

Exhibit No.:  
Issue(s): Deferred Income Taxes  
Witness: Gregory L. Nelson  
Sponsoring Party: Union Electric Company  
Type of Exhibit: Rebuttal Testimony  
Case No.: ER-2008-0318  
Date Testimony Prepared: October 14, 2008

**MISSOURI PUBLIC SERVICE COMMISSION**

**Case No. ER-2008-0318**

**REBUTTAL TESTIMONY**

**OF**

**GREGORY L. NELSON**

**ON**

**BEHALF OF**

**UNION ELECTRIC COMPANY  
d/b/a AmerenUE**

**\*\* DENOTES HIGHLY CONFIDENTIAL INFORMATION \*\***

**St. Louis, Missouri  
October, 2008**

**NP**

1 **REBUTTAL TESTIMONY**

2 **OF**

3 **GREGORY L. NELSON**

4 **CASE NO. ER-2008-0318**

5 **Q. Please state your name and business address.**

6 A. My name is Gregory L. Nelson. My business address is One Ameren  
7 Plaza, 1901 Chouteau Avenue, St. Louis, Missouri 63103.

8 **Q. By whom and in what capacity are you employed?**

9 A. I am employed by Ameren Services Company as Vice President & Tax  
10 Counsel.

11 **Q. Please describe Ameren Services Company.**

12 A. Ameren Services Company is a subsidiary of Ameren Corporation that  
13 provides administrative and technical support services for its parent and other  
14 subsidiaries, including Union Electric Company d/b/a AmerenUE (“AmerenUE” or  
15 “Company”). Ameren Services Company was formed as a result of the December 1997  
16 merger transaction involving UE and CIPSCO Incorporated.

17 **Q. Please describe your employment history with Ameren Services**  
18 **Company.**

19 A. I was hired by UE as Manager, Taxes in October, 1995, and became  
20 Manager, Taxes of Ameren Services Company, when that company was formed. In  
21 1999, I was elected Vice President & Tax Counsel of Ameren Services Company.

1           **Q.     Please describe your duties and responsibilities as Vice President &**  
2 **Tax Counsel.**

3           A.     I am Ameren's chief tax officer, and my department is responsible for  
4 federal, state and local tax accounting, compliance, advice and planning for the Ameren  
5 group of corporations, including UE.

6           **Q.     Please describe your qualifications.**

7           A.     I graduated from Vanderbilt University in 1978 with a Bachelor of Arts  
8 degree in Business Administration. I also received a Juris Doctor degree from Vanderbilt  
9 University in 1981. I received a Master of Laws degree in Taxation from Georgetown  
10 University in 1988. I have been employed exclusively in the field of taxation since my  
11 graduation from law school. My tax experience includes government service (with the  
12 Tax Division of the United States Department of Justice in Washington, D.C. from 1984-  
13 1988), the private practice of law (with Reid & Priest in Washington, D.C. from 1988-  
14 1995) and employment as the head of the UE and Ameren Services Tax Departments  
15 (1995-present). Since 1988, my career has been exclusively focused on the taxation of  
16 regulated utilities and related businesses.

17                     I have served as Chair of the Edison Electric Institute's Taxation  
18 Committee and Co-chair of that committee's Tax Analysis and Research Subcommittee.  
19 I have also served as the President of the St. Louis Chapter of Tax Executives Institute.

20                     I have testified before a subcommittee of the Ways and Means Committee  
21 of the United States House of Representatives and various committees of the Missouri  
22 Senate and House of Representatives on matters relating to the taxation of regulated

1 utilities. I also have testified before the Illinois Commerce Committee on taxation issues  
2 during hearings on the merger transaction involving UE and CIPSCO Incorporated.

3 **Q. What is the purpose of your rebuttal testimony?**

4 A. The purpose of my rebuttal testimony is to address an adjustment that  
5 Staff has made to increase the amount of deferred income taxes that reduce rate base.  
6 The specific adjustment relates to the treatment of liabilities associated with uncertain tax  
7 positions.

8 **Q. How did the Staff address the treatment of liabilities associated with**  
9 **uncertain tax positions?**

10 A. On pages 11-12 of the Staff Report on Cost of Service (“Report”), the Staff  
11 described the effect of deferred income taxes and the ratemaking principle that net  
12 deferred income liabilities are a reduction to rate base. Staff identified uncertain tax  
13 positions that UE has taken with respect to temporary book-tax differences. Staff stated  
14 that UE will not know whether the uncertain tax positions will be allowed or disallowed  
15 until the completion of the audits of its tax returns by the Internal Revenue Service. Staff  
16 stated that the Company has recorded reserves for those uncertain tax positions. Staff  
17 concluded that it “does not believe that the deferred tax balance should be reduced for the  
18 determination of rates until a final determination has been made regarding these items by  
19 the Internal Revenue Service.” In Accounting Schedule 2, line 20, Staff proposes that the  
20 amount of Deferred Taxes that reduces rate base should be \*\* [REDACTED] \*\*. That  
21 amount includes liabilities in the amount of \*\* [REDACTED] \*\* that are associated with  
22 UE’s uncertain tax positions.

