

REBUTTAL TESTIMONY
OF
RYAN KIND
UNION ELECTRIC COMPANY D/B/A AMERENUE
CASE NO. EO-2004-0108

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

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

4 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND EMPLOYMENT BACKGROUND.**

5 A. I have a B.S.B.A. in Economics and a M.A. in Economics from the University of
6 Missouri-Columbia (UMC). While I was a graduate student at UMC, I was employed as
7 a Teaching Assistant with the Department of Economics, and taught classes in
8 Introductory Economics, and Money and Banking, in which I served as a Lab Instructor
9 for Discussion Sections.

10 My previous work experience includes several years of employment with the Missouri
11 Division of Transportation as a Financial Analyst. My responsibilities at the Division of
12 Transportation included preparing transportation rate proposals and testimony for rate
13 cases involving various segments of the trucking industry. I have been employed as an
14 economist at the Office of the Public Counsel (Public Counsel or OPC) since 1991.

15 **Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THIS COMMISSION?**

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1 A. Yes, prior to this case I submitted written testimony in numerous gas rate cases, several
2 electric rate design cases and rate cases, as well as other miscellaneous gas, water,
3 electric, and telephone cases.

4 **Q. HAVE YOU PROVIDED COMMENTS OR TESTIMONY TO OTHER REGULATORY OR**
5 **LEGISLATIVE BODIES ON THE SUBJECT OF ELECTRIC UTILITY REGULATION AND**
6 **RESTRUCTURING?**

7 A. Yes, I have provided comments and testimony to the Federal Energy Regulatory
8 Commission (FERC), the Missouri House of Representatives Utility Regulation
9 Committee, the Missouri Senate's Commerce & Environment Committee and the
10 Missouri Legislature's Joint Interim Committee on Telecommunications and Energy.

11 **Q. HAVE YOU BEEN A MEMBER OF, OR PARTICIPANT IN, ANY WORK GROUPS,**
12 **COMMITTEES, OR OTHER GROUPS THAT HAVE ADRESSED ELECTRIC UTILITY**
13 **REGULATION AND RESTRUCTURING ISSUES?**

14 A. Yes. I was a member of the Missouri Public Service Commission's (the Commission's)
15 Stranded Cost Working Group and participated extensively in the Commission's Market
16 Structure Work Group. I am currently a member of the Missouri Department of Natural
17 Resources Weatherization Policy Advisory Committee, the National Association of State
18 Consumer Advocates (NASUCA) Electric Committee, and both the Operating
19 Committee and the Standards Authorization Committee of the North American Electric
20 Reliability Council (NERC). I have served as the public consumer group representative
21 to the Midwest ISO's (MISO's) Advisory Committee. During the early 1990s, I served
22 as a Staff Liaison to the Energy and Transportation Task Force of the President's Council
23 on Sustainable Development.

I. INTRODUCTION

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TRANSFER THAT AMERENUE IS PROPOSING IN THIS CASE.

A. For decades, AmerenUE has provided both gas and electric service to service territories, customers and loads in both Illinois and Missouri. Currently, over 90% of AmerenUE's electric customers and electric load are in Missouri. Ameren currently has three utility operating companies in Illinois (AmerenUE, AmerenCIPS, and AmerenCILCO) and is in negotiations to obtain a fourth (Illinois Power). Ameren is seeking to transfer AmerenUE's gas and electric service territories along with the related distribution and transmission assets to AmerenCIPS (the proposed transfer).

The proposed transfer would have several major consequences including:

- The 600 MW of AmerenUE generation assets formerly used to serve AmerenUE's Illinois electric customers would be available to serve AmerenUE's Missouri electric customers.
- The costs associated with the 600 MW of generation assets formerly used by AmerenUE's Illinois customers would no longer be allocated to those customers and would likely be used in the subsequent calculation of rates to be charged to AmerenUE's captive Missouri electric customers.
- AmerenUE's parent company, Ameren Corporation (Ameren), would significantly benefit from the proposed transfer because some of its excess non-regulated generating capacity would be used to provide capacity and energy to the Illinois customers who were formerly served by AmerenUE.

- The AmerenUE Illinois transmission facilities that currently link AmerenUE's Venice and Pinckneyville (acquisition is pending regulatory approvals) generation facilities to AmerenUE's transmission network in Missouri would be transferred to its affiliate, AmerenCIPS.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. My testimony contains evidence and analysis that shows why the proposed transfer is detrimental to the public interest and should be denied. My testimony will also suggest conditions that should be applied to the proposed transfer if the Commission decides to approve the proposed transfer, despite Public Counsel's recommendation to the contrary.

II. REASONS WHY AMEREN AND AMERENUE ARE SEEKING THE PROPOSED TRANSFER.

Q. HAVE ANY OF AMEREN'S SENIOR OFFICERS STATED WHY AMEREN IS SEEKING TO TRANSFER THE ILLINOIS PORTION OF AMERENUE TO AN AMEREN AFFILIATE?

A. Yes. On October 28, 2003, Warner Baxter, Ameren's Executive Vice President and Chief Financial Officer gave a presentation at an Edison Electric Institute Financial Conference where he stated:

...Another piece of transfer business that we're in the process of doing is transferring our service territory from AmerenUE which is principally our Missouri operating affiliate, all into Illinois. **That's really done for two reasons. One is to simplify our jurisdictional matters trying to keep UE very simply a Missouri utility...At the same time, it also will facilitate the generation transfer [transfer of Pinckneyville and Kinmundy plants from Ameren Energy Generating (AEG) to AmerenUE] that we just talked about. Illinois will no longer have approval authority associated with that transaction.** Again what we hope to do is to have both service territory transfer as well as the generation transfer sometime in place by the summer, by next summer. Key point associated with all this however is that from the financial standpoint [of the holding company, Ameren] it really doesn't matter when those transfers are done because we are in a rate moratorium

1 through the middle at least 2006 if not through the end 2006. So we have
2 some time, we operate our plants on some sort of joint dispatch basis so
3 it is not going to have a financial impact or operating impact. But
4 ultimately when want to get these things done before our next rate case is
5 in the state of Missouri as well as Illinois...(emphasis added)

6 **Q. WHY DO YOU BELIEVE THAT MR. BAXTER POINTED OUT THAT “ILLINOIS WILL NO**
7 **LONGER HAVE APPROVAL AUTHORITY ASSOCIATED WITH THE TRANSACTION” AFTER**
8 **AMERENUE TRANSFERS ITS ILLINOIS CUSTOMERS TO AMERENCIPS WHEN HE SPOKE**
9 **ON 10/23/03 AT THE EDISON ELECTRIC INSTITUTE FINANCIAL CONFERENCE?**

10 A. I believe he was explaining to the investment community that Ameren was “on track” to
11 work its way around the significant opposition to the transfer of AEG's Pinckneyville and
12 Kinmundy plants that it had encountered when it sought approval of the transfer from the
13 Illinois Commerce Commission (ICC).

