

Exhibit No.:  
Issues: Postretirement Expenses,  
Venice Power Plant Fire  
Expenses, Environmental  
Expenses, Legislative  
Expenses  
Witness: Martin J. Lyons  
Sponsoring Party: Union Electric  
Type of Exhibit: Cross-Surrebuttal Testimony  
Case No.: EC-2002-1  
Date Testimony Prepared: June 24, 2002

**MISSOURI PUBLIC SERVICE COMMISSION**

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

**CROSS-SURREBUTTAL TESTIMONY**

**OF**

**MARTIN J. LYONS**

**ON**

**BEHALF OF**

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

Exhibit No. 139  
Date 7/10/02 Case No. EC-2002-1  
Reporter Kem

St. Louis, Missouri  
June, 2002

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1                                   **CROSS-SURREBUTTAL TESTIMONY**

2   **OF**

3   **MARTIN J. LYONS**

4   **CASE NO. EC-2002-1**

5                                   **I.     BACKGROUND**

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

7           A.     My name is Martin J. Lyons. My business address is One Ameren Plaza,  
8     1901 Chouteau Avenue, St. Louis, Missouri, 63103.

9           **Q.     Are you the same Martin J. Lyons who previously filed rebuttal**  
10   **testimony in this proceeding?**

11          A.     Yes, I am.

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

13          A.     The purpose of my testimony is to rebut certain issues raised by Office of  
14   Public Counsel ("OPC") witnesses Robertson and Effron. Specifically, I will address  
15   issues related to postretirement benefit costs, Venice power plant expenses and insurance  
16   recoveries, environmental expenses and legislative costs.

17                                   **II.    OPPORTUNISM**

18          **Q.     In your rebuttal testimony, you describe what you believe to be Staff**  
19   **opportunism. Do your comments apply to the testimony filed by the OPC in this**  
20   **proceeding?**

21          A.     Yes. The OPC, and specifically OPC witnesses Robertson and Effron,  
22   propose a number of adjustments to the Company's test year plant in service and  
23   operating expenses employing seemingly arbitrary and inconsistent approaches to the

1 concept of a test year. In certain instances OPC witnesses limit expenses to the historical  
2 test year, ignoring the extended period for known and measurable changes (e.g.,  
3 environmental expenses). In other instances, OPC witnesses go well beyond the test year  
4 and propose to consider all costs associated with an event, not just those reflected in the  
5 test year (e.g., Venice power plant insurance proceeds).

6 While it is expected that there will be differences between the parties to  
7 this proceeding on certain issues, it is imperative that all parties employ and adhere to the  
8 test year mandated by the Commission. The apparent manipulation of the test year  
9 concept to achieve desired results should not be allowed.

10 The Company has set forth a test year which accurately reflects the  
11 ongoing expenses required to provide safe and reliable service to our customers. Further,  
12 the Company believes that its consistent application of accrual accounting, in accordance  
13 with Generally Accepted Accounting Principles ("GAAP"), to support test year expenses  
14 provides the Commission assurance of its solid foundation.

15 The Company has the right to recover its expenses and earn a return on its  
16 prudently incurred investments. Many of the adjustments proposed by both the Missouri  
17 Public Service Commission Staff and the OPC will deprive the Company of that right.

18 **III. POSTRETIREMENT BENEFIT COSTS**

19 **Q. Have you reviewed the rebuttal testimony of OPC witness Effron?**

20 **A. Yes I have.**

21 **Q. Please summarize Mr. Effron's proposed adjustment to**  
22 **postretirement benefit costs.**

1           A.     Mr. Effron proposes that the accrued liability of \$97.7 million associated  
2     with Other Postretirement Employee Benefit ("OPEB") costs, as reflected on the  
3     Company's balance sheet as of September 30, 2001, be reflected as a reduction to rate  
4     base. Mr. Effron's proposed adjustment to rate base amounts to \$88 million.

5           **Q.     Do you agree with Mr. Effron's recommendation?**

6           A.     No. His position is premised on the belief that the liability represents  
7     customer supplied funds. To the contrary, the liability represents the level of unfunded  
8     expenses. To reduce rate base by the amount of the OPEB liability would deprive the  
9     Company of the opportunity to earn a return on its assets.

10          **Q.     Please explain.**

11          A.     The Company currently funds OPEB costs only to the extent that such  
12     expenses are recovered through rates. A liability existed on the balance sheet at  
13     September 30, 2001 for two reasons. First, there was a period of time between when the  
14     Statement of Financial Accounting Standards ("SFAS") No. 106, "Employers'  
15     Accounting for Postretirement Benefits Other Than Pensions," was implemented for  
16     financial reporting purposes (1993) and when it was implemented for ratemaking  
17     purposes (1995). During that period, expense was recognized and a liability was accrued  
18     but this amount was not and has not been collected in rates and has not been funded by  
19     the Company. As of September 30, 2001, this amount represented approximately \$83  
20     million of the total liability that Mr. Effron proposes to deduct from rate base.

