EXHIBIT

Exhibit No.: _____
Issue(s): Generally Accepted Accounting Principles/
Environmental Expense/
Venice Power Plant Fire Costs/
Lobbying Costs
Witness: Ted Robertson
Type of Exhibit: Cross-Surrebuttal
Sponsoring Party: Public Counsel
Case No.: EC-2002-1
Date Testimony Prepared: June 24, 2002

CROSS-SURREBUTTAL TESTIMONY

OF

TED ROBERTSON

Submitted on Behalf of
the Office of the Public Counsel

NP

UNION ELECTRIC COMPANY

Case No. EC-2002-1

Exhibit No. 100 NP
Date 7/10/02 Case No. EC-2002-1
Reporter KLM

June 24, 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 TED ROBERTSON

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Ted Robertson, of lawful age and being first duly sworn, deposes and states:

1. My name is Ted Robertson. I am a Public Utility Accountant for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my cross-surrebuttal testimony consisting of pages 1 through 46 and Schedule TJR-1 through TJR-14.

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.

Ted Robertson, C.P.A.
Public Utility Accountant III

Subscribed and sworn to me this 24h day of June 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

CROSS-SURREBUTTAL TESTIMONY
OF
TED ROBERTSON

UNION ELECTRIC COMPANY
d/b/a
AMERENUE

CASE NO. EC-2002-1

INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. Ted Robertson, P. O. Box 7800, Jefferson City, Missouri 65102.

Q. ARE YOU THE SAME TED ROBERTSON THAT HAS PREVIOUSLY FILED REBUTTAL TESTIMONY IN THIS CASE?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR CROSS-SURREBUTTAL TESTIMONY?

A. The purpose of this cross-surrebuttal testimony is to address comments made in the rebuttal testimony of Company witness, Mr. Martin Lyons. I will address the Public Counsel's perceived flaws with the Company's analysis and recommendations pertaining to Generally Accepted Account Principles ("GAAP") and the proper regulatory ratemaking for costs associated with environmental expense, the Venice Power Plant fire and lobbying.

GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

Q. MR. LYONS' SPENDS A SUBSTANTIAL AMOUNT OF HIS REBUTTAL TESTIMONY CHASTISING THE MPSC STAFF FOR NOT ADHEARING TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. WHAT ARE GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AND WHAT ARE THEY USED FOR?

A. The process of developing and reporting financial information to external decision makers is called **financial accounting**. External decision makers are those groups that do not have direct access to the internal operations of an entity. They make decisions regarding the entity, such as whether to invest or divest, whether to extend credit to the entity, and what public policy constraints and advantages should apply to the entity. Because of their detachment from the entity, they cannot directly command specific financial information from the entity; therefore, they must rely on general-purpose financial statements.

To meet the external users information needs, the accounting profession has developed a system of accounting concepts, standards, principles and procedures designed to assure that the external financial statements produced are relevant and reliable. The system of concepts, principles and procedures utilized is referred to as "Generally Accepted Accounting Principles." The objective of the external financial statements developed

with GAAP is to communicate the economic effects of completed transactions and other events on the financial position and operations of the entity.

Q. WHAT IS THE "MATCHING PRINCIPLE?"

A. One implementation principle of GAAP is the "Matching Principle" which states, for a reporting period, revenues should be recognized in conformity with the revenue principle; then the expenses incurred in earning that revenue should be recognized during the same period. If revenue is carried over from a prior period or deferred to a future period in conformity with the revenue principle, all identifiable elements of expense related to that revenue likewise should be carried over from the prior period or deferred to a future period. The matching principle requires the use of accrual basis accounting to record and report expenses.

Q. WHAT ARE ACCRUED ITEMS?

A. Accrued items result from transactions where cash flows follow recognition of the related expense or revenue. Accruing an expense means cash is **paid after** the related expense is booked. For example, paragraph 59 of Financial Accounting Standard No. 5 states:

> Paragraph 8 requires that a loss contingency be accrued if the two specified conditions are met. The purpose of those conditions is to require accrual of losses when they are reasonably estimable and relate to the current or a prior period.

However, paragraph 63 of Financial Accounting Standard No. 5 states:

> The sole result of accrual, for financial accounting and reporting purposes, is allocation of costs among accounting periods.

Essentially, accrual accounting calls for the recording of costs when obligations have been incurred and the amount of funds required to satisfy them are estimable.

Q. IS GAAP SUITABLE, IN ALL SITUATIONS, FOR REGULATORY RATEMAKING?

A. No, GAAP is not suited, in all situations, for ratemaking purposes. As discussed earlier, a primary objective of accrual accounting is to provide investors with comparable data presented according to standard rules and procedures. This objective is quite different from that established by the theory, concepts, rules and procedures of traditional regulatory ratemaking.

Q. PLEASE DESCRIBE ACCOUNTING IN THE RATEMAKING SETTING.

A. Regulatory ratemaking consists of developing a revenue requirement which is the sum of a utility's return on prudent, used and useful, investment plus recovery of reasonable operating expenses. Though GAAP and the prescribed Uniform System of Accounts ("USOA") are used to record or book the company's investment and operational revenues

and expenses, not all costs so booked are relevant to the determination of a utility's revenue requirement for regulatory purposes. GAAP allows companies largesse in booking investment that may not be prudent or used and useful in the provision of services to consumers. It also allows the booking of other costs or expenses that they may not actually incur. Neither of these two events, plus many others, are allowed for ratemaking. In fact, Commission rule 4 CSR 240.20.020(4) states that the USOA is for bookkeeping purposes only.

Q. WHAT IS THE PREMISE OF GAAP?

A. The premise of GAAP is that the companies are matching revenues of the current period with expenses of the current period. In reality, the expenses may not be incurred until a later period or never incurred at all. A major goal of GAAP is to provide investors and other stakeholders with the ability to **compare** the investment and operating results of a company with other companies within a specific industry or even with other companies within differing industries. The comparability of companies, though important **for financial accounting** purposes, is of little consequence for regulatory ratemaking purposes.

In essence, GAAP is not the foundation upon which a regulatory ratemaking revenue requirement is automatically determined and it should not be relied on as such. It is but one of the many tools regulator's use to determine a utility's appropriate revenue

requirement. Traditional regulatory ratemaking, on the other hand, is based upon the theory that a utility should be allowed to recover from ratepayers an appropriate return on the shareholders investment along with recovery of reasonable operating expenses.

Q. ARE ANNUALIZATION AND NORMALIZATION ADJUSTMENTS APPROPRIATE TO USE FOR REGULATORY RATEMAKING PURPOSES?

A. Yes. Annualization adjustments are made to extend over the period, or to eliminate from the period, events that had partial effects and are either recurring or have terminated. While normalization adjustments are made to restate the period data for abnormal conditions. They are usually made to revenues or to expenses to compensate for unusual levels of operations as recorded during the period. Examples may include items such as extreme weather conditions or plant outages.

Q. IS THE COMMISSION REQUIRED TO FOLLOW GAAP OR THE UNIFORM SYSTEM OF ACCOUNTS WHEN DETERMINING A UTILITIY'S REVENUE REQUIREMENT?

A. No. Section 393.140(4) RSMo. 2000 states that the Commission shall "[h]ave power, in its discretion, to prescribe uniform methods of keeping accounts, records and books, to be observed by ...electrical corporations...engaged in the manufacture, sale or distribution of... electricity for light, heat or power..."

Furthermore, Commission rule 4 CSR 240-20.030(1) states that every electrical corporation subject to the Commission's jurisdiction shall keep all accounts in conformity with the Uniform System of Accounts ("USOA") as prescribed by the FERC. Commission rule 4 CSR 240-20.030(4) states, in relevant part, that "[i]n prescribing this system of accounts, the commission does not commit itself to the approval or acceptance of any item set out in any account for the purpose of fixing rates or in determining other matters before the commission."

Q. DOES AUTHORITATIVE LITERATURE ON REGULATORY RATEMAKING RECOGNIZE THAT COMMISSIONS OFTEN DEVIATE FROM GAAP WHEN DEVELOPING A UTILITY'S RATES?

A. Yes. The Institute of Public Utilities, Graduate School of Business Administration, Michigan State University publishes the book, *Public Utility Accounting: Theory And Application*, James E. Suelflow (1988), which states on page 40:

> While the prerequisites of a good accounting systems are found on sound economic principles, it seems reasonable, at least at this point of development, to view accounting classification merely as a means of providing the regulatory body with information in a standard form. Interpretation of this information comes from the regulatory commission. **Thus, a regulatory body cannot be bound in its interpretation of results by the prescribed system of accounts, and "a regulatory body must not be restrained in regulation by the art of accounting."**
>
> (emphasis added)

Q. DO CERTIFIED PUBLIC ACCOUNTANTS RECOGNIZE THAT THE USE OF NON-GAAP CONCEPTS AND PROCEDURES SUCH AS NORMALIZATIONS AND ANNUALIZATIONS IN DEVELOPING A UTILITY'S REVENUE REQUIREMENT ARE STANDARD PRACTICE OF COMMISSIONS?

A. Yes. On page 37 its *Public Utilities Manual* (1980), the public accounting firm of Deloitte Haskins+Sells stated:

> Effect of Regulation
>
> Most utility companies are subject to rate regulation by state commissions; regulation of rates, and therefore revenues, would in itself affect accounting, but commissions generally have direct accounting jurisdiction as well.
>
> **Regulation of rates requires accounting information, and sound regulation requires sound accounting, although not necessarily on the same basis as in unregulated business.** Accounting supplies the information that is used in rate regulation, and rate regulation and accounting regulation, in turn, affect the accounting data. **Because of this interaction, regulated accounting may differ in certain respects from that used in other businesses.**
>
> **...the accounting required by regulatory bodies sometimes differs from that which would have resulted from the application of generally accepted accounting principles.**
>
> (emphasis added)

And, continuing on page 45, it states:

> Nature of Differences

> ...systems basically follow generally accepted accounting principles and the techniques normally employed elsewhere, **but accounting specifications for certain matters are designed to meet needs peculiar to the regulated utilities. The differences normally result, either directly or indirectly, from the emphasis in regulation on ratemaking objectives...**
>
> **Many differences between the regulated and unregulated approach to accounting for transactions result from the recognition of operating expense in rate proceedings at a time different from that when they would be recognized by unregulated business. It is a common practice in the ratemaking process to defer recognition of costs considered abnormal or as having benefit applicable to future rates.**
>
> (emphasis added)

Q. ARE YOU AWARE OF ANY INSTANCES WHERE THE COMMISSION HAS BEEN BOUND OR REQUIRED TO FOLLOW GAAP?

A. Yes. It's my understanding that the Commission is statutorily required to adhere to requirements of the Federal income tax normalization procedures and to the funding of postretirement benefits associated with amounts calculated according to Financial Accounting Standard No. 106 ("FAS 106"). However, with regard to FAS 106, the Commission does have some authority in the regulation of the factors utilized in the calculations. These are the only two instances of which I am aware that the Commission must follow GAAP.

Q. ARE YOU AWARE OF ANY EMPIRICAL EVIDENCE WHEREBY THE COMMISSION HAS DECIDED ISSUES WHICH RESULTED IN DEVIATION FROM GAAP?

A. Yes. In every rate case there are included numerous issues which do not adhere strictly to GAAP. Examples include the annualization of inventory balances, cash work capital analyzes, interest cost imputations, deferred tax savings imputations, revenue normalizations and annualizations or normalization of all kinds of operation and maintenance expenses, e.g., payroll costs and payroll taxes, maintenance expenses, uncollectibles expenses, advertising expenses, outside service expenses, etc. The process of regulatory ratemaking is primarily concerned with the development of rates based upon prudent and reasonable costs of an ongoing nature. The development of these costs do not always exactly match the costs companies book while following GAAP, nor should they.

Q. IS MR. LYONS CORRECT WHEN HE CLAIMS THIS COMMISSION SHOULD FOLLOW GAAP IN LOCK-STEP IN THIS PROCEEDING?

A. No. As I have discussed there are numerous policy reasons why the Commission should not follow GAAP. Indeed, the Commission's own rules, and the statutory authority which is the foundation of those rules, do not require the Commission to follow GAAP. Mr. Lyons' is simply wrong.

ENVIRONMENTAL EXPENSE

Q. WHAT IS THE PUBLIC COUNSEL'S POSITION ON THE ENVIRONMENTAL ACTIVITY COSTS PROPOSED BY THE COMPANY?

A. It is the Public Counsel's position that the Company has requested inappropriate regulatory ratemaking treatment for the costs of various environmental activities it booked during the test year. It is the Public Counsel recommendation that the Commission deny the Company's proposal to include the accrued expense and direct expenses it booked during the test year in the determination of the new rates. In their stead, Public Counsel recommends that the Commission include a normalized amount of environmental activity costs based upon an appropriate level of actual cash expenditures incurred by the Company during the test year.

Q. WHAT IS THE PUBLIC COUNSEL'S OPINION OF AN APPROPRIATE LEVEL OF ACTUAL CASH EXPENDITURES?

A. An appropriate level of actual cash expenditures should include the reasonable and prudent ongoing costs being incurred by the Company. As discussed in my rebuttal testimony, during the test year ended June 30, 2001, the Company direct charged to expense $136,737, on a total company basis. It also reduced the liability reserve account on a total basis by $342,077. Thus, the actual charges incurred by the Company, on a total basis, during the test year was $478,814.

However, of the amounts direct charged ** ** were for costs involving the Sauget Sites cleanup (OPC Data Request No. 1031, Union Electric Company Case No. EM-96-149, attached as Schedule TJR-1 to this testimony) as was ** ** of the amounts by which the reserve liability was reduced (OPC Data Request No. 1053, Union Electric Company Case No. EM-96-149, attached as Schedule TJR-2 to this testimony). Because the Sauget Sites cleanup relates to activities which we believe are not necessary for the provision of electric services to current customers, Public Counsel recommends that they be excluded from the determination of our recommended cash basis normalization.

Q. WHAT IS PUBLIC COUNSEL'S RECOMMENDATION EXCLUDING THE SAUGET COSTS?

A. Excluding the Sauget Sites results in the Public Counsel's recommending an environmental costs normalization of **$87,536**, on a total company basis. Because the Company actually booked $6,136,737 to expense during the test year, the adjustment necessary to achieve the Public Counsel's recommendation is to decrease the Company's booked expenses by **$6,049,201**.

Q. PLEASE EXPLAIN WHY YOU ARE REQUESTING THAT THE COMMISSION EXCLUDE THE SAUGET SITES ENVIRONMENTAL EXPENSES.

A. The Public Counsel's opposition to the inclusion of the Sauget Sites environmental expenses in the instant case cost of service is based on a plethora of reasons. For example, (1) some of the sites subject to remediation are not used and useful for providing service to current customers, (2) if current customers are required to pay for the cost of service not recovered from past customers, i.e., past rates were too low, the result is intergenerational inequity, and possibly retroactive ratemaking. Present customers should not be required to pay for past deficits of the Company in future rates. Also, recovery of these costs from ratepayers would guarantee the investments of stockholders rather than present the Company with the opportunity to earn a return approved by the Commission, (3) the investigation expenditures expensed by the Company may be a non-recurring cost of operations, (4) shareholders are compensated for this particular business risk through the risk premium applied to the equity portion of the Company's weighted average rate of return (WROR), (5) shareholders not ratepayers receive the benefits of gains or losses (below-the-line treatment) of any sale or removal from service of Company-owned land or investment. Since it is the shareholder who receives either the gain or the loss on an investment's disposal, it is the shareholder who should shoulder the responsibility for any legal liability that arises at a later date related to the investment, (6) the liability for the remediation costs is not incurred because of any service currently provides to its customers. AmerenUE is a potentially responsible party because it either owns the property now or utilized the property at sometime in the past, (7) automatic recovery of the remediation costs from AmerenUE customers reduces the incentive for

the Company to seek partial or complete recovery of the costs from other past owners of the plant sites or Company's insurers, and (8) most of the expenses that the Company booked during the test year (i.e., $6,000,000) are an accrual of nothing more than estimates of expenses it might or might not incur sometime in the future.

