

EXHIBIT

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Issue(s): Off System Sales/
Conditions Ordered in Case No. EO-2004-0108/
SO₂ Sales Revenues/
Electric Energy, Inc. Joppa Plant
Witness/Type of Exhibit: Kind/Rebuttal
Sponsoring Party: Public Counsel
Case No.: ER-2007-0002

REBUTTAL TESTIMONY

OF

RYAN KIND

Submitted on Behalf of
the Office of the Public Counsel

UNION ELECTRIC COMPANY D/B/A AMERENUE

**** denotes highly confidential information ****

NP

Case No. ER-2007-0002

January 31, 2007

OPC Exhibit No. 406 NP
Case No(s) ER-2007-0002
Date 3/14/07 Rptr WV

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

In the Matter of Union Electric Company d/b/a)
AmerenUE for Authority to File Tariffs Increasing)
Rates for Electric Service Provided to Customers)
in the Company's Missouri Service Area.)

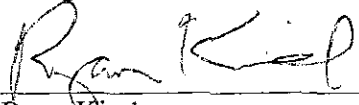
Case No. ER-2007-0002
Tariff No. YE-2007-0007

AFFIDAVIT OF RYAN KIND

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Ryan Kind, of lawful age and being first duly sworn, deposes and states:

1. My name is Ryan Kind. I am a Chief Utility Economist 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 affidavit are true and correct to the best of my knowledge and belief.




Ryan Kind

Subscribed and sworn to me this 31st day of January 2007.



JERENE A. BUCKMAN
My Commission Expires
August 10, 2009
Cole County
Commission #05754036



Jerene A. Buckman
Notary Public

My commission expires August 10, 2009.

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REBUTTAL TESTIMONY
OF
RYAN KIND
UNION ELECTRIC COMPANY
CASE NO. ER-2007-0002

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. ARE YOU THE SAME RYAN KIND THAT SUBMITTED DIRECT TESTIMONY IN THIS CASE**
5 **ON DECEMBER 15, 2006 REGARDING REVENUE REQUIREMENT ISSUES AND**
6 **DECEMBER 29, 2006 REGARDING FUEL ADJUSTMENT CLAUSE ISSUES?**

7 A. Yes, I am.

8 **I. INTRODUCTION AND RECOMMENDATIONS**

9 **Q. PLEASE IDENTIFY THE ISSUES THAT YOU WILL BE ADDRESSING IN YOUR REBUTTAL**
10 **TESTIMONY.**

11 A. The major issues that are addressed in this testimony include:

- 12 • A clarification of the Office of the Public Counsel's (Public Counsel's or OPC's)
13 recommendation regarding the treatment of off-system sales margins in light of
14 the commitment made by Warner Baxter in his direct testimony regarding UE's
15 "commitment" to hold ratepayers harmless from adverse rate impacts arising from
16 the Taum Sauk disaster.

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- 1 • The continuing failure of Union Electric Company (UE or Company) to provide
- 2 timely responses to OPC's data requests that would allow Public Counsel to make
- 3 an assessment of the extent to which UE has complied with the transmission hold
- 4 harmless conditions in the Commission's order approving the Metro East Transfer
- 5 in Case No. EO-2004-0108.
- 6 • Public Counsel's revised recommendation regarding the amount of Sulfur Dioxide
- 7 (SO₂) emission allowance transaction revenues that should be included in the
- 8 revenue requirement upon which any new rates resulting from this case would be
- 9 based.
- 10 • Public Counsel's response to one of the remarks made by UE witness Warner
- 11 Baxter in his direct testimony regarding UE's entitlement to 40% of the capacity
- 12 and output from the Electric Energy, Inc. (EEInc.) plant in Joppa, Illinois.

13 **II. OFF-SYSTEM SALES MARGINS**

14 **Q. HOW DID UE WITNESS WARNER BAXTER DESCRIBE UE'S COMMITMENT IN THIS CASE**
15 **TO HOLD CUSTOMERS HARMLESS FROM ADVERSE RATE IMPACTS RELATED TO THE**
16 **TAUM SAUK DISASTER IN HIS DIRECT TESTIMONY?**

17 A. Mr. Baxter makes the following statements on pages 34 and 35 of his direct testimony:

18 Consistent with the position that we have maintained throughout this
19 period, **we are taking full responsibility for this [Taum Sauk] matter**
20 **in our rate filing.** [Emphasis added]

21 ...

