

Exhibit No.: _____

Issue(s):

Applicability of GAAP/
Normalization Adjustments/
Accrual Accounting/
Non-Recurring Expenses/
Customer Growth Adjustment/
Income Taxes/
Accrual for OPEB

Witness // Type of Exhibit: Effron/Cross-Surrebuttal

Sponsoring Party:

Public Counsel

Case No.:

EC-2002-1

CROSS-SURREBUTTAL TESTIMONY

OF

DAVID J. EFFRON

Submitted on Behalf of the Office of the Public Counsel

Staff of the Missouri Public Service Commission

v.

Union Electric Company d/b/a AmerenUE

Case No. EC-2002-1

June 24, 2002

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

STAFF OF THE MISSOURI
PUBLIC SERVICE COMMISSION,
Complainant,

vs.

UNION ELECTRIC COMPANY,
d/b/a AmerenUE,
Respondent.

Case No. EC-2002-1

AFFIDAVIT OF DAVID J. EFFRON

STATE OF CONNECTICUT)

) ss

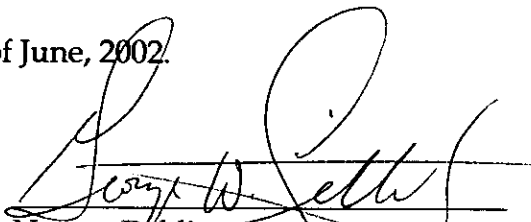
COUNTY OF)

David J. Effron, of lawful age and being first duly sworn, deposes and states:

1. My name is David J. Effron. I am a consultant with Berkshire Consulting Services. I am presenting testimony on behalf of the Missouri Office of the Public Counsel.
2. Attached, hereto and made a part hereof for all purposes, is my cross-surrebuttal testimony consisting of pages 1 through 15 and Schedule DJE-4.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.


David J. Effron

Subscribed and sworn to me this 21st day of June, 2002.


Notary Public

My Commission expires 3/31/07.

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CROSS-SURREBUTTAL TESTIMONY

OF

DAVID J. EFFRON

STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION

V.

UNION ELECTRIC COMPANY D/B/A AMERENUE

CASE NO. EC-2002-1

1 **1. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME.**

3 A. My name is David J. Effron.

4 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS DOCKET?**

5 A. Yes. I submitted rebuttal testimony on May 10, 2002. My qualifications, background, and
6 experience are included with my rebuttal testimony.

7 **Q. WHAT IS THE PURPOSE OF THIS CROSS-SURREBUTTAL TESTIMONY?**

8 A. The purpose of this cross-surrebuttal testimony is to respond to the rebuttal testimony of Union
9 Electric Company d/b/a AmerenUE ("UE" or "the Company"). In this cross-surrebuttal testimony,
10 I respond to the Company's rebuttal testimony regarding the applicability of generally accepted
11 accounting principles ("GAAP"), normalization adjustments to test year expenses, accrual vs. cash
12 basis accounting, the treatment of non-recurring expenses, customer growth annualization, and the
13 Company's calculation of income tax expense in its cost of service presentation. I also present

1 additional testimony on the accrual for postretirement benefits other than pensions addressed in my
2 original direct testimony.

3 **2. APPLICABILITY OF GAAP**

4 **Q. ON PAGE 15 OF HIS REBUTTAL TESTIMONY, COMPANY WITNESS LYONS**
5 **CLAIMS THAT IN THE AREAS OF NORMALIZATION, ACCRUAL**
6 **ACCOUNTING, AND NON-RECURRING EXPENSES "STAFF JETTISONS GAAP**
7 **PRINCIPLES (SIC) IN FAVOR OF SOME HOME-COOKED METHODOLOGY."**

8 **DO YOU AGREE WITH THIS CHARACTERIZATION?**

9 A. No. GAAP offer little, if any, insight into the appropriate treatment of these items for ratemaking
10 purposes. The methods proposed by Staff in these areas are not inconsistent with GAAP. Rather,
11 GAAP, for the most part, do not address how these matters are to be treated in the development of
12 the cost of service for the purpose of setting rates. To the extent GAAP are relevant, I find Staff's
13 approach to be every bit as consistent with GAAP as the Company's approach.

