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Service Commission

EXHIBIT

Exhibit No
Issue(s)

Witness/Type of Exhibit
Sponsoring Party
Case No

Off System Sales/
Fuel Adjustment Clause
Kind/Direct
Public Counsel
ER-2008-0318

DIRECT TESTIMONY

OF

RYAN KIND

Submitted on Behalf of
the Office of the Public Counsel

UNION ELECTRIC COMPANY D/B/A AMERENUE

Case No. ER-2008-0318

** _____ **

Denotes Highly Confidential Information that has been Redacted

September 4, 2008

Exhibit No. 402-NP
Case No(s) ER-2008-0318
Date 11/25/08 Rptr MV

NP

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

In the Matter of Union Electric Company d/b/a)
AmerenUE for Authority to File Tariffs)
Increasing Rates for Electric Service Provided)
to Customers in the Company's Missouri)
Service Area)

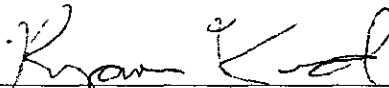
Case No. ER-2008-0318

AFFIDAVIT OF RYAN KIND

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Ryan Kind, of lawful age and being first duly sworn, deposes and states

- 1 My name is Ryan Kind I am a Chief Utility Economist for the Office of the Public Counsel
- 2 Attached hereto and made a part hereof for all purposes is my direct testimony
- 3 I hereby swear and affirm that my statements contained in the attached affidavit are true and correct to the best of my knowledge and belief

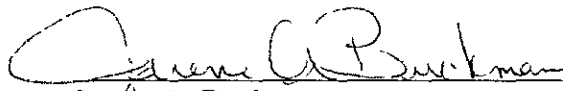


Ryan Kind

Subscribed and sworn to me this 4th day of September 2008



JERENE A. BUCKMAN
My Commission Expires
August 10, 2009
Cole County
Commission #05754036



Jerene A. Buckman
Notary Public

My commission expires August 10, 2009

**DIRECT TESTIMONY
OF
RYAN KIND
UNION ELECTRIC COMPANY
CASE NO ER-2008-0318**

1 **Q PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS**

2 A Ryan Kind, Chief Energy Economist, Office of the Public Counsel, P.O. Box 2230,
3 Jefferson City, Missouri 65102

4 **Q PLEASE SUMMARIZE YOUR EDUCATIONAL AND EMPLOYMENT BACKGROUND**

5 A I have a B.S.B.A. in Economics and a M.A. in Economics from the University of
6 Missouri-Columbia (UMC). While I was a graduate student at UMC, I was employed as
7 a Teaching Assistant with the Department of Economics and taught classes in
8 Introductory Economics and Money and Banking, in which I served as a Lab Instructor
9 for Discussion Sections.

10 My previous work experience includes several years of employment with the Missouri
11 Division of Transportation as a Financial Analyst. My responsibilities at the Division of
12 Transportation included preparing transportation rate proposals and testimony for rate
13 cases involving various segments of the trucking industry. I have been employed as an
14 economist at the Office of the Public Counsel (Public Counsel or OPC) since 1991.

15 **Q HAVE YOU TESTIFIED PREVIOUSLY BEFORE THIS COMMISSION?**

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1 A Yes prior to this case I submitted written testimony in numerous gas rate cases several
2 electric rate design cases and rate cases as well as other miscellaneous gas water
3 electric and telephone cases.

4 **Q HAVE YOU PROVIDED COMMENTS OR TESTIMONY TO OTHER REGULATORY OR**
5 **LEGISLATIVE BODIES ON THE SUBJECT OF ELECTRIC UTILITY REGULATION AND**
6 **RESTRUCTURING?**

7 A Yes I have provided comments and testimony to the Federal Energy Regulatory
8 Commission (FERC) the Missouri House of Representatives Utility Regulation
9 Committee, the Missouri Senate's Commerce & Environment Committee and the
10 Missouri Legislature's Joint Interim Committee on Telecommunications and Energy.