22 Specifically, AmerenUE's cost of service study in this case treats the
23 Taum Sauk Plant as if it has remained in operation throughout the test
24 year and ignores the financial impacts of the upper reservoir failure.
25 This means that to the extent the Taum Sauk Plant would have been
26 dispatched economically during the test year, we are treating it as if it
27 was in fact dispatched. As a result, **customers are...being credited with**
28 **margins from off-system sales the Taum Sauk Plant would have**

Rebuttal Testimony of
Ryan Kind

provided had it remained in service. These losses are being borne by the Company's shareholders. [Emphasis added]

Q. SHOULD UE'S COMMITMENT TO HOLD CUSTOMERS HARMLESS FROM ADVERSE RATE IMPACTS ARISING FROM THE TAUM SAUK DISASTER BE REFLECTED IN PUBLIC COUNSEL'S RECOMMENDATIONS FOR THE TREATMENT OF OFF-SYSTEM SALES MARGINS IN THIS CASE?

A. Yes.

Q. WHAT DID YOU RECOMMEND IN YOUR DIRECT TESTIMONY FOR THE TREATMENT OF OFF-SYSTEM SALES MARGINS IN THIS CASE?

A. The Public Counsel recommendation for the treatment of off-system sales margins consisted of two elements and was described in my direct testimony as follows:

- UE's revenue requirement should include a baseline amount of off-system sales margins at a level that reflects the best estimate of the ongoing level of off-system sales margins; and
- A deferred accounting tracker mechanism should be used to accumulate variations from the baseline level between rate cases. The accumulated deferral amount should be reflected in the revenue requirement in UE's next rate case.

Q. HOW HAVE YOU MODIFIED OPC'S RECOMMENDATION TO REFLECT THE FACT THAT THE TAUM SAUK PLANT IS NOT OPERABLE AND THE COMMITMENT IN WARNER BAXTER'S TESTIMONY TO HOLD CUSTOMERS HARMLESS FROM ADVERSE RATE IMPACTS ARISING FROM THE TAUM SAUK DISASTER?

Rebuttal Testimony of
Ryan Kind

1 A. I have modified OPC's recommendation for the treatment of off-system sales margins by
2 adding a third element to OPC's proposal. The third element is intended to hold
3 ratepayers harmless from adverse rate impacts arising from the Taum Sauk disaster, in
4 accordance with UE's commitment to do so.

5 **Q. PLEASE DESCRIBE THE ADDITIONAL THIRD ELEMENT OF OPC'S PROPOSAL FOR THE**
6 **TREATMENT OF OFF-SYSTEM SALES MARGINS.**

7 A. In order to hold ratepayers harmless, it will be necessary to impute the revenues from
8 margins on the additional sales of capacity and energy that would be possible if the Taum
9 Sauk Plant was still operating. If the Taum Sauk Plant begins operating while the OPC
10 off-system sales margin tracker proposal is still in effect, and if UE takes prudent steps to
11 earn the additional margins that would be enabled by the return to service of the Taum
12 Sauk Plant, then continuing to defer imputed amounts of estimated forgone margins on
13 the sales of capacity and energy would no longer be necessary. However, ratepayers
14 would still need to be made whole in the next rate case for the forgone margins on the
15 sale of capacity and energy that had occurred prior to the resumption of operations at the
16 Taum Sauk Plant.

17 **Q. PLEASE DESCRIBE THE METHOD THAT SHOULD BE USED TO IMPUTE THE REVENUES**
18 **FROM MARGINS ON THE ADDITIONAL SALES OF CAPACITY AND ENERGY THAT WOULD**
19 **BE POSSIBLE IF THE TAUM SAUK PLANT WAS STILL OPERATING.**

20 A. The only way that this imputation can be accomplished with any precision is through the
21 use of production cost (fuel) modeling. Both UE and the Commission Staff (Staff) have
22 resources for production cost modeling. UE and the Staff have had discussions in this
23 case about the proper way to use fuel models to determine the expected amount of off-
24 system sales margins. Public Counsel recommends that the Commission adopt all three

elements of OPC's proposal for this issue and that the third element be implemented by a technical committee composed of UE, Staff, OPC and other interested parties. If the off-system sales technical committee is unable to achieve consensus on implementing the third element of OPC's off-system sales tracker proposal, this committee should bring irresolvable issues to the Commission for it to decide.

