





Surrebuttal Testimony of  
Ryan Kind

1 **Q. DO YOU BELIEVE THAT THE RATEMAKING TREATMENT PRESENTED BY MR. MAURICE**  
2 **BRUBAKER ON BEHALF OF THE MISSOURI INDUSTRIAL ENERGY CONSUMERS (MIEC)**  
3 **IS REASONABLE?**

4 A. While I am in general agreement with many aspects of his proposed ratemaking treatment,  
5 I have some differences.

6 **Q. WHICH PARTS OF MR. BRUBAKER'S PROPOSAL DO YOU AGREE WITH?**

7 A. I agree with the first recommendation page 3 of his rebuttal testimony that the Commission  
8 "should indicate to UE that it will permit recovery of merger costs in future proceedings if  
9 UE can demonstrate the existence of these costs and establish that savings which have  
10 resulted from the merger are larger than the costs for which recovery is sought." Of  
11 course, in agreeing with this statement, I am assuming that Mr. Brubaker is not including  
12 the "merger premium" as a potential merger cost that might be eligible for future recovery  
13 from ratepayers since neither UE or its ratepayers actually incurred any costs in  
14 association with the "merger premium."

15 **Q. DO YOU AGREE WITH MR. BRUBAKER'S SECOND RECOMMENDATION ON PAGE 3 OF**  
16 **HIS REBUTTAL TESTIMONY?**

17 A. No. I disagree with his recommendation that "[i]f the Commission does decide to approve  
18 a regulatory plan in this proceeding, then it should require that the 'earnings sharing' plan  
19 be modified so that customers receive their intended share." I do not agree with this  
20 recommendation because I do not believe that it would be appropriate for the Commission  
21 to approve a regulatory plan within the context of this merger application case.

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1 Approval of a regulatory plan in this merger case would be inappropriate for a couple of  
2 reasons. First, it would not be appropriate because ratemaking issues should be decided in  
3 rate cases or complaint cases where all relevant factors can be considered when  
4 determining a reasonable level of rates. Second, it would be inappropriate to approve any  
5 extraordinary ratemaking treatment in association with this merger since UE chose to enter  
6 into this merger primarily because of the benefits that it is expected to provide to UE's  
7 shareholders and management.

8 I believe UE entered into this merger agreement on the basis of: (1) the long-run strategic  
9 and earnings benefits that it expected the merger to achieve and (2) the short-run earnings  
10 benefits that UE expected to receive as a result of the normal ratemaking process. In the  
11 case of UE, the normal ratemaking process provides the utility with an opportunity to  
12 retain a portion of earnings above the level that is normally allowed through: (1) regulatory  
13 lag and (2) UE's alternative regulatory plan (and the possibility of extending this plan in  
14 the future) which allows for sharing of excess earnings within a certain range.

15 **Q. WHAT IS MR. BRUBAKER'S THIRD RECOMMENDATION ON PAGE 3 OF HIS REBUTTAL**  
16 **TESTIMONY?**

17 **A.** He states that

18 [if] UE is to be permitted to make claims, in the future, for recovery of  
19 merger costs and a share of merger savings, then it is essential to define  
20 the starting point for the measurement of merger savings. Under these  
21 circumstances, UE should be required to undergo a complete rate case  
22 proceeding in order to establish appropriate costs and rate levels on a pre-  
23 merger basis. This is essential to avoid counting as merger savings those  
24 cost reductions and efficiencies that occurred prior to the merger.

25 **Q. DO YOU AGREE WITH MR. BRUBAKER'S THIRD RECOMMENDATION ON PAGE 3 OF**  
26 **HIS REBUTTAL TESTIMONY?**

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1 A. No. First of all, as explained earlier in this testimony, OPC does not believe that it would  
2 be appropriate for the Commission to approve a regulatory plan within the context of this  
3 merger application case. Second, if the Commission were to approve a regulatory plan  
4 that allowed for some extraordinary treatment of merger costs or savings in the future, we  
5 do not believe that Mr. Brubaker's recommendation would be sufficient to ensure that  
6 merger-related savings could be isolated from other savings.

