

Exhibit No.: 106
Issue(s): LTS Tariff
Witness: Wilbon L. Cooper
Sponsoring Party: Union Electric Company
Type of Exhibit: Surrebuttal Testimony
Case No.: EA-2005-0180
Date Testimony Prepared: February 14, 2005

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EA-2005-0180

SURREBUTTAL TESTIMONY

OF

WILBON L. COOPER

ON

BEHALF OF

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

FILED

MAR 02 2005

*Missouri Public
Service Commission*

**St. Louis, Missouri
February, 2005**

Exhibit No. 106
Case No(s) EA-2005-0180
Date 2-22-05 Rptr KF

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

Application of Union Electric Company)
for a Certificate of Public Convenience and)
Necessity authorizing it to construct, install,)
own, operate, control, manage and maintain)
electric plant, as defined in § 386.020(14), RSMo.)
to provide electric service in a portion of)
New Madrid, County, Missouri, as an)
extension of its existing certificated area)

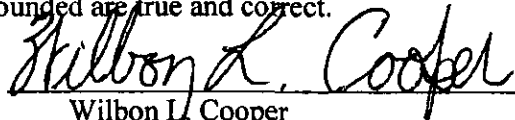
Case No. EA-2005-0180

AFFIDAVIT OF WILBON L. COOPER

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

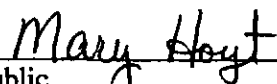
Wilbon L. Cooper, being first duly sworn on his oath, states:

1. My name is Wilbon L. Cooper. I am employed by Ameren Services Company as Manager of the Rate Engineering and Analysis Department of Regulatory Policy and Planning.
2. Attached hereto and made a part hereof for all purposes is my Surrebuttal Testimony on behalf of Union Electric Company, d/b/a AmerenUE, consisting of 9 pages, all of which have been prepared in written form for introduction into evidence in the above-referenced docket.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct.



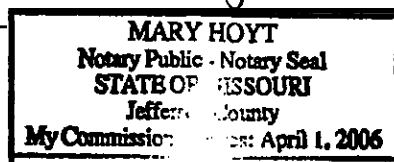
Wilbon L. Cooper

Subscribed and sworn to before me this 14th day of February, 2005.



Notary Public

My commission expires: 4-1-2006



1 **SURREBUTTAL TESTIMONY**

2 **OF**

3 **WILBON L. COOPER**

4 **CASE NO. EA-2005-0180**

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

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

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

9 A. I am employed by Ameren Services Company as Manager of the Rate
10 Engineering and Analysis Department of Regulatory Policy and Planning.

11 **Q. Are you the same Wilbon L. Cooper who filed Direct Testimony in this case?**

12 A. Yes, I am.

13 **Q. What is the purpose of your surrebuttal testimony?**

14 A. The purpose of my surrebuttal testimony is to comment on certain rate – related
15 testimony filed by MPSC witnesses Michael S. Proctor and James C. Watkins. I will also address
16 OPC witness Ryan Kind's testimony and his commentary pertaining to special contracts, and
17 MIEC witness Michael Gorman's testimony as it relates to the notice provision in the tariff.

18 **Q. Have you read and are you generally familiar with the testimony of Missouri**
19 **Public Service Commission ("MPSC" or "Commission") staff witness Dr. Michael S.**
20 **Proctor?**

21 A. Yes.

22 **Q. On page 17 (lines 2-7) of Dr. Proctor's testimony he states, in part, "I will**
23 **assume that the \$32.28/MWh rate level is operable, but would note that my interpretation**

1 of the LTS tariff filed by Ameren in this case is that in its cost of service submittal to
2 signatories in Case No. EC-2002-1 no later than January 1, 2006, under the revenue
3 recovery that is currently in AmerenUE's rates, the Commission can expect to see a rate
4 level closer to \$30/MWh being proposed by AmerenUE to serve Noranda load." Do you
5 agree with Dr. Proctor's interpretation?