**III. RATEMAKING IMPACTS OF CONDITIONS IN THE COMMISSION'S
ORDER IN THE UE METRO EAST TRANSFER CASE**

**Q. IN YOUR DIRECT TESTIMONY, YOU INDICATED THAT UE HAD FAILED TO PROVIDE
TIMELY RESPONSES TO OPC'S DATA REQUESTS CONCERNING SOME OF THE
CONDITIONS IN THE COMMISSION'S ORDER APPROVING THE METRO EAST TRANSFER
IN CASE NO. EO-2004-0108. HAS UE PROVIDED ANY ADDITIONAL RESPONSES
PERTAINING TO THIS ISSUE SINCE THE TIME THAT YOU FILED YOUR DIRECT
TESTIMONY ON DECEMBER 15, 2006?**

A. No, UE has failed to provide any additional information despite Public Counsel's repeated reminders to the Company that we are still waiting for DR responses and clarifications of DR responses. OPC DR Nos. 2020 and 2021 regarding the transmission hold harmless conditions in Case No. EO-2004-0108 were sent to UE on November 14, 2006 and no response whatsoever has been made by the Company as of January 30, 2007. This dismal performance in responding to DR Nos. 2020 and 2021 (eleven weeks and counting as of January 30) is inexcusable. Over a week ago, counsel for UE informed OPC that these DRs were on Maureen Borkowski's desk and that he would try to expedite the answers. If Public Counsel were not currently burdened with responding to the greatest surge of electric, gas and water cases ever experienced by our staff, we would be taking more aggressive actions to compel the responses to these and many other late UE DR responses.

1 **Q. WHICH CONDITION IN THE COMMISSION'S ORDER APPROVING THE METRO EAST**
2 **TRANSFER IN CASE No. EO-2004-0108 DO OPC DR Nos. 2020 AND 2021**
3 **PERTAIN TO?**

4 A. These DRs are related to the hold harmless condition with respect to adverse impacts
5 related to the transfer of most of UE's transmission assets located in Illinois from UE to
6 AmerenCIPS. Ordered paragraph number 8 in the Commission's "Report and Order on
7 Rehearing" in Case No. EO-2004-0108 states:

8 "Union Electric Company, doing business as AmerenUE, as a condition
9 of the approval herein contained, shall not recover in rates any portion of
10 any **increased costs due solely to transmission charges for the use of**
11 **the transmission facilities herein transferred to AmerenCIPS** to the
12 extent that the costs in question would not have been incurred had the
13 facilities not been transferred." (Emphasis added)

14 **Q. WHAT CONCLUSIONS, IF ANY, DID YOU MAKE IN YOUR DIRECT TESTIMONY**
15 **REGARDING WHETHER UE IS IN COMPLIANCE WITH THE CONDITON QUOTED ABOVE**
16 **REGARDING ANY INCREASED COSTS DUE SOLELY TO TRANSMISSION CHARGES FOR**
17 **THE USE OF THE TRANSMISSION FACILITIES HEREIN TRANSFERRED TO AMERENCIPS?**

18 A. In my direct testimony, I stated at line 1 on page 11 that:

19 I have not been able to begin making a determination of UE's
20 compliance with this condition at this time since UE has failed to provide
21 timely responses to OPC DR Nos. 2020 and 2021 regarding this
22 condition. Because of UE's failure to provide timely DR responses on
23 this subject, I reserve the right to address this issue again in additional
24 testimony in this case.

25 **Q. HAS YOUR INABILITY TO BEGIN MAKING A DETERMINATION REGARDING UE'S**
26 **COMPLIANCE WITH THE TRANSMISSION HOLD HARMLESS ISSUE CHANGED SINCE YOU**
27 **MADE THE ABOVE STATEMENT?**

Rebuttal Testimony of
Ryan Kind

1 A. No, as a result of UE's continuing failure to provide DR responses, I still have not been
2 able to begin making a determination of UE's compliance with this condition. There, I
3 still reserve the right to address this issue again in additional testimony in this case.