14 **Q. IN HIS PRESENTATION AT THE EDISON ELECTRIC INSTITUTE FINANCIAL CONFERENCE,**
15 **MR. BAXTER POINTED OUT THAT THE PROPOSED TRANSFER WOULD**
16 **“FACILLITATE...THE TRANSFER” OF GENERATION PLANTS FROM AMEREN’S NON-**
17 **REGULATED GENERATING COMPANY, AEG, TO AMERENUE. DOES AMERENUE**
18 **MENTION THIS MOTIVATION IN EITHER ITS APPLICATION OR DIRECT TESTIMONY IN**
19 **THIS CASE?**

20 A. No.

21 **Q. DO YOU KNOW WHY AMEREN EXPECTS THE PROPOSED TRANSFER TO**
22 **“FACILLITATE...THE TRANSFER” OF GENERATION PLANTS FROM AEG TO**
23 **AMERENUE.?**

24 A. I believe that Ameren has this expectation about the proposed transfer because, without
25 the transfer, AmerenUE would still be a regulated utility in Illinois and would have to

1 resume the controversial request for the ICC to approve the transfer of AEG's plants to
2 AmerenUE. The AEG plant transfer had been criticized in the ICC proceedings because it
3 appeared to be a way for Ameren to mitigate the financial risks from investing heavily in
4 gas peaking plants at a time when the Midwest was experiencing a glut of new peaking
5 capacity. It was argued in the ICC proceeding that Ameren was taking advantage of its
6 affiliate relationships to sell plants to one of its utility operating subsidiaries at book
7 value that when it would be hard pressed to find other buyers willing to pay that high of a
8 price in the midst of an overbuilt peaking capacity market in the Midwest region.

9 **Q. SHOULD THE COMMISSION BE CONCERNED THAT IT IS BEING ASKED TO APPROVE ONE**
10 **TRANSACTION THAT WOULD FACILLIATE ANOTHER MAJOR TRANSACTION?**

11 A. AmerenUE has not requested approval of the AEG plant transfer as part of this proposed
12 transfer application. However, I would recommend that if, contrary to OPC's
13 recommendation, the Commission decides to approve the proposed transfer, it should be
14 very clear to state that it is not making any judgment about the future ratemaking
15 treatment that would be applied to the transfer of peaking plants from AEG to
16 AmerenUE.

17 **Q. WHAT MOTIVATING FACTORS OR PURPOSES FOR THE PROPOSED TRANSFER DOES**
18 **AMERENUE CITE IN ITS APPLICATION AND DIRECT TESTIMONY IN THIS CASE?**

19 A. AmerenUE's application does not explicitly address the reasons why the transfer is being
20 proposed. In Mr. Nelson's direct testimony, he states on page 11 that there are two
21 purposes for the transfer. He states that the primary purpose is "to effectuate an electric
22 resource plan in a manner beneficial to Missouri customers" because he believes "the
23 transfer is the least cost alternative available to supply AmerenUE's long-term capacity
24 and energy needs." Mr. Nelson states that a second purpose is to "separate all of its wire

business in Illinois from the generation business, and to separate its operating subsidiaries to be more in line with the current regulatory regimes that exist in each of the states.”

Ameren officials appear to be emphasizing different motivations for the proposed transfer when they speak to different audiences. When Mr. Baxter discussed the purposes of the transfer at the Edison Electric Institute Financial Conference, he highlighted the transfer being motivated by the effect it will have of facilitating the transfer of generating plants from AEG to AmerenUE. Mr. Nelson may not have referenced that purpose because Ameren would probably prefer that the transfer of generation assets from AEG to AmerenUE does not become an issue in this case.

Q. DURING YOUR INVESTIGATION IN THIS CASE, HAVE YOU FOUND ANY OTHER INFORMATION THAT SHEDS ADDITIONAL LIGHT ON AMEREN’S MOTIVATIONS FOR PURSUEING THE PROPOSED TRANSFER?

A. Yes. In one of the later sections of this testimony where Ameren’s strategic plan is addressed, I will describe **

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III. COMMISSION’S APPROVAL STANDARD FOR THE PROPOSED TRANSFER.

Q. WHAT STANDARD DOES THE COMMISSION APPLY IN DETERMINING WHETHER THIS TYPE OF APPLICATION SHOULD BE APPROVED?

A. Counsel informs me that AmerenUE must show that its proposed transfer will not be “detrimental to the public interest” and, since the proposal involves a transfer between affiliates, it must also be done in accordance with the Commission’s Affiliate Transaction rules for electric and gas utilities.

NP

Q. WHAT IS THE MAIN AREA OF AMERENUE'S PROPOSAL THAT YOU WILL ADDRESS?

A. One of the key aspects of the proposed transaction that I have examined is whether the proposed transaction, which will make about 600 MWs of generating capacity available to AmerenUE's Missouri customers provides: (1) capacity for which there is a need at this time and (2) provides any needed capacity at the least cost to AmerenUE customers. These points are important because if the 600 MW of transferred capacity that AmerenUE's Missouri customers would soon be paying for in rates caused rates to be higher than they would have been if AmerenUE had chosen another resource option, then the proposed transfer would clearly be detrimental to the public interest. Similarly, if AmerenUE has not done the comprehensive analysis required to demonstrate that the proposed transfer is its least cost resource addition at this point in time, then the Company has not met its burden of proof to show that the proposed transfer is not detrimental to the public interest.

Q. PLEASE EXPLAIN HOW THE 600 MW OF CAPACITY THAT AMERENUE'S MISSOURI CUSTOMERS WOULD RECEIVE AS A RESULT OF THE PROPOSED TRANSFER WILL AFFECT THE FUTURE RATES PAID BY AMERENUE'S MISSOURI CUSTOMERS.

A. The rates that AmerenUE's electric customers pay in Missouri are based on AmerenUE's Missouri revenue requirement. Approximately 600 MW of AmerenUE's capacity is currently allocated to Illinois customers. If the proposed transfer is approved, there will no longer be any AmerenUE customers in Illinois (to which the 600 MW of AmerenUE's generation costs had formerly been allocated), and thus the costs associated with this generation capacity would be imposed upon Missouri's AmerenUE customers through the revenue requirement upon which rates are based.

1 **Q. IF MORE CAPACITY IS NEEDED TO MEET THE INCREASING DEMANDS OF MISSOURI**
2 **CUSTOMERS, HOW COULD THESE CUSTOMERS BE HARMED BY PAYING FUTURE RATES**
3 **THAT INCLUDE THE COSTS OF THE CAPACITY THAT WAS FORMERLY DEDICATED TO**
4 **SERVING ILLINOIS LOADS?**

5 A. Missouri customers will be harmed if the transfer of 600 MW of generation capacity is
6 approved, causing a cost shift from AmerenUE's Illinois revenue requirement to
7 AmerenUE's Missouri revenue requirement. As a result, AmerenUE's Missouri
8 customers would be paying significantly higher rates than rates that would be associated
9 with acquiring some other less costly generating capacity.

10 As this testimony will demonstrate, AmerenUE cannot show that this application is "not
11 detrimental" because (see later sections of this testimony for a more comprehensive list
12 of deficiencies) the Company has not:

- 13 1) Performed an analysis comparing the proposed transfer to an extension of its
14 existing contract with Electric Energy, Inc. (EEI) for output from the Joppa plant
15 or
- 16 2) Pursued the standard practice of issuing an RFP to determine its full range of
17 resource options. Without the information that would be provided by such an
18 RFP, AmerenUE has no basis for asserting that the proposed transfer is its least
19 cost resource option with the lowest amount of future adverse rate impacts.
20 Likewise, without performing an analysis that compares the proposed transfer to
21 extending the EEI Joppa contract, AmerenUE has no basis for asserting that the
22 proposed transfer is its least cost resource option with the lowest amount of
23 future adverse rate impacts.

1 **Q. DOES AMERENUE’S TESTIMONY ATTEMPT TO SHOW THAT THERE IS A NEED FOR AN**
2 **ADDITIONAL 600 MW OF CAPACITY AT THIS TIME?**

3 A. Yes. Mr. Voytas attempts to do this on page 7 of his testimony where he shows
4 AmerenUE’s year by year reserve margins for the next few years, assuming the proposed
5 transfer occurs. However, Mr. Voytas fails to point out that his reserve margin
6 calculations assume that AmerenUE will no longer have access to 400 MWs of capacity
7 from EEI’s Joppa plant beginning in 2006. Ameren owns 60% of EEI and it does not
8 explain why it cannot get a new cost-based contract that would allow it to continue
9 getting reasonably priced power from the Joppa plant after the current contract with EEI
10 expires at the end of 2005.

