desire to reduce the wasteful duplication of Customer Service Equipment and offer an improved level of service to their Customers.

AGREEMENT

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1.

DEFINITIONS

In addition to terms defined elsewhere herein, when used herein, the following terms shall have the definitions set forth below. Words importing persons include corporations or other entities, as applicable, and words importing on the singular include the plural and vice versa when the context requires.

- 1.1 **Agreement** shall mean this document including any appendices or exhibits hereto.
- 1.2 **Customer** shall mean any person, partnership, corporation, limited liability company, political subdivision, or any agency, board, department or bureau of the state or federal government, or any other legal entity that has requested or is receiving electric service. Any Customer who has requested or is receiving electric service at one structure shall be a new and different Customer at each structure at which electric service has been requested.
- 1.3 **Effective Date** of this Agreement shall be the effective date of the order issued by the Commission pursuant to Section 394.312 RSMo. 2000 approving this Agreement.
- 1.4 **Electric Power Provider** shall mean any other electric corporation and/or rural electric cooperative.
- 1.5 **Existing Structure** shall mean any Structure that receives electric energy from either party prior to or on the Effective Date of this Agreement. "Existing Structure" shall also mean:
 - A. Any replacement of an Existing Structure ("Replacement Structure"), provided said Replacement Structure is (1) located completely within the boundary of the property on which the Existing Structure is located, (2) used for the Same Purpose as the Existing Structure it is replacing, and (3) that the Existing Structure is totally removed from the property within six months of completion of the Replacement Structure.

B. Any maintenance, repair, remodeling, or partial replacement of an Existing Structure.

- 1.6 **New Outbuilding** shall mean, if the Existing Structure's Purpose is residential, a New Structure that is a detached garage, detached storage building, gazebo, detached porch, or similar structure that is not attached to the Existing Structure in question and is not a residence. If the Existing Structure's Purpose is agricultural, a "New Outbuilding" is a New Structure that is a detached garage, barn, well, silo, grain bin, or similar structure that is not attached to an Existing Structure in question and is not a residence.
- 1.7 **New Structure** shall mean (i) any structure that did not receive electric energy from either party prior to or on the effective date of this Agreement and (ii) the replacement of an existing structure with a structure that does not satisfy the definition of existing structure set forth herein.
- 1.8 **Structure** shall mean an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus but shall not include customer-owned meter wiring. A Structure shall include an original structure and any contiguous addition to or expansion thereto. Structure shall not include a metering device or customer-owned meter wiring.
- 1.9 **Laws and Regulations** shall mean all applicable statutes, regulations, codes, laws, licenses, decisions, interpretations, policy statements, regulatory guides, rules, criteria, all license requirements enforced or issued by any government, federal, state, or local, or any governmental agency, authority, or body, and industry-recognized guidelines and professional standards.

ARTICLE 2.

EXCLUSIVE RIGHT TO SERVE

- 2.1 Pursuant to Section 394.312 RSMo. 2000, this Agreement designates the boundaries of the electric service area of Company and Cooperative. In this Agreement, Cooperative agrees not to serve New Structures in an area described in Article 3, hereinafter referred to as the Exclusive Service Area of the Company. Likewise, Company agrees not to

serve New Structures in an area described in Article 4, hereinafter referred to as the Exclusive Service Area of the Cooperative. Because Section 394.312 RSMo. 2000, permits electric suppliers to displace competition only by a written agreement, parties that are not signatories to this Agreement are in no way affected by the terms of this Agreement, including but not limited to, the exclusive service area boundaries set forth herein.