4 **IV. NORMALIZATION OF SO₂ EMISSION SALES ALLOWANCE REVENUES**

5 **Q. IN YOUR DIRECT TESTIMONY, YOU PRESENTED PUBLIC COUNSEL'S**
6 **RECOMMENDATION FOR A NORMALIZED LEVEL OF SO₂ SALES REVENUES TO REFLECT**
7 **IN THE REVENUE REQUIREMENT FOR THIS CASE. YOU ALSO STATED THAT "BECAUSE**
8 **OF UE'S FAILURE TO PROVIDE TIMELY DR RESPONSES ON THIS SUBJECT, I RESERVE**
9 **THE RIGHT TO REVISE THE NORMALIZATION RECOMMENDATION AND ADDRESS THIS**
10 **ISSUE AGAIN IN ADDITIONAL TESTIMONY IN THIS CASE." HAVE YOU NOW RECEIVED**
11 **SOME OF THE DR RESPONSES THAT YOU REFERENCED IN THE ABOVE QUOTE?**

12 A. Yes, UE's responses to a series of DRs related to SO₂ allowance transactions finally
13 began to trickle in on January 19, 2007, over eight weeks after the DRs had been sent to
14 UE. The Company's responses to SO₂ related DRs continued to arrive at OPC's offices
15 this week.

16 **Q. HAVE YOU REVISED YOUR RECOMMENDATION FOR THE NORMALIZED LEVEL OF SO₂**
17 **SALES REVENUES TO REFLECT IN THE REVENUE REQUIREMENT FOR THIS CASE AFTER**
18 **REVIEWING THE SO₂ RELATED DR RESPONSES THAT YOU HAVE RECENTLY RECEIVED**
19 **FROM THE COMPANY?**

20 A. Yes, I have. The OPC recommendation that I presented in direct testimony was based on
21 limited information since I relied completely on the SO₂ transaction data contained in
22 the "Annual Report of SO₂ Allowance Transactions" (SO₂ Annual Reports) that UE began
23 submitting to the Staff and OPC in 1999 pursuant to the Commission's order in Case No.

Rebuttal Testimony of
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1 EO-98-401. The new information that was provided by UE in response to OPC DRs has
2 allowed me to provide a normalized amount that is based on more up-to-date information
3 which includes all of the SO₂ allowance transactions made during calendar year 2006.
4 The new information has also allowed me to examine some of the individual transactions
5 in more detail. As I continue my review of this detailed newly arrived information on
6 individual transactions, I may have additional recommendations on the SO₂ allowance
7 issue.

8 **Q. WHAT IS PUBLIC COUNSEL'S REVISED RECOMMENDATION FOR THE NORMALIZED**
9 **LEVEL OF SO₂ ALLOWANCE SALES TO REFLECT IN THE REVENUE REQUIREMENT FOR**
10 **THIS CASE AND HOW DID YOU ARRIVE AT THAT RECOMMENDATION?**

11 A. Public Counsel now recommends that the Commission use **_____** as the
12 normalized level of SO₂ allowance sales in this case. As shown in Attachment 1, I arrived
13 at this figure by calculating a five-year average of the amount of annual revenues that UE
14 has received from emission allowance sales over the five-year period that ends on
15 December 31, 2006. The last six months of the five year period coincides with the update
16 to the test year that the Commission has ordered in this case. The level of allowance
17 sales that UE made in each year over the five year period varies considerably so there
18 was an obvious need to normalize the level of allowance sales to make the amount in the
19 test year more representative of the level of sales that has occurred following the last time
20 that UE's rates and earnings were reviewed in Case No. EC-2002-1.

21 **Q. ARE THE AMOUNTS OF ANNUAL REVENUES SHOWN ON ATTACHMENT 1 THE SAME**
22 **AS THE ANNUAL REVENUE AMOUNTS THAT UE CALCULATED IN THE SO₂ ALLOWANCE**
23 **RELATED DR RESPONSES THAT YOU RECEIVED FROM THE COMPANY?**

Rebuttal Testimony of
Ryan Kind

1 A. No. The annual figures for 2002, 2003, and 2004 come directly from the annual revenue
2 calculations contained in a spreadsheet file entitled "SO2 sales UE.xls" that UE provided
3 in response to OPC DR No. 2086. However, I found it necessary to make adjustments to
4 the figures for 2005 and 2006.

