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FILED

DEC 19 1994

MISSOURI  
PUBLIC SERVICE COMMISSION

December 16, 1994



Mr. David L. Rauch  
Executive Secretary  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

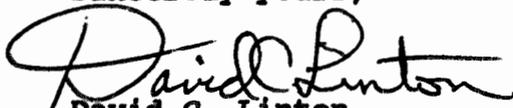
Dear Mr. Rauch:

Re: MPSC Case No. EO-95-151; Joint Application of Union  
Electric Company and Laclede Electric Cooperative

Enclosed for filing in the above-referenced case are an original and fourteen copies of the Direct Testimony of Larry Merry.

Please acknowledge receipt of this filing by stamping as filed a copy of this letter and returning it to the undersigned in the enclosed, self-addressed envelope.

Sincerely yours,

  
David C. Linton  
Attorney

cc: Office of Public Counsel  
Rodric A. Widger

5.

Exhibit No.:  
Issues: Public Interest  
Witness: Larry Merry  
Type of Exhibit: Direct Testimony  
Sponsoring Party: Union Electric Co.  
Case No.: EO-95-151

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EO-95-151

FILED

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DIRECT TESTIMONY

OF

LARRY MERRY

MISSOURI  
PUBLIC SERVICE COMMISSION

Jefferson City, Missouri

December 19, 1994

5.

X

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the matter of the application )  
of Union Electric Company and )  
Laclede Electric Cooperative, Inc., )  
for approval of a written Territorial )  
Agreement designating the boundaries )  
of each electric service supplier )  
within portions of Miller and Camden )  
Counties in Missouri. )

Case No. EO-95-151

FILED

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AFFIDAVIT OF LARRY MERRY

STATE OF MISSOURI )  
 )  
COLE COUNTY )

SS

MISSOURI  
PUBLIC SERVICE COMMISSION

Larry Merry, being first duly sworn on his oath, states:

1. My name is Larry Merry. I work in Cole County, Missouri, and am District Manager of the Capital and Lakeside Districts of Union Electric Company.

2. Attached hereto and made a part hereof for all purposes is my testimony consisting of pages 1 to 7, inclusive, all of which testimony has been prepared in written form for introduction into evidence in this docket on behalf of Union Electric Company.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct.

Larry Merry

Larry Merry

Subscribed and sworn to before me this 5<sup>th</sup> day of December, 1994.

Barbara Ann Racz  
Notary Public

12-20-98



1 either party may fulfill its obligations under that Agreement,  
2 it must be approved by the Commission.

3 Q. Please briefly describe the area encompassed by this  
4 Territorial Agreement.

5 A. This Agreement applies only to certain portions of Camden and  
6 Miller Counties. The service areas in those counties are  
7 described as areas lying either "due north" or "due south" of  
8 a line which is described and shown on Exhibits 1 and 2 of the  
9 Agreement, which I have attached as Schedule 1 of my  
10 testimony. UE's service area is that portion of Camden and  
11 Miller Counties that lies "due north" of that line. Laclede's  
12 service area is the portion of Camden County which lies "due  
13 south" of that line. Consequently, any area lying east of the  
14 section line on which the east end point lies or lying west of  
15 the section line on which the west end point lies or lying  
16 outside of Camden or Miller Counties is not affected by this  
17 Agreement. And UE's exclusive service territory is that area  
18 which is north of the line, east of the section line on which  
19 the west end point is located, west of the section line on  
20 which the east end point is located and in Camden or Miller  
21 Counties.

22 Q. Please describe the electrical facilities that Union Electric  
23 owns in these areas.

24 A. I have produced as Schedule 2 to my testimony a series of nine  
25 maps which show the boundary line of this agreement east of  
26 Linn Creek and the Company's facilities in the vicinity of the

1 boundary line. For the most part, the maps lie side by side,  
2 with one exception. The second sheet is an enlargement of the  
3 northeast one-quarter of the first sheet. This is an accurate  
4 depiction of the Company's electric facilities in these areas.  
5 In the remainder of UE's described service area, it is the  
6 electric provider to the exclusion of Laclede Electric  
7 Cooperative.