7 **Q. WHY DON'T YOU BELIEVE THAT MR. BRUBAKER'S RECOMMENDATION WOULD BE**  
8 **SUFFICIENT TO ENSURE THAT MERGER-RELATED SAVINGS COULD BE ISOLATED**  
9 **FROM OTHER SAVINGS?**

10 A. While Mr. Brubaker's recommendation would be very helpful in isolating cost reductions  
11 that have been achieved prior to the merger from those achieved after the merger, his  
12 recommendation would not provide a method for isolating merger-related savings from  
13 other savings that are achieved subsequent to the merger. The importance of this  
14 additional separation is obvious, given the pre-merger plans that UE and CIPS already had  
15 for reducing costs with re-engineering and staffing reductions. It should be noted,  
16 however, that many of the parties to this case (including UE) have already acknowledged  
17 the extreme difficulties associated with tracking savings that are solely attributable to a  
18 utility merger.

19 **Q. DO YOU SEE ANY ADDITIONAL PROBLEMS WITH MR. BRUBAKER'S THIRD**  
20 **RECOMMENDATION?**

21 A. Yes, the limited extent to which this recommendation could be effective is dependent on  
22 expeditious progress in a Commission initiated complaint case. While the Commission has  
23 authority to initiate a complaint case, it could be hindered by the following: it has limited

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1 Staff resources and other priorities may prevail, UE's Alternative Regulatory Plan  
2 prevents the Staff from filing a rate reduction case prior to July 1, 1998, and the  
3 Commission would not be bound by any statutory clock in deciding the case. Therefore it  
4 would appear difficult for the Commission to commit to resolving a complaint case in a  
5 timely manner that would resolve the isolation of pre-merger savings from post-merger  
6 savings.

7 **Q. PLEASE SUMMARIZE OPC'S POSITION REGARDING MR. BRUBAKER'S THIRD**  
8 **RECOMMENDATION.**

9 A. Public Counsel does not believe that a case can be made for granting any extraordinary  
10 ratemaking treatment to UE in this merger application case. Mr. Brubaker's suggestion  
11 for limiting the adverse affect on ratepayers that might result from granting any  
12 extraordinary ratemaking treatment to UE in this merger application case is totally  
13 inadequate and unworkable due to: (1) the extreme difficulties associated with tracking  
14 merger savings to isolate merger-related savings from other post-merger savings, (2) the  
15 inability to have 100% certainty that the Commission could commit itself, within this  
16 merger case, to proceed expeditiously with "a complete rate case proceeding" that would  
17 "establish appropriate costs and rate levels on a pre-merger basis."

18 **Q. ON WHICH OF THE ISSUES THAT WERE RAISED BY COMMISSION STAFF (STAFF)**  
19 **WITNESS DAN BECK IN HIS SUPPLEMENTAL REBUTTAL TESTIMONY WOULD YOU LIKE**  
20 **TO COMMENT?**

21 A. I will comment on his recommendations regarding the ten year System Support Agreement  
22 (SSA) and his analysis of UE's potential stranded cost exposure.

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1       **Q.     ARE YOU IN AGREEMENT WITH MR. BECK'S RECOMMENDATION THAT THE**  
2       **COMMISSION SHOULD NOT "COMMIT TO PREAPPROVAL OF THE CAPACITY THAT IS**  
3       **RETURNING DURING THE PHASE OUT OF THE 10 YEAR SSA TO MEET THE LOAD**  
4       **GROWTH OF THE MISSOURI JURISDICTION"?**

5       **A.**    Yes. I support this recommendation for the following reasons. First, the uncertainties  
6       associated with both UE's future resource needs and the range of resources that may be  
7       available to satisfy these needs make it inappropriate for the Commission to preapprove, at  
8       this time, a specific means by which these potential resource needs should be satisfied.  
9       Second, the issue would not even have arisen at the present time, were it not for the present  
10      merger proposal which has been prompted by UE's desire to enhance its ability to be an  
11      effective competitor in a more competitive energy industry. Since the issue has arisen as a  
12      result of a transaction which was initiated for the benefit of the utility and its shareholders,  
13      I do not believe the Commission should be forced to adjust its normal procedure for  
14      protecting ratepayers by assessing the prudence of utility investments at the time the utility  
15      seeks ratemaking treatment for those investments.

16      **Q.     DO YOU AGREE WITH MR. BECK'S POSITION THAT HE WOULD NOT OPPOSE A TEN**  
17      **YEAR SYSTEM SUPPORT AGREEMENT IF UE IS WILLING TO TAKE THE FINANCIAL RISK**  
18      **ASSOCIATED WITH RETURNING THE UE ILLINOIS CUSTOMERS' CAPACITY TO UE?**

19      **A.**    Yes, I do. As Mr. Beck states at line 5 on page 14 of his testimony:

20                   Missouri retail ratepayers should not bear any risk of the stranded costs  
21                   associated with generation built to serve UE's Illinois ratepayers. If UE's  
22                   stranded generation costs turn out to be positive, then Missouri retail  
23                   ratepayers should not have to bear the burden of those costs. Therefore, I  
24                   recommend that if the Commission accepts the 10 year SSA plan, that it  
25                   be subject to the condition that Missouri retail ratepayers be held harmless  
26                   for any stranded generation costs associated with the return of UE  
27                   generation capacity from the phase out of the sale of capacity and energy  
28                   to CIPS.