- 2.2 After the Effective Date, as between the parties, each party shall have the exclusive right to furnish electric service to all New Structures located within its respective Exclusive Service Area described in Articles 3 and 4 of this Agreement, regardless of the size of the load or the characteristics of the customer's requirements. Except as provided expressly herein, neither party may furnish, make available, render, or extend electric service to New Structures or for use within the exclusive service area of the other party, either directly, indirectly, through a parent, affiliate, or subsidiary of Company or Cooperative, whether said parent, affiliate, or subsidiary be a corporation, limited liability company, partnership, or cooperative corporation.
- 2.3 Both Parties retain the right to furnish electric service to all Existing Structures that they are serving by either permanent or temporary electric service on the Effective Date of this Agreement, regardless of their location.
- 2.4 During the time period between the filing date of this Agreement with the Commission and the Effective Date of the Agreement, if a customer requests new electric service for a Structure located in the Exclusive Service Area of one party from the other party, the parties will meet and determine the party and means to serve the Structure. In the event the parties cannot agree, the new Structure shall be served by the party whose customer equipment is located closer to the new Structure.
- 2.5 The parties recognize and agree that this Agreement places limits on the party's abilities to distribute retail electric energy. In the event that retail wheeling of unbundled electric energy becomes available in the territory affected by this Agreement (i.e., retail customers are permitted to choose their suppliers of electric energy), nothing in this Agreement shall be construed to limit in any way the ability of either party to furnish

electric energy to Structures located in the Exclusive Service Area of the other party; provided, however, that the electric energy shall be delivered to said Structures by means of the electric distribution facilities of the party in whose Exclusive Service Area the Structures are located. Further, in the event changes in this Agreement are required due to retail wheeling of unbundled electric energy becoming available in the territory affected by this Agreement, both parties agree to negotiate in good faith changes to this Agreement and the parties shall cooperate in obtaining approval of the modified agreement by participating in the joint application requesting Missouri Public Service Commission (hereinafter the "Commission") approval, if required.

ARTICLE 3.

EXCLUSIVE SERVICE AREA OF COMPANY

The Exclusive Service Area of Company, as between the parties under this Agreement shall be those portions of Audrian County (Figure A1), Boone County (Figure A2), Callaway County (Figure A3), Montgomery County (Figure A4), and Warren County (Figure A5) as described by metes and bounds in Exhibit B and as illustrated by the lines shown on the above-referenced Figures. All exhibits referred to in this Article are incorporated herein by reference and made a part of this Agreement, as if fully set out verbatim. In cases of conflict between maps in Figures A1 to A5 and the written legal descriptions by metes and bounds in Exhibit B, the legal written descriptions shall prevail. The Company may serve within municipalities that are located in the Company's Exclusive Service Area, pursuant to this Agreement.

ARTICLE 4.

EXCLUSIVE SERVICE AREA OF COOPERATIVE

The Exclusive Service Area of Cooperative, as between the parties under this Agreement shall be those portions of Audrian County (Figure A1), Boone County (Figure A2), Callaway County (Figure A3), Montgomery County (Figure A4), and Warren County (Figure A5) as described by metes and bounds in Exhibit C and as illustrated by the lines shown on the above-referenced Figures, except that area which is described by metes and bounds in Exhibit D, Callaway Plant Site, which shall be open to competition. All exhibits referred to in this Article are incorporated herein by reference and made a part of this Agreement as if fully set out verbatim. In cases of

conflict between maps in Figures A1 to A5 and the written legal descriptions by metes and bounds in Exhibit C, the legal written descriptions shall prevail. The Cooperative may serve within municipalities that are located in the Cooperative's Exclusive Service Area, pursuant to this Agreement.

ARTICLE 5.

OTHER ELECTRIC POWER PROVIDERS

- 5.1 The exclusive service area of Company as defined in Article 3 includes other Electric Power Providers. Notwithstanding any other provision of this Agreement, should any Electric Power Provider cease to operate and maintain its electric facilities and sell such facilities, merge, or otherwise transfer the service and facilities to Cooperative, or Cooperative's surviving entity, Cooperative and/or its surviving entity shall have the power to serve the Structures which are receiving permanent service, as that term is defined in § 394.315, RSMo. from said Electric Power Provider and/or Cooperative as of the date Cooperative and Electric Power Provider close and consummate the sale and/or merger (hereinafter "Reorganization Date").
- 5.2 Following the purchase, merger or other acquisition of any other Electric Power Provider's facilities by Cooperative and the receipt of all required regulatory approvals, Company and Cooperative shall within twelve (12) months after the Reorganization Date submit an amendment to this Agreement ("the Amendment") to the Missouri Public Service Commission modifying this Agreement as follows:
 - A. The parties agree that the boundary lines established pursuant to either Sections 5.2B or 5.2C shall not modify the boundary lines established for both Company and Cooperative in Callaway and Audrain Counties as set out in this Agreement.
 - B. For all other counties covered by this Agreement, the parties shall determine if a territorial agreement between Company and the Electric Power Provider exists prior to the Reorganization Date. If a territorial agreement does exist, then the Amendment shall exclude from the Exclusive Service Area of the Company under this Agreement, the Exclusive Service Area of the other Electric Power Provider

as defined in the territorial agreement between the Company and the other Electric Power Provider.