21                 The remaining \$5 million liability exists primarily due to timing  
22     differences between when expense is accrued and when the plan is funded, primarily

1 because the expense is accrued monthly, while the trust is funded semi-annually. As a  
2 result, this portion of the liability fluctuates monthly.

3 **Q. Is the Company seeking recovery in this proceeding of the \$83 million**  
4 **liability created as a result of the timing difference between when SFAS 106 was**  
5 **implemented for financial reporting purposes versus for ratemaking purposes?**

6 **A.** No, the Company is not seeking recovery of the \$83 million liability.  
7 Mr. Effron's recommendation to reduce rate base by the OPEB liability reflected on the  
8 Company's balance sheet is premised on his erroneous assumption that the liability  
9 represents customer provided funds. Given that the OPEB liability in fact largely  
10 represents the amount of OPEB costs which have not been recovered through rates,  
11 Mr. Effron's recommendation should be rejected.

12 **IV. VENICE POWER PLANT PROPOSED ADJUSTMENTS**

13 **Q. Have you reviewed the rebuttal testimony of OPC witness Robertson?**

14 **A.** Yes, I have.

15 **Q. Please summarize Mr. Robertson's proposed adjustment.**

16 **A.** Mr. Robertson purportedly attempts to reflect the total cost of repairs at  
17 the Venice power plant made subsequent to a fire at the facility, and the ultimate  
18 insurance recoveries in the test year. The result of his proposed adjustment is the  
19 inappropriate elimination of Missouri jurisdictionalized expenses and the reduction of  
20 rate base.

21 **Q. Do you agree with Mr. Robertson's proposed adjustment?**

22 **A.** No. As I will discuss, Mr. Robertson's proposed adjustment is critically  
23 flawed.

1           **Q.     Please discuss the first flaw with Mr. Robertson's proposed**  
2 **adjustment to Venice Power Plant expenditure levels.**

3           A.     Similar to adjustments proposed by Missouri Public Service Commission  
4 Staff witness Harrison, Mr. Robertson's proposed adjustment attempts to reduce test year  
5 plant in service and expense levels by insurance proceeds received after September 30,  
6 2001. As I stated in my rebuttal testimony, adjustments related to items occurring after  
7 the test year and update period are inconsistent with the test year concept that is  
8 fundamental to the ratemaking process. The amount of the insurance settlement was  
9 neither known nor measurable at September 30, 2001. In fact, the Company did not settle  
10 the claim until December 2001 and did not receive a final settlement amount until May  
11 2002. Both dates are well beyond the test year and update periods. To adopt Mr.  
12 Robertson's proposed adjustment related to the Venice power plant would seriously  
13 undermine the test year concept upon which regulatory proceedings such as this are  
14 based.

15           **Q.     Why did the Company not recognize the insurance proceeds in the**  
16 **test year?**

17           A.     As I stated in my rebuttal testimony, the Company recorded the insurance  
18 proceeds consistent with GAAP, which requires that the Company record a gain  
19 contingency when the gain is realized. If the Company had recorded the insurance  
20 proceeds in advance of receipt or the claim being settled and accepted in writing (i.e.,  
21 December 2001), as both Staff witness Harrison and OPC witness Robertson suggest, it  
22 would have violated GAAP.

1           **Q.     How does Mr. Robertson's proposed adjustment compromise the test**  
2 **year concept?**

3           A.     A test year is simply a snapshot of expenditures during a defined twelve-  
4 month period and plant in service at a defined point in time. The theory of a test year is  
5 that rates are to be established based upon a definitive period of time (i.e., a twelve month  
6 period) that approximates the revenues and expenses to be incurred during the period in  
7 which the established rates will be in effect. A historical test year can be appropriately  
8 modified for known and measurable changes. If a party is allowed to include  
9 expenditures or events outside of a test year, and which were neither known nor  
10 measurable at the end of the test period, then the rates established based upon such  
11 information would not likely be representative of expenditures and events during the  
12 period in which the rates are in effect.

13                     The Company appropriately recorded the insurance proceeds in  
14 accordance with GAAP. To allow such proceeds to be brought forward to a test year  
15 ended June 30, 2001 and updated to September 30, 2001, when the amount of such  
16 proceeds was neither known or measurable, would undermine the test year concept.

17           **Q.     Please discuss the second flaw in Mr. Robertson's proposed**  
18 **adjustment.**

19           A.     Mr. Robertson's testimony is internally inconsistent in that on the one  
20 hand he argues that the insurance proceeds and expenses associated with the Venice  
21 power plant fire should be viewed in their entirety. With regard to environmental  
22 expense, however, Mr. Robertson attempts to pigeon-hole the level of recoverable  
23 expenses to only those expenses that were actually incurred during the test year. Such



1 inconsistency reeks of manipulation of the Company's test year to achieve a desired  
2 result.

3 Further, by the very nature of the test year concept, there is a long list of  
4 examples of test year expenditures that do not reflect the entire cost of Company projects  
5 or initiatives. Plant in service reflects only those expenditures incurred as of the end of  
6 the test year. Costs associated with maintenance projects do not include all costs  
7 associated with such projects