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1 Like the Staff, Public Counsel also would not oppose the ten year SSA if its acceptance by  
2 the Commission is subject to the condition that "Missouri retail ratepayers be held  
3 harmless for any stranded generation costs associated with the return of UE generation  
4 capacity from the phase out of the sale of capacity and energy to CIPS."

5 **Q. DOES MR. BECK'S ANALYSIS OF UE'S POTENTIAL STRANDED COST EXPOSURE AT**  
6 **PAGES 12 THROUGH 14 OF HIS TESTIMONY REINFORCE YOUR BELIEF THAT THE**  
7 **COMMISSION SHOULD NOT APPROVE UE'S MERGER APPLICATION UNLESS THE**  
8 **COMPANY MAKES A COMMITMENT TO BEAR THE FINANCIAL RISK ASSOCIATED WITH**  
9 **THE CAPACITY THAT WILL BECOME AVAILABLE IF UE'S SSA IS PHASED OUT AFTER**  
10 **ONLY FIVE YEARS?**

11 A. Yes.

12 **Q. WHAT IS UE'S POSITION REGARDING ITS OVERALL POTENTIAL STRANDED COST**  
13 **EXPOSURE?**

14 A. As I noted in my rebuttal testimony, UE's response to Staff DR No. 77 stated that "...we  
15 have reviewed stranded cost studies done by industry analysts over the past several years,  
16 and we agree with their conclusions that neither UE nor CIPS has any material stranded  
17 cost exposure." Based on this response, it appears that UE does not believe that it has  
18 any significant stranded cost exposure.

19 **Q. IS THERE ANY REASON WHY UE'S STRANDED COST EXPOSURE MIGHT INCREASE IN**  
20 **THE FUTURE?**

21 A. No. In fact, the opposite is likely to occur for the following reasons. First, UE is not  
22 currently in the process of building new generating assets that might lead to stranded cost



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1 exposure in the future. Second, stranded costs will generally decrease with the passage of  
2 time as the utility collects revenues based on rates which compensate it for annual  
3 depreciation expense on generation assets. This compensation for depreciation expense of  
4 generation assets serves to increase accumulated depreciation which reduces the net book  
5 plant value of assets. Third, a utility also has the means to reduce its stranded cost  
6 exposure by taking advantage of opportunities (e.g. reducing heat rates or fine-tuning to  
7 increase capacity) to mitigate some or all of this exposure before these costs have the  
8 possibility of becoming stranded.

9 **Q. BASED ON UE'S ASSESSMENT OF ITS EXPOSURE AND THE LIKELIHOOD THAT SOME**  
10 **OF WHATEVER STRANDED COSTS DO EXIST WILL GO AWAY WITH THE PASSAGE OF**  
11 **TIME, DO YOU BELIEVE UE SHOULD BE WILLING TO MAKE A COMMITMENT TO NOT**  
12 **PURSUE RECOVERY OF ANY STRANDED COSTS ASSOCIATED WITH THE SERVICE**  
13 **THAT IT HAS PROVIDED TO ITS ILLINOIS CUSTOMERS?**

14 A. Yes. Since UE believes its stranded cost exposure is currently minimal, and as noted  
15 above, whatever exposure currently exists should be less in five or ten years, I don't see  
16 why UE would hesitate to make this commitment. I would also note that since UE's  
17 ratemaking proposal puts much of the business risk associated with the merger on  
18 ratepayers, it seems entirely inappropriate for the Company to ask ratepayers to underwrite  
19 a merger that was undertaken to better position the Company for a more competitive future  
20 and then leave open the possibility that it may also try to recover any stranded costs that  
21 are unrelated to the service that the UE has been providing to Missouri ratepayers.

22 In fact, given UE's assertion that "that neither UE nor CIPS has any material stranded cost  
23 exposure," I do not see why the Company would not use this merger case as an  
24 opportunity to make a commitment that it will not seek recovery of stranded costs (other

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1 than those directly attributable to regulatory mandates) in any future ratemaking  
2 proceedings before the Missouri PSC.

