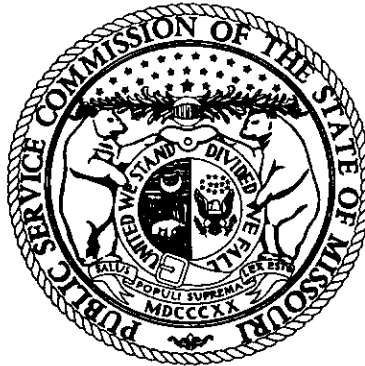


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the matter of the Joint Application of Union)
Electric Company d/b/a AmerenUE and the City of)
Kennett for an Order Authorizing the Sale,)
Transfer, and Assignment of Certain Electric)
Distribution Facilities and Other Rights)
Generally Constituting AmerenUE's Electric)
Utility Business Within and Near the City of)
Kennett, Approving a Territorial Agreement, and)
Authorizing the City of Kennett to Provide)
Electrical Service to One Customer Outside Its)
Municipal Limits.)

Case No. EM-99-106

REPORT AND ORDER

Issue Date: December 30, 1998

Effective Date: January 12, 1999

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the Joint Application of Union)
Electric Company d/b/a AmerenUE and the City of)
Kennett for an Order Authorizing the Sale,)
Transfer, and Assignment of Certain Electric)
Distribution Facilities and Other Rights) Case No. EM-99-106
Generally Constituting AmerenUE's Electric)
Utility Business Within and Near the City of)
Kennett, Approving a Territorial Agreement, and)
Authorizing the City of Kennett to Provide)
Electrical Service to One Customer Outside Its)
Municipal Limits.)

APPEARANCES

William B. Bobnar, Attorney, Union Electric Company d/b/a AmerenUE, One Ameren Plaza, St. Louis, Missouri 63166, for Union Electric Company d/b/a AmerenUE and the City of Kennett, Missouri.

John B. Coffman, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Dennis L. Frey, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Nancy Dippell, Senior.

REPORT AND ORDER

On September 14, 1998, Union Electric Company d/b/a AmerenUE (AmerenUE) and the City of Kennett, Missouri (Kennett or City), filed a Joint Application under Sections 394.312 and 416.041.3, RSMo 1994, requesting approval of a territorial agreement. Specifically, AmerenUE and Kennett (Applicants) request that the Missouri Public Service Commission (Commission): (1) authorize the sale of certain Electric

Distribution Facilities, Easements, and other rights of AmerenUE to the City; (2) find the electric service areas designated in the agreement to be not detrimental to the public interest; and (3) authorize the City to provide electrical service to one customer outside of its municipal limits. A copy of the written territorial agreement was filed with the application and is attached to this order and incorporated herein as Attachment 1.

On September 25 the Commission issued an Order and Notice which included notice provisions for the area affected and an intervention date of October 15. No applications to intervene were filed. On November 16 the Staff of the Missouri Public Service Commission (Staff), the City, AmerenUE, and the Office of the Public Counsel (OPC) filed a unanimous Stipulation and Agreement stating that the territorial agreement including the customer exchange and the facilities exchange, is in the public interest and should be approved. The Stipulation and Agreement is attached to this order and incorporated herein as Attachment 2.

The Commission held an evidentiary hearing on November 24. All parties were represented at the hearing.

Discussion

AmerenUE is a public utility engaged in providing electric and gas services to the public in the State of Missouri, subject to the jurisdiction of the Commission. AmerenUE's principal place of business is located in St. Louis, Missouri. The City, through its Board of Municipal Utilities, provides retail electric service to the public in

the area which is the subject of the territorial agreement. The City's principal place of business is located in Kennett, Missouri.

The territorial agreement designates the service area of each of the Applicants in portions of the Missouri county of Dunklin. The Applicants state in the Joint Application that AmerenUE is seeking authority to sell its facilities located generally within the city limits of Kennett, Missouri. In addition the Applicants have agreed that the City should serve one structure located outside the city limits at 1024 Starnes.

Applicants have set out the terms of their agreement in a document entitled Contract for Purchase and Sale of Distribution Facilities (Agreement), which is marked as Attachment 1 and attached to the Joint Application. The Agreement contains Exhibits A and B which describe the assets to be included in and excluded from the sale. The assets to be transferred include all 34.5 kV and 4 kV electric distribution facilities and related secondary and service facilities (except the Kennett Substation property and associated equipment, and certain transformers and revenue meters), along with their respective easements and contractual arrangements, located within the city limits of Kennett and supplied by AmerenUE.

Exhibit C to the Agreement lists the specific structures to be transferred to the City by customer name and address. The Agreement also contains a section entitled Territorial Agreement and Exhibit D, which gives the legal description of the structure which AmerenUE and the City

have agreed will be served by the City even though it is located outside the city limits.