14 **Q. PLEASE EXPLAIN.**

15 A. GAAP generally apply to the presentation of financial statements such as the results of operations
16 and balance sheets. However, as a general rule, GAAP are not relevant in considering if or how
17 actual expenses incurred in a historic test year should be adjusted for the purpose of determining
18 revenue requirements on a prospective basis. For example, in this case, the test year is the twelve
19 months ended June 30, 2001. To determine the labor expense to include in the cost of service Staff
20 adjusts the actual labor expense incurred in the twelve months ended June 30, 2001 for wage rate
21 increases. Obviously, in reporting the results of operations for a given period, GAAP do not

1 provide for this type of adjustment. This does not mean Staff's adjustment for wage increases is
2 inconsistent with GAAP. Rather, GAAP simply do not address whether, or to what extent, labor
3 expense should be adjusted for wage rate increases in determining revenue requirements for a
4 regulated utility.

5 There are certainly areas where regulatory commissions might consider GAAP in deciding
6 the proper attribution of expenses to a given period for cost of service purposes. For example, a
7 commission might consult GAAP with regard to the inclusion of deferred tax expense in the cost of
8 service, the appropriate periodic pension cost or other postretirement benefit cost to include in
9 revenue requirements, or whether an expenditure should be capitalized or expensed. However, the
10 issues of normalization of expenses, accrual accounting, and non-recurring expenses in this case are
11 all matters of estimating the appropriate level of expense for the purpose of determining the
12 Company's prospective revenue requirement. As much as Mr. Lyons might contend otherwise,
13 GAAP simply do not offer a great deal of guidance when it comes to such matters of estimation.

14 **3. NORMALIZATION ADJUSTMENTS**

15 **Q. DO STAFF'S NORMALIZATION ADJUSTMENTS TO TEST YEAR EXPENSES**
16 **VIOLATE GAAP?**

17 **A.** They do not. I am unaware of any generally accepted accounting principle that requires a
18 regulatory commission to use each and every actual historic test year expense, regardless of how
19 abnormal or unusual, for the purpose of establishing prospective revenue requirements. If Staff's
20 normalization adjustments properly reflect the expenses that the Company can reasonably expect to

1 incur on a prospective, ongoing basis, then the normalization adjustments make perfect sense as
2 well as not running afoul of GAAP.

3 Mr. Lyons takes Staff to task for using a five-year normalization period to normalize
4 injuries and damages, describing the five-year period as "arbitrary and opportunistic." (Page 44)
5 Mr. Lyons does not state that it is inappropriate for Staff to normalize injuries and damages expense
6 and acknowledges that this expense has fluctuated significantly in recent years. There does not
7 seem to really be any dispute that it is proper to normalize this expense. Unfortunately, there is no
8 objective formula to determine the appropriate number of years to use to calculate the
9 normalization adjustment. The goal is to use enough years to get an adequate sample of actual data
10 but not to reach back so far as to include data that might be obsolete. In my opinion, five years
11 strikes an appropriate balance in this regard.

12 Mr. Lyons claims that Staff has arbitrarily and opportunistically chosen five years to
13 normalize injuries and damages expense, and he supports this claim by noting that use of a three-
14 year or four-year average would have resulted in an adjustment of \$500,000 less. Staff is proposing
15 a revenue reduction of \$245 million to \$285 million. I seriously doubt that a five-year average was
16 chosen for the purpose of squeezing an extra \$500,000 out of the Company. Because use of a
17 different number of years would have resulted in a different adjustment doesn't mean five years is
18 inappropriate.

19 **Q. DO YOU BELIEVE STAFF HAS BEEN " OPPORTUNISTIC" IN ITS CHOICE**
20 **OF THE PERIODS USED TO CALCULATE ITS PROPOSED NORMALIZATION**
21 **ADJUSTMENTS?**

1 A. No. For, example, on page 15 of his rebuttal testimony, Mr. Lyons implies Staff has been
2 inconsistent by using a four-year period to normalize tree trimming expense as opposed to the five-
3 year averages used elsewhere by Staff. If Staff had used a five-year average to quantify the
4 adjustment to actual test year tree trimming expense, the adjustments would have been even greater
5 and pro forma expenses less. Any suggestion that Staff has been opportunistic in this regard is
6 without any basis in fact.