Q. MR. LYONS STATES THAT THE COMPANY RECORDS ITS ENVIRONMENTAL LIABILITY AND RELATED EXPENSE ON THE ACCRUAL BASIS OF ACCOUNTING, CONSISTENT WITH GAAP. IS THAT CORRECT?

A. Yes, on page 49, lines 13 – 18, of his rebuttal testimony, he states:

> The Company records its environmental liability and related expense on the accrual basis of accounting, consistent with GAAP. According to Statement of Financial Accounting Standards No. 5 and FASB Interpretation No. 14, the Company is required to accrue its best estimate of its liability for environmental costs when (1) the event giving rise to an expected cash expenditure has occurred and payment is probable, and (2) the amount of the expenditure is reasonably estimable.

However, as I discussed earlier, the Company does direct charge some environmental activity costs to an expense account.

Q. IS IT THE COMPANY'S POSITION THAT THE ACCRUAL BASIS EXPENSE BE REFLECTED IN THE RATES DEVELOPED FROM THIS CASE?

A. Yes. On page 51, lines 8 – 10, of his rebuttal testimony, Mr. Lyons states:

> As a general principle, I believe that the accrual basis expense, as reflected in the Company's financial statements for the June 30, 2001 test year, provides a reasonable level of operating expense on a going-forward basis.

Q. IS IT MR. LYONS' ASSERTION THAT A CASH BASIS APPROACH TO DETERMINING THE LEVEL OF ANNUALIZED ENVIRONMENTAL EXPENSE IS NOT APPROPRIATE?

A. Yes. On page 50, lines 14 – 15, of his rebuttal testimony, he states:

> Absolutely not. As I previously testified, the cash basis fails to recognize amounts that are probable of being paid and reasonably estimable.

Q. HAS THE COMPANY BEEN REQUIRED TO MAKE PAYMENTS FOR ENVIRONMENTAL ACTIVITIES COMMENSURATE WITH THE ESTIMATED EXPENSE AMOUNTS IT HAS ACCRUED?

A. No. On page 51, lines 16 – 17, of his rebuttal testimony, Mr. Lyons states:

> ...the Company has not yet been required to make significant payments related to its environmental liabilities.

Mr. Lyons comments are corroborated in my rebuttal testimony, pages 5 and 6, where I show that for the period July 1, 1996 through September 30, 2001 the Company had,

excluding direct charges, actually paid on a cumulative basis $455,325 for environmental activities. However, it had amassed an over-accrued environmental balance totaling ** ** (beginning balance ** ** plus $12,794,675).

Q. HOW DID THE COMPANY DEVELOP THE ESTIMATED EXPENSE ACCRUAL IT RECORDED IN THE RESERVE ACCOUNT DURING THE TEST YEAR?

A. Company's response to OPC Data Request No. 1015 (attached as Schedule TJR-3 to this testimony), in Union Electric Company Case No. EM-96-149, stated:

> The Environmental Reserve level as of June 30, 2001 was $14.3 million, was determined by looking at (sic) minimum and maximum liability determined by our Environmental and Safety Department and booking within this range.

The range of total liabilities shown was for the year 2000. The minimum liability was $9.1 million (of which $5.8 million was for gas related operations) and the maximum liability was $23.6 million (of which $11.3 million was for gas related operations). That leaves a liability range of $3.3 million to $12.3 million for non-gas operations. The range of non-gas liabilities, by site, is as follows:

Site	Minimum	Maximum
Missouri Electric Works	$1.3	$2.0
Dorsett Diesel UST Site	0.0	0.3
Sauget	2.0	10.0
Total	$3.3	$12.3

During the 12 months ended June 2001 the Company actually charged approximately $342,000 against the reserve account. However, the Company's response to item 2 of OPC Data Request No. 1015 states that the Sauget Site Clean-up presents the majority of the charges to the AmerenUE Environmental Reserve.

Q. ARE THE COSTS ASSOCIATED WITH THE ESTIMATED EXPENSE ACCRUED KNOWN AND MEASUREABLE?

A. No, they are not. The over-accrued environmental balance represents nothing more than expense estimates booked by the Company that have not materialized. It is quite clear to the Public Counsel that the Company's expense estimates for this issue have for a long time been way off the mark and should not be allowed in the determination of the instant case rates.

Q. WHAT IS MEANT BY THE TERM KNOWN AND MEASURABLE?

A. Known and measurable adjustments are made to restate data for known changes that have occurred subsequent to the end to the test year. Examples may included an item such as a change in costs associated with insurance policies or union wage increases.

Q. WHAT ENVIRONMENTAL ACTIVITIES ARE OCCURRING AT THE THREE SITES NOT IDENTIFED AS MANUFACTURED GAS PLANT RELATED?

A. In a February 2, 2001 memorandum to Mr. W. L. Baxter from M. L. Menne, provided by the Company in its response to MPSC Staff Data Request No. 32 (attached as Schedule TJR-4 to this testimony), it states:

**

**

(emphasis added)

Q. PLEASE CONTINUE.

A. Company response to MPSC Staff Data Request No. 37 (attached as Schedule TJR-5 to this testimony) provided the following information regarding the Sauget Sites:

> **Sauget Areas 1 and 2** – In June and September 2000, U.S. EPA and the Department of Justice advised the Company that it was considered a PRP in connection with two Superfund sites known as Sauget Area 1 and Sauget Area 2. With respect to Area 1, DOJ added UE as a defendant in a pre-existing lawsuit involving the former Monsanto Chemical Company along with 16 other defendants. UE owns and operates transmission and distribution facilities in an area known as Dead Creek. Industrial companies in the area historically used Dead Creek as a repository for their industrial process waste. DOJ seeks recovery of cleanup costs in excess of $2M and Monsanto seeks to reallocate remediation costs of $15M to other defendants. **The Company considers its liability exposure to be nominal.**
>
> Formal notice from U.S. EPA was received on June 23, 2000, informing us of our involvement as a PRP at the Sauget Area 2 Site in Sauget, Illinois. From the 100+ parties identified as PRPs, a PRP group consisting of 11 companies has been formed called the Sauget Area 2 Sites Group or "SA2SG." On September 29, 2000, the PRP group submitted a good faith offer that included a proposed Administrative Order on Consent ("AOC") and a proposed Scope of Work ("SOW"). The Agency is on an aggressive schedule and work should begin in 2002 collecting samples for the site evaluation and if appropriate, proposed clean-up.
>
> The Sauget Area 2 consists of five known disposal areas adjacent or in close proximity to the Mississippi River. The five disposal areas are know as Sites O, P, Q, R, and S. UE is an owner of Site P and operated ash ponds in what is now known as Site Q. Due to the proximity of the Area 2 sites to the Mississippi River, the Company cannot rule out the possibility that the government will seek natural resource damages or require groundwater or remediation activities that impact the river. Under CERCLA's liability scheme, UE's exposure may not be limited to its fly ash operations. Accordingly, the Company is aggressively seeking to minimize its liability exposure. **Based on estimates, UE's portion of the initial investigation cost is $600 thousand. Over the next two years internal costs for legal and technical costs, designed to minimize our**

liability and pursue insurance coverage, could range as high as $1 to $2 million. Approximately $650,000 has been spent to date.

(emphasis added)

Q. IS IT THE PUBLIC COUNSEL'S UNDERSTANDING THAT THE $6,000,000 EXPENSE ACCRUAL COMPANY BOOKED DURING THE TEST YEAR RELATES ENTIRELY TO THE SAUGET SITES?

A. Yes. Company's response to OPC Data Request No. 1015c (attached as Schedule TJR-6 to this testimony), in Union Electric Company Case No. EM-96-149, states:

**
**

Company's responses to MPSC Staff Data Request Nos. 32 and 37 clearly indicate that funding for any additional costs, if necessary, at the Missouri Electric Works and Dorsett Road Sites may be relatively minimal or covered by recoveries from other parties or insurance proceeds from its transfer of the risk to an insurance policy.

Q. WHY IS THE COMPANY POTENTIALLY LIABLE TO INCUR CLEANUP EXPENDITURES FOR THE SAUGET SITES?

A. Regarding the Sauget Area 1 Site, Union Electric Company is a defendant in Case No. 99-63-DRH in the United States District Court for the Southern District of Illinois East St. Louis Division. Case No. 99-63-DRH is a civil action pursuant to Section 107 of the Comprehensive Environment Compensation and Liability Act ("CERCLA"). 42 U.S.C. § 9607, as amended, for recovery of costs incurred by the United States in responding to a release or threat of release of hazardous substances at several locations that collectively form the Sauget Area 1 Superfund Site in west central St. Clair County, Illinois.

Sauget Area 1 is located within the corporate limits of the Village of Sauget, Illinois and extends into the adjoining Village of Cahokia, Illinois. The Area 1 Site is comprised of three closed landfills (Site G, H, and I); one filled wastewater pond (Site L); one flooded burrow pit (Site M); one filled borrow pit (Site N) and six creek segments along Dead Creek (CS-A through F).

Union Electric Company was added as a defendant to the civil suit because it currently owns a portion of Area 1, CS-F. Creek Segment CS-F is approximately 6,500 feet long and extends from Route 157 to the Old Prairie du Pont Creek which ultimately drains into the Mississippi River. Hazardous substances within the meaning of Section 101 (14) of CERCLA 42 U.S.C. § 9601(14) including but not limited to VOCs such as chloroform, benzene, and toluene, SVOCs, such as benzene, toluene, chlorobenzene, and

ethyl benzene and elevated levels of PCBs and heavy metal have come to be located on the property currently owned by the Union Electric Company.

Q. WHAT IS "CERCLA?"

A. To deal with the contamination and cleanup problems presented by abandoned and/or inactive hazardous waste sites, Congress in 1980 enacted the Comprehensive Environment Compensation and Liability Act ("CERCLA" or "Superfund"). CERCLA provided funding and enforcement authority to the Environmental Protection Agency ("EPA") to enable it to respond to hazardous substance releases and to enable the EPA to undertake or regulate the cleanup of those hazardous sites where owners/operators were either without resources or unwilling to implement such cleanups. In 1986 CERCLA was amended by the Superfund Amendments and Reauthorization Act ("SARA") which intensified Superfund activities and set a goal of achieving "permanent" solutions at Superfund sites. CERCLA imposes strict, joint, and several liability on present or former owners or operators of facilities where substances have been or are threatened to be released into the environment. Potentially responsible parties ("PRP") include owners of contaminated land from point of contamination to date, operators (which is interpreted as any party that had possession, control, or influence over the premises during the same period), transporters, and generators of the contaminants regardless of whether they directly released such substances into the environment.

Q. DOES THE COMPANY BELIEVE ITS POTENTIAL LIABILITY TO THE CIVIL SUIT TO BE MINIMAL?

A. Yes, according to the Company's response to MPSC Staff Data Request No. 37, mentioned earlier, the Company considers its liability exposure to this Site to be nominal. In fact, in its *Answer Of Defendant Union Electric Company*, Cause No. 99-63-DRH, dated January 18, 2001 and provided in the Company's response to Public Counsel Data Request No. 1030 (attached as Schedule TJR-7 to this testimony), in Union Electric Company Case No. EM-96-149, Company denies all responsibility and liability for the cleanup costs. On page 17 of the document, Company states:

> 139. The actual or threatened release of hazardous wastes or other substances, if any, and the damages resulting therefrom, if any, were caused solely by an act or omission of a third party other than an employee or agent of Union Electric, or other than one whose act or omission occurred in connection with a contractual relationship, existing directly or indirectly with Union Electric, and as a result of 42 U. S. C. Section 9607 (b), the claim of plaintiff is barred in whole or in part.

Q. HAS THE INCURRED ANY CLEANUP IN SAUGET AREA 1?

A. No. Company's response to MPSC Staff Data Request No. 186 (attached as TJR-8 to this testimony) states:

> The Company has not incurred cleanup costs in connections with Sauget Area 1. **To date, the Company's Area 1 expenses have been limited to litigation defense costs.**

(emphasis added)

Q. HAS THE COMPANY PROVIDED TO PUBLIC COUNSEL ANY EVIDENCE TO SUPPORT ITS BELIEF THAT IT SHOULD NOT BE HELD LIABLE FOR REMEDIATION COSTS OF THE SAUGET AREA 1 SITE?

A. Yes. Attached as Schedule TJR-9 to this testimony is a copy of a June 18, 2001 letter from Ameren Company attorney, Susan B. Knowles to a Ms. Karen Torrent of the U.S. Department of Justice in which Ms. Knowles states the Company's opposition to inclusion in the litigation (MPSC Staff Data Request No. 208). In part, the letter states:

> Over the last century various industrial companies have used Dead Creek as a repository for their industrial wastes. Such contaminants apparently flowed downstream and "have come to be located on property currently owned by Union Electric." (¶ 102, Amended Complaint) There are no allegations that Union Electric engaged in similar disposal activity. Rather, the basis for Union Electric's alleged liability stems from the Company's ownership of a transmission line which crosses the Creek over an area referred to as Creek Segment F.

Q. PLEASE CONTINUE?

A. Regarding the Sauget Area 2 Site, on or about June 23, 2000, Union Electric Company was notified by the United States Environmental Protection Agency that it was a potentially responsible party ("PRP") with respect to the site. The source areas for the

Sauget Area 2 Site consist of five known disposal areas adjacent, or in close proximity, to the Mississippi River. The five disposal areas are known as Sites O, P, Q, R and S. Union Electric Company was named as an owner/operator PRP for Sauget Area 2 Sites P and Q.

Q. PLEASE DESCRIBE SAUGET AREA 2 SITES P AND Q.

A. Sauget Area 2 Site P occupies approximately 20 acres of land located between the Illinois Central Gulf Railroad and the Terminal Railroad and north of Monsanto Avenue in the Village of Sauget. On information and belief, Site P was operated as a landfill from 1973 to an unknown date in the early 1980s. According to available Illinois EPA records, the landfill accepted "general wastes," including diatomaceous earth filter cake from Edwin Cooper (a/k/a Ethyl Corporation) and nonchemical wastes from Monsanto. Periodic State inspections of Site P also documented that the landfill contained drums labeled "Monsanto ACL-85, Chlorine Composition," drums of phosphorus pentasulfide from Monsanto and Monsanto ACL filter residues and packaging. Site P is currently inactive and covered and access to the site is unrestricted.

Sauget Area 2 Site Q is a former subsurface/surface disposal area which occupies approximately 90 acres. The site is located in the Villages of Sauget and Cahokia, Illinois, and is bordered by Sauget Site R and the old Union Electric Power Plant on the north; the Illinois Central Gulf Railroad and the United States Corps of Engineers (U.S.