- C. If no territorial agreement exists between Company and the other Electric Power Provider as of the Reorganization Date, Company and Cooperative shall submit an Amendment which removes all U.S. Surveys/ sections, and those U.S. Surveys/ sections adjacent to those U.S. Survey/ sections, where the Electric Power Provider had Customer Service Equipment and customers/members, from the Exclusive Service Area of Company as defined in this Agreement; and either party may serve any New Structures in these affected U.S. Survey/ sections as if no territorial agreement exists; provided, however, that no U.S. Survey/ section nor part of any U.S. Survey section within Callaway or Audrain County located within the municipal limits of any municipality whose population is in excess of 1500 or the statutory limit as set out in Chapter 394, RSMo. will be deleted from the Company's Exclusive Service Area.
- D. Nothing in this Section prohibits the parties in the Amendment from establishing new exclusive service areas in the affected service area in lieu of the above procedures.

ARTICLE 6.

OTHER ELECTRIC SYSTEMS

- 6.1 The Exclusive Service Area of Cooperative as defined in Article 4 includes the City of Fulton, which operates and maintains municipally-owned electric facilities. Notwithstanding this Agreement, should Fulton cease to operate and maintain its electric facilities and sell such facilities to Company, Company may serve within the incorporated boundaries of Fulton as it exists on the date Fulton and Company agree on a sale of Fulton's facilities to Company ("Sale Date"), pursuant to the following terms and conditions. Following the purchase of such facilities by Company and the receipt of all required regulatory approvals, Company and Cooperative shall agree on an amendment to this Agreement ("the Amendment").

- A. If a territorial agreement between Cooperative and Fulton exists prior to the Sale Date, the Amendment shall exclude from the exclusive service area of the Cooperative under this Agreement, the exclusive service area of Fulton under the territorial agreement between the Cooperative and the municipality.
 - B. If no such territorial agreement exists on the Sale Date, the Amendment shall exclude from the exclusive service area of Cooperative under this Agreement, certain territory lying within Fulton's incorporated boundaries. The boundaries of the area to be excluded from Cooperative's exclusive service area under this Agreement shall be that portion of Fulton's incorporated boundary as it exists on the Effective Date of this Agreement, plus such portion of any territory annexed by the municipal after the Effective Date of this Agreement, which territory is closer to the facilities acquired by Company from Fulton than to facilities of Cooperative as both such facilities exist on the Sale Date.
 - C. In the event the parties cannot agree on the boundaries defined above within twelve (12) months after the Sale Date, the parties shall submit the issue of the appropriate boundaries to determination by the Commission, as provided in Section 394.312.2. RSMo.
- 6.2 Notwithstanding the foregoing Article 6.1, Company shall be entitled to serve all of the Structures served by Fulton prior to the purchase of the facilities by Company, regardless of whether the Structures are located in territory determined to be served by Company or Cooperative. Cooperative shall be entitled to serve all of the Structures it was serving prior to the purchase of the Fulton municipal system by Company, regardless of whether the Structures are located in territory deemed to be served by Company or Cooperative.
- 6.3 The exclusive service area of Company as defined in Article 3 includes the cities of Columbia, Centralia and Vandalia, incorporated municipalities which operate and maintain municipally-owned electric facilities. Notwithstanding this Agreement, should any of the municipalities cease to operate and maintain municipally-owned electric facilities and sell such facilities to Cooperative, Cooperative may serve within the incorporated boundaries of such municipal as it exists on the date such municipal and