5 **Q. PLEASE EXPLAIN THE ADJUSTMENT THAT YOU MADE TO THE 2006 SALES FIGURES**
6 **IN THE SO2 SALES UE.XLS SPREADSHEET FILE.**

7 A. This file was not updated to include the last SO₂ allowance sale that UE made in 2006.
8 Therefore, to calculate the 2006 total, I added the ** _____
9 _____
10 _____
11 _____
12 _____ **

13 **Q. PLEASE EXPLAIN THE ADJUSTMENT THAT YOU MADE TO THE 2005 SALES FIGURES**
14 **IN THE SO2 SALES UE.XLS SPREADSHEET FILE.**

15 A. This adjustment was necessary because ** _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____ **

22 **Q. PLEASE EXPLAIN HOW THE AMOUNT OF THIS REVENUE IMPUTATION WAS**
23 **CALCULATED.**

Rebuttal Testimony of
Ryan Kind

1 A. The calculations that support this revenue imputation are shown on Attachment 3. As
2 Attachment 3 shows, the amount of revenues that UE generated from **

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11 **Q. PLEASE SUMMARIZE THE REASONS WHY THE ****

12 **

13 A. **

Rebuttal Testimony of
Ryan Kind

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Q. WHO IS ANDY SERRI?

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A. According to Ameren's web site (http://www.ameren.com/AEM/ADC_AEM_Bios.asp),

12

Mr. Serri is the President of one of UE's non-regulated affiliates, Ameren Energy

13

Marketing (AEM). I do not believe he has ever been a UE employee.

Rebuttal Testimony of
Ryan Kind

1 **Q. DOES THE MISSOURI AFFILIATE TRANSACTION RULE CONTAIN PROVISIONS TO**
2 **PREVENT THE KIND OF AFFILIATE ABUSE THAT APPEARS TO BE ASSOCIATED WITH**
3 **THIS TRANSACTION?**

4 A. Yes. Section (2) of 4 CSR 240-20.015 contains at least one standard that is intended to
5 prevent this type of affiliate abuse. 4 CSR 240-20.015(2)(B) states:

6 (B) Except as necessary to provide corporate support functions, the
7 regulated electrical corporation shall conduct its business in such a way
8 as not to provide any **preferential service**, information or treatment to an
9 affiliated entity over another party at any time. [Emphasis added]

10 Preferential service is defined in 4 CSR 240-20.015(1)(H) which states:

11 (H) Preferential service means information or treatment or actions by the
12 regulated electrical corporation which places the affiliated entity at an
13 **unfair advantage** over its competitors. [Emphasis added]

14 Unfair advantage is defined in 4 CSR 240-20.015(1)(J) which states:

15 (J) Unfair advantage means an advantage that cannot be obtained by
16 nonaffiliated entities or can only be obtained at a competitively
17 prohibitive cost in either time or resources.

18 It appears that the explicit connection between this transaction and **

19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____**

Rebuttal Testimony of
Ryan Kind

1 Q. **
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3 **

4 A. ** The current STATEMENT OF POLICY AND CODE OF
5 CONDUCT WITH RESPECT TO THE RELATIONSHIP BETWEEN POWER
6 MARKETER AND PUBLIC UTILITY (AEM Code of Conduct) that has been approved
7 by the FERC for AEM includes the following provisions:

8 To the maximum extent practical, the employees of power marketer will
9 operate separately from the employees of public utility.

10 All market information shared between Public Utility and Power
11 Marketer will be disclosed simultaneously to the public. This includes
12 all market information, including but not limited to, any communication
13 concerning power or transmission business, present or future, positive or
14 negative, concrete or potential. Shared employees in a support role are
15 not bound by this provision, but they may not serve as an improper
16 conduit of information to non-support personnel.

17 **
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21 **

22 Q. ARE THERE ASPECTS OF THE **
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24 **

25 A. **
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Rebuttal Testimony of
Ryan Kind

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Q. DO YOU HAVE ANY ADDITIONAL COMMENTS REGARDING THE **

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A.

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Q. WHAT IS THE SOURCE OF THE ABOVE GRAPH AND WHAT DOES IT ILLUSTRATE?

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A. This graph came from a spreadsheet file entitled “UE Sales Chart.xls” that was included in UE’s response to OPC DR No. 2086. The bar graph shows the amount of SO₂ allowance transaction revenue that UE has generated at various points in time since 1999. Higher bars represent greater amounts of sales revenues as measured on the y-axis on the left side of the chart. The line on the graph shows how SO₂ allowance market prices have changed over the same time period. By looking at both the bar graph and the line graph

NP

Rebuttal Testimony of
Ryan Kind

1 at a specific point in time, you can see the relationship between the level of market prices
2 and the amount of SO₂ allowance sales revenues resulting from the SO₂ allowance
3 transactions that UE chose to engage in at specific points in time.

