Exhibit No.: _____
Issue(s): Off System Sales/
Metro East Transfer Case/
SO_2 Allowance Revenues/
Electric Energy, Inc. Joppa Plant/
Disallowance of Pinckneyvill and Kinmundy Costs/
Disallowance of Peno Creek Costs
Witness/Type of Exhibit: Kind/Surrebuttal
Sponsoring Party: Public Counsel
Case No.: ER-2007-0002

SURREBUTTAL TESTIMONY

OF

RYAN KIND

Submitted on Behalf of
the Office of the Public Counsel

UNION ELECTRIC COMPANY D/B/A AMERENUE

****** _____ ******
Denotes Highly Confidential Information that has been redacted.

NP

Case No. ER-2007-0002

February 27, 2007

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-2007-0002** Tariff No. YE-2007-0007

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 surrebuttal 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 27th day of February 2007.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

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

Jerene A. Buckman
Notary Public

My commission expires August 10, 2009.

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SURREBUTTAL TESTIMONY

OF

RYAN KIND

UNION ELECTRIC COMPANY

CASE NO. ER-2007-0002

Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

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

Q. ARE YOU THE SAME RYAN KIND THAT SUBMITTED DIRECT TESTIMONY IN THIS CASE ON DECEMBER 15, 2006 AND DECEMBER 29, 2006 AND REBUTTAL TESTIMONY ON JANUARY 31, 2007?

A. Yes, I am.

I. INTRODUCTION AND RECOMMENDATONS

Q. PLEASE IDENTIFY THE ISSUES THAT YOU WILL BE ADDRESSING IN YOUR SURREBUTTAL TESTIMONY.

A. The major issues that are addressed in this testimony include:

- The Union Electric Company (UE or the Company) has failed to show that its proposed Fuel Adjustment Clause incentive mechanism, which provides for the sharing of off-system sales margins, complies with the requirements of subsection (11)(B) of 4 CSR 240-20.090 ("Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms" or the "Missouri Fuel Adjustment Clause rule"). For this

reason, UE's proposed Fuel Adjustment Clause incentive mechanism that provides for the sharing of off-system sales margins should be rejected by the Commission and any Fuel Adjustment Clause approved by the Commission in this case should provide for the full pass through to customers of any variations in the off-system sales margins from the amount of such margins that are included in base rates.

- The rebuttal testimony of UE witness Gary Weiss fails to provide the information and analysis necessary for the Company to comply with the Commission's Metro East transfer case conditions which permit the Company to recover certain categories of costs in a rate case "if it proves by a preponderance of the evidence that the sum of the Missouri ratepayer benefits attributable to the transfer in the applicable test year is greater than the 6% of such unknown generation-related liabilities sought to be recovered." For this reason, Public Counsel continues to recommend that the Commission disallow the **_____** in costs associated with generation-related liabilities that were unknown at the time of the Metro East order.

- The continuing failure of Union Electric Company (UE or Company) to provide timely responses to OPC's data requests that would allow Public Counsel to make an assessment of the extent to which UE has complied with the transmission hold harmless conditions in the Commission's order approving the Metro East Transfer in Case No. EO-2004-0108.

- Public Counsel's revised recommendation regarding the amount of Sulfur Dioxide (SO_2) emission allowance transaction revenues that should be included in the revenue requirement upon which any new rates resulting from this case would be based. Public Counsel recommends that new UE rates resulting from this case

should reflect $23,993,951 as the proper normalized level of revenues from SO_2 allowance transactions based upon: (1) additional information that UE provided subsequent to the filing of rebuttal testimony and (2) further review of overdue DR responses that were received shortly before the filing of rebuttal testimony.

- The Electric Energy, Inc., Pinckneyville/Kinmundy and Peno Creek issues are also addressed in this testimony.

II. OFF-SYSTEM SALES MARGINS

Q. HOW DID UE'S DIRECT FUEL ADJUSTMENT CLAUSE TESTIMONY FILED ON SEPTEMBER 29, 2006 ADDRESS ANY INCENTIVE FEATURES THAT THE COMPANY WAS PROPOSING TO INCORPORATE INTO ITS FUEL ADJUSTMENT CLAUSE?

A. The Fuel Adjustment Clause minimum filing requirements (MFRs) that were attached (Schedule MJL-2-6) to the September 29, 2006 direct testimony of Marty Lyons indicated on page 6 under item (J) that:

> AmerenUE's proposed FAC does not contain any FAC-specific incentive feature. As noted above, the proposed FAC would accommodate the pass-through of off-system sales margins if an off-system sales margin sharing mechanism were in place, and an FAC would facilitate the use of such a sharing mechanism.

Q. IS MR. LYONS' REBUTTAL TESIMONY REGARDING UE'S FUEL ADJUSTMENT CLAUSE PROPOSAL CONSISTENT WITH THE STATEMENT IN THE MFRS THAT WERE ATTACHED TO HIS DIRECT TESTIMONY?

A. No. At line 20 on page 22 of his rebuttal testimony, Mr. Lyons states:

> AmerenUE recognizes the importance of incentives and has, in fact, addressed this issue through its filed proposal by….(2) providing strong overall fuel cost and power plant performance incentives through either the traditional (fixed) or sharing treatment of OSS margins.

Mr. Lyons also discusses what he asserts are the beneficial incentives associated with the Company's proposed sharing mechanism for off-system sales (OSS) margins at line 5 on page 28 of his testimony where he states:

> Yes, the proposed sharing mechanism retains strong incentives to maximize OSS, though not as strong as the incentive provided under the traditional treatment of OSS margins. However, customers would benefit through both (1) their share of OSS margins and (2) the reduced energy costs resulting from improved plant performance as discussed above.

The two above quoted statements from the rebuttal testimony of Mr. Lyons show that the Company believes that its proposed FAC does in fact have an incentive feature.

Q. IN THE SECOND QUOTE THAT YOU PROVIDED IN THE PRECEDING ANSWER, MR. LYONS ASSERTS THAT UE'S OFF-SYSTEM SALES INCENTIVE FEATURE, WHICH PERMITS THE COMPANY TO RETAIN A PORTION OF THE PROCEEDS FROM OFF-SYSTEM SALES WOULD BENEFIT CUSTOMERS DUE TO "THE REDUCED ENERGY COSTS RESULTING FROM IMPROVED PLANT PERFORMANCE." HAS THE COMPANY PROVIDED ANY ANALYSIS THAT SHOWS THAT SAVINGS FROM "THE REDUCED ENERGY COSTS RESULTING FROM IMPROVED PLANT PERFORMANCE" ARE EXPECTED TO MORE THAN OFFSET THE REDUCTIONS IN OFF-SYSTEM SALES MARGINS PASSED THROUGH TO CUSTOMERS?

A. No. The Company has not provided any analysis to demonstrate that the off-system sales incentive feature of its FAC proposal will provide net benefits to customers.

Q. DOES THE FAC RULE PROVIDE SOME GUIDANCE TO THE COMMISSION AS IT EVALUATES THE REASONABLENESS OF OFF-SYSTEM SALES INCENTIVE PROPOSALS?

A. Yes. Subsection (11)(B) of 4 CSR 240-20.090 states:

> (B) Any incentive mechanism or performance-based program shall be structured to align the interests of the electric utility's customers and shareholders. The anticipated benefits to the electric utility's customers from the incentive or performance-based program shall equal or exceed the anticipated costs of the mechanism or program to the electric utility's customers. For this purpose, the cost of an incentive mechanism or performance-based program shall include any increase in expense or reduction in revenue credit that increases rates to customers in any time period above what they would be without the incentive mechanism or performance-based program.