The first factor the Commission will consider in deciding the appropriateness of this territorial agreement is the extent to which the agreement eliminates or avoids unnecessary duplication of facilities. Mr. Doug Groesbeck testified on behalf of AmerenUE that some of the customers which will have a change of electric supplier have called AmerenUE over the past years to request that they receive service from the City instead. The Applicants indicate in the application that allowing the City to service one customer outside its city limits will be accomplished without further extension of facilities.

The second factor the Commission will consider is the ability of each party to the territorial agreement to provide adequate service to the customers in its exclusive service area. Mr. Groesbeck testified that the customers being transferred to the City will be served well by the City. Mr. Groesbeck stated that the City was a reliable service provider and these customers will be served well by the City because the City's service personnel is located much closer to these customers than AmerenUE's service personnel.

The third area for Commission concern is the effect of approval of the territorial agreement on customers of the Applicants. The Applicants listed 20 customers which will be transferred from AmerenUE to the City. Mr. Groesbeck stated that the customers being switched to the City will experience a substantial rate decrease.

The last factor the Commission will consider is the category of other cost and safety benefits attributed to the proposed territorial agreement. Mr. Groesbeck stated that the agreement will promote economic efficiency for AmerenUE.

Staff's witness, Mr. James L. Ketter, also testified that the agreement is in the public interest.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

The Commission finds that approval of the territorial agreement will avoid future duplication of facilities. The Commission finds that the Applicants are capable of adequately and safely providing the electric power supply, service, and maintenance needs of the customers in their service areas as designated in the proposed territorial agreement. The Commission further finds that the overall effect of the proposed territorial agreement would not be harmful to ratepayers, that the agreement would promote efficiency and safety, and reduce customer confusion.

The Commission finds that the change of suppliers necessary to effectuate the territorial agreement should be approved and that the City should be authorized to provide electrical service to one customer outside of its municipal limits. The Commission finds that the sale of certain Electric Distribution Facilities, Easements, and other rights of AmerenUE to the City and the electric service areas designated in the agreement will not be detrimental to the public interest and should be approved.

The Commission further finds that the approval of this territorial agreement will not impair AmerenUE's existing certificates of public convenience and necessity except as specifically limited by the territorial agreement.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Missouri Public Service Commission has jurisdiction over the services, activities, and rates of AmerenUE pursuant to Section 386.250, RSMo Supp. 1997, and Chapter 393, RSMo 1994. The Commission has jurisdiction over the City under Section 386.800, RSMo 1994, which contemplates territorial agreements where cities are allowed territory beyond their corporate limits.

Section 386.800, RSMo, provides, in pertinent part:

1. No municipally owned electric utility may provide electric energy at retail to any structure outside the municipality's corporate boundaries after July 11, 1991, unless:

.

(2) The service is provided pursuant to an approved territorial agreement under section 394.312, RSMo.

The Commission may approve a territorial agreement if the agreement in total is not detrimental to the public interest. Section 394.312, RSMo 1994. Based on the findings of fact it has made, the Commission concludes that the territorial agreement proposed by AmerenUE and the City is not detrimental to the public interest and should be approved.

Section 393.106, RSMo 1994, authorizes the Commission to approve a change of supplier when the change is in the public interest for other than a rate differential. Based on the findings the Commission has made regarding the effect of the territorial agreement on customers, the Commission concludes that the change of suppliers necessary to effectuate that agreement is in the public interest.

The Commission may approve a sale of facilities when it is assured that adequate service will continue to be supplied to the public and the sale is not detrimental to the public interest. State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App. 1980). Based on its findings that AmerenUE will continue to be capable of supplying safe and adequate electric service, the Commission concludes

that the sale of assets is not detrimental to the public interest and should be approved.

IT IS THEREFORE ORDERED:

1. That the territorial agreement filed by Union Electric Company d/b/a AmerenUE and the City of Kennett, Missouri, on September 14, 1998, and submitted at the hearing on December 10, 1998, is approved.

2. That the Applicants are authorized to perform in accordance with the terms and agreements of the Contract for Purchase and Sale of Distribution Facilities (Attachment 1).

3. That the Stipulation and Agreement (Attachment 2) filed by the parties on November 16, 1998, is approved.

4. That the change of suppliers necessary to effectuate the territorial agreement is approved, including the authorization for the City of Kennett to provide electrical service to one customer outside its municipal limits.

5. That the sale, transfer, and assignment of certain assets by Union Electric Company d/b/a AmerenUE to the City of Kennett as described in Attachment 1 is authorized.

6. That Union Electric Company d/b/a AmerenUE shall file in this case notification of the closing date of the sale and transfer of assets within five days after its completion.

7. That nothing in this Report and Order shall be considered a finding of the Commission as to the value for ratemaking purposes of the properties involved or as an acquiescence in the value placed upon those

properties by Union Electric Company d/b/a AmerenUE. The Commission reserves the right to determine any ratemaking treatment to be afforded these transactions in any later proceeding.

