

Exhibit No.:  
Issue(s): Allocation of Joint Dispatch Benefits/  
Witness: James R. Dittmer  
Type of Exhibit: Cross-Surrebuttal  
Sponsoring Party: Public Counsel  
Case No.: EC-2002-1  
Date Testimony Prepared: June 24, 2002

## **CROSS-SURREBUTTAL TESTIMONY**

**OF**

**JAMES R. DITTMER**

Submitted on Behalf of  
the Office of the Public Counsel

**UNION ELECTRIC COMPANY**

**Case No. EC-2002-1**

June 24, 2002

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

The Staff of the Missouri Public Service  
Commission, )

Complainant )

vs )

Case No. ER-2002-1

Union Electric Company, d/b/a )  
AmerenUE; )

**AFFIDAVIT OF JAMES R. DITTMER**

STATE OF Missouri )

) SS

COUNTY OF JACKSON )

James R. Dittmer, of lawful age and being first duly sworn, deposes and states:

- 1) My name is James R. Dittmer. I am a Senior Regulatory Consultant working for the firm of Utilitech, Inc. This testimony I am presenting herein is offered on behalf of the Missouri Office of the Public Counsel <sup>Cross SVI</sup>
- 2) Attached hereto and made a part hereof for all purposes is my rebuttal testimony consisting of pages 1 through 17.
- 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.

Subscribed and sworn to be this 24 th day of June 2002

  
James R. Dittmer

  
Notary Public J. R. Huff

My commission expires 03/18/2004

**JR HUFF**  
**NOTARY PUBLIC STATE OF MISSOURI**  
**BATES COUNTY**  
**MY COMMISSION EXP. MAR. 18, 2004**



**CROSS SURREBUTTAL TESTIMONY  
OF  
JAMES R. DITTMER  
UNION ELECTRIC COMPANY  
d/b/a AMERENUE  
CASE NO. EC-2002-1**

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

A. My name is James R. Dittmer. My business address is 740 Northwest Blue Parkway, Suite 204, Lee's Summit, Missouri 64086.

**Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS CASE?**

A. Yes. I filed rebuttal testimony in this case on May 10, 2002 on behalf of the Office of the Public Counsel for the State of Missouri (hereinafter "OPC" or "Public Counsel").

**Q. WERE YOUR QUALIFICATIONS DISCUSSED IN YOUR REBUTTAL TESTIMONY FILED IN THIS CASE?**

A. Yes.

**Q. ON WHOSE BEHALF IS YOUR CROSS SURREBUTTAL TESTIMONY BEING PRESENTED?**

A. Like my rebuttal testimony filed in this case, this cross surrebuttal testimony is also being presented on behalf of the Office of the Public Counsel.

1     **Q.     WHAT TOPICS WILL YOU BE ADDRESSING IN YOUR CROSS**  
2     **SURREBUTTAL TESTIMONY?**

3     A.     Dr. Michael Proctor proposed within testimony filed on behalf of the Missouri  
4     Public Service Commission ("MPSC" or "Commission") Staff on March 1, 2002  
5     that profits from off-system sales be allocated between AmerenUE and Ameren  
6     Electric Generating Company ("AEG") in a manner that differs from that set forth  
7     within the current Joint Dispatch Agreement ("JDA") between AmerenUE, AEG  
8     and CIPS. Mr. Craig D. Nelson filed rebuttal testimony on behalf of AmerenUE  
9     opposing Dr. Proctor's proposed allocation of off-system sales margins. Mr.  
10    Nelson's primary arguments are that Dr. Proctor's allocation methodology is  
11    inconsistent with the current JDA, that Dr. Proctor's adjustment is in conflict with  
12    conclusions drawn by the MPSC Staff in previous AmerenUE dockets, and that  
13    Dr. Proctor's adjustment represents a "hindsight attack" on the JDA. Mr. Nelson  
14    therefore concludes that Dr. Proctor's proposal to not use the JDA as the basis for  
15    ratemaking treatment to be afforded in this case is unfair, harmful to the  
16    Company, and should be rejected "as a matter of policy and fairness."

17  
18    Beyond the passionate "procedural" argument made for rejecting Staff's proposal  
19    for allocating off-system sales, Mr. Nelson offers brief testimony that suggests  
20    that the JDA has been beneficial to AmerenUE Missouri retail ratepayers, and  
21    accordingly, no changes to the agreement or rate making adjustments are  
22    warranted.

