

Exhibit No.:
Issue(s): Tom Sauk Rebuilding Costs
Witness/Type of Exhibit: Kind/Direct
Sponsoring Party: Public Counsel
Case No.: ER-2011-0028

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-2011-0028

February 4, 2011

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

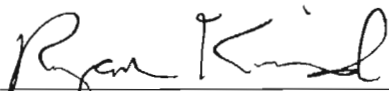
In the Matter of Union Electric Company)
d/b/a AmerenUE's Tariff to Increase Its)
Annual Revenues for Electric Service) Case No. ER-2011-0028

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 February 2011.



JERENE A. BUCKMAN
My Commission Expires
August 23, 2013
Cole County
Commission #09754037



Jerene A. Buckman
Notary Public

My commission expires August 23, 2013.

DIRECT TESTIMONY
OF
RYAN KIND
UNION ELECTRIC COMPANY
CASE NO. ER-2011-0028

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?**

Direct Testimony of
Ryan Kind

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 POLICY ISSUES?**

14 A. Yes. I am currently a member of the Missouri Department of Natural Resources
15 Weatherization Policy Advisory Committee, the National Association of State Consumer
16 Advocates (NASUCA) Electric Committee, and the Stakeholder Steering Committee
17 (SSC) of the Eastern Interconnection Planning Collaborative (EIPC). I have served as the
18 public consumer group representative to the Midwest ISO's (MISO's) Advisory
19 Committee and as the small customer representative on both the NERC Operating
20 Committee and the NERC Standards Authorization Committee. During the early 1990s, I
21 served as a Staff Liaison to the Energy and Transportation Task Force of the President's
22 Council on Sustainable Development.

23

1 **Q. PLEASE IDENTIFY THE ISSUE THAT YOU WILL BE ADDRESSING IN YOUR TESTIMONY.**

2 A. The issue that is addressed in this testimony is cost recovery associated with re-building
3 the Taum Sauk pumped storage plant.

4 **Q. WHY DID THE UNION ELECTRIC COMPANY (UE OR COMPANY) NEED TO REBUILD ITS**
5 **TAUM SAUK PUMPED STORAGE PLANT?**

6 A. The Taum Sauk plant was destroyed in a disaster that occurred on December 14, 2005 as
7 a result of a number of serious errors in judgment related to UE’s operation and
8 maintenance of the plant. Tom Voss was President of UE at the time of the disaster and
9 he provided an Exhibit (see Attachment A) subsequent to his testimony at the hearing in
10 Case No. ES-2007-0474 that summarized his view of the many errors in judgment on the
11 part of UE that led to the disaster. The “Staff’s Initial Incident Report” filed in that same
12 case on October 24, 2007 provides a more comprehensive description and analysis of the
13 factors that led up to the disaster.

14 **Q. HAS THE COMPANY MADE A COMMITMENT TO HOLD CUSTOMERS HARMLESS FROM**
15 **THE ADVERSE IMPACTS OF THE TAUM SAUK DISASTER?**

16 A. Yes, the Company made several statements regarding this commitment in the first two
17 years following the December 14, 2005 Taum Sauk disaster. The AmerenUE Press
18 Release that was issued when UE filed a new rate case (Case No. ER-2007-0002) on July
19 7, 2006 included several statements from Ameren President Gary Rainwater including the
20 statement that “Rainwater added that consistent with the company’s commitment to
21 accept full responsibility for the effects of the Dec. 14 failure of its Taum Sauk Plant,
22 AmerenUE has not included in the rate request filed today the related cost that the
23 company has incurred.” UE’s hold harmless commitment also appeared in the Direct

1 Testimony of UE President Warner Baxter in Case No. ER-2007-0002 where he stated on
2 page 34 that:

3 Consistent with the position that we have maintained throughout this
4 period, we are taking full responsibility for this matter in our rate filing.

5 ***

6 Specifically, AmerenUE's cost of service study in this case treats the
7 Taum Sauk Plant as if it has remained in operation throughout the test
8 year and ignores the adverse financial impact of the upper reservoir
9 failure.

10 UE's commitment to hold customers harmless from any adverse financial impacts from
11 the Taum Sauk disaster was restated in two separate pleadings filed by the Company in
12 Case No. ES-2007-0474. In its June 12, 2007 pleading opposing the Staff's request to
13 investigate the Taum Sauk disaster, the Company stated that "AmerenUE has already
14 accepted full responsibility for the effects of the breach of the Taum Sauk reservoir." In
15 its November 7, 2007 pleading titled "AmerenUE's Response to Staff's Initial Incident
16 Report," the Company states on page 8 that "Ameren has already committed to protecting
17 its customers from bearing the costs of the Taum Sauk failure."