7 **4. ACCRUAL ACCOUNTING**

8 **Q. TURNING NOW TO THE ISSUE OF ACCRUAL VS. CASH BASIS COUNTING,**
9 **ISN'T IT TRUE THAT GAAP REQUIRES ACCRUAL ACCOUNTING?**

10 A. Yes. It appears to be the position of the Company that because GAAP requires accrual accounting,
11 the test year revenue requirement must include the actual accrual for environmental remediation
12 costs, legal expenses, and injuries and damages for the twelve months ended June 30, 2001, as
13 booked by the Company in those twelve months.

14 **Q. DO YOU AGREE?**

15 A. No. Again, GAAP offers little guidance on the appropriate allowance for environmental costs,
16 legal expenses, and injuries and damages to include in the Company's prospective revenue
17 requirement. The appropriate expense to include in the cost of service for these items is the normal,
18 ongoing amount that will enable the Company to meet its obligations prospectively, to the extent
19 such obligations are properly recoverable from ratepayers. If the historic actual normalized cash
20 disbursements for these expenses are a realistic approximation of the prospective annual costs
21 associated with these obligations, then including those amounts in the revenue requirement offers

1 the Company a reasonable opportunity to recover the amounts necessary to meet its prospective
2 obligations, and there is no inconsistency with GAAP.

3 **Q. CAN YOU ILLUSTRATE YOUR POINT WITH AN EXAMPLE?**

4 A. Injuries and damages expense is a good example. In the twelve months ended June 30, 2001, the
5 Company accrued \$17,800,000 for injuries and damages expenses, based apparently on what it
6 believed its ultimate liability would be for injuries and damages experienced during that period.
7 Staff reduced this expense to \$12,595,000 based on actual disbursements for injuries and damages
8 in the five years ended September 30, 2001.

9 The Company asserts that Staff is in violation of GAAP because it based its normalization
10 adjustment on cash disbursements rather than the expenses accrued by the Company. However, it
11 must be remembered that accruals are estimates. If those estimates are shown to be inaccurate by
12 actual experience, then it would be wholly improper under GAAP to base the prospective
13 allowance for injuries and damages on the Company's historic accruals.

14 In fact, the actual annual disbursements for injuries and damages in the five years ended
15 September 30, 2001 never reached \$17,800,000, and, as far as I can tell, the Company has
16 presented no evidence that they ever will. The advantage of using actual disbursements is that they
17 represent actual costs that the Company has incurred for injuries and damages, not subjective
18 estimates of what the Company expects it will ultimately incur.

19 Now it is certainly possible that something has changed that would render the historic level
20 of actual expenditures for injuries and damages inapplicable to the future. However, the Company

1 has not identified any such changes nor cited any factors that would indicate that prospective
2 injuries and damages expenses will be higher in the future than they were in five years ended
3 September 30, 2001. Absent any reason to believe that there is some escalating trend in injuries
4 and damages costs, I believe that the actual expenditures for injuries and damages is the best basis,
5 and without question the most objective basis, for determining the injuries and damages expense to
6 include in the revenue requirement. Further, I believe that it is, or should be, a reasonable
7 representation of the average annual accrual that the Company will record on its books
8 prospectively for injuries and damages. In this sense, the Staff's method of determining the injuries
9 and damages expense to include in the revenue requirement is ultimately consistent with GAAP.

10 **Q. THE COMPANY ALSO ACCUSES STAFF OF SELECTIVELY APPLYING THE**
11 **ACCRUAL BASIS OF ACCOUNTING WHEN IT SERVES THEIR PURPOSE, AS**
12 **IN THE CASE OF ACCOUNTING FOR INSURANCE PROCEEDS FROM THE**
13 **VENICE FIRE (LYONS, PAGE 18). DOES THIS ACCUSATION HAVE ANY**
14 **MERIT?**