11 **Q. WOULD AMERENUE HAVE A NEED FOR THE ADDITIONAL 600 MWs OF CAPACITY**
12 **THAT THE PROPOSED TRANSFER WOULD PROVIDE IF IT CONTINUED TO HAVE ACCESS**
13 **TO 400 MW OF CAPACITY FROM THE JOPPA PLANT?**

14 A. No.

15 **IV. IMPACT OF THE AMEREN HOLDING COMPANY STRUCTURE ON THE**
16 **AMEREN AND AMERENUE DECISIONS REGARDING THE PROPOSED**
17 **TRANSFER.**

18 **Q. IF AMERENUE HAD NOT BECOME PART OF A HOLDING COMPANY AS A RESULT OF THE**
19 **UE/CIPS MERGER, WOULD THIS COMMISSION HAVE ANY NEED TO ADDRESS THE**
20 **PROPOSED TRANSFER OF AMERENUE’S ILLINOIS SERVICE TERRITORY TO ONE OF**
21 **AMERENUE’S AFFILIATES?**

22 Probably not. The UE/CIPS merger was the first of a series of structural changes at
23 AmerenUE and its affiliates that precipitated the current application. A couple years after

1 the merger, Illinois began to restructure its electric industry. AmerenUE's holding
2 company, Ameren, responded to this restructuring by creating a non-regulated generation
3 company, Ameren Energy Generating (AEG). Once AEG was created, AmerenUE
4 essentially stopped building new plants in Missouri to keep up with AmerenUE's load
5 growth because it was decided at the holding company level that generation expansion
6 would take place at AEG.

7 AEG proceeded to install more capacity than was needed by Ameren's utility operating
8 companies in Illinois (in the hopes of marketing the power (via Ameren Energy
9 Marketing) to retail customers in states with electric retail competition) and ended up
10 with excess peaking capacity that it could not sell profitably into competitive markets.
11 Information (see <http://www.icc.state.il.us/ec/docs/020515relameren.pdf>) that Ameren
12 provided to the Illinois Commerce Commission (ICC) indicated that, for the summer of
13 2002, AmerenCIPS (supplied by Ameren Energy Marketing (AEM)) had a reserve
14 margin of 29% while AmerenUE's reserve margin was only 17%. Presumably,
15 AmerenCIPS' reserve margin for 2002 would have been even higher (and AmerenUE's
16 would have been even lower) if AEM had not made a significant capacity sale to
17 AmerenUE for that summer.

18 Within the last couple of years, Ameren decided that it would move some of its excess
19 non-regulated generating capacity from AEG to AmerenUE, even though it had
20 constructed most of this capacity in Illinois. When Ameren sought permission from the
21 Illinois Commerce Commission (ICC) to transfer generating capacity from AEG to
22 AmerenUE, it received substantial opposition. (It is also receiving substantial opposition
23 at FERC to this proposal.) Ameren responded to the opposition at the ICC by
24 withdrawing its application and attempting to get approval from the ICC and this
25 Commission to transfer all of its AmerenUE operations in Illinois to AmerenCIPS since

1 doing so would eliminate the need for ICC approval of the transfer of AEG generating
2 units to AmerenUE.

3 The transfer of AmerenUE's Illinois load provided for by the transfer proposed in this
4 application would also help Ameren reduce the risks associated with its substantial
5 investment in non-regulated generating capacity. Some of Ameren's non-regulated
6 capacity will be used to serve the electric load of the AmerenUE Illinois customers that
7 would be transferred to AmerenCIPS if this application is approved.

8 **Q. IN YOUR ANSWER ABOVE YOU MENTION THAT "AEG PROCEEDED TO INSTALL MORE**
9 **CAPACITY THAN WAS NEEDED BY AMEREN'S UTILITY OPERATING COMPANIES IN**
10 **ILLINOIS (IN THE HOPES OF MARKETING THE POWER (VIA AEM) TO RETAIL**
11 **CUSTOMERS IN STATES WITH ELECTRIC RETAIL COMPETITION) AND ENDED UP WITH**
12 **EXCESS PEAKING CAPACITY THAT IT COULD NOT SELL PROFITABLY INTO COMPETITIVE**
13 **MARKETS." CAN YOU PROVIDE SOME REFERENCES FROM SEVERAL YEARS AGO**
14 **WHICH ILLUSTRATE THE VIEWS THAT AMEREN HELD AT THAT TIME ABOUT FOCUSING**
15 **ON THE ADDITION OF NON-REGULATED GENERATING FACILITIES?**

16 A. Yes. Ameren's employee newsletter, Ameren Journal, had several articles in the years
17 2000 and 2001 that illustrated the philosophy of focusing on non-regulated generation
18 that was held by Ameren's senior management at that time. In the May 2000 issue of
19 Ameren Journal, Ameren's current CEO Gary Rainwater stated on page 2 that:

20 We're competing with companies that have 30,000 or 40,000 megawatts
21 of capacity, so **we'll either have to move the AmerenUE plants into**
22 **the genco [Ameren's non-regulated generating subsidiary] at some**
23 **point or gain control of additional capacity in other ways.** We don't
24 know if the state of Missouri will allow us to do that in the future, but
25 that's the most critical issue we'll face in the years to come. (emphasis
26 added)

1 In the July 2000 issue of Ameren Journal, Ameren's current CEO Gary Rainwater stated
2 on page 3 that:

3 AmerenEnergy Resource's mission is to be the growth engine of the
4 corporation. Therefore, a prime financial KPI [key performance
5 indicator] for us will be to achieve high earnings growth rates. That is
6 not an appropriate indicator for regulated generation because it's
7 virtually impossible to grow earnings at returns that justify new
8 generation investment. **We need to put our investment on the non-**
9 **regulated side of the generation business**, so we can't expect regulated
10 generation to achieve earnings growth. (emphasis added)

11 In the May 2001 issue of Ameren Journal, Ameren's current CEO Gary Rainwater stated
12 on page 10 that:

13 We have proposed legislation that would allow utilities to move their
14 generating assets into affiliated companies....Until legislation is enacted,
15 **AmerenUE could face years of growing dependence on purchased**
16 **power. The company currently plans to add a 45 MW peaking unit**
17 **at its [AmerenUE] Meramec Plant next summer, while Ameren's**
18 **non-regulated generation subsidiary, Ameren Energy Generating**
19 **(AEG) plans to add about 850 MW of capacity this summer alone.**
20 (emphasis added)

21 In addition to the statements made in Ameren Journal articles, the former Senior Vice-
22 President of Ameren Services, Paul Agathen, addressed this issue in May 2001 in a guest
23 editorial in the Joplin Globe where he stated that "Missouri's state regulated utilities have
24 no plans to build new generating plants."

25 **Q. DOES THE AMEREN HOLDING COMPANY AND MANAGEMENT STRUCTURE PROVIDE**
26 **AMEREN AND AMERENUE WITH GREAT MOTIVATION TO PURSUE OBJECTIVES IN THE**
27 **MANAGEMENT OF AMERENUE'S RESOURCE PLANNING PROCESS THAT COINCIDE WITH**
28 **THE INTERESTS OF AMERENUE'S CUSTOMERS?**

29 A. No. If AmerenUE was a "stand alone" regulated utility it would be more likely that the
30 interests of AmerenUE's customers would coincide with the interests of AmerenUE's
31 management. For example, due to regulatory lag, "stand alone" utilities generally have

1 an incentive to minimize their costs and this interest tends to coincide with the interests
2 of consumers so long as cost minimization does not lead to unacceptable declines in
3 service quality. However, once utilities become part of a holding company structure, the
4 incentives of a regulated utility are much less likely to cause their interests to coincide
5 with the interests of consumers, especially at utilities like AmerenUE, where a separate,
6 independent management no longer exists for the regulated utility.