8 Q. Please describe the goal of this Territorial Agreement.

9 A. The goal of this Territorial Agreement is to prevent  
10 duplication. For a significant portion of the geographic  
11 interface between our two entities, our facilities have been  
12 separated by the geographic boundaries of the Lake of the  
13 Ozarks and Linn Creek. The remaining portion of the boundary  
14 line fell out rather naturally in that there was an obvious  
15 line of separation between our facilities.

16 Laclede and UE have had an amicable working relationship  
17 in the past. We have been satisfied to serve within these  
18 "natural" boundaries. While these boundaries limit to some  
19 extent where we serve, in a highly competitive situation,  
20 certain loads might justify crossing these boundaries. UE  
21 sought to take advantage of the mechanism of Senate Bill 813  
22 before any significant destructive duplication occurred.

23 Q. Please briefly enumerate the main points of this Territorial  
24 Agreement.

25 A. The primary effect of this Agreement is to designate the  
26 exclusive service areas for new customers of the two parties.

1 The few existing customers served by one party in the other  
2 party's exclusive service area will continue to be served by  
3 the supplier providing service on the date of the Agreement.  
4 There will be no exchanges of customers as a result of this  
5 Agreement.

6 There are a few instances in which UE's facilities cross  
7 the described boundary and serve customers on Laclede's side  
8 of the line. I do not consider these to be instances of  
9 duplication because they do not duplicate any of Laclede's  
10 facilities. We did not designate the boundaries in this  
11 agreement so that these customers remained in UE's service  
12 area because we wanted to keep the description of the boundary  
13 line as much as possible on section lines. To describe the  
14 line so that the customers remained in UE's service area would  
15 have required that we deviate from section lines. I believe  
16 that following section lines as much as possible will result  
17 in a clearer dividing line, one that will be easier to  
18 maintain.

19 UE will continue to serve the following four customers  
20 south of the dividing line:

21 <u>Name</u>	<u>Location</u>
22 John Kennebec	TBLC Ext. 3U
23	Linn Creek, MO 65052
24 James G. Clark	Linn Creek, MO 65052
25 Missouri DNR	McCubbin Point
26	Kaiser, MO 65047
27 Wilene Willoughby	Br Deane Creek Ext. W
28	Brumley, MO 65556

1 I have marked each of these customers as 1, 2, 3 and 4,  
2 respectively, on Schedule 2.

3 The Agreement also stipulates that both parties will  
4 continue to serve customers in the territory of the other  
5 (those specified immediately above) and may have the need to  
6 construct facilities across or in the service territory of the  
7 other. Therefore, the parties will not waive any authority  
8 they have to build facilities or serve customers in the entire  
9 area of the Agreement except as provided in the Agreement.  
10 For that reason, the Agreement stipulates that the Commission  
11 must find that the Company's certificates of convenience and  
12 necessity are not impaired.

13 Q. What is the extent of the Company's certificate authority in  
14 the area of this Agreement?

15 A. I have attached as Schedule 3, copies of maps of Camden and  
16 Miller Counties showing the area for which the Company has  
17 certificates of public convenience and necessity. The Company  
18 has certificate authority for the entire area that will be its  
19 service territory pursuant to the agreement. In Camden  
20 County, that authority extends to the south of the boundary  
21 line to the township line dividing Township 37 North and  
22 Township 38 North. Obviously, if the Commission approves this  
23 agreement, the Company will only exercise that authority  
24 pursuant to the constraints of the agreement.

