

Exhibit No.:  
Issue(s): SO2 Emission Allowance Revenues  
Witness/Type of Exhibit: Kind/Rebuttal  
Sponsoring Party: Public Counsel  
Case No.: EC-2002-1

**REBUTTAL TESTIMONY**

**OF**

**RYAN KIND**

Submitted on Behalf of  
the Office of the Public Counsel

**UNION ELECTRIC COMPANY**

**NP**

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

May 10, 2002

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

STAFF OF THE MISSOURI	)	
PUBLIC SERVICE COMMISSION,	)	
Complainant,	)	
	)	
vs.	)	Case No. EC-2002-1
	)	
UNION ELECTRIC COMPANY,	)	
d/b/a AmerenUE,	)	
Respondent.	)	

**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 consisting of pages 1 through 38 and Schedules RK-1 through RK-6.
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 10<sup>th</sup> day of May 2002.

**KATHLEEN HARRISON**  
Notary Public - State of Missouri  
County of Cole  
My Commission Expires Jan. 31, 2006

  
\_\_\_\_\_  
Kathleen Harrison  
Notary Public

My commission expires January 31, 2006.

# TABLE OF CONTENTS

<b>I. SUMMARY.....</b>	<b>3</b>
<b>II. BACKGROUND INFORMATION REGARDING FEDERAL ENVIRONMENTAL REGULATION OF SO2 EMISSIONS.....</b>	<b>9</b>
<b>III. BACKGROUND INFORMATION REGARDING PSC OVERSIGHT OF UE'S SO2 EMISSION ALLOWANCE TRANSACTIONS.....</b>	<b>11</b>
<b>IV. IMPACT OF THE AMEREN HOLDING COMPANY STRUCTURE ON THE AMEREN AND UE DECISIONS REGARDING UE'S SO2 ALLOWANCE TRANSACTIONS.....</b>	<b>15</b>
<b>V. UE DOCUMENTS REGARDING SO2 ALLOWANCE TRANSACTION STRATEGIES .....</b>	<b>17</b>
<b>VI. OPC'S RECOMMENDED ADJUSTMENTS ASSOCIATED WITH THREE KEY SO2 ALLOWANCE TRANSACTIONS OCCURING DURING THE TEST YEAR BUT NOT REFLECTED IN TEST YEAR SO2 ALLOWANCE REVENUES .....</b>	<b>26</b>
<b>VII. SO2 ALLOWANCE TRANSACTIONS OCCURING AFTER THE TEST YEAR AND THE FINAL SHARING PERIOD.....</b>	<b>36</b>
<b>VIII. CALCULATION OF NORMALIZED SO2 ALLOWANCE TRANSACTIONS REVENUE FOR THE TEST PERIOD.....</b>	<b>37</b>

**REBUTTAL TESTIMONY**

**OF**

**RYAN KIND**

**UNION ELECTRIC COMPANY D/B/A AMERENUE**

**CASE NO. EC-2002-1**

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 7800,  
3 Jefferson City, Missouri 65102.

4 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND EMPLOYMENT BACKGROUND.**

5 A. I have a B.S.B.A. in Economics and a M.A. in Economics from the University of  
6 Missouri-Columbia (UMC). While I was a graduate student at UMC, I was employed as  
7 a Teaching Assistant with the Department of Economics, and taught classes in  
8 Introductory Economics, and Money and Banking, in which I served as a Lab Instructor  
9 for Discussion Sections.

10 My previous work experience includes several years of employment with the Missouri  
11 Division of Transportation as a Financial Analyst. My responsibilities at the Division of  
12 Transportation included preparing transportation rate proposals and testimony for rate  
13 cases involving various segments of the trucking industry. I have been employed as an  
14 economist at the Office of the Public Counsel (Public Counsel or OPC) since April 1991.

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

Rebuttal Testimony of  
Ryan Kind

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

4 **Q. HAVE YOU PROVIDED COMMENTS OR TESTIMONY TO OTHER REGULATORY OR**  
5 **LEGISLATIVE BODIES ON THE SUBJECT OF ELECTRIC UTILITY REGULATION AND**  
6 **RESTRUCTURING?**

7 A. Yes, I have provided comments and testimony to the Federal Energy Regulatory  
8 Commission (FERC), the Missouri House of Representatives Utility Regulation  
9 Committee, the Missouri Senate's Commerce & Environment Committee and the  
10 Missouri Legislature's Joint Interim Committee on Telecommunications and Energy.

11 **Q. HAVE YOU BEEN A MEMBER OF, OR PARTICIPANT IN, ANY WORK GROUPS,**  
12 **COMMITTEES, OR OTHER GROUPS THAT HAVE ADRESSED ELECTRIC UTILITY**  
13 **REGULATION AND RESTRUCTURING ISSUES?**

14 A. Yes. I was a member of the Missouri Public Service Commission's (the Commission's)  
15 Stranded Cost Working Group and participated extensively in the Commission's Market  
16 Structure Work Group. I am currently a member of the Missouri Department of Natural  
17 Resources Weatherization Policy Advisory Committee, the Operating Committee of the  
18 North American Electric Reliability Council (NERC), and the National Association of  
19 State Consumer Advocates (NASUCA) Electric Committee. I have served as the public  
20 consumer group representative to the Midwest ISO's (MISO's) Advisory Committee and  
21 currently serve as the alternate consumer group representative to that committee. During  
22 the early 1990s, I served as a Staff Liaison to the Energy and Transportation Task Force  
23 of the President's Council on Sustainable Development.

1 **I. SUMMARY**

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

3 A. My testimony will provide Public Counsel's recommendations for:

- 4 • A \*\* \_\_\_\_\_ \*\* adjustment to the SO2 emission allowance revenues that  
5 should be reflected in the total UE (Missouri and Illinois) cost of service that the  
6 Commission uses as the basis for determining the revenue requirement used to set  
7 rates in this case, and
- 8 • Modifying the authority that the Commission gave UE in Case No. EO-98-401,  
9 to manage, within certain limits, its SO2 allowance inventory. This previous  
10 grant of authority should be substantially narrowed to ensure that UE does not  
11 have blanket authorization that would allow it: (1) to enter into favorable SO2  
12 allowance deals with its affiliates at the expense of ratepayers or (2) to engage in  
13 SO2 transactions which are structured and timed in a manner that will prevent the  
14 pass through or sharing of SO2 allowance revenues with ratepayers.