6 A. No. The Company has no firm expectation with regard to a specific level of rates
7 that Noranda or any other customer or customer class will experience after it provides its class
8 cost of survey study to the other signatories in Case No. EC-2002-1 by January 1, 2006. First,
9 the Company is not required to provide Missouri retail electric jurisdictional and associated class
10 cost of service studies until January 2006. Providing those studies does not require the Company
11 to propose either a change in the overall level of its revenues or the distribution of said revenues
12 among classes. However, if a rate and/or rate design case results from that study, the Company
13 expects the Commission to set fair and just and reasonable rates from a jurisdictional and class
14 perspective. Such cost of service should be equal to the revenue required to pay operating
15 expenses, provide for depreciation and taxes, and permit the Company's shareholders to earn a
16 fair and reasonable return on their investment. More specifically, the Company expects to file
17 class rates based on the fundamental principle of cost causation and equitable cost recovery. If
18 adherence to this principle produces the \$30/MWh rate level suggested by Dr. Proctor, then the
19 Company can be expected to file cost support for this rate level; however, adherence to this same
20 principle could result in a different "cost based" filed rate level that could be higher or lower
21 than the \$30/MWh level.

22 Q. On page 19 (lines 10-13) of Dr. Proctor's testimony it states, in part,
23 "Moreover, when AmerenUE files its class cost of service study on January 2006, the ACF

1 component of the tariff will not be included and, absent an increase in overall revenue
2 requirements to serve Missouri retail customers, the rate that Noranda would anticipate
3 would actually fall to 3.002 cents/kWh.” Please comment.

4 A. Again, Dr. Proctor seems to be suggesting that the Company’s proposed LTS
5 tariff somehow binds the Commission in its treatment of any rate case filing the Company might
6 make based on the January 2006 cost of service study. The language on the elimination of the
7 Annual Contribution Factor or ACF in the proposed LTS tariff does not bind the Commission
8 from a ratemaking perspective. Moreover, there was no intent to bind and the LTS tariff does
9 not bind the Commission to any future rate level for Noranda and Noranda is fully aware that all
10 of the Company’s rates are subject to the jurisdiction of the Commission and may change from
11 time to time as is lawful. While the tariff does state the specific ACF shall be eliminated
12 effective upon a Commission order in a complaint case, rate case proceeding, or any other
13 regulatory proceeding where Company’s rates for its bundled Service Classifications are
14 changed, it does not state that the Commission can not institute or implement some other form of
15 an ACF or rate design that would effectively achieve the same result, assuming the record
16 supported such a rate component. Based on Dr. Proctor’s recent deposition, I now understand
17 that Dr. Proctor is not contending that the Commission is somehow bound by any aspect of the
18 LTS tariff is a future rate case.

19 Q. Dr. Proctor mentions the Company’s January 2006 cost of service submittal
20 several times in his testimony. Is the Company required to file for a change its rates
21 simultaneous with the January 2006 filing?

22 A. No. As stated earlier, the Company is only required to submit to the other
23 signatories to the Case No. EC-2002-1 settlement Missouri retail electric jurisdictional and

1 associated class cost of service studies in January 2006. There is no requirement that the
2 Company propose either a change in the overall level of its revenues or the distribution of said
3 revenues among classes. Therefore, it is possible that Noranda could be served under the
4 proposed LTS tariff with the ACF beyond 2006.

5 **Q. Have you read and are you generally familiar with the testimony of MPSC**
6 **staff witness James C. Watkins?**

7 A. Yes.

8 **Q. On page 4 (lines 21-22) of Mr. Watkins' testimony he states that you have**
9 **suggested that the Rider RDC charges should be used as a proxy for the cost of a radial line**
10 **from the Company's transmission line to the Customer's substation. Is Mr. Watkins**
11 **statement accurate?**

12 A. No, page 6 (lines 4-10) of my direct testimony discusses my rationale for the use
13 of Rider RDC as a proxy for the Company's *avoidance of certain costs and related expenses* of
14 providing distribution service to its primary service customers. The Company's transmission
15 lines are not even connected to Noranda, as discussed in the Company's Application and as
16 explained by Mr. Ed Pfeiffer in his testimony filed in this docket. Therefore, Mr. Watkins'
17 statement is somewhat misleading, and at the least is in error.