Cooperative agree on a sale of the municipal's facilities to Cooperative ("Sale Date"), pursuant to the following terms and conditions. Following the purchase of such municipality's facilities by Cooperative and the receipt of all required regulatory approvals, Company and Cooperative shall agree on an amendment to this Agreement ("the Amendment"). If a territorial agreement between Company and the municipality exists prior to the Sale Date, the Amendment shall exclude from the exclusive service area of Company, under this Agreement, the exclusive service area of the municipality under the territorial agreement between the Company and the municipality. If no territorial agreement between Company and the municipality exists on the Sale Date, the Amendment shall exclude from the exclusive service area of Company under this Agreement, certain territory lying within the municipality's incorporated boundaries. Boundaries of the area to be excluded from the exclusive service area of Company shall be that portion of the municipality's incorporated boundary as it exists on the Effective Date of this Agreement, plus such portion of any territory annexed by the municipality after the Effective Date of this Agreement, which territory is closer to the facilities acquired by Cooperative from the municipality than to facilities of Company as both such facilities exist on the Sale Date. In the event the parties cannot agree on the boundaries defined above within twelve (12) months after the Sale Date, the parties shall submit the issue of the appropriate boundaries to determination by the Commission as provided in Section 394.312.2. RSMo.

- 6.4 Notwithstanding the foregoing Article 6.3, Cooperative shall be entitled to serve all of the Structures served by the municipality prior to the purchase of the facilities by Cooperative, regardless of whether the Structures are located in territory determined to be served by Company or Cooperative. Company shall be entitled to serve all of the Structures it was serving prior to the purchase of the municipality system by Cooperative, regardless of whether the Structures are located in territory deemed to be served by Company or Cooperative.

ARTICLE 7.

Exceptions to Exclusive Service Territories

Company and Cooperative agree to the following exceptions to the Company's exclusive service area set forth in Article 3 above.

- A. Cooperative shall have the exclusive right to serve the Existing Structures, any expansion of the Existing Structures, and any New Structures located completely within the boundaries of the properties described by deed in Exhibit E, for the businesses of the Golden Village, Inc. or its successors and assigns, Carl and Shirley Gastineau Trust U/T/A or its successors and assigns, and Gastineau Log Homes or its successors and assigns. The Cooperative's right to serve facilities within the property boundary listed above shall continue to exist, regardless of the property owner or whether the property is abandoned, so long as the Property's Purpose is commercial, provided, however, if the property is abandoned for over ten (10) years, Cooperative's rights to serve within the property boundary shall be extinguished. For the purpose of this section, "Abandoned" shall mean the termination of all commercial activities on the property.
- B. The Cooperative's exclusive right to serve as described in Article 7A above shall not apply to any portion of property described in Exhibit E once said property is sold or leased for either agricultural or residential Purposes.

ARTICLE 8.

LOCATION OF A STRUCTURE

- 8.1 The location of a Structure for purposes of this Agreement shall be the geographical location at which electric energy is used, regardless of the metering point or point of delivery.
- 8.2 The first owner of a New Structure who requests and receives electric service at said Structure which is located on or crossed by any mutual boundary line, as described in Articles 3 and 4, defining the Exclusive Service Areas of the parties shall be permitted to choose either party for permanent electric service; provided that the Customer's meter is

installed within that party's Exclusive Service Area. Thereafter, that party shall exclusively serve that Structure.

- 8.3 A party may provide electric service to a New Outbuilding located in the Exclusive Service Area of the other party, so long as (i) the New Outbuilding is located within the contiguous tract of land on which that party's customer's Structure is located and the New Outbuilding shall not be used for commercial or industrial purposes or (ii) the other party consents in writing. This section shall not apply to a customer who receives electric service from both Company and Cooperative on the same tract of land, and requests additional electric service. New Outbuildings for these customers shall be served by the designated exclusive service provider, unless the customer, Company, and Cooperative agree otherwise and follow the procedures set out in Article 10.

ARTICLE 9.

RIGHT TO CONSTRUCT FACILITIES

This Agreement shall in no way affect either party's right to construct such electric generation, distribution and transmission facilities within the designated Exclusive Service Area of the other as that party deems necessary, appropriate or convenient to provide electric service to its customers not inconsistent with the terms of this Agreement and as otherwise allowed by law.