COE) flood control levee on the east; and the Mississippi River on the west. U.S. EPA conducted a CERCLA removal action at Site Q in 1995. This removal action involved the excavation of PCBs, organics, metals, and dioxin contaminated soils and drums which had been scoured out of the fill area and were spilling directly into the adjacent waters of the Mississippi River. U.S. EPA recovered its costs for this removal in a subsequent administrative settlement. U.S. EPA conduced a second CERCLA removal action at Site Q beginning in October of 1999 and into early 2000. During this removal action, U.S. EPA has excavated more than 2,000 drums and more than 7,000 cubic yards of contaminated soils containing metals, PCBs, and organics. The Mississippi River has flooded Site Q many times during the last several years. Leachate from Site Q has in the past migrated and potentially could continue to migrate into the Mississippi River. Most of Site Q is covered with highly permeable black cinders. Operation for a barge loading facility and construction debris disposal areas now operate on top of parts of Site Q. Access to this site is also unrestricted.

Q. DOES THE COMPANY CURRENTLY OWN SAUGET AREA 2 SITES P AND Q?

A. Company's Supplemental Response No. 1 to Public Counsel Data Request No. 1052 (attached as Schedule TJR-10 to this testimony), in Union Electric Company Case No. EM-96-149, states that it owned in fee simple or possessed a property interest in Sauget Area 2 Site P but that it does not and has not owned Sauget Area 2 Site Q. This information is corroborated in a December 13, 2001 letter from the Counsel for

AmerenUE to U.S. EPA (attached as Schedule TJR-11 to this testimony) that was provided by the Company in its response to Public Counsel Data Request No. 1030, Case No. EM-96-149. The letter states:

> The EPA has notified UE that it is a Potentially Responsible Party at the proposed Area 2. UE has a significant interest in the proposed NPL listing because it is presently the owner of a portion of what the Agency has designated "Site P," with Area 2, and because if formerly owned and operated an electrical generating facility in Sauget, Illinois and leased a portion of one of the sites for the storage of fly ash. The ash ponds were located in a narrow corridor within the middle-section of a parcel that the EPA has designated "Site Q."

Q. HAS THE COMPANY OPPOSED THE EPA'S ATTEMPTS TO CLASSIFY THE SAUGET AREA SITE P AS A SUPERFUND SITE?

A. Yes. In the same letter to the EPA discussed in the prior Q & A, on page 6, the Company stated:

> Given the clear authority contained in *Meade*, little more need be said about the impropriety of EPA's inclusion of Site P in this proposed listing, except to note that had the EPA scored Site P independently, it would have derived a score for Site P of 0.60 – a far cry from the score needed to qualify Site P as a "high risk" site such that it should be listed on the NPL. Accordingly, even if EPA had followed the requirements of CERCLA Section 105 and the law set out in the *Meade* decision and had scored Site P, there would be no basis to include Site P in Area 2. For all these reasons, the Agency must remove Site P from this proposed listing.

Q. DOES THE COMPANY ALSO DISPUTE THE EPA ALLEGATIONS REGARDING SAUGET AREA SITE Q?

A. Yes.

Q. IS IT THE PUBLIC COUNSEL'S BELIEF THAT MOST OF THE ENVIROMENTAL EXPENSES THAT THE COMPANY BOOKED DURING THE TEST YEAR RELATE TO THE SAUGET SITES?

A. Yes. The Company has stated that the $6,000,000 accrual it booked to the reserve account during the test year was for the Sauget Sites and the largest portion of the direct charges it incurred were also Sauget related.

Q. DOES THE PUBLIC COUNSEL HAVE A BREAKDOWN OF THE EXPENSES BOOKED DURING THE TEST YEAR BY SPECIFIC SAUGET SITE?

A. No. The Public Counsel has requested that information but as of the time I am writing this testimony, the Company has not provided the information.

Q. SHOULD CURRENT RATEPAYERS BE REQUIRED TO REIMBURSE THE COMPANY FOR ENVIRONMENTAL REMEDIATION COSTS WHICH ARE CURRENTLY IN DISPUTE?

A. No. The Company has stated that it expects the costs associated to be nominal; therefore, Public Counsel assumes that the majority of the expenses it booked during the test year

must be related to the Sauget Area 2 Sites. In either case, Public Counsel does not believe that the costs to remediate these sites should be included in rates. Excusing the fact that the greater part of the costs booked during the test year relate to an accrual of estimated expenses, which we oppose completely, the costs associated with the remediation of these sites should never be recoverable from ratepayers. Current ratepayers should not be held responsible for the remediation of sites associated with the past operations of the Company. It is also relevant that the Company does not really know what the ultimate remediation costs will be considering it is disputing the EPA's classification of the sites and its potential liabilities.

Q. SHOULD CURRENT RATEPAYERS BE REQUIRED TO REIMBURSE THE COMPANY FOR ENVIRONMENTAL REMEDIATION COSTS ON PROPERTIES WHICH IT DOES NOT OWN AND ARE NOT USED AND USEFUL IN THE CURRENT PROVISION OF ELECTRIC SERVICES?

A. No, of course not. Current ratepayers received no services from the Sauget Area 2 Site Q property. The Company does not own the property and any operations that it may have had on it ceased existence long ago. The cost of remediation of this property relate to events associated with past operations of the Company and they should not be considered as a cost subject to reimbursement by current ratepayers.

Q. MR. LYONS' ALSO ASSERTS ALLEGATIONS OF INTERGENERATIONAL INEQUITIES IF THE ACCRUED COSTS ARE NOT INCLUDED IN CURRENT RATES. IS THAT CORRECT?

A. Yes. On page 50, lines 22 – 23 and page 51, lines 1 – 5, of his rebuttal testimony, he states:

> Moreover, the accrual basis of recording environmental liabilities and related expense better assigns collection through rates to the ratepayers that benefited from the Company's actions that led to recorded environmental liabilities. Because of the length of time generally associated with environmental remediation projects, if recovery in rates is postponed until environmental liabilities are actually paid, ratepayers who did not benefit from the Company's acts will be required to pay for those acts. Prudent ratemaking principles should not allow such inequity.

Q. WHAT IS INTERGENERATIONAL INEQUITY?

A. In its basic form intergenerational inequity most often refers to the allocation of scarce resources between older and younger consumers. In the context of regulatory ratemaking it can be extrapolated to describe which customers, current or future, or current and future, reimburse a utility for the costs it incurs to provide its services.

Q. DOES THE PUBLIC COUNSEL BELIEVE THAT MR. LYONS' PROPOSAL WOULD CREATE AN INTERGENERATIONS INEQUITY?

A. Yes, but not in the manner he has described in his testimony. Mr. Lyons' proposal would create a condition that is the exact reverse of the intergenerational inequity he describes. That is, his proposal implies that future ratepayers will be treated unfairly if recovery in rates are postponed until the liabilities the Company has booked are actually paid. His suggestion is flawed because in reality it is the current ratepayer that would receive the unfair treatment if they are required to reimburse the Company for costs related to past operations which have not actually been incurred. If Mr. Lyons' proposal is accepted, current customers would be paying for services which they did not receive and future customers would be free of their responsibility to pay their fair share if the estimated costs are ever actually incurred, assuming the costs are found to be prudent and reasonable for regulatory ratemaking purposes.

For illustration purposes, assume that the Commission did allow the Company to include the accrual of estimated expenses into the rates set in this case. Assume further that the level of costs that are actually incurred does not change materially from that incurred during the last six years or more. The difference between the estimated accrual built into rates and the actual costs incurred would be paid to the Company for however long the new rates actually existed. In effect, the Company would be collecting revenues from current customers for expense reimbursement which did not occur. It would be free money not subject to refund to ratepayers.

Q. DOES MR LYONS' REFERENCE TO THE LENGTH OF TIME ASSOCIATED WITH ENVIRONMENTAL PROJECTS AND THE ULTIMATE PAYMENT OF ASSOCIATED LIABILITIES AS A FACTOR IN CREATING INTERGENERATIONAL INEQUITY MAKE SENSE?

A. No. In fact, his comments are quite illogical. For example, he states:

> ...if recovery in rates is postponed until environmental liabilities are actually paid, ratepayers who did not benefit from the Company's acts will be required to pay for those acts.

His testimony is illogical because if recovery in rates occurs during the same time period that the costs are actually paid, then a proper matching of revenues with expenses has been met for both accounting and regulatory ratemaking purposes. Furthermore, the last part of his statement is completely false. Ratepayers taking service during the periods that the environmental activities are incurred and paid (assuming that the costs are prudent and reasonable and should be allowed in the determination of the utility's cost of service) do in fact benefit from the services provided.

Mr. Lyons' attempt to somehow link the Company's recording of the estimated liability with the benefits of the environmental activities provided ratepayers does not exist. He would have this Commission believe that once the liability is recorded benefits automatically begin to flow to ratepayers. That is not so. Any benefits associated with

prudent and reasonable environmental activities do not begin to accrue until those activities are actually incurred. The recording of an estimated expense and liability is nothing more than a perfunctory accounting procedure. GAAP recognizes this phenomenon because in paragraph 61 of Financial Accounting Standard No. 5 it states:

> **Accounting accruals are simply a method of allocating costs among accounting periods and have no effect on an enterprise's cash flow.**
>
> (emphasis added)

However, an accrual of estimated expenses can effect the cash flows of a regulated entity if the Commission allowed it to include the estimates in its cost of service. Furthermore, if the estimated expenses are included in the development of rates and the costs which they represent never materialize, ratepayers have no recourse for recovery of the monies they provided to the utility.

Q. PLEASE CONTINUE.

A. Mr. Lyon also fails to note that, even though it is true that environmental projects can last for a significant time period, an individual project's activities are associated with specific time periods and resultant payment for those specific activities is actually relatively short. This fact is described by both the Staff and the Company in their individual Cash Working Capital analyzes that they filed in this case.

The Staff on its Cash Working Capital Schedule 8, line 12, of its Staff Accounting Schedules recommends a Cash Vouchers expense lag of 27.00 days. While on the Company's Cash Working Capital Schedule 5, line 15, contained in the rebuttal testimony of Company witness, Mr. Gary Weiss, he identifies an Other Operating Expenses expense lag of 19.95 days. Both of the analyzes clearly show that the Company is paying for the environmental services it receives not long after they are actually received. This fact is further corroborated in the rebuttal testimony of Company witness, Mr. Michael Adams, for on page 19, lines 22 – 25, he explains what is an expense lead:

Q. What is an expense lead?

A. The expense lead refers to the elapsed time from when a good or service is provided to the Company to the point in time when the Company pays for the good or service and the funds are no longer available to the Company.

And, on page 19, lines 22 – 25, he added:

Q. What are other operations and maintenance expenses and what are the lead effects that one can expect with such expenses?

A. The Company engages in transactions with other vendors (not associated with pensions, benefits, payroll, fuel, or wholesale energy market transactions) for a variety of purposes including facility maintenance, system reliability, and customer service. Invoices from providers of such services were analyzed in order to estimate a lead time associated with payment for services related to other operations and maintenance activities. **The Company's**

analysis indicates that on average, invoices were paid by the Company 19.95 days after they were received.
(emphasis added)

Q. ARE THE TERMS EXPENSE LAG/LEAD, AND CASH VOUCHERS AND OTHER OPERATING EXPENSES, BASICALLY INTERCHANGEABLE IN THIS SITUATION?

A. Yes. The terms expense lag and expense lead in this situation are basically interchangeable as are the terms cash vouchers and other operating expenses. They are the same because in the context of the Staff's and Company's Cash Working Capital analyzes, they represent the results of an analysis of similar costs.

Q. PLEASE SUMMARIZE THE PUBLIC COUNSEL'S POSITION ON THIS ISSUE.

A. Public Counsel recommends that the Commission adopt a level of ongoing environmental costs commensurate with the actual expenditures incurred during the test year for reasonable and prudent activities. Public Counsel's recommendation is that the actual expenditures incurred in the test year, less costs related to the Sauget Areas 1 & 2 Sites, be reflected in the determination of the Company's new rates. OPC believes that Mr. Lyons' proposal to allow an estimated accrual of $6,000,000, plus direct charges, in rates is not appropriate because, 1) the Company is not incurring costs at a level anywhere near the level of expenses that it has booked and, 2) the accrual estimate and a portion of the direct charges are associated with the remediation of the Sauget Sites. The

costs to remediation the Sauget Sites should not be allowed because they pertain to costs associated with electric operations of prior years, are on properties not owned by the Company, are not used and useful in the provision of current electric services and/or are subject to various disputes between AmerenUE and the EPA regarding liabilities and potential costs to be incurred.

VENICE POWER PLANT FIRE COSTS

Q. IS IT THE PUBLIC COUNSEL'S UNDERSTANDING THAT THE COMPANY OPPOSES ANY RECOGNITION OF THE INSURANCE PROCEEDS IT RECEIVED FOR THE FIRE DAMAGES?

A. Yes. The Staff has taken a position whereby a "pro rata" portion of the insurance recoveries received are netted against the fire costs that were incurred. Whereas, the Public Counsel has taken a position that all the costs associated with the fire, along with the entire insurance recovery, should be viewed in its entirety. It's the Public Counsel's understanding that neither methodology would be acceptable to the Company because it seeks to include all the test year fire costs in the development of rates. Company's proposal would, if approved, treat the fire damages as an ongoing normal cost and allow it to recoup the costs for as long as the new rates are in effect.

Q. HOW DO THE PUBLIC COUNSEL'S AND THE STAFF'S POSITIONS DIFFER?

A. Public Counsel believes that the recognition of all the costs and all the insurance proceeds is the only appropriate methodology to use since it protects the interests of both shareholders and ratepayers alike. The Staff's position of pro-rata assignment yields the possibility that at least a portion of the investment and expenses the Company incurred to make the plant operational again will not be included in the development of the instant case rates. The primary reason we believe our position to be stronger rests on the fact

that it takes into account all the fire costs and all the insurance recoveries received, and not just a pro-rata portion of the amounts as proposed the Staff's position. For example, if the Staff's methodology does not include plant restoration costs in excess of the insurance recoveries that the Company received in the development of the new rates (and its my understanding it doesn't), those costs will in all likelihood never be recovered by the Company. Certainly, they will not be recovered in this case if the Commission accepts their proposal.

If the Commission accepts the Public Counsel's position, ratepayers will be required to reimburse the Company for all costs it did not recover from its insurance policies. From the Company's position, it will not be out any losses because of the fire. What the insurance proceeds it received did not satisfy, the ratepayers will provide via the costs inclusion in the new rates. Neither party, shareholder or customer, ends up being overcharged or shortchanged.

Make no mistake, Public Counsel agrees completely with the Staff that fire costs and the associated insurance proceeds should both be considered in the determination of ongoing costs Company incurs for this issue. However, Public Counsel's position differs only from Staff because we believe that all costs, and not just a portion of the costs, should be recognized and included in any adjustment approved by this Commission. To do otherwise would be an unfair position in which to put the Company. Public Counsel

believes that it would be unreasonable not to allow the Company the opportunity to recover all the fire damage costs it has incurred. We also believe that the Company's position to include in rates fire costs for which it has already been reimbursed equally unreasonable.

Q. WHY DOES THE COMPANY OPPOSE RECOGNITION OF THE INSURANCE PROCEEDS AS AN OFFSET TO THE FIRE COSTS INCURRED?

A. Company argues that recovery of the fire insurance proceeds was outside the test year. On page 40, lines 1 – 3, of Mr. Lyons' rebuttal testimony, he states:

> Adjustments related to items occurring after the test year and update period are inconsistent with the test year concept that is so fundamental to this ratemaking proceeding.