15 **Q. PLEASE BRIEFLY EXPLAIN THE BASIS FOR THE ADJUSTMENT TO THE UE SO2**  
16 **EMISSION ALLOWANCE REVENUES.**

17 A. This adjustment is based primarily on the following factors:

- 18 • Normalized SO2 emission allowance sales revenues are based on: (1) those UE  
19 SO2 emission allowance transactions for which I recommend imputing revenues  
20 during the test year and (2) the SO2 allowance sales that occurred after the UE  
21 Experimental Alternative Regulation Plan (2<sup>nd</sup> EARP) ended on June 30, 2001.  
22 Public Counsel only has about 8 months of SO2 allowances sales revenue data for  
23 the year beginning July 1, 2001 and we reserve the right to update our

1 recommended adjustment for a normalized level of SO2 allowance transaction  
2 revenues after UE provides all of the requested information about SO2 allowance  
3 transactions during 2002 that it has thus far refused to provide.

- 4 • Ameren's internal documents show that Ameren: \*\* \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_

9 \_\_\_\_\_ \*\* the level of sales taking  
10 place during the test year can not be used without adjustments that impute the  
11 amount of SO2 allowance revenues that would have been realized during the year  
12 if UE had not manipulated its earnings during the last year of the EARP.

13 **Q. PLEASE SPECIFY OPC'S RECOMMENDATION TO MODIFY THE AUTHORITY THAT THE**  
14 **COMMISSION GAVE UE IN CASE NO. EO-98-401, TO MANAGE, WITHIN CERTAIN**  
15 **LIMITS, ITS SO2 ALLOWANCE INVENTORY.**

16 A. The authority previously granted to UE to manage, within certain limits, its SO2  
17 allowance inventory should be modified so that:

- 18 • Unless UE obtains prior commission to do so, UE is not allowed to engage in SO2  
19 transactions that generate more revenues annually than the level of SO2 allowance  
20 transaction revenues that are reflected in the revenue requirement and rates that  
21 the Commission approves in this case, and  
22 • UE no longer has authority to engage in any type of SO2 transactions with  
23 affiliated entities without prior Commission approval.  
24





1 that will have an ongoing need for SO2 emission allowances. If the Commission  
2 prohibits SO2 allowance transactions between UE and its affiliates without prior  
3 Commission approval, it will eliminate the opportunity for UE to enter into  
4 "sweetheart" SO2 allowance deals with this Illinois utility that now appears likely  
5 to become a new UE affiliate.

- 6 • When the Commission granted UE limited authority to manage its SO2 allowance  
7 inventory several years ago, it was not anticipated that the manner in which  
8 Ameren managed the UE SO2 allowance inventory would be strongly driven by

9 \*\*

---

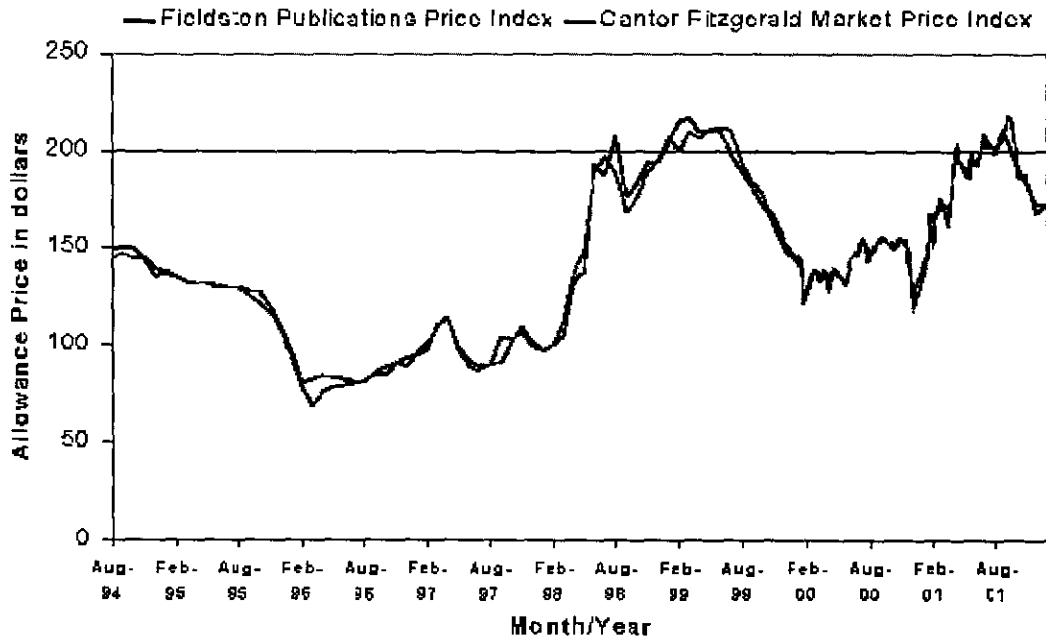
10 \*\*

---

11 **Q. PLEASE EXPLAIN WHY YOU BELIEVE THAT THE AMOUNTS OF REVENUES FROM SO2**  
12 **TRANSACTIONS REFLECTED IN TEST YEAR SHOULD BE GIVEN CLOSE SCRUTINY.**

13 A. As I discuss in further detail in the following sections, the Commission has given UE the  
14 authority to sell nearly 400,000 emission allowances without any approval beyond that  
15 already granted to UE in Case No. EO-98-401. Emission allowances have been trading in  
16 the range of \$70 to \$217 over the last few years. (See graph below.) If UE were to sell  
17 60,000 allowances per year and received an average price of \$180 per allowance for these  
18 sales, it would generate revenues of \$10.8 million per year. The pre-tax earnings  
19 associated with these sales would be equal to the amount of revenues less some small  
20 payments that may be necessary for brokers fees.

