

1 **CROSS-SURREBUTTAL TESTIMONY**

2 **OF**

3 **RYAN KIND**

4 **UNION ELECTRIC COMPANY**

5 **CASE NO. EM-96-149**

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

7 A. Ryan Kind, Chief Public Utility Economist, Office of the Public Counsel, P.O. Box 7800,
8 Jefferson City, Missouri 65102

9 **Q. ARE YOU THE SAME RYAN KIND WHO HAS TESTIFIED PREVIOUSLY IN THIS CASE?**

10 A. Yes, I am.

11 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

12 A. I will respond to some of the comments made by other witnesses in their rebuttal testimony
13 and supplemental rebuttal testimony. I will also provide further information regarding
14 some of the documents (*Goldman Sachs Presentation to Union Electric Company, June*
15 *15, 1995*, and Doloitte Touche Intermediate Work Products provided in response to OPC
16 DR No. 573) that the Office of the Public Counsel received from UE shortly before our
17 filing of rebuttal testimony. This testimony will also cover issues related to follow-up
18 discovery based on information found in the above-referenced documents.

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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Ryan Kind

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 its 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?**

Surrebuttal Testimony of
Ryan Kind

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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Ryan Kind

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: ** _____

_____ **

Surrebuttal Testimony of
Ryan Kind

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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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5

6

**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.**

7

8

**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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21

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Ryan Kind

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

Surrebuttal Testimony of
Ryan Kind

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?

Surrebuttal Testimony of
Ryan Kind

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 _____
17 _____ **

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.

Surrebuttal Testimony of
Ryan Kind

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.**

Surrebuttal Testimony of
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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

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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)
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BEEN
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SCHEDULE RK-1

Deloitte &
Touche LLP



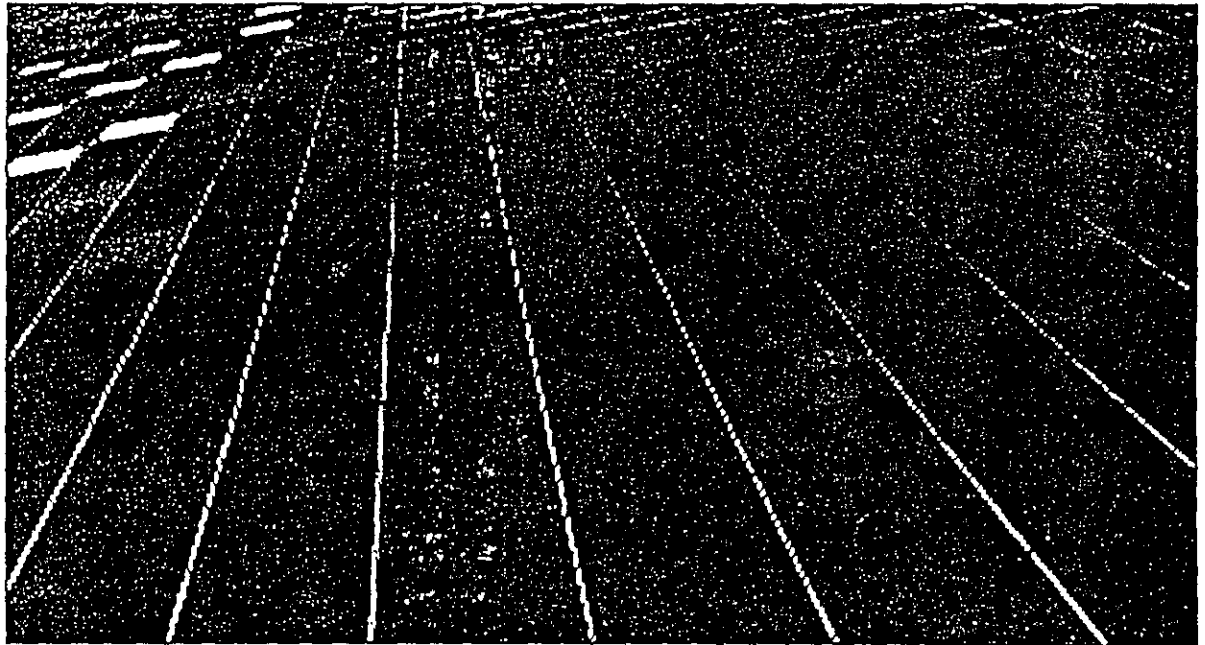
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Board of Directors Presentation