Q. WHAT IS A TEST YEAR AND UPDATE PERIOD?

A. Test year is a measure of the operations and investment from some specified twelve-month period. The test period is a measure of, or is representative of, conditions during the period of new rates. A twelve-month period is selected as a test year and is then restated, to the extent necessary, to produce the test period data considered reflective of conditions during the period in which rates are to be in effect. The test year provides the data foundation upon which the rate case is built. It is the starting point for developing

investment and operating results that are presumed to be representative of future conditions so that future rate needs may be reasonably estimated.

An update is a measure of the period of time from the end of the ordered test year to some arbitrary date (usually a month or so before the filing of direct testimony is due). The purpose of including an update period in the rate case is to, as much as possible, capture the most current investment, revenues and costs in the instant case prior to the filing of direct testimony.

Q. IS THE PUBLIC COUNSEL'S POSITION AN ATTEMPT TO REFLECT THE MOST RECENT LEVEL OF COSTS REPRESENTATIVE OF THE PERIOD THE NEW RATES WILL BE IN EFFECT?

A. Yes.

Q. DOES MR. LYONS DENY THAT THE COMPANY WAS REIMBURSED BY ITS INSURANCE PROVIDERS FOR COSTS RELATED TO THE FIRE?

A. No. Mr. Lyons willing admits that the Company was reimbursed for the majority of the fire costs incurred. On page 40, lines 9 – 11, of Mr. Lyons' rebuttal testimony, he states:

> Amounts received during October 2001 and November 2001 totaled only $7,500,000, or approximately one-third of the total settlement. After these initial payments were received, the remaining two-thirds of the total settlement remained subject to acceptance by the insurance carrier.

And, regarding the remaining settlement amount, he added on lines 16 and 17:

> It is significant to note that it was not until May 1, 2002 that the Company received a final settlement amount.

His testimony was corroborated by the Company's response to MPSC Staff Data Request No. 214 (attached as Schedule TJR-12 to this testimony):

**

**

Q. SHOULD THE COMPANY BE ALLOWED TO INCLUDE IN RATES THE FIRE COSTS FOR WHICH IT HAS BEEN REIMBURSED JUST BECAUSE THE INSURANCE RECOVERIES FELL OUTSIDE OF THE TEST YEAR AND UPDATE PERIOD?

A. No, of course not. A basic premise of regulatory ratemaking is that the revenue requirement include an appropriate return on shareholders investment and the recovery of prudent and reasonable ongoing expenses. Mr. Lyons' proposal is that the fire costs, even though they have been reimbursed, should be treated as an ongoing expense. His recommendation is illogical. Company has provided no evidence or testimony that it expects to incur on a regular basis additional power plant fires that will cause it to suffer the inequities of unreimbursed costs associated with such catastrophes. Neither has the Public Counsel sought to deny the Company recovery of any costs related to the Venice Power Plant fire that were not covered by the insurance proceeds. Company's position is illogical because it has already recovered the costs of the fire via insurance proceeds, and any remaining costs that were not recovered or were associated with enhancements to the plant have not been challenged for disallowance by the Public Counsel.

LOBBYING COSTS

Q. WHAT IS THE ISSUE?

A. Beginning on page 32, line 17, Mr. Lyons discusses his opposition to Staff's position to eliminate dues associated with the Edison Electric Institute (on page 3, lines 10 – 20, page 4, lines 20 – 23, and page 5, lines 1 – 10, of her direct testimony, Ms. Leasha Teel discusses the adjustment to disallow the dues of the Edison Electric Institute because of the organization's lobbying activities). Public Counsel disagrees with Mr. Lyons assertions that lobbying costs should be included in rates; furthermore, Public Counsel does not believe that the Staff's position regarding lobbying costs is complete because it has not recognized that other lobbying costs were also booked above the line during the test year and that those other lobbying costs should also be disallowed.

Q. WAS THE STAFF MADE AWARE THAT THE OTHER LOBBYING COSTS WERE ALSO BOOKED ABOVE THE LINE?

A. Yes, however, if the Staff relied on the Company's response to OPC Data Request Nos. 1017 and MPSC Staff Data Request No. 42 (attached as Schedules TJR-13 and TJR-14 to this testimony, respectively), provided in Union Electric Company Case No. EM-96-149, during its investigation, it is possible that they may have overlooked the additional lobbying costs. Their oversight would have been understandable given that the Company's responses to the data requests provided incorrect and misleading information.

Company's responses stated that lobbying costs and expenses are charged to a below the line account. Public Counsel later discovered that the Company had in fact booked a significant amount of lobbying costs above the line.

Q. SHOULD THE STAFF'S LOBBYING ADJUSTMENT BE MODIFIED TO DISALLOW THE LOBBYING COSTS YOU IDENTIFIED IN YOUR REBUTTAL TESTIMONY?

A. Yes. It is the Public Counsel's opinion that all lobbying costs incurred by the Company during the test year should be disallowed. Our recommendation includes the Company titled "legislative costs" which we believe are nothing more than a new name applied to lobbying activities it advocated in the State of Missouri. Public Counsel recommends that the MPSC Staff correct their oversight on this matter by recognizing that the Company provided the auditors with incorrect and misleading information and by accepting an additional lobbying expense disallowance in the amount shown in my rebuttal testimony.

Q. DOES THIS CONCLUDE YOUR CROSS-SURREBUTTAL TESTIMONY?

A. Yes, it does.

INDEX OF SCHEDULES TO ROBERTSON CROSS-SURREBUTTAL

SCHEDULE TJR-1

HAS BEEN DEEMED

PROPRIETARY

IN ITS ENTIRETY.

SCHEDULE TJR-2

HAS BEEN DEEMED

PROPRIETARY

IN ITS ENTIRETY.

SCHEDULE TJR-3

HAS BEEN DEEMED

PROPRIETARY

IN ITS ENTIRETY.

SCHEDULE TJR-4

HAS BEEN DEEMED

PROPRIETARY

IN ITS ENTIRETY.

No. 37

DATA INFORMATION REQUEST
Union Electric Company
CASE NO. EC-02-001

Requested From: Daphyne Bradley
Date Requested: 12/07/01
Information Requested: See Attached

Requested By: John Cassidy

Information Provided: See attached.

The attached information provided to the Missouri Public Service Commission Staff in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission Staff if, during the pendency of Case No. EC-02-001 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

If these data are voluminous, please (1) identify the relevant documents and their location (2) make arrangements with requestor to have documents available for inspection in the Union Electric Company office, or other location mutually agreeable. Where identification of a document is requested, briefly describe the document (e.g. book, letter, memorandum, report) and state the following information as applicable for the particular document: name, title, number, author, date of publication and publisher, addresses, date written, and the name and address of the person(s) having possession of the document. As used in this data request the term "document(s)" includes publication of any format, workpapers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies of data, recordings, transcriptions and printed, typed or written materials of every kind in your possession, custody or control within your knowledge. The pronoun "you" or "your" refers to Union Electric Company and its employees, contractors, agents or others employed by or acting in its behalf.

Signed By: Daphyne Bradley

Date Response Received: _____

Prepared By: Donald L. Richardson

No. 37
Attachment

DATA INFORMATION REQUEST
Union Electric Company
CASE NO. EC-02-001

Requested From: Daphyne Bradley
Date Requested: 12/07/01
Information Requested:

1. Provide all documentation describing and explaining all sites for which the Company has been identified as a potentially responsible party for environmental cleanup through June 30, 2001.

2. Provide all documentation describing and explaining all sites for which the Company has been identified as a potentially responsible party for environmental cleanup from July 1, 2001 through December 31, 2001. Update on a going forward basis as necessary.

3. For each site listed in item 1 and 2 above, list all possible sources of funds that may exist to assist the Company in cleanup of each environmental site.

4. Describe all activities the Company has performed to determine other potentially liable parties to each potential cleanup site. Provide all documentation related to this process.

5. Describe all efforts the Company has made to secure outside sources of funds to assist in paying for each potential cleanup site. Provide all documentation related to this process.

6. For each site listed in item 1 and 2 above, provide the amount of expense the Company reasonably estimates it will incur to clean up each site.

7. For each amount and site listed in item 6 above, provide the final date the Company estimates that it will actually spend the amount listed in item 6 above.

8. Provide all documentation the Company has to support the responses to items 6 and 7 above.

The Company objects to the term "potentially responsible party" in that the term is undefined. The Company interprets the data request to refer to all contaminated sites for which the Company bears responsibility without regard to a particular environmental statutory classification (i.e., CERCLA, RCRA). Responsive documentation is too voluminous to produce. Accordingly, the Company provides the following summary response.

Funding of Investigation and Clean-Up Costs Via Insurance

Prior to their merger into Union Electric Company (""UE"), Missouri Power & Light, Missouri Edison and Missouri Utilities (subsidiaries of UE) all maintained individual, occurrence-based policies. These policies generally had low deductibles and fairly low levels of coverage (i.e., Missouri Power & Light, $50,000 deductible and $250,000 coverage limit). Until recently, Missouri law regarding insurance coverage has been disadvantageous to policyholders. Now, however, Missouri courts have ruled that response (cleanup) costs can be considered "damages" within the meaning of insurance policies. As a result of these developments, the Company is evaluating whether insurance coverage is available at sites owned and operated by its former subsidiaries. As costs are incurred in connection with such sites, the Company intends to aggressively pursue insurance coverage where available. Due to the type of coverage maintained by UE, the Company does not believe insurance coverage is available for its Alton, Illinois and Keokuk, Iowa manufactured gas plant sites.

MGP Sites

Union Electric Company and its subsidiaries owned / operated or otherwise acquired approximately fourteen (14) manufactured gas plant (MGP) sites in Missouri, Illinois and Iowa. Those sites are as follows: Columbia, Boonville, Moberly, Jefferson City, Excelsior Springs, Huntsville, Mexico, Louisiana, Cape Girardeau, Rivermines (a.k.a. Flat River), Ryder, Ray Avenue (all in Missouri); Alton, Illinois, and Keokuk, Iowa. Site investigations are underway or planned for all of the MGP sites that have not yet been cleaned up to determine whether remediation actions are warranted. In the Company's judgment, and based on currently available data, not all sites will require remediation. The Missouri Department of Natural Resources (MDNR) has issued no further action letters for the following sites: Mexico, Cape Girardeau, Louisiana, and Rivermines.

Remediated Sites: Columbia & Booneville

The Company performed remediation activities at Booneville ($1.3M) and Columbia ($3.1M) MGP sites. Further actions are not planned for those sites at this time.

Scheduled Remedial Actions – Jefferson City & Moberly

Site conditions at Jefferson City and Mobery have been fully characterized and remediation activities are scheduled for 2002 and 2004, respectively. The Company anticipates cleanup costs at Jefferson City to total approximately $3M. Cleanup costs for Moberly have not yet been developed.

Site Investigations and Remedial Design – Excelsior Springs & Huntsville

The Company is currently negotiating with the City of Excelsior Springs regarding access so that site characterization activities can occur. The Company anticipates completing its investigation in 2002. Investigation costs typically run between $200k to $300k per site. Once investigation activities at Excelsior Springs are concluded, the Company intends to conduct similar activities at the Huntsville MGP, probably in 2005.

Remaining Sites – Ryder, Ray Avenue, Alton and Keokuk

No immediate activities are currently planned for the Ryder and Ray Avenue Sites. The Company believes, based upon its investigation of former site operations and ownership, that other PRPs may be responsbile for contamination existing at the site. Specifically, the Ray Avenue Site was a former Koppers Company coal tar plant and the Ryder MGP was owned by the Laclede Gaslight Company.

The Company intends to conduct additional investigation work at its former Alton MGP site in 2002. Prior to conducting such work, however, the Company will need to negotiate access with the current owner and its long term tenant, the United States Postal Service. With respect to the Keokuk site, the Company has reached a partial settlement ($1.8M) with United Cities Gas, a former operator of the facility. Negotiations are ongoing with other PRPs such as Amoco. Stone and Webster, a PRP who designed and may have operated the facility, has filed for bankruptcy protection. The Company has filed a CERCLA claim in the bankruptcy proceeding but recovery of any amount on such a contingent and unsecured claim is doubtful.

Rose Chemical Site

This PCB-contaminated site is considered closed and a final consent decree was entered with the court on August 27, 2000. Missouri Power & Light, a subsidiary of UE, sent electrical equipment containing PCBs to the site. UE incurred

remediation costs of approximately $110,000 in connection with this site and no further costs are anticipated.

Missouri Electric Works

USEPA identified Missouri Edison as a PRP at this site in 1987. A Consent Decree was entered in 1991 requiring the settling defendants to conduct soil remediation and groundwater investigations at the site. The PRP Group was successful in obtaining mixed funding from USEPA, insurance proceeds from the site owner's carries (approximately $7.4 M), as well as settlements from recalcitrant PRPs. Soil remediation activities at the site totaled approximately $7.5M. The Company does not anticipate significant additional expenditures under the Consent Decree.

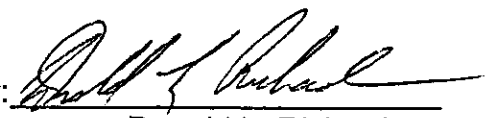
Sauget Areas 1 and 2

In June and September 2000, USEPA and the Department of Justice advised the Company that it was considered a PRP in connection with two Superfund sites known as Sauget Area 1 and Sauget Area 2. With respect to Area 1, DOJ added UE as a defendant in a pre-existing lawsuit involving the former Monsanto Chemical Company along with 16 other defendants. UE owns and operates transmission and distribution facilities in an area known as Dead Creek. Industrial companies in the area historically used Dead Creek as a repository for their industrial process waste. DOJ seeks recovery of cleanup costs in excess of $2M and Monsanto seeks to reallcoate remediation costs of $15M to other defendants. The Company considers its liability exposure to be nominal.

Formal notice from U.S. EPA was received on June 23, 2000, informing us of our involvement as a PRP at the Sauget Area 2 Site in Sauget, Illinois. From the 100+ parties identified as PRPs, a PRP group consisting of 11 companies has been formed called the Sauget Area 2 Sites Group or "SA2SG." On September 29, 2000, the PRP group submitted a good faith offer that included a proposed Administrative Order on Consent ("AOC") and a proposed Scope of Work ("SOW"). The Agency is on an aggressive schedule and work should begin in 2002 collecting samples for the site evaluation and if appropriate, proposed clean-up.

The Sauget Area 2 consists of five known disposal areas adjacent or in close proximity to the Mississippi River. The five disposal areas are known as Sites O, P, Q, R, and S. UE is an owner of Site P and operated ash ponds in what is now known as Site Q. Due to the proximity of the Area 2 sites to the Mississippi River, the Company cannot rule out the possibility that the government will seek natural resource damages or require groundwater or remediation activities that impact the river. Under CERCLA's liability scheme, UE's exposure may not be limited to its fly ash operations. Accordingly, the Company is aggressively seeking to minimize its liability exposure. Based on current estimates, UE's

portion of the initial investigation cost is $600 thousand. Over the next two years, internal costs for legal and technical costs, designed to minimize our liability and pursue insurance coverage, could range as high as $1 to $2 million. Approximately $650,000 has been spent to date.