8. That this Report and Order shall become effective on January 12, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray and
Schemenauer, CC., concur and
certify compliance with the
provisions of Section 536.080,
RSMo 1994.
Crumpton, C., absent.

Dated at Jefferson City, Missouri,
on this 30th day of December, 1998.

CONTRACT
for
PURCHASE AND SALE
OF DISTRIBUTION FACILITIES

between

UNION ELECTRIC COMPANY

d/b/a/ AmerenUE

and

CITY OF KENNETT

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

THIS AGREEMENT ("Agreement") made and entered into the 9th day of September, 1998, by and between UNION ELECTRIC COMPANY d/b/a AmerenUE, a Missouri corporation (hereinafter referred to as "Seller"), and the CITY OF KENNETT, Missouri, a Missouri municipal corporation (hereinafter referred to as "Buyer").

RECITALS

- A. Seller presently owns and operates within the city limits of Kennett, Missouri, certain 34.5 kV and 4 kV distribution facilities and related secondary and service facilities (the "Facilities"), which are more particularly described in Exhibit A, attached hereto and made a part hereof for all purposes; and
- B. The Facilities are situated upon easements through grant, condemnation or prescription ("Easements") or pursuant to franchises, licenses or permits (collectively, the "Contractual Arrangements"), all of which are described in the Schedules and attached to this Agreement and made a part hereof for all purposes; and
- C. Except as expressly excluded on Exhibit B, attached hereto and made a part hereof, Seller desires to sell the Assets (collectively, the "Facilities," "Easements" and "Contractual Arrangements") and to assign, to the extent that it may legally and contractually do so, its rights under the Easements and Contractual Arrangements related to its distribution of electricity within Kennett to Buyer, and Buyer desires to purchase and accept same, all pursuant to the terms, conditions and provisions hereof; and
- D. Seller and Buyer are authorized by law to provide electric service within the State of Missouri, including portions of the city of Kennett, Missouri; and

- E. Seller now serves certain customers which are identified in Exhibit C, attached hereto and made a part hereof for all purposes; and which may be more efficiently served by Buyer; and
- F. Seller and Buyer desire to exchange the customers identified in Exhibit C because this exchange would allow Buyer to efficiently serve all customers within the City of Kennett and thus benefit public interest; and
- G. Since one of the customers identified in Exhibit C, residing at 1024 Starnes, is just outside the city limits of Kennett, Seller and Buyer wish to enter into a Territorial Agreement to permit the transfer of this customer's structure to Buyer.

AGREEMENT

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

ARTICLE I **PURCHASE PRICE**

A. Agreement to Sell and to Purchase. Seller hereby agrees to sell and transfer to Buyer, and Buyer hereby agrees to purchase and accept from Seller, all of Seller's Facilities as set forth and described on Exhibit A and all rights, privileges and obligations, pursuant to Easements and associated with said Facilities; except for those items and/or utility easements which are listed on Exhibit B, which are thereby expressly excluded, excepted and/or reserved.

B. Purchase Price. The purchase price for the foregoing, payable at Closing, shall be \$17,240 (which includes, without limitation, the value of the Facilities, Easements and Contractual Arrangements).

ARTICLE II CONDITIONS

A. **Effective Date.** This Agreement shall be effective as of the effective date of the Order of the Missouri Public Service Commission (hereinafter "the Commission") approving this Agreement.

B. **Overall Conditions.** Except as otherwise provided herein, the Agreement is contingent upon all of the following having occurred no later than July 1, 1999, unless such condition is waived, extended or modified by agreement, in writing, signed by an officer of each party hereto:

1. Approval of this Agreement by the Commission, including but not limited to, receipt of an Order from the Commission approving the Agreement authorizing the sale of the Assets and authorizing a change in supplier for 41 structures identified in Exhibit C.
2. Approval of the transaction by the voters of the City of Kennett, if required by law, the Board of Municipal Utilities and the City Council, if required by law.
3. Receipt of an Order from the Commission authorizing Seller to terminate its duty to serve its customers within the City of Kennett; approving the Territorial Agreement allowing the City of Kennett to provide service to the structure located at 1024 Starnes, a structure located outside the city limits; and relieving Seller and its assigns and affiliates of any duties, obligations or conditions which may have been imposed previously by law or by the Commission with respect to Seller's public electric utility business in Kennett, Missouri.
4. Approval of the Board of Directors of Seller, if required.

