

Exhibit No.:  
Issues: SO<sub>2</sub> Emission Allowance  
Revenues  
Witness: James C. Moore, II  
Sponsoring Party: Union Electric  
Type of Exhibit: Cross-Surrebuttal Testimony  
Case No.: EC-2002-1  
Date Testimony Prepared: June 24, 2002

**MISSOURI PUBLIC SERVICE COMMISSION**

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

**CROSS-SURREBUTTAL TESTIMONY**

**OF**

**JAMES C. MOORE, II**

**ON**

**BEHALF OF**

**UNION ELECTRIC COMPANY  
d/b/a AmerenUE**

**\*\* DENOTES PROPRIETARY INFORMATION \*\***

**St. Louis, Missouri  
June, 2002**

**NP**

1 **CROSS-SURREBUTTAL TESTIMONY**

2 **OF**

3 **JAMES C. MOORE, II**

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

5 **Q. Please state your name and business address.**

6 A. My name is James C. Moore, II. My business address is 1901 Chouteau  
7 Avenue, St. Louis, Missouri, 63103.

8 **Q. By whom are you employed, and what is your position?**

9 A. I am employed by Ameren Energy Fuels and Services Company ("AFS")  
10 as a Fuel and Emissions Trader.

11 **Q. Please describe your educational background and experience.**

12 A. I have received a Bachelor of Science in Electrical Engineering from the  
13 University of Missouri–Rolla, an MBA from the John M. Olin School of Business at  
14 Washington University and an Advanced Certificate in International Affairs from  
15 Washington University. I have been in the energy business since 1983 in various  
16 capacities. I have been actively involved in the emissions markets since their inception in  
17 1994. I have also traded electricity and natural gas since the early 1990's. I am  
18 intimately familiar with the energy markets, how they are structured and how they work.

19 **Q. What is the purpose of your testimony?**

20 A. The purpose of my testimony is to address the Office of Public Counsel's  
21 ("OPC") recommendation to impute SO<sub>2</sub> emission allowance revenues into the test year.

22 **Q. Briefly explain the OPC's claims.**

1           A.     OPC is recommending that a substantial increase in SO<sub>2</sub> revenues be  
2     imputed for the rate case and that the Company's ability to manage its allowances should  
3     be curtailed.

- 4                     •   OPC alleges that Ameren's management of the AmerenUE  
5                     allowances was driven by ratemaking and affiliate considerations.
- 6                     •   OPC alleges that an affiliate vintage swap was structured to benefit  
7                     Ameren affiliates at the expense of Missouri ratepayers.
- 8                     •   OPC alleges that the CILCORP Inc. acquisition will allow Ameren  
9                     to enter into "sweetheart" deals in the future with the new affiliate  
10                    at the expense of Missouri ratepayers.

11           **Q.     Did ratemaking treatment drive AmerenUE's decisions related to SO<sub>2</sub>**  
12 **emission allowance transactions?**

13           A.     No. Ratemaking treatment did not drive our decisions concerning  
14     allowance transactions. In December 1998, the MPSC approved a Stipulation and  
15     Agreement which allowed the Company to manage its allowance inventory, subject to the  
16     terms of the Stipulation ("Order Approving Stipulation and Agreement", EO-98-401,  
17     issued December 15, 1998) Since that time, our strategy has been focused primarily on  
18     building the bank of SO<sub>2</sub> allowances for compliance purposes and secondarily to  
19     monetize certain of these allowances as appropriate, through a variety of strategies.

20           **Q.     Has this strategy benefited AmerenUE ratepayers?**

21           A.     Yes. Since December 1999, when allowance management was assigned to  
22     the Fuels Department (now AFS) vintage swaps and loans have added \*\*         \*\*  
23     additional allowances to the AmerenUE SO<sub>2</sub> bank. These allowances are worth almost

1       \*\*               \*\* at current market prices. In addition, over \*\*               \*\* has been  
2 collected in option premiums.