**Figure 1 - Historical SO2 Emission Allowance Market Price Data**



If UE has significant amounts of excess allowances and is not using the authority granted by this Commission to sell some of these allowances into the market, then further inquiry is prudent to determine if there is some good reason for not selling a portion of its excess inventory. This is especially true if the expected future appreciation in the value of allowances falls short of the discount rate used to value future revenue streams.

Unfortunately, both the EARP and the rate case that was expected at the conclusion of the EARP may have given UE the incentive to avoid making sales where a substantial amount of the earnings from these sales would have to be returned to ratepayers in credits. Other factors, such as Ameren's hopes of getting its generation assets removed from Missouri ratemaking jurisdiction along with the emission credits associated with those generation assets may have also impacted Ameren's decisions regarding the structure, type, size and amount of transactions that would take place involving UE's emission allowances.

1       **Q.    IS OPC'S ASSERTION IN CASE NOS. EM-96-149 AND EC-2002-1059 THAT UE**  
2       **MANIPULATED THE EARNINGS RELATED TO ITS SO2 ALLOWANCE TRANSACTIONS**  
3       **UNDER THE EARP RELATED TO THE ADJUSTMENT THAT OPC IS PROPOSING IN THIS**  
4       **CASE?**

5       A.    Yes. UE's purposeful manipulation of earnings related to SO2 allowance transactions  
6       under the EARP has caused the unadjusted test year historical data about revenues related  
7       to SO2 allowance transactions during the test year to be entirely unrepresentative of the  
8       level of SO2 transactions revenue that would be expected in a typical year.

9       **Q.    HOW MIGHT EARNINGS BE MANIPULATED IN A MANNER THAT UNDERSTATES THE**  
10       **LEVEL OF EARNINGS THAT SHOULD BE USED TO DETERMINE CREDITS THAT WOULD BE**  
11       **SHARED WITH RATEPAYERS IN THE EARP?**

12       A.    Generally speaking, earnings could be understated if the revenues on the Company's  
13       earnings report are understated or the expenses on the report are overstated. Expenses  
14       could be overstated if they do not accurately reflect the level of expenses incurred by the  
15       regulated utility during the sharing period or if the utility chose to alter its operations so  
16       that its expenses during the sharing period would be higher than the expenses would be if  
17       no regulatory incentives existed to understate earnings. Revenues could be understated if  
18       they do not accurately reflect the level of revenues received by the regulated utility  
19       during the sharing period or if the utility chose to alter its operations so that its revenues  
20       during the sharing period would be lower than the revenues would be if no regulatory  
21       incentives existed to understate earnings. An example of this type of activity would be if  
22       the Company structured a transaction so that it would receive revenues after the sharing  
23       period even though the deal was struck during the sharing period.

1       **Q.     CAN YOU PROVIDE A GRAPH THAT ILLUSTRATES HOW THE PATTERN OF UE'S SO2**  
2       **TRANSACTIONS CHANGED ONCE THE EARP ENDED AND UE KNEW THAT ITS**  
3       **SHAREHOLDERS MIGHT BE ABLE TO RETAIN 100% OF THE EARNINGS FROM EMISSION**  
4       **ALLOWANCE TRANSACTIONS?**

5       A.     Yes. Please see Schedule RK-6.

6       **II.    BACKGROUND INFORMATION REGARDING FEDERAL ENVIRON-**  
7       **MENTAL REGULATION OF SO2 EMISSIONS.**

8       **Q.     BEFORE TURNING TO A MORE COMPLETE EXPLANATION OF THE BASIS FOR PUBLIC**  
9       **COUNSEL'S RECOMMENDATIONS REGARDING THE NORMALIZED LEVEL OF SO2**  
10       **EMISSION ALLOWANCE REVENUES TO INCLUDE IN THE UE COST OF SERVICE, PLEASE**  
11       **PROVIDE SOME BACKGROUND INFORMATION ABOUT THE FEDERAL ENVIRONMENTAL**  
12       **LAWS THAT CAUSED UE TO RECEIVE AN ANNUAL ALLOCATION OF SO2 EMISSION**  
13       **ALLOWANCES.**

14       A.     On November 15, 1990, President Bush authorized major revisions to the Clean Air Act  
15       (CAA) that included a requirement for substantial reductions in power plant emissions  
16       (both SO2 and NOx) intended to control acid rain. Title 4 of the CAA amendments of  
17       1990 created a new market-based system for reducing SO2 emissions below 1980 levels.  
18       In this system, owners of power plants like UE received their allocation of the emission  
19       allowances through an allocation process based primarily on historic fuel consumption  
20       from 1985 through 1987. Power plant owners use this allocation of allowances for their  
21       own compliance and any excess allowances can be either sold in the market or banked for  
22       future use or sale. Those power plant owners that do not have sufficient allowances can  
23       buy allowances in the market to achieve compliance. Different amounts of allowances  
24       were allocated to power plant owners during Phase I (1995-1999) and Phase II. Each

Rebuttal Testimony of  
Ryan Kind

1 allowance permits a generating unit to emit one ton of SO<sub>2</sub> during or after a specified  
2 year. Unused allowances can be banked for future use or sale.

3 The market-based system for regulating SO<sub>2</sub> emissions, where allowances could be  
4 traded, was intended to minimize the cost of reducing SO<sub>2</sub> emissions to the desired level.  
5 The system of tradable allowances encourages utilities to over-comply with emissions  
6 reductions targets when they can do so at a cost that is less than the market value of  
7 allowances while at the same time, allowing utilities to under-comply with the reduction  
8 targets when they can buy allowances at a cost that is less than their own cost of  
9 compliance. The most common strategies for lowering SO<sub>2</sub> emissions are converting to  
10 low sulfur coal or scrubbing power plant emissions. UE has reduced its emissions by  
11 converting many of its power plants to permit the burning of low sulfur coal from sources  
12 in the West like the Powder River Basin.