1 The purpose of my cross-surrebuttal testimony being offered herein is to  
2 demonstrate that there is no requirement that a change to the JDA be approved by  
3 various regulatory commissions before a ratemaking adjustment, such as that  
4 proposed by Dr. Proctor, can be reflected within the development of AmerenUE's  
5 Missouri retail rates.

6  
7 **Q. WHY IS THE "PROCEDURAL" ISSUE SURROUNDING THE JDA OF**  
8 **INTEREST TO YOU AND THE PUBLIC COUNSEL?**

9 A. In my rebuttal testimony filed in this case on May 10, 2002 on behalf of the OPC,  
10 I also propose an allocation of costs and benefits that differs from that established  
11 within the current JDA. Obviously, adoption of my proposed adjustment is also  
12 dependent upon a determination by this Commission that it is not legally, or "as a  
13 matter of policy and fairness," prohibited from imposing rate making adjustments  
14 that differ from that calculated pursuant to the JDA.

15  
16 **Q. DOES MR. NELSON EVER CLAIM THAT THIS COMMISSION LACKS**  
17 **THE JURISDICTION TO IMPOSE A RATEMAKING ADJUSTMENT**  
18 **THAT DIFFERS FROM THAT WHICH WOULD BE CALCULATED**  
19 **PURSUANT TO THE JDA?**

20 A. No, Mr. Nelson never claims that this Commission lacks the jurisdiction to  
21 impose the ratemaking adjustment proposed by Dr. Proctor. Further, Mr. Nelson  
22 and the Company cannot credibly make such a claim.

1     **Q.     MR. NELSON PROVIDES CONSIDERABLE HISTORY OF THE JDA.**  
2     **HE DISCUSSES THE STAFF'S ANALYSIS OF THE CURRENT AND**  
3     **PREVIOUS JDA IN CASE NOS. EA-2000-37 AND EM-96-149. FURTHER,**  
4     **MR. NELSON DISCUSSES THE STAFF'S PREVIOUS CONCERNS AND**  
5     **THE PURPORTED ULTIMATE ACCEPTANCE AND SUPPORT FOR**  
6     **THE TERMS OF THE CURRENT JDA. FINALLY, MR. NELSON**  
7     **QUOTES EXTENSIVELY FROM ORDERS AND STIPULATION AND**  
8     **AGREEMENTS FROM THE TWO NOTED CASES.**  
9     **NOTWITHSTANDING SUCH EXTENSIVE TESTIMONY AND**  
10    **QUOTATIONS FROM PREVIOUS AGREEMENTS, IS THERE ANY**  
11    **IMPLICIT, IF NOT EXPLICIT REQUIREMENT THAT THE MPSC**  
12    **STAFF OR THIS COMMISSION ABIDE BY THE TERMS OF THE**  
13    **CURRENT JDA WHEN IT PROPOSES "RATEMAKING**  
14    **ADJUSTMENTS" OR "RATEMAKING TREATMENTS" IN THIS RATE**  
15    **SETTING PROCEEDING?**

16    **A.    No. Mr. Nelson provides considerable history and argument for why the current**  
17    **JDA should be followed in this complaint case proceeding. Indeed, I do not**  
18    **believe it would be an exaggeration to characterize his testimony as nearly**  
19    **passionate on the topic. However, a close review of his testimony as well as the**  
20    **orders, stipulations and agreements which Mr. Nelson attaches to his testimony**  
21    **reveals that through selective quotation from such documents that Mr. Nelson is**  
22    **simply making the "best case" he can for his impassioned argument. A full and**  
23    **complete reading of the stipulations and orders attached to his testimony from**

1 each noted case clearly reveals that neither the MPSC Staff, the OPC or the  
2 Commission are bound by the terms of the JDA for ratemaking purposes. In fact,  
3 each agreement cited reserves for the Commission to make explicit ratemaking  
4 determinations that differ from the JDA.