15 **A.** None whatsoever. It is entirely appropriate to recognize insurance proceeds received by the
16 Company to cover the costs of this (hopefully) unusual and non-recurring event. It would be
17 entirely inappropriate and internally inconsistent to include the expenses of this incident in the cost
18 of service with no recognition of the insurance proceeds received in defrayal of those expenses. In
19 effect, this would be allowing the Company to recover costs that it never ultimately incurred.
20 Based on the rebuttal testimony of Mr. Lyons at pages 38-41, it is apparently the position of the
21 Company that it is appropriate to include the expense of the Venice fire, without consideration of

1 the insurance proceeds, in the Company's revenue requirement as a normal recurring expense so
2 that the Company can recover this expense (again) from ratepayers not just once, but year after
3 year, as long as the rates established in this case are in effect. The treatment of the Venice fire
4 expenses proposed by the Company is clearly improper and the Commission should reject it.

5 **5. NON-RECURRING EXPENSES**

6 **Q. DO YOU BELIEVE THAT STAFF'S ADJUSTMENTS TO ELIMINATE NON-**
7 **RECURRING EXPENSES ARE APPROPRIATE?**

8 A. Yes. It has always been my understanding that rates are established to recover an ongoing, normal
9 level of expenses, not to recover one-time or non-recurring expenses from previous periods. The
10 Company claims that by removing such expenses from the test year, "those costs will never be
11 recovered" (Lyons, page 23). This claim is not only baseless, it also betrays a basic
12 misunderstanding of the whole ratemaking process.

13 **Q. PLEASE EXPLAIN.**

14 A. A good example of the flaw in the Company's reasoning is the adjustment by Staff to reduce pro
15 forma transmission expenses by \$12,503,000 to remove the payment by UE to exit the Midwest
16 Independent System Operator ("ISO"). This expense is clearly non-recurring. The Company is
17 proposing to amortize this payment over four years and to include the amortization expense in the
18 cost of service on the grounds that the expense was prudently incurred and the Company should
19 have the opportunity to recover this expense. In fact, the prospective amortization is unnecessary,
20 as the Company has already recovered this expense.

1 **Q. WHAT DO YOU MEAN?**

2 A. This cost was incurred in the twelve months ended June 30, 2001. The Company charged the cost
3 to expense (Account 566) as incurred. Yet, even with this one-time, non-recurring expense, the
4 Company was able to earn, even exceed, its authorized return on equity. If rates in effect during the
5 twelve months ended June 30, 2001 produced revenues that were adequate to absorb this expense
6 and still provide the Company with a more than adequate return for that period, I do not understand
7 how it is possible to assert that the expense, prudent though it may be, has not already been
8 recovered. To allow prospective amortization of this expense, which has already been recovered
9 from ratepayers, would provide the Company with a double recovery of the cost of exiting the
10 Midwest ISO.

11 **Q. DOES THE SAME PRINCIPLE APPLY TO THE OTHER NON-RECURRING**
12 **EXPENSES?**

13 A. Yes. The Company complains that by eliminating these expenses, Staff is depriving the Company
14 of the opportunity to recover these expenses. In fact, as the Company exceeded its authorized
15 return even as these one-time expenses were being incurred, these expenses have already been
16 recovered.

17 Similarly, with regard to the abnormal expenses incurred by the Company in the twelve-
18 months ended June 30, 2001 (that is, the expenses that Staff is proposing to normalize rather than
19 eliminate completely), the Company's assertions that Staff is depriving them of the opportunity to
20 recover those expenses are baseless. Given that the Company exceeded its authorized return even
21 as these abnormal expenses were incurred, the abnormal expenses have been recovered.

6. CUSTOMER GROWTH ADJUSTMENT

Q. THE COMPANY STATES THAT THE COMMISSION SHOULD REJECT STAFF'S PROPOSED CUSTOMER GROWTH ADJUSTMENT TO SALES AND REVENUE (KOVACH, PAGE 24). DO YOU FIND THE COMPANY'S ARGUMENTS TO BE COMPELLING?

A. No. The Company contends that Staff's customer growth adjustment violates the test year and updating provisions in this case "by creating uncertain and speculative phantom test year customers, kilowatthours, and revenues which are not applicable to the test year, or the update period" (Id.). A customer growth adjustment that annualizes sales to customers as of September 30, 2001 is no more uncertain or speculative than any other pro forma adjustments to actual results of operations, and it is perfectly consistent with the update period used by Staff.