18 **Q. DID THE COMMISSION STAFF (STAFF) MAKE ANY RECOMMENDATIONS IN CASE NO.**
19 **ES-2007-0474 ABOUT HOLDING CUSTOMERS HARMLESS FROM ANY ADVERSE**
20 **FINANCIAL IMPACTS DUE TO THE TAUM SAUK DISASTER?**

21 A. Yes, the Staff made a recommendation pertaining to this issue in the "Staff's Initial
22 Incident Report" dated October 24, 2007. A list of 10 Staff recommendations starts on
23 page 82 of that Staff report. Recommendation number one states:

24 That any and all costs, direct and indirect, associated with the Taum Sauk
25 incident be excluded from rates on an ongoing basis. This includes, but is
26 not limited to, the exclusion of rebuilding costs and treating the facility
27 as though its capacity is available for dispatch modeling.

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1 **Q. DID THE STAFF MAKE ANY ASSESSMENT OF THE PRUDENCY OF UE'S ACTIONS THAT**
2 **LED TO THE FAILURE OF THE UPPER RESERVOIR (UR) AT THE TAUM SAUK PLANT IN**
3 **THE INCIDENT REPORT THAT IT FILED IN CASE NO. ES-2007-0474?**

4 A. Yes, the Staff summarized its assessment of the prudency of UE's actions on pages 71
5 and 72 of "Staff's Initial Incident Report" where it states:

6 Using the measure set out above, the Commission can only conclude that
7 the loss of the Taum Sauk plant was due to imprudence on the part of
8 UE. UE was well-aware of the catastrophic results likely to occur if the
9 UR was overtopped by over-pumping. UE knew, or should have known,
10 that storing water against the parapet wall of a rockfill dam was
11 "unprecedented." UE knew, or should have known, that operating with a
12 freeboard of only one or two feet left no margin for error and required
13 particularly accurate control of the UR water level. Given that
14 circumstance, UE's decision to continue operating Taum Sauk after the
15 discovery of the failure of the gauge piping anchoring system and the
16 consequent unreliability of the piezometers upon which the UR control
17 system was based is frankly beyond imprudent – it is reckless. UE also
18 knew or should have known that the upper Warrick probes had been reset
19 above the lowest point at the top of the UR.

20 **Q. HOW SHOULD THE COMPANY'S HOLD HARMLESS COMMITMENT BE APPLIED IN THIS**
21 **RATE CASE NOW THAT THE TAUM SAUK FACILITY HAS BEEN RE-BUILT AND RETURNED**
22 **TO SERVICE?**

23 A. Consistent with UE's hold harmless commitment and the Company's failure to prudently
24 maintain and operate the Taum Sauk plant, there should be no impact on customer rates
25 in this case as a result of the investments made by UE to re-build the Taum Sauk facility
26 and return it to service.

27 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

28 A. Yes.

Exhibit 53
MPSC Case No. ES-2007-0474
Taum Sauk December 14, 2005 event

During the hearing on August 6, 2007, Mr. Mills from the Office of Public Counsel and the Public requested that Mr. Voss provide a list of all “errors in judgment” that were made regarding the Taum Sauk December 14, 2005 event.

Response:

Mr. Voss believes that the following mistakes, errors, and/or errors in judgment were made regarding the December 14, 2005 event:

1. Poor communication between the engineering and operating groups – The engineering and operating groups did not communicate as effectively as they should have. For example, only certain people had information about the low point of the parapet wall at the upper reservoir, and that information was not effectively communicated to all necessary personnel.

2. Lack of a proper understanding of the design basis – AmerenUE operations and engineering personnel did not have a good understanding of the design basis for the upper reservoir. For example, individuals did not fully understand the original design’s requirement of 2 foot of free board. In addition, changes were made to instrumentation and computer programs without an analysis of design basis implications.

3. Failure to recognize the severity of problems and to act in a conservative manner – Operations and engineering personnel did not recognize the severity of the gage piping problem that was identified in the fall of 2005, and they did not take sufficiently conservative steps in response to the problem. For example, while people believed that lowering the operating level of the reservoir by 2 feet was sufficient at the time, that judgment was not sufficiently conservative. Likewise, the determination that the gage piping problem was not a safety issue that necessitated an immediate outage was not sufficiently conservative.

4. Problems with initial construction – The various investigations have determined that the original construction of the upper reservoir was not consistent with the design.

Mr. Voss’s response is based on information he learned from reading the reports of the numerous investigations into the December 14, 2005 event and in talking with AmerenUE employees who were involved in those investigations.