ARTICLE 10.

CASE-BY-CASE EXCEPTION PROCEDURE

- 10.1 The parties may agree on a case-by-case basis by an Addendum hereto to allow a Structure to receive service from one party although the Structure is located in the Exclusive Service Area of the other party.
- 10.2 Such Addendum shall be filed with the Executive Secretary of the Commission in the same manner as a motion or other pleading, with a copy submitted to the Office of Public Counsel. There will be no filing fee for these addenda.

- 10.3 Each Addendum shall consist of a statement identifying the Structure, the party to serve the Structure, the justification for the Addendum, and indicating that the parties support the Addendum.
- 10.4 Each Addendum shall be accompanied by a statement, signed by the customer to be served, which acknowledges such customer's receipt of notice of the contemplated electric service to be provided, and that the Addendum represents an exception to the territorial boundaries approved by the Commission and shall indicate the customer's consent to be served by the service provider contemplated by the Addendum.
- 10.5 If the Commission Staff or Office of the Public Counsel do not submit a pleading objecting to the Addendum within forty-five (45) days of the filing thereof, the Addendum shall be deemed approved by the aforesaid parties. Each Addendum shall contain a statement in bold uppercase typeface indicating that the Staff or Office of the Public Council have forty-five (45) days to oppose the Addendum or else the Addendum shall be deemed approved by the aforesaid parties.
- 10.6 Each party, pursuant to an executed Addendum, shall have the right to provide temporary service, as defined in Section 393.106 RSMo., until the Commission approves or disapproves the Addendum. No party shall be required to remove any facilities installed pursuant to an agreement until the effective date of an Order of the Commission or a court regarding the removal of same.

ARTICLE 11.

TERM AND CONDITIONS OF PERFORMANCE

- 11.1 **Term of Agreement.** The term of this Agreement shall be perpetual unless terminated by the parties in accordance with Article 12, Termination.
- 11.2 **Conditions of Performance.** Performance of the parties is contingent upon all of the following having occurred no later than December 31, 2002, unless such condition is waived, extended or modified by agreement, in writing, signed by an officer of each party hereto:

- A. All required approvals of both the Company's and Cooperative's Board of Directors, if required;
 - B. Approval of this Territorial Agreement by the Commission, which shall, as a minimum, consist of an order (i) approving this Agreement and (ii) a finding that this Agreement does not impair Company's certificates of convenience and necessity, except as specifically limited by the Agreement;
 - C. Approval of this Territorial Agreement by the Federal Energy Regulatory Commission to the extent of its jurisdiction, if required;
 - D. Approval of a Contract for Purchase and Sale of Distribution Facilities between Company and Cooperative dated March 22, 2002 (the "Contract") by the Commission, which shall, as a minimum, consist of an order (i) authorizing Company to sell, transfer, and assign to Cooperative the certain facilities and easements, as more particularly described in the Contract and (ii) finding the change in electric supplier for approximately 800 structures from Company to Cooperative and approximately 600 structures from Cooperative to Company in Callaway and Montgomery Counties, for reasons other than rate differential, is in the public interest and approving such change; and
 - E. Approval of this Territorial Agreement or the Contract by the Securities and Exchange Commission to the extent of its jurisdiction, if required.
- 11.3 This Agreement shall be submitted to the Board of Directors of both Company and Cooperative for approval. Once approved by each party's board of directors, each board member and officer of Company and Cooperative agree to support the approval of this Agreement as being in the public interest. To this end, each party will cooperate in presenting a joint application showing that this Agreement is in the public interest. Further, no board member or officer of Company or Cooperative shall support any effort undertaken by others to oppose this Agreement.
- 11.4 Company and Cooperative agree to undertake all actions reasonably necessary to implement this Agreement. Company and Cooperative will cooperate in presenting a

joint application showing this Agreement, in total, not to be detrimental to the public interest. Company and Cooperative will share equally in the costs assessed by the Commission for seeking administrative approval of this Agreement. All other costs will be borne by the respective party incurring the costs.

ARTICLE 12.