13 **Q. DO THE ALLOWANCES THAT UE RECIEVES EVERY YEAR FROM THE ENVIRONMENTAL**  
14 **PROTECTION AGENCY (EPA) HAVE ANY VALUE AT THE TIME UE RECIEVES THEM?**

15 A. The answer to this question is both yes and no, depending on what is meant by the word  
16 "value." If the word "value" is interpreted to mean "market value", then these allowances  
17 have value at the time they are received by UE because the Company could find a willing  
18 buyer to purchase the allowances at the time UE receives its allocation. On the other  
19 hand, it is my understanding that from a strict accounting point of view, allowances are  
20 reflected on the Company's balance sheet as having a zero value since the Company did  
21 not make any direct payments to receive the allowances. However, if a Company  
22 purchases allowances in the market and saves them for future use, instead of just  
23 receiving an annual allowance allocation from the EPA, then these allowances would be  
24 reflected on a Company's balance sheet at the market price.

1 **Q. WHAT WAS THE MARKET VALUE OF UE'S EMISSION ALLOWANCE INVENTORY DURING**  
2 **THE TEST YEAR?**

3 A. Ameren estimated the market value of UE's emission allowance inventory during the test  
4 year to be approximately \*\* \_\_\_\_\_ \*\*

5 **III. BACKGROUND INFORMATION REGARDING PSC OVERSIGHT OF**  
6 **UE'S SO2 EMISSION ALLOWANCE TRANSACTIONS.**

7 **Q. PLEASE EXPLAIN THE RELATIONSHIP BETWEEN THE SO2 EMISSION ALLOWANCES**  
8 **THAT UE RECEIVES EVERY YEAR AND THE SERVICE THAT THE COMPANY PROVIDES**  
9 **TO MISSOURI RATEPAYERS AS A REGULATED ELECTRIC UTILITY.**

10 A. I already mentioned that the quantity of allowances that UE receives every year from the  
11 EPA is based largely on the amount of fuel that was consumed at its generating plants  
12 during the 1985 through 1987 time period. The generating plants to which the  
13 allowances were allocated were built to serve the native load of UE. The electric rates  
14 paid by UE's customers have been set at a level high enough to provide UE with a  
15 reasonable opportunity to recover from its customers the costs associated with the  
16 financing and operation of these power plants. UE has not needed to pay for any costs  
17 that are not recoverable in rates in order to receive its annual allocation of emission  
18 allowances for the plants that it uses to serve its regulated utility service customers.

19 **Q. HOW DID THIS COMMISSION FIRST GET INVOLVED IN OVERSEEING UE'S SO2**  
20 **EMISSIONS ALLOWANCES TRANSACTIONS?**

21 A. On March 23, 1998, UE filed an application with the Commission wherein it sought  
22 authorization to manage its SO2 emission allowance inventory. On December 15, 1998  
23 the Commission issued an order approving a Stipulation and Agreement which granted  
24 UE limited authority to manage its SO2 allowance inventory.

1       **Q.     WHAT WERE SOME OF THE MAIN PROVISIONS OF THE STIPULATION & AGREEMENT**  
2       **APPROVED BY THE COMMISSION IN CASE NO. EO-98-401?**

3       A.     The Stipulation & Agreement in Case No. EO-98-401, which gave UE limited flexibility  
4       to manage its SO<sub>2</sub> allowances, included the following four key provisions:

5             1.     AmerenUE will have the authority to manage its allowance  
6             inventory, with the restrictions discussed below. The Staff and the  
7             Office of Public Counsel reserve the right to reexamine and modify their  
8             positions respecting the Commission granting AmerenUE the authority  
9             to manage its sulfur dioxide emission allowance inventory, when the  
10            New Experimental Alternative Regulation Plan resulting from the Union  
11            Electric Company- CIPSCO, Inc. merger Case No. EM-96-149 expires  
12            on June 30, 2001. Any profits or losses that are realized from the sales  
13            or any other transactions associated with allowances, will be booked to  
14            utility operating income according to generally accepted accounting  
15            principles. **The regulatory treatment of these profits and losses as**  
16            **well as the prudence of any allowance transaction is subject to**  
17            **review and adjustment as part of any audit and/or examination in a**  
18            **future sharing calculation or future rate case.** (emphasis added)

19            2.     **The Company is authorized to manage the entire allowance**  
20            **inventory, but may sell only up to one-half of all Phase I allowances**  
21            **without seeking specific Commission approval.** This includes sales to  
22            AmerenCIPS and other utilities. AmerenUE may request authorization  
23            to sell additional allowances, above this level, through a filing with the  
24            Commission. (emphasis added)

25            3.     Sales in combination with other transactions, such as power  
26            contracts, are also authorized as a portion of the level discussed above.  
27            However, the Company must book a profit from the sale of the  
28            allowances at least equal to the current market value as established by the  
29            monthly price index published by Cantor Fitzgerald Environmental  
30            Brokerage Service. Should either the Staff, the Office of the Public  
31            Counsel or the Company wish to use a different index for this purpose in  
32            the future, notice will be given to the other parties and all parties will  
33            negotiate in good faith to agree on a substitute. The Commission will be  
34            asked to resolve the matter if no agreement is reached in a reasonable  
35            time period.

36            4.     The Company will be required to provide detailed reporting of  
37            all the transactions involving allowances once each year. The reporting  
38            date will be August 31 for the previous twelve months ending on June  
39            30. The database to support allowance transactions and inventory  
40            balances will be maintained and available to the Staff upon request  
41            during the year.