4 **Q. HAVE YOU REVIEWED THE INFORMATION IN THIS GRAPH TO ASSESS WHETHER IT IS**
5 **CORRECT AND UP TO DATE?**

6 A. The graph appears to accurately reflect the amount of SO₂ allowance sales revenues that
7 UE has generated but it is not completely up-to-date through the end of 2006 ** _____
8 _____

9 **

10 **V. UE'S ENTITLEMENT TO 40% OF THE OUTPUT FROM THE ELECTRIC**
11 **ENERGY, INC. JOPPA PLANT**

12 **Q. AT LINE 17 ON PAGE 29 OF HIS DIRECT TESTIMONY, UE WITNESS WARNER BAXTER**
13 **STATES THAT "THE EEINC BOARD OF DIRECTORS HAS A FIDUCIARY DUTY TO EEINC.**
14 **SHAREHOLDERS TO MAXIMIZE THE VALUE OF THE SHAREHOLDER'S INVESTMENT."**
15 **DO THE ACTIONS OF ALL EEINC. DIRECTORS APPEAR TO INDICATE THAT THIS VIEW**
16 **IS SHARED BY ALL EEINC. DIRECTORS?**

17 A. No. A FERC filing (See page 6 of Attachment 6) by one of the owners, Kentucky
18 Utilities Company (KU), made it clear that the Directors of KU were making their best
19 efforts to try to secure an extension of the contract at the best price possible so that KU
20 could continue to use the capacity and output from the EEInc. Joppa plant as a low cost
21 resource "for the purpose of serving KU's native load customers." Presumably, if UE felt
22 the same public interest obligations and desire to comply with state commission resource
23 planning rules, it would have taken the same actions as KU rather than attempting to

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1 argue that such actions are not consistent with the fiduciary responsibilities of EEInc.
2 directors and shareholders.

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

4 A. Yes.

Attachments 1 thru 5

have been deemed

**** Highly Confidential ****

in their entirety.

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Electric Energy, Inc.

Docket No. ER05-1482-000

**LG&E ENERGY LLC'S MOTION TO INTERVENE OUT OF TIME
AND COMMENTS**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.214 (2005), LG&E Energy LLC ("LG&E Energy") on behalf of its utility operating companies, Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU"), hereby respectfully requests that the Commission grant LG&E Energy's Motion to Intervene Out of Time in the above-referenced docket.

In support thereof, LG&E Energy states as follows:

I. DESCRIPTION OF LG&E ENERGY

LG&E Energy is a registered utility holding company under the Public Utility Holding Company Act of 1935.¹ LG&E Energy's operating company subsidiaries, LG&E and KU, are primarily engaged in the generation, transmission, and distribution of electric energy in the Commonwealth of Kentucky. LG&E also purchases, distributes and sells natural gas to customers within Kentucky. The LG&E and KU operating companies are currently members of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). KU is a twenty percent equity owner of Electric Energy, Inc. ("EEInc"), and has a contractual right pursuant to a Power Supply Agreement ("PSA") to twenty percent of

¹ 15 U.S.C. § 79a *et seq.* LG&E Energy is a wholly-owned subsidiary of E.ON AG, a stock corporation formed under the laws of the Republic of Germany. *See E.ON AG*, 97 FERC ¶ 61,049 (2001) (approving E.ON acquisition of LG&E Energy).

the output of EEInc's coal-fired steam-electric generating plant at Joppa, Illinois (the "Joppa Plant"). KU further has a contractual right to a portion of the energy from Owensboro Municipal Utilities' ("OMU") Smith Units 1 and 2 under a power purchase agreement between KU and OMU; LG&E has no such right.²

II. BACKGROUND

On September 15, 2005, EEInc filed a market-based rate tariff for the sale of electric capacity, energy and firm transmission rights and the reassignment of transmission capacity rights at negotiated rates.

EEInc was formed in 1950 for the purpose of constructing, owning and operating the Joppa Plant. EEInc is owned 40% by Union Electric Company d/b/a Ameren UE ("AmerenUE"), 40% by AmerenEnergy Resources Company ("AER") and 20% by KU. Since it began operating in 1954, the Joppa Plant has provided a total of 1,100 MW of capacity pursuant to long-term contracts to the U.S. Department of Energy (DOE) and to the EEInc owners or their respective affiliates. These contracts, which are on file at the Commission, expire on December 31, 2005.