5  
6 **Q. WHAT LANGUAGE FROM THE NOTED DOCUMENTS ARE YOU**  
7 **RELYING UPON TO REACH THE CONCLUSION THAT NEITHER**  
8 **THE STAFF, THE OPC OR THE COMMISSION ARE BOUND FOR**  
9 **RATEMAKING PURPOSES BY THE TERMS OF THE CURRENT JDA?**

10 A. Taking the documents in the sequential order in which they were developed, in  
11 the merger docket between Union Electric Company and Central Illinois Public  
12 Service Company established before this Commission as Case No. EM-96-149,  
13 the Company, the MPSC Staff, the OPC as well as a number of other Intervenors  
14 entered into a Stipulation and Agreement on or about July 12, 1996. That  
15 document, along with the MPSC's order approving such stipulation, have been  
16 attached in their entirety to Mr. Nelson's rebuttal testimony as Schedule 1.  
17 Paragraph 8 of the noted UE merger case stipulation was entitled "State  
18 Jurisdictional Issues." For convenience and continuity, subparagraph (e) of the  
19 section entitled "State Jurisdictional Issues" is provided in its entirety below:

20 e. Electric Contracts Required to be filed with the FERC  
21 *All wholesale electric energy or transmission service contracts* ,  
22 tariffs, agreements or arrangements, including any amendments  
23 thereto, of any kind, *including the Joint Dispatch Agreement*,  
24 between UE and any Ameren subsidiary or affiliate required to be  
25 filed with and/or approved by the Federal Energy Regulatory  
26 Commission ("FERC"), pursuant to the Federal Power Act  
27 ("FPA"), as subsequently amended, *shall be conditioned upon the*

1                   *following without modification or alteration: UE and Ameren*  
2                   *and each of its affiliates and subsidiaries will not seek to*  
3                   *overturn, reverse, set aside, change or enjoin, whether through*  
4                   *appeal or the initiation or maintenance of any section in any*  
5                   *action in any forum, a decision or order of the Commission*  
6                   *which pertains to recovery, disallowance, deferral or ratemaking*  
7                   *treatment of any expense, charge, cost or allocation incurred or*  
8                   *accrued by UE in or as a result of a wholesale electric energy or*  
9                   *transmission service contract, agreement, arrangement or*  
10                  *transaction on the basis that such expense, charge, cost or*  
11                  *allocation has itself been filed with or approved by the FERC, or*  
12                  *was incurred pursuant to a contract, arrangement, agreement or*  
13                  *allocation method which was filed with or approved by the*  
14                  *FERC. (Emphasis added)*  
15

16               The upshot and impact of the above quoted language from the first stipulation  
17               entered into between the Company, Staff, OPC and other Intervenors is that the  
18               Company could not appeal any Missouri rate decisions on the grounds that a  
19               contract or agreement was filed with, or approved by, the FERC. It is clear that  
20               the parties were agreeing that the Company would not be allowed to challenge  
21               ratemaking decisions on the grounds that it differed from a JDA approved by the  
22               FERC.

23       **Q.    IS THERE ANY OTHER LANGUAGE INCLUDED WITHIN THE**  
24       **MERGER STIPULATION WHICH ALSO SUPPORTS A CONCLUSION**  
25       **THAT RATE TREATMENT TO BE AFFORDED AFFILIATED**  
26       **TRANSACTIONS WAS TO REMAIN AN MPSC JURISDICTIONAL**  
27       **MATTER?**

28       A.    Yes. Subparagraph (g) of the same section of the Case No. EM-96-149  
29       Stipulation and Agreement entitled "State Jurisdictional Issues" further solidify



1 the MPSC ratemaking authority surrounding affiliate transactions by stating the  
2 following:

3 g. No Pre-Approval of Affiliated Transactions. No pre-approval of  
4 affiliated transactions will be required, but all filings with the SEC  
5 or FERC for affiliated transactions will be provided to the  
6 Commission and the OPC. *The Commission may make its*  
7 *determination regarding the ratemaking treatment to be afforded*  
8 *these transactions in a later ratemaking proceeding or a*  
9 *proceeding respecting any alternative regulation plan.*  
10 *(Emphasis added)*  
11

12 In my opinion, the earlier quoted language from subparagraph (e) of the Case No.  
13 EM-96-149 Stipulation should leave no doubt that the parties intended for this  
14 Commission to retain complete ratemaking jurisdiction over affiliate transactions  
15 notwithstanding the fact that a JDA would be filed with and approved by the  
16 FERC. However, the just quoted subparagraph (g) leaves absolutely no doubt that  
17 this Commission was retaining the jurisdiction to “make its determination  
18 regarding the *ratemaking treatment* to be afforded these transactions in a later  
19 proceeding” even if a change to the JDA had been filed with the Securities and  
20 Exchange Commission or the FERC.