3               **Q.     Has AmerenUE sold allowances during a sharing period?**

4               A.     Yes, 30,000 allowances were sold in the 4<sup>th</sup> quarter of 1999 for a total of  
5 \$5.2 million. These sales were during a sharing period. AmerenUE also collected  
6 \$536,000 in option premiums during the last sharing period.

7               **Q.     On page 6 of his testimony, Mr. Kind indicates that 60,000 allowances**  
8 **per year could have been sold at an average price of \$180. Could this have been**  
9 **done?**

10              A.     No. It is not clear from Mr. Kind's testimony over what period of time he  
11 is asserting that 60,000 allowances per year could have been sold. It should be noted that  
12 AmerenUE did not have direct ability to manage its allowance inventory until December  
13 1998. It is highly unlikely that 60,000 allowances could have been sold at an average  
14 price of \$180 since the average price of allowances since 1995 averaged \$143. In  
15 addition, due to the illiquid nature of this market, especially during the period for 1995-  
16 1999, such large scale sales would have placed significant downward pressure on the  
17 market price of these allowances. And finally, such large scale annual sales of  
18 allowances during this period would not have been a prudent compliance strategy.

19              **Q.     Is Mr. Kind's claim that these sales would generate \$10.8 million per**  
20 **year true?**

21              A.     No. Even if the Company had been able to prudently make these sales, at  
22 an average price of \$143 per ton, the sales would generate \$8.58 million. The revenues  
23 would have been reduced due to income taxes by 40% or \$3.4 million because the

1 allowances have a zero cost basis. In total, net revenues would have been approximately  
2 \$5.2 million.

3 **Q. What would selling 60,000 tons per year have done to AmerenUE's**  
4 **allowance bank?**

5 A. In hindsight, these sales could have allowed AmerenUE to meet existing  
6 emission requirements, but, at best, with little room for growth or for additional  
7 generation. Of course, this was not evident during this period due to uncertainties over  
8 potential changes in environmental laws, operating conditions and market conditions. The  
9 emission allowance market is much more robust now than it was in its first five years. In  
10 addition, the AmerenUE strategy of building the bank has generated enough allowances  
11 to give us the flexibility to sell allowances when prices are at historically higher levels  
12 and market conditions are more suitable for larger scale sales. In addition, AmerenUE  
13 now has a much clearer view of the regulations, what our power plants can and can not  
14 do, how the switch to Powder River Basin coal has impacted our compliance strategy and  
15 a clearer understanding of the emission markets.

16 **Q. Looking ahead, do you believe that AmerenUE can support some level**  
17 **of annual allowance sales, given the Company's current view of its compliance**  
18 **strategy, operating conditions and market conditions?**

19 A. Yes. Based upon current environmental regulations, the Company's status  
20 on its compliance strategy, operating conditions and current market conditions, I believe  
21 that AmerenUE could support annual SO<sub>2</sub> allowance sales of approximately \*\*

22 \*\* allowances over the next few years. Under current market conditions, this  
23 would yield revenues of approximately \*\* \*\* per year or \*\*

1       \*\* after income taxes. In fact, earlier this year operating conditions and market  
2 conditions were appropriate to engage in several such sales. However, changing market  
3 conditions and environmental regulations, among other things, may require the Company  
4 to alter its view.

5           **Q.     On page 7 Mr. Kind indicates that AmerenUE has not used the**  
6 **authority granted to it by the Commission to sell some of the banked allowances.**

7           A.     Since December 1999, AmerenUE has sold a total of \*\*       \*\*  
8 allowances for a total of \*\*       \*\*. Ameren has sold allowances during sharing  
9 periods and out of sharing periods. As stated previously, AmerenUE has carefully  
10 chosen when it sells allowances to maximize the amount of revenues received, while  
11 paying careful attention to its environmental compliance needs.

12          **Q.     How have allowance sales impacted the AmerenUE allowance bank?**

13          A.     AmerenUE has sold \*\*       \*\* allowances, but \*\*       \*\*  
14 allowances have been added to the bank through the use of vintage swaps and loans.  
15 AmerenUE has collected \*\*       \*\* in revenues while keeping the size of the  
16 allowance bank essentially the same since 1999.