25 Q. What benefits will the Company derive from this Territorial  
26 Agreement?

1 A. This Territorial Agreement will benefit the Company by  
2 establishing an exclusive service territory for the Company.  
3 The exclusive service territory will work to prevent future  
4 duplication of distribution facilities. Up until now, neither  
5 party has made an effort to enter into the geographic market  
6 of the other. That advantage will continue to allow the  
7 Company to design its system so as to maximize the use of its  
8 present investment. It will ensure that the Company will be  
9 able to utilize its existing facilities to the maximum extent  
10 allowed by the population growth in the area.

11 Q. What benefits will the Company's customers derive from this  
12 Territorial Agreement?

13 A. The efficiencies in design and service described above will  
14 favorably impact cost.

15 The limitation of duplication will lessen any perceived  
16 negative impact of the electric distribution facilities on the  
17 aesthetics and safety of the community.

18 Q. Will the Company maintain facilities in the service territory  
19 of Laclede Electric Cooperative?

20 A. Yes. The Company will continue to have service territory  
21 beyond the boundaries of this Agreement. As I have already  
22 mentioned, the Company will continue to serve customers in  
23 Laclede's service territory for which it must maintain  
24 distribution facilities. UE may also have to construct  
25 additional facilities through Laclede's service territory to  
26 serve new load beyond the area of this Agreement.

1 Q. Does this conclude your testimony?

2 A. Yes, it does.

**TERRITORIAL AGREEMENT**

**THIS AGREEMENT is entered into between Union Electric Company, hereinafter referred to as "Company", and Laclede Electric Cooperative, Inc., hereinafter referred to as "Cooperative".**

**WHEREAS, Company is authorized by law to provide electric service within the State of Missouri, including portions of Miller and Camden Counties; and**

**WHEREAS, Cooperative is authorized by law to provide electric service within the State of Missouri, including portions of Camden County; and**

**WHEREAS, the Missouri Legislature has authorized electrical corporations and rural electric cooperatives to enter into written territorial agreements; and**

**WHEREAS, Company and Cooperative desire to promote the orderly development of the retail electric service within portions of Miller and Camden Counties, Missouri, to avoid wasteful duplication and to minimize disputes which may result in higher costs in serving the public; and**

**NOW, THEREFORE, Company and Cooperative, in consideration of the mutual covenants and agreements herein contained, agree as follows:**

**1. For purposes of this Agreement:**

**(a) "Customer" includes any natural person, firm, association, partnership, business trust, public or private corporation, political subdivision or any agency, board, department or bureau of the state or federal government or any other legal entity which 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.**

**FILED**

**DEC 19 1994**

Schedule 1

(b) "Structure" is defined as an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus but shall not include customer-owned meter wiring. "Structure" shall include a contiguous addition to or expansion of a previously existing structure and a replacement of a previously existing structure if the replacement structure is built on the foundation of the previously existing structure and is used for the same purposes as the previously existing structure.

(c) "Company" shall mean Union Electric Company and any subsidiary or other corporate entity owned or controlled by Union Electric Company.

(d) "Cooperative" shall mean Laclede Electric Cooperative, Inc. and any subsidiary or other corporate entity owned or controlled by Laclede Electric Cooperative, Inc.

(e) "New Structure" shall mean any structure which did not receive electric energy from either party prior to the effective date of this Agreement.

2. After the effective date of this Agreement, as between the parties hereto, each shall have the exclusive right to furnish electric service to all new structures located within its respective electric service area described in paragraphs 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 structures or for use within the electric service area of the other party, either directly, indirectly or through a subsidiary corporation or other entity controlled by the party. Each party shall have the right to

continue to serve those structures located in the electric service area of the other party which it is serving on the effective date of this Agreement.

3. The electric service area of Company under this Agreement shall be that portion of Camden and Miller Counties as is due north of the line described by metes and bounds in Exhibit 1 to this Agreement and as substantially illustrated by the line as shown on the map marked Exhibit 2 to this Agreement, all exhibits being incorporated herein by reference and made a part of this Agreement as if fully set out verbatim.