Q. HAS UE PROVIDED ANALYSIS OR ANY OTHER EVIDENCE IN THIS CASE TO DEMONSTRATE THAT "THE ANTICIPATED BENEFITS TO THE ELECTRIC UTILITY'S CUSTOMERS FROM" ITS OFF-SYSTEM SALES SHARING INCENTIVE PROPOSAL WOULD BE EXPECTED TO "EQUAL OR EXCEED THE ANTICIPATED COSTS OF THE MECHANISM OR PROGRAM TO THE ELECTRIC UTILITY'S CUSTOMERS?"

A. No.

Q. ARE YOU AWARE OF ANY OTHER UE WITNESSES THAT HAVE DESCRIBED UE'S FUEL ADJUSTMENT CLAUSE OFF-SYSTEM SALES SHARING PROPOSAL AS AN INCENTIVE MECHANISM?

A. Yes. UE witness John Mayo also portrays UE's Fuel Adjustment Clause off-system sales sharing proposal as an incentive mechanism. At line 16 on page 10 of his testimony, Dr. Mayo states:

> **AmerenUE has identified an alternative incentive mechanism** that would provide for a broad range of off-system sales in which consumers and the firm would both be beneficiaries of the profits the firm is able to make in the off-system sales market. **This sharing mechanism** is described in detail in the direct testimony of Mr. Shukar… (Emphasis added)

This passage from Dr. Mayo's rebuttal testimony refers to UE's Fuel Adjustment Clause off-system sales sharing proposal as an incentive mechanism, as does the following passage from Dr. Mayo's rebuttal testimony which begins at line 21 on page 10:

> From an economic perspective, AmerenUE's proposed off-system sales treatment (both its proposed traditional treatment and its alternative sharing mechanism) is attractive because **it adds an incentive component to the FAC** and does so in an arena, off-system sales, where incentives are especially likely to matter. Specifically, the ability to make sales in the off-system market will be significantly influenced by the ability (or lack thereof) of the utility to manage its plants' availability and efficiency. Thus, by creating a financial incentive for the firm to increase its off-system sales, the Commission will provide a strong incentive for the firm to become increasingly efficient in this arena. The consequences of this efficiency will, under either AmerenUE's proposed traditional or alternative off-system sharing plan, benefit AmerenUE's consumers.

Once again, in the above quote, we see a UE witness claiming that UE's Fuel Adjustment Clause off-system sales sharing proposal is an incentive mechanism that will somehow provide benefits to consumers that exceed expected costs of the incentive mechanism **without** providing any facts or analysis to support this assertion.

III. RATEMAKING IMPACTS OF CONDITIONS IN THE COMMISSION'S ORDER IN THE UE METRO EAST TRANSFER CASE

Q. IN YOUR DIRECT AND REBUTTAL TESTIMONY, YOU INDICATED THAT UE HAD FAILED TO PROVIDE TIMELY RESPONSES TO OPC'S DATA REQUESTS CONCERING SOME OF THE CONDITIONS IN THE COMMISSION'S ORDER APPROVING THE METRO EAST TRANSFER IN CASE NO. EO-2004-0108. HAS UE PROVIDED ANY ADDITIONAL RESPONSES PERTAINING TO THIS ISSUE SINCE THE TIME THAT YOU FILED YOUR REBUTTAL TESTIMONY ON JANUARY 31, 2007?

A. No, UE has failed to provide any additional information despite Public Counsel's repeated reminders to the Company that we are still waiting for DR responses and

clarifications of DR responses. OPC DR Nos. 2020 and 2021 regarding the transmission hold harmless conditions in Case No. EO-2004-0108 were sent to UE on November 14, 2006 and no response whatsoever has been made by the Company as of February 26, 2007. This dismal performance in responding to DR Nos. 2020 and 2021 (fourteen weeks and counting as of February 20th) is inexcusable. If Public Counsel were not currently burdened with responding to the greatest surge of electric, gas and water cases ever experienced by our staff, we would be taking more aggressive actions to compel the responses to these and many other late UE DR responses.

Q. WHICH CONDITION IN THE COMMISSION'S ORDER APPROVING THE METRO EAST TRANSFER IN CASE NO. EO-2004-0108 DO OPC DR NOS. 2020 AND 2021 PERTAIN TO?

A. These DRs pertain to the hold harmless condition with respect to adverse impacts related to the transfer of most of UE's transmission assets located in Illinois from UE to AmerenCIPS. Ordered paragraph number 8 in the Commission's "Report and Order on Rehearing" in Case No. EO-2004-0108 states:

> "Union Electric Company, doing business as AmerenUE, as a condition of the approval herein contained, shall not recover in rates any portion of any **increased costs due solely to transmission charges for the use of the transmission facilities herein transferred to AmerenCIPS** to the extent that the costs in question would not have been incurred had the facilities not been transferred." (Emphasis added)

Q. WHAT CONCLUSIONS, IF ANY, DID YOU MAKE IN YOUR DIRECT TESTIOMONY REGARDING WHETHER UE IS IN COMPLIANCE WITH THE CONDITON QUOTED ABOVE REGARDING "ANY INCREASED COSTS DUE SOLELY TO TRANSMISSION CHARGES FOR THE USE OF THE TRANSMISSION FACILITIES HEREIN TRANSFERRED TO AMERENCIPS?"

A. In my direct testimony, I stated at line 1 on page 11 that:

> I have not been able to begin making a determination of UE's compliance with this condition at this time since UE has failed to provide timely responses to OPC DR Nos. 2020 and 2021 regarding this condition. Because of UE's failure to provide timely DR responses on this subject, I reserve the right to address this issue again in additional testimony in this case.

Q. HAS YOUR INABILITY TO BEGIN MAKING A DETERMINATION REGARDING UE'S COMPLIANCE WITH THE TRANSMISSION HOLD HARMLESS ISSUE CHANGED SINCE YOU MADE THE ABOVE STATEMENT?

A. No, as a result of UE's continuing failure to provide DR responses, I still have not been able to begin making a determination of UE's compliance with this condition. Therefore, I still reserve the right to address this issue in additional testimony in this case. I also recommend that the Commission give serious consideration to UE's failure to respond to requests for information such as this when it considers making future decisions about transactions where a utility is proposing conditions such as those that were approved in the Metro East transfer case.

Q. HOW DID UE ADDRESS ITS COMPLIANCE WITH THE METRO EAST TRANSFER CASE CONDITIONS IN ITS REBUTTAL TESTIMONY?

A. UE witness Gary Weiss addressed this issue briefly in his rebuttal testimony starting at the bottom of page 17 and continuing through page 19. The main thrust of Mr. Weiss' testimony is that UE is in compliance with the various conditions because he says so and because he provided a few unsupported numbers that purport to comply with the Commission's Metro East transfer case conditions which permit the Company to recover

certain categories of costs in a rate case "if UE can meet its burden to establish that such costs are outweighed by transfer-related benefits[1]."

Q. PLEASE PROCEED TO ADDRESS THE SPECIFICS OF MR. WEISS' TESTIMONY.

A. At line 3 on page 18, Mr. Weiss states that "Mr. Kind first accuses AmerenUE of violating the condition that 'pre-closing liabilities that are directly assignable to UE's Illinois retail operations, or to the transferred assets, must transfer to CIPS as a condition of the Commission's approval of the transfer.'"

