

Exhibit No.:

Issue(s):

Witness/Type of Exhibit:

Sponsoring Party:

Case No.:

Rate Case Expense
Trippensee/Surrebuttal
Public Counsel
ER-2010-0036

SURREBUTTAL TESTIMONY

OF

RUSSELL W. TRIPPENSEE

Submitted on Behalf of the Office of the Public Counsel

AMEREN UE ELECTRIC

Case No. ER-2010-0036

March 5, 2010

NP

**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.**

[illegible]

My commission expires June 8, 2013.

SURREBUTTAL TESTIMONY

OF

RUSSELL W. TRIPPENSEE

AMERENUE

CASE NO. ER-2010-0036

1 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

2 A. Russell W. Trippensee. I reside at 1020 Satinwood Court, Jefferson City, Missouri 65109, and my
3 business address is P.O. Box 2230, Jefferson City, Missouri 65102.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am the Chief Utility Accountant for the Missouri Office of the Public Counsel (OPC or Public
6 Counsel).

7 **Q. ARE YOU THE SAME RUSSELL W. TRIPPENSEE WHO HAS FILED DIRECT**
8 **AND REBUTTAL TESTIMONY IN THIS CASE?**

9 A. Yes.

10 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

11 A. I will respond to the rebuttal testimony of AmerenUE witness Stephen M. Kidwell with respect to
12 pages 33, line 21 through page 39, line 5. Specifically I will address Mr. Kidwell's assertions that
13 Public Counsel's testimony on rate case expense is unsubstantiated and inconsistent with regulatory
14 principles.

15 **Q. IS PUBLIC COUNSEL ABLE TO PROVIDE A SPECIFIC LEVEL OF RATE**
16 **CASE EXPENSE THAT SHOULD BE INCLUDED IN THE REVENUE**
17 **REQUIREMENT?**

1 A. The true-up period ended as of January 31, 2010 and as of the date of this testimony, Public
2 Counsel has not received the necessary information from AmerenUE to make that recommendation
3 which is understandable, given the timing of this surrebuttal testimony immediately after the true-up
4 cut-off date. Consistent with the true-up process being utilized in this case, Public Counsel expects
5 to be able provide that recommendation to the Commission in its true-up testimony.

6 **Q. IS PUBLIC COUNSEL ABLE TO IDENTIFY SPECIFIC AREAS OF RATE**
7 **CASE COST THAT THE COMMISSION SHOULD EXCLUDE FROM RATE CASE**
8 **EXPENSE?**

9 A. Yes. Public Counsel believes the Commission should exclude external consultant costs associated
10 with legal expense, return on equity witness, cash working capital, Connie Murray, and the Brattle
11 Group. After exclusion of these costs, Public Counsel recommends that the Commission allocate
12 50% of the rate case costs to the revenue requirement and 50% to the stockholders. This allocation
13 would recognize that both ratepayers and stockholders receive benefits from the regulatory process.

14 **Q. MR. KIDWELL ARGUES THAT PUBLIC COUNSEL'S RECOMMENDATION IS**
15 **"PURE ASSERTION" AND THAT THE COMMISSION COULD NOT RELY ON IT**
16 **IN MAKING ITS RECOMMENDATION. CAN YOU PLEASE RESPOND TO HIS**
17 **CRITIQUE?**

18 A. Mr. Kidwell's position is could be restated as; "the Commission should just trust AmerenUE to do
19 the right thing and not evaluate its actions and how those actions impact the revenue requirement
20 that is borne by the ratepayers". Public Counsel believes a utility's actions should be evaluated and

1 only those expenses proved to be reasonable and prudent should be considered for treatment in the
2 rate making process.

3 Mr. Kidwell goes on to state that I have a fundamental misunderstanding of the purpose of return on
4 equity (ROE) testimony and then provides a quote from the US Supreme Court in the seminal
5 Bluefield case with respect to ROE. His argument is a red herring. Public Counsel has made a
6 recommendation in the testimony of Daniel Lawton with respect to a fair rate of return for
7 AmerenUE. Mr. Lawton's testimony sets out that AmerenUE has filed testimony from Dr. Morin
8 that would not result in a fair return. In fact Dr. Morin has effectively abandoned his
9 recommendation for ROE as contained in his direct testimony with a significantly lower
10 recommendation in his rebuttal testimony. As Mr. Lawton's surrebuttal testimony addresses, Dr.
11 Morin's revised recommendation still results in a return that is not appropriate. Dr. Morin's
12 recommendation is above the midpoint of his revised analysis. This contrasts with all the other
13 ROE witnesses in this case who utilize the midpoint of the results of their analyses to develop their
14 recommendations. Dr. Morin's upward movement from the mid-point of his analysis also ignores
15 the equity rich capital structure of AmerenUE as compared to his comparable risk group. The
16 initial excessive return recommendation along with the upward bias in Dr. Morin's revised
17 recommendation serves to underscore that rate of return testimony is used to benefit the
18 stockholder.