11 **Q HAVE YOU BEEN A MEMBER OF, OR PARTICIPANT IN, ANY WORK GROUPS**
12 **COMMITTEES, OR OTHER GROUPS THAT HAVE ADDRESSED ELECTRIC UTILITY**
13 **REGULATION AND RESTRUCTURING ISSUES?**

14 A Yes I was a member of the Missouri Public Service Commission's (the Commission's)
15 Stranded Cost Working Group and participated extensively in the Commission's Market
16 Structure Work Group. I am currently a member of the Missouri Department of Natural
17 Resources Weatherization Policy Advisory Committee, the National Association of State
18 Consumer Advocates (NASUCA) Electric Committee, and the Standards Authorization
19 Committee of the North American Electric Reliability Council (NERC). I have served as
20 the small customer representative on the NERC Operating Committee and as the public
21 consumer group representative to the Midwest ISO's (MISO's) Advisory Committee.
22 During the early 1990s I served as a Staff Liaison to the Energy and Transportation Task
23 Force of the President's Council on Sustainable Development.

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1 **I. INTRODUCTION**

2 **Q PLEASE IDENTIFY THE MAJOR ISSUES THAT YOU WILL BE ADDRESSING IN YOUR**
3 **TESTIMONY.**

4 **A** The major issues that are addressed in this testimony include

- 5
- 6 • Off-system sales margins for the current period (test year and true-up period).
 - 7 • Ratemaking treatment of UI's speculative trading activities
 - 8 • An adjustment to hold customers harmless from the Taum Sauk disaster that was not reflected in the rates resulting from Case No. PR-2007-0002 and
 - 9 • UI's request for the Commission to approve a Fuel Adjustment Clause (FAC)

10 **II. OFF-SYSTEM SALES MARGINS**

11 **Q WHAT IS PUBLIC COUNSEL'S RECOMMENDATION FOR THE RATEMAKING TREATMENT**
12 **OF OFF-SYSTEM SALES MARGINS IN THIS CASE?**

13 **A** Public Counsel's recommendations related to off-system sales consist of the following

- 14
- 15 • The amount of off-system sales (OSS) margins that should be included in UI's revenue requirement should be UI's updated budget estimate of calendar year 2008 off-system sales margins. This figure is ** _____ **
 - 17 • The amount of off-system sales margins that the Commission decides to include in UI's revenue requirement for the current period should reflect UI's updated estimate of calendar year 2008 revenues from the sale of capacity-only products and the capacity component of ancillary services such as spinning reserves and supplemental reserve capacity and
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- The revenues from off-system sales and the margins on those sales that are used in the calculation of UE's revenue requirement in this case should reflect a reasonable amount of hedging revenues from the forward sales of energy through bilateral contracts and other asset-based transactions.

Q. HOW DID YOU OBTAIN THE UE APRIL 15, 2008 BUDGET RE-FORECAST FIGURE THAT YOU ARE RECOMMENDING IN THIS CASE?

A OPC DR No. 6 requested UE to "Please provide a copy of all documents created by or for the RMSC within the last three years that pertain to historical and possible future purchases or sales of energy or capacity by AmerenUE or its agents." UE's response to this DR included several packets from Ameren RMSC (Risk Management Steering Committee) meetings from the last three years. The Ameren RMSC includes members on Ameren's senior management team including Tom Voss, the Chief Executive Officer and President of the Union Electric Company. In addition to the positions that Mr. Voss has at UE, he is also the Executive Vice President and Chief Operating Officer of the Ameren Corporation.

The Ameren RMSC meeting packet for its July 19, 2008 meeting contained the April 15, 2008 budget re-forecast figure for UE's OSS margins. This figure appears close to the bottom of the first table on page 4 (for the reader's convenience, the top third of this page has been reproduced and enlarged in Attachment B) of Attachment A.