21  
22 **Q. IN APPROVING THE STIPULATION FROM CASE NO. EM-96-149, DID**  
23 **THIS COMMISSION IN ANYWAY, SHAPE OR FORM ACQUIESCE ITS**  
24 **JURISDICTIONAL AUTHORITY TO IMPOSE RATEMAKING**  
25 **ADJUSTMENTS OR TREATMENT WHEN IT APPROVED THE**  
26 **QUOTED STIPULATION?**

1 A. No. To the contrary, in its Report and Order approving the UE/CIPS merger in  
2 Case No. EM-96-149, this Commission repeated nearly word-for-word the  
3 language that I quoted from the related Stipulation, stating as follows:

4 *UE, Ameren and each of its affiliates and subsidiaries will not*  
5 *seek to overturn, reverse, set aside, change or enjoin through*  
6 *appeal or the initiation or maintenance of any action in any*  
7 *forum, a decision or order of the Commission which pertains to*  
8 *recovery, disallowance, deferral or ratemaking treatment of any*  
9 *expense, charge, cost or allocation incurred or accrued by UE in*  
10 *or as a result of a contract, agreement, arrangement or*  
11 *transaction with any affiliate, associate, holding, mutual service*  
12 *or subsidiary company on the basis that such expense, charge,*  
13 *cost or allocation has itself been filed with or approved by the*  
14 *Securities and Exchange Commission (SEC) or was incurred*  
15 *pursuant to a contract, arrangement, agreement or allocation*  
16 *method which was filed with or approved by the SEC. This*  
17 *provision is also applied to both gas and electric contracts filed*  
18 *with the Federal Energy Regulatory Commission (FERC).*

19  
20 No preapproval of affiliated transactions will be required, but all  
21 filings with the SEC or FERC for affiliated transactions will be  
22 provided to the Commission and the OPC. *The Commission may*  
23 *make its determinations regarding the ratemaking treatment to*  
24 *be accorded these transactions in a later ratemaking proceeding*  
25 *or a proceeding respecting any alternative regulation plan. (pp 9 –*  
26 *10 Case No. EM-96-149 Report and Order, **Emphasis Added**)*  
27

28 Thus, it is abundantly clear that this Commission recognized the importance of  
29 the issue first raised in the Case EM-96-149 Stipulation when it undertook the  
30 effort to completely repeat such language within its Report and Order approving  
31 the UE/CIPS merger and the Stipulation that set forth conditions to the merger.

32  
33 **Q. YOU HAVE THUS FAR ADDRESSED THE STIPULATION AS WELL AS**  
34 **THE REPORT AND ORDER FROM THE UE MERGER PROCEEDING –**  
35 **CASE NO. EM-96-149. MR. NELSON ALSO ADDRESSES EVENTS**

1 FROM THE COMPANY'S RESTRUCTURING CASE WHICH WAS  
2 FILED IN 1999 IN ORDER THAT THE COMPANY COULD ESTABLISH,  
3 AND TRANSFER AMERENCIPS GENERATING ASSETS TO, AN  
4 ELECTRIC WHOLESALE GENERATOR SUBSIDIARY. DID ANY  
5 EVENTS, AGREEMENTS OR ORDERS FROM THAT PROCEEDING  
6 "UNDO" ANY OF THE ISSUES REGARDING RATEMAKING  
7 AUTHORITY OF THE MPSC ESTABLISHED IN THE MERGER  
8 DOCKET – CASE NO. EM-96-149?