19 **Q. IS MR. KIDWELL'S SURREBUTTAL TESTIMONY CONSISTENT WITH THE US**
20 **SUPREME COURT BLUEFIELD CASE HE CITES ON PAGE 38, LINES 13 -**
21 **17?**

1 A. No. In the next paragraph following his cite of the Bluefield case, Mr. Kidwell states that the
2 “Commission has an obligation to provide the utilities it regulates with a reasonable opportunity to
3 recover prudently incurred costs.” The Bluefield case is about the opportunity to earn a reasonable
4 ROE in the future based on the rates being set in the current case. Mr. Kidwell’s statement about
5 “recovery of prudently incurred costs” is predicated first on the determination that a historic cost
6 was prudent and secondly that the rates set in the current case will be adjusted to recover those
7 historic costs during a future period. My understanding of the Bluefield case and regulatory
8 principles including the prohibition against retro-active ratemaking, as practiced in Missouri, is that
9 the relationship of revenues to expenses, investments in utility property, and capital costs
10 (excluding equity costs) related to those investments is examined and a net operating income is
11 determined. The net operating income is the nominal dollars of ROE. To convert the nominal
12 dollars of ROE into the ROE expressed as a percentage is calculated by dividing the net operating
13 income by the level of equity capital used to support the rate base investment necessary to provide
14 utility service. Whether or not the resulting ROE expressed as a percentage is adequate determines
15 whether or not rates need to be adjusted. “Recovery of prudently incurred costs” as recommended
16 by Mr. Kidwell would be analogous to a cost plus contract where the ratepayer pays only after the
17 actual costs are incurred and a profit level is added. That model is often used in contracts for home
18 building or infamously in armed services procurement contracts, but cost plus is not rate of return
19 regulation.

20 Once rates are adjusted, future ROE is determined in a similar manner but the expenses and costs
21 considered are future expenses, costs and investment. There is no determination as to the prudence
22 of those future expenses, costs, and investments. The specific prudent and reasonable expenses and

1 costs included in the rate setting determination are not included in earnings determinations for
2 future periods as Mr. Kidwell's statement implies. Neither is there any pre-approval or other
3 finding that future expenses and costs used to calculate a future ROE are prudent.

4 A theme of AmerenUE's case has been excessive regulatory lag premised on the concept of rate
5 making being a cost recovery process. Rate of Return regulation analyzes the relationship of known
6 and measures revenues, expenses, capital costs, and investments in order evaluate and possibly
7 change current rates to provide an opportunity to earn a just and reasonable future return. In
8 contrast, AmerenUE's testimony focuses on specific historic components of the regulatory process
9 and assets that future rates are designed to recover those historic expenses and costs. If
10 AmerenUE's assertion that rate making is a cost recovery process, one would have to answer the
11 question; how are future expenses "recovered" if there are not annual rate cases or there is a
12 significant period between rate cases as occurred after 1987 for AmerenUE? Mr. Kidwell's
13 testimony implies that regulation in Missouri is in a continuously retro-active cost recovery mode.
14 That simply is inconsistent with rate of return regulation.

15 Obviously expense levels change along with investment levels and costs after a rate case. Rate of
16 return regulation provides a basis to make a determination as to when a utility decides to file a rate
17 case or another party chooses to file a complaint case.

18 **Q. MR. KIDWELL CITES THE WORK OF AMERENUE'S OUTSIDE LEGAL**
19 **COUNSEL AND THE LIMITED AVAILABILITY OF INTERNAL LEGAL**
20 **RESOURCES AS A BASIS FOR WHY PUBLIC COUNSEL'S POSITION SHOULD**
21 **BE REJECTED. DO YOU HAVE ANY RESPONSE TO HIS COMMENTS?**

1 A. Yes. Mr. Kidwell rebuttal testimony estimates that the current case will have \$685,000 of outside
2 legal expense (page 35, line 14 – 15). If this estimate is correct, the result is AmerenUE will spend
3 \$2,433,294 on external legal services during the last four years to process three rate cases.
4 AmerenUE's lead counsel, Mr. Byrne, has approximately 20 years experience in Missouri
5 regulatory proceedings. Ms. Tatro is also an experienced regulatory attorney. Mr. Kidwell does
6 not cite other corporate duties for either Mr. Byrne or Ms. Tatro. AmerenUE has seven other
7 attorneys with regulatory experience. Public Counsel recognizes that AmerenUE has a right to
8 counsel. However Public Counsel would assert that ratepayers have a right to reasonable rates. If
9 AmerenUE had leveraged existing internal legal resources with three additional in-house attorneys
10 with compensation package of \$100,000 per year for example, AmerenUE would have spent less
11 than half the monies it is requesting be considered in the regulatory process. The services of these
12 attorneys would be available for periods when rate cases are not being processed to handle other
13 issues for AmerenUE thus providing for work scheduling that allows the existing experienced
14 regulatory attorneys to assist during rate cases. This is not speculation but a reasonable
15 management strategy to minimize ratepayer cost and maximize utility resources.