18 **Q. On pages 5 and 6 of Mr. Watkins' testimony, he asserts that the Company's**
19 **adjustments of average energy and demand losses embedded in its existing Large Primary**
20 **Service Rate to reflect the unique characteristics of the Noranda load may be unreasonable.**
21 **Please comment.**

22 A. Mr. Watkins has accurately described the Company's adjustments to average
23 Large Primary Service ("LPS") demand and energy losses to reflect Noranda's load

1 characteristics. As stated in my direct testimony, it was logical that a strict application of the LPS
2 rate to Noranda was inappropriate. As a result, the Company elected to use readily available
3 average LPS loss data from its most recent rate design case and specific loss data for Noranda, to
4 develop a reasonable adjustment for losses until a more specific class cost of service study is
5 performed with any change in rates that might result therefrom.

6 **Q. On pages 6 and 7 of Mr. Watkins' testimony, he discusses the impact of the**
7 **proposed ACF provision of the proposed LTS tariff. Please comment.**

8 A. As I stated earlier, while the proposed LTS tariff contains a provision for the
9 elimination of the specific ACF in the tariff, it does not prevent the Commission from imposing
10 another charge or rate design, that would, in effect, either replicate or mimic the specific ACF in
11 the Company's next rate proceeding, or should the Commission decide, not replicate or mimic
12 the ACF.

13 **Q. On page 7 of Mr. Watkins' testimony, he discusses the impact of the ACF if**
14 **Noranda were to experience a reduced load factor. Please comment.**

15 A. Historically, Noranda has been able to maintain a load factor in excess of 98%
16 and I'm unaware of any circumstances or conditions that would change this characteristic.
17 Therefore, Mr. Watkins' scenario is possible, but highly unlikely. Despite this improbability,
18 Mr. Watkins correctly states that a lower load factor would increase the average charge per
19 kilowatt-hour because the fixed charges (customer charge and demand charge) are spread over
20 fewer kilowatt-hours. However, Mr. Watkins fails to mention that under his unlikely scenario
21 the Company's operating expense would be lower also as a result of fewer kilowatt-hours being
22 delivered/sold to Noranda. This offset in operating expenses or lowering of revenue
23 requirements should not be ignored when evaluating LTS with ACF billing versus standard LPS

1 billing. Besides, the Company's proposed LTS tariff essentially requires a customer to have a
2 98% or better load factor to qualify for the LTS rate. Finally, rates are frozen. Whatever impact
3 of load factor or other changes, real or theorized, will be addressed in some form or fashion in
4 the Company's next rate case.

5 **Q. Have you reviewed the testimony of Public Counsel witness Ryan Kind?**

6 A. Yes. A good portion of his testimony addresses whether the agreement between
7 the Company and Noranda is a "special contract" and the purported ramifications of a special
8 contract.

9 **Q. Do you agree with Mr. Kind's observations?**

10 A. No. Mr. Kind appears to mistakenly believe that Noranda will take service
11 under a contract with AmerenUE. That is incorrect. Let me explain. AmerenUE entered into an
12 agreement with Noranda (submitted as Exhibit CDN-1 to Mr. Craig Nelson's direct testimony)
13 that provides that the Company will provide regulated service to Noranda under the LTS tariff if
14 the Commission approves the Company's Application and the tariff, among other conditions. If
15 that approval occurs and the other conditions are met, Noranda will take service, the LTS tariff
16 will apply to that service, and the agreement with Noranda will not apply to or govern that
17 service in any way, with one exception that has nothing to do with providing or taking the
18 service, or the rates, but only pertains to what may occur 15 or more years from when service
19 begins. During the entire time that service continues, the contract has no effect on how
20 AmerenUE provides service, how Noranda takes service, or on the Commission's authority
21 regarding the service or the rates for the service.

22 The LTS tariff is a regulated rate providing regulated service to a regulated customer.

23 The LTS tariff has as its premise a cost justification which is primarily based on the cost

1 justification of the LPS tariff, but with modifications to the LPS rate intended to reflect cost
2 adjustments (based on service differences) albeit without the benefit of a complete class cost of
3 service study. The vast majority of the other terms and conditions in the LTS tariff are virtually
4 identical to the LPS tariff. The revenues to be derived under the LTS tariff are virtually the same
5 as if Noranda was taking service under the LPS tariff.