17          **Q.     Mr. Kind states that UE did not bring in any revenue for SO<sub>2</sub>**  
18 **allowances during the last sharing period. Is that true?**

19          A.     No. AmerenUE sold allowance call options during the last sharing period  
20 which generated \*\*       \*\* in option premiums during that period.

21          **Q.     OPC believes a transaction involving a vintage swap with an affiliate**  
22 **(AmerenEGC) was structured inappropriately. Mr. Kind asserts that the swap was**

**NP**

1     **done primarily for the benefit of the affiliate. Was this transaction structured to**  
2     **favor the affiliate?**

3           A.     No, this transaction was structured as a vintage swap to continue the  
4     AmerenUE strategy of building the bank. Our primary objective has been to build the  
5     bank to ensure AmerenUE maintains adequate allowances for compliance needs. These  
6     additional allowances have also allowed us to monetize allowances when allowance  
7     prices are high and market conditions are appropriate, as well as provide a “compliance  
8     buffer” for growth and the possible addition of new generation to support customer  
9     requirements. Other considerations included the tax consequences of transactions. This  
10    transaction was completed at fair market value at the time of the trade. The market rate  
11    was documented in an e-mail from Jude Moussa of Cantor Fitzgerald that was submitted  
12    in response to OPC DR’s.

13           **Q.     Would this strategy have changed if the internal transaction had not**  
14    **been completed?**

15           A.     No. AmerenUE has completed numerous vintage swaps with several  
16    different counterparties. AmerenUE would have swapped the allowances with another  
17    counterparty if AmerenEGC had not agreed to the transaction.

18           **Q.     Has this transaction continued to be favorable to AmerenUE since it**  
19    **was entered into?**

20           A.     Yes, the allowances AmerenUE gained in this transaction are currently  
21    worth \*\*       \*\* more than when the transaction was completed.

1           **Q.     OPC recommends imputing \*\*                   \*\* in sales revenue to**  
2   **treat this vintage swap as a sale. Should this amount be adjusted if it were adopted**  
3   **by the Commission?**

4           A.     Yes. If the allowances had been sold, income taxes of approximately \*\*  
5   \_     \*\* would need to be taken out of the entire gain as the allowances have a zero cost  
6   basis. In addition, if the vintage swap was done as a sale, then the later vintage  
7   allowances would not be in AmerenUE's possession. Thus, the \*\*                   \*\*  
8   increased value of these allowances should be subtracted from the revenue imputed by  
9   Mr. Kind. This reduces the \*\*           \*\* to about \*\*           \*\*.

10          **Q.     OPC believes that AmerenUE timed transactions to avoid sharing**  
11   **periods. Was this transaction timed to avoid a sharing period?**

12          A.     No. This transaction was agreed to and completed during a sharing  
13   period.

14          **Q.     Mr. Kind asserts on page 23 that the October 2000 memo you wrote**  
15   **and that he included as Schedule RK-2 in his testimony indicated that AmerenUE**  
16   **considered ratemaking when contemplating the affiliate vintage swap.**

17          A.     It is my job to point out any and all possible considerations that I think  
18   might have an impact on possible transactions. However, I am not an expert on the  
19   alternative regulation plan and do not claim to understand how the plan exactly works. In  
20   addition, I have no way of knowing where AmerenUE is in relation to the sharing grid at  
21   any time during the year. I pointed out ratemaking matters in the memo as a possible  
22   impact, but did not state what that impact might have been as I did not know. The large  
23   size of the transaction, and the fact that it was a transaction with an affiliate required



1 approval from my superiors. There were additional considerations involved in the  
2 decision making process that dictated the course of action that was pursued. My job was  
3 to bring forward potential transactions to address compliance requirements at  
4 AmerenEGC while continuing to pursue AmerenUE's allowance accumulation and  
5 selective selling strategy. It was determined that a vintage swap done at fair market value  
6 was the best solution for both AmerenUE and AmerenEGC.