5. Approval of the Securities and Exchange Commission, if required.

C. **Surveys and Inspections.** Seller shall permit Buyer or Buyer's representatives to enter upon the Easements for the purposes of making surveys and environmental and other inspections and shall provide Buyer with true copies of all documents pertaining to this transaction reasonably requested by Buyer. Buyer may, at Buyer's expense, make or cause to be made, an environmental study of the Facilities and/or Easements. Buyer shall be excused from performance of this Agreement if its environmental study reveals significant potential liability arising from environmental causes in connection with the Facilities and/or Easements; provided, however, that in order to exercise this option to be excused, Buyer must so notify Seller not later than two months from the date of this Agreement. Seller shall cooperate fully in such environmental study, and Seller shall answer questions and give such permission for entry and for sampling as may be reasonably required therefor.

ARTICLE III TAXES

A. **Taxes Upon Transfer.** Seller shall be responsible for transfer taxes, if any, prior to the transfer of the Facilities and Easements to Buyer hereunder, including without any limitations, sales imposed on the sale or transfer. Buyer shall be responsible for transfer taxes coincident with and subsequent to the transfer of the Facilities and Easements to Buyer hereunder, including without any limitations, sales taxes imposed on the sale or transfer.

B. **Property Taxes.** Property taxes shall be pro-rated to and including the date of Closing, Buyer to have the day of Closing. The purchase price shall be adjusted accordingly, at Closing. The party responsible for paying said taxes shall be determined as follows: If Seller has filed the appropriate ad valorem tax returns for the calendar year which includes the date of Closing covering the Facilities which are the subject of this Contract, then Seller shall pay the taxes; if Seller has not filed such returns, then

Buyer will be responsible for filing the appropriate returns, if any, and paying the applicable taxes.

If any portion of the property tax adjustment is based on estimates, any discrepancy between the actual property taxes and said estimates shall be further adjusted when the actual property taxes have been determined and the bills therefor received. Seller shall be solely responsible for any interest and/or penalties to the extent of (i) any failure of Seller to pay when due any taxes which Seller is responsible for paying, as provided above, and (ii) any failure of Seller to supply Buyer with accurate tax bills and information respecting taxes which Buyer is responsible for paying, as provided above.

C. **Other Taxes.** Seller shall be responsible for paying all license, gross receipts, and franchise taxes owed to the appropriate governmental agency on service to a customer until it is transferred to Buyer's facilities. Buyer 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 IV **CLOSING AND TRANSFER OF FACILITIES AND CUSTOMERS**

A. **Closing.** Closing shall be during business hours on a business day no later than one hundred-eighty (180) days after the date of the Commission's Order approving the Agreement. The Closing shall be at such time and place as the parties mutually agree; provided that, if no agreement is reached, the Closing shall be on the last business day before expiration of said one hundred-eighty (180) day period during business hours at a location of which Seller gives Buyer advanced notice.

B. Title and Risk of Loss. Title and risk of loss shall pass on the date of Closing.

C. Duties. At the time of Closing, Seller 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 Seller 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 (hereinafter "Seller's Mortgage"), and shall have made a good faith effort to release the Easements from all such liens. Notwithstanding the foregoing, Seller 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.

D. Recording Fees. Each party shall bear the costs for recording fees for the instruments which it desires to record.

E. Finality of Orders. All regulatory orders must be satisfactory to both parties, each party reserving the right to insist that the orders be final and non-appealable. In the event of an appeal of any such order, notwithstanding any other provision herein, either party may insist that Closing be postponed until all appeals and remands thereof are finalized.

F. Time and Method of Transfer of Facilities. Seller shall transfer all Facilities listed in Exhibit A to Buyer on the date of Closing by a Bill of Sale, without regard to whether the line is energized by the Buyer's system.

G. Time and Method of Transfers of Easements. Seller shall transfer all Easements associated with a Designated Area to Buyer on the date of Closing by executing an

Assignment of Easements. Seller shall cooperate with Buyer to obtain the consent for such transfer from the granting party, if required. **

H. **Possession.** Buyer shall have the right of possession of the Facilities (excluding revenue meters as identified in Exhibit C) and Easements upon transfer of the Facilities and Easements on the date of Closing.

I. **Customers.** In accordance with the procedure set forth in Article V, Seller shall transfer all of its customers identified in Exhibit C to Buyer on the date of Closing, simultaneous with the Facilities serving the customers. Except as provided in Article V herein, Buyer shall thereafter provide electric service to all the structures identified in Exhibit C, and Seller shall not provide electric service to said structures. Seller shall also issue to each customer served by the facilities sold pursuant to this Agreement, a final bill, reduced by any applicable deposit.

J. **Accounts Receivable.** Seller shall retain all accounts receivable related to Seller's electric business at the time of Closing and through the time that the customers are transferred from Seller to Buyer. Seller shall be entitled to receive all money paid to either Seller or Buyer on said account.