Signed by: 

Donald L. Richardson
Consulting Environmental Engineer

SCHEDULE TJR-6

HAS BEEN DEEMED

PROPRIETARY

IN ITS ENTIRETY.

FILE COPY

AmerenUE's Response to
OPC Data Request
Case No. EM-96-149
6th Sharing Period (3rd Year EARP II)

No. 1030:

Information Requested:
Company's response to OPC 1015 identified the Sauget Site remediation area (area south of the former Cahokia Plant) as the largest portion of environmental reserve. Is this site the same as the Cahokia Plant (Sauget, IL) Superfund site? If yes, please provide copies of all correspondence between the Company and the EPA, and the Company and the IL DNR regarding the Company's identification as a PRP for the Cahokia Plant (Sauget, IL) Superfund site. If no, please provide copies of all documentation that describe the purpose of the remediation and explain the Company's associated liabilities with regard to Federal and State statutes.

Response Provided:
Respondent is uncertain as to what is meant by the "Cahokia Plant Superfund Site." To the extent OPC is referring to prior litigation involving the sale of the Cahokia Power Plant, the answer is "no." Respondent objects to this request in that "all documentation that describes the purpose of the remediation and...associated liabilities," is overbroad and unduly burdensome. The Company, along with other members of the Sauget Area 2 Sites Group, is in the process of negotiating final details of the Area 2 Sampling Plan with U.S. EPA and anticipates that such investigative work will commence in the Summer and Fall of 2002. Subject to the foregoing objections and without waiving same, Respondent will provide copies of the following: (1) Special Notice of Liability; (2) Administrative Order on Consent; (3) Amended Complaint filed by the United States Department of Justice and Answer filed by Union Electric Company; (4) comments filed by Union Electric Company in response to National Priorities Listing (NPL) of Sauget Area 2.

Signed By: Susan B Knowles
Prepared By: Susan B. Knowles
Title: Associate General Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION

UNITED STATES OF AMERICA Plaintiff, v. MONSANTO CHEMICAL, et al. Defendant.	)	Cause No. 99-63-DRH

ANSWER OF DEFENDANT UNION ELECTRIC COMPANY

Defendant Union Electric Company ("Union Electric"), and for its answer to Plaintiffs Amended Complaint, states as follows:

1. Defendant Union Electric admits that this is a civil action pursuant to CERCLA section 107 for cost recovery. Defendant Union Electric denies that it was in anyway involved with any release or threat of release of hazardous substances at the Site. Defendant Union Electric denies any allegations contained in paragraph 1 not admitted above.

2. Defendant Union Electric admits the allegations contained in paragraph 2.

3. Defendant Union Electric denies that it was in anyway involved with the release of hazardous substances at the Site. Defendant Union Electric admits the remaining allegations contained in paragraph 3.

4. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 4, and therefore, denies those allegations.

5. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5, and therefore, denies those allegations.

6. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 6, and therefore, denies those allegations.

7. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 7, and therefore, denies those allegations.

8. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 8, and therefore, denies those allegations.

9. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 9, and therefore, denies those allegations.

10. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 10, and therefore, denies those allegations.

11. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 11, and therefore, denies those allegations.

12. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 12, and therefore, denies those allegations.

13. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 13, and therefore, denies those allegations.

14. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 14, and therefore, denies those allegations.

15. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 15, and therefore, denies those allegations.

16. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 16, and therefore, denies those allegations.

17. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 17, and therefore, denies those allegations.

18. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 18, and therefore, denies those allegations.

19. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 19, and therefore, denies those allegations.

20. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 20, and therefore, denies those allegations.

21. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 21, and therefore, denies those allegations.

22. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 22, and therefore, denies those allegations.

23. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 23, and therefore, denies those allegations.

24. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 24, and therefore, denies those allegations.

25. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 25, and therefore, denies those allegations.

26. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 26, and therefore, denies those allegations.

27. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 27, and therefore, denies those allegations.

28. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 28, and therefore, denies those allegations.

29. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 29, and therefore, denies those allegations.

30. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 30, and therefore, denies those allegations.

31. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 31, and therefore, denies those allegations.

32. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 32, and therefore, denies those allegations.

33. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 33, and therefore, denies those allegations.

34. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 34, and therefore, denies those allegations.

35. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 35, and therefore, denies those allegations.

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37. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 37, and therefore, denies those allegations.

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42. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 42, and therefore, denies those allegations.

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46. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 46, and therefore, denies those allegations.

47. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 47 and therefore denies those allegations.

48. Defendant Union Electric denies the allegations contained in paragraph 48.

49. Defendant Union Electric denies the allegations contained in paragraph 49.

50. Defendant Union Electric denies the allegations contained in paragraph 50.

51. Defendant Union Electric denies the allegations contained in paragraph 51.

52. Defendant Union Electric denies the allegations contained in paragraph 52.

53. Defendant Union Electric denies the allegations contained in paragraph 53.

54. Defendant Union Electric denies the allegations contained in paragraph 54.

55. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 55, and, therefore, denies those allegations.

56. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 56, and, therefore, denies those allegations.

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58. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 58, and therefore, denies those

allegations.

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66. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 66, and, therefore, denies those

allegations.

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79. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 79, and therefore, denies those allegations.

80. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 80, and therefore, denies those allegations.

81. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 81. and therefore, denies those allegations.

82. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 82, and therefore, denies those

allegations.

83. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 83, and therefore, denies those allegations.

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87. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 87, and therefore, denies those allegations.

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allegations.

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97. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 97, and therefore, denies those allegations.

98. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 98, and therefore, denies those

allegations.

99. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 99, and therefore, denies those allegations.

100. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 100, and therefore, denies those allegations.

101. Defendant Union Electric denies the allegations in paragraph 101.

102. Defendant Union Electric denies the allegations in paragraph 102.

103. Defendant Union Electric denies the allegations in paragraph 103.

104. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 104, and therefore, denies those allegations.

105. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 105, and therefore, denies those allegations.

106. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 106, and therefore, denies those allegations.

107. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 107, and therefore, denies those allegations.

108. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 108, and therefore, denies those

allegations.

109. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 109, and therefore, denies those allegations.

110. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 110, and therefore, denies those allegations.

111. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 111, and therefore, denies those allegations.

112. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 112, and therefore, denies those allegations.

113. Defendant Union Electric realleges and incorporates by reference herein its responses to paragraphs number 1 through 112 and is its answer to paragraph 113.

114. Defendant Union Electric admits the allegations contained in paragraph 114.

115. Defendant Union Electric denies the allegations contained in paragraph 115.

116. Defendant Union Electric denies the allegations contained in paragraph 116.

117. Defendant Union Electric denies allegations contained in paragraph 117.

118. Defendant Union Electric denies the allegations contained in paragraph 118.

119. Defendant Union Electric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained paragraph 119, and, therefore, denies those allegations.

120. Defendant Union Electric is without sufficient knowledge or information belief as

to the truth of the allegations contained in paragraph 120 and, therefore, denies those allegations.

121. Defendant Union Electric denies the allegations contained in paragraph 121.

122. Defendant Union Electric denies the allegations contained in paragraph 122.

123. Plaintiff's claims fail to state a claim upon which relief may be granted.

124. Defendant Union Electric is not liable for costs to clean up the sites at issue because Union Electric never owned or operated a facility from which there was a release or threatened release of hazardous substances into the environment which caused plaintiff to incur response costs.

125. The plaintiff may not recover from Union Electric any amounts that exceed the portion of costs or damages that are attributable to any release or threat of release from any hazardous substances from any portion of the Site that Union Electric owns.

126. The claims against Union Electric are barred to the extent such claims relate to conduct that occurred before the effective date of CERCLA because the retroactive application of CERCLA is unconstitutional in that Union Electric could not have altered its conduct to conform with legal requirements to avoid the liability now sought to be imposed nor could it have reasonably anticipated the type of liability that plaintiff seeks to impose.

127. The claims of plaintiff against Union Electric are barred to the extent such claims relate to conduct that occurred before the effective date of CERCLA because CERCLA does not have retroactive effect.

128. The claims of plaintiff are barred by the statute of limitations including, but not limited to, 42 U. S. C. Section 9613 (g) (2).

129. The claims of plaintiff are barred, in whole or in part, by the doctrine of unclean hands, caveat emptor, assumption of the risk, unjust enrichment, waiver, latches, or estoppel, or the application of one or more of these equitable doctrines.

130. The claims of plaintiff are barred by its failure to join necessary and indispensable parties to this action.

131. The claims of plaintiff are barred because damages, if any, were caused by accidental events beyond the control of Union Electric.

132. If Union Electric is to be judged liable for costs or damages associated with the Sites, Union Electric is entitled to a set off or reduction in said liability to the extent said costs have been paid by others in settlement of claims against them.

133. Because the harm, if any, is divisible and there is a reasonable basis for dividing the harm, joint and several liability may not be imposed.

134. Plaintiff's claims are barred or limited insofar as they seek to recover costs, damages, expenses and any other type of relief incurred before the effective date of CERCLA on December 11, 1980.

135. Upon information and belief, the acts or omissions of Union Electric, if any, did not proximately cause any of the response costs or damages of which plaintiff now complains; therefore, no liability exists on the part of Union Electric for any such response costs or damages.

136. If Union Electric is ultimately adjudged liable for costs of response or damages associated with the Sites, said liability is limited, under the doctrines of comparative implied indemnity and equitable indemnity, to Union Electric's owned equitable share of liability compared to the liabilities of all other persons including plaintiffs.

137. The costs incurred by plaintiff are not response costs recoverable from Union Electric within the meaning of CERCLA.

138. The costs incurred by plaintiff were not necessary costs of response and were not reasonably incurred and are therefore not recoverable from Union Electric.

139. The actual or threatened release is of hazardous wastes or other substances, if any, and the damages resulting therefrom, if any, were caused solely by an act or omission of a third party other than an employee or agent of Union Electric, or other than one whose act or omission occurred in connection with a contractual relationship, existing directly or indirectly with Union Electric, and as a result of 42 U. S. C. Section 9607 (b), the claim of plaintiff is barred in whole or in part.

140. Plaintiff is not entitled to recovery of its costs of prosecuting this action or attorneys' fees that they have incurred or may incur in the future.

141. Union Electric hereby adopts and incorporates herein by reference all affirmative defenses that have been or will be asserted by other parties to this action to the extent such defenses are applicable to Union Electric.

142. Union Electric reserves the right to rely on all further affirmative defenses that become available or appear during discovery proceedings in this action and reserves the right to amend its Answer and Affirmative Defenses for the purpose of asserting any such additional affirmative defenses.

WHEREFORE, defendant Union Electric Company, having fully answered, prays that the claims against Union Electric be dismissed with prejudice and for such other relief as the Court deems just and proper.

Respectfully submitted,

Thomas B. Weaver
ARMSTRONG TEASDALE LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
(314) 621-5070
(314) 621-5065 (facsimile)

Susan B. Knowles
Ameren Services
1901 Chouteau Avenue
P. O. Box 66149 (MC 1310)
St. Louis, MO 63166-6149

ATTORNEYS FOR DEFENDANT UNION ELECTRIC COMPANY.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was mailed via U.S. Mail, postage prepaid, on this 18th day of January, 2001, to:

Karen E. Torrent, Trial Attorney
Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-3581
(202) 616-6584 fax

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David J. Barram, Administrator
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Washington, D.C. 20405
(202) 501-0298

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MacDonald, Hebrank & True
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and
Jane Direnzo Pigott
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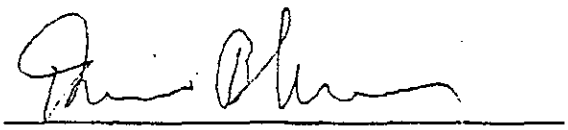
Counsel for Anheuser-Busch, Inc.

Hrant Norsigian, Jr.
Kasten, Gerber & Norsigian
1400 S. Lincoln, Suite B
O'Fallon, IL 62269

Counsel for Metro Construction Equipment, Inc.



FILE COPY

Data Information Request No. 186
From Union Electric Company d/b/a AmerenUE
MPSC Case No. EC-2002-1

Requested From: Mary Hoyt

Date of Request: May 30, 2002

Requested By: John Cassidy

Information Requested:

In response to Staff Data Requests 32 and 37 in Case No. EC-2002-1, the Company indicated that cleanup costs related to Sauget Areas 1 and 2 could range as high as $1 to $2 million over the next two years.

1. Provide a copy of all bids or RFPs the Company has submitted with regard to initiating this cleanup for Sauget Areas 1 and 2.
2. Provide a copy of all responses received to these bids (RFPs).
3. Provide a copy of AmerenUE's evaluation of the responses in item 2 above.
4. Indicate which bid (RFP) AmerenUE chose and why.
5. Provide a copy of the contract with AmerenUE's bid (RFP) selection.
6. For items 1-5 above, provide dates, amounts and detailed explanation.

Response

The Company has not incurred cleanup costs in connection with Sauget Area 1. To date, the Company's Area 1 expenses have been limited to litigation defense costs.

With respect to Area 2, the Company was joined with ten other potentially responsible parties to perform Remedial Investigation / Feasibility Studies (RI/FS) under the terms of an Administrative Order on Consent (AOC) issued by USEPA. This group, the Sauget Area Sites Group, has retained the following primary contractors to perform the sampling work required by the AOC: AMEC (ecological risk assessment), Herst (management support services), URS (soil and groundwater sampling and data validation), and ENSR (human health risk assessment). The contractors were chosen based upon a variety of factors including cost and expertise. In addition, since the various members of the Group have divergent interests, the successful candidates could not have a particularly strong allegiance or business relationship with any individual Group member.

The Area 2 statement of work (SOW), sampling plan and bid proposals are voluminous and the Company will make available for inspection such materials at its offices in St. Louis. The actual contracts were executed by the Group's designated project manager.

In addition, the Company has retained various professionals to assist and advise on all aspects of Sauget Area 2. Such professionals include New Fields Inc. and Ish Inc. who were selected (New Fields) via recommendation by the Company's outside lawfirm (Wildman Harrold) or were known to the Company through its involvement with EPRI (Ish Inc.).

The attached information provided to the Missouri Public Service Commission Staff in response to the above Data Information Request is accurate and complete and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission Staff if, during the pendency of Case No. EC-2002-1 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

If these data are voluminous, please (1) identify the relevant documents and their location; (2) make arrangements with requestor to have documents available for inspection at a location mutually agreeable. Where identification of a document is requested, briefly describe the document (e.g., book, letter, memorandum, report) and state the following information as applicable for the particular document: name, title, number, author, date of publication and publisher, addresses, date written, and the name and address of the person(s) having possession of the document. As used in this Data Request, the term "document(s)" includes publication of any format, workpapers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies of data, recordings, transcriptions and printed, typed or written materials of every kind in your possession, custody or control within your knowledge. The pronoun "you" or "your" refers to the person identified in the "Requested From" block above and all other employees, contractors, agents or others employed by or acting on behalf of the organization, group or governmental unit associated with that person. When used with respect to a natural person, "identify" means state his or her name, address, telephone number, current employer, job title, and current work telephone number.

Response Provided By: Susan Knowles & Paul Pike Date: June 12, 2002

Signed By: Mary Hoyt

Schedule TJR-8
Page 2 of 2

FILE COPY

Data Information Request No. 208
From Union Electric Company d/b/a AmerenUE
MPSC Case No. EC-2002-1

Requested From: Mary Hoyt

Date of Request: June 4, 2002

Requested By: John Cassidy

Information Requested:
(Please refer to response to data request 37 from Case No. EC-2002-1.)