7 **Q. Mr. Kind states that this memo "describes the strong regulatory**  
8 **disincentives that Ameren perceived for pursuing the 'Allowance Sale' option ... "**  
9 **Does this memo identify "strong" regulatory disincentives? (p. 23 line 32 – p. 24 line**  
10 **2)**

11 **A.** No. In one sentence on a two page memo I mention that the after tax  
12 revenues would go into the Missouri alternative regulation plan. The memo merely states  
13 this fact and does not indicate whether this is an incentive, a disincentive or neutral. It  
14 was a statement of fact that was stated as such. The reference to "as much as 90% of the  
15 earnings would have to be returned to ratepayers through sharing credits" was not in my  
16 memo. Mr. Kind added those words. My memo was not a "strong" indication of  
17 disincentives.

18 **Q. On page 27 Mr. Kind refers to the vintage swap as transferring**  
19 **\*\* allowances. Which vintages were swapped?**

20 **A.** AmerenUE delivered \*\* allowances.

21 **Q. On page 30 Mr. Kind states that the transaction only shows a net gain**  
22 **of \$12,600 on a \*\* transaction. Mr. Kind refers to this as an extremely**  
23 **low return on a high risk transaction. Is this a low return, high risk transaction?**

1           A.     No. It appears Mr. Kind does not understand the emissions business,  
2 commodity markets and the tax consequences of doing swaps. A vintage swap is a low  
3 risk transaction because it is settled immediately. The counterparties send their  
4 allowances to each other at the same time, so the risk of default is very low. The net gain  
5 of a vintage swap should be close to zero. If it is not done at close to a net zero  
6 transaction, it does not qualify as a like kind exchange and becomes a taxable transaction.  
7 The value of the vintage swap is found in the future value of the additional allowances  
8 received in the transaction. AmerenUE received an additional \*\*     \*\* allowances in  
9 the transaction that are currently worth \*\*               \*\* more than when the transaction  
10 was entered into.

11           **Q.     On pages 29–31 Mr. Kind refers to a spreadsheet attached as**  
12 **Schedule RK-3. Mr. Kind uses this schedule to justify his belief that the transaction**  
13 **was done as a vintage swap to avoid sales revenues in a sharing period. Was this**  
14 **spreadsheet used to justify the transaction?**

15           A.     No. The spreadsheet referred to in Schedule RK-3 was generated months  
16 after the transaction was completed. The transaction was completed in January, 2001.  
17 The spreadsheet was generated in April as we tried to determine how to report 1<sup>st</sup> quarter  
18 performance towards internal goals and objectives. Since the transaction was with an  
19 affiliate, the traditional earnings measures would sum to zero across the corporation.

20           **Q.     On page 32 Mr. Kind claims that this swap was done at a lower rate**  
21 **than comparable swaps and refers to Schedule RK-4. Why are the other vintage**  
22 **swaps at a much higher swap ratio?**

1           A.     It appears, once again, that Mr. Kind does not understand the emissions  
2     market and how vintage swaps are transacted. Vintage swap ratios are dependent upon  
3     the vintages being swapped. For instance, a swap for 2004 allowances carries a much  
4     lower swap ratio than for 2008 allowances. The swap transaction between AmerenUE  
5     and AmerenEGC was for \*\*                               \*\* vintages. The swaps referenced in  
6     schedule RK-4 by Mr. Kind as being "Comparable" are not comparable at all. I have  
7     reviewed the transactions listed by Mr. Kind in Schedule RK-4. The swaps he referred to  
8     involve \*\*                               \*\* vintages and thus, command a higher swap ratio. All of  
9     these swaps, including the transaction with AmerenEGC, were done at prevailing market  
10    prices for the vintages involved at the time of the transaction. Had AmerenUE done  
11    similar transactions (with the later vintages) with an affiliate, they would have been done  
12    at the same average ratio of \*\*                               \*\* listed in Schedule RK-4. Likewise, if  
13    AmerenUE had done a transaction similar to the AmerenEGC transaction (with earlier  
14    vintages) with an external counterparty, it would have been completed at the same  
15    \*\*     \*\* swap ratio.