ARTICLE V

INTERIM OPERATIONS

A. **Responsibilities of Buyer and Seller.** Until the customers are physically removed from Seller's system and connected to Buyer's system, Seller will continue to provide electricity, read meters and bill customers. Upon connection to Buyer's system, Buyer shall take responsibility for the operation and maintenance of the Facilities. Seller and Buyer agree to cooperate during this transition period (hereinafter the "Interim Period") in order to minimize any adverse impact on the customers.

B. **Removal of Facilities.** As soon as possible following the transfer of all customers from Seller to Buyer, Buyer shall remove (at its expense) Seller's 34.5 kV and

any other applicable distribution facilities and promptly return all transformers and revenue meters to Seller at no cost to Seller for disposal at Seller's expense or for other use.

C. **Emergency Calls.** Seller shall respond to emergency service calls up until Buyer physically connects its system to the Facilities serving a customer. Thereafter, Buyer shall respond to all emergency service calls.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

A. **Seller.** Seller represents and warrants to Buyer and agrees with Buyer as follows:

1. **Title.** Seller warrants to Buyer that (1) Seller will transfer to Buyer good and marketable title to the 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.** Seller 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 Seller's performance of its obligations hereunder.
3. **Fitness of Property.** Except as hereafter provided, the Facilities sold and transferred pursuant to this Agreement, are sold by Seller and purchased by Buyer "AS IS," and **SELLER 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.**

Except as otherwise provided herein, in no event shall Seller 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 Seller, not contained in this Agreement, shall constitute a warranty that the Facilities will conform to the affirmation or promise.

B. **Buyer.** Buyer represents and warrants to Seller that Buyer 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 Seller's performance of its obligations hereunder.

ARTICLE VII

RECORDS

A. **Records and Books Available to Buyer and Seller.** Seller shall give to Buyer, Buyer's accountants, counsel and other representatives, during normal business hours from the date hereof to the appropriate Closing Dates, access to books, records, contracts and commitments of Seller related to this transaction and shall furnish Buyer during such period with information concerning Seller's affairs as Buyer 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.

B. **Retention of Documents by Buyer.** Buyer shall have the right to retain all original accounting records, customers' business records, operating manuals, computer software, meter test records, maps and all other documents related directly to Seller's electric business within the City of Kennett and normally maintained by Seller in the City of Kennett.

ARTICLE VIII **FITNESS OF PROPERTY**

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

ARTICLE IX **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 telecopy with receipt confirmed, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to the receiving party at the following address:

If to Buyer: Kennett Board of Public Works
Attn: Jim Toombs, Office Manager
P.O. Box 40
Kennett, MO 63857
Phone: 573-888-5366
Telecopy: 573-888-3312

If to Seller: UNION ELECTRIC COMPANY d/b/a AMERENUE
Attn: Mr. William J. Carr
One Ameren Plaza
1901 Chouteau Avenue (MC 820)
St. Louis, Missouri 63103
Phone: 314-554-3990
Telecopy: 314-554-6454

or the attention of such other individuals or at such other addresses of which the parties may give notice from time to time. Notice shall be deemed given on the date of delivery, in the case of personal delivery or telecopy, 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 X
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 such failure and the delay which it will cause, and 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 XI **TERRITORIAL AGREEMENT**

According to the terms of this Agreement, the sale includes the distribution and service facilities located outside the City of Kennett, which serve an existing structure located at 1024 Starnes. After the Closing, Buyer shall have the exclusive right to furnish electric service to this structure. Furthermore, in the event (1) said existing structure is replaced with a new structure on the existing structure's lot, the legal description of which is shown on Exhibit D, or (2) new structures are constructed on said lot, Buyer shall have the right to serve these new structures.

ARTICLE XII **LIABILITIES**

Seller acknowledges that Buyer is acquiring the Facilities, Easements and Contractual Arrangements without any assumption of Seller's liabilities, except as expressly assumed by Buyer in writing prior to Closing after receipt of full disclosure by Seller. Seller covenants that Seller shall fully and timely satisfy the liabilities of Seller not assumed by Buyer 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 Closing.

ARTICLE XIII **MISCELLANEOUS**

A. **Termination.** Either party may cancel this Agreement prior to Closing for any reason. In the event that Buyer or Seller cancels this Agreement, or in the event of failure of any contingency herein set out, the parties shall be relieved of any further liability under this Agreement.

B. **Amendments.** No modification, amendment, deletion, or other change in this Agreement shall be effective for any purpose unless specifically set forth in writing, signed by both parties and approved by the Commission.

C. **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.

D. **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. To that end, each party will cooperate in presenting a joint application to the Commission showing such transfer to be in the public interest. 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.

E. **Survival of Obligations.** 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.

F. **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.

G. **Survival.** All representations and warranties, and rights and duties hereunder, except for those which are fully executed at the Closing, shall survive the Closing.

H. **Exhibits and Schedules.** All Exhibits, Schedules and Figures referenced herein, are hereby incorporated by reference into the Agreement, as if fully set out verbatim.