1       **Q.     THE LAST SENTENCE OF THE FIRST ITEM IN THE ABOVE STIPULATION AND AGREEMENT**  
2           **CONCERNS THE RATEMAKING TREATMENT ASSOCIATED WITH THE ALLOWANCE**  
3           **TRANSACTIONS THAT WERE PERMITTED BY THE COMMISSION'S ORDER IN CASE NO.**  
4           **EO-98-401. HOW DOES THAT SENTENCE IMPACT THE SO2 ALLOWANCE REVENUE**  
5           **ADJUSTMENT THAT PUBLIC COUNSEL IS PROPOSING?**

6       **A.**     Counsel advises me that that sentence indicates that the Commission's decision in Case  
7           No. EO-98-401 to permit UE certain flexibility to engage in SO2 allowance sales and  
8           otherwise manage its SO2 allowance inventory preserved for a later date any  
9           Commission determinations regarding the ratemaking treatment of UE's SO2 allowance  
10          transactions. From a layman's perspective, the statement in the stipulation that:

11                   The regulatory treatment of these profits and losses as well as the  
12                   prudence of any allowance transaction is subject to review and  
13                   adjustment as part of any audit and/or examination in a future sharing  
14                   calculation or future rate case.

15                   appears to be very straightforward and self-explanatory in its applicability to this general  
16                   rate proceeding.

17       **Q.     CAN YOU QUANTIFY THE EFFECT OF THE SECOND ITEM FROM THE STIPULATION AND**  
18           **AGREEMENT SHOWN ABOVE WHICH STATES THAT "THE COMPANY IS AUTHORIZED TO**  
19           **MANAGE THE ENTIRE ALLOWANCE INVENTORY, BUT MAY SELL ONLY UP TO ONE-HALF**  
20           **OF ALL PHASE I ALLOWANCES WITHOUT SEEKING SPECIFIC COMMISSION**  
21           **APPROVAL?"**

22       **A.**     Yes. Its my understanding that UE received \*\* \_\_\_\_\_ \*\* Phase I SO2 emission  
23           allowances and that the Commission order allowed it to sell one-half, or \*\* \_\_\_\_\_ \*\* of  
24           these allowances without seeking additional Commission approval.



1 **Q. ARE YOU AWARE OF ANY ADDITIONAL COMMISSION ORDERS THAT PERTAIN TO UE'S**  
2 **MANAGEMENT OF ITS SO2 ALLOWANCE INVENTORY?**

3 A. Yes. Section 7 of the Stipulation and Agreement approved by the Commission in Case  
4 No. EM-96-149 contains terms that the parties agreed to regarding the New Experimental  
5 Alternative Regulation Plan (2<sup>nd</sup> EARP). Attachment C to the Stipulation and Agreement  
6 contains additional details about implementation of the 2<sup>nd</sup> EARP. Item 2.a. on page 1 of  
7 Attachment C states that:

8 the earnings report will reflect the following:...Any sale of emission  
9 allowances shall be reflected above-the line in the ROE calculation.

10 **Q. PLEASE EXPLAIN THE SIGNIFICANCE OF THE COMMISSION'S ORDERS IN THE TWO**  
11 **CASES DISCUSSED ABOVE, CASE NOS. EO-98-401 AND EM-96-149 TO THE SO2**  
12 **ALLOWANCE REVENUES ADJUSTMENT THAT OPC IS RECOMMENDING IN THIS CASE.**

13 A. The Commission order in Case No. EO-98-401 gave UE limited flexibility to engage in  
14 SO2 transactions while preserving Commission ratemaking treatment of the transactions  
15 until future rate cases or cases where sharing calculations are made in the context of the  
16 second EARP. The Commission order in Case No. EM-96-149 provided the guideline  
17 that allowance sales "shall be reflected above-the line in the ROE calculation." While the  
18 Commission's order in Case No. EO-98-401 explicitly preserved the Commission's  
19 authority to make future determinations regarding the prudence and ratemaking treatment  
20 for UE's allowance transactions, the second order gave UE specific guidance about how  
21 it should report allowance transactions to the Commission when it filed its earnings  
22 reports under the EARP.

23 Regrettably, UE and its affiliates within the Ameren holding company structure reacted  
24 to the signal that the proceeds from allowance transactions would have to be shared with  
25 consumers in accordance with the sharing grid set forth in the EARP by altering their

1 decisions about the magnitude, type, and timing of its SO2 allowance transactions while  
2 the EARP was still in effect. In addition to reacting to the ratemaking incentives under  
3 the EARP in their decisions regarding allowance transactions, UE and its affiliates were  
4 guided by other improper considerations including: (1) the present and potential future  
5 needs of UE's non-regulated affiliates for SO2 emission allowances and (2) the impact  
6 that allowance transactions between UE and its affiliates would have on the financial  
7 performance of UE's unregulated affiliates and the overall financial performance of  
8 Ameren.

9 **IV. IMPACT OF THE AMEREN HOLDING COMPANY STRUCTURE ON**  
10 **THE AMEREN AND UE DECISIONS REGARDING UE'S SO2**  
11 **ALLOWANCE TRANSACTIONS.**

12 **Q. DOES THE AMEREN HOLDING COMPANY AND MANAGEMENT STRUCTURE PROVIDE**  
13 **AMEREN AND UE WITH GREATER MOTIVATION TO PURSUE IMPROPER OBJECTIVES IN**  
14 **THE MANAGEMENT OF SO2 ALLOWANCES AND IN OTHER AREAS THAN WOULD EXIST**  
15 **IF UE WAS A "STAND ALONE" REGULATED UTILITY?**

16 A. Yes, I believe so.

17 **Q. PLEASE EXPLAIN.**

18 A. The holding company structure of UE and its parent company, Ameren, is fairly complex  
19 and includes an extensive mixture of regulated and non-regulated business lines. While  
20 Ameren operates a regulated vertically integrated utility in Missouri, it operates a  
21 regulated distribution utility in Illinois along with an unregulated generation company  
22 and an unregulated power marketing company. Many of Ameren's affiliates (e.g.  
23 Ameren Services, Ameren Energy, and Ameren Energy Fuels & Services) perform

Rebuttal Testimony of  
Ryan Kind

1 activities on behalf of both the regulated and unregulated portions of Ameren's  
2 operations.