6 In my experience, "special contracts" tend to be those arrangements between the utility
7 and customer where there is virtually little or no regulatory oversight. It may be that the utility
8 and customer make some showing of an economic bypass, or that the resultant rate will at least
9 cover fixed costs in some extant circumstances, and even where the utility could enter any
10 agreement it chooses and its only obligation was to place the contract on file. None of these
11 characteristics are reflective of the Noranda matter and LTS tariff. As I and others have
12 explained, in the next rate case or rate proceeding, Noranda will be treated like any other
13 customer; I do not find this sort of regulatory review to be "special".

14 **Q. You mentioned that the contract has some effect 15 or more years from now.**
15 **Please explain.**

16 **A.** As I understand it, Noranda was given a statutory right to switch suppliers.
17 Noranda has agreed in the contract to forego that right for at least 15 years.

18 **Q. To what portion of MIEC witness Gorman's testimony do you intend to**
19 **address?**

20 **A.** Mr. Gorman makes statements with regard to Noranda's obligations coming to an
21 end prior to the 15 year contract term. He states, "the five-year notice of intent to terminate
22 service at the end of the initial 15-year minimum period should also apply to service termination
23 within the initial term."

1 **Q. How do you respond?**

2 A. Mr. Gorman apparently misunderstands the term of service provisions. The
3 LTS tariff requires the customer to take service for 15 years at a minimum, and nothing less. Mr.
4 Gorman's position is that the customer could give notice of termination and take service for less
5 than 15 years—that is not acceptable to AmerenUE. The customer is required to give the five
6 year notice, but must take service for the initial term of 15 years. Simply stated, Noranda has no
7 right to give any notice that would allow for termination before the end of the initial fifteen year
8 term.

9 **Q. Mr. Gorman then assumes if his early notice provision is accepted, and**
10 **where the customer is permitted to opt out of the 15 year initial term, that the billing**
11 **demand be based on the load prior to termination notice, and not the LTS billing demand.**
12 **Is Mr. Gorman's proposal acceptable?**

13 A. No. Mr. Gorman offers no rationale for his proposal. It appears he believes he is
14 intending to mitigate against some unknown, unquantifiable harm by virtue of the customer
15 leaving the system "early". But whether his billing demand adjustment meets the stated purpose
16 is not explained. A number of variables would come into play, the least of which is the amount
17 of the billing demand and when the customer opted out of the initial term vis a vis the facts and
18 circumstances at hand. For example, if load growth surpassed current expectations, that factor
19 alone may play significantly into the propriety of his proposal. In the end, Mr. Gorman's
20 approach is in conflict with the required minimum 15 year term, and to the extent he requires the
21 customer to compensate AmerenUE if somehow it would leave before the initial term, the level
22 of compensation is not proportionate to the alleged harm, which could be zero. I would also note
23 that staff witness Dr. Proctor does not believe that the hypothetical possibility that Noranda

Surrebuttal Testimony of
Wilbon L. Cooper

1 might leave the system "early" warrants any condition or alternative terms relating to the LTS
2 tariff or the provision of service to Noranda.

3 **Q. Does this complete your surrebuttal testimony?**

4 **A. Yes.**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the following parties of record by e-mail this 14th day of February, 2005, at the e-mail addresses set forth below:

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102
gencounsel@psc.mo.gov

Office of the Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102
opcservice@ded.mo.gov

Robert C. Johnson
Lisa C. Langeneckert
The Stolar Partnership LLP
911 Washington Avenue
St. Louis, MO 63101
rjohnson@stolarlaw.com
llangeneckert@stolarlaw.com

Paul M. Ling
Great Plains Energy Services
1201 Walnut, 20th Floor
Kansas City, MO 64106-2124
paul.ling@kcpl.com

Diana M. Vuylsteke
Bryan Cave, LLP
211 N. Broadway, Suite 3600
St. Louis, MO 63102
dmvuylsteke@bryancave.com

Duncan Kincheloe
Missouri Joint
Municipal Electric Utility Commission
2407 W. Ash
Columbia, Missouri 65203
(573) 445-3279
(573) 445-0680 (fax)

Mark W. Comley
Newman, Comley & Ruth P.C.
601 Monroe, Suite 301
P.O. Box 537
Jefferson City, Missouri 65102-0537
Telephone: 573-634-2266
Fax: 573-636-3306
dkincheloe@mpua.org
comleym@ncrpc.com

/s/James B. Lowery
James B. Lowery