3 **Q. DO YOU NEED TO SUPPLEMENT YOUR PREVIOUSLY FILED REBUTTAL TESTIMONY**  
4 **WITH RESPECT TO ANY OF THE DOCUMENTS THAT YOU RECEIVED SHORTLY BEFORE**  
5 **THAT TESTIMONY WAS FILED?**

6 A. Yes, I do. As I noted on pages 9 and 39 of my rebuttal testimony, OPC received some  
7 documents from UE shortly before our rebuttal testimony was due even though these  
8 documents were within the scope of data requests that UE had answered quite some time  
9 ago.

10 **Q. PLEASE REVIEW THE PORTION OF YOUR REBUTTAL TESTIMONY THAT DISCUSSED**  
11 **THE \*\* \_\_\_\_\_ \*\* SAVINGS THAT UE IDENTIFIED IN ITS ANALYSIS OF**  
12 **AREAS WHERE POTENTIAL MERGER-RELATED SAVINGS WERE AVAILABLE.**

13 A. At line 17 on page 39 of my rebuttal testimony, I stated that:

14 Another area where the savings estimate did not appear to reflect the full  
15 potential for savings was in the area of capacity deferral savings. On  
16 April 25, 1996 OPC obtained copies of some intermediate work products  
17 of Deloitte & Touch (in response to OPC DR No. 573) which provided  
18 additional insight into how the savings estimate contained in UE's filing  
19 was arrived at. Unfortunately, since we have only had access to these  
20 documents for a short time (even though OPC believes they were within  
21 the scope of long outstanding Staff DR Nos. 1, 5, and 30), I have been  
22 unable to analyze them in detail or do any follow-up discovery on them at  
23 this time. For this reason, OPC reserves the right to file supplemental  
24 rebuttal testimony based on UE's responses to DRs that follow-up on the  
25 documents received in response to OPC DR No. 573.

26 Two of the documents that OPC received in response to DR No. 573 were  
27 copies of August 1, 1995 and August 8, 1995 Deloitte & Touch Board of  
28 Directors presentations. The relevant portions of both documents are  
29 included in Schedule RK-3. Both of these documents indicate that UE and  
30 CIPSCO believed \*\* \_\_\_\_\_  
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One of the concerns I have with this is that UE asserts that it has gained control of CIPSCO's assets by paying a premium to CIPSCO's shareholders. If this is true, then why isn't UE utilizing these assets \*\* \_\_\_\_\_ \*\* to the fullest extent possible to obtain savings?

**Q. WHAT HAVE YOU LEARNED ABOUT THIS ISSUE SINCE THE TIME YOU FILED YOUR REBUTTAL TESTIMONY?**

A. On May 29, Public Counsel received UE's response to OPC DR No. 679 which requested information related to the capacity deferral savings information that was in Deloitte & Touche's intermediate work products discussed in the above quote from my rebuttal testimony. This response included an August 4, 1995 memo regarding Capacity/Dispatch Savings -- Issue Resolution from Gene Meehan to Craig Nelson, Gary Rainwater, Tom Flaherty, Rob Robinson, Mark Vantrease, and Bob Mill. This memo and the rest of UE's response to OPC DR No. 679 are included in Schedule RK 1.

The introductory portion of this memo states that its purpose is \*\* \_\_\_\_\_

\_\_\_\_\_ \*\* The major topics that are covered in this memo are: \*\* \_\_\_\_\_

\_\_\_\_\_ \*\* The portion of this memo that discusses the \*\* \_\_\_\_\_ \*\* topic cites three areas from which \*\* \_\_\_\_\_ \*\* could potentially be obtained. These areas are: \*\* \_\_\_\_\_

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**Q. WHAT DOES THIS MEMO SAY ABOUT \*\*** \_\_\_\_\_

\_\_\_\_\_ **\*\*?**

**A. It states that:**

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\_\_\_\_\_ **\*\***

**Q. WHAT DOES THE ABOVE QUOTE FROM THE AUGUST 4, 1995 MEMO INDICATE IS THE**

**\*\*** \_\_\_\_\_

\_\_\_\_\_ **\*\*?**

**A. The primary reason appears to be UE's desire to \*\*** \_\_\_\_\_

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**Q. DOES THIS MEMO REINFORCE YOUR BELIEF THAT THE PRIMARY REASON FOR UE'S  
DECISION TO MERGE WITH CIPSCO WAS TO PROVIDE UE'S SHAREHOLDERS WITH  
LONG-RUN STRATEGIC AND EARNINGS BENEFITS?**