III. MOTION TO INTERVENE OUT OF TIME

LG&E Energy submits that good cause exists to grant this motion to intervene out of time. LG&E Energy seeks to correct misstatements made in the intervention of the Missouri Office of the Public Counsel ("MOPC") in its intervention filed on October 6, 2005. LG&E Energy agrees to accept the record of the proceeding as it stands at the time this motion is

² See the Companies' 2005 Joint Integrated Resource Plan (Kentucky Public Service Commission ("KPSC") Case No. 2005-00162) at Vol. 1-03, Sec. 5, pp. 5-37 - 5-38. EEInc erroneously stated at page 8 of its Application, FERC Docket No. ER05-1482-000, filed on September 15, 2005, that "like KU, LG&E has a right to a portion of the energy from OMU's Smith Units 1 and 2."

granted, and LG&E Energy does not seek to delay this proceeding. LG&E Energy therefore submits that its intervention in this proceeding will not prejudice the other parties in the proceeding and will not otherwise disrupt the proceeding. In addition, LG&E Energy's interest is not adequately represented by other parties in the proceeding. As a party to the contracts discussed in this proceeding, which contracts are due to expire on December 31, 2005, LG&E Energy must have the opportunity to participate in the instant proceeding. Under these circumstances, good cause exists to permit LG&E Energy to intervene out of time.

IV. COMMUNICATIONS.

The names and addresses of the persons who should be included on the official service lists in these proceedings and to whom communications concerning this motion should be addressed on behalf of LG&E Energy are as follows:

Steven Phillips *
Senior Corporate Attorney
LG&E Energy, LLC
220 West Main Street
Louisville, Kentucky 40202
(502) 627-2648
steven.phillips@lgeenergy.com

R. Michael Sweeney, Jr.
Linda L. Walsh*
Hunton & Williams LLP
1900 K Street, N.W.
Washington, D.C. 20006-1109
(202) 955-1526
rsweeney@hunton.com
lwalsh@hunton.com

* Designated for service

V. STATEMENT OF ISSUES.

Pursuant to revised Rule 203 of the FERC's Rules of Practice and Procedure, 18 C.F.R. § 385.203,³ LG&E Energy states the issues as follows:

(1) Whether LG&E Energy should be allowed to intervene out of time.

³ *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, 70 Fed. Reg. 55,723 (Sept. 23, 2005), 112 FERC ¶ 61,297 (2005).

No other party can adequately represent LG&E Energy's interest, and LG&E Energy has good cause to intervene out of time. Granting LG&E Energy's motion will not disrupt the proceeding or prejudice other parties in the proceeding. Additionally, LG&E Energy's motion conforms to the requirements of Rule 214(b) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(b).

VI. COMMENTS

LG&E Energy seeks to clarify certain statements made by the Missouri Office of the Public Counsel ("MOPC") in its Motion to Intervene, Protest and Request for Hearing of the Missouri Office of Public Counsel filed on October 6, 2005 ("MOPC Motion"). MOPC asserts that KU's ownership share of EEInc's output (20%) continues to be committed to serving KU's native load customers. MOPC purportedly bases this conclusion on KU's 2005 Joint Integrated Resource Plan⁴ ("Joint IRP") documents. MOPC states:

While this commitment may not be in the form of a contractual agreement at this time, documents that KU has filed within the last year with the Kentucky Public Service Commission (KPSC) show that KU has made a commitment to its regulators at the KPSC to continue using capacity from the EEInc Joppa plant to serve its native load customers in Kentucky long after the PSA [Power Supply Agreement] expires at the end of 2005.⁵

MOPC also states that the Joint IRP contains several references to KU's reliance on 200 MW of capacity from the Joppa Plant after the PSA expires.⁶

MOPC's reading of the Joint IRP is incorrect. The portion of the Joint IRP that MOPC quoted states:

⁴ Kentucky Public Service Commission ("KPSC") Case No. 2005-00162. The Joint IRP was filed by KU and LG&E with the KPSC.

⁵ MOPC Motion at 15 (emphasis added).