4. The electric service area of Cooperative under this Agreement shall be that portion of Camden County as is due south of the line described by metes and bounds in Exhibit 1 to this Agreement and as substantially illustrated by the line as shown on the map marked Exhibit 2 to this Agreement, both exhibits being incorporated herein by reference and made a part of this Agreement as if fully set out verbatim.

5. The location of a structure for purposes of this Agreement shall be the geographical location at which electric power and energy is used, regardless of the point of delivery. The first owner of a new structure located on or crossed by any mutual boundary line described in paragraphs 3 and 4 dividing the electric service territories 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 service area. Thereafter that party shall exclusively serve that structure.

6. The parties may agree on a case-by-case basis by an Addendum hereto to allow a structure to receive service from one party though the structure is located in the electric service area of the other.

Such Addendum referred to above shall be filed with the Missouri Public Service Commission with a copy to the Office of Public Counsel. There will be no filing fee for these Addendums.

These Addendums apply to new structures only and not to structures receiving service on the effective date of the Commission's Order approving the Territorial Agreement.

Each Addendum shall be accompanied by a notarized statement indicating that the parties support the Addendum.

Each Addendum shall be accompanied by a notarized 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 Public Service Commission and shall indicate the customer's consent to be served by the service provided contemplated by the Addendum.

Each Addendum shall include, or be accompanied by, an explanation of the justification that electric service should be provided in the agreed manner.

If the Staff, Office of Public Counsel, or the Commission on its own motion, 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 and the Staff shall file a recommendation with the Commission and the Commission may then issue an Order approving the Addendum. However, if a pleading in opposition to the Addendum is filed, then the Commission shall schedule an evidentiary hearing at the

earliest reasonable opportunity to determine whether the Addendum should be approved.

Each party, pursuant to an executed Agreement, 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 a final and non-appealable Order of the Commission or a court regarding the removal of same.

7. 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 Public Service Commission for seeking of administrative approval of this Agreement. All other costs will be borne by the respective party incurring the costs.

8. Except as expressly provided herein, neither the boundaries described by this Agreement nor any term of this Agreement may be modified, repealed or changed except by a writing mutually approved by the respective parties and by the Missouri Public Service Commission.

9. This Agreement shall be binding on the parties and all subsidiaries, successors, assigns and corporate parents or affiliates of Company and Cooperative.

10. This Agreement shall become effective upon approval by the Missouri Public Service Commission pursuant to Section 394.312, R.S.Mo. (Supp. 1992). The term

of this Agreement shall be perpetual. Performance of the parties is contingent upon all of the following having occurred no later than February 28, 1995:

(a) All required approvals of the Cooperative's Board of Directors.

(b) Approval of the transaction by the Public Service Commission of Missouri, including but not limited to a finding that this Agreement, in total, is not detrimental to the public interest and that this Agreement shall suspend the Company's obligation to serve customers within Cooperative's service area described in paragraph 5 of this Agreement but shall not impair the Company's certificates of convenience and necessity in any other respect within Camden County.

11. Both of the parties to this Agreement have service territories outside of the areas covered by this Agreement. For service outside of the areas described by this Agreement, each party 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.

12. This Agreement shall in no way affect either party's right to construct such electric distribution and transmission facilities within the designated electric 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.

13. This contract constitutes the entire agreement between the parties relating to the allocation of service rights in the territory described herein. If the Public Service Commission of Missouri 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.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

UNION ELECTRIC COMPANY

By William J. Lee

Title: Vice President

ATTEST:

[Signature]  
Secretary

LACLEDE ELECTRIC  
COOPERATIVE

By Lloyd Kelmer

Title: PRESIDENT

ATTEST:

[Signature]  
Secretary

**BOUNDARY BETWEEN UNION ELECTRIC COMPANY AND LACLEDE COOPERATIVE**

Beginning at a point on the West line of Section 33, Township 39 North, Range 17 West, Camden County, Missouri, that intersects the main channel of the Niangua Arm of the Lake of the Ozarks; thence in an easterly direction along said main channel of the Niangua Arm and the Osage Arm of the Lake of the Ozarks to a point in Section 26, Township 39 North, Range 17 West, Camden County, Missouri, where said main channel of the Osage Arm of the Lake of the Ozarks intersects the channel of Linn Creek Cove said point also described as being at or near Mile Marker 31; thence in a southeasterly direction following the channel of said Linn Creek Cove of the Lake of the Ozarks to the Southeast corner of Section 36, Township 39 North, Range 17 West, Camden County, Missouri, said point also being the Northwest corner of Section 6, Township 38 North, Range 16 West, Camden County, Missouri; thence continuing southeasterly along the said channel of the Linn Creek Cove to a point in the Northwest Quarter of Section 8, Township 38 North, Range 16 West, Camden County, Missouri, said point being the confluence point of said Linn Creek Cove with Linn Creek; thence continuing in a southeasterly direction along the centerline of Linn Creek to a point in the South half of the South half of said Section 8 that said Linn Creek forks; thence with the center line of the North Fork of Linn Creek, as now exists, crossing Sections 17 and 16, to a point on the West line of Section 15, Township 38 North, Range 16 West, Camden County, Missouri; thence South along the West line of said Section 15 to the Northwest corner of the Southwest Quarter of the Southwest Quarter of said Section 15; thence East along the East/West Quarter Quarter Section Line to the Northeast corner of the Southeast Quarter of the Southeast Quarter said Section 15; thence South along the East line of Section 15 to the Southeast corner thereof, said point also being the Northwest corner of Section 23, Township 38 North, Range 16 West, Camden County, Missouri; thence East along the North line of said Section 23 to the Northeast corner of said Section 23; said point also being the Southwest corner of Section 13, Township 38 North, Range 16 West, Camden County, Missouri; thence North along the West line of Section 13 and Section 12, Township 38 North, Range 16 West, Camden County, Missouri, to the Northwest corner of said Section 12; thence East along the North line of said Section 12 to the Northeast corner of said Section 12, said point also being the Northwest corner of Section 7, Township 38 North, Range 15 West, Camden County, Missouri; thence East along The North line of said Section 7 to the Northeast corner of said Section 7, said point also being the Southwest corner of Section 5, Township 38 North, Range 15 West, Camden County, Missouri; thence North along the West line of said Section 5 to the Northwest corner of said Section 5; thence East along the North line of Sections 5, 4, and

3 of Township 38 North, Range 15 West, Camden County, Missouri, to the Northeast corner of said Section 3; thence South along the East line of said Section 3 to the Southeast corner of said Section 3, said point also being the Northwest corner of Section 11, Township 38 North, Range 15 West, Camden County, Missouri; thence East along the North line of said Section 11, to the Northeast corner of said Section 11; thence South along the East line of said Section 11 to the Southeast corner of said Section 11, said point also being the Northwest corner of Section 13, Township 38 North, Range 15 West, Camden County, Missouri; thence East along the North line of Section 13, to the Northeast corner of said Section 13; thence South along the East line of said Section 13 to the Southeast corner of said Section 13, said point also being the Northwest corner of Section 19, Township 38 North, Range 14 West, Camden County, Missouri; thence East along the North line of said Section 19 to the Northeast corner of said Section 19; thence South along the East line of said Section 19 to the Southeast corner of said Section 19, said point also being the Northwest corner of Section 29, Township 38 North, Range 14 West, Camden County, Missouri; thence East along the North line of said Section 29 to the Northeast corner of said Section 29, said point also being the Southwest corner of Section 21, Township 38 North, Range 14 West; thence North along the West line of said Section 21 to the Northwest corner of said Section 21; thence East along the North line of Sections 21, 22, 23, and 24 of Township 38 North, Range 14 West, Camden County, Missouri, to the Northeast corner of said Section 24; said point being on the Camden/Pulaski County Line and the point of ending.