Q. WHY IS AN ADJUSTMENT TO ANNUALIZE SALES TO CUSTOMERS AS OF SEPTEMBER 30, 2001 CONSISTENT WITH THE UPDATE PERIOD USED BY STAFF?

A. Staff includes plant in service as of September 30, 2001 in rate base and calculates pro forma depreciation expense by applying its proposed depreciation rates to that plant. The plant in service as of September 30, 2001 is the plant necessary to serve the customers as of that date. If the return on and of plant necessary to serve customers as of September 30, 2001 is included in the Company's cost of service, it is only logical to reflect the annual sales to those customers in determining the pro forma operating revenues being produced by present rates.

1 Further, Mr. Kovach's reference to the "Staff limitation of including fuel only" in the
2 expenses associated with its customer growth adjustment (page 14) is a mischaracterization. Staff
3 has also recognized depreciation expense on plant to serve customers as of September 30, 2001 and
4 the return requirement on that plant. In this regard there is no inconsistency in Staff's presentation.

5 **Q. MR. KOVACH ALSO CRITICIZES STAFF'S CUSTOMER GROWTH ADJUSTMENT**
6 **BECAUSE IT " IMPUTES REVENUES INTO THE TEST YEAR WHICH THE**
7 **COMPANY WILL NOT RECEIVE, IF AT ALL, UNTIL AFTER SEPTEMBER**
8 **30, 2001" (PAGE 4). IS THERE ANY VALIDITY TO THIS**
9 **CRITICISM?**

10 **A.** No. The same thing could be said about the annual depreciation expense on plant in service as of
11 September 30, 2001. That is, the Company will not record a full year of depreciation expense on
12 the plant going into service as of that date until the twelve months ending September 30, 2002. Yet
13 the Company seems to have no problem imputing this expense into the test year, although the
14 Company will not record that level of expense until well after September 30, 2001. If it is
15 appropriate to include depreciation expense on plant in service as of September 30, 2001 in pro
16 forma test year expenses, it is equally appropriate to recognize revenues from sales to customers as
17 of that date.

18 **Q. WHAT ABOUT THE COMPANY'S CLAIM THAT STAFF HAS UNDERSTATED THE**
19 **MISSOURI ALLOCATION RATIOS BY FAILING TO ADJUST THOSE RATIOS**
20 **TO RECOGNIZE THE SALES TO MISSOURI CUSTOMERS AS OF SEPTEMBER**
21 **30, 2001?**

1 A. That criticism is equally without merit. It would be necessary to increase the allocation ratios to
2 Missouri only if it could be established that there had been no similar growth in customers in the
3 other jurisdictions from the twelve months ended June 30, 2001 to September 30, 2001. The
4 Company has presented no such evidence, and there is no reason to think that the number of
5 customers in Missouri relative the other jurisdictions has changed.

6 **Q. PLEASE SUMMARIZE YOUR POSITION ON THE REASONABLENESS OF A**
7 **CUSTOMER GROWTH ADJUSTMENT.**

8 A. If plant in service is stated on end of test year basis, or in this case three months after the end of the
9 test year, it is perfectly reasonable and consistent to reflect the annual level of sales to the
10 customers being served by that plant in determining the revenues produced by rates presently in
11 effect. An adjustment to revenue for customer growth is necessary to achieve this consistency.

12 **7. INCOME TAXES**

13 **Q. HAVE YOU ANALYZED THE COMPANY'S CALCULATION OF INCOME TAX**
14 **EXPENSE INCLUDED IN ITS COST OF SERVICE?**

15 A. Yes. The Company's calculation of income tax expense is shown on Schedule 13 accompanying
16 the testimony of Mr. Weiss.

17 **Q. SHOULD THE COMPANY'S CALCULATION OF PRO FORMA INCOME TAX BE**
18 **MODIFIED?**

19 A. Yes. On Schedule 13-3, the Company reflects a pro forma adjustment to the tax reconciling item
20 for the difference between tax accelerated depreciation and book depreciation of \$29,557,000. This

1 adjustment reflects the depreciation adjustment on Schedule 11-2 for the Company's proposed new
2 depreciation rates, and it increases currently taxable income by \$29,557,000.