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**A. Yes, it certainly does. In fact, the second paragraph of the above quote indicates that the  
maximization of \*\* \_\_\_\_\_ \*\* has guided UE's decisions in this area.**

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**Q. DOES THIS MEMO ILLUSTRATE UE'S KNOWLEDGE OF SOME LONG RUN STRATEGIC  
BENEFITS THAT IT EXPECTS TO ACHIEVE BY THIS MERGER WHICH HAVE NOT BEEN  
PREVIOUSLY DISCLOSED BY THE COMPANY?**

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**A. Yes, it clearly does. In my rebuttal testimony, I discussed the long run strategic and  
earnings benefits that UE will achieve by the increased amount of generation assets that it  
would own after the merger. I did not, however, discuss the advantages that UE would  
attain from \*\* \_\_\_\_\_**

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**Q. DID UE'S PROFORMA FINANCIAL ANALYSIS INCLUDE IMPACTS OF REVENUE  
ENHANCEMENT ASSOCIATED WITH THE NEW ENTITY'S ENLARGED PORTFOLIO OF  
GENERATION ASSETS?**

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1 A. No, as I stated in my rebuttal testimony, "neither UE's merger saving estimates or its  
2 proforma financial analysis included impacts of revenue enhancement associated with the  
3 new entity's enlarged portfolio of generation assets."

4 Q. DID ANY OTHER PARTS OF UE'S RESPONSE TO OPC DR NO. 679 ADDRESS \*\* \_\_\_\_\_

5 \_\_\_\_\_  
6 \*\*

7 A. Yes, UE's response to part a) of OPC DR No. 679 stated that:

8 \*\* \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_  
11 \*\*

12 Q. DO YOU AGREE WITH UE'S ASSERTION THAT \*\* \_\_\_\_\_

13 \_\_\_\_\_  
14 \*\*

15 A. Yes, I do agree with this. I am somewhat puzzled, however, that UE raises this objection  
16 as a potentially insurmountable barrier to acquiring these \*\* \_\_\_\_\_ \*\* benefits  
17 for ratepayers. This objection is inconsistent with UE's approach to acquiring merger  
18 savings benefits in other areas where the ratepayers in one state may have benefited at the  
19 expense of ratepayers in the other state.

20 A couple of examples where UE has devised mechanisms that will allow ratepayers to  
21 achieve merger-related benefits (achievement is, of course, subject to the limitations  
22 imposed by UE's ratemaking proposal) without allowing ratepayers in one state to benefit  
23 at the expense of ratepayers in the other state include: savings arising from joint dispatch  
24 and the sharing of information services hardware and software. In the area of joint

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1           dispatch, UE created the Joint Dispatch Agreement so that a set of principles were put in  
2           place to prevent ratepayers in one state from benefiting at the expense of ratepayers in the  
3           other state. In the area of information services, UE's response to an OPC data request  
4           indicated that it believed its cost allocation procedures would ensure that UE's ratepayers  
5           would not be subsidizing CIPSCO ratepayers by sharing the information system  
6           enhancements that UE had already acquired prior to the merger announcement.

7           **Q. DID THIS AUGUST 4, 1995 MEMO CONTAIN OTHER INFORMATION ABOUT**  
8           **POTENTIAL CAPACITY SAVINGS FROM AREAS THAT HAD NOT BEEN DISCUSSED IN**  
9           **ANY OF THE DOCUMENTS THAT HAD BEEN PROVIDED PREVIOUSLY BY UE?**

10          A. Yes, it did. This memo addressed potential savings that UE may obtain as a result of

11          “\*\* \_\_\_\_\_ \*\*”

12          **Q. PLEASE SUMMARIZE THE MEMO'S DISCUSSION OF \*\* \_\_\_\_\_**

13          \_\_\_\_\_\*\*

14          A. The memo states that:

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1 Q. WHAT ESTIMATES DO THE MEMO CONTAIN FOR THE APPROXIMATE SAVINGS THAT  
2 WOULD RESULT FROM A REDUCTION IN THE \*\* \_\_\_\_\_ \*\*

3 A. It is estimated that a \*\* \_\_\_\_\_  
4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_ \*\*

7 Q. DOES THE MEMO RECOMMEND THAT UE INCORPORATE \*\* \_\_\_\_\_ \*\*  
8 SAVINGS IN ITS ESTIMATE OF MERGER-RELATED SAVINGS?