16 This Commission should evaluate the reasonableness of a utility's actions and the impact on
17 ratepayers. To simply accept AmerenUE's assertion that a cost is justified and not perform some
18 evaluation of that request does not serve the ratepayer whom this Commission is obligated to
19 protect. With regard to external legal services, Public Counsel asserts that an objective evaluation
20 clearly indicates the costs are excessive.

21 Q. PREVIOUSLY YOU DISCUSSED DR. MORIN'S REBUTTAL TESTIMONY AND
22 INDICATED PUBLIC COUNSEL BELIEVES THE COST ASSOCIATED WITH

1 **HIS TESTIMONY SHOULD BE EXCLUDED FROM CONSIDERATION IN THIS**
2 **CASE. MR. KIDWELL DISCUSSES RATE OF RETURN TESTIMONY**
3 **BEGINNING ON PAGE 37, LINE 22. DO YOU HAVE ANY COMMENTS ON**
4 **HIS ASSERTION THAT EXISTING INTERNAL RESOURCES ARE TOO**
5 **OCCUPIED TO FILE ROE TESTIMONY?**

6 A. Yes. The treasurer of AmerenUE, Mr. Jere Birdsong has previously filed ROE testimony with this
7 Commission. As Mr. Kidwell indicates, Mr. Birdsong is directly involved with the “Company
8 financings” (page 38, lines 3 – 4). Public Counsel would assert that intimate knowledge of the
9 current capital costs including a market required equity cost is an integral component of the job of a
10 treasurer of a utility with over \$6 billion of rate base to support. The determination of such costs is
11 an on-going process and evaluation of current market conditions. Public Counsel would submit that
12 the additional effort to put those evaluations into testimony and spend a day explaining those
13 evaluations to this Commission is not unreasonable nor would the effort justify expending
14 ** ** to date.

15 Q. **MR. KIDWELL IS CRITICAL OF PUBLIC COUNSELS EXCLUSION OF**
16 **EXTERNAL EXPERTS (PAGE 37, LINE 22). PLEASE ADDRESS**
17 **COMPANY’S USE OF AN EXTERNAL CONSULTANT TO TESTIFY ON CASH**
18 **WORKING CAPITAL.**

19 A. Cash working capital (CWC) as calculated for ratemaking purposes in Missouri has a long track
20 record of the procedures and processes used. The process, while sometimes tedious, is not a
21 complicated process as evidenced by Staff normally assigning an entry level or junior grade

1 regulatory auditor to the task. The use of external consultants for this task is simply not justified for
2 a utility with the internal resources of AmerenUE.

3 **Q. ARE YOU EXPERIENCED WITH PERFORMING CASH WORKING CAPITAL**
4 **STUDIES?**

5 A. Yes. I performed multiple CWC studies as a member of the MPSC Staff including the first CWC
6 study on Southwestern Bell and studies for three former subsidiaries of the then Union Electric
7 Company providing retail electric service in this state. I have reviewed numerous CWC during my
8 tenure with the Public Counsel.

9 **Q. MR. KIDWELL ENDS HIS REBUTTAL TESTIMONY OF YOUR DIRECT**
10 **TESTIMONY WITH A DISCUSSION OF THE 50/50 SPLITTING OF RATE**
11 **CASE EXPENSE. PLEASE COMMENT ON HIS CONCERNS.**

12 A. Rate case expense is totally within the control of the utility. Requests for rate increases benefit
13 stockholder by increasing the probability of higher ROEs in the future. Public Counsel's
14 recommendation to split these costs recognizes that stockholders benefit from the regulatory
15 process and assigns a cost of that benefit to the stockholder. Such a result is analogous to the
16 Commission practice of assigning transaction costs of a merger to the stockholder while allowing
17 consideration of transition costs of integrating the two utilities. The benefit of the merger cannot be
18 obtained without the transaction cost, however allocation of those costs to the stockholder
19 recognizes the benefits to the stockholder of the transaction.

20 **Q. ARE THERE OTHER CONSIDERATIONS IN PUBLIC COUNSEL'S 50/50**
21 **PROPOSAL?**

1 A. Yes. Absent some mechanism for sharing, the utility has minimal incentive to negotiate reasonable
2 terms. An evaluation of the terms included for the Brattle Group in this case underscores this
3 concern. A review of the contract with the Brattle Group shows that hourly rates for the various
4 consultants engaged range from ** ** per hour to ** ** per hour for non-administrative
5 staff. Administrative staff activities would cost ratepayers only ** ** to ** ** per hour if
6 considered in the revenue requirement (see Trippensee Direct, Schedule RWT DIR-4 HC 8 of 8). A
7 Brattle Group principle that has already provided live testimony on behalf of AmerenUE in the
8 interim portion of this case has an hourly rate of ** ** per hour.

9 AmerenUE's request to have the ratepayers bear responsibility for these exorbitant billing rates
10 shows minimal regard for the financial hardships facing ratepayers or concern for cost control.

11 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

12 A. Yes.