

**EXHIBIT**

Exhibit No.:	
Issue(s):	Rate Case Expense/ Deferred MPSC/OPC Assessments
Witness/Type of Exhibit:	Robertson/Rebuttal
Sponsoring Party:	Public Counsel
Case No.:	ER-2012-0166

**REBUTTAL TESTIMONY**

**OF**

**TED ROBERTSON**

Submitted on Behalf of  
the Office of the Public Counsel

**UNION ELECTRIC COMPANY  
D/B/A AMEREN MISSOURI**

**Case No. ER-2012-0166**

\*\*

\*\*

Denotes "Highly Confidential" Information that has been redacted

August 14, 2012

OPC Exhibit No. 407  
Date 9-27-12 Reporter xf  
File No. ER-2012-0166

**NP**

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

In the Matter of Union Electric Company     )  
d/b/a Ameren Missouri's Tariffs to Increase     )  
Its Revenues for Electric Service             )


File No. ER-2012-0166

**AFFIDAVIT OF TED ROBERTSON**

STATE OF MISSOURI     )  
                                       )     ss  
COUNTY OF COLE     )

Ted Robertson, of lawful age and being first duly sworn, deposes and states:


1. My name is Ted Robertson. I am a Chief Public Utility Accountant for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Ted Robertson, C.P.A.  
Chief Public Utility Accountant

Subscribed and sworn to me this 14<sup>th</sup> day of August 2012.



JERENE A. BUCKMAN  
My Commission Expires  
August 23, 2013  
Cole County  
Commission #09754037

  
\_\_\_\_\_  
Jerene A. Buckman  
Notary Public

My Commission expires August, 2013.

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**REBUTTAL TESTIMONY  
OF  
TED ROBERTSON**

**UNION ELECTRIC COMPANY  
d/b/a AMEREN MISSOURI  
CASE NO. ER-2012-0166**

1 I. INTRODUCTION

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. Ted Robertson, P. O. Box 2230, Jefferson City, Missouri 65102.

4  
5 Q. ARE YOU THE SAME TED ROBERTSON THAT HAS PREVIOUSLY FILED  
6 DIRECT TESTIMONY IN THIS CASE?

7 A. Yes.

8  
9 II. PURPOSE OF TESTIMONY

10 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

11 A. The purpose of this Rebuttal Testimony is to address the Company's request for  
12 ratemaking treatment of rate case expense and deferred MPSC/OPC assessments.

13  
14 III. RATE CASE EXPENSE

15 Q. WHAT IS THE AMOUNT OF RATE CASE EXPENSE COMPANY HAS PAID TO-  
16 DATE?

1 A. The most recent response to MPSC Staff Data Request No. 173 states as of the end of  
2 April 2012 Company has paid invoices totaling \*\* \*\* The costs consist of  
3 \*\* \*\* to Smith Lewis, LLP and \*\* \*\* to Brydon, Swearngen &  
4 England P. C. as outside legal, \*\* \*\* to Concentric Energy Advisors for return  
5 on equity, lead/lag/revenue requirement and policy experts, \*\* \*\* to various  
6 outside support services and \*\* \*\* for travel expenses.

7  
8 Q. IS IT PUBLIC COUNSEL'S RECOMMENDATION THAT THE COSTS  
9 ASSOCIATED WITH THE OUTSIDE LEGAL SMITH LEWIS, LLP AND BRYDON,  
10 SWEARENGEN & ENGLAND P. C. BE EXCLUDED FROM THE RATE CASE  
11 EXPENSE AMOUNT AUTHORIZED IN THE INSTANT CASE?

12 A. Yes.

13  
14 Q. WHAT ARE PUBLIC COUNSEL'S REASONS FOR RECOMMENDING THE  
15 DISALLOWANCE OF THE OUTSIDE LEGAL COSTS FOR SMITH LEWIS, LLP  
16 AND BRYDON, SWEARENGEN & ENGLAND P. C.?

17 A. Public Counsel does not believe that Company's incurrence of these costs has been  
18 prudent, reasonable and necessary because they are duplicative, far more costly than what  
19 its own employees would have cost to perform the same activities and have been  
20 unnecessarily incurred.

1  
2 Q. PLEASE CONTINUE.

3 A. Public Counsel believes that the services provided by the outside attorneys could and  
4 should have been performed by Company's own and/or affiliated companies' attorneys.  
5 Therefore, Public Counsel believes that the services provided by the outside attorneys are  
6 duplicative, unreasonable and unnecessary since Company has attorneys employed who  
7 are capable of performing the duties associated with the processing of the current rate  
8 case. For example, Company's response to OPC Data Request No. 1008 identified that  
9 16 licensed attorneys are currently employed by AmerenMO, its parent company and  
10 affiliates (an update to the data request later identified that one of the employees outside  
11 of the General Counsel Department was an error). Of the attorneys listed in the response,  
12 8 are identified as having regulatory experience while the others do not.