I. **Assignment.** This Agreement shall be binding on the parties and all subsidiaries, successors, assigns and corporate parents or affiliates of Buyer and Seller. 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. 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.

J. **Alternate Dispute Resolution.** 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. In the event of a dispute, the parties, prior to instituting any litigation or a Commission proceeding, shall consider Alternative Dispute Resolution procedures, such as mediation, arbitration or a mini-trial. If either party believes the dispute is not suitable to such procedures or is not satisfied with the results thereof, that party may proceed with litigation or a Commission proceeding.

K. **No Waiver.** No failure to require strict performance of this Agreement by either party shall release the other party from any obligation under this Agreement, nor shall it be deemed a waiver of any right under this Agreement.

L. **Entire Agreement.** This Agreement is a complete contract and contains the entire agreement between the parties relating to the subject matter hereof. All prior communications, whether written or oral, are hereby superseded, abrogated, and withdrawn.

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.

SELLER:

UNION ELECTRIC COMPANY
d/b/a AmerenUE

By: William J. [Signature]

Title: Vice President

ATTEST:

By: [Signature] Waters

Title: ASST. SECRETARY

BUYER:

CITY OF KENNETT

By: [Signature]

Title: Mayor

ATTEST:

By: Deanna S. Moore

Title: City Clerk

KENNETT BOARD OF PUBLIC WORKS

By: Larry Jones

Title: Sup't of Utilities

ATTEST:

By: Deanna S. Moore

Title: City Clerk

ATTACHMENTS TO AGREEMENT

Exhibits

Exhibit A	Assets To Be Sold
Exhibit B	Excluded Assets
Exhibit C	List Of Structures To Be Transferred To City Of Kennett By Customer Name
Exhibit D	Property Description

EXHIBIT A

ASSETS TO BE SOLD

UNION ELECTRIC COMPANY FACILITIES TO BE PURCHASED BY THE CITY OF KENNETT

The Assets of Seller to be conveyed to Buyer at Closing shall include all 34.5 kV and 4 kV electric distribution facilities and related secondary and service facilities (except for those excluded on Exhibit B) located within the city limits of Kennett and supplied by Union Electric's Deering and Kennett Substations, along with their respective Easements and Contractual Arrangements.

In addition, the sale shall include the distribution and service facilities located outside of Kennett used to serve the structure located at 1024 Starnes.

EXHIBIT B

EXCLUDED ASSETS

UNION ELECTRIC COMPANY FACILITIES NOT TO BE PURCHASED BY THE CITY OF KENNETT

The sale and the Assets of Seller to be conveyed to Buyer at Closing shall not include the Kennett Substation property and associated equipment.

The sale also shall not include the transformers and revenue meters that Buyer, pursuant to this Agreement, has returned to Seller at no cost to Seller for disposal at Seller's expense or for other use.

EXHIBIT C

LIST OF STRUCTURES TO BE TRANSFERRED TO CITY OF KENNETT BY CUSTOMER NAME

<u>Customer</u>	<u>Address</u> <u>Kennett, MO 63857</u> ¹	<u>Meter No.</u>
Donna J. Talley	2235 Willoughby	79402263
Donnie Rawls	2309 Willoughby	90341416
Agnes Orene Marshall	2231 Willoughby	31846248
Karen Morris Jestus D.S.	2233 Willoughby	37322777
Bob W. Yarbro	2211 Willoughby	30610186
William Boyce Holt	1680 Willoughby	66857346
Joseph Allen Sloan	1660 Willoughby	81157655
Norma Hanner	1640 Willoughby	79040546
Harold Warf	1620 Willoughby	73961910
Calvin Cutler	1024 Starnes	79031379
Iola Frances Lawrence	918 Starnes	69298937
Griffin Construction Sign ²	3070 Highway 412	39484798
Otis Branham	2015 Lloyd	53964229
Austin Potter	3080 Highway 412	39389960
Brian Lowe	911 Keith	79402241
Douglas Eugene Criswell	908 Keith	19577636
Church of God	1008 Court	15305176
Cecil & Juanita Evans	914 Starnes	78185889
Burlington Northern -- Frisco Railroad Crossing ³	500 1st.	22724331
Frank Williams	3045 Highway 412	48077456

Notes:

¹ Unless otherwise specified, address is both billing address and address of structure.

² Billing Address: Oxford Inn, P.O. Box 2207, Fort Smith AR 72902.

³ Billing Address: Burlington Northern Santa Fe Railway Company, P.O. Box 2699
Topeka, KS 66601.

EXHIBIT D

PROPERTY DESCRIPTION

1024 STARNES, KENNETT, MISSOURI 63857

COUNTY: Dunklin
TOWNSHIP: 19N
RANGE: 10E
SECTION: 31

Description: PT. SE1/4 NW1/4: Beg. NW Cor. For P.O.B. E. 150', S. 100', W. 150' N.