Q PLEASE EXPLAIN WHY YOU BELIEVE IT IS APPROPRIATE TO USE UE'S UPDATED 2008 OFF-SYSTEM SALES MARGIN BUDGET FIGURE TO REFLECT UE'S OFF-SYSTEM SALES MARGINS FROM THE CURRENT PERIOD IN THIS CASE

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1 A The April 15, 2008 budget re-forecast figure reflects UE's best estimate of the amount of
2 OSS sales margin that it expects to receive in calendar year 2008. Public Counsel
3 believes this is the best estimate of the level of OSS margins that UE is currently
4 achieving and the best estimate of the level of OSS margins that UE will be achieving on
5 an ongoing basis.

6 **Q WHY DO YOU BELIEVE THE UE OSS BUDGET REFORECAST FOR 2008 IS A GOOD**
7 **APPROXIMATION OF THE LEVEL OF OSS MARGINS THAT UE WILL ACTUALLY ACHIEVE**
8 **IN 2008?**

9 A Please refer again to the top of page 4 of Attachment A (or to Attachment B). The table
10 at the top of that page indicates that as of July 7, 2008, UE was less than 2% away from
11 achieving its budget goal for a time period covering a little more than the first half of
12 2008. In addition, there is a graph in the upper third of that page (see also Attachment B)
13 that shows UE's actual OSS margins are currently exceeding its January 3, 2008 budget
14 figure of ** _____ ** and that UE's actual OSS margin level as of July 7, 2008
15 have put it on a path to substantially exceed the January 3, 2008 budget figure by the end
16 of the year.

17 **Q WERE UE'S ASSUMPTIONS IN CALCULATING THE JANUARY 3, 2008 BUDGET FIGURE**
18 **AND THE APRIL 15, 2008 BUDGET REFORECAST FIGURES BASED ON REALISTIC**
19 **ASSUMPTIONS ABOUT UE'S OPERATIONS IN 2008?**

20 A They certainly should have been if UE was going to utilize the figures for its budget and
21 for giving guidance to investors about its 2008 earnings. The assumptions used in
22 calculating these figures would have included Ameren's best estimate of wholesale
23 market prices, the assumption that there will be a Callaway re-fueling outage in the Fall

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1 of 2008, and the assumption that Taum Sauk continues to be out of service during all of
2 2008 as a result of the destruction of the Taum Sauk generating facility in late 2005

3 **Q IF THE TAUM SAUK GENERATING FACILITY WAS IN SERVICE FOR ALL OF 2008, WOULD**
4 **UE'S BUDGET ESTIMATE AND REFORECAST FIGURE LIKELY BE CONSIDERABLY**
5 **HIGHER FOR 2008?**

6 A Yes, the Taum Sauk facility was a highly profitable component of UE's generating fleet.
7 The Commission's investigation of the Taum Sauk disaster indicated that Taum Sauk was
8 used extensively and that its profitability may have contributed to the disaster since UE
9 had incentives to fill the storage reservoir as fully as possible and to delay taking the
10 plant out of service for crucial repairs.

11 **Q WHY DO YOU BELIEVE THE UE OSS BUDGET REFORECAST FOR 2008 IS A GOOD**
12 **APPROXIMATION OF THE LEVEL OF OSS MARGINS THAT UE WILL BE ABLE TO**
13 **ACHIEVE ON AN ONGOING BASIS?**

14 A I believe that UE's January 3, 2008 budget figure and the April 15, 2008 budget
15 reforecast figure are conservative in light of UE's pledge to hold ratepayers harmless
16 from the impacts of the Taum Sauk Disaster since these figures would not reflect the
17 additional sales of energy and capacity that would be made if the disaster had not taken
18 this plant out of service.

