

Exhibit No.:

Issue(s): SO2 Emission Allowance Revenues

Witness/Type of Exhibit: Kind/Rebuttal

Sponsoring Party: Public Counsel

Case No.: EC-2002-1

REBUTTAL TESTIMONY

OF

RYAN KIND

Submitted on Behalf of
the Office of the Public Counsel

UNION ELECTRIC COMPANY

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Case No. EC-2002-1

May 10, 2002

Rebuttal Testimony of
Ryan Kind

1 Ameren-wide need for SO2 allowances because it was considering the needs of Ameren's
2 unregulated operations that would increase Ameren's need for SO2 emission allowances.

3 **

4 **Q. DO YOU BELIEVE IT WAS APPROPRIATE FOR AMEREN TO CONSIDER ITS ** "NEW**
5 **AMEREN BUSINESS PROPOSALS IN UNREGULATED COAL BUSINESSES THAT MAY NEED**
6 **A SOURCE OF SO2 ALLOWANCES" ** IN ITS DETERMINATION OF HOW TO MANAGE**
7 **UE'S SO2 ALLOWANCE INVENTORY?**

8 **A. ** No. Ameren's needs for emission allowances to help further the objectives of its**
9 **unregulated coal businesses should never have played a part in its decisions about how**
10 **UE could best utilize its bank of excess allowances to further UE's public service**
11 **obligations of providing safe and adequate service at just and reasonable rates.**
12 **Considering the needs of Ameren's unregulated business when deciding how to best**
13 **manage UE's emission allowance inventory was a flagrant example of affiliate abuse.**
14 **Unfortunately, such instances of affiliate abuse are not surprising when you have the**
15 **perverse incentives arising from the holding company corporate structure that was**
16 **discussed towards the beginning of this testimony. How can one expect the senior**
17 **management of UE to shepherd the interests of UE when the senior managements of UE**
18 **and Ameren are one and the same? ****

19 **VI. OPC'S RECOMMENDED ADJUSTMENTS ASSOCIATED WITH THREE**
20 **KEY SO2 ALLOWANCE TRANSACTIONS OCCURING DURING THE**
21 **TEST YEAR BUT NOT REFLECTED IN TEST YEAR SO2 ALLOWANCE**
22 **REVENUES**

23 **Q. WHAT DID UE'S BOOKS SHOW FOR TEST YEAR EMISSION ALLOWANCE REVENUES?**

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1 A. UE's books indicated that the Company recognized \$945,859 in emission revenues
2 during the test year of which \$912,216 was allocated to the Missouri jurisdiction.

3 Q. DID THE COMMISSION STAFF MAKE ANY ADJUSTMENT TO THE \$912,216 FIGURE FOR
4 SO2 EMISSION ALLOWANCE REVENUES AS PART OF THE ADJUSTMENTS THAT THEY
5 MADE WHEN THEY FILED AN OVER-EARNINGS COMPLAINT IN CASE NO. EC-2002-1?

6 A. No, its my understanding that the Staff made no adjustments to UE's figures for SO2
7 allowance revenues and that the Staff did not perform an extensive evaluation of UE's
8 SO2 emission allowance transactions during the test year.

9 Q. PLEASE SUMMARIZE THE ADJUSTMENTS THAT THAT PUBLIC COUNSEL BELIEVES
10 SHOULD BE MADE TO UE'S TEST YEAR SO2 EMISSION ALLOWANCE TRANSACTION
11 REVENUES.

12 A. Public Counsel recommends adjusting the earnings report filed by UE to reflect an
13 additional \$27,695,500 in revenues associated with SO2 emission allowance transactions.
14 As I stated earlier, this includes the following three adjustments:

15 1) ** \$17,640,000 for a "vintage swap" transaction that took place on 1/22/01.
16 Allowances for vintage years 2000, 2001, and 2003 were transferred to UE's
17 affiliate, Ameren Energy Generating Company (AEG) while AEG transferred
18 allowances with vintages of 2006, 2007, and 2008 to UE. OPC recommends
19 imputing \$17,640,000 in allowance sales revenues for the test year to rectify this
20 manipulation. **

21 2) ** \$8,725,000 in revenues for a "forward sale" entered into on 3/13/01. The
22 payable date for the sale proceeds was pushed forward outside the test year and

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1 update period to 10/10/01. OPC recommends imputing UE's allowance sales
2 revenues for the test year by \$8,725,000 to rectify this manipulation. **

- 3 3) ** \$1,330,500 in revenues from the premium associated with a call option contract
4 entered into on 11/3/00. The payable date for the premium was pushed forward
5 outside the test year and update period to 10/10/01. OPC recommends imputing
6 UE's allowance options sales revenues for the test year by \$1,330,500 to rectify
7 this manipulation. **

8 Q. PLEASE EXPLAIN PUBLIC COUNSEL'S RATIONALE FOR THE FIRST ADJUSTMENT
9 RELATED TO THE ** \$17,640,000 "VINTAGE SWAP" TRANSACTION THAT TOOK PLACE
10 ON 1/22/01. **

11 A. Public Counsel recommends ** treating this swap as if it were a straight forward sale
12 because the Ameren documents that were described and discussed earlier in this
13 testimony provide a compelling case to show that Ameren structured UE's emission
14 allowance transactions in a way that would best serve the overall financial and strategic
15 interests of Ameren, not UE. Specifically, the documents described and discussed above
16 that support this adjustment are:

- 17 • Minutes from the December 15, 2000 meeting of the Ameren Risk Management
18 Steering Committee which noted that Ameren's current strategies of managing
19 UE's allowance inventory were inadequate to prevent a decline in the value of the
20 UE allowance inventory over time. These minutes noted that changes in the
21 sharing proportions that would allow shareholders to retain a greater portion of
22 transaction earnings should be made to remedy the problem. The clear implication
23 was that transactions like straight forward sales, as opposed to swaps, which
24 monetize the stored value of allowances and return it to ratepayers will not be