⁶ *Id.*

The EEInc Power Supply Agreement (“PSA”) expires December 31, 2005. Because KU has an ownership interest of only 20 percent while Ameren has an ownership interest of 80 percent, the disposition of the PSA after the expiration date is not certain at this time. For the purpose of this analysis, the Companies assume that the PSA will be extended in its current form for the entire study period. The PSA permits KU to take its 20% share in the output of six coal-fired, baseload units with combined capacity of approximately 1,000 megawatts. The Companies continue to schedule their 20 percent contract right to the 200 megawatts from EEInc.⁷

This quote from the Joint IRP makes plain that KU did not represent that it could rely on the 200 MW of capacity from the Joppa Plant after the PSA expires, nor did KU in the Joint IRP “commit[] to its regulators at the KPSC” to use Joppa Plant capacity, either now or in the future.⁸ Rather, the Joint IRP “assume[s]” that the terms of the current PSA would continue beyond December 31, 2005 for planning purposes only, and does not state that the PSA will in fact continue beyond December 31, 2005; indeed, the Joint IRP specifically states that the PSA with EEInc expires on December 31, 2005.⁹ Moreover, the Joint IRP states that the “Companies continue to schedule their 20 percent contract right to the 200 megawatts from EEInc,” but makes no commitment to do so in the future.¹⁰

Accordingly, KU would like to submit a clarifying statement: KU cannot commit, and has not committed, to using the capacity presently available pursuant to the PSA between

⁷ MOPC Motion at 16 (emphases added), quoting The Joint Resource Plan’s “Plan Summary”, page 5-39 http://psc.ky.gov/pscscf/2005-00162/LG%26E_IRP_Vol1-03_Section5_Plan_Summary_042105.pdf). Note that although this quote refers to “their 20 percent contract right,” the PSA is in fact a contract between KU and EEInc, and LG&E is not a party thereto.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

EEInc and KU beyond the existing term of the agreement (*i.e.* December 31, 2005) because KU's contractual rights to that power expire on December 31, 2005.

All of the above notwithstanding, KU is attempting to negotiate with EEI for a PSA for an additional term under the best possible pricing for the purpose of serving KU's native load customers. KU has used the capacity available to KU under the existing PSA to serve its native load customers and desires to continue to use this capacity in the future for this purpose so long as it remains a least-cost resource.

Because the EEInc power has been part of KU's resource portfolio used to supply KU's native load customers, KU continues to seek a best and final offer from EEInc for such power, which will allow KU to analyze the offer and determine if the power would be a least cost resource, as compared to other options, for serving KU's native load customers. If that analysis determines that the EEInc power would be a least cost resource, KU would intend to proceed with the transaction after receiving all appropriate regulatory and other approvals. If that analysis determines that the EEInc power would not be a least cost resource, KU would intend to decline that offer from EEInc.

KU has not made a commitment that it will continue to use capacity from the Joppa Plant available under the current PSA to serve KU's native load customers in Kentucky past December 31, 2005, and such a commitment cannot be made until EEInc provides KU with an offer, the appropriate least-cost analysis is completed, and contract negotiations and document execution are completed.

Finally, KU would note that the MOPC misstated the implications of the market-based rate authority sought by EEInc. MOPC suggests that the EEInc tariff prevents EEInc from selling to utility affiliates with franchised service territories. In fact, such sales can be

made. Section 1 of EEInc's proposed market-based rate tariff states that EEInc will not make any sale of power to an utility affiliate with a franchised service territory without prior authorization from the Commission. Thus, EEInc remains free to make such sales provided that it has such authorization from the Commission. KU and EEInc continue to negotiate for an extension of the PSA mindful of the fact that any such extension would require the Commission's prior authorization.

VII. CONCLUSION

WHEREFORE, for the foregoing reasons, LG&E Energy respectfully moves that the Commission grant its motion to intervene out of time with full rights afforded as a party as requested herein.

Respectfully submitted,

/s/

R. Michael Sweeney, Jr.
Linda L. Walsh
Hunton & Williams LLP
1900 K Street, N.W.
Washington, D.C. 20006-1109
(202) 955-1526
rsweeney@hunton.com
lwalsh@hunton.com

Steven Phillips
Senior Corporate Attorney
LG&E Energy LLC
220 West Main Street
Louisville, Kentucky 40202
(502) 627-2648
steven.phillips@lgeenergy.com

Attorneys for LG&E Energy LLC

Dated: November 3, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day, November 3, 2005, served the foregoing document to the electronic Listserv established by the Federal Energy Regulatory Commission for the above-referenced proceedings.

/s/
Linda L. Walsh

Attorney for LG&E Energy LLC