TERMINATION

- 12.1 **Termination Events.** This Agreement and the transactions contemplated by this Agreement may be terminated by mutual consent of Company and Cooperative.
- 12.2 **Effective Date of Termination.** The termination of this Agreement shall be effective on the date the Commission receives a notice signed by both Company and Cooperative of their decision to terminate this Agreement.
- 12.3 **Effect of Termination.** If the transactions contemplated by this Agreement are terminated as provided herein each party shall pay the costs and expenses incurred by it in connection with this Agreement, and no party (or any of its officers, directors, employees, agents, attorneys, representatives, or shareholders) shall be liable to any other party for any costs, expenses, or damages; except as provided herein, neither party shall have any liability or further obligation to the other party to this Agreement.

ARTICLE 13.

NOTICES

All notices, reports, records, or other communications which are required or permitted to be given to the parties under this Agreement shall be sufficient in all respects if given in writing and delivered in person, by fax, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to the receiving party at the following address:

For Company

Mr. Ron Loesch
District Manager
Union Electric Company
P.O. Box 38
Mexico, MO 65265

Mr. Larry Merry
District Manager
Union Electric Company
P.O. Box 1558
Jefferson City, MO 65102-1558

For Cooperative

Mr. Thomas W. Howard
General Manager
Callaway Electric Cooperative
503 Truman Road, P.O. Box 250
Fulton, MO 65251

or to such other address as such party may have given to the other by notice pursuant to this Section. Notice shall be deemed given on the date of delivery, in the case of personal delivery or fax, or on the delivery or refusal date, as specified on the return receipt, in the case of overnight courier or registered or certified mail.

ARTICLE 14.**ASSIGNMENT**

- 14.1 This Agreement shall be binding on the successors and assigns of both Company and Cooperative. Neither party shall make any assignment of any of its rights or interests under this Agreement without the written consent of the other party, which consent shall not be unreasonably withheld, and approval of the Commission.
- 14.2 Notwithstanding the foregoing, in the event of a merger, corporate reorganization, or corporate restructuring of a party, said party may assign this Agreement to the corporate entity responsible for providing distribution level electric service in the area covered by this Agreement and the consent of the other party shall be deemed to be given. The consenting party or party whose consent is deemed to be given shall cooperate in obtaining approval of the assignment by (a) participating in the joint application requesting Commission approval of the assignment and (b) providing an affidavit, stating that it consents to the Assignment, for inclusion in such application.

ARTICLE 15.
MISCELLANEOUS

- 15.1 **Other Products and Services Not Affected.** This Agreement is limited to the distribution of electricity and shall in no way affect either party's right to offer other products and services, including but not limited to, the sale of distributed generation equipment, natural gas service, propane service, fiber optic communication service, satellite television service and other communication services, to customers located in the Exclusive Service Area of the other party. Neither shall this Agreement limit, in any way, a party's right to construct such non-electric distribution facilities within the designated Electric Service Area of the other as that party deems necessary, appropriate or convenient to provide other non-electric distribution service to its customers.
- 15.2 **Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with, and its validity shall be determined under, the laws of the State of Missouri.
- 15.3 **Amendments.** No modification, amendment, deletion, or other change in this Agreement or the boundaries described in the Agreement shall be effective for any purpose, unless specifically set forth in writing and signed by both parties and approved by the Commission.
- 15.4 **Headings.** Headings and titles contained in this Agreement are included for convenience only and shall not be considered for purposes of interpretation of this Agreement.
- 15.5 **Impact of Commission or Court Orders.** The filing fee for this application pursuant to 4 CSR 240-21.010 shall be split between the parties. If the Commission does not approve the provisions of this Agreement, then it shall be nullified and of no legal effect between the parties. Further, if any part of this Agreement is declared invalid or void by a Court or agency of competent jurisdiction, then the whole Agreement shall be deemed invalid and void.