3 It is true that the increase in book depreciation rates will not affect the depreciation expense
4 that the Company deducts for income tax purposes, and currently taxable income in relation to pre-
5 tax operating income will increase by the amount of the depreciation adjustment. However, the
6 Company records deferred tax expense on the difference between tax and book depreciation. The
7 increase in book depreciation due to the change in depreciation rates will decrease any excess of tax
8 over book depreciation (or increase the excess of book over tax depreciation) and decrease the
9 deferred income tax expense accordingly. In other words, the \$29,557,000 adjustment to
10 depreciation expense would lead to a reduction to total income tax expense, taking current and
11 deferred income taxes together. With a combined state and federal income tax rate of 38.39%, the
12 reduction to pro forma income tax expense would be \$11,347,000, and the reduction to the
13 Company's revenue requirement would be \$18,417,000.

14 **Q. ARE THERE ANY OTHER ANOMALIES IN THE COMPANY'S CALCULATION OF**
15 **INCOME TAX EXPENSE?**

16 A. Yes. On Schedule 13-3, the Company eliminated the tax reconciling item for the FASB 106
17 liability of \$13,207,000 (total company). Applying the combined state and federal income tax rate
18 of 38.39% to this adjustment the reduction to the related deferred tax credit should be \$5,070,000.
19 However, on Schedule 14, the adjustment to the deferred tax credit for this item is \$6,790,000.
20 Taken together, these two adjustments, instead of being a wash, increase pro forma income tax

AmerenUE's Response to
Office of Public Counsel Data Request
Case No. EM-2002-1
Excess Earnings Complaint
Staff of the MPSC v. Union Electric Company d/b/a AmerenUE

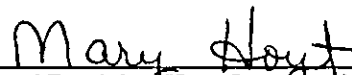
Schedule DJE-4

No. 4051: Referring to the 2000 FERC Form 1, page 123.10, Note 11 states that the MoPSC and ICC "allow recovery of postretirement costs in rates to the extent such costs are funded." The response to OPC Data Request 4041 states that the UE postretirement benefit liability was \$97.7 million as of September 30, 2001. Please explain how this liability has accumulated if the postretirement benefit costs are funded as the expense is recognized. If the expense recognized is different from the amount funded, please provide a complete explanation, including a description of why the expense recognized would be different from the amount recovered in rates.

Response: Statement of Financial Accounting Standards (SFAS) No. 106, "Employers' Accounting for Postretirement Benefits Other than Pensions," requires companies to accrue for the costs of postretirement benefits over the service period of the employee (that is, before the payment of benefits to the employee), rather than on a pay-as-you-go basis as had been the practice prior to the issuance of SFAS 106. Thus, the amount of expense included in the financial statements does not always represent the amount actually funded, resulting in a liability or asset for the difference.

The calculation of the amount to be expensed includes assumptions about the amount of the obligation (based on the commitment made to the employee) and the timing of the payout of that obligation. Actuarial information is used to estimate these amounts. The components of the expense include service cost; interest cost; actual return on plan assets, if any; amortization of unrecognized prior service cost, if any; gain or loss (including the effects of changes in assumptions) to the extent recognized; and amortization of the unrecognized obligation or asset existing at the date of initial application of SFAS 106.

The calculation of the amount that is funded is determined at Company management's discretion. Currently, AmerenUE's policy is to fund an amount equal to the expense that is recovered in rates. However, a liability does exist on the balance sheet at September 2001 for two reasons. First, there was a period of time between when SFAS 106 was implemented for financial reporting purposes (1993) and when it was implemented for ratemaking purposes (1995) where a liability was accrued but has not been collected in rates and has not been funded by the Company. As of September 30, 2001, this amount represented approximately \$83 million of the total liability. The remaining liability exists due to timing differences between when the expense is accrued and when the plan is funded, primarily because the expense is accrued monthly, while the trust is funded semi-annually. As a result, this portion of the liability fluctuates monthly.



Signed By: Mary Hoyt, Legal Assistant

Prepared by: Lynn Barnes

Title: Controller, Energy Delivery