19 **Q LET'S TURN NOW TO THE CAPACITY PORTION OF OFF-SYSTEM SALES MARGINS. WHY**
20 **IS IT IMPORTANT TO REFLECT THE LEVEL OF OSS MARGINS FROM CAPACITY SALES IN**
21 **THIS CASE?**

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1 A Capacity markets are a relatively new addition to wholesale electric markets in the
2 Midwest. While bilateral electric wholesale transactions have included prices for both
3 energy and capacity for a long time, a capacity-only wholesale electric product has only
4 become widespread over the last few years. The first time that UE received revenues
5 from a capacity-only transaction was in 2006. In that year, UE received about ⁺** _____
6 _____** in capacity sales revenues. (See
7 Staff DR No. 2 in Case No. ER-2008-0015.) The level of UE's capacity sales revenues
8 have remained substantial since that time. In 2007, UE's capacity revenues were close to
9 ** _____
10 _____**

11 **Q. DID THE STAFF AND UE POSITIONS ON OFFSYSEM SALES MARGINS IN UE'S LAST**
12 **RATE CASE, ER-2007-0002, REFLECT UE'S ABILITY TO ACHIEVE OSS MARGINS**
13 **THROUGH THE SALE OF CAPACITY-ONLY WHOLESALE MARKET PRODUCTS?**

14 A No, the Staff may not have been aware that these transactions were occurring and UE
15 chose to ignore them in the cost of service calculations that it presented to the
16 Commission.

17 **Q. IF THE COMMISSION DECIDES THAT EITHER THE STAFF OR THE COMPANY'S**
18 **PRODUCTION COST MODEL CALCULATION OF OSS MARGINS ON ENERGY SALES**
19 **SHOULD BE RELIED ON IN SETTING THE LEVEL OF OSS MARGINS IN THIS CASE, WILL IT**
20 **BE NECESSARY TO ADD CAPACITY SALES REVENUES TO THE OSS ENERGY SALES**
21 **MARGIN FIGURES CALCULATED FROM THESE MODELS?**

22 A Yes, it will. If this is not done, then the level of OSS margins that are reflected in rates
23 will be underestimated, just as they were in the last UE rate case.

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1 **Q WHAT IS THE LEVEL OF CAPACITY SALES MARGIN REVENUES THAT OPC BELIEVES**
2 **SHOULD BE ADDED IF THE COMMISSION RELIES ON THE RESULTS OF THE STAFF OR**
3 **UE'S PRODUCTION COST MODELING RESULTS FOR OSS MARGINS ON ENERGY SALES**
4 **IN THIS CASE?**

5 **A I believe that the Commission should use UE's updated figure for capacity sales in 2008**
6 **referenced above plus an imputed amount of capacity sales revenues that reflects the**
7 **additional capacity sales revenues that UE would have achieved if the Taum Sauk plant**
8 **was still in service. I believe that the actual 2008 sales figure is a conservative estimate of**
9 **the amount of capacity sales revenues that UE will be achieving on an ongoing basis due**
10 **to the tightening of capacity markets.**

11 Table 2 in Attachment C to this testimony contains the calculations that I have made for
12 the amount of current period capacity sales revenues (****_____****) that should be
13 included to hold ratepayers harmless with respect to the forgone capacity sales that would
14 have been possible if Taum Sauk was still in service. In Table 1 of the same attachment
15 this amount is added to the amount of actual capacity sales margins for 2008. As Table 1
16 indicates, the sum of these two amounts is ****_____****. Public Counsel
17 recommends that that if the Commission uses the output from the Staff's or the
18 Company's production cost model for OSS margins from energy sales, then ******
19 **_____**** should be added to the OSS energy sales margin figure.

20 **Q DOES OPC RECOMMEND ADDING ANY ADDITIONAL AMOUNTS TO THE OUTPUT FROM**
21 **THE STAFF'S OR THE COMPANY'S PRODUCTION COST MODEL FOR OSS MARGINS**
22 **FROM ENERGY SALES, IF THE COMMISSION DETERMINES THAT THE OSS MARGINS ON**
23 **ENERGY SALES FROM ONE OF THESE MODELS SHOULD BE USED AS PART OF THE**
24 **BASIS FOR DETERMINING UE'S CURRENT PERIOD REVENUE REQUIREMENT IN THIS**
25 **CASE?**

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1 A Yes, if the Commission decided to use the OSS margins on energy sales from either the
2 Staff's or the Company's production cost models as part of the basis for determining
3 UL's current period revenue requirement in this case then it needs to add additional
4 margins on energy sales to reflect the additional earnings that UL's Asset Management &
5 Trading group (in 2008, this internal UE group began performing the wholesale
6 marketing functions formerly done at Ameren Energy) is making through forward sale
7 wholesale transactions and financial hedging. UE's earnings from these activities have
8 been quite substantial over the last three years. UL would not be in a position to generate
9 these earnings without the regulated generating units that ratepayers are supporting
10 through the rates they pay for regulated electric service. These earnings are generated by
11 UL employees using regulated utility facilities that are also supported by revenues for
12 ratepayers.

