

Exhibit No.:

Issue(s):

Recommended Conditions for

Authorizing UE's Participation in MISO

Witness/Type of Exhibit:

Kind/Rebuttal

Sponsoring Party:

Public Counsel

Case No.:

EO-98-413

REBUTTAL TESTIMONY

OF

RYAN KIND

FILED
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Missouri Public
Service Commission

Submitted on Behalf of
the Office of the Public Counsel

UNION ELECTRIC

Case No. EO-98-413

February 25, 1999

Rebuttal Testimony of
Ryan Kind

1 **Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THIS COMMISSION?**

2 A. Yes, prior to this case I submitted written testimony in numerous gas rate cases, several
3 electric rate design cases and rate cases, as well as other miscellaneous water, gas,
4 electric, and telephone cases.

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

6 A. My testimony will address the following topics associated with the request made by
7 Union Electric (UE or AmerenUE or the Company) for the Commission to authorize the
8 Company's participation in the Midwest Independent System Operator (MISO):

- 9 • Overview of origins of this docket in the UE/CIPS merger docket (EM-96-149)
- 10 • Public Counsel's involvement in the formation of the MISO
- 11 • Shortcomings of the MISO as approved by the FERC
- 12 • Public Counsel's recommendations

13 **Q. HOW DID THIS DOCKET FOR APPROVAL OF UE'S PARTICIPATION IN THE MISO RESULT**
14 **FROM THE UE/CIPS MERGER DOCKET (EM-96-149)?**

15 A. Market power issues were raised by parties in the merger case. The testimony of Public
16 Counsel and Commission Staff (Staff) witnesses discussed the role that ISOs can play in
17 mitigating market power issues. The Commission responded to this testimony by
18 ordering UE to join an ISO or file a plan with the Commission "for establishing an
19 independent entity charged with the operation, pricing and planning of its transmission
20 system."

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1 After the Commission issued its Report and Order in the UE/CIPS merger case in
2 February 1997, Ameren was one of the transmission owning utilities that filed an
3 application with the Federal Energy Regulatory Commission (FERC) on January 15,
4 1998 for approval of the MISO. Then, on March 30, 1998, UE filed its application
5 requesting Commission authority to participate in the MISO. The Commission opened
6 this docket in response to that application.

7 **Q. PLEASE DESCRIBE THE POTENTIAL MARKET POWER PROBLEMS THAT LED THE**
8 **COMMISSION TO BELIEVE THAT IT WAS NECESSARY TO CONDITION ITS APPROVAL OF**
9 **THE UE/CIPS MERGER ON UE'S WILLINGNESS TO JOIN AN ISO OR FORM AN**
10 **INDEPENDENT ENTITY THAT OPERATES UE'S TRANSMISSION SYSTEM.**

11 **A.** The Commission's Report and Order in EM-96-149 stated at page 16 that "to address the
12 vertical market power concern that Ameren could use its transmission system to restrict
13 competition from other generation, the regional transmission group should be an entity
14 that will independently operate the transmission systems of the vertically integrated
15 utilities within the region."

16 **Q. CAN YOU PROVIDE A MORE FORMAL DEFINITION OF VERTICAL MARKET POWER?**

17 **A.** Yes, the following definitions are from the proposed education message that the
18 Education Working Group submitted to the Commission in the August 14, 1998 work
19 group report.

20 Market power - the ability of a firm, alone or in concert with other firms, to profitably
21 maintain the price of a product above the competitive market level for an extended period
22 of time. Suppliers with vertical or horizontal market power could charge unfair prices
23 and realize excessive profits..

1
2 Vertical market power – this type of market power involves the ability of a firm to
3 control an essential element in the vertical production chain and, through that control,
4 cause competitors to be at a disadvantage through either restricted access or higher costs
5 for the products or services required to produce and deliver the specific product.

6 **Q. IS THERE A GENERAL ACKNOWLEDGEMENT IN THE ELECTRIC INDUSTRY THAT WHEN A**
7 **UTILITY IS VERTICALLY INTEGRATED DUE TO ITS OWNERSHIP AND CONTROL OF**
8 **DISTRIBUTION, TRANSMISSION, AND GENERATION ASSETS, THE UTILITY WILL BE**
9 **CAPABLE OF UTILIZING ITS TRANSMISSION ASSETS TO GAIN VERTICAL MARKET**
10 **POWER?**

11 **A.** Yes, this concept is generally accepted, and the FERC issued orders 888 and 889 in
12 response to its concern that vertically integrated utilities may use their transmission assets
13 to exercise vertical market power. Through orders 888 and 889, the FERC hoped to
14 decrease the ability of vertically integrated electric utilities to discriminate against others
15 in transmission pricing and access. More recently, the FERC has been encouraging ISOs
16 and exploring the need to define boundaries for, and require participation in, regional
17 transmission organizations (RTOs).

18 **Q. WAS THE MISSOURI OFFICE OF THE PUBLIC COUNSEL INVOLVED IN THE DISCUSSIONS**
19 **THAT LED TO THE FILING OF THE MISO FERC APPLICATION?**

20 **A.** Yes, we took advantage of the opportunity to provide input into the ISO formation
21 process through attendance at meetings and collaboration with state consumer advocate
22 offices in other MISO states.

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1 **Q. DID OPC PARTICIPATE IN THE FERC DOCKET WHERE THE MISO APPLICATION WAS**
2 **CONSIDERED?**

3 A. Yes, we intervened in the FERC case as part of the Midwest Coalition for Effective
4 Competition (MCEC). A summary of the issues addressed by the MCEC in the FERC
5 MISO application case was included in the Public Counsel Response that was filed in this
6 docket on July 22, 1998. One complete copy of the MCEC Request to Intervene and
7 Protest in FERC Docket Nos. EC-98-24 and ER-98-1438 was attached to the Public
8 Counsel Response so that it may be reviewed in the Commission case file.

9 **Q. WAS THE MCEC SUCESSFUL IN PURSUADING THE FERC TO ADOPT MOST OF ITS**
10 **POSITIONS ON THE MISO FERC APPLICATION?**

11 A. No. Unfortunately, the FERC approved most of the application (except for the MISO's
12 proposed pricing provisions) as filed by the MISO. Public Counsel was particularly
13 disappointed that the FERC decided not to give the MISO the authority to take over
14 control area operations.

15 **Q. DOES PUBLIC COUNSEL BELIEVE THAT EVEN WITH THE MISO, AMEREN WILL HAVE**
16 **THE ABILITY TO DISCRIMINATE AGAINST OTHER USERS OF ITS TRANSMISSION SYSTEM**
17 **AND PROVIDE A COMPETITIVE ADVANTAGE TO ITS GENERATION ASSETS?**

18 A. Yes. This potential for UE to exercise market power will become especially important to
19 Missouri consumers if the Missouri Legislature decides to restructure this state's electric
20 industry.

21 **Q. WHAT IS PUBLIC COUNSEL'S VIEW ON WHETHER THE MISSOURI ELECTRIC INDUSTRY**
22 **SHOULD BE RESTRUCTURED?**

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1 A. Public Counsel believes that even if restructuring is done in the best possible manner,
2 small consumers may suffer. If restructuring is not done properly, then we could go from
3 a system of well regulated monopolies to unregulated monopolies or oligopolies. Even if
4 restructuring results in a system where numerous competitors are seeking to fulfill the
5 energy needs of consumers, consumers may get little benefit from this "competition" if
6 some of the competitors possess significant market power.

7 Q. WHAT ARE SOME OF THE LIKELY SOURCES OF MARKET POWER IN A RESTRUCTURED
8 MISSOURI ELECTRIC INDUSTRY?

9 A. Vertical market power could be exercised through the control of either distribution or
10 transmission assets if the vertically integrated utilities that own these assets are allowed
11 to discriminate against competitors in terms of reliability, access, pricing, or privileged
12 access to information. Horizontal market power could arise from: (1) the concentration
13 of ownership of generation assets in relevant markets and (2) market power exercised at
14 the retail merchant (aggregator) level through incumbent advantages in the areas of brand
15 name recognition, product bundling, default provider status, privileged access to
16 customer and competitor information, long-term special contracts, and stranded cost
17 subsidies.

18 Q. DO YOU BELIEVE THE COMMISSION HAS AN OPPORTUNITY IN THIS DOCKET TO ENSURE
19 THAT UE WILL NOT BE ABLE TO UTILIZE ITS TRANSMISSION ASSETS TO EXERCISE
20 VERTICAL MARKET POWER IF RETAIL WHEELING IS PERMITTED IN MISSOURI?

21 A. Yes, OPC believes the Commission should condition its approval of UE's participation in
22 the MISO on the Company's willingness to transfer its control area functions to the
23 MISO prior to the implementation of retail wheeling legislation in Missouri. The transfer

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1 of these functions could be accomplished most efficiently by transferring the personnel
2 and facilities that are currently utilized to perform these functions to the MISO.

3 **Q. IS THE AVAILABILITY OF THIS OPTION DEPENDENT ON THE MISO'S WILLINGNESS TO**
4 **ACCEPT THE TRANSFER OF UE'S CONTROL AREA OPERATIONS TO IT?**

5 **A.** Yes. If the MISO declines to accept the transfer of UE's control area operations, then UE
6 should be required to transfer its control area operations to a separate independent entity
7 that is created for this purpose.

8 **Q. SHOULD UE BE REQUIRED TO DETERMINE THE WILLINGNESS OF THE MISO TO**
9 **ACCEPT ITS CONTROL AREA OPERATIONS WELL IN ADVANCE OF ANY DATE THAT IS**
10 **SET FOR THE START OF RETAIL WHEELING IN MISSOURI?**

11 **A.** Yes. This should be relatively easy to do, even if UE waits until any retail wheeling
12 legislation is passed prior to determining the willingness of the MISO to accept UE's
13 control area operations. Due to the many intermediate steps that must be accomplished
14 (rate unbundling, affiliate rules, stranded cost recovery plans, etc.) prior to the beginning
15 of retail wheeling, UE should be able to determine the MISO's willingness to accept
16 UE's control area operations at least one year in advance of the start of retail wheeling.

17 **Q. WHAT IF THE MISO IS UNWILLING TO ACCEPT THE TRANSFER OF UE'S CONTROL**
18 **AREA OPERATIONS?**

19 **A.** If this occurs, then UE should be required to transfer its control area functions to a
20 separate independent entity that would operate UE's transmission assets.

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1 Q. PLEASE DESCRIBE THE CONTROL AREA FUNCTIONS THAT PUBLIC COUNSEL IS
2 RECOMMENDING BE TRANSFERRED TO THE MISO OR A SEPARATE ENTITY.

3 A. Control areas are responsible for providing the minute to minute balancing of generation
4 and load within the control area. This must be accomplished on a continual basis to
5 maintain reliable service within the control area through automatic generation control
6 (AGC). In order to be able to effectively use AGC to maintain control area balance and
7 voltage support, the control area operator must have sufficient advance notice of the loads
8 that are likely to occur at any given time and advance notice of the generation resources
9 (and associated transmission scheduling) for meeting these loads.

10 Q. DO YOU HAVE ANY COMMENTS REGARDING THE DIRECT TESTOMONY OF UE'S
11 WITNESS, MR. R. ALLEN KELLY?

12 A. Yes, Mr. Allen states at line 18 on page 5 of his testimony that:

13 AmerenCIPS and AmerenUE will need to review orders issued as to the
14 Midwest ISO by this commission, the Illinois Commission, other state
15 commissions, and other federal regulatory agencies. Ameren will need
16 to review those orders to ensure that any conditions imposed by those
17 commissions and agencies are reasonable and appropriate for Ameren, its
18 customers and its shareholders. If not, AmerenCIPS and AmerenUE
19 may once again need to consider other regional transmission options.

20 I am concerned that UE has indicated an intention to consider withdrawing from the
21 MISO if it is not satisfied with orders related to its participation that are issued by "this
22 commission, the Illinois Commission, other state commissions, and other federal
23 regulatory agencies." Public Counsel does not believe that UE should be allowed to
24 withdraw from the MISO without first seeking authorization from this Commission. For
25 this reason, OPC recommends that the Commission require UE to request the
26 Commission's authorization for the Company to withdraw from the MISO prior to doing
27 so.

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1 **Q. ARE YOU CONCERNED THAT UE MAY CHOOSE TO WITHDRAW FROM THE MISO IF THE**
2 **CONDITIONS POSED BY REGULATORY COMMISSIONS REMOVE ANY STRATEGIC OR**
3 **FINANCIAL ADVANTAGES ASSOCIATED WITH THE COMPANY'S OWNERSHIP OF**
4 **TRANSMISSION ASSETS?**

5 **A. Yes. In other words, if regulatory policies succeed in ensuring that UE no longer has the**
6 potential to use its transmission assets to exercise vertical market power, then the
7 Company may seek to avoid being required to participate in an ISO or any other RTO.

8 **Q. PLEASE SUMMARIZE THE RECOMMENDATIONS THAT PUBLIC COUNSEL IS MAKING IN**
9 **THIS CASE.**

10 **A. OPC recommends that the Commission prescribe the following conditions for its**
11 approval of UE's application in this case.

- 12 • At least one year prior to the start of retail wheeling in Missouri, UE should to
13 determine the MISO's willingness to accept UE's control area operations and
14 report this determination to the Commission.
- 15 • If the MISO is willing to accept UE's control area operations, then these
16 operations should be transferred to the MISO at least six months prior the start
17 of retail wheeling in Missouri.
- 18 • If the MISO is not willing to accept UE's control area operations, then these
19 operations should be transferred to an independent entity at least six months
20 prior to the start of retail wheeling in Missouri.
- 21 • UE must request the Commission's authorization for the Company to withdraw
22 from the MISO prior to doing so.

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1 **Q. IS OPC OPPOSED TO THE APPROVAL OF UE'S APPLICATION IN THIS CASE WITHOUT**
2 **THE ABOVE RECOMMENDED CONDITIONS?**

3 **A. Yes.**

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

5 **A. Yes.**

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

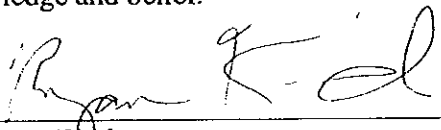
In the Matter of the Application of Union Electric)
Company (AmerenUE) for an Order Authorizing) Case No. EO-98-413
it to Participate in the Midwest ISO.)

AFFIDAVIT OF RYAN KIND

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

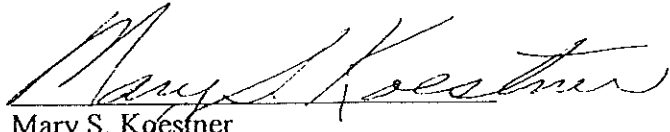
Ryan Kind, of lawful age and being first duly sworn, deposes and states:

1. My name is Ryan Kind. I am the 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 consisting of pages 1 through 10.
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.



Ryan Kind

Subscribed and sworn to me this 25th day of February, 1999.



Mary S. Koestner
Notary Public

My commission expires August 20, 2001