1. Over what time period (what years) did the contamination occur at Sauget Area 1?
2. Over what time period did the contamination occur at Sauget Area 2?
3. When did AmerenUE acquire the property located at Sauget Area 1?
4. When did AmerenUE acquire the property located at Sauget Area 2?
5. What does AmerenUE use the property at Sauget Area 1 for today? Please describe.
6. What does AmerenUE use the property at Sauget Area 2for today? Please describe.
7. When did AmerenUE discontinue use of the Ash Ponds at Sauget Area 2?

Response to Questions 1, 3, 5:

Area 1 – Dead Creek

USEPA has defined a creek and 7 landfills in Sauget and Cahokia, Illinois as constituting a "facility" under the federal Superfund law. That entire area has been denominated as Sauget Area 1. In United States v. Monsanto Chemical Company, the government has filed a cost recovery action against numerous industrial companies, including Solutia f/n/a Monsanto Chemical Company. According to the Department of Justice allegations, the contamination in Sauget Area 1 commenced in the 1920's with the discharge of industrial waste into Dead Creek and the burying of hazardous substances in landfills near or adjacent to the Creek. While contaminated sediment has been removed from the creek bed, the landfills have not been remediated and the groundwater underlying Area 1 is contaminated. UE owns transmission and distribution lines that either cross or are adjacent to the Creek. Until a final remedy has been selected and implemented, the contamination is ongoing.

Appended hereto is correspondence detailing the history of the Company's acquisition of property in Area 1. The Company continues to use the transmission and distribution facilities in Area 1.

Response to Questions 2, 4, 6, 7:

Area 2

Area 2 is comprised of a series of landfills, former treatment lagoons and/or surface impoundments located in the vicinity of the Mississippi River in Sauget, Illinois. To the best of the Company's knowledge, landfilling commenced in the late 1960s and the Village of Sauget constructed sewage lagoons in the 1960s. From approximately 1949 – 1974, Union Electric Company operated ash ponds on leased property in an area that is adjacent to property on which chemical, industrial and sanitary landfilling occurred. The ash ponds were used in conjunction with the former Cahokia Power Plant. The ash ponds are no longer in use.

In addition, UE owns a parcel of property (Site P) that it subsequently leased in 1974 to a landfill operator, Sauget & Company, for the disposal of construction debris. In violation of its permit, Sauget & Co. apparently accepted hazardous waste from industrial companies in Sauget. In the late 1960s, the Company acquired Site P from railroad companies as part of a transmission line corridor. The Company continues to own and use Site P for transmission towers and lines.

The attached information provided to the Missouri Public Service Commission Staff in response to the above Data Information Request is accurate and complete and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission Staff if, during the pendency of Case No. EC-2002-1 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

If these data are voluminous, please (1) identify the relevant documents and their location; (2) make arrangements with requestor to have documents available for inspection at a location mutually agreeable. Where identification of a document is requested, briefly describe the document (e.g., book, letter, memorandum, report) and state the following information as applicable for the particular document: name, title, number, author, date of publication and publisher, addresses, date written, and the name and address of the person(s) having possession of the document. As used in this Data Request, the term "document(s)" includes publication of any format, workpapers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies of data, recordings, transcriptions and printed, typed or written materials of every kind in your possession, custody or control within your knowledge. The pronoun "you" or "your" refers to the person identified in the "Requested From" block above and all other employees, contractors, agents or others employed by or acting on behalf of the organization, group or governmental unit associated with that person. When used with respect to a natural person, "identify" means state his or her name, address, telephone number, current employer, job title, and current work telephone number.

Response Provided By: Susan B. Knowles Date: June 12, 2002

Signed By: Mary Hoyt

Schedule TJR-9
Page 2 of 5

Legal File

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June 18, 2001

FEDERAL EXPRESS

Ms. Karen Torrent, Esq.
U.S. Department of Justice
Environment & Natural Resources Division
Room 12088
1425 New York Avenue NW
Washington, DC 20005

Ameren

RE: United States v. Monsanto Chemical Company, Solutia Inc., et al.
No. 99-63-DRH

Dear Ms. Torrent:

On September 5, 2000, the United States Department of Justice added Union Electric Company ("UE" or the "Company") as a defendant to litigation involving Monsanto Chemical Company, Solutia Inc. and others. Pursuant to Section 107 of the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA", 42 U.S.C. §9607), the government seeks recovery of certain clean-up costs allegedly incurred in responding to a release of hazardous substances in an area known as Dead Creek.

Over the last century various industrial companies have used Dead Creek as a repository for their industrial wastes. Such contaminants apparently flowed downstream and "have come to be located on property currently owned by Union Electric." (¶ 102, Amended Complaint) There are no allegations that Union Electric engaged in similar disposal activity. Rather, the basis for Union Electric's alleged liability stems from the Company's ownership of a transmission line which crosses the Creek over an area referred to as Creek Segment F. This transmission line is located approximately three miles south of the last Creek disposal site (Site N) at Judith Lane in Sauget, Illinois. The nature of Union Electric's property interests in the area is described more fully below.

In the mid-1920's, Union Electric constructed the Cahokia–Buck Knob electric transmission line which connects a hydroelectric facility in central Missouri to the former Cahokia Power Plant in Sauget, Illinois. The Cahokia-Crystal City segment of that line is located predominantly in Illinois. In order to construct the line, the

Company acquired easements from various property owners. The easements are for the width of the transmission line, typically an 80 foot wide right-of-way. However, with respect to towers 18-20, located in Cahokia, Illinois, the Company obtained the necessary property in fee rather than by easement. Enclosed is a copy of the quitclaim deed by which Union Electric Company of Illinois (a predecessor company) acquired in 1925 various parcels or parts of properties (Lots 31, 55, 73, 100, 101, 56, and 108) from a straw party, Louis H. and Fanny James Egan. Two additional parcels of property (portions of Lots 203 and 72) were acquired by tax deed in 1924.

Also, enclosed for your review are Sidwell aerial maps (Nos. 06-03B, 06-03C); a UE transmission line plan and profile drawing (No. 7543-Y-3); a map from our real estate records outlining fee-owned parcels; and an easement acquired in 1924 over land for which Frederick Pitzman and Josephine Methudy were trustees. Of particular interest is the contemporaneous map appended to the 1924 easement which depicts a trapezoidal parcel through which Dead Creek flowed. The Company does not own this parcel of property. The Sidwell maps have been marked to indicate the Company's right-of-way. However, according to our review of acquisition records, Lot 203 does not abut Dead Creek. According to the 1924 map, the land bordering both sides of the Creek is part of Lot 302, on which the Company's facilities were placed by virtue of the 1924 easement. Under the terms of the 1924 easement, the Company agreed to pay property taxes but is not the fee owner. (Transmission Tower Number 19 is located on a portion of Lot 55 south of the creek and Tower No. 18 is located on the north side of the creek on an 80 foot wide easement.)

The Company's property interests are limited to the foregoing easements and fee parcels. The mere holding of an easement interest is insufficient to confer CERCLA liability. See Long Beach Unified Sch. Dist. v. Dorothy B. Godwin Cal. Living Trust, 32 F.3d 1364, 1368 (9th Cir. 1994) (copy enclosed).

Assuming arguendo that UE could be considered an "owner" under CERCLA, the government's apparent liability theory is overly broad. Under the government's theory, downstream landowners would be subject to liability for conditions they neither contributed to nor created nor have the ability to control. Moreover, UE's alleged ownership interests are no different than any of the other myriad owners whose properties happen to be located near or on the Creek, i.e., the church property located north of the Creek and adjacent to Tower No. 18 or the residential owners along the creek bed. The government has decided apparently not to join in its litigation all adjacent property owners. In this context, there is no legal distinction between UE and the other adjacent property owners. Accordingly, the Company respectfully suggests that the government reconsider its decision to add Union Electric Company as a party to the pending litigation and to dismiss UE from this action.

By copy of this letter, I am sending copies of the enclosed maps and documents to Mr. Tom Martin of the United States Environmental Protection Agency, so as to facilitate

the government's review of this matter. Once you have had the opportunity to review these materials (enclosed), please contact me or Mr. Tom Weaver of Armstrong Teasdale at (314) 342-8021 so that we may discuss these issues in further detail.

Sincerely,

Susan B. Knowles
Associate General Counsel

Enclosures

cc: Mr. Tom Martin, U.S. Environmental Protection Agency
Mr. Tom Weaver, Armstrong Teasdale

AmerenUE's Response to
OPC Data Request
Case No. EM-96-149
6th Sharing Period (3rd Year EARP II)

FILE COPY

No. 1052:

Regarding Environmental Costs, as of 6/30/01, did the Company own the Rose Chemical Site, Missouri Electric Works Site, Sauget Area 1, Sauget Area 2 site O, Sauget Area 2 Site P, Sauget Area 2 site Q, Sauget area 2 Site R, Sauget Area 2 Site S, Doresett Road UST Site, Rush Island Bioventing Project Site and the Venice Plant Air Permit Fee Site properties? For each of the properties not owned by the Company, if previously owned by the Company or a predecessor company, please provide the details regarding its original purchase and later disposal, i.e., purchaser, date, amount, gain/lose, USOA accounts booked, etc. If a property site was never owned by the Company, or a predecessor company, please describe the link to the Company's responsibility for the environmental investigation and/or remediation of the property site.

Supplemental Response No. 1:

As of 6/30/01, the Company owned in fee simple or possessed a property interest in the following: Sauget Area 1 Creek Segment F, Sauget Area 2 Site P; Dorsett Road UST Site, Rush Island Power Plant and the Venice Power Plant. The Company does not and has not owned the remaining sites (Rose Chemical, Missouri Electric Works, Sauget Area 2 Sites O, Q, R and S). As for the "link to the Company's responsibility," see pp 2-4 of the Company's response to MPSC Data Request No. 37 in Case No. EC-2002-1, as well as the liability standards set forth in the Comprehensive Environment Response, Compensation Liability Act (CERCLA 42 U.S.C. § 9601 et seq.) and federal court decision construing that Act. Specifically, liability extends to various categories of potentially responsible parties including the following: owners and operators; transporters, generators, and those individuals/entities that arrange for the disposal of hazardous waste and/or substances. Under both federal and state law, environmental liability is not limited to "Company owned electric property that is currently used and useful" as suggested by the OPC in its pre-filed testimony.

Signed By: Susan B Knowles

Prepared By: Susan B. Knowles
Title: Associate General Counsel

FILE COPY

AmerenUE's Response to
OPC Data Request
Case No. EM-96-149
6th Sharing Period (3rd Year EARP II)

No. 1030:

Information Requested:
Company's response to OPC 1015 identified the Sauget Site remediation area (area south of the former Cahokia Plant) as the largest portion of environmental reserve. Is this site the same as the Cahokia Plant (Sauget, IL) Superfund site? If yes, please provide copies of all correspondence between the Company and the EPA, and the Company and the IL DNR regarding the Company's identification as a PRP for the Cahokia Plant (Sauget, IL) Superfund site. If no, please provide copies of all documentation that describe the purpose of the remediation and explain the Company's associated liabilities with regard to Federal and State statutes.

Response Provided:
Respondent is uncertain as to what is meant by the "Cahokia Plant Superfund Site." To the extent OPC is referring to prior litigation involving the sale of the Cahokia Power Plant, the answer is "no." Respondent objects to this request in that "all documentation that describes the purpose of the remediation and...associated liabilities," is overbroad and unduly burdensome. The Company, along with other members of the Sauget Area 2 Sites Group, is in the process of negotiating final details of the Area 2 Sampling Plan with U.S. EPA and anticipates that such investigative work will commence in the Summer and Fall of 2002. Subject to the foregoing objections and without waiving same, Respondent will provide copies of the following: (1) Special Notice of Liability; (2) Administrative Order on Consent; (3) Amended Complaint filed by the United States Department of Justice and Answer filed by Union Electric Company; (4) comments filed by Union Electric Company in response to National Priorities Listing (NPL) of Sauget Area 2.

Signed By: Susan B Knowles
Prepared By: Susan B. Knowles
Title: Associate General Counsel

December 13, 2001

Docket Coordinator, Headquarters
U.S. Environmental Protection Agency
CERCLA Docket Office
1235 Jefferson Davis Highway
Crystal Gateway #1, First Floor
Arlington, VA 22202

Re: Comments on the Proposed Listing of Sauget Area 2, in Sauget and Cahokia, Illinois, on the CERCLA National Priorities List

Dear Docket Coordinator:

These comments are submitted by Union Electric Company d/b/a AmerenUE ("UE") in response to the proposal by the United States Environmental Protection Agency ("EPA") to list the "Sauget Area 2" sites on the National Priorities List (NPL). *See* 66 Fed. Reg. 47,618 (September 13, 2001). Sauget Area 2 is an aggregation of five parcels of land that are referred to as "sites" in the listing documents, the combined area of which totals 312 acres. Area 2 is located in Sauget and Cahokia, Illinois.

The EPA has notified UE that it is a Potentially Responsible Party at the proposed Area 2. UE has a significant interest in the proposed NPL listing because it is presently the owner of a portion of what the Agency has designated "Site P," within Area 2, and because it formerly owned and operated an electrical generating facility in Sauget, Illinois and leased a portion of one of the sites for the storage of fly ash. The ash ponds were located in a narrow corridor within the middle-section of a parcel that EPA has designated "Site Q."

The original Federal Register notice for this proposed listing set a deadline of November 13, 2001 for the filing of comments. By letter dated October 22, 2001, Mr. Dave Evans, Director of the State, Tribal and Site Investigation Center at EPA's OSWER granted UE a 30-day extension of the comment period, through December 13, 2001. A copy of the letter granting UE this extension is attached as Exhibit 1.

As part of these comments we attach and incorporate by reference as Exhibit 2 a technical report of Newfields, Inc., entitled *Comments on Sauget Area 2 Hazard Ranking System Listing Document* ("Newfields Report"); the 45 exhibits to the Newfields Report are in a separate 3-ring binder. In these comments, we refer to exhibits using the same numbers as those used by

Newfields. A list of exhibits appears at the end of the Newfields Report, and an additional copy of these comments, including the Newfields Report, appears at Tab 45 of the exhibit binder.

In proposing Area 2 for listing on the NPL, EPA made a series of fundamental errors:

1. when it aggregated "Site P" with other Sites in Area 2;

2. when it chose an inappropriate conceptual site model for Area 2;

3. when it aggregated three contiguous but distinct areas into a single parcel now identified as "Site Q";

4. when it disregarded its own 1994 performance of a CERCLA time-critical removal action on the southern portion of what the Agency refers to as Site Q;

5. when it incorrectly determined the length of wetland shorelines within Site Q;

6. when it assumed the presence of endangered species on Site Q without any verification for that assumption; and

7. when it relied on inappropriate sampling techniques in collecting groundwater data in Site Q.

All these errors were made in disregard of established legal authority; or of the Agency's own Hazard Ranking System (HRS) regulations, 40 C.F.R. Part 300; or of the Agency's own published guidance, *The Hazard Ranking System Guidance Manual* (November 1992) ("HRS Guidance") As such, the Agency actions are arbitrary, capricious and unreasonable, or not otherwise in accordance with the law. *Tex Tin Corporation v. EPA,* 992 F.2d 353, 354 (D.C. Cir. 1993).