Q. DID MR. WEISS ACCURATELY CHARACTERISE YOUR DIRECT TESTIMONY WHEN HE STATES THAT YOU ACCUSED UE OF VIOLATING THIS CONDITION IN THE METRO EAST TRANSFER ORDER?

A. No. Like much of the other hyperbole that he employs when addressing this issue, Mr. Weiss goes beyond the facts in his attempt to rebut Public Counsel's testimony on this issue. My direct testimony does not "accuse" UE of violating the condition regarding the required transfer of directly-assignable pre-closing liabilities. Instead, my testimony states that it was not clear from UE's response to OPC DR No. 2017 whether or not the Company had complied with this condition. My direct testimony addressed this lack of clarity at the bottom of page 9 where I stated:

> OPC DR No. 2017 asked UE to verify that it had complied with this condition regarding the transfer to CIPS of pre-closing liabilities that are directly assignable to UE's Illinois retail operations, or to the transferred assets. UE's response did not contain a clear statement verifying that it was in compliance with this condition. OPC has informed UE that its answer did not clearly affirm or deny compliance with this condition but no additional clarification has been forthcoming from UE thus far. UE's

[1] "Report and Order on Rehearing" in Case No. EO-2004-0108, p.63.

response to the DR described the process it was using to transfer "identifiable" assets and liabilities but it was not clear to OPC that the process described by UE would result in full compliance with this condition. UE's use of the word "identifiable" in its DR response raises the question of whether the Company is capable of identifying all such assets and liabilities.

Q. HOW DOES MR. WEISS' REBUTTAL TESTIMONY ADDRESS THE ISSUES THAT YOU RAISED ABOUT THE COMMISSION'S METRO EAST TRANSFER CASE CONDITIONS WHICH PERMIT THE COMPANY TO RECOVER CERTAIN CATEGORIES OF COSTS IN A RATE CASE "IF IT PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE SUM OF THE MISSOURI RATEPAYER BENEFITS ATTRIBUTABLE TO THE TRANSFER IN THE APPLICABLE TEST YEAR IS GREATER THAN THE 6% OF SUCH UNKNOWN GNERATION-RELATED LIABILITIES SOUGHT TO BE RECOVERED?"

A. While Mr. Weiss acknowledges at line 2 on page 19 of his rebuttal testimony that UE's test year case includes $138,303 in costs, he falls far short of proving "by a preponderance of the evidence that the sum of the Missouri ratepayer benefits attributable to the transfer " are in excess of the costs that the Company is seeking to recover. Instead, Mr. Weiss attempts to meet the "preponderance of the evidence" standard set forth in the Commission's Metro East transfer order by stating that UE's calculation of the test year savings from the transfer is $22.3 million. Mr. Weiss's "support" for this figure can be found in his Schedule GSW-E-40 (a copy of his narrative response to OPC DR No. 2019) and in the workpapers to his rebuttal testimony which includes the same documents that were provided previously in response to OPC DR No. 2019. The workpaper that is supposed to provide "support" for the $22.3 million figure is merely a small table containing less than 10 figures, which shows that when one of the figures is subtracted from another, the result is a difference of $22.3 million.

Q. DOES MR. WEISS ATTEMPT TO EXPLAIN WHY HE THINKS THAT PRESENTING A NUMBER THAT IS PULLED FROM A VERY SIMPLE TABLE CONTITUTES PROVIDING THE COMMISSION WITH "A PREPONDERANCE OF THE EVIDENCE" TO SUPPORT THE COMPANY'S POSITION?

A. No. Mr. Weiss did not choose to explain the analysis or provide any of the assumptions and inputs that went into the calculation, nor did he choose to even identify the modeling tool that was used in the calculations. He doesn't even identify whether the figures used in the analysis are actual historical numbers or normalized numbers.

Q. ARE THE NUMBERS THAT MR. WEISS CLAIMS CAN BE VIEWED AS "A PREPONDERANCE OF THE EVIDENCE" FOR SUPPORTING THE INCLUSION OF CERTAIN CATEGORIES OF COSTS ADDRESSED IN THE COMMISSION'S METRO EAST ORDER BEING PRESENTED FOR THE FIRST TIME IN THE COMPANY'S REBUTTAL TESTIMONY?

A. Yes. Apparently, UE did not even intend to present these cryptic analytical results contained in Mr. Weiss's rebuttal testimony until Public Counsel raised the issue of Metro East conditions in direct testimony.

Q. DID UE HAVE THE BURDEN OF PRESENTING EVIDENCE TO SUPPORT ITS REQUEST IN THIS RATE CASE TO RECOVER CERTAIN CATEGORIES OF COSTS THAT WERE ADDRESSED IN THE METRO EAST CASE EVEN IF OPC HAD NOT RAISED THIS ISSUE IN ITS DIRECT TESTIMONY?

A. Yes. UE clearly had this burden even if Public Counsel had not raised the issue. It is important to remember that the condition regarding the recovery of "up to 6% of unknown generation-related liabilities associated with the generation that was formerly allocated to AmerenUE's Metro East service territory" was actually suggested by UE in

its October 15, 2004 "APPLICATION FOR REHEARING, AND ALTERNATIVE MOTION FOR CLARIFICATION OF THE COMMISSION'S ORDER OF OCTOBER 6, 2004 (Rehearing Application). On page 6 of the Rehearing Application, UE presented what it called "a possible solution for Missouri ratepayers." This "possible solution" that UE proposed included:

> The Commission would amend the Order to allow the Company to establish in future rate cases that the overall Missouri ratepayer benefits attributable to the Metro East transfer outweigh 6% of any currently unknown, contingent, and unliquidated generation-related liabilities that later become known and liquidated. If the Company is able to establish that fact, the Company will be entitled to recover that 6%. In other words, **the Company will take on the burden to show that the benefits attributable to the transfer outweigh 6% of these "liabilities**." (Rehearing Application, p. 6) (Emphasis added)

Public Counsel was surprised that UE made no attempt whatsoever in its direct testimony to meet the burden imposed on it in the Metro East order to provide "a preponderance of the evidence" to support the inclusion of more than 94% of generation-related liabilities that were unknown at the time of the Metro East order. OPC was further surprised that Mr. Weiss' rebuttal testimony response to OPC's direct testimony pointing out this shortcoming was to merely provide a few unsupported numbers that are supposed to meet the burden that it accepted to provide "a preponderance of the evidence" to support recovery of these costs.

Q. IN THIS CASE, UE IS SEEKING RECOVERY OF ABOUT $138,000 IN CERTAIN CATEGORIES OF COSTS THAT WERE ENUMERATED IN THE METRO EAST CASE ORDER. IS IT POSSIBLE THAT THIS NUMBER COULD BE SUBSTANTIALLY GREATER IN FUTURE CASES?

A. Yes. That is one of the reasons why the Commission should pay close attention to the implementation of the Metro East conditions as it decides this rate case.

Q. YOU BEGAN YOUR DISCUSSION OF THE METRO EAST CONDITIONS BY DESCRIBING UE'S LONGSTANDING FAILURE TO PROVIDE RESPONSES TO OPC DR NOS. 2020 AND 2021 REGARDING THE TRANSMISSION HOLD HARMLESS CONDITIONS IN THE COMMISSION'S METRO EAST ORDER. PLEASE DESCRIBE HOW MR. WEISS ADDRESSED THE TRANSMISSION CONDITION IN HIS REBUTTAL TESTIMONY.