7 **Q. PLEASE CONTINUE YOUR EXPLANATION OF HOW AMEREN'S HOLDING COMPANY**
8 **STRUCTURE AFFECTS THE INCENTIVES AND DECISION-MAKING PROCESS AT**
9 **AMERENUE.**

10 A. The holding company structure of AmerenUE and its parent company, Ameren, is fairly
11 complex and includes an extensive mixture of regulated and non-regulated business lines.
12 While Ameren operates a regulated vertically-integrated utility in Missouri, it operates
13 regulated distribution utilities in Illinois along with an unregulated generation company
14 (AEG) and an unregulated power marketing company (AEM). Many of Ameren's
15 affiliates (e.g. Ameren Services, Ameren Energy, and Ameren Energy Fuels & Services)
16 perform activities on behalf of both the regulated and unregulated portions of Ameren's
17 operations.

18 It must be assumed that, from the perspective of Ameren's officers and directors at the
19 holding company level, their fiduciary responsibility to shareholders is to seek to obtain
20 the highest possible returns at the holding company level, subject to risk considerations.
21 One consideration in obtaining high returns at the Ameren holding company level would
22 obviously be the ability to avoid "regulatory take back" (e.g. through sharing credits) or
23 the adjustment of earnings levels (e.g. through rebasing of rates in a general rate
24 proceeding). Therefore, if Ameren has the opportunity to enter into a profitable
25 transaction, such as a long term power sale of low cost output from EEI's Joppa plant,

one would expect the holding company to prefer having the transaction take place between EEI and one of its unregulated subsidiaries (e.g. AEM) rather than between EEI and AmerenUE.

Q. WOULDN'T THE SENIOR OFFICERS OF AMERENUE BE MOTIVATED TO ACHIEVE THE HIGHEST POSSIBLE LEVEL OF PERFORMANCE AT AMERENUE SO THAT THEY COULD TAKE CREDIT FOR THIS ACCOMPLISHMENT, EVEN THOUGH SOME OF THIS HIGH PERFORMANCE MIGHT COME AT THE EXPENSE OF ONE OF ITS AFFILIATES OR ITS PARENT?

A. No. The achievement of outstanding operating results by AmerenUE that come at the expense of the overall financial performance of Ameren would not be expected to occur unless the senior management of Ameren was ineffective at pursuing its fiduciary responsibilities to the holding company's shareholders. An effective management at the holding company level would be certain to communicate the overriding importance of the holding company's financial performance to AmerenUE's senior management and hold them accountable to ensure that good financial operating results at the AmerenUE level did not come at the expense of the holding company's performance.

Q. HAVE YOU SEEN EVIDENCE OF AMEREN'S SENIOR MANAGEMENT COMMUNICATING WITH AMERENUE'S SENIOR MANAGEMENT ABOUT THE OVERIDING IMPORTANCE OF THE HOLDING COMPANY'S FINANCIAL PERFORMANCE AND HOLDING THEM ACCOUNTABLE FOR NOT ACHIEVING GOOD FINANCIAL OPERATING RESULTS AT THE AMERENUE LEVEL THAT COME AT THE EXPENSE OF THE HOLDING COMPANY'S PERFORMANCE?

A. Given the shared management personnel of the holding company and AmerenUE, there would be no need for such communications and accountability to take place. This is

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1 because Ameren's President and Chief Executive Officer, Gary Rainwater, is also the
2 President and Chief Executive Officer of AmerenUE, AmerenCIPS, AmerenCILCORP,
3 Ameren Services, and CILCORP, Inc. AmerenUE's response to OPC DR No. 588
4 indicated that Gary Rainwater, the Chairman and Chief Executive Officer (CEO) for
5 AmerenUE's parent company, Ameren, is "the ultimate decision-maker in the
6 [AmerenUE] resource planning process."

7 **Q. HAVE YOU SEEN EVIDENCE THAT AMEREN'S BOARD OF DIRECTORS DIRECTED**
8 **AMEREN'S SUBSIDIARIES TO ENTER INTO AN AGREEMENT TO PROCEED WITH THE**
9 **PROPOSED TRANSFER?**

10 A. ** _____
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18 **Q. HAVE ANY AMERENUE EMPLOYEES PROVIDED TESTIMONY IN SUPPORT OF THIS**
19 **APPLICATION?**

20 A. No. All three of AmerenUE's witnesses are employees of Ameren Services. My
21 experience with these witnesses is that they all work to support the financial and strategic
22 interests of AmerenUE's holding company, Ameren.

23 **Q. DOES AMEREN'S HOLDING COMPANY STRUCTURE AND THE CONCENTRATION OF**
24 **AUTHORITY OVER ALL OPERATING COMPANY AFFILIATES INTO ONE SENIOR LEVEL**

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**MANAGER IMPACT THE ROLE THAT THE COMMISSION NEEDS TO FULFILL WHEN
REVIEWING INTER-AFFILIATE TRANSFER APPLICATIONS SUCH AS THIS ONE?**

A. Yes. This Commission can only safely assume that meaningful due diligence analysis for this transaction was performed at the holding company level. This is consistent with the findings from review of discovery in this case. AmerenUE's responses to Staff and OPC DRs in this case have exhibited a lack of the kind of due diligence that one would expect to find for a transaction of this size. Staff DR No. 49 addressed this issue by asking AmerenUE to:

Provide a copy of all fairness opinions or other similar documents used by the AmerenUE Board of Directors to approve the transfer of a portion of its business to CIPS.

AmerenUE's response to Staff DR No. 49 stated that "we are not aware of any fairness opinions or similar documents."

If AmerenUE was a "stand alone" utility entering into a similar transaction with a non-affiliated entity, then I would expect to see the kind of thorough due diligence analysis that is generally performed for transactions of this size. Given the lack of any meaningful due diligence analysis performed by the applicant, interveners in this case and the Commission have a greater responsibility to perform an "in depth" independent assessment of the proposed transfer to determine whether it would be detrimental to the public interest.

**Q. ARE THE PLANS FOR MAJOR AMEREN INITIATIVES LIKE THE PROPOSED TRANSFER
USUALLY INITIATED AND APPROVED AT THE OPERATING COMPANY LEVEL OR ARE
PLANS FOR MAJOR INITIATIVES LIKE THE TRANSFER USUALLY THE RESULT OF A
COMPREHENSIVE STRATEGIC PLANNING PROCESS THAT TAKES PLACE AT THE
HOLDING COMPANY (AMEREN) LEVEL.**

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1 A. I have reviewed the Ameren strategic planning process for a number of years and have
2 consistently only seen major initiatives like the proposed transfer proceed after it became
3 a part of the overall Ameren strategic plan. According to a description of Ameren's
4 strategic planning process on the Ameren Corporation's website (see
5 http://www.ameren.com/Investors/ADC_IV_Strategic_Planning.pdf), "Ameren's Senior
6 Management Team is charged with the formal process of developing, reviewing and
7 revising the Company's comprehensive corporate Strategic Plan." The plans developed
8 by the Senior Team are then approved by the Ameren Board of Directors.