In these comments, UE will present an abbreviated introduction, followed by an itemized discussion of the significant conceptual and regulatory errors made in characterizing and scoring the properties that comprise "Area 2."

I. BACKGROUND

The five properties that are collectively identified as "Area 2" in the Agency's proposed NPL listing notice all lie within the vicinity of Sauget and Cahokia, Illinois. Only two of these five properties are contiguous, but all were nevertheless aggregated by EPA in its proposed listing.

The five properties or "sites" that make up Area 2 have been designated by EPA as Sites O, P, Q, R and S, for a total of 312 acres. Four of the five sites have a distinct and rather singular history of use for various forms of waste disposal. A more detailed description of each site's history is found in the Newfields Report at pages 6-7.

Briefly, Site O, at 20 acres, is presently inactive, but from 1966 to 1978 it was used to contain sludge dewatering lagoons. Site P, at 28 acres, is inactive but at one time was operated as a permitted non-chemical landfill. As stated above, UE is an owner of a portion of Site P. Site R, at 25 acres, was operated as a landfill from 1957 to 1977 and was known as the Sauget Toxic Dump. The fourth site, Site S, is believed to have been operated as a chemical drum disposal site in the 1970s.

The fifth site, Site Q, at 255 acres, is the largest of the sites. Given its size, it is not surprising that the site was never devoted to a single use. Two parcels in Site Q — one at the site's northern end ("Northern Q") and the other at its southern end ("Southern Q") — both have a history of use for waste disposal. The very northern "dogleg" parcel, which is directly adjacent to Site R but which has boundaries distinct from Site R, was operated as the Sauget Municipal Landfill. The southern region of Site Q was put to an entirely different use unrelated to the northern portion; various portions of southern Q were used at different times for drum disposal. The central portion of Site Q ("Central Q"), according to aerial photographs and other documents, was used for neither landfilling nor waste disposal. A few areas within central-Q were used to store fly ash; more recently, the central parcel of Q has been used to store coal. Some areas within central Q have never been used for anything other than farming.

The five sites comprising "Area 2," then, have little or nothing in common historically and nothing in common at present except for the aggregation sought by EPA in the proposed listing. As will be shown in the discussion that follows, this lack of commonality is a fundamental and unavoidable shortcoming in EPA's proposal to cobble together a much larger Superfund site than is allowed under federal law, the HRS, or the EPA's own HRS Guidance.

II. EPA HAS NO BASIS FOR INCLUDING "SITE P" IN AREA 2.

Of all the errors committed by EPA in the proposed listing, its inclusion of Site P in Area 2 is the most obvious and it is unsupported by <u>any</u> authority.

EPA has the authority to list a release on the NPL if the HRS score for that release exceeds 28.5. But a review of the administrative record shows that here EPA did not score any single release. Instead, EPA aggregated all of the alleged "releases" at each of the sites it has identified – O, P, Q, R and S – into a single release, and then calculated a score for the aggregation. In doing so, EPA used toxicity values for contaminants found not at Site P, but at <u>Site R</u> (e.g., PCBs, VOCs) and assigned these values to all the sites rather than quantifying the true toxicity value for contaminants at each individual site. Had EPA used contaminant toxicity

values for materials actually found at Site P (only manganese and phenol), the Site P HRS score would be, as shown by Newfields, dramatically lower. Newfields Report, p. 23.

EPA does not have the statutory authority to aggregate releases from geographically distinct areas for purposes of scoring them collectively under the HRS. Authority for such site aggregation cannot be found in CERCLA itself, 42 U.S.C. § 9601 *et seq.*, nor in the regulations adopted under CERCLA, 40 C.F.R. Part 300. EPA has, in the past, claimed such authority under CERCLA, and has even cited to its so-called "Aggregation Policy" as support for its right to combine distinct, non-contiguous properties, but both those claims were squarely refuted by the Appellate Court in *Mead Corp. v. Browner*, 100 F.3d 152, 153 (D.C. Cir. 1996).

As will be further discussed below, EPA may not include Site P in its listing proposal for Area 2 unless Site P is independently scored under the HRS and it receives a sufficiently high HRS score on its own. Because EPA did not even bother to score Site P independently, there is no factual or legal support on which to base EPA's proposed inclusion of Site P in Area 2. Moreover, even were the Agency to have scored Site P under the HRS, it would have obtained a very low score. Site P simply should not be part of the Agency's Area 2 listing proposal.

1. The Agency Must Separately Score Non-Contiguous Sites.

Of the five "sites" proposed by EPA for inclusion and listing as "Area 2," only two bear designated boundaries that are contiguous.[1] The other three, Sites O, P, and S, are not contiguous, and of these, Site P is most distant from the others. A review of the HRS Documentation Record shows that EPA aggregated all of the sites within Area 2 when it calculated the HRS score for this area. The record contains no HRS scoring for Site P alone.

EPA's authority both to establish the NPL and to develop risk-based criteria for placing a facility on the NPL derives from Section 105(a)(8)(B), 42 U.S.C. § 9605(a)(8)(B). The appropriate risk-based criteria are set forth at CERCLA Section 105(a)(8)(A). Pursuant to this authority and using this fundamental criteria, EPA developed the Hazard Ranking System, 40 C.F.R. Part 300, App. A.

Under the CERCLA regulations, EPA may list a facility on the NPL only if it meets any one of three criteria: The facility scores sufficiently high under the HRS; or the facility is designated as being of "highest priority" by a state; or if (i) the Agency for Toxic Substances and Disease Registry (ATSDR) has issued a "health advisory" for the facility, and (ii) the EPA finds that the site poses a significant threat, and (iii) EPA determines that a remediation is the most cost effective response method. 40 C.F.R. § 300.425(c).

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[1] UE disputes EPA's designation of Site Q as a single "site," and contends that based on history and sampling data, Site Q should be treated as three distinct sites for listing purposes. See *infra* at pages 9-10.

Here, EPA is basing its recommendation to list Site P on the NPL based on an HRS score, but not an HRS score developed for Site P. Indeed, an examination of the scoring documents in the administrative record shows that the Agency performed only a single "scoring," and that scoring was based on all of the sites proposed to constitute Area 2.

The record itself contains no discussion of EPA's aggregation of the five sites. But EPA's authority to aggregate two or more non-contiguous areas into a single area for NPL listing purposes is subject to a single, clear, and well established rule of law: EPA may not list a discrete parcel of land on the NPL unless that discrete parcel qualifies under EPA's "statutorily warranted criteria." *Mead Corp. v. Browner*, 100 F.3d 152, 153 (D.C. Cir. 1996). Under this rule, unless EPA establishes that Site P meets the listing criteria set forth in the HRS, it cannot include Site P in Area 2.

As the EPA well knows, in *Mead* the petitioner challenged EPA's attempt to aggregate three separate, non-contiguous land parcels into a single site for listing on the NPL. Two of the sites to be aggregated met the listing criteria set forth in CERCLA, but the third site – not contiguous with the other two – had not been scored by the EPA and did not otherwise qualify for listing under Section 105 of CERCLA. EPA claimed that under Section 105 it had authority to aggregate sites for NPL listing, but the court flatly rejected this contention.

In rejecting the applicability of EPA's "Aggregation Policy," the court noted that the policy on its face applies to Section 104(d)(4) of CERCLA, not Section 105, and it further noted that Congress gave EPA no authority under CERCLA to aggregate non-qualifying, non-contiguous sites for purposes of NPL listing. 100 F.3d 152, 155. In completely rejecting both the authority for and the application of EPA's Aggregation Policy for purposes of NPL listing, the court stated:

> Because EPA lacks statutory authority to use its Aggregation Policy to list on the NPL a site that would not otherwise qualify, we vacate EPA's inclusion of [Petitioner's property] within its...listing.

100 F.3d 152, 157.

In light of the unequivocal language in *Meade*, a case with facts nearly identical to those in this matter, EPA may not propose Site P for the NPL unless it can demonstrate that Site P, standing alone, exceeds the HRS listing threshold.

2. Site P Is A Low-Risk Site

Given the clear authority contained in *Meade*, little more need be said about the impropriety of EPA's inclusion of Site P in this proposed listing, except to note that had the EPA scored Site P independently, it would have derived a score for Site P of 0.60 – a far cry from the score needed to qualify Site P as a "high risk" site such that it should be listed on the NPL. Accordingly, even if EPA had followed the requirements of CERCLA Section 105 and the law set out in the *Meade* decision and had scored Site P, there would be no basis to include Site P in Area 2. For all these reasons, the Agency must remove Site P from this proposed listing.

3. Illinois EPA Has Concluded That Site P Should Not Be Included in Area 2.

As noted in the Newfields Report at page 5, the Illinois EPA, which is well familiar with all of the "sites" and with "Area 2," does not believe that Site P should be aggregated with the other Area 2 sites. Expanded Site Inspection Report (IEPA), Ecology & the Environment, Inc., Vol. 1 of 2, Exhibit 3 to Newfields Report, p. 14.[2]

III. EPA'S CONCEPTUALIZATION OF AREA 2 IS SKEWED AND INACCURATE

The Agency's purpose in specifying any geographic area for listing on the NPL is to efficiently and correctly address sites that propose a significant risk of harm to human health and the environment, and indeed, this is the whole point of the NPL and the Hazard Ranking System. Reference to the Agency's own guidance on HRS scoring makes clear that the Agency seeks to properly investigate and characterize contamination at any given location to ensure proper and complete remediation. 40 C.F.R. § 300.430(b)(2). But a technical review of the HRS Documentation in the case of Sauget Area 2, suggests that EPA has not correctly characterized the conditions that exist in this area, and has committed other fundamental errors in the proposed listing.

The fundamental flaw in EPA's approach to its evaluation of this site is its failure to consider contributions to the groundwater contamination in Area 2 from sources outside of any of the proposed Area 2 sites. Had EPA given any consideration to external sources, it could never have developed the surrealistic plume definition shown in the listing documentation. HRS Documentation Record, p. 10. And were EPA to adopt a plume definition that fit the known data about Area 2 (and Area 1), its initial view and ultimate handling of Area 2 may fundamentally change. If Area 2 is suspected to be a high-priority site under CERCLA, then at the very least the Agency should apply itself to actual conditions in this area before it proposes any Area or any site within the area for listing on the NPL.

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[2]Although EPA made Volume 2 of this report part of the administrative record, it did not include Volume 1 of the report. Accordingly, the relevant portion of the report is included as Exhibit 3 to the Newfields Report.

1. The Centerpiece Of EPA's Model Is A Plume With No Source

Page 10 of the HRS Documentation Record depicts what EPA has determined to be the "Ground Water Plume" under Area 2. This plume purportedly originates at the eastern boundary of Site O and extends both westerly and southwesterly from O. The plume also supposedly exists under the southern end of Site P, from which it flows southwesterly towards Site R and ultimately to the Mississippi River. Thus depicted, the plume lies under all of the sites in proposed Area 2. EPA comments on this plume, stating, "The ground water below the Sauget Area 2 site appears to be contaminated from sources located on-site." HRS Documentation Record, p. 60.

UE's environmental consultants, Newfields, have studied the technical materials that comprise the HRS Documentation Record, with particular study of the References listed in that record. HRS Documentation Record, pp. 11-12. As a result of their study of the available data, plus such additional sampling data as was also available to EPA for Area 1, Newfields has also identified the true "plume" of contamination that likely exists in Area 2.[3]

The Newfields Report depicts a plume of groundwater contamination that is vastly different than that proposed by EPA. Newfields Report, p. 11, Figure 12. Unlike the EPA's proposed groundwater plume, which appears to spring from nowhere, the true plume noted by Newfields drew itself – its appearance is a product of the groundwater contamination data available for a single chemical, chlorobenzene, and is simply a graphical representation of that data. Notably, this data shows no groundwater flow component to the southwest. More notably, the true initial source of the groundwater plume is (among other nearby sources) the Monsanto Krummrich facility – it does not magically spring into existence at the eastern boundary of Area 2. Finally, the available data indicates that there is no so-called "plume" under Site P. Newfields Report, p. 8-14.

2. The Initial Sources of Area 2 Groundwater Contamination Are Off-Site Industrial Sources, Including The Krummrich Plant

The Newfields Report demonstrates quite clearly that the initial source of the contaminant plume across a portion of proposed Area 2 emanates from sources outside of Area 2; among these sources is the Krummrich plant, but there may be other sources. *See*, Newfields Report, p. 4. Although UE recognizes that EPA has not included the area comprising the Krummrich facility (or other facilities in the vicinity of Krummrich) as part of "Area 2" because that facility

[3] In order to depict the true plume affecting Area 2, Newfields utilized groundwater sampling data for chlorobenzene, obtained in 1999 and earlier. Included with the Newfields exhibits at Tab 44 is a CD containing each data point and referencing the documentary source for each point. *See*, Newfields Report, p. 3, discussion after Table of Contents.

is being addressed separately under a RCRA-based Administrative Order, UE believes that EPA's failure to acknowledge the contribution of Krummrich (or other off-site sources) to the contaminant plume that flows under portions of proposed Area 2 has fundamentally flawed its approach to all of Area 2. UE believes that unless the EPA acknowledges the significant groundwater contribution flowing under Area 2 from upgradient areas, the investigation and characterization of Area 2 will continue to be inaccurate and fundamentally unfair to parties that had no connection with upgradient sources of contamination.

3. Groundwater Flow Across Area 2 is Due West

Another notable flaw in EPA's conception of Area 2 is best depicted at Figures 12 and 14 of the Newfields Report. Newfields Report, p. 11, 14. These figures demonstrate that, contrary to EPA's depiction of the "groundwater plume" in the HRS Documentation Record, the real groundwater "plume" under Area 2 moves not to the southwest, but to the west. This conclusion is also supported through Newfields' variographic analysis of the data for Area 2, and its discussion of that data. Newfields Report, pp. 9-13.

As stated above, the graphical presentation of available chlorobenzene data for Area 2 demonstrates that EPA has ignored a significant source of groundwater contamination and that the contaminated groundwater plume under Area 2 flows due west (and not southwest). These two facts, in turn, call to question other unstated, but clearly erroneous conclusions about the site implied by EPA's inclusion and characterization of the sites that make up proposed Area 2. First, EPA's "groundwater plume" diagram, which graphically suggests that contaminated groundwater moves from the Source O area southwest under the middle-section of Site Q, is simply not correct, and UE challenges and questions any implied conclusion by EPA that the mid-section of Site Q overlies a contaminant plume moving from some contaminated site outside of Area 2 or otherwise. The southwestern movement of groundwater across Area 2 is inconsistent with the available information about Area 2. Second, the Newfields characterization of groundwater flow as being due west also challenges EPA's inclusion of Site P in Area 2. As will be discussed below, the available data does not show any plume of contamination underlying Site P; the information presented in the Newfields Report simply underscores the fact that Site P is hydraulically isolated from the other Sites.

When the groundwater conditions at Area 2 are analyzed based on actual data and not hopeful speculation, two conclusions become apparent: First, the only portion of Site Q that is likely affected by upgradient groundwater contamination is that portion that is due west of the Krummrich Facility, and this portion is identified and discussed below as "Northern Q" or the "dogleg" portion of Q. Second, Site P has no connection with any groundwater plume – neither the actual plume nor even the one suggested by EPA in the HRS Documentation Record.