16           **Q.     Has Ameren routinely entered into transactions with affiliates?**

17           A.     No. Although the EO-98-401 Order and Stipulation specifically  
18    authorizes transaction with AmerenCIPS, this vintage swap is the only transaction  
19    entered into with an affiliate since that order. This transaction was done on an arm's  
20    length basis at prevailing market rates at the time.

21           **Q.     Do you believe that the acquisition of CILCORP Inc. will result in**  
22    **Ameren entering into "sweetheart deals" with CILCORP?**

1           A.     No. I do not currently even know what CILCORP's emission position is.  
2 I have had no discussions to date to determine what the CILCORP emissions strategy will  
3 be. Furthermore, our strict policy is that transactions with our affiliates are to be done at  
4 documented market rates. There has only been one such transaction involving  
5 AmerenUE since the EO-98-401 Stipulation. This one transaction (vintage swap  
6 described earlier) was transacted at a slight premium, in AmerenUE's favor, to avoid any  
7 appearance of impropriety.

8           **Q.     OPC recommends an \*\*                               \*\* adjustment for a forward**  
9 **sale of 50,000 allowances (page 27, line 22). OPC believes this transaction was done**  
10 **in this manner to avoid revenue during the last sharing period. Was this**  
11 **transaction done as a forward sale to avoid the last sharing period?**

12          A.     No. This transaction was brought to Ameren by Evolution Markets (an  
13 emissions broker) as a forward transaction. The counter-party was not interested in a  
14 spot transaction at the time. This transaction was completed just prior to the annual EPA  
15 auction. We believed that under market conditions at the time and our overall  
16 compliance position, this forward sale, was a prudent course of action. Frankly, it is  
17 doubtful whether a straight sale of 50,000 allowances could have been transacted at the  
18 time of the transaction without substantially reducing the market price.

19          **Q.     On page 34 Mr. Kind refers to an October, 2000 memo and states that**  
20 **"Ameren evidently believed (or hoped) that the earnings from a forward sale would**  
21 **go undetected by regulators and not have to 'go into the Missouri Alternative**  
22 **Regulation Plan.'"**(p. 34, lines 1-3) **Is Mr. Kind's statement true?**

1           A.     There is nothing in this memo that suggests Ameren believed that the  
2 revenues from the forward sale would go undetected by the regulators. On the contrary,  
3 Ameren knew that this transaction would be reported to the Commission on the annual  
4 report required by the stipulation and agreement approved by the Commission in Case  
5 No. EO-98-401. Knowing that the PSC Staff and OPC would be reviewing this  
6 transaction, we carefully documented the rationale leading up to the decision. Every  
7 transaction AmerenUE does is reported to the Commission and the deals are done with  
8 the expectation that they will be reviewed.

9           **Q.     OPC points to an option trade that was structured to bring the option**  
10 **premium in during the fall of 2001. Was this option premium received later to**  
11 **avoid the sharing period?**

12          A.     No. Option premiums are included in income throughout the life of the  
13 options. Thus, it is irrelevant when the cash was received. As I have previously stated,  
14 \$536,000 in option premiums were recorded during the sharing period.

15          **Q.     Was ratemaking a consideration for making trades outside the last**  
16 **sharing period?**

17          A.     We were not sure what the ratemaking treatment would be following the  
18 last sharing period. We understood that AmerenUE was seeking to extend the EARP.  
19 Thus, it was our expectation that the sharing mechanism might be extended, and any  
20 future sale or option transactions would simply be included in the new regulatory sharing  
21 mechanism.

22          **Q.     Does this conclude your testimony?**

23          A.     Yes it does.

The Staff of the Missouri Public Service Commission,  
Complainant,  
vs.  
Union Electric Company, d/b/a AmerenUE,  
Respondent.

Union Electric Company, d/b/a )  
AmerenUE, )  
Respondent. )

[illegible]

1. My name is James C. Moore, II. I work in St. Louis, Missouri, and I am employed by Ameren Services Company as Senior Business Development Executive.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct.

Subscribed and sworn to before me this 21<sup>st</sup> day of June, 2002.

My commission expires:

**DEBBY ANZALONE**  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Louis County  
My Commission Expires: April 18, 2006