3 It must be assumed that from the perspective of Ameren's officers and directors at the  
4 holding company level, their fiduciary responsibility to shareholders is to seek to obtain  
5 the highest possible returns at the holding company level, subject to risk considerations.  
6 One consideration in obtaining high returns at the Ameren holding company level would  
7 obviously be the ability to avoid "regulatory take back" (e.g. through sharing credits) or  
8 the adjustment of earnings levels (e.g. through rebasing of rates in a general rate  
9 proceeding). Therefore, if Ameren has the opportunity to enter into a profitable  
10 transaction, such as a long term power sale, one would expect the holding company to  
11 prefer having the transaction take place at one of its unregulated subsidiaries rather than  
12 at one of its regulated utility subsidiaries.

13 **Q. WOULDNT THE SENIOR OFFICERS OF UE BE MOTIVATED TO ACHIEVE THE HIGHEST**  
14 **POSSIBLE LEVEL OF PERFORMANCE AT UE SO THAT THEY COULD TAKE CREDIT FOR**  
15 **THIS ACCOMPLISHMENT, EVEN THOUGH SOME OF ITS HIGH PERFORMANCE MIGHT**  
16 **COME AT THE EXPENSE OF ONE OF ITS AFFILIATES OR ITS PARENT?**

17 A. No. The achievement of outstanding operating results by UE that came at the expense of  
18 its affiliates or the overall financial performance of Ameren would not be expected to  
19 occur unless the senior management of Ameren was ineffective at pursuing its fiduciary  
20 responsibilities to the holding company shareholders. An effective management at the  
21 holding company level would be certain to communicate the overriding importance of the  
22 holding company's financial performance to UE's senior management and hold them  
23 accountable for not achieving good financial operating results at the UE level that come  
24 at the expense of the holding company's performance.

1       **Q.    HAVE YOU SEEN EVIDENCE OF AMEREN'S SENIOR MANAGEMENT COMMUNICATING**  
2       **WITH UE'S SENIOR MANAGEMENT ABOUT THE OVERIDING IMPORTANCE OF THE**  
3       **HOLDING COMPANY'S FINANCIAL PERFORMANCE AND HOLDING THEM ACCOUNTABLE**  
4       **FOR NOT ACHIEVING GOOD FINACIAL OPERATING RESULTS AT THE UE LEVEL THAT**  
5       **COME AT THE EXPENSE OF THE HOLDING COMPANY'S PERFORMANCE?**

6       A.    No, given the shared management structure of the holding company and UE, there would  
7       be no need for such communications and accountability to take place. This is because  
8       Charles Mueller serves as the Chairman and Chief Executive Officer of Ameren, UE, and  
9       Ameren Services and because Gary Rainwater is the President and Chief Operating  
10      Officer of Ameren, UE, and Ameren Services.

11      **V.    UE DOCUMENTS REGARDING SO2 ALLOWANCE TRANSACTION**  
12      **STRATEGIES**

13      **Q.    WHAT IS THE BASIS FOR YOUR EARLIER STATEMENT THAT "UE AND ITS AFFILIATES**  
14      **WITHIN THE AMEREN HOLDING COMPANY STRUCTURE REACTED TO THE SIGNAL THAT**  
15      **THE PROCEEDS FROM ALLOWANCE TRANSACTIONS WOULD HAVE TO BE SHARED WITH**  
16      **CONSUMERS IN ACCORDANCE WITH THE SHARING GRID SET FORTH IN THE EARP BY**  
17      **ALTERING THEIR DECISIONS ABOUT THE MAGNITUDE, TYPE, AND TIMING OF ITS SO2**  
18      **ALLOWANCE TRANSACTIONS WHILE THE EARP WAS STILL IN EFFECT?"**

19      A.    This statement is based on documents discovered by Public Counsel during the audit that  
20      it performed as part of this case and the audit to assess the earnings report that UE  
21      submitted for the last sharing period of the second EARP. Those audits found evidence  
22      that UE had manipulated its earnings related to SO2 transactions during the last sharing  
23      period of the second EARP. The year covered by this sharing period, July 1, 2000  
24      through June 30, 2001, is the same year as the test year ordered by the Commission in  
25      this case. The manipulation of SO2 allowance earnings that Public Counsel observed

Rebuttal Testimony of  
Ryan Kind

1 during the sharing period was one of the factors that led Public Counsel to file a  
2 complaint (Case No. EC-2002-1059) regarding the earnings information that UE  
3 submitted in the final sharing period of the second EARP.

4 **Q. HAVE YOU REVIEWED DOCUMENTS AS PART OF YOUR AUDIT OF UE FOR THE SHARING**  
5 **CASE AND FOR THIS COMPLIANT CASE THAT LEAD YOU TO BELIEVE THAT AMEREN**  
6 **CONSIDERED THE POSSIBLE REGULATORY TREATMENT OF UE'S ALLOWANCES IN THIS**  
7 **SHARING CASE OR THE CURRENT UE COMPLAINT CASE (CASE NO. EC-2002-1) IN ITS**  
8 **DECISIONS ABOUT THE MAGNITUDE, TYPE, OR TIMING OF SO2 TRANSACTIONS THAT IT**  
9 **WOULD MAKE DURING THE TEST YEAR?**

10 A. \*\* \_\_\_\_\_ \*\*

11 **Q. HAVE YOU REVIEWED DOCUMENTS AS PART OF YOUR AUDIT OF UE FOR THE SHARING**  
12 **CASE AND FOR THIS COMPLIANT CASE THAT LEAD YOU TO BELIEVE THAT AMEREN**  
13 **CONSIDERED THE POSSIBILITY OF GETTING UE'S GENERATION ASSETS REMOVED**  
14 **FROM MISSOURI RATEMAKING JURISDICTION ALONG WITH THE EMISSION CREDITS**  
15 **ASSOCIATED WITH UE'S GENERATION ASSETS IN ITS DECISIONS ABOUT THE**  
16 **MAGNITUDE, TYPE, OR TIMING OF SO2 TRANSACTIONS THAT IT WOULD MAKE DURING**  
17 **THE TEST YEAR?**