IV. PORTIONS OF SITE Q HAVE BEEN MIS-CHARACTERIZED AND INCORRECTLY SCORED AND SHOULD NOT BE PART OF AREA 2

Initially, it is difficult to discuss Site Q because the HRS Documentation Record and other reference documents that are part of the administrative record leave the intended boundaries of Q in doubt. From the record and other materials pertaining to so-called "Site Q," UE cannot determine whether the Site was intended by EPA to include the former UE ash ponds located near or on the western boundary of Site Q, as shown in Figures 27-30 at pages 24-25 of the Newfields Report. EPA should clarify the Site Q boundaries if and when it proposes a final rule on this listing.

Whatever the intended boundaries of Site Q, the Agency mischaracterizes the Site's history when it treats Site Q as a single site. Site Q, as described in both the HRS Documentation Record (at page 13) and at page 6 of the Newfields Report, at 225 acres, is by far the largest of the parcels comprising Area 2, being more than seven times the area of the next largest site. The history of Site Q shows that various parts of this site have been put to at least three uses in the past, each use being different and occurring in a distinctly different portion of Site Q from the other two. The Newfields Report at page 6 states that the northern portion of Q (the Newfields Report refers to the "dogleg" portion due east of Site R as "Northern Q") was used for landfilling, while the very southern area of Site Q was used as a drum storage area. The middle portion of Q, however, may have only been used for the disposal of fly ash and, possibly, domestic garbage. Newfields Report, p. 6. Thus, "Site Q" is not truly a single parcel, and each of the wastes found in the three sections bear no relationship to the others. Pursuant to the HRS Guidance, EPA should not have aggregated and then scored northern, middle and southern Site Q; these sites should have been scored separately.

1. The Agency Has Not Clearly Defined Site Q

The HRS Documentation Record contains no legal description of Site Q, and the only means by which it is identified is by drawing dated March 1, 2001. HRS Documentation Record, p. 9. This drawing leaves doubt as to the intended western boundary of Site Q, because it appears that the Agency's description of Site Q does not include certain portions of the shoreline. Earlier documents pertaining to this area, generated by the Illinois EPA, suggest that the Site Q shoreline should not be included in Area 2; an Illinois EPA drawing of Site Q shows that the western shoreline of Site Q is not included in the definition of the site. *See*, Newfields Report, pp. 24-25, Figures 27-31. The EPA should clarify the intended boundaries of Site Q.

2. **The Ash Ponds on Middle-Q Should Not Be Aggregated With Northern and Southern Site Q**

Even if the Agency contends that Site Q includes the former UE ash ponds, the "middle-Q" parcel should not have been aggregated with the distinctly separate sources in the north and south of Site Q. Section 4.2 of the HRS Guidance provides in pertinent part, "If sources are similar in type and have similar target populations, the scorer should consider aggregating them into one source." HRS Guidance at 49. There is no dispute that the "source type" in northern Q is a landfill, and in southern Q it is drums. HRS Guidance, p. 42. And there is no data to show that middle Q is a source at all, but it is clearly neither a landfill nor a drum storage area. Therefore, the three areas of Site Q do not meet the most basic aggregation criteria in the HRS Guidance: The "source type" of northern and southern Q are not the same.

The HRS Guidance also provides a "checklist" in order to determine whether separate sources should be aggregated. HRS Guidance, Highlight 4-6, p. 51. The checklist contains a list of six items, and the Guidance provides that only if the answer to each checklist question is "yes" should the sources be aggregated. As noted above, when considered for aggregation the sources in northern and southern Q fail the test of source type, because the areas are different source types. But the checklist comparison also shows that the sites fail a second item — "similar waste characteristics." HRS Guidance, Highlight 4-6, p. 51. As noted in the Newfields Report, the waste characteristics of the sources found at northern and southern Q are not similar. Newfields Report, p.29.

Even if the northern and southern Q sources are considered to be "overlapping sources," they still fail the EPA's test for aggregation. According to Agency guidance, overlapping sources should be aggregated only when there is a similarity or identity between the sources for site-specific disposal operations, the type of hazardous substances found in each source, and the containment characteristics of the sources. HRS Guidance, Highlight 4-7, p. 52. Here, it is abundantly clear that there is no identity of disposal operations among the three parts of Site Q, and it has already been shown that the hazardous wastes are different between southern and northern Site Q.[4]

Finally, the Agency is reminded of Section 125(b) of CERCLA itself, 42 U.S.C. § 9626(b), in which Congress provided special commentary on fly ash waste, and considerations respecting such waste when EPA is engaged in an HRS scoring. To be sure, this section does not preclude listing of a property that is otherwise contaminated with other hazardous wastes, but in this case, "middle-Q" has no wastes to speak of, save for the fly ash ponds, if in fact Site Q does

[4] Middle Site Q may contain nominal amounts of hazardous substances, but this contamination bears no relationship to the contamination at northern and southern Q.

contain those ponds. Given the precautionary language of SARA and the subsequent revision of the HRS to comply with the dictates of Congress in Section 125(b), the Agency should give special consideration to aggregating "middle-Q" with other areas on Q that have completely different histories and wastes.

For all these reasons, central Site Q should not have been included as part of Site Q, and southern Site Q also should not have been aggregated with the northern "dogleg" area of Q. The only portion of "Site Q" that warrants inclusion in Area 2 is the northern-most section, adjacent to Site R. Newfields Report, p. 29.

V. EPA FAILED TO CORRECTLY SCORE FOUR ELEMENTS OF RISK AT SITE Q

In employing the scoring methods and making its assumptions about Site Q, the Agency either ignored its own guidance or it ignored the HRS regulations, and in both cases these errors resulted in an incorrect HRS score. These errors included the Agency's failure to consider the 1994 removal action that was conducted by IEPA on southern Site Q; the EPA's failure to correctly apply the HRS regulations to a determination of wetland perimeter; the assumption, based on flimsy support, that wildlife species were endangered by Site Q; and the failure to take proper groundwater samples at Site Q, contrary to legal precedent that has established the appropriate procedure for collecting such samples. For all of these reasons, the EPA's underlying methodology for conducting the scoring should be reconsidered, abandoned, and the HRS score it derived recalculated.

1. EPA Erroneously Ignored The 1994 Removal Action in Southern Q

Just as there is no doubt that the Agency here failed or refused to consider a prior removal action at the southern part of Site Q, there is also no doubt that in 1994 the Illinois EPA performed a CERLCA time-critical removal action on the southern portion of Site Q to remove drums that were leaking hazardous substances. *See*, Newfields Report, Exhibit 41. In the 1994 removal, the Illinois EPA's contractor removed hazardous wastes from Southern Q. *supra*, at Exhibit 41.

Under the Agency's HRS Guidance, the results of a qualifying removal action must be considered if the removal meets three tests: it must have resulted in the removal of hazardous substances, it must have occurred prior to the "site cutoff date," and the waste must have been disposed of at a proper RCRA facility. Application of this test leaves no doubt that the 1994 removal on southern Q is a qualifying removal, because the IEPA-led removal obviously complied with the first and third elements. As to the cutoff date, although the Agency has not stated such a date, it is clear from the materials referenced by the EPA in the HRS Documentation Record that it considered data much of much more recent vintage than the 1994

removal, even data from as late as 1999. Accordingly, the Agency had no basis for disregarding the affect of the 1994 removal, and as a result of this, the HRS score calculated by the Agency was obtained in violation of HRS regulations and Guidance.[5]

2. EPA Wetland Perimeter Calculations Are Erroneous

In developing a "targets" score, the HRS provides for estimating a score for sensitive areas such as wetlands. Regardless of the concentrations of hazardous substances under consideration, the HRS provides the same method for determining the proper score, and the method requires the scorer to determine the total length of wetlands that lie along the hazardous substance migration path, and assign a risk-based number from a table. HRS Regulations §§ 4.1.4.3.1.1 and 4.1.4.3.1.2; 40 C.F.R. §§ 4.1.4.3.1.1-4.1.4.3.1.2; HRS Guidance, p. 331-333. These same regulations also provide that for rivers, the scorer should use the length of the wetland frontage along the shoreline. The HRS Guidance manual is in agreement with this. HRS Guidance, Highlight 8-61, p. 333.

UE's consultant, Newfields, using the same photographic materials and drawings as the EPA, performed this calculation for the wetland areas on Site Q, calculating the total length of the wetland frontage lying along the Mississippi River. The total obtained was 1.45 miles. *See*, Newfields Report, p. 33. But the Agency used another approach, and instead of totaling total river frontage miles, EPA calculated the total perimeter of all wetlands in Site Q, whether that perimeter fell along river frontage or not. The result obtained through disregard of the regulations and the guidance was 3.6 miles, or more than two times the appropriate number. This improper doubling of the wetland length resulted in the improper doubling of the HRS score for potential sensitive environments. *See*, Newfields Report, p. 32.

The only possible conclusion from reviewing the Agency's doubling method for computing wetland frontage is that the Agency assumes that contamination from Site Q itself enters the wetlands within Q. For central Site Q, however, there is no evidence that any contaminants in this area would enter the wetlands in Q. Accordingly, EPA should re-calculate the incorrectly computed sensitivity factor for wetlands, and utilize one-half of the value that presently contributes to the HRS score for this site.

3. Site Q Is Not A Wildlife Habitat

The Agency actually scored Site Q as if it were a habitat for endangered species. Site Q has been studied extensively to evaluate its potential to provide habitat for endangered species,

[5] As noted in the Newfields Report, EPA has already considered a significant quantity of data generated well after the 1994 removal action, and even after the initial IEPA Site Investigation. Newfields Report, p. 31.

and there have been found several features in Site Q that could make the site suitable for such species, except that Site Q lacks both breeding and feeding habitat areas, making the EPA's assumption suspect and highly unlikely. Moreover, Site Q and even central Site Q are at the heart of significant commercial activity, rendering the EPA's conclusion about endangered species even more remote. Site Q was not properly scored as a wildlife habitat. *See*, Newfields Report, pp. 34-35.

4. EPA's Groundwater Sampling Was Improper and The Results Are Demonstrably Inconsistent

Two sets of groundwater monitoring data have been taken by the governments at Site Q. One set was taken in 1987, and the other in 1999. The earlier set was taken using conventional groundwater sampling techniques which included 1) establishment and development of an enclosed, permanent groundwater well and 2) proper development of the well through installation, bailing and observation; 3) the filtration of the well sample, to avoid spurious results from particulate matter entrained in the sample. All of the these steps were taken as a recognized and customary precaution against inaccurate results due to the inadvertent sampling of a soil particle that is not really part of the groundwater regime. And all of these steps relate directly to minimizing agitation of the water column when sampling, followed by a further precaution – filtration – to assure that soil particles don't result in an unnecessary remediation because of incorrectly "high" results. Analysis of the 1987 samples showed that groundwater levels of PCBs, Aldrin and Dieldrin were either zero or beyond the detection limit used in the test.

EPA again took groundwater samples in 1999, analyzing the samples for the same constituents. In this later round of sampling, it appears EPA did everything in its power to skew these test results high. EPA abandoned the traditional means of obtaining groundwater samples, selecting instead a sampling that is the antithesis of quiescence: A "GeoProbe" sampler was used, a device designed for speed, not accuracy, in sample-taking. This device is advanced through the soil into the groundwater in a continuous series of "pushes," and is known to cause contaminated soil from horizons above the groundwater to enter the groundwater that is to be tested, while at the same time agitating the groundwater itself and causing the entrainment of additional soil particles. Nor is there any period for well development, nor for allowing the groundwater regime to return to an uninterrupted state, because the groundwater sample is taken without any waiting period. Finally, to further assure capturing a soil particle in the ultimate tested sample, no filtration was performed.

The use of unfiltered samples by EPA for purposes of HRS scoring has been rejected by two courts that reviewed nearly identical issues on the same day. *Anne Arundel County v. U.S. EPA*, 963 F.2d 412 (D.C. Cir. 1992); and *Kent County v. U.S. EPA*, 963 F.2d 391 (D.C. Cir. 1992). In both cases, EPA had utilized unfiltered groundwater results to score and propose a site for listing on the NPL, and in both cases the Court of Appeals rejected EPA's attempt to do so,

recognizing that testing via unfiltered means may skew the results upwards. And while both courts allowed for the Agency to develop internal guidance on appropriate sampling techniques, the courts did not go so far as to allow EPA to adopt the routine use of a GeoProbe coupled with a sampling method prone to error. Here the sampling data and text showing the results fails to contain any documentation to justify the unconventional means of sampling, much less the failure to filter the groundwater samples. Accordingly, the Agency's data that contributed to a score representing this data should be disregarded, and recalculated based upon the 1987 testing results. *See*, Newfields Report, pp. 36-37.

VI. CONCLUSION

For all of the reasons specified in these comments and in the Newfields Report, the listing of Sauget Area 2, as it is presently described by EPA, would be arbitrary and capricious, and an abuse of discretion by the Agency. AmerenUE therefore requests that EPA reject the proposed rule for NPL listing, and remove Sauget Area 2 from the proposed list of NPL sites.

Respectfully submitted,

James R. Morrin
Joseph A. Madonia
Counsel for AmerenUE

JRM/lk
Enclosures

SCHEDULE TJR-12

HAS BEEN DEEMED

PROPRIETARY

IN ITS ENTIRETY.

AmerenUE's Response to
Office of Public Counsel Data Request
Case No. EM-96-149
6th Sharing Period (3rd Year of EARP I

No. 1017

Information Requested:

Have all lobbying costs, expenditures and expenses incurred during the test year been excluded from the Missouri regulated portion of the revenues and expenses shown in the final earnings report? If your answer is no, please identify and describe in detail all lobbying costs, expenditures or expenses that remain with the Missouri regulated operations.

Response:

The Company charges its lobbying costs and expenses to a below the line account. Thus these costs and expenses are not charged to the Missouri jurisdictional electric operating expenses.

Signed by: Gary S. Weiss
Prepared by: Gary S. Weiss
Title: Supervisor Regulatory Accounting

Schedule TJR-13

1/9/02

AmerenUE's Response to MPSC Staff Data Request Case No. EM-96-149

No. 42

1. Provide all amounts paid for lobbying activities and charged to Missouri electric operations by month for the twelve months ending June 30, 2001.

   a. Identify AmerenUE employees by name, number of hours, and total cost for lobbying activities.
   b. indicate the name of the lobbyist being paid
   c. indicate amounts paid
   d. indicate all Missouri electric accounts that were charged
   e. describe specifically what AmerenUE and Missouri electric ratepayers received for each payment

Response:

On the attached time reports the second to last column shows the service request number. The following service request numbers deal with lobbying:

A0387	Lobbying Activities for AmerenUE - 100% AmerenUE
A0388	Lobbying Activities for AmerenCIPS - 100% AmerenCIPS
A0393	Lobbying Activities Allocated - Allocated to AmerenUE and AmerenCIPS
A0633	Missouri Deregulation - 100% AmerenUE

Labor on Service Requests A0387, A0388, and A0393 is charged to non-operating expense account 426. Labor on Service Request A0633 is charged to Account 920.

Expenses other than Labor on Service Requests A0387, A0388, and A0393 is charged to non-operating expense account 426. Expenses other than Labor on Service Request A0633 is charged to A&G accounts 921-001, 921-002, 923-001, and 930-239 along with non-operating expense account 426.

See attached for the total charges for each Service Request.

Paula Nixon

Prepared & Signed By:
Paula Nixon
Secretary to the Vice President
Corporate Communications &
Public Policy

Schedule TJR-14