13 **Q WHAT IS THE AMOUNT OF ADDITIONAL OSS EARNINGS THAT UE IS MAKING THROUGH**
14 **FORWARD SALE WHOLESALE TRANSACTIONS AND FINANCIAL HEDGING THAT OPC**
15 **PROPOSES TO REFLECT IN THIS CASE?**

16 A Public Counsel recommends that** _____ ** be included as additional OSS
17 earnings in this case. This figure is the average of the amounts that Ameren Energy
18 working as an agent for UL achieved in 2006 (** _____ **) and 2007 (** _____
19 _____ **) I obtained these figures from the Ameren Energy Performance Scorecards
20 for December 2006 and December 2007 that UE provided in response to OPC DR No.
21 2086. These figures represent earnings in the OSS area that will not be reflected in the
22 production cost model calculations performed by Staff and UE.

23 **Q YOU STATED EARLIER IN THIS TESTIMONY THAT THE STAFF AND UE OSS MARGIN**
24 **RECOMMENDATIONS IN THE LAST CASE FAILED TO REFLECT THE EARNINGS THAT UE**

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1 **WAS MAKING AT THAT TIME FROM CAPACITY SALES DID THE STAFF AND UE MARGIN**
2 **RECOMMENDATIONS IN THE LAST CASE ALSO FAIL TO REFLECT THE EARNINGS THAT**
3 **UE WAS MAKING AT THE TIME FROM FORWARD SALES AND HEDGING ACTIVITIES BY**
4 **AMEREN ENERGY, UE'S WHOLESALE MARKETING AGENT IN 2006 AND 2007?**

5 A Yes in calendar year 2006 Ameren Energy made **_____** in earnings related
6 to wholesale transactions and hedging done on behalf of UF that was not reflected in the
7 OSS margin recommendations of Staff and UF

8 **Q ARE THERE ANY OTHER WAYS THAT UE GENERATES MARGINS IN THE WHOLESALE**
9 **POWER MARKETING AREA THAT WOULD NOT BE REFLECTED IN THE OSS MARGIN ON**
10 **ENERGY SALES CALCULATIONS THAT ARE MADE WITH PRODUCTION COST MODELS?**

11 A Yes OPC DR No 67 stated

12 Did UF have any costs and revenues associated with non-asset based
13 trading of wholesale capacity and energy products during the test year? If
14 so were these costs and revenues included in UF's test year revenue
15 requirement? If these costs and revenues were included in UF's test year
16 revenue requirement please reference the workpapers that show how
17 they were included in the revenue requirement. If these costs and
18 revenues were NOT included in UF's test year revenue requirement
19 please fully explain why they were not included

20 UE's response to this DR states

21 UF did have costs and revenues associated with speculative trading
22 during the test year however, these costs and revenues were not included
23 in the revenue requirement. The costs were not included because IERC
24 requires these revenues and costs to be recorded below the line as non-
25 operating revenues or expenses and as a result are viewed as items to be
26 excluded

27 **Q IS OPC RECOMMENDING AT THIS TIME THAT THE EARNINGS FROM UE'S SPECULATIVE**
28 **WHOLESALE TRADING BE REFLECTED IN THE REVENUE REQUIREMENT IN THIS CASE?**

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1 A Public Counsel is not making that recommendation at this time and we are still exploring
2 the issue. We do however dispute UE's contention in its response to OPC DR No. 67 that
3 these revenues and expenses should be excluded from consideration in Missouri PSC rate
4 cases because of UE's assertion that there is a FERC regulation that requires "below the
5 line" treatment in FERC proceedings.