9 A. Yes, it does. The memo states:  
10 \*\* \_\_\_\_\_  
11 \_\_\_\_\_ \*\*

12 Q. DID UE CHOOSE TO INCORPORATE \*\* \_\_\_\_\_ \*\* SAVINGS IN ITS  
13 ESTIMATE OF MERGER-RELATED SAVINGS?

14 A. No.

15 Q. DOES PUBLIC COUNSEL BELIEVE THAT THE MEMO'S ESTIMATES OF \*\* \_\_\_\_\_  
16 \_\_\_\_\_ \*\* SAVINGS ARE REASONABLE?

17 A. We have not had significant time to evaluate these estimates since UE only provided this  
18 memo to us several days ago. These estimates do, however, appear to be reasonable based  
19 on an initial cursory review of this analysis.

20 Q. ARE THESE \*\* \_\_\_\_\_ \*\* SAVINGS LIKELY TO PROVIDE SOME EARNINGS  
21 ENHANCEMENT TO UE IN THE FUTURE?



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1 A. Yes. I believe these savings will provide an enhancement to UE's earnings in the long-run.  
2 While there is some uncertainty as to when these savings will begin to accrue to UE, they  
3 are likely to begin within the next ten years.

4 **Q. HAVE YOU SEEN ANY OTHER INFORMATION THAT LENDS CREDIBILITY TO THE**  
5 **EXPECTATION THAT RESERVE REQUIREMENTS MAY FALL OVER THE NEXT TEN**  
6 **YEARS?**

7 A. Yes, on page IV-9 in Volume 4 of *St. Joseph Light & Power's May 1996 Electric Utility*  
8 *Resource Planning* filing, St. Joseph Light & Power (SJLP) states that:

9 \*\* \_\_\_\_\_  
10 \_\_\_\_\_  
11 \_\_\_\_\_  
12 \_\_\_\_\_ \*\*

13 This page of SJLP's IRP filing also contains a table of \*\* \_\_\_\_\_

14 \_\_\_\_\_  
15 \_\_\_\_\_  
16 \_\_\_\_\_

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18 **Q. YOU STATED PREVIOUSLY THAT UE HAD JUST PROVIDED THE AUGUST 4, 1995**  
19 **MEMO TO PUBLIC COUNSEL A FEW DAYS AGO. DO YOU BELIEVE THAT THIS**  
20 **DOCUMENT WAS WITHIN THE SCOPE OF PREVIOUS OPC AND STAFF DRs, SOME OF**  
21 **WHICH WERE SENT TO UE SEVERAL MONTHS AGO?**

22 A. Yes, I do. I believe that the August 4, 1995 memo was within the scope of Staff DR Nos.  
23 1 and 30 and OPC DR Nos. 573, 655, 679, and 681.

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1       **Q.     DID THE LATE ARRIVAL OF THIS DOCUMENT INTERFERE WITH OPC'S EFFORTS TO**  
2       **EVALUATE UE'S MERGER PROPOSAL?**

3       A.     Yes, as I stated previously in my rebuttal testimony:

4                     [t]his document's late arrival (1) prevented OPC from doing follow up  
5                     discovery on this document prior to this testimony, (2) prevented us from  
6                     raising questions pertaining to this document in the interviews conducted  
7                     with UE witnesses in this case, and (3) left OPC with inadequate time to  
8                     evaluate the contents of this document.

9       **Q.     EARLIER IN THIS TESTIMONY, YOU STATED THAT THERE WAS ANOTHER DOCUMENT,**  
10       ***GOLDMAN SACHS PRESENTATION TO UNION ELECTRIC COMPANY, JUNE 15, 1995,***  
11       **THAT YOU RECEIVED SHORTLY BEFORE YOUR TESTIMONY WAS FILED.  WHAT HAVE**  
12       **YOU DISCOVERED ABOUT UE'S REASONS FOR NOT PROVIDING THAT DOCUMENT?**

13       A.     UE's response to OPC DR No. 670 stated that this document (see Schedule RK 1 of Ryan  
14                     Kind's rebuttal testimony) was not provided previously in response to OPC DR No. 527  
15                     because "[t]he June 15, 1995 document does not deal with the merger and, therefore was  
16                     not provided in response to this request." UE's response to OPC DR No. 670 also stated  
17                     that this document was not provided previously in response to OPC DR No. 535 (d)  
18                     because "[t]he June 15, 1995 document did not relate to the merger and, therefore was not  
19                     provided in response to this request."

20       **Q.     DID YOU FIND THESE EXPLANATIONS FROM UE CREDIBLE?**

21       A.     No. I believe only a cursory review of this document (see Schedule RK-1 of Ryan Kind's  
22                     rebuttal testimony) is necessary to conclude that this document **does** deal with this merger  
23                     and that this document **does** relate to this merger.