18 A. \*\* \_\_\_\_\_ \*\*

19 **Q. HAVE YOU REVIEWED DOCUMENTS AS PART OF YOUR AUDIT OF UE FOR THE SHARING**  
20 **CASE AND FOR THIS COMPLIANT CASE THAT LEAD YOU TO BELIEVE THAT AMEREN**  
21 **CONSIDERED THE POTENTIAL FOR USING UE'S \*\* \_\_\_\_\_ \*\* BANK OF EXCESS**  
22 **ALLOWANCES TO COVER ONGOING OR FUTURE DEFICITS IN THE AMOUNT OF**  
23 **ALLOWANCES NEEDED AT AMEREN'S NON-REGULATED POWER PLANTS IN ITS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**DECISIONS ABOUT THE MAGNITUDE, TYPE, OR TIMING OF SO2 TRANSACTIONS THAT IT  
WOULD MAKE?**

A. \*\* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ \*\*

**Q. PLEASE IDENTIFY AND EXPLAIN THE AMEREN DOCUMENTS THAT YOU HAVE REVIEWED  
WHICH SHOW THAT AMEREN CONSIDERED \*\*** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ \*\*

A. There are two types of Ameren documents that \*\* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ \*\* The first type are the  
Ameren documents that described and analyzed the allowance trading strategies that  
Ameren could utilize. The second type of documents are those that document and  
summarize the transactions that took place over the last few years. I will discuss the  
second type of documents which summarize the transactions that took place over the last  
few years in a later section.

The first document that I will discuss is a copy of the minutes from the \*\* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Rebuttal Testimony of  
Ryan Kind

1  
2  
3  
4  
5  
6

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7

\_\_\_\_\_

8

\_\_\_\_\_

9

\_\_\_\_\_

10

\_\_\_\_\_

11

\_\_\_\_\_

12

\_\_\_\_\_

13

\_\_\_\_\_

14

\_\_\_\_\_

15

\_\_\_\_\_

16

\_\_\_\_\_

17

\_\_\_\_\_

18

\_\_\_\_\_

19

\_\_\_\_\_

20

\_\_\_\_\_

21

\_\_\_\_\_ \*\*

22

**Q. DOES THE ABOVE QUOTE FROM THE \*\***

23

\_\_\_\_\_

24

\_\_\_\_\_

25

\_\_\_\_\_

26

\_\_\_\_\_

\_\_\_\_\_ \*\*

27

**A. \*\***

\_\_\_\_\_

28

\_\_\_\_\_





Rebuttal Testimony of  
Ryan Kind

1

2

3

4

5

6

7

8

9

10

11

12

13

14

\*\*

15

**Q. PLEASE IDENTIFY AND EXPLAIN THE NEXT AMEREN DOCUMENT THAT YOU REVIEWED**

16

**WHICH SHOWS THAT AMEREN \*\***

17

18

\*\*

19

**A. \*\***

20

21

22

23

24

25

Rebuttal Testimony of  
Ryan Kind

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



Rebuttal Testimony of  
Ryan Kind

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

\_\_\_\_\_  
\_\_\_\_\_ \*\*

**Q. THE \*\*** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ **\*\* HAVE YOU**  
**REVIEWED ANY \*\*** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ **\*\* THAT**  
**WERE UNDER CONSIDERATION BY AMEREN?**

**A. \*\*** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

\_\_\_\_\_

\_\_\_\_\_

\*\*

**Q. DO YOU BELIEVE IT WAS APPROPRIATE FOR AMEREN TO CONSIDER ITS \*\*** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ **\*\* IN ITS DETERMINATION OF HOW TO MANAGE**

**UE'S SO2 ALLOWANCE INVENTORY?**

**A. \*\*** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ **\*\***

**VI. OPC'S RECOMMENDED ADJUSTMENTS ASSOCIATED WITH THREE  
KEY SO2 ALLOWANCE TRANSACTIONS OCCURING DURING THE  
TEST YEAR BUT NOT REFLECTED IN TEST YEAR SO2 ALLOWANCE  
REVENUES**

**Q. WHAT DID UE'S BOOKS SHOW FOR TEST YEAR EMISSION ALLOWANCE REVENUES?**

Rebuttal Testimony of  
Ryan Kind

1 A. UE's books indicated that the Company recognized \$945,859 in emission revenues  
2 during the test year of which \$912,216 was allocated to the Missouri jurisdiction.

3 **Q. DID THE COMMISSION STAFF MAKE ANY ADJUSTMENT TO THE \$912,216 FIGURE FOR**  
4 **SO2 EMISSION ALLOWANCE REVENUES AS PART OF THE ADJUSTMENTS THAT THEY**  
5 **MADE WHEN THEY FILED AN OVER-EARNINGS COMPLAINT IN CASE NO. EC-2002-1?**

6 A. No, its my understanding that the Staff made no adjustments to UE's figures for SO2  
7 allowance revenues and that the Staff did not perform an extensive evaluation of UE's  
8 SO2 emission allowance transactions during the test year.

9 **Q. PLEASE SUMMARIZE THE ADJUSTMENTS THAT THAT PUBLIC COUNSEL BELIEVES**  
10 **SHOULD BE MADE TO UE'S TEST YEAR SO2 EMISSION ALLOWANCE TRANSACTION**  
11 **REVENUES.**

12 A. Public Counsel recommends adjusting the earnings report filed by UE to reflect an  
13 additional \$27,695,500 in revenues associated with SO2 emission allowance transactions.  
14 As I stated earlier, this includes the following three adjustments:

15 1) \*\* \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_  
19 \_\_\_\_\_  
20 \_\_\_\_\_ \*\*

21 2) \*\* \_\_\_\_\_  
22 \_\_\_\_\_

Rebuttal Testimony of  
Ryan Kind

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

\_\_\_\_\_  
\_\_\_\_\_ \*\*

3) \*\* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ \*\*

**Q. PLEASE EXPLAIN PUBLIC COUNSEL'S RATIONALE FOR THE FIRST ADJUSTMENT  
RELATED TO THE \*\***

\_\_\_\_\_ \*\*

Public Counsel recommends \*\* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





Rebuttal Testimony of  
Ryan Kind

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

Blank lined area for testimony, with lines corresponding to the numbered list on the left.