**NP**

1           **Q.     Do you agree with Staff’s adjustment to Deferred Taxes?**

2           A.     No. The deferred tax balance used to reduce rate base should not include  
3 liabilities associated with uncertain tax positions. Therefore, I believe that the Deferred  
4 Taxes that reduce rate base, line 20 of Accounting Schedule 2, should be  
5 **\*\* [REDACTED] \*\***.

6           **Q.     Why should liabilities associated with uncertain tax positions be**  
7 **excluded from the balance of deferred tax liabilities that reduce rate base?**

8           A.     As a general rule, ratemaking should provide UE’s customers with the tax  
9 benefits that UE ultimately realizes.

10                   As Staff states in its Report, deferred taxes arise from temporary  
11 differences between book and tax treatment of an item of income or expense. These  
12 deferred taxes are in essence an interest-free loan from the government to the taxpayer.  
13 Because the interest-free loan from the government is essentially “no-cost capital” to a  
14 regulated utility, well-established regulatory principles require that the deferred taxes be  
15 removed from rate base. These principles reflect the objective of ratemaking to provide  
16 ratepayers with the benefit of tax deferrals that are actually realized by the utility.

17                   However, Staff’s revised Accounting Schedule 2 treats liabilities  
18 associated with uncertain tax positions as deferred taxes in the rate base calculation. This  
19 treatment is erroneous because it has the effect of treating such liabilities as no-cost  
20 capital. Liabilities for uncertain tax positions are not cost-free capital, and should  
21 therefore be excluded from the deferred taxes that reduce rate base.

**NP**

1           **Q.     Why is it incorrect to treat liabilities for uncertain tax positions as no-**  
2 **cost capital?**

3           A.     The liabilities for uncertain tax positions represent the best estimate of the  
4 amount of liabilities that UE expects to pay to taxing authorities, with interest. Because  
5 these liabilities to the government bear interest, they are not cost-free capital to UE.

6           **Q.     How does UE determine the amount of liabilities for uncertain tax**  
7 **positions?**

8           A.     Generally Accepted Accounting Principles (“GAAP”) provide rules for  
9 recording the effect of tax deferrals resulting from temporary book-tax differences in  
10 SFAS 109 and FASB Interpretation No. 48 (“FIN 48”). Under these rules, a regulated  
11 utility, like any other publicly-held enterprise, records as a deferred tax only the portion  
12 of the deferral that meets the criteria for recognition prescribed by FIN 48. Under FIN  
13 48, the potential deferral associated with the uncertain tax position that does not meet the  
14 criteria for recognition is not recorded as a deferred tax, but rather as a separate “other”  
15 liability, which we refer to as the “FIN 48 liability.” This amount is a liability for the  
16 deferral of tax that the taxpayer claimed on its tax returns that, under the FIN 48 standard,  
17 may not be recognized. In other words, the FIN 48 liability is the amount that the  
18 taxpayer expects to repay the government, with interest, under the FIN 48 standard.

19           **Q.     What internal and external review is required for FIN 48 liabilities?**

20           A.     FIN 48 requires UE to review the FIN 48 liabilities quarterly and adjust  
21 them to take into account changes in laws and regulations. In addition, UE’s external  
22 auditors review UE’s FIN 48 liabilities, also on a quarterly basis. Therefore, there is a  
23 constant true-up process of all FIN 48 liabilities, as mandated by GAAP.

1           **Q.     What is the effect of the Staff's position?**

2           A.     Under the calculation employed in the Staff's revised Accounting  
3     Schedule 2, 100% of the benefit of tax deferrals for uncertain tax positions reduces rates  
4     by virtue of the rate base offset.  If the ultimate outcome matches the FIN 48 analysis  
5     (*i.e.*, UE loses the uncertain tax position), there will be no deferral of tax and no  
6     mechanism for UE to recover the amount that reduced rates but was not actually realized  
7     by the utility.

8           **Q.     Does this conclude your rebuttal testimony?**

9           A.     Yes, it does.

10

**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 GREGORY L. NELSON**

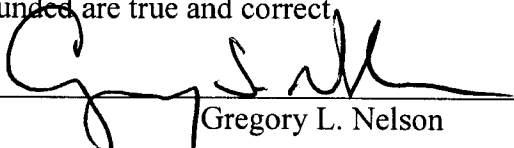
**STATE OF MISSOURI** )  
 ) ss  
**CITY OF ST. LOUIS** )

Gregory L. Nelson, being first duly sworn on his oath, states:

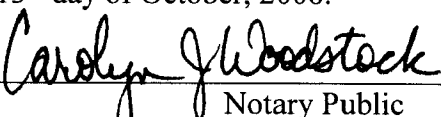
1. My name is Gregory L. Nelson. I am employed by Ameren Services Company as Vice President & Tax Counsel.

2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony on behalf of Union Electric Company, d/b/a AmerenUE, consisting of 6 pages, all of which have been prepared in written form for introduction into evidence in the above-referenced docket.

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

  
\_\_\_\_\_  
Gregory L. Nelson

Subscribed and sworn to before me this 13<sup>th</sup> day of October, 2008.

  
\_\_\_\_\_  
Notary Public

My commission expires: 6/10/2012