- 15.6 **Survival.** Obligations under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive termination, cancellation or expiration of this Agreement.
- 15.7 **No Waiver.** If a party has waived a right under this Agreement on any one or more occasions, such action shall not operate as a waiver of any right under this Agreement on any other occasion. Likewise, if a party has failed to require strict performance of an obligation under this Agreement, such action shall not release the other Party from any other obligation under this Agreement or the same obligation on any other occasion.
- 15.8 **Further Assurances.** The parties shall execute such other documents and perform such other acts as may reasonably be necessary in order to give full effect to this Agreement.
- 15.9 **Company's Service Territory Outside This Agreement.** Company has service territories outside of the areas covered by this Agreement. For service outside of the areas described by this Agreement, Company will continue to operate without regard to this Agreement. The principles of law, rules and regulations applicable to the business of retail sales of electricity shall apply without regard to this Agreement.
- 15.10 **Cooperative's Service Territory Outside This Agreement.** Cooperative has service territories outside of the areas covered by this Agreement. For service outside of the areas described by this Agreement, Cooperative will continue to operate without regard to this Agreement. The principles of law, rules and regulations applicable to the business of retail sales of electricity shall apply without regard to this Agreement.
- 15.11 **Expenses.** Except as otherwise expressly provided herein, all expenses incurred by the parties hereto in connection with or related to the authorization, preparation and execution of this Agreement and the closing of the transactions contemplated hereby, including, without limitation, the fees and expenses of agents, representatives, counsel and accountants employed by any such party, shall be borne solely and entirely by the party which has incurred same.
- 15.12 **Entire Agreement.** This contract constitutes the entire agreement between the parties relating to the allocation of service rights in the territory described herein. If the

Commission does not approve this Agreement or fails to approve or rejects any portion of this Agreement, then the entire Agreement shall be nullified and of no legal effect. Further, if any part of this Agreement is declared invalid or void by a Court or other agency with competent jurisdiction, then the whole Agreement shall be deemed invalid and void.


The parties have entered into this Agreement as evidenced below by the signature of their duly authorized representatives as of the date set forth on the first page hereof.

UNION ELECTRIC COMPANY

d/b/a AmerenUE

By 
Name William J. Carr
Title Vice President

ATTEST:

By 
Title Secretary

Territorial Agreement

CALLAWAY ELECTRIC COOPERATIVE

By: John T. Hall

Name: John T. Hall

Title: President

Attest:

By: Raymond R. Rasmussen

Title: Secretary

November 9, 2001

Name
Address
Address
Location Number/Account Number

Dear Name:

AmerenUE and Callaway Electric Cooperative are considering agreements to exchange some electric distribution facilities and to define exclusive service areas. AmerenUE and Callaway Electric Cooperative believe that these agreements would enable both utilities to operate more efficiently by eliminating costly duplication of service, help to keep rates down, improve service, and provide for orderly growth in the area. The agreements will also enhance public safety, resulting in less confusion for fire, ambulance, and law enforcement officials.

We are considering an agreement that would transfer to Callaway Electric Cooperative approximately 750 homes and businesses now served by AmerenUE in return for approximately 600 Callaway Electric Cooperative members. You have an account in an area where electric service would switch from Callaway Electric Cooperative to AmerenUE. The agreements are subject to the review and approval of the Missouri Public Service Commission before becoming effective. Prior to entering into the agreement, we wish to obtain your thoughts.

Enclosed is a pamphlet providing information about AmerenUE and answering some of the questions you might have. To obtain your thoughts and answer your questions, representatives of both AmerenUE and Callaway Electric Cooperative will be available at the following locations:

Tuesday, Nov. 27, 3-7 p.m. at Callaway Electric Cooperative Community Room,
503 Truman Road, Fulton, MO.

Thursday, Nov. 29 5-7 p.m. at Montgomery R-II High School, 394 HWY 19 North,
Montgomery City, MO.


If you have questions and are unable to attend one of these sessions, you may call or write as follows:

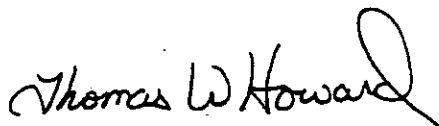
AmerenUE
P.O. Box 38
Mexico, MO 65265
(573) 876-3041

Callaway Electric Cooperative
P.O. Box 250
Fulton, MO 65251
(573) 642-3326

We hope to see you at one of the sessions.

Sincerely,


RONALD W. LOESCH
Manager
AmerenUE


THOMAS W. HOWARD
General Manager
Callaway Electric Cooperative