9 **Q. IS THE PROPOSED TRANSFER INCLUDED IN THE HOLDING COMPANY'S CURRENT**
10 **STRATEGIC PLAN?**

11 A. ** _____ **

12 **V. RELATIONSHIP BETWEEN AMEREN'S STRATEGIC PLANNING**
13 **PROCESS AND THE PROPOSED TRANSFER**

14 **Q. ARE THE PLANS AND INITIATIVES DESCRIBED IN AMEREN'S CURRENT STRATEGIC**
15 **PLAN RELEVANT TO THE TRANSFER THAT AMERENUE IS PROPOSING IN THIS CASE?**

16 A. ** _____
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Q. PLEASE DESCRIBE ATTACHMENT 1.

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A. Attachment 1 contains **

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Q. PLEASE PROVIDE A FURTHER EXPLANATION OF **

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A. ** _____

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Q. WHAT IS INCLUDED IN THE ** _____

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A. ** _____

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1 **Q. COULD CONSUMERS BE HARMED BY **** _____

2 _____

3 _____ **

4 A. ** _____ ** I believe that AmerenUE needs to have a separate trading organization for
5 making long-term power supply purchases and sales. Further, if Ameren is not willing to
6 modify the JDA to make it more equitable for AmerenUE, then the JDA should be
7 terminated which would result in the need for a separate AmerenUE trading organization
8 to do short-term trades as well. These separate trading organizations that I am
9 recommending would need:

- 10 • The resources that are necessary to be effective and
- 11 • The independence to keep them from any constraints or influences that Ameren
- 12 might impose upon their operations.

13 **Q. COULD CUSTOMERS BE HARMED BY **** _____

14 _____

15 _____ **

16 A. ** _____

17 _____ **

18 **Q. PLEASE PROVIDE A FURTHER EXPLANATION OF **** _____

19 _____ **

20 A. ** _____

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Rebuttal Testimony of
Ryan Kind

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Q. PLEASE PROVIDE A FURTHER EXPLANATION OF **

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**VI. AMERENUE'S ANALYSIS FAILS TO PROVE THAT THE PROPOSED
TRANSFER IS THE LEAST COST RESOURCE OPTION**

A. OVERVIEW OF THE ANALYSIS

**Q. WHICH UE WITNESS WAS RESPONSIBLE FOR ATTEMPTING TO DEMONSTRATE THAT
THE PROPOSED TRANSFER IS THE COMPANY'S LEAST COST RESOURCE OPTION?**

A. In Mr. Nelson's testimony, he states at line 12 on page 11 that "the transfer is the least cost alternative available to supply AmerenUE's long-term capacity and energy needs, as more fully explained in the direct testimony of Mr. Richard A. Voytas." Richard Voytas, an employee of Ameren Services Company, states at line 18 on page one of his testimony that:

The purpose of my testimony is to explain why ...[the proposed transfer] is the least cost alternative available to supply AmerenUE's long-term capacity needs.

**Q. DO YOU BELIEVE THAT THE DIRECT TESTIMONY OF MR. VOYTAS FULFILLED ITS
STATED PURPOSE OF SHOWING THAT THE PROPOSED TRANSFER "IS THE LEAST COST
ALTERNATIVE AVAILABLE TO SUPPLY AMERENUE'S LONG-TERM CAPACITY NEEDS."**

A. No.

**Q. DO YOU AGREE WITH HOW MR. VOYTAS AND MR. NELSON FRAMED THE ISSUE? THEY
APPEAR TO BE IMPLYING THAT IF AMERENUE CAN SHOW THAT THE ILLINOIS
TRANSFER "IS THE LEAST COST ALTERNATIVE AVAILABLE TO SUPPLY AMERENUE'S
LONG-TERM CAPACITY NEEDS" THEN THE PROPOSED TRANSFER WILL NOT BE
DETRIMENTAL FROM A RESOURCE PLANNING PERSPECTIVE. IS THIS CORRECT?**

Rebuttal Testimony of
Ryan Kind

1 A. It depends on how the phrase “least cost alternative available to supply AmerenUE’s
2 long-term capacity needs” is interpreted. If this phrase is interpreted to mean that UE only
3 needs to show that there are no other single resource alternatives with better cost
4 characteristics, then I would disagree. For example, if UE had an option to enter into a
5 five or ten year power supply agreement (PSA) that would lead to lower rates during a
6 five or ten year period than the proposed transfer, I would argue that the proposed
7 transfer was not the Company’s least cost option. However, UE’s witnesses might
8 disagree by arguing that a five or ten year purchase does not meet the Company’s
9 definition of a resource alternative that is “available to supply AmerenUE’s **long-term**
10 capacity needs.” (emphasis added)

11 **Q. APART FROM ANY DIFFERENCES YOU MAY HAVE WITH HOW UE HAD FRAMED THIS**
12 **ISSUE IN ITS TESTIMONY, DOES THE TESTIMONY OF MR. VOYTAS PERSUADE YOU**
13 **THAT THE PROPOSED TRANSFER IS THE COMPANY’S LEAST COST RESOURCE**
14 **OPTION?**

15 A. No.

16 **Q. PLEASE EXPLAIN WHY NOT.**

17 A. Mr. Voytas’ testimony on this issue fails to be persuasive for a number of reasons
18 including:

- 19 1) The reserve requirement analysis that Mr. Voytas presents to demonstrate the
20 purported need for the 600 MW of capacity provided by the transfer is
21 inadequate. The analysis did not even identify what UE’s reserve margin would
22 be in 2004 - 2007 without the transfer, and when OPC requested this information

1 in OPC DR No. 563, UE's response stated that "the requested analyses have not
2 been done."

3 2) Mr. Voytas assumes that UE will be unable to renew its cost-based contract with
4 EEI for capacity and energy from the Joppa plant when the current contract
5 expires at the end of 2005. If this contract can be renewed it would be very
6 difficult to show a need for the additional 600 MW of capacity that the proposed
7 transfer would provide to UE's Missouri customers.

8 3) Mr. Voytas fails to explain how the least cost options can be identified and
9 analyzed without issuing a request for proposals (RFP) to determine the full
10 range of resource options that are available.

11 4) Even without issuing an RFP, UE knew of other resource options (including
12 NRG's Audrain plant) but failed to pursue them or compare them to the cost of
13 the capacity provided by the proposed transfer.

14 5) The analysis performed by Mr. Voytas compares the proposed transfer to the cost
15 of 600 MW of new gas-fired capacity, even though UE has no need for anything
16 close to 600 MWs over the next few years, assuming that: (1) the Company's
17 other planned capacity additions take place and (2) the 400 MW Joppa contract is
18 renewed.

19 6) Mr. Voytas assumes that the cost of newly installed gas-fired generation is
20 \$471/kW, but does not provide adequate documentation to support this estimate.

21 7) Ameren has been selling large quantities of UE's SO₂ emission allowances over
22 the last few years and the analysis performed by Mr. Voytas should have allowed
23 for increased environmental compliance costs that will be associated with the 600
24 MW of transferred capacity (which includes a high proportion of coal-fired

capacity that relies on banked allowances to be operated economically) ** _____

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B. TIMING AND MAGNITUDE OF CAPACITY NEEDS

Q. DID MR. VOYTAS PROVIDE A CLEAR PICTURE OF THE MAGNITUDE AND TIMING OF AMERENUE' CAPACITY NEEDS?

A. No. The only information that he provided which relates to this subject were the results of his calculation of AmerenUE's reserve margins in 2004 – 2007, assuming that the proposed transfer is approved.

Q. SO, MR. VOYTAS DID NOT EVEN PROVIDE INFORMATION ON WHAT RESERVE MARGINS OR CAPACITY SHORTFALLS, IF ANY, MIGHT EXIST WITHOUT THE PROPOSED TRANSFER?