13  
14 Company's response to OPC Data Request No. 1010 states further that, "Due to the  
15 numerous other regulatory matters that the Ameren regulatory attorneys are required to  
16 deal with daily it is impossible for them to handle the Ameren Missouri rate case  
17 effectively without the assistance of outside attorneys." However, Public Counsel  
18 believes the Company rationale for not using its own personnel to process the rate case is  
19 not reasonable since it is conceivable that the required activities associated with  
20 processing the rate case could have been apportioned into smaller chunks assigned to the

1 attorneys with regulatory experience and those without regulatory experience. That way,  
2 even though the Company attorneys, like the MPSC Staff and Public Counsel personnel,  
3 are busy with other assigned duties, it would have conceivably made the processing of  
4 the rate case legal activities more manageable for each of the Company's attorneys and  
5 likely a lot less expensive to ratepayers.

6  
7 Company has estimated that it will incur \*\* \*\* of outside legal costs in order to  
8 process the instant case. Public Counsel believes that the services of the Company's  
9 employee attorneys, whose costs are already included in payroll or would be allocated to  
10 Company if employed by an affiliate, would likely be a lot less expensive. For example,  
11 in a hypothetical scenario where the annual cost for a Company employee attorney is a  
12 \$100,000 salary with a 50% overhead for benefits (which I believe to be on the high end),  
13 Company could hire 6 full-time attorneys to process the instant case. Of course,  
14 Company is not going to hire 6 attorneys as employees just to process rate cases in the  
15 state of Missouri for they would have nothing to do in the interim between cases.  
16 Because only a portion of their annual cost would be assigned to rate case expense which  
17 would only occur when the Company is actively seeking an increase in rates  
18 demonstrates that utilization of Company's current employee attorneys can be achieved at  
19 a much lower cost than outside legal firms.

1 Q. CAN THE COMMISSION DISALLOW COSTS THAT ARE NOT OF BENEFIT TO  
2 RATEPAYERS, WITHOUT THE NEED FOR A SHOWING OF BAD FAITH OR  
3 ABUSE OF DISCRETION?

4 A. Yes. On pages 167 and 168 of its Report And Order in Kansas City Power & Light  
5 Company Case No. ER-2010-0355 the Commission's decision stated:

6  
7 49. The Commission can disallow costs that are not of benefit to  
8 ratepayers, and there does not need to be a showing of bad faith or abuse  
9 of discretion for the Commission to disallow costs.

10 50. In File No. GR-2004-0209, the Commission reduced the amount of  
11 rate case expense incurred by Missouri Gas Energy (MGE) by the  
12 disallowance of certain attorney fees. In that Report and Order, the  
13 Commission recognized the unfairness of charging ratepayers high  
14 attorney fees.

15  
16 51. In a 1993 Missouri-American decision, the Commission attempted to  
17 provide some definition by which to measure whether rate case expense is  
18 necessary and prudently incurred. In that case the Commission based its  
19 decision on whether actual evidence exists of cost containment.

20  
21 The Commission must continue to look to the record for  
22 evidence in support of rate case expense and in this case  
23 that evidence is lacking. Disallowing all expense, or  
24 perhaps even disallowing any prudently incurred rate case  
25 expense could be viewed as violating the Company's  
26 procedural rights. The Commission does not want to put  
27 itself in the position of discouraging necessary rate cases  
28 by discouraging rate case expense. The operative words  
29 here, however, are necessary and prudently incurred. The  
30 record does not reflect efforts at cost containment and  
31 consequently it does not support that these expenses have  
32 been prudently incurred.  
33



1 Absent evidence of cost containment, the Commission in that case  
2 disallowed approximately one-third of Missouri American's rate case  
3 expense.  
4

5  
6 Note: The Commission came to the same conclusion in KCP&L Greater Missouri  
7 Operations Company Case No. ER-2010-0356 (Report And Order, page 183).  
8

9 Q. IS IT PUBLIC COUNSEL'S RECOMMENDATION THAT THE COSTS  
10 ASSOCIATED WITH THE SERVICES PROVIDED BY THE CONCENTRIC  
11 ENERGY ADVISORS BE EXCLUDED FROM THE RATE CASE EXPENSE  
12 AMOUNT AUTHORIZED IN THE INSTANT CASE?

13 A. Yes.  
14

15 Q. WHAT ARE PUBLIC COUNSEL'S REASONS FOR RECOMMENDING THE  
16 DISALLOWANCE OF THE COSTS FOR THE CONCENTRIC ENERGY ADVISORS  
17 EXPERTS?