Parcel Number: 12-09.0-31-002-01-002.016.000

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

FILED

NOV 16 1998

Missouri Public
Service Commission.

In the Matter of the Joint Application of)
Union Electric Company d/b/a AmerenUE)
and the City of Kennett for an Order)
Authorizing the Sale, Transfer, and)
Assignment of Certain Electric Distribution)
Facilities and Other Rights Generally)
Constituting AmerenUE's Electric Utility)
Business Within and Near the City of)
Kennett, Approving a Territorial)
Agreement, and Authorizing the City of)
Kennett to Provide Electrical Service to)
One Customer Outside Its Municipal)
Limits.

Case No. EM-99-106

STIPULATION AND AGREEMENT

I. Procedural History

1. On September 14, 1998, Union Electric Company d/b/a AmerenUE (AmerenUE or Company) and the City of Kennett (City) filed a Joint Application pursuant to Sections 394.106, 393.190, 394.312, and 386.000 RSMo. 1994 (the Joint Application), requesting that the Missouri Public Service Commission (Commission): (1) authorize the sale, transfer, and assignment of certain Electric Distribution Facilities, Easements, and other rights generally constituting Company's electric utility business within and near the City; (2) approve a territorial agreement between the Company and the City; and (3) authorize the City to provide electrical service to one customer outside of its municipal limits. The joint applicants set out their agreement to sell and transfer AmerenUE's facilities within and near the City of Kennett in a document entitled "Contract for Purchase and Sale of Distribution Facilities between Union

Electric Company d/b/a AmerenUE and City of Kennett", dated September 9, 1998 (Agreement), which is marked as Attachment 1 and attached to the Joint Application.

2. The Agreement also requires that the Commission approve a change in electric service supplier from AmerenUE to City for customers who own or occupy twenty structures listed in Exhibit C to the Agreement. (Attachment 1 was revised to reflect updated customer names and addresses and the revised attachment was filed with the Commission on October 5, 1998.) All of these customers were notified by letter of this proposed change on or about September 3, 1998. Attached hereto as Exhibit 1 is the text of said customer notification letter.

3. According to the Agreement, the sale includes certain distribution and service facilities located outside the city limits of Kennett, consisting of poles and spans of wire used to serve a residence owned by Calvin Cutler and located at 1024 Starnes. To allow City to serve this structure, AmerenUE and City have entered into a territorial agreement, as set forth in Article XII of the Agreement. If approved by the Commission, Article XII would give to the City AmerenUE's rights and authority to serve this one structure, without further extension of any facilities outside of its municipal boundaries.

4. On September 25, 1998, the Commission issued an order and notice providing, among other things, for the intervention of interested parties. Applications for intervention were to be filed no later than October 15, 1998. As of the date of this filing, no parties have filed for intervention.

5. The Staff of the Commission, the Office of the Public Counsel, AmerenUE, and City (hereinafter collectively known as "the Parties"), having reviewed the Joint Application and

associated Agreement and having considered the position of the Parties and the issues to be resolved in this case, have entered into this Stipulation and Agreement.

II. The Parties Have Reached the Following Stipulation and Agreement:

6. The Parties assert and, in consideration of the promises and covenants herein contained, state that the territorial agreement permitting City to serve the structure located at 1024 Starnes contained in the Agreement between AmerenUE and City is in the public interest and therefore should be approved.

7. The Parties further assert and state that the customer exchange between AmerenUE and City is in the public interest and therefore should be approved.

8. The Parties further assert and state that the facilities exchange between AmerenUE and City is in the public interest and therefore should be approved.

9. This Stipulation and Agreement shall be binding upon the successors and assigns of AmerenUE and City.

III. General Matters

10. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation and Agreement in total, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the signatories to take other positions in other proceedings.

11. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein: their

respective rights pursuant to §536.080 RSMo. 1994; to present testimony, to cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2 RSMo. 1994; their respective rights to seek rehearing pursuant to §386.500 RSMo. 1994; and their respective rights to seek judicial review pursuant to §386.510 RSMo. 1994. The Parties agree to cooperate with each other in presenting this Stipulation and Agreement to the Commission for approval and shall take no action, direct or indirect, in opposition to the request for approval of this Stipulation and Agreement.

12. The Staff has reviewed the Joint Application along with supporting information, and has made an inspection of the facilities to be transferred. The Company's method of calculating net book value of the equipment subject to the proposed sale is considered to be reasonable. The customers subject to this change of supplier will benefit from lower electric rates from the City, and can expect faster response from service crews dispatched from the local utility. Moreover, by allowing the City to be the sole provider of electric service within the territorial boundary, the Agreement will reduce duplication of facilities. No AmerenUE customer other than those involved in the transfer will be affected by the Agreement. Staff concurs as a signatory to the Stipulation and Agreement, and recommends approval of the Joint Application.