A. No. As I stated earlier, his response to OPC DR No. 563 indicated that he had not performed the analysis necessary to calculate the level of reserve margins that AmerenUE would have without the proposed transfer

Q. CAN YOU USE THE SAME DATA AND METHODOLOGY USED BY MR. VOYTAS IN HIS POST TRANSFER RESERVE MARGIN CALCULATIONS TO CALCULATE THE RESERVE MARGINS AND CAPACITY SHORTFALLS (OR SUPPLUS) THAT WOULD EXIST OVER THE NEXT FOUR YEARS UNDER A VARIETY OF LIKELY SCENARIOS?

A. Yes. The results of the calculations that I performed to produce figures for reserve margins and capacity position (MWs of deficit/surplus) using the methodology and data that Ameren provided in its response to OPC DR No. 562 are shown in Attachment 2.

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Q. PLEASE DISCUSS AND ANALYZE THE RESERVE MARGIN AND CAPACITY POSITON FIGURES THAT APPEAR IN ATTACHMENT 2.

A. First I will describe the figures in the top half of the table that pertain to Ameren's current situation without the proposed transfer. For this scenario, I've shown what AmerenUE's reserve margins and Capacity positions would be in each year, with and without the extension of the EEI contract. As the table shows, the extension of the Joppa contract only affects the figures in 2006 and 2007 since the current contract expires at the end of 2005.

As the figures in the top half of the table demonstrate, AmerenUE has ** _____

_____ **

Next, I will describe the figures in the bottom half of the table that pertain to Ameren's future situation, assuming the proposed transfer is approved and implemented. The figures in the bottom half of the table show ** _____

**

Q. PLEASE SUMMARIZE YOUR VIEWS OF WHICH RESOURCE OPTIONS AMERENUE SHOULD BE CONSIDERING AT THIS TIME, GIVEN ITS CURRENT CAPACITY SITUATION.

A. Acquiring an additional 600 MWs at this time makes no sense at all. Such a large acquisition would be especially imprudent prior to exploring all options for renewing the EEI contract. **

** If, despite OPC's recommendation to the contrary, the Commission decides to approve this application, it should be conditioned on AmerenUE's agreement to work with Public Counsel and Staff to make sure that AmerenUE: (1) has the "in house" resources" necessary to aggressively market its excess capacity and energy in contracts of one year or longer and (2) utilizes these enhanced marketing resources effectively for the benefit of ratepayers.

C. POSSIBLE EXTENSION OF THE EEI JOPPA CONTRACT

Q. HAVE YOU RECEIVED ANY KIND OF EXPLANATION FROM AMERENUE AS TO WHY IT IS ASSUMING THAT THE EEI CONTRACT WILL NOT BE RENEWED?

A. OPC DR No. 566 asked AmerenUE to "identify the assumptions that have been made regarding whether AmerenUE will continue to be entitled to 40% of the output of generators owned by Electric Energy, Inc. and its subsidiary, Midwest Electric Power, Inc. in 2004, 2005, 2006, or 2007. Mr. Voytas' response to this DR simply stated that:

The EEInc. Contract with AmerenUE expires in December of 2005. The contract does not extend beyond that date and it is unknown as to what

EEInc's plans are after that date. Ameren UE does not have a contract with Midwest Electric Power, Inc.

Q. WHAT IS YOUR REACTION TO MR. VOYTAS' RESPONSE?

A. I am quite surprised at his lack of information and at the apparent lack of motivation to try and work out an extension that would benefit AmerenUE and its ratepayers.

It is noteworthy that Mr. Voytas and Mr. Nelson are part of the holding company chain of command as opposed to being AmerenUE employees that devote all their time to furthering the interests of AmerenUE and its ratepayers. It is the holding company's strategic and financial interests that would be furthered if the contract between EEI and AmerenUE is not renewed.

Q. CAN YOU PROVIDE AN EXAMPLE OF HOW AMERENUE AND ITS RATEPAYERS PROVIDED SUPPORT TO EEI DURING THE DEVELOPMENT OF THE JOPPA PROJECT?

A. Yes. I will provide a brief description of Case No. EF-77-197. In that case, AmerenUE came to this Commission requesting authority for AmerenUE to "guarantee" certain financial obligations of Electric Energy, Inc., an affiliate. This "guarantee" was requested so that EEI could proceed with its proposal to acquire and install certain air pollution control equipment consisting of three 550 foot chimneys, coal handling equipment and an air quality monitor at the Joppa plant. The Commission approved this request for AmerenUE to provide an additional "guarantee" to EEI that committed AmerenUE, as one of the EEI Sponsoring Companies, to make payments to EEI sufficient to enable EEI to pay its operating and other costs and expenses so that in the event that EEI is unable to generate or deliver any power or energy to the Sponsoring Companies for any reason, they would still be obligated to continue making payments to EEI.

The Commission's order approving AmerenUE's request to "guarantee" certain obligations of EEI, even if it was unable to deliver power to AmerenUE noted that:

The execution and delivery by the Sponsoring Companies, EEI and the Trustees of the proposed amendment and the assignment thereof to the Trustee, are conditions precedent to the obligations of Metropolitan Life Insurance Company to purchase and pay for the 8 1/2 percent bonds of EEI. **In return for its "guaranty" of EEI's financial obligations, Applicant will be assured of a continuous source of economical power, its entitlement of the surplus power not contractually obligated to ERDA.** This surplus power is more economical to Applicant than the installation of other new generation or the purchase of such power from others. During 1976, the surplus power cost Applicant an average of 1.5 cents per kilowatt hour, as compared with an estimated 2.2 cents per kilowatt hour for other similar purchased power and 2.0 cents per kilowatt hour to construct new additional generation to replace the EEI capacity.

Now, Ameren Corp. appears to have decided that AmerenUE's ratepayers will no longer benefit from this "continuous source of economical power" despite the financial support they have provided to the development of this "source of economical power."

Q. HAS ANY REPRESENTATIVE OF AMEREN CORP. OR AMERENUE EVER EXPLAINED WHY AMERENUE WOULD NOT WANT TO RENEW ITS CONTRACT WITH EEI AND CONTINUE RECEIVING ITS ENTITLEMENT TO THE SURPLUS POWER NOT CONTRACTUALLY COMMITTED TO THE ERDA?

A. Not to my satisfaction. Perhaps the personnel who do AmerenUE's resource planning are not aware of AmerenUE's entitlement to this low cost power as the largest EEI Sponsoring Company and perhaps they are not aware of the support that AmerenUE and its ratepayers have provided to EEI over the years by "guaranteeing" some of its financial obligations.

Q. THE COMMISSION ORDER THAT YOU QUOTED ABOVE CITED THE LOW COST OF THE POWER THAT AMERENUE IS ENTITLED TO RECEIVE AS A RESULT OF AMERENUE'S

1 **40% OWNERSHIP SHARE OF EEI. HAVE YOU SEEN ANY OTHER PUBLICLY AVAILABLE**
2 **INFORMATION THAT DESCRIBES THE COST OF ENERGY GENERATED AT THE JOPPA**
3 **PLANT?**

4 A. Yes. An article on page ten of the October 2003 issue of Ameren Journal stated that:

5 ...**the Joppa generating station is one of the most cost-effective and**
6 **cleanest plants in the United States....**The Joppa facility continues to
7 be an electric generation success story. EEI is 60% owned by the
8 company. (emphasis added)

9 As the above quote indicates, Joppa has become, in Ameren's words, "an electric
10 generation success story." Its hard to comprehend that Ameren and AmerenUE would
11 now try to stop AmerenUE ratepayers from continuing to share in the benefits from the
12 "success story" that those ratepayers helped create through their support of EEI over the
13 years.