A. Mr. Weiss addressed the transmission hold harmless condition in a very cursory manner in his rebuttal testimony. His testimony on this issue began by again mischaracterizing my direct testimony when he stated at line 5 on page 19 of his testimony that:

> Mr. Kind also alleges that Ameren UE violated the provision of the order that precludes AmerenUE from recovering in rates any portion of any increased costs due solely to transmission charges for the use of transmission facilities transferred to AmerenCIPS to the extent that the costs in question would not have been incurred had the facilities not been transferred.

My direct testimony raised the issue of whether UE was in compliance with the transmission hold harmless condition but the testimony did not allege that UE had "violated" this condition. My direct testimony on this issues stated at line 1 on page 11 that:

> I have not been able to begin making a determination of UE's compliance with this condition at this time since UE has failed to provide timely responses to OPC DR Nos. 2020 and 2021 regarding this condition. Because of UE's failure to provide timely DR responses on this subject, I reserve the right to address this issue again in additional testimony in this case.

Perhaps Mr. Weiss was confusing my testimony on this issue with testimony of another party.

Q. WHAT ELSE DID MR. WEISS SAY ABOUT THE TRANSMISSION HOLD HARMLESS CONDITION IN HIS REBUTTAL TESTIMONY?

A. At line 11 on page 19 of his testimony, Mr. Weiss asserts that UE does not have any increased costs in its test year case that reflect "any increased cost due solely to transmission charges for the use of transmission facilities transferred to AmerenCIPS to the extent that the costs in question would not have been incurred had the facilities not been transferred."

Q. WHAT EVIDENCE AND ANALYSIS DID MR. WEISS PROVIDE TO SUPPORT THIS ASSERTION?

A. Absolutely none. During the Metro East transfer case, concerns were raised about possible future increases in transmission costs incurred by UE to utilize output from generating plants outside of Missouri that are owned by UE and connected to UE's system by transmission facilities that were being transferred from UE to AmerenCIPS as part of the transfer case. These plants include the generation facilities owned by UE at: Venice, Illinois; Pinckneyville, Illinois; Joppa, Illinois; and Keokuk, Iowa. Mr. Weiss merely stated that there would be no increased costs. He does not explain how he arrived at this conclusion and he does not address the potential impacts of the control area (and corresponding MISO pricing node) re-configuration that has been pursued by Ameren.

IV. NORMALIZATION OF SO_2 EMISSION SALES ALLOWANCE REVENUES

Q. BEGINNING AT LINE 16 ON PAGE 10 OF HIS REBUTTAL TESTIMONY, UE WITNESS WARNER BAXTER MAKES A PROPOSAL REGARDING "STORM COSTS AND SO2 EMISSION ALLOWANCES." PLEASE PROVIDE THE DETAILS OF MR. BAXTER'S PROPOSAL.

A. This proposal is described very briefly starting at line 23 on page 11 of Mr. Baxter's testimony where he states:

> In an effort to address the cash flow needs of the Company, while mitigating the rate impact of these storms on our customers, the Company proposes that the July and November December storm-related O & M expenditures be offset directly by the approximately **____** million of SO2 allowances sales revenues that the Company was able to realize during the second half of 2006.
>
> …
>
> If the approach is approved, the Company will not seek to recover the approximately **____** million in O & M costs related to these storms from ratepayers in this or any other rate case.

Q. DOES PUBLIC COUNSEL SUPPORT MR. BAXTER'S PROPOSAL REGARDING "STORM COSTS AND SO2 EMISSION ALLOWANCES?"

A. No. This is a one-side proposal that would benefit shareholders but harm ratepayers. Mr. Baxter's proposal seems designed to drastically lower the normalized level of SO_2 allowance revenues that would be reflected in rate levels in exchange for the Company's commitment that it would not seek to recover one-time storm expenditures from ratepayers. The inequity of this proposal is obvious. In exchange for ratepayers giving up an offset to UE's annual revenue requirement of somewhere between $20.63 million (State of Missouri recommendation) and $23.99 million (OPC revised recommendation), ratepayers will not need to pay for the annual amortization amount (likely to be a small fraction of the approximate **_____** million total cited in Warner Baxter's rebuttal testimony) of the approximate **____** million total storm O & M cost in future rates.

Not unlike many of the other issues in this rate case, OPC is still waiting for a number of outstanding DRs that are related to Mr. Baxter's proposal. After reviewing Mr. Baxter's proposal in his January 31, 2007 rebuttal testimony, I promptly sent DR Nos. 2213 through 2218 to UE in an attempt to get further information related to this proposal. These DRs were sent to UE on February 1 and were due 2 weeks ago on February 12 but no answers have been forthcoming. Therefore, I reserve the right to provide additional

supplemental Surrebuttal testimony on this issue when these late DR responses are sent to OPC.

Q. IN YOUR REBUTTAL TESTIMONY, YOU PRESENTED PUBLIC COUNSEL'S REVISED RECOMMENDATION FOR A NORMALIZED LEVEL OF SO_2 SALES REVENUES TO REFLECT IN THE REVENUE REQUIREMENT FOR THIS CASE. IN YOUR PRECEDING ANSWER YOU REFERRED TO A REVISED OPC RECOMMENDED SO_2 ALLOWANCE REVENUE AMOUNT OF $23,993,951. IS THAT THE SAME REVISED FIGURE THAT YOU PROVIDED IN YOUR REBUTTAL TESTIMONY?

A. No. The $23,993,951 figure is new. Most of the change from OPC's prior recommendation of $25,638,379 is based upon an additional DR response related to UE's SO_2 allowance transactions that the Company provided after my rebuttal testimony was filed. My rebuttal testimony was based on UE's responses to a series of DRs related to SO_2 allowance transactions that finally began to trickle in on January 19, 2007, over eight weeks after the DRs had been sent to UE. Because of the lateness of UE's DR responses, I was unable to follow-up on what appeared to be an error in the Company's tabulation of its 2006 SO_2 allowance revenues prior to filing my testimony. The Company's response to OPC DR No. 2225 provided the information necessary to determine the correct of amount of 2006 SO_2 allowance revenues and I have used this information to re-calculate the five-year SO_2 allowance transaction revenue upon which OPC's normalized level of SO_2 sales revenues recommendation is based. In my rebuttal testimony, I noted that "as I continue my review of this detailed newly arrived information on individual transactions, I may have additional recommendations on the SO_2 allowance issue."

Q. WHAT IS PUBLIC COUNSEL'S REVISED RECOMMENDATION FOR THE NORMALIZED LEVEL OF SO_2 ALLOWANCE SALES THAT SHOULD BE REFLECTED IN THE REVENUE

REQUIREMENT FOR THIS CASE AND HOW DID YOU ARRIVE AT THAT RECOMMENDATION?

A. Public Counsel now recommends that the Commission use $23,993,951 as the normalized level of SO_2 allowance sales in this case. As shown in Attachment 1, I arrived at this figure by calculating a five-year average of the amount of annual net revenues that UE has received from emission allowance sales over the five-year period that ends on December 31, 2006. The last six months of the five year period coincides with the update to the test year that the Commission has ordered in this case. The level of allowance sales that UE made in each of the five calendar years over the five year period varies considerably from the test year sales level ($3.9 million) so there was an obvious need to normalize the level of allowance sales to make the amount in the test year more representative of the level of sales that has occurred preceding the test year, and in the test year update period.