- 9 A. No. First, I note and emphasize that the Company specifically continued to forfeit  
10 any rights to a "jurisdictional" appeal of any MPSC ratemaking treatment that  
11 may be afforded an affiliate transaction by agreeing to the following language  
12 included within the Stipulation from that case:

13 **6. Additional Conditions:**

- 14 b. AmerenUE agrees that a Commission Order containing the  
15 findings required by PUHCA with respect to Genco shall in no  
16 way be binding on the Commission or preclude any party to a  
17 future rate case, earnings complaint case or second alternative  
18 regulation plan sharing credit calculation proceeding from  
19 contesting the ratemaking treatment to be afforded transactions  
20 relating to AmerenCIPS, Genco, Marketing Company, AmerenUE  
21 marketing company, Ameren Energy, or any affiliate, associate,  
22 mutual service, subsidiary or holding company.
- 23 c. *AmerenUE agrees that it will not seek to overturn, reverse, set*  
24 *aside, change or enjoin, whether through appeal or the initiation*  
25 *or maintenance of any action in any forum, a decision or Order*  
26 *of the Commission which pertains to recovery, disallowance,*  
27 *deferral or ratemaking treatment of any expense, charge, cost or*  
28 *allocation incurred or accrued by AmerenUE in or as a result of*  
29 *the JDA on the basis that such expense, charge, cost or*  
30 *allocation has itself been filed with or approved by the FERC, or*  
31 *was incurred as a result of the Commission making findings*  
32 *pursuant to 15 U.S.C.A § 79z-5a) (Section 32©) of PUHCA)*  
33 *(Emphasis Added)*

1 I also note and emphasize that the Stipulation which AmerenUE agreed to in Case  
2 No. EA-2000-37 also specifically preserved all the ratemaking authority issues  
3 agreed to in Case No. EM-96-149 by not only repeating such provisions word-for-  
4 word in the body of the Stipulation, but additionally, including the following  
5 language:

6 (nothing in the conditions agreed to by AmerenUE in the instant  
7 proceeding, Case No. EA-2000-37, reduces the requirements  
8 contained in the Stipulation and agreement in Case No. EM-96-  
9 149)

10  
11 Thus, it is abundantly clear that at the time of the 1999 Restructuring Case that  
12 once again the Company was acquiescing any right to raise any issue regarding  
13 ratemaking treatments surrounding the JDA or any other affiliate transaction.  
14

15 **Q. DID THE COMMISSION'S ORDER APPROVING THE STIPULATION**  
16 **FROM RESTRUCTURING CASE NO. EA-2000-37 IN ANY WAY, SHAPE**  
17 **OR FORM CONCEDE ANY OF THE RATEMAKING AUTHORITY**  
18 **ISSUES AGREED TO IN THE STIPULATION FROM THAT CASE, OR**  
19 **WHICH THE COMMISSION HAD SOLIDIFIED WITHIN ITS REPORT**  
20 **AND ORDER ISSUED IN MERGER CASE NO. EM-96-149?**

21 **A.** No. Once again, to the contrary, the Commission's Order Approving the Case  
22 No. EA-2000-37 Stipulation reasserted its authority to impose ratemaking  
23 determinations regarding affiliate transaction. Specifically, in addition to  
24 approving the AmerenUE proposed transaction subject to conditions which  
25 AmerenUE and other parties agreed to in the noted Stipulation, the Commission  
26 additionally ordered:

1                   That the Commission reserves the right to consider any ratemaking  
2 treatment to be afforded the properties and transactions herein involved in a later  
3 proceeding. (Conclusions of Law; Ordered Finding No. 5 from Case No. EA-  
4 2000-37)  
5

6  
7       **Q.    YOU HAVE THUS FAR PROVIDED CONSIDERABLE SUPPORT AS TO**  
8       **WHY YOU BELIEVE THERE IS NO LEGAL REQUIREMENT TO BE**  
9       **CONCERNED THAT ANY RATEMAKING TREATMENT ORDERED**  
10      **WITHIN THIS CASE NEEDS TO COMPLY WITH THE CURRENTLY**  
11      **FILED AND FERC-APPROVED JDA. NOTWITHSTANDING THE FACT**  
12      **THAT THERE IS NO LEGAL REQUIREMENT TO CHANGE THE JDA**  
13      **PRIOR TO IMPOSING A RATEMAKING TREATMENT, IS THERE**  
14      **NONETHELESS A “FAIRNESS” ISSUE THAT SUGGESTS THE**  
15      **COMMISSION SHOULD NOT CONSIDER IMPOSING A GIVEN RATE**  
16      **TREATMENT PRIOR TO MODIFYING THE JDA?**