14 **Q. GIVEN THE PRESENT UNCERTAINTIES REGARDING THE EXTENSION OF AMERENUE'S**
15 **CONTRACT WITH EEI, DO YOU HAVE ANY RECOMMENDATIONS IN THIS AREA?**

16 A. Yes. If, despite OPC's recommendation to the contrary, the Commission decides to
17 approve this application, this approval should be conditioned on Ameren Corp. and
18 AmerenUE's agreeing to extend AmerenUE's contract with EEI for power from the
19 Joppa Plant beyond 2005.

20 **D. NO RECENT RFP TO DISCOVER THE FULL RANGE OF OPTIONS**

21 **Q. PLEASE DESCRIBE THE RANGE OF RESOURCE OPTIONS INCLUDED IN THE ANALYSIS**
22 **PERFORMED BY MR. VOYTAS.**

23 A. The range of resources was extremely limited. Mr. Voytas chose to limit his analysis to a
24 comparison of only two resource options, (1) the proposed transfer and (2) the

1 construction of gas-fired combustion turbines that would also provide 600 MW of
2 capacity.

3 **Q. HOW DOES MR. VOYTAS ATTEMPT TO JUSTIFY CONSIDERING SUCH A LIMITED RANGE**
4 **OF RESOURCE OPTIONS IN HIS ANALYSIS THAT PURPORTS TO SHOW THAT THE**
5 **PROPOSED TRANSFER IS THE LEAST COST OPTION?**

6 A. At line lines 16 – 19 on page four of his testimony, Mr. Voytas tries to explain why the
7 transfer was only compared to one other alternative resource. He states that:

8 [the Company has] performed Asset Mix Optimization studies which
9 have shown that building or purchasing combustion turbine generators
10 are the least cost generation alternative to supply AmerenUE's capacity
11 and energy needs until around 2010.

12 **Q. DO YOU AGREE WITH MR. VOYTAS' RATIONALE FOR EXCLUDING THE CONSIDERATION**
13 **OF OTHER RESOURCE OPTIONS?**

14 A. Absolutely not. It doesn't make any sense from a resource planning perspective or from
15 a resource acquisition perspective. It would be highly imprudent for a utility to build or
16 otherwise acquire a large amount of capacity in today's overbuilt market without issuing
17 an RFP to see what offers are made for PSA, the sale of existing plants, etc. When
18 AmerenUE issued an RFP several years ago, it received a large number of attractive
19 responses and that was before the capacity glut in the Midwest was fully developed.

20 In his statement above about the Asset Mix Optimization studies that were performed
21 which show the need for gas-fired combustion turbines (CTs), Mr. Voytas appears to be
22 saying its only necessary to look at the results of the studies when making a resource
23 acquisition decision. That doesn't make any sense...you also need to look at other
24 options that are available in the market at the time you make a resource acquisition
25 decision. The other options that may be available in the market at any given point in time

1 are not included in the Asset Mix Optimization studies. That's why you need to discover
2 what those options are by issuing an RFP at the time you are ready to make a resource
3 acquisition decision.

4 The statements that Mr. Voytas has made about arriving at a major resource acquisition
5 decision by simply relying on the output of Asset Mix Optimization studies is not
6 consistent with the resource planning process at Ameren that I've been involved with
7 over the last few years. This point will be discussed further in following section.

8 **Q. HAS AMERENUE BEEN REQUIRED BY THIS COMMISSION TO USE AN RFP PROCESS IN**
9 **CERTAIN SITUATIONS WHERE AMEREN AFFILIATES ARE INVOLVED?**

10 A. Yes. In Case No. EA-2000-37, AmerenUE sought and received permission from this
11 Commission for AmerenUE's Illinois affiliate, AmerenCIPS, to transfer its generation
12 assets to an Exempt Wholesale Generator owned by Ameren. One of the conditions that
13 the Commission required for approving that transaction was that AmerenUE would agree
14 to a process for issuing RFPs for new generation resources under certain circumstances
15 when Ameren affiliates are involved in the resource acquisition process. Some of the
16 same affiliate concerns that were present in that case are also present in this case.

17 The conditional approval that included a requirement for an open and fair resource
18 acquisition process was intended to help prevent AmerenUE's ratepayers from being
19 harmed by an AmerenUE resource acquisition process that served the interests of
20 AmerenUE's parent company, Ameren, instead of serving the interests of AmerenUE's
21 ratepayers. Public Counsel believes the Commission needs to take similar steps to
22 protect AmerenUE ratepayers in this case. OPC recommends denial of this application
23 until such time as AmerenUE can show that it has: (1) discovered all available resource

options by issuing an RFP and (2) fairly evaluated those options and the proposed transfer to determine the least cost viable option.

E. ANALYSIS EVEN EXCLUDED EXISTING KNOWN RESOURCE OPTIONS

Q. YOU MENTIONED IN THE LAST SECTION THAT JUST RELYING ON THE OUTPUT OF ASSET MIX OPTIMIZATION STUDIES IS NOT CONSISTENT WITH THE RESOURCE PLANNING PROCESS AT AMEREN THAT YOU'VE BEEN INVOLVED WITH OVER THE LAST FEW YEARS. PLEASE EXPLAIN.

A. I have been in touch with Ameren resource planning personal quite a bit over the last few years. The Company meets with the Staff and Public Counsel at least twice a year and numerous extra meetings have been scheduled over the last few years to address specific issues as they arise.

AmerenUE's consideration and analysis of only two resource options is not consistent with the range of options that the Company has identified at recent resource planning meetings. Specifically, **

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Rebuttal Testimony of
Ryan Kind

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**Q. DO YOU KNOW OF ANY OTHER RESOURCE OPTIONS THAT AMERENUE OR ITS
AFFILIATES HAVE LEARNED ABOUT EVEN WITHOUT ISSUEING AN RFP?**

A. I've had a difficult time obtaining information in this area from AmerenUE and its
affiliates through Data Requests. AmerenUE objected to OPC DR No. 572 which
requested AmerenUE to provide:

a copy of all documents that have been created by or for Ameren or its
affiliates within the last three years that contain descriptions or analysis
of, or references to, the interest expressed by any entities (or their agents)
that have contacted Ameren or its affiliates and expressed an interest in

Rebuttal Testimony of
Ryan Kind

discussing the possible sale of generation facilities to Ameren or its affiliates.

AmerenUE also objected to OPC DR No. 571 which requested AmerenUE to provide:

a copy of all documents that Ameren or its affiliates have received from other entities (or their agents) within the last year that contain expressions of interest in discussing purchase power agreements of one year or longer for the sale of power to Ameren or its affiliates.

Despite its objection to OPC DR No. 571, Ameren chose to provide one document in response to this DR. That document is a copy of **

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F. INADEQUATE SUPPORT FOR COST ESTIMATE OF NEW GAS-FIRED CAPACITY

Q. HOW DOES MR. VOYTAS ARRIVE AT THE \$471/kW FIGURE THAT HE USES AS THE COST OF NEW GAS-FIRED GENERATION WHICH HE COMPARES TO THE PROPOSED TRANSFER?

A. He appears to have used an arbitrary method to arrive at the \$471/kW figure. His workpapers indicate that this is the average weighted cost of AEG's Pinckneyville and Kinmundy Plants but Mr. Voytas failed to explain why he believes these plants are a good proxy for the cost of new gas-fired capacity.

Q. IS THE \$471/kW FIGURE THAT MR. VOYTAS USES AS THE COST OF NEW GAS-FIRED GENERATION HIGHER THAN OTHER FIGURES THAT YOU HAVE SEEN AMERENUE USE IN THE PAST?

A. Yes. Its significantly higher than the \$390/kW estimate of the cost of constructing new gas-fired capacity that AmerenUE cited in its Application in EA-2000-37. The \$390/kW figure is closer to the range of figures for the cost of new gas-fired peaking plants that I have seen over the last few years. In its filings at the FERC in Case No EC03-53, NRG

indicates that, in August 2002, it offered to sell its three year old gas peaker plant in Audrain County to AmerenUE for \$312/kW.