13. The Staff shall have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties and participants with advance notice of when the Staff shall

respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure.

14. None of the Parties to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any rate-making principle or any method of cost determination or cost allocation underlying or allegedly underlying the Stipulation and Agreement, except as the Commission finds that the Territorial Agreement, facility exchange, and customer transfer is in the public interest. Further, the Parties recommend that the Commission reserve the right to consider the rate-making treatment to be afforded these transaction in any later rate-making proceeding, including but not limited to, the determination of customer credits and rate reductions under the Experimental Alternative Regulation Plan of AmerenUE.

WHEREFORE the Parties respectfully request the Commission to issue its Order:

- A. authorizing AmerenUE and City to perform in accordance with the terms and conditions of the Agreement;
- B. authorizing AmerenUE to sell, transfer, and assign to the City the Assets, as more particularly described in the Agreement;
- C. authorizing AmerenUE to extinguish all Commission Certificates of Convenience and Necessity under which AmerenUE operates its electric business in the City; authorizing AmerenUE to terminate its retail electric service to the public in the City; relieving AmerenUE of all public utility obligations with respect to its electric utility business in the City, pursuant to said Certificates of Convenience and Necessity; and terminating all other duties, obligations, and conditions that have resulted from or have been imposed by law or because of the Commission's

jurisdiction over AmerenUE as an electric utility with respect to AmerenUE's electric business in the City;

D. authorizing AmerenUE to enter into, execute, and perform in accordance with the terms of all other documents reasonably necessary and incidental to the performance of the transactions which are the subject of the Agreement;

E. approving Article XII of the Agreement, which authorizes City to provide electrical service to one customer outside of the City's municipal boundary without further extension of any facilities;

F. granting such other relief as is deemed necessary to accomplish the purposes of the Agreement and to consummate the sale, transfer, and assignment of the Assets and related transactions; and

G. approving all of the terms of this Stipulation and Agreement.

Respectfully submitted,

William B. Bobnar *D-7-f.*

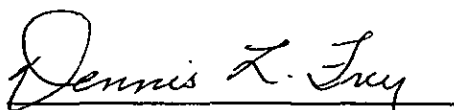
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Kennett



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Attorney for the Staff of
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Commission



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Jefferson City, MO 65102
573-751-4857
573-751-5562 (fax)

Attorney for the
Office of Public Counsel

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 16th day of November, 1998.

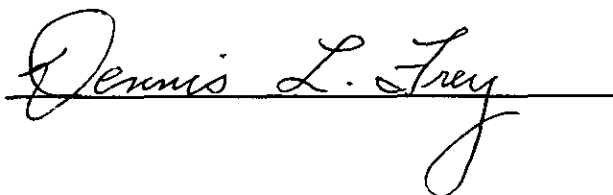


Exhibit 1
Text of Customer Notification Letter

September 3, 1998

Name
Address
City, State, Zip

Dear _____:

AmerenUE and the City of Kennett will be in the near future filing an Application with the Missouri Public Service Commission requesting authority for AmerenUE to sell to the City its electric facilities in the city. In the Application, both parties request the authority to transfer your electric service supplier from AmerenUE to the City of Kennett.

AmerenUE provides electric service to only a small number of customers in Kennett. As a result, AmerenUE cannot add new load to the facilities serving you which makes these facilities isolated, difficult to maintain and affects reliable service. On the other hand, the City will be well-positioned to provide you with an adequate and reliable source of electricity.

Using experience gained from previous exchanges, AmerenUE and the City will work together so that any transfer of electric service will cause only minimum inconvenience and will be of no cost to you. Based upon last year's billing data and the existing rates, your future bills for electricity will be lower (the decrease in your bill will vary based upon your actual usage) as a result of this transfer. In addition, all deposits will be returned to you in accordance with normal AmerenUE procedures.

We recognize that changing to a new electricity supplier may cause some anxiety and may give rise to questions. If you have questions, you may call or write as follows:

AMERENUE

Larry C. Simon
Supervising Engineer
45 S. Minnesota
Cape Girardeau, Missouri 63703
573-651-5721

CITY OF KENNETT

Mr. Jim Toombs, Office Manager
Kennett Board of Public Works
P.O. Box 40
Kennett, Missouri 63857
573-888-5366

MISSOURI PUBLIC SERVICE COMM'N.

**Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102
573-751-2474**

Sincerely,

**Doug Groesbeck
District Manager, Southeast District
AmerenUE**

OFFICE OF THE PUBLIC COUNSEL

**Ms. Martha Hogerty
Public Counsel
Office of the Public Counsel
P. O. Box 7800
Jefferson City, Missouri 65102
573-751-4857**