Q. IN YOUR REBUTTAL TESTIMONY, YOU DESCRIBED SEVERAL ADJUSTMENTS THAT YOU MADE TO UE'S FIGURES FOR ANNUAL SO_2 ALLOWANCE SALES REVENUES FOR THE FIVE YEAR PERIOD FROM 2002 THROUGH 2006. DID THE ADDITIONAL INFORMATION THAT YOU RECEIVED SINCE YOUR REBUTTAL TESTIMONY CAUSE YOU TO DROP ANY OF THOSE ADJUSTMENTS?

A. Yes. Based on information provided in UE's response to OPC DR No. 2225, I have dropped the adjustment that I had made previously to the 2006 sales total. However, I have kept the revenue imputation adjustment that I made to the SO_2 sales revenue figure for 2005.

Q. DID YOU MAKE ANY ADDITIONAL ADJUSTMENTS TO THE SO_2 ALLOWANCE SALES FIGURES FOR 2002 THROUGH 2006 THAT WERE INCLUDED IN YOUR FIVE-YEAR AVERAGE?

A. Yes. As I reviewed the figures for 2002 through 2006 that I used from the SO_2 sales UE.xls spreadsheet file, I noticed that I had not treated the broker fees and EPA auction revenues consistently for some of these years so I made corrections to always include (1) broker fees as a reduction to annual SO_2 sales revenues and (2) EPA auction revenues as an addition to annual SO_2 revenues.

Q. YOU HAVE RESPONDED TO SOME OF THE REMARKS THAT MR. BAXTER MADE ABOUT SO_2 ALLOWANCE TRANSACTIONS. DO YOU HAVE ANY RESPONSE TO THE REBUTTAL TESTIMONY REGARDING SO_2 EMISSION ALLOWANCES THAT WAS FILED BY UE WITNESS JAMES MOORE?

A. Yes. At line 20 on page 3 of his testimony, Mr. Moore denies that UE and its affiliates have responded to improper affiliate considerations in carrying out its SO_2 allowance transactions. Unfortunately, I continue to discover new information about UE engaging in SO_2 allowance transactions where improper considerations are present.

Q. PLEASE DESCRIBE HOW, SUBSEQUENT TO THE FILING OF YOUR REBUTTAL TESTIMONY IN THIS CASE, YOU DISCOVERED ADDITIONAL INFORMATION ABOUT UE ENGAGING IN SO_2 ALLOWANCE TRANSACTIONS WHERE IMPROPER CONSIDERATIONS WERE PRESENT.

A. Starting at line 13 on page 9 of my rebuttal testimony, I described an SO_2 allowance transaction involving UE and Dynegy that occurred in December of 2005. The information that I had at the time I wrote my rebuttal testimony indicated that UE had

engaged in an SO_2 transaction that was "contingent upon considerations in a reactive power case that Andy Serri is involved in" according to the documentation of that transaction that was included as Attachment 4 to my rebuttal testimony. I noted in my rebuttal testimony that Andy Serri is the President of one of UE's non-regulated affiliates, Ameren Energy Marketing (AEM). I also noted in my rebuttal testimony that this appeared to be a violation of the Missouri Affiliate transaction rule provisions that prohibit Missouri regulated utilities from providing "preferential service" or an "unfair advantage" to their affiliates. Beginning at line 18 of page 12 of my rebuttal testimony, I stated that:

> It appears that the explicit connection between this transaction and "considerations in a reactive power case Andy Serri is involved in" means that UE has provided a "preferential service" to an affiliated entity since UE would not be expected to consider providing a similar service to any non-affiliated entities. The provision of this preferential service would clearly give the UE affiliate where Mr. Serri works, AEM, an "unfair advantage" over its competitors since they could not rely on a regulated affiliate with captive customers for similar assistance in resolving reactive power issues or other issues that arise from participating in wholesale electric power markets.

After my rebuttal testimony was filed, I followed up on this issue by sending several additional DRs (OPC DR Nos. 2212 through 2220) to UE in order to gain a better understanding of the events that took place in December of 2005. These DRs were sent on February 1 and were due on February 12. UE responded to DR Nos. 2212 – 2217 on February 17 but the other DR responses are still outstanding. Because some of the DRs related to this issue are overdue and still outstanding, I reserve the right to supplement my written testimony on this issue.

The additional information that I discovered about this SO_2 transaction affiliate issue came from both: (1) UE's responses to OPC DR Nos. 2212 – 2217 and (2) from a meeting on this subject that Ameren personnel requested to have with Lewis Mills (the Public Counsel) and myself.

Q. PLEASE DESCRIBE THE MEETING WITH AMEREN PERSONELL THAT YOU REFERENCED IN YOUR PRECEDING ANSWER.

A. On February 15, 2007 representatives of UE (Michael Moehn, Tom Byrne, and Maureen Borkowski) initiated a meeting with Lewis Mills and me regarding an SO_2 allowance transaction with Dynegy that is documented in Attachments 4 and 5 of my rebuttal testimony in this case. During that meeting, Michael Moehn, Tom Byrne, and Maureen Borkowski explained that the Company's documentation in Attachment 4 was incorrect in stating that the Dynegy SO_2 transaction (FUS 143-X) was related to "a reactive power case Andy Serri is involved in." They explained that, instead of being related to a FERC "reactive power case" which involved Ameren and Dynegy, the Dynegy SO_2 transaction was related to two other FERC cases in which the affiliates of Ameren and Dynegy were involved. Ameren personnel at the meeting identified the two other cases as (1) the "SECA shift to shipper case" involving AmerenIP and (2) the case where Dynegy filed a complaint with FERC regarding increased transmission charges that it would be subject to as a result of AmerenIP joining MISO. Tom Byrne and Michael Moehn said that they wanted to meet with us to discuss this because they were preparing responses to OPC DRs and their DR responses would be indicating that the documentation for the Dynegy SO_2 transaction (FUS 143-X) was incorrect in stating that the transaction was related to a "reactive power case."

During that meeting Michael Moehn stated that **_____

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_____** At the meeting, Michael Moehn also explained that he and Andy Serri called

Eric Watts at Dynegy in December of 2005 to initiate discussions with Dynegy about the early exercise of Dynegy's option to buy SO_2 allowances from UE.

Q. IN THE MEETING THAT YOU DESCRIBED IN THE PRECEDING ANSWER, AMEREN PERSONEL TOLD YOU THAT INSTEAD OF REFERENCING THE "REACTIVE POWER CASE" THE DOCUMENTATION FOR THE DYNEGY SO_2 TRANSACTION SHOULD HAVE REFERENCED TWO FERC CASES THAT WERE DESCRIBED AS (1) THE "SECA SHIFT TO SHIPPER CASE" INVOLVING AMERENIP AND (2) THE CASE WHERE DYNEGY FILED A COMPLAINT WITH FERC REGARDING INCREASED TRANSMISSION CHARGES THAT IT WOULD BE SUBJECT TO AS A RESULT OF AMERENIP JOINING MISO. DO YOU KNOW THE DOCKET NUMBERS OF THE FERC CASES THAT WERE DESCRIBED IN THE MEETING?

A. I believe that that the FERC docket number associated with the "SECA shift to shipper case" involving AmerenIP is FERC Docket No. ER05-6 and that the FERC docket numbers associated with the case where Dynegy filed a complaint with FERC regarding increased transmission charges that it would be subject to as a result of AmerenIP joining MISO are FERC Docket Nos. ER04-1239 and ER04-1254.