G. FAILURE TO RECOGNIZE INCREASED FUTURE COST OF ENVIRONMENTAL COMPLIANCE

Q. DID AMERENUE'S ANALYSIS OF THE COSTS OF THE PROPOSED TRANSFER OVER THE NEXT 25 YEARS CONSIDER THE POSSIBILITY OF SHARPLY HIGHER COSTS TO COMPLY WITH ENVIRONMENTAL REGULATIONS?

A. No.

Q. HOW MIGHT THE ENVIRONMENTAL COMPLIANCE COSTS ASSOCIATED WITH AMERENUE'S PORFOLIO OF COAL-FIRED PLANTS INCREASE SUBSTANTIALLY OVER THE 25 PERIOD ANALYZED BY MR. VOYTAS?

A. The costs of compliance for emissions that are currently regulated, such as SO₂ could increase, and the costs of compliance for emissions that are not currently regulated, such as mercury and CO₂, could be very substantial. **

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Rebuttal Testimony of
Ryan Kind

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Q. HAS AMEREN BEEN **_____

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A. **_____

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Rebuttal Testimony of
Ryan Kind

I do not believe the analysis that Mr. Voytas performed on the cost effectiveness of the proposed transfer took into account the substantial depletion of UE's SO2 allowance bank that has already occurred and the substantial further depletions that are budgeted to occur over the next few years.

Q. HASN'T THE COMMISSION IMPOSED LIMITS ON THE AMOUNT OF SO2 SALES THAT AMERENUE CAN MAKE IN ORDER TO ENSURE THAT AMERENUE CAN'T FULLY DEplete ITS ALLOWANCE BANK?

A. Yes. The Commission only gave AmerenUE authority to sell up to one-half of its Phase I allowances and has never authorized AmerenUE to sell any Phase II allowances (allowances issued after 1999). I hope AmerenUE can provide some assurance in its Surrebuttal testimony in this case that it is currently in compliance with the limits on AmerenUE's SO2 allowance transactions that were set by the Commission in Case No. EO-98-401.

Q. DO YOU HAVE ANY RECOMMENDATIONS RELATED TO AMERENUE'S SO2 EMISSION ALLOWANCES?

A. Yes. If, despite OPC's recommendation to the contrary, the Commission decides to approve this application, it should be conditioned on AmerenUE's ability to show the Commission that it is currently in full compliance with the restrictions on how the Company can manage its allowance inventory that were set forth in Case No. EO-98-401. In addition, any approval of this Application should also be conditioned on AmerenUE's renewal of its commitment to manage its SO2 allowance inventory in compliance with the Commission's order in Case No. EO-98-401.

VII. TRANSMISSION ISSUES WITH AMERENUE ILLINOIS GENERATION FACILITIES

Q. PLEASE SUMMARIZE THE ISSUES ASSOCIATED WITH AMERENUE'S PROPOSED SALE OF NEARLY ALL OF ITS ELECTRIC TRANSMISSION FACILITIES IN ILLINOIS.

A. AmerenUE's Illinois transmission facilities that currently link AmerenUE's Venice and Pinckneyville (acquisition is pending regulatory approvals) generation facilities to AmerenUE's transmission network in Missouri would be transferred to its affiliate, AmerenCIPS. The transfer of these Illinois transmission facilities could have adverse rate and reliability impact on AmerenUE's Missouri customers. The potential for adverse unforeseen consequences is great due to the major changes that are currently taking place in FERC transmission policies and the organizations (e.g. Midwest ISO) that manage the grid in the Midwest.

If, despite OPC's recommendation to the contrary, the Commission decides to approve this application, it should be conditioned on AmerenUE's agreement to hold its Missouri ratepayers harmless from any adverse rate or reliability impacts that result from the Pinckneyville and Venice generating facilities no longer being directly connected to Missouri via transmission assets that are owned and operated by AmerenUE.

VIII. RELATIONSHIP BETWEEN THIS APPLICATION AND THE AMEREN JDA

Q. AT LINE 1 ON PAGE 5 OF HIS DIRECT TESTIMONY, CRAIG NELSON STATES THAT "THE JDA, WHICH WAS APPROVED BY THIS COMMISSION..." DO YOU AGREE THAT THE JDA HAS BEEN APPROVED BY THIS COMMISSION?

Rebuttal Testimony of
Ryan Kind

1 A. No. The JDA has never been approved by this Commission for ratemaking purposes.
2 OPC witness Jim Dittmer provided a thorough analysis of this issue in his Cross-
3 Surrebuttal testimony in Case No. EC-2002-1.

4 **Q. DO YOU HAVE OTHER ISSUES RELATED TO THE JDA THAT YOU WOULD LIKE TO**
5 **DISCUSS?**

6 A. I believe that the JDA and the possibility of renewing, terminating, or modifying it in the
7 future could affect the issues in this case. My ability to pursue this issue has, however,
8 been severely constrained by AmerenUE's objections to OPC DRs concerning the JDA.
9 Even though Public Counsel has sought to overcome these objections through a Motion
10 to Compel, and the judge has largely granted our motion, we still have not received DR
11 responses from the Company. Therefore, I reserve the right to supplement my testimony
12 on this issue once the compelled DR responses are received from the Company.

13 **IX. PUBLIC COUNSEL'S POSITION REGARDING AMERENUE'S PROPOSED**
14 **TRANSFER**

15 **Q. PLEASE SUMMARIZE OPC'S POSITION REGARDING AMERENUE'S PROPOSED**
16 **TRANSFER.**

17 A. Public Counsel believes that the proposed transfer is detrimental to the public interest and
18 should be denied for the following reasons:

- 19 • AmerenUE has not met its burden of proving that the transfer to AmerenCIPS of
20 AmerenUE's Illinois transmission facilities that currently link AmerenUE's
21 Venice and Pinckneyville generation facilities to AmerenUE's transmission
22 network in Missouri is not detrimental to the public interest.

Rebuttal Testimony of
Ryan Kind

- 1 • AmerenUE has not met its burden of proving that its Missouri electric customers
2 have a need for the generation capacity that currently serves AmerenUE's Illinois
3 customers Illinois customers
- 4 • AmerenUE has not met its burden of proving that it cannot extend its EEI contract
5 past the current expiration date at the end of 2005.
- 6 • AmerenUE has not met its burden of proving that it analyzed the entire range of
7 potential least cost resources options to determine the least cost resource because
8 if did not issue a new RFP to identify these options.
- 9 • AmerenUE has not met its burden of proving that it analyzed the entire range of
10 potential least cost resources options to determine the least cost resource because
11 if did not even explore and evaluate all existing known resource options.
- 12 • AmerenUE chose an arbitrary and high number for the cost/kW of gas-fired
13 capacity in his very limited analysis that compared only one resource option to the
14 proposed transfer.
- 15 • AmerenUE's analysis of least cost resource options was also flawed because it
16 failed to take into account the increased costs of future environmental compliance
17 (SO₂, mercury, CO₂, etc.) which would tend to make the coal-dominated fleet of
18 generation assets more costly relative to other resource options (e.g. wind, gas-
19 fired generation, and demand response resources).
- 20 • If, despite OPC's recommendation to the contrary, the Commission decides to
21 approve this application, it should be conditioned on all of the recommended
22 conditions set forth in this testimony.
- 23

Rebuttal Testimony of
Ryan Kind

1 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

2 A. Yes.

REBUTTAL TESTIMONY
OF
RYAN KIND
UNION ELECTRIC COMPANY D/B/A AMERENUE
CASE NO. EO-2004-0108

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