17      **A.**    Certainly “fairness” should be an issue of concern to this Commission.  
18           Specifically, the Commission should be concerned that the outcome of any Joint  
19           Dispatch Agreement is “fair” in a rate setting proceeding such as this. Indeed, the  
20           purpose for all the noted and quoted Stipulations and MPSC Orders previously  
21           discussed was to ensure that this Commission could impose a “fair” ratemaking  
22           outcome without the fear of a party – notably the Company – asserting that this  
23           Commission could not impose what it determined to be “fair” ratemaking  
24           treatment without getting approval from other regulatory commissions (i.e.,  
25           FERC).  
26

1     **Q.     BUT WHAT OF MR. NELSON’S ARGUMENT THAT IT IS NOT “FAIR”**  
2     **THAT PARTIES DISREGARD AN “APPROVED CONTRACT” PRIOR**  
3     **TO THEIR TERMINATION OR UNTIL THEY ARE CHANGED AFTER**  
4     **ALL REGULATORY APPROVALS ARE OBTAINED? IS IT FAIR TO**  
5     **THE COMPANY TO IMPOSE A RATEMAKING OUTCOME THAT IS**  
6     **DIFFERENT THAN WHAT WOULD BE CALCULATED VIS-À-VIS**  
7     **ADHERENCE TO THE JDA?**

8     **A.**     Yes. Very much so. The Stipulations noted and quoted from the merger case and  
9     the restructuring case which the Company voluntarily entered into represent  
10    agreements wherein each signatory negotiated and compromised to achieve items  
11    that were of particular importance to them. Undoubtedly, the final Stipulations  
12    did not contain all the provisions that each signatory would have liked to have  
13    achieved if each party could have had it “his way.” If it were extremely important  
14    to AmerenUE that this Commission *not* be able to order a ratemaking outcome  
15    that could be construed as inconsistent with a currently filed and approved JDA,  
16    then it should have insisted upon such provision prior to agreeing to and signing  
17    each Stipulation. In other words, if this condition was important to AmerenUE, it  
18    should not have signed the agreement, and instead, fully litigated the issue in an  
19    attempt to persuade the Commission of the merits of the position it was putting  
20    forth.

21  
22    It is illogical for a company of the size and sophistication of AmerenUE – with its  
23    significant Missouri regulatory experience and the considerable legal resources at

1 its disposal at the time each noted Stipulation was entered into – to now feign  
2 surprise, shock or disappointment that parties such as the MPSC Staff or the OPC  
3 would invoke their legal right bargained for within each noted Stipulation to  
4 propose ratemaking adjustments that are inconsistent with a currently filed and  
5 approved JDA. AmerenUE should not now complain or otherwise object to an  
6 event that it voluntarily agreed to when signing stipulations in the CIPS/UE  
7 merger case as well as the restructuring case.

8  
9 **Q. DOES MR. NELSON OR ANYONE FROM AMERENUE OFFER ANY**  
10 **EQUITY ARGUMENTS AS TO WHY STAFF’S OFF-SYSTEM SALES**  
11 **ADJUSTMENT SHOULD NOT BE ADOPTED?**

12 A. Mr. Nelson offers two arguments that I would characterize as “equity” reasons as  
13 to why the Staff’s off-system sales allocation should not be adopted. First, Mr.  
14 Nelson argues at page 16 of his rebuttal testimony that AmerenUE and its  
15 customers have benefited from the current JDA by virtue of the fact that during  
16 certain hours and days of the year, AmerenUE is able to purchase energy from  
17 AEG at AEG’s incremental cost of generation. At times, AEG’s incremental  
18 generating costs can be less than AmerenUE’s incremental generating costs or the  
19 market rates for purchased power that AmerenUE might otherwise be forced to  
20 pay.

21  
22 I do not disagree with Mr. Nelson that, during certain hours of the year, buying at  
23 incremental cost from AEG can be beneficial to AmerenUE. However, as stated

1           that the current JDA is far more advantageous to AEG than it is to AmerenUE.  
2           Accordingly, the adjustments proposed by Dr. Proctor and myself should be  
3           adopted in this case – without regard to, or fear of, jurisdictional concerns or the  
4           “fairness” or “policy” concerns noted extensively in Mr. Nelson’s rebuttal  
5           testimony.

6  
7       **Q.    DOES THAT CONCLUDE YOUR CROSS SURREBUTTAL**  
8       **TESTIMONY?**

9       **A.    Yes, it does.**