6 III. PRIOR PERIOD TAUM SAUK HOLD HARMLESS ADJUSTMENT

7 **Q PLEASE BRIEFLY EXPLAIN WHY YOU ARE PROPOSING A PRIOR PERIOD HOLD**
8 **HARMLESS ADJUSTMENT RELATED TO THE TAUM SAUK OUTAGE IN THIS CASE**

9 A UE's senior management has explicitly stated that it intends to hold ratepayers harmless
10 from the impacts of the Taum Sauk disaster. Adjustments were made to OSS margins on
11 energy sales in UE's last rate case for this purpose but no corresponding adjustments
12 were made to hold ratepayers harmless from the adverse impacts on the amount of
13 capacity sales that UE could have made due to the unavailability of Taum Sauk's 440
14 MWs of capacity.

15 Public Counsel raised this issue in UE's last rate case (Case No. ER-2007-0002) but the
16 Commission did not believe it had sufficient information to determine whether and how
17 much of an adjustment should be made for forgone sales of capacity. On page 118 of its
18 Report and Order in Case No. ER-2007-0002, the Commission stated:

19 AmerenUE has made a commitment to hold the public harmless from the
20 effects of the Taum Sauk disaster, and the Commission intends to hold it
21 to that commitment. Based on Public Counsel's allegations, it appears
22 AmerenUE could be making additional sales of regulatory capacity if not
23 for the loss of Taum Sauk's capacity. Unfortunately, there is no way
24 based on the record in this case to calculate the amount of adjustment
25 that should be made to AmerenUE's income to account for that loss of
26 capacity.

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1 Because of the Commission's May 24, 2008 ORDER GRANTING THE OFFICE OF
2 THE PUBLIC COUNSEL'S MOTION TO OPEN CASE AND GRANTING THE
3 STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION'S MOTION TO
4 CONSOLIDATE OPC is making a recommendation in this case for an adjustment to
5 hold customers harmless from the Taum Sauk disaster

6 **Q PLEASE DESCRIBE PUBLIC COUNSEL'S PROPOSED ADJUSTMENT.**

7 A The amount of the adjustment is calculated in Table 3 of Attachment C. As that table
8 indicates, the Commission should order an additional prior period Taum Sauk hold
9 harmless adjustment in this case of ****_____**** to hold customers harmless from
10 the forgone capacity sales impact of the Taum Sauk disaster. This adjustment is being
11 proposed in addition to the current period Taum Sauk hold harmless adjustment for the
12 current period forgone capacity sales impact of the Taum Sauk disaster. There is no need
13 to amortize this prior period Taum Sauk hold harmless adjustment since the time that will
14 elapse between the current rate case and UE's next rate case will likely be about the
15 same as the time elapsed between Case No. LR-2007-0002 and this case.

16 **Q WHY DO YOU BELIEVE UE WILL BE FILING ANOTHER RATE CASE WITHIN THE NEXT**
17 **COUPLE YEARS?**

18 A UE will need to file another rate case soon so it can get the capital investments (the Sioux
19 power plant scrubber investment and other projects) that are now under way in rates once
20 they are providing service to customers.

21 **Q. WILL OPC BE TAKING A POSITION ON UE'S PROPOSAL THAT THE COMMISSION**
22 **APPROVE A FUEL ADJUSTMENT CLAUSE (FAC) FOR IT IN THIS CASE?**

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1 A Yes. OPC opposes UE's request that the Commission permit it to use an FAC. A detailed
2 description of OPC's position and the support for it will be provided in testimony that
3 will be filed later in this case.

4 **Q DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

5 A Yes.

Kind Direct
Attachment A

has been deemed

“Highly Confidential”

in its entirety

Kind Direct
Attachment B

has been deemed

“Highly Confidential”

in its entirety

Kind Direct
Attachment C

has been deemed

“Highly Confidential”

in its entirety