Q. WHAT LED YOU TO BELIEVE THAT THESE ARE THE FERC DOCKET NUMBERS ASSOCIATED WITH THE CASES THAT AMEREN PERSONEL IDENTIFIED IN THE FEBRUARY 15, 2007 MEETING THAT YOU DISCUSSED IN THE PRECEDING ANSWERS?

A. I believe these are the correct FERC docket numbers because Dynegy and AmerenIP were both involved in these cases and because the issues in these FERC dockets are a very close match to the issues that Ameren personnel described in the February 15, 2007 meeting. In addition, I have found a document (See Attachment 2) that Ameren and Dynegy jointly filed in these FERC dockets on January 25, 2006 entitled "JOINT

NOTICE OF WITHDRAWAL OF DYNEGY AND AMEREN" in which Ameren and Dynegy provided notice to the FERC that they were withdrawing certain pleadings in FERC Docket Nos. ER05-6, ER04-1239 and ER04-1254.

Q. WHAT STATEMENTS WERE MADE BY AMEREN AND DYNEGY IN THE JOINT PLEADING ENTITLED "JOINT NOTICE OF WITHDRAWAL OF DYNEGY AND AMEREN?"

A. This pleading was very brief and to the point. It stated that:

> 1. Ameren withdraws its "Notice of AmerenIP of Intention to Pursue Shift to Supplier/Shipper Adjustments in Docket Nos. ER05-6, *et al*.," filed September 6, 2005 in Docket Nos. ER05-6, *et al*., and **forswears any future claim against Dynegy** in these proceedings. (Emphasis added)
>
> 2. Dynegy withdraws all pleadings filed in Docket Nos. ER04-1239, *et al*., and ER04-1254, *et al*., **and forswears any future claims against** the Midwest Independent Transmission System Operator, Inc. ("MISO") or **Ameren** in these proceedings. (Emphasis added)

Q. DO THE STATEMENTS MADE IN THE ABOVE QUOTED FERC PLEADING BY BOTH OF THE PARTIES THAT EACH OF THEM "FORSWEARS ANY FUTURE CLAIMS AGAINST" THE OTHER PARTY IN THE SPECIFIED PROCEEDINGS INDICATE THAT THEY ARRIVED AT SOME AGREEMENT THAT RESOLVED THEIR CLAIMS AGAINST EACH OTHER?

A. Yes. This was apparently the same agreement where Dynegy agreed to the early exercise of its SO_2 emission allowance options with UE.

Q. HAVE YOU SEEN A COPY OF AN AGREEMENT THAT ADDRESSES ALL THREE OF THE ISSUES THAT AMEREN PERSONEL SAID (DURING THE FEBRUARY 15, 2007 MEETING) WERE RESOLVED BETWEEN AMEREN AFFILATES AND DYNEGY?

A. No. OPC DR No. 2237 (sent to UE on February 16, 2007) requested UE to provide "a copy of any settlement agreement(s) between Ameren or its affiliates and Dynegy Power

Marketing Inc. or its affiliates that was related to the "JOINT NOTICE OF WITHDRAWAL OF DYNEGY AND AMEREN" that was filed in FERC Docket Nos. ER04-1239 and ER05-6 on January 25, 2006" but UE has not yet responded to this DR.

Q. ATTACHMENT 3 STATES THAT ** _____

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A. **_____

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Q. HAVE YOU BEEN ABLE TO IDENTIFY SOME OF THE AMEREN EXECUTIVES WHO APPROVED ** _____

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A. Yes. UE's response to OPC DR No. 2214 included a document that is identical to Attachment 4 of my rebuttal testimony except that the 6 blank signature lines that appeared on the attachment contain signatures. (See Attachment 3 to this Surrebuttal testimony.) While it is possible to read 4 of the signatures on the attachment, James

Moore, Robert Neff, Michael Mueller, and Thomas Voss, all of the signature lines appear to be designated for Ameren affiliates other than UE, so it remains unclear as to who, if anyone, approved this transaction on behalf of UE.

Q. DO YOU FIND IT REMARKABLE THAT SIX EXECUTIVES REPRESENTING AMEREN AFFILIATES OTHER THAN UE WOULD BE WILLING TO SIGN A DOCUMENT FOR THE APPROVAL OF A UE SO_2 ALLOWANCE TRANSACTION WHICH CONTAINED THE STATEMENT "THIS TRANSACTION IS ALSO CONTINGENT UPON CONSIDERATIONS IN A REACTIVE POWER CASE ANDY SERRI IS INVOLVED IN?"

A. Yes. Apparently none of these executives have been well trained about the details of the Missouri Affiliate Transactions Rule or the FERC Code of Conduct. It seems likely that if any of the six signing executives had raised questions about the tie between the Dynegy SO_2 transaction and the "reactive power case Andy Serri is involved in", someone would have discovered that the reference to the reactive power case was an error. Presumably, the detection of this error would have, at a minimum, led to the revision of the transaction approval documentation.

Q. WHAT HAVE YOU LEARNED FROM YOUR DISCOVERY IN THIS CASE ABOUT THE EFFORTS THAT UE HAS MADE TO TRAIN ITS EMPLOYEES ABOUT THE MISSOURI AFFILIATE TRANSACTIONS RULE?

A. OPC DR No. 2196 contained the following request for information:

> 4 CSR-20.015 (9) states that "The regulated electrical corporation shall train and advise its personnel as to the requirements and provisions of this rule as appropriate to ensure compliance." Please provide a copy of all documents created by or for UE or its affiliates as part of UE's efforts to "train and advise its personnel as to the requirements and provisions of this rule as appropriate to ensure compliance." If no such documents exist, please provide a statement to that effect.

UE's response to this DR consisted of a included a single document dated November 12, 2003. This document was a power point presentation that was distributed to "Ameren management" in June of 2003 according to UE's response to OPC DR No. 2196. UE's response to OPC DR No. 2196 asserts that "AmerenUE routinely provides training on this topic" although there is apparently no documentation of this training and no documents that are used in the training. OPC DR No. 2197 requested the following information:

> 4 CSR-20.015 (9) states that "The regulated electrical corporation shall train and advise its personnel as to the requirements and provisions of this rule as appropriate to ensure compliance." Please specify all activities (e.g. training meetings, distribution of informational materials via newsletters, email, the Ameren intranet, etc.) that UE or its affiliates have engaged in since January 1, 2003 in order to "train and advise its personnel as to the requirements and provisions of this rule as appropriate to ensure compliance." If no such activities have occurred, please provide a statement to that effect.

UE's response to DR No. 2197 referenced the Company's response to DR No. 2196 in which UE was only able to cite one specific instance where educational materials had been distributed to "Ameren management" in June of 2003. It stretches credibility, however, to believe UE's assertions that materials dated November 12, 2003 were distributed to Ameren personnel several months earlier in June of 2003.

Q. DOES UE'S INABILITY TO PROVIDE EVIDENCE THAT IT HAS ENGAGED IN ANY SUBSTANTIAL EFFORTS TO COMPLY WITH THE TRAINING REQUIREMENTS IN SECTION (9) OF 4 CSR-20.015 PROVIDE ONE POSSIBLE EXPLANATION OF HOW SIX EXECUTIVES OF UE AFFILIATES COULD CHOOSE TO SIGN A SO_2 TRANSACTION APPROVAL DOCUMENT THAT CONTAINED CLEAR WARNING SIGNALS THAT THE TRANSACTION MIGHT BE PART OF AN IMPROPER AFFILIATE TRANSACTION?