1       **Q.     DO YOU BELIEVE UE'S LACK OF FULL AND PROMPT RESPONSIVENESS TO PUBLIC**  
2       **COUNSEL'S DISCOVERY REQUESTS IN THIS CASE HAVE HINDERED YOUR ABILITY TO**  
3       **EFFECTIVELY ANALYZE UE'S MERGER APPLICATION TO DETERMINE WHETHER IT IS**  
4       **DETRIMENTAL TO THE PUBLIC INTEREST?**

5       A.     Yes. For complex cases such as this one, the Commission sets up a procedural schedule  
6       that allows adequate time for parties to acquire information from the utility, through the  
7       discovery process. An extensive amount of time is necessary because parties may have  
8       other commitments that prevent them from focusing solely on one case, and because the  
9       discovery process, by its very nature requires an extensive amount of time.

10      **Q.     PLEASE EXPLAIN WHAT YOU MEANT WHEN YOU SAID, "THE DISCOVERY PROCESS,**  
11      **BY ITS VERY NATURE REQUIRES AN EXTENSIVE AMOUNT OF TIME?"**

12      A.     Discovery is not just a one-step process. Often, facts and documents that are relevant to a  
13      case are found in small increments. Facts and documents contained in one response can be  
14      helpful in identifying issues and documents that merit further discovery. When a company  
15      is not fully responsive to DRs, then a crucial first step may be missed which prevents or  
16      defers further steps in the discovery process from occurring.

17      **Q.     CAN YOU CITE AN EXAMPLE OF HOW A DOCUMENT RECEIVED LATE IN THE**  
18      **PROCEDURAL SCHEDULE CAN HINDER A PARTY IN INVESTIGATING AN ISSUE?**

19      A.     Yes. The August 4, 1995 memo that was discussed above contains a section on merger  
20      related \*\* \_\_\_\_\_

21      \_\_\_\_\_ \*\* Public Counsel was not aware of this issue until we received this document.  
22      We did not expect to find information related to this topic in UE's DR response. However,  
23      upon receiving information on this subject in UE's DR response, it became apparent that

Surrebuttal Testimony of  
Ryan Kind

1           this information should have been provided in previous UE DR responses. If this  
2           information had been provided earlier, OPC would have been able to send follow-up DRs  
3           to UE in order to learn more about this issue.

4           **Q.    IN THE EXAMPLE GIVEN ABOVE, WOULD OPC HAVE HAD OTHER WAYS TO UTILIZE**  
5           **ADDITIONAL TIME ALLOWED TO ANALYZE THE \*\* \_\_\_\_\_**  
6           **\_\_\_\_\_ \*\* ISSUE IF UE HAD RESPONDED MORE FULLY TO EARLIER DRs BY**  
7           **INCLUDING THIS DOCUMENT IN ITS RESPONSE?**

8           A.    Yes, if this document was provided earlier, OPC would have been able to conduct a more  
9           thorough investigation of this general topic (from sources other than UE) and OPC would  
10          have been able to raise questions about this document in interviews that were conducted  
11          with UE personnel.

12          **Q.    DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

13          A.    Yes, it does.

KIND CROSS-SURREBUTTAL  
CASE NO. EM-96-149

THIS ENTIRE  
14-PAGE SCHEDULE  
(WITH THE EXCEPTION OF  
PAGES RK-1.5 and RK-1.7)  
HAS  
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SCHEDULE RK-1