18 A. Public Counsel does not believe that Company's incurrence of these costs has been  
19 prudent, reasonable and necessary because they are duplicative and have been  
20 unnecessarily incurred.  
21

22 Q. PLEASE CONTINUE.

1 A. Public Counsel believes that the services provided by the Concentric Energy Advisors  
2 experts could and should have been performed by Company's own and/or affiliated  
3 companies employees. Therefore, Public Counsel believes that the services provided by  
4 the Concentric Energy Advisors experts are duplicative, unreasonable and unnecessary  
5 since Company has a significant number of highly educated and experienced employees  
6 who are likely capable of performing the duties associated with the processing of the  
7 current rate case. For example, Company's estimated total cost for the services provided  
8 by the Concentric Energy Advisors experts is \*\* \*\* For the return on equity  
9 portion alone the estimate is \*\* \*\* for the services provided by Mr. Robert  
10 Hevert. However, Company's response to OPC Data Request No. 1019 identified that 4  
11 employees (i.e., Jerre Birdsong, Darrell Hughes, Ryan Martin and Michael O'Bryan) in  
12 the Company's Corporate Finance area have significant experience with regard to  
13 financing associated with a regulated utility. In fact, Mr. O'Bryan has filed numerous  
14 testimonies in various Company rate cases in this State and the state of Illinois.  
15  
16 For the very same reasons that the costs of utilization of Company's employee attorneys  
17 is a more prudent and reasonable process for incurrence of rate case expense, utilization  
18 of the services of its own employees (or affiliates as applicable) for return, lead/lag and  
19 policy issues would likely be much more reasonable than the costs for the services  
20 provided by the Concentric Energy Advisors experts.

1  
2 Q. IS IT PUBLIC COUNSEL'S RECOMMENDATION THAT SOME OF THE COSTS  
3 ASSOCIATED WITH THE OUTSIDE SUPPORT SERVICES BE EXCLUDED FROM  
4 THE RATE CASE EXPENSE AMOUNT AUTHORIZED IN THE INSTANT CASE?

5 A. Yes. Company's response to MPSC Staff Data Request No. 173 identified that Company  
6 has paid outside support costs to \*\*

7 \*\* for \*\*

\*\* and \*\*

\*\* for

8 \*\*

\*\*

9  
10 Q. WHAT ARE PUBLIC COUNSEL'S REASONS FOR RECOMMENDING THE  
11 DISALLOWANCE OF THE COSTS FOR THE OUTSIDE SUPPORT SERVICES  
12 IDENTIFIED?

13 A. Public Counsel believes that \*\*

14 \*\* costs should be disallowed for the same reasons as similar services were disallowed in  
15 the recent case Kansas City Power & Light Company Case No. ER-2010-0355. On page  
16 171 of the Report And Order in Kansas City Power & Light Company Case No. ER-  
17 2010-0355 the Commission's decision stated:

18  
19 Finally, Staff has proposed the disallowance of the expenses for the  
20 services of the CCA. The CCA provided witness development and  
21 coaching services, routine tasks typically performed by retained counsel,  
22 internal or otherwise. The KCC also disallowed similar expenses as unjust

1 and unreasonable. The Commission determines that the CCA expense  
2 should be disallowed as duplicative of other services that were performed  
3 or should have been performed KCPL's and GMO's attorneys.  
4

5  
6 Note: The Commission came to the same conclusion in KCP&L Greater Missouri  
7 Operations Company Case No. ER-2010-0356 (Report And Order, pages 186-187).  
8

9 At this time, Public Counsel's recommendation for disallowance of the costs paid for the  
10 services of the \*\* \*\* is not final due to the lack of documentation  
11 supporting the purpose of the costs. I require additional review so as to determine  
12 whether or not the services that were provided are prudent, reasonable and necessary.  
13

14 IV. DEFERRED MPSC AND OPC ASSESSMENTS

15 Q. IS COMPANY REQUESTING RECOVERY OF MPSC AND OPC ASSESSMENTS  
16 THAT OCCURRED AFTER THE END OF THE TRUE-UP PERIOD IN CASE NO.  
17 ER-2011-0028?

18 A. Yes. On page 32 of the Direct Testimony of Company witness, Mr. Gary S. Weiss, he  
19 states:

20 Adjustment 15 increases amortization expense by \$620,000 for the annual  
21 amortization over two years for the \$1,240,000 increase in the MPSC and  
22 the Office of Public Counsel assessment in July 2011. This significant  
23 increase occurred after the end of the true-up period in Case No. ER-2011-  
24 0028 and was not reflected or anticipated by the Company or the MPSC  
25 Staff. The Company has deferred this increase in the assessment

1 on its books and is requesting approval to amortize this increase in the  
2 assessment over two years.  
3  
4

5 Q. DOES THE PUBLIC COUNSEL BELIEVE THAT THE COMMISSION SHOULD  
6 NOT AUTHORIZE THE REQUEST?

7 A. Yes. The request should be denied. It is my understanding that costs were incurred  
8 subsequent to the identified rate case and were deferred without Commission  
9 authorization. Furthermore, Commission authorization would constitute retroactive  
10 ratemaking if recovery were authorized.  
11

12 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

13 A. Yes.  
14