A. Yes. It does. However, I think the willingness of six executives to sign this document on behalf of UE affiliates is just as much a symptom of Ameren's emphasis over the last few

years on planning and executing business strategies that align the interests of the various Ameren affiliates with the overall interests of the Ameren holding company.

V. UE'S ENTITLEMENT TO 40% OF THE OUTPUT FROM THE ELECTRIC ENERGY, INC. JOPPA PLANT

Q. DO YOU HAVE ANY RESPONSE TO THE REBUTTAL TESTIMONY FILED BY UE WITNESS MICHAEL MOEHN REGARDING THE ELECTRIC ENERGY, INC. JOPPA GENERATING PLANT?

A. Yes. At line 9 on page 7 of his testimony, Mr. Moehn states:

> The daily operations, maintenance and planning of Joppa Plant are the sole responsibility of the management of EEInc.

Mr. Moehn's assertion that Ameren has no control over the operations, maintenance and planning of Joppa Plant is simply not credible. The President of EEInc., Robert Powers also holds the title of Vice President of Generation Technical Services at Ameren according to UE's response to OPC DR No. 2190. Ameren's 2003 SEC 10-K indicates that Mr. Powers began his career at Ameren as a long time UE employee. The description of Mr. Powers under the "Executive Officers of the Registrant" section of this SEC filing states:

> Mr. Powers began is career with UE in 1976 as an engineer. He was named Supervising Engineer in 1977, Superintendent in 1985, Assistant Manager in 1990, and Manager in 1995. In 2000, Mr. Powers was elected Vice President of Genco. Also in 2000, he was elected President of EEI.

Q. HAS MR. POWERS HELD OTHER POSITIONS WITH AMEREN AFFILIATES?

A. Yes. The Annual Report of Interlocking Positions (FERC Form 561) that he filed at FERC for 2003 indicated that at that time he held the positions of EEInc President,

Ameren Energy Development Co. Vice-President, Ameren Energy Generating Co. Vice-President, AmerenEnergy Medina Valley Cogen, LLC. Vice-President, and AmerenEnergy Resources Generating Co. (Genco) Vice-President.

Q. CAN YOU PROVIDE A SPECIFIC EXAMPLE WHERE AMEREN'S MANAGEMENT HAS DIRECTED THE PLANNING AND OPERATIONS OF EEINC?

A. **_____

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Q. DO YOU HAVE ANY RESPONSE TO THE REBUTTAL TESTIMONY FILED BY UE WITNESS ROBERT DOWNS REGARDING THE ELECTRIC ENERGY, INC. JOPPA GENERATING PLANT?

A. Yes. At line 6 on page 6 of his testimony, Mr. Downs states:

> It would be legally impermissible for AmerenUE to insist, through coercion or direction of its employees/directors, that EEInc sell its assets to AmerenUE for less than fair market value.

Perhaps Mr. Downs is not aware that Kentucky Utilities (KU) pursued the approach that he claims is "legally impermissible." I am not aware of UE, Ameren, EEInc or any other

entity seeking a legal remedy to stop KU from pursuing this approach. Evidence that KU pursued this approach is contained in the December 22, 2005 filing (See Attachment 6) made by KU in Case No. 2005-00162 at the Kentucky Public Service Commission.

VI DISALLOWANCE OF PINCKNEYVILLE AND KINMUNDY COSTS

Q. STARTING AT LINE 12 ON PAGE 27 OF HIS REBUTTAL TESTIMONY, UE WITNESS RICHARD VOYTAS QUOTES FROM SOME OF THE FINDINGS IN THE FEBRUARY 5, 2004 INITIAL DECISION OF JUDGE CINTRON. AT LINE 1 ON PAGE 28, MR. VOYTAS HAS QUOTED A PASSAGE FROM THE INITIAL DECISION THAT REFERENCES A "FUTURE MPSC PRUDENCE REVIEW." ARE YOU AWARE OF ANY DOCUMENTS THAT UE SUBMITTED TO THE COMMISSION REGARDING THE COMPANY'S WILLINGNESS TO ACCEPT THE RESULTS OF A COMMISSION PRUDENCE REVEW OF THE PINCKNEYVILLE/KINMUNDY TRANSACTION?

A. Yes. Attachment 7 is a copy of a letter that Steve Sullivan signed on behalf of UE stating that the Company agrees that the Commission has the authority to review the prudency of the Pinckneyville/Kinmundy transaction.

VII DISALLOWANCE OF PENO CREEK COSTS

Q. AT LINES 13 – 15 ON PAGE 29 OF HIS REBUTTAL TESTIMONY, MR. VOYTAS CRITICISES YOU FOR NOT CONDUCTING A DETAILED AUDIT OF THE CONSTRUCTION OF THE PENO CREEK FACILITY. HAVE YOU SENT UE DRS REGARDING THE CONSTRUCTION OF THE PENO CREEK FACILITY?

A. Yes, I have. Unfortunately some of these DRs are overdue and still unanswered as of date that this testimony is filed so I reserve the right to supplement this testimony when those overdue DR responses (including DR Nos. 2126 and 2127) arrive.

Q. ON PAGES 29 AND 30 OF HIS REBUTTAL TESTIMONY, MR. VOYTAS CRITICISES YOUR CHOICE OF THE BENCHMARK FIGURE OF $390/KW THAT YOU UTILITIZED IN YOUR ADJUSTMENT OF THE COST OF THE PENO CREEK GENERATING FACILLITY. ARE THE CRITICISMS OF MR. VOYTAS JUSTIFIED?

A. No. Mr. Voytas appears to be very confused about the source of the $390/kW figure that I used from a UE filing in Case No. EA-2000-37. At lines 2 -5 he claims that this figure is outdated and irrelevant because it comes from a 1995 study. However, UE's response to OPC DR No. 510 in Case No. EA-2000-37 (See Attachment 8) shows that Mr. Voytas is mistaken. As this DR response indicates, the $390/kW figure came from an analysis that was attached to an August 26, 1999 letter from Ameren employee Fred Pope.

Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

A. Yes.

Kind Attachment 1

has been deemed

“Highly Confidential” in its entirety

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission System Operator, Inc	)	Docket Nos. ER04-1239-000, *et al.*
Illinois Power Company	)	Docket Nos. ER04-1254-000, *et al.*
	and	
Midwest Independent Transmission System Operator, Inc.	)	Docket Nos. ER05-6-000, *et al.*
Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, LLC, *et al.*	)	Docket Nos. ER04-135-000, *et al.*
Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, LLC, *et al.*	)	Docket Nos. EL02-111-000, *et al.*
Ameren Services Company, *et al.*	)	Docket Nos. EL03-212-000, *et al.*

To: The Honorable Curtis L. Wagner, Jr., Chief Administrative Law Judge
The Honorable H. Peter Young, Presiding Administrative Law Judge

Cc: The Honorable Bruce L. Birchman, Settlement Judge
The Honorable Lawrence Brenner, Settlement Judge

JOINT NOTICE OF WITHDRAWAL OF DYNEGY AND AMEREN

Pursuant to Rule 216 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"), 18 C.F.R. § 385.216 (2005), Dynegy Power Marketing, Inc. and Dynegy Midwest Generation, Inc. (collectively referred to herein as "Dynegy") and Ameren Services Company and Illinois Power Company dba AmerenIP (collectively referred to herein as "Ameren") hereby give notice of the withdrawal of the following pleadings in the captioned proceedings. Specifically,

1. Ameren withdraws its "Notice of AmerenIP of Intention to Pursue Shift to Supplier/Shipper Adjustments in Docket Nos. ER05-6, *et al.*," filed September 6, 2005 in Docket Nos. ER05-6, *et al.*, and forswears any future claim against Dynegy in these proceedings.