**Deloitte &  
Touche LLP**



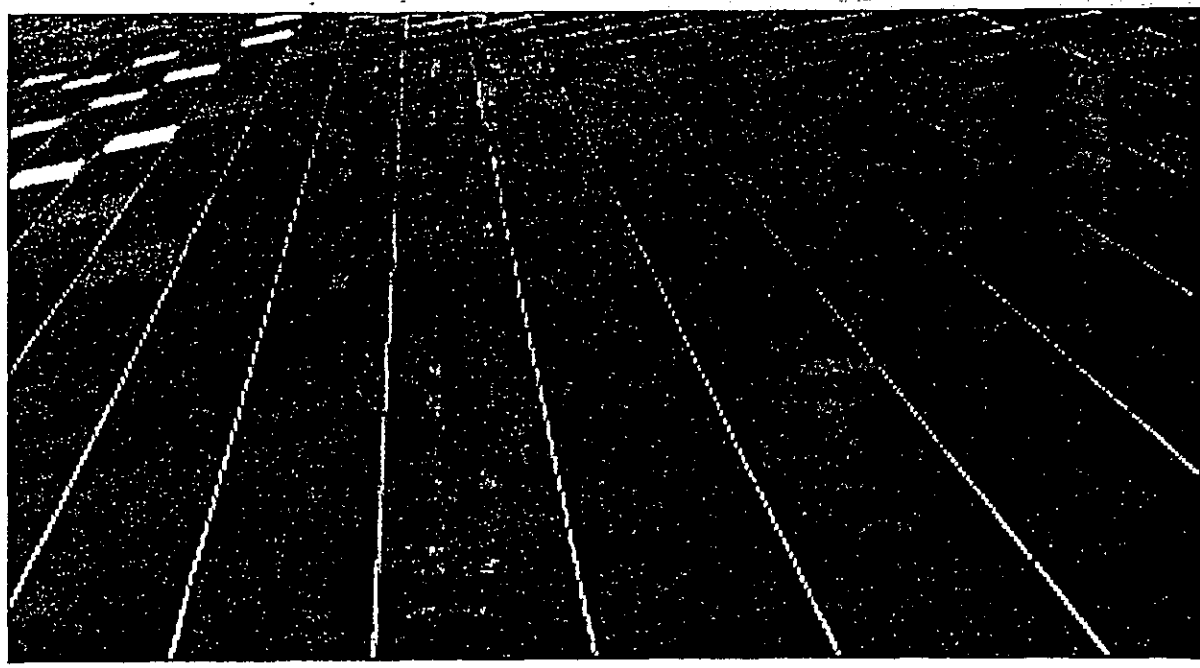
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# *Project Gateway*

## **PROPRIETARY**

*Board of Directors Presentation*

*August 8, 1995*



**MP**

Schedule RK-1.7

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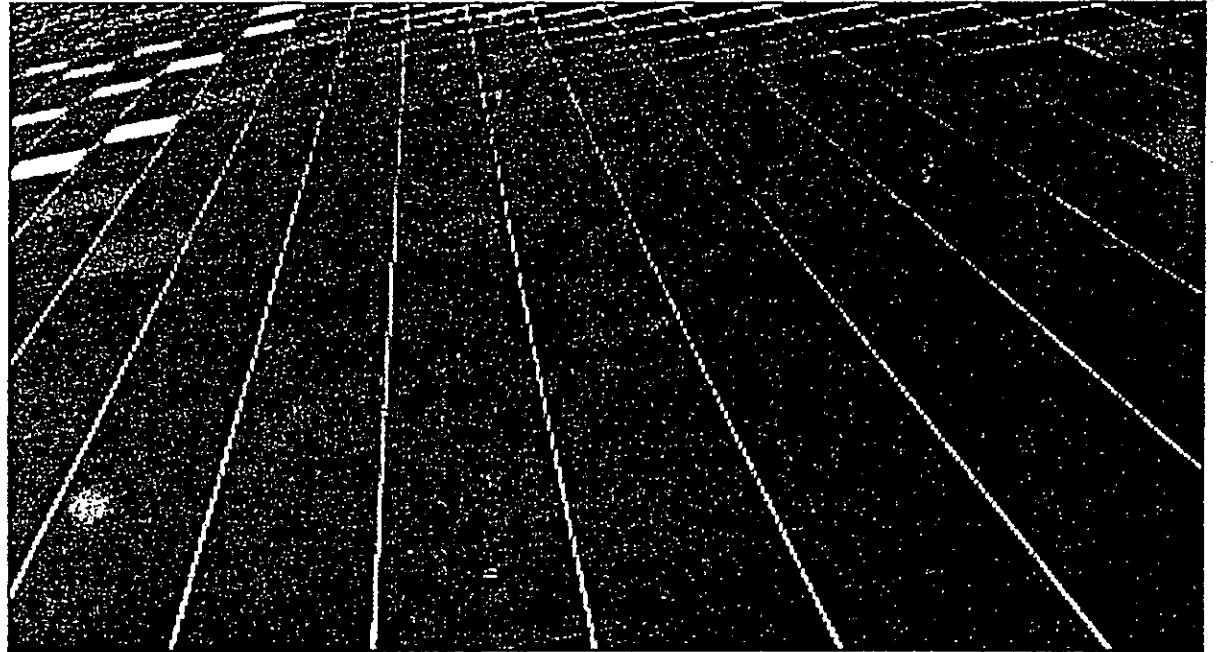
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# Project Gateway

Board Presentation  
August 1, 1995

Kind Cross-Submittal  
Case No. EM-96-149



MP

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