August 8, 1995



MP

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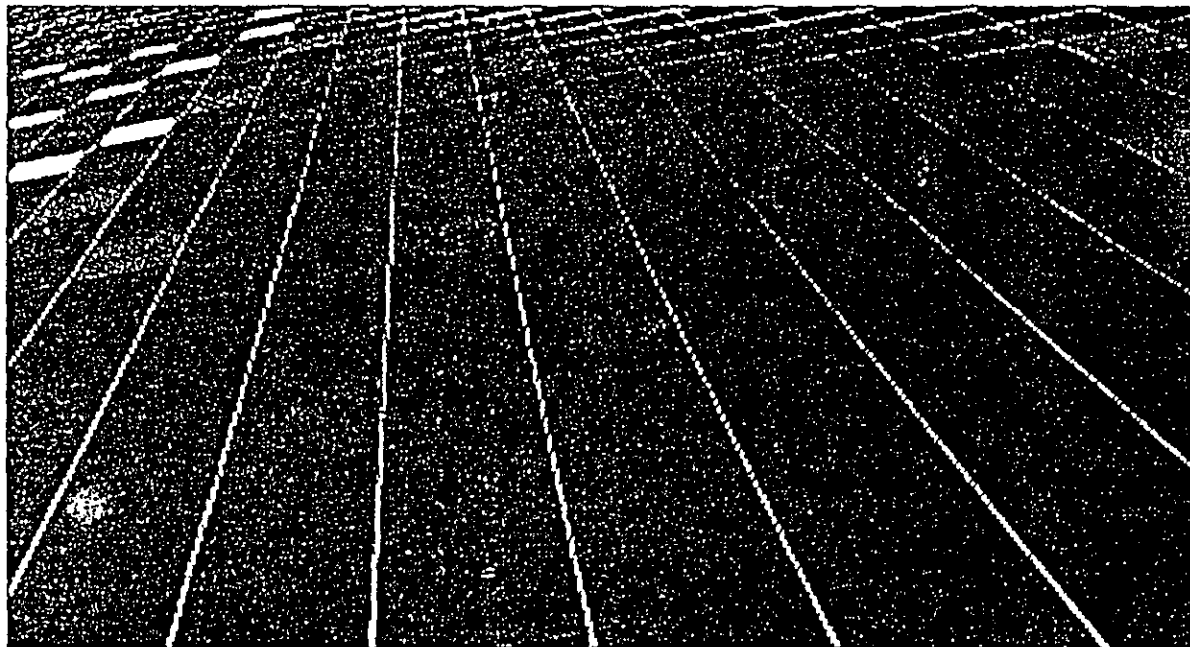
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Board Presentation

August 1, 1995

PROPRIETARY

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



MP

OPC DR 679(d)



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POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
573-526-5695 (TT)

June 27, 1996

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SAM GOLDAMMER
Director, Utility Operations

GORDON L. PERSINGER
Director, Policy & Planning

KENNETH J. RADEMAN
Director, Utility Services

VACANT
Director, Administration

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Chief Administrative Law Judge

ROBERT J. HACK
General Counsel

Mr. David L. Rauch
Executive Secretary
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

RE: Case No. EM-96-149

Dear Mr. Rauch:

Enclosed for filing in the above captioned case is an original and fourteen (14) conformed copies of this letter and the enclosed attached evidentiary procedural schedule.

A Hearing Memorandum was filed with the Commission on Friday, June 21, 1996 as ordered by the Commission, but as indicated in the cover letter by the undersigned counsel for the Staff, the schedule of issues needed to be addressed further by the parties. There is a list of issues and a date and a time, "July 1, a.m." at the beginning of the list of issues on page 35 of the Hearing Memorandum filed on June 21, but nothing further in the manner of dates and times. This part of the Hearing Memorandum was not complete.

In part, this section of the Hearing Memorandum was not complete because the Staff and the Office of the Public Counsel have been engaged in detailed negotiations with Union Electric Company (UE) in an good faith effort to reach a mutually acceptable resolution of the outstanding matters among them in Case No. EM-96-149. Not all discussions among these and other parties are literally at an end, but resolution of the outstanding matters has not been reached, so discussions have basically concluded.

Due to the considerable effort expended by certain of the Staff and Public Counsel witnesses and attorneys in this effort to reach a resolution of the various issues in this proceeding, the Staff and Public Counsel inquired of UE whether it would agree to

the order of issues that follows in Attachment 1. The Staff and Public Counsel appreciate UE's willingness to accommodate the Staff and Public Counsel. The Staff is submitting by facsimile transmission this order of issues to the other parties in this case for their review. The Staff and Public Counsel believe that this schedule will accommodate a conclusion of the evidentiary proceedings by the last scheduled day of hearings, July 12, 1996.

The Staff would note that among the issues shown for the first day of hearings, July 1, 1996, are the jurisdictional issues. Counsel for UE, Public Counsel and the Staff will appear and seek to answer any questions that the Commissioners might choose to ask counsel on these matters, if any.

The Staff apologizes for any inconvenience this situation has caused or may cause.

Very truly yours,



Steven Dottheim
Deputy General Counsel
(573) 751-7489

SD:ceb

Commission (EC-96-164). Even if the Commission were to find this issue to be relevant, UE's rates for standby service are just and reasonable, and this Commission and others in Illinois and Iowa have so found on several occasions since the early 1980's.

Trigen's Position

The Commission should deny approval of the proposed merger unless the Company demonstrates that the merged companies will not operate to suppress competition by continuing to deny adequate transmission access and charge appropriate rates for standby service as required under Federal and State regulations, statutes and law.

Witnesses:

Trigen: Spiewak Reb., all pages

Company: Kovach, all pages

Borkowski, pp. 16-18, 21-22

III. ORDER OF ISSUES/WITNESSES

| <u>Date</u> | <u>Time</u> | <u>Issue</u> | <u>Witnesses</u> |
|-------------|-------------|----------------------------------------------|-----------------------|
| July 1 | a.m. | Approval of and Rationale for Merger: Policy | UE: Mueller Brandt |

| | | | |
|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|---------------------------------------------------------------------------------------------------|
| July 1 | Commission Jurisdiction (Including Access To Books and Records; Access To Officers and Employees; Joint Dispatch Agreement and System Support Agreement and Changes Thereto; General Services Agreement and Changes Thereto; Orders/Decisions on Affiliated Transactions; Orders/Decisions Regarding Gas Supply, Storage and/or Transportation Service; Orders/Decisions Regarding Electric Production; Pre- Approval) | UE: | Legal Memorandum (Brandt - Schedule 1 Rainwater Borkowski Baxter) |
| | | Staff: | Legal Memorandum (Moore - Sched. 19 Schwieterman Wallis Lin Beck Oligschlaeger) |
| | | Public Counsel: | Legal Memorandum (Kind) |
| | Gas Supply, Storage and/or Transportation Service | UE: | Brandt Borkowski |
| | | Staff: | Wallis |
| July 2 | UE Management | UE: | Brandt |
| | | Staff: | Oligschlaeger |
| | Separate Payroll Records | UE: | Brandt Baxter |
| Staff: | | Imhoff | |
| | General Services Agreement | UE: | Brandt Baxter Rainwater |
| | | Staff: | Schwieterman |

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|--------|------|----------------------------|-----------------|-------------------------------------------|
| July 2 | | Amortization of Costs | UE: | Brandt Baxter Rainwater Birdsong |
| | | | Staff: | Imhoff |
| | | | Public Counsel: | Trippensee |
| July 3 | a.m. | Recovery of Merger Premium | UE: | Kimmelman* |

*Due to scheduling conflicts, Mr. Kimmelman is scheduled for the morning of July 3 rather than for July 8 or later.

| | | | | |
|--------|--|-------------------------------------------------------|-----------------|-------------------------------------------|
| | | Joint Dispatch Agreement; System Support Agreement | UE: | Brandt Rainwater Borkowski |
| | | | Staff: | Lin Elliott Beck |
| | | | Public Counsel: | Kind |
| July 8 | | Quantification of Savings | UE: | Flaherty Rainwater Nelson Reid |
| | | | Staff: | Lin Elliott Wallis Oligschlaeger |
| | | | MIEC: | Brubaker |

| | | | |
|-----------|-------------------------------------------------------------------------------------------------------|-----|---------------------------------------------------------|
| July 8-12 | Approval of and Rational for Merger: Policy; Ratemaking Proposal; Recovery of Merger Premium | UE: | Brandt Birdsong Rainwater Baxter Kimmelman* |
|-----------|-------------------------------------------------------------------------------------------------------|-----|---------------------------------------------------------|

*Due to scheduling conflicts, Mr. Kimmelman is scheduled for the morning of July 3.

| | |
|--------|---------------------------------------------------|
| Staff: | Moore Hyneman Featherstone Oligschlaeger |
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| Public Counsel: | Trippensee Kind Burdette |
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|-------|----------|
| MIEC: | Brubaker |
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|---------|----------------------------------------------------------------|---------|---------------------|
| July 10 | Trigen's Transmission* Access and Standby Rates Proposal | Trigen: | Spiewak |
| | | UE: | Kovach Borkowski |

*Due to scheduling conflicts on July 11 and 12, Trigen's issue is scheduled so as to be completed by Wednesday afternoon, July 10.

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| MIEC's Retail Wheeling Proposal | No testimony filed |
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IV. ORDER OF CROSS EXAMINATION

| <u>Cross of UE Witnesses</u> | <u>Cross of Staff Witnesses</u> | <u>Cross of Public Counsel Witnesses</u> | <u>Cross of Trigen Witness</u> | <u>Cross of MIEC Witness</u> |
|----------------------------------|-------------------------------------|----------------------------------------------|------------------------------------|----------------------------------|
| Others | Others | Others | Others | Others |
| Trigen | Trigen | Trigen | MIEC | Trigen |
| MIEC | Public Counsel | Staff | Staff | Staff |
| Staff | MIEC | MIEC | Public Counsel | Public Counsel |
| Public Counsel | UE | UE | UE | UE |

Service list for:
Case No. EM-96-149
Updated: 6-25-96

James J. Cook
Union Electric Company
1901 Chouteau Avenue
P.O. Box 149 (M/C 1310)
St. Louis, MO 63103

Richard W. French
French & Stewart
1001 E. Cherry Street
Suite 302
Columbia, MO 65201

Michael C. Pendergast
Laclede Gas Company
720 Olive Street
Room 1530
St. Louis, MO 63101

Robert C. Johnson/Diana M. Schmidt
Peper, Martin, Jensen, Maichel and Hetlage
720 Olive Street
24th Floor
St. Louis, MO 64141-9679

Jeremiah W. Nixon/Daryl R. Hylton
Attorney General's Office
221 W. High Street
P.O. Box 899
Jefferson City, MO 65102

Susan B. Cunningham
Kansas City Power & Light Co.
1201 Walnut Street
P.O. Box 418679
Kansas City, MO 64141-9679

Lewis R. Mills, Jr.
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

James C. Swearngen
Brydon, Swearngen & England
312 E. Capitol
P.O. Box 456
Jefferson City, MO 65102

Marilyn S. Teitelbaum
Schuchat, Cook & Werner
1221 Locust Street
2nd Floor
St. Louis, MO 63103

Gary W. Duffy
Brydon, Swearngen & England
312 E. Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102

Paul S. DeFord
Lathrop & Norquist, L.C.
2345 Grand Blvd.
Suite 2500
Kansas City, MO 64108

James M. Fischer
Mutual Savings Bank
1001 W. McCarty, Suite 215
Jefferson City, MO 65101