2. Dynegy withdraws all pleadings filed in Docket Nos. ER04-1239, *et al.*, and ER04-1254, *et al.*, and forswears any future claims against the Midwest Independent Transmission System Operator, Inc. ("MISO") or Ameren in these proceedings.

Respectfully submitted,

/s/

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2000 K Street, N.W., Suite 500
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(202) 828-5815 (phone)
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/s/

Betsy Carr
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1000 Louisiana, Suite 5800
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(713) 767-6109 (phone)
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betsy.carr@dynegy.com

Counsel for Dynegy Power Marketing, Inc. and Dynegy Midwest Generation, Inc.

/s/

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/s/

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(202) 654-5613 (fax)
jeffrey.jakubiak@troutmansanders.com

Counsel for Ameren Services Company and AmerenIP

Dated: January 25, 2006

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2006, I served the foregoing document via first-class mail upon each person designated on the official service list compiled by the Secretary in these proceedings.

/s/

Jeffrey M. Jakubiak

Kind Attachment 3

has been deemed

“Highly Confidential” in its entirety

Kind Attachment 4

has been deemed

“Highly Confidential” in its entirety

Kind Attachment 5

has been deemed

“Highly Confidential” in its entirety

Kent W. Blake
Director
State Regulation and Rates

LG&E Energy LLC
220 West Main Street
Louisville, Kentucky 40202
502-627-2573
502-217-2442 FAX
kent.blake@lgeenergy.com

December 22, 2005

Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RE: **The 2005 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company**
Case No: 2005-00162

Dear Ms. O'Donnell:

As John Malloy and I discussed with Commission Staff on September 23, 2005, Kentucky Utilities Company's ("KU") Power Supply Agreement ("PSA") with Electric Energy Inc. ("EEI") is scheduled to expire at the end of 2005. EEI's position on renewing the PSA continues to be one based on market indices (defined generally as the applicable locational marginal pricing ("MISO LMP")) with a capacity payment, as opposed to the cost-based rate structure under which the contract has historically operated and which KU requested during the contract negotiations.

After extensive negotiations, we have received and reviewed EEI's final proposed new PSA for this 200 MWs from EEI's Joppa plant located in Joppa, Illinois. KU has evaluated EEI's proposed renewal of the PSA in the context of its Integrated Resource Plan ("IRP") based upon a least-cost reasonable resource analysis.

Based on the proposed PSA by EEI, KU has determined that continuation of the PSA would not be a least-cost option for KU's customers. The results from the evaluation of the proposed EEI contract were presented to the Company's Operating Committee established pursuant to the Power Supply System Agreement on December 16, 2005. After consideration of the supporting analysis, the Operating Committee approved the recommendation not to renew the PSA with EEI. We notified EEI of KU's decision on December 22, 2005. Enclosed is a copy of our notification letter to EEI.

As such, the PSA will expire December 31, 2005, and KU will no longer purchase the 200 MW of capacity and energy from EEI. There is no near term (2006-2007) impact on KU's capacity plans. KU and Louisville Gas and Electric Company ("LG&E") will continue to review their capacity and energy needs in the context of their on-going IRP process.

Should you have any questions concerning the enclosed, please do not hesitate to contact me.

Sincerely,

Kent W. Blake

Kent W. Blake

Enclosure

cc: Elizabeth E. Blackford
Michael L. Kurtz

Kentucky Utilities Company One Quality Street Lexington, KY 40507-1462 Tel 606 255-2100

Kentucky
Utilities
Company

Louisville Gas and Electric Company
220 West Main Street
Louisville, Kentucky 40202

December 22, 2005

SENT by email and overnight mail

Mr. Robert L. Powers
President
Electric Energy Incorporated
One Ameren Plaza
1901 Chouteau Avenue
MC-600
St. Louis, Missouri 63103
314-554-6101

Re: Draft Power Purchase Agreement (the "Draft PPA") between Electric Energy, Inc. ("EEI") and Kentucky Utilities Company ("KU")

Dear Bob:

I send this letter in response to the draft PPA Jim Helm circulated to me on December 6, 2005. KU has understood that the Draft PPA, including the pricing provisions therein, constitutes EEI's best and final offer to KU of power from the Joppa plant after the end of calendar year 2005.

As you know, KU had hoped to negotiate a cost-based agreement to replace the present Power Supply Agreement that expires on December 31, 2005, and we had been working toward that goal for much of the past year. While the PPA draft that you forwarded may achieve EEI's goal of pursing market-based sales, it unfortunately, as confirmed through KU's generation planning analysis, is not be a least cost resource for KU and its customers. Accordingly, KU is confirming by this letter that it must decline EEI's offer of power on these terms. If EEI should have power available on better terms in the future or at a later time, KU certainly remains interested in considering such availability, and does not intend by this letter to waive any right or claim that it may otherwise have to be notified and have an opportunity to acquire that power.

Please feel free to call me with any questions or concerns.

Sincerely,

KENTUCKY UTILITIES COMPANY

Charles A. Freibert, Jr.

By:_____
Charles A. Freibert, Jr.
Director Energy Marketing
502-627-3673

cc: Ameren – Alan Kelly, Andy Serri
EEI – Jim Helm
LGEE – Paul Thompson, John Voyles, Kent Blake, Bob Brunner, Steve Phillips, Beth Cocanougher

AmerenUE

Steven R. Sullivan
Vice President Regulatory Policy,
General Counsel & Secretary

One Ameren Plaza
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St. Louis, MO 63166-6149
314.554.2098
314.554.4014 fax
srsullivan@ameren.com

AMENDED LETTER

June 5, 2003

VIA ELECTRONIC MAIL

Chairman Kelvin Simmons
Honorable Connie Murray
Honorable Steve Gaw
Honorable Bryan Forbis
Honorable Robert Clayton, III
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102-0360

Dear Commissioners:

In regard to Ameren Energy Generating Co. and Union Electric Co. d/b/a AmerenUE, Docket No. EC03-53-000, AmerenUE agrees that the Missouri Commission has the authority to fully analyze the prudency of the proposed transaction, including, but not limited to, the timing of the purchase, the amount of the purchase, the need for the purchase, and the appropriateness of the purchase in light of other options, including purchase on the market or acquisition of other assets.

Further, AmerenUE agrees that the transmission of this letter to the FERC does not in any way constitute a preapproval of ratemaking treatment by the Commission nor does it prohibit or prevent any party from raising any issues in any future ratemaking case in which the transaction is reviewed. AmerenUE agrees that FERC approval of the purchase and transfer of the Pinckneyville and Kinmundy generating units from AEG to AmerenUE does not preempt the Missouri Commission from determining the prudency of that transaction nor preempts the Missouri Commission from Directing appropriate ratemaking treatment.

Sincerely,

SRS/bb
cc: Dan Joyce
Joe Bednar

Attachment 7

Kind Attachment 8

has been deemed

“Highly Confidential” in its entirety