Rebuttal Testimony of  
Ryan Kind

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ \*\*

**Q. WHEN SOMEONE ENTERS INTO A VINTAGE SWAP TRANSACTION, DO THEY USUALLY GET MORE ALLOWANCES IN RETURN THAN THE QUANTITY THAT THEY TRANSFERRED IN THE SWAP?**

Q. Yes. The party that transfers away SO2 allowances with vintages that are useable immediately (in this case, UE) usually gets extra allowances in return as interest to compensate them for the time value of money and sometimes due to the expectation that the allowances received in return that aren't usable for several years (due to the vintage) have a lower market value. \*\*

Rebuttal Testimony of  
Ryan Kind

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

\_\_\_\_\_  
\_\_\_\_\_\*\*

**Q. HOW DID THE \*\*** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_\*\*

**A. The analysis that I have performed of \*\*** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_\*\*

**Q. PLEASE EXPLAIN PUBLIC COUNSEL'S RATIONALE FOR THE SECOND ADJUSTMENT  
RELATED TO THE \*\*** \_\_\_\_\_\*\*

**A. \*\*** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Rebuttal Testimony of  
Ryan Kind

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ \*\*

**Q. HAS UE ENGAGED IN ANY \*\* \_\_\_\_\_ \*\* SINCE THE EARP HAS ENDED  
AND IT HAS RETURNED TO TRADITIONAL REGULATION?**

A. \*\*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ \*\*

**Q. PLEASE EXPLAIN PUBLIC COUNSEL'S RATIONALE FOR THE THIRD ADJUSTMENT  
RELATED TO \*\* \_\_\_\_\_ \*\***

A. Public Counsel recommends that \*\*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**Q. HAS UE \*\*** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ \*\*

**A. \*\*** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ \*\*

**VII. SO2 ALLOWANCE TRANSACTIONS OCCURRING AFTER THE TEST YEAR AND THE FINAL SHARING PERIOD**

**Q. DID A SIGNIFICANT INCREASE IN THE NUMBER OF SO2 ALLOWANCE SALES BY UE OCCUR SHORTLY AFTER THE END OF THE TEST YEAR WHICH ALSO COINCIDED WITH THE END OF THE FINAL SHARING PERIOD OF THE ARP?**

**A.** Yes, most definitely. However, I am unable to give a full accounting of the sales that took place beyond the end of the test year because UE has thus far refused (despite the lack of a formal objection) to provide all of the information requested in OPC DRs. What I can say, based on the sketchy information that I have received, is that between October 1, 2001 and sometime in late February of 2002, UE had received \*\* \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*\*

\*\*

\*\*

**VIII. CALCULATION OF NORMALIZED SO2 ALLOWANCE  
TRANSACTIONS REVENUE FOR THE TEST PERIOD.**

**Q. PLEASE EXPLAIN THE STEP THAT YOU TOOK TO NORMALIZE SO2 ALLOWANCE  
REVENUES FOR THE TEST YEAR.**

A. The first step I took was to impute the revenues associated with the three transactions discussed in Section VI of this testimony to arrive at a new figure for non-normalized test year revenues. (See Schedule RK-5) Next, I looked at the only other representative time period of SO2 allowance sales data. This was the partial year beginning on July 1, 2001. As discussed previously, the data that UE has provided so far indicated that \*\* \_\_\_\_\_ \*\* in sales have occurred between July 1, 2001 and February 28, 2002. While I am still intending to include data from the months of March and April of 2002 in my calculation of a representative year of sales that has taken place since the end of the EARP and the end of the test year, UE has thus far refused to provide the requested data even though the Company has already acknowledged that this data has already been included in one of its data bases for SO2 transactions.

The calculation on Schedule RK-5 shows how I have arrived at OPC's proposed adjustment of \*\* \_\_\_\_\_ \*\* based on the data that I have at this time. I expect that UE will eventually provide the SO2 transactions data for the months of March and April in 2002 and I reserve the right to update OPC's adjustment at that time. I would note that



Rebuttal Testimony of  
Ryan Kind

1 the numbers discussed above and shown in Schedule RK-5 for "UE" are "total company  
2 UE" revenues. Accordingly, these revenue amounts should be appropriately allocated to  
3 Missouri retail jurisdictional operations utilizing appropriately developed energy  
4 allocators.

5 **Q. DOES PUBLIC COUNSEL HAVE AN ALTERNATIVE RECOMMENDATION FOR AN**  
6 **ADJUSTMENT TO TEST YEAR SO2 ALLOWANCE TRANSACTIONS?**

7 A. Yes. If the Commission decides that the SO2 allowance revenue data from the  
8 test year is so tainted due to UE's efforts to manipulate its earnings associated with SO2  
9 allowance transactions during the last year of the EARP and that, even with the  
10 adjustments to the test year allowance transaction revenue data that I have proposed, that  
11 data from the test year should not be used as an input in the determination of normalized  
12 test year revenues, then I have an alternative recommendation. My alternative  
13 recommendation is to use only the information available on SO2 sales revenues occurring  
14 during the time period from July 1, 2001 through April 30, 2002. This alternative would  
15 result in an adjustment of \$19,129,500 in "total UE" SO2 allowance revenues based on  
16 the data that is available at this time. The \$19,129,500 figure should be updated to reflect  
17 allowance sales revenues from the months of March and April 2002, when that data  
18 becomes available.

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

20 A. Yes.

Schedules RK-1  
through  
RK-6 have  
been deemed  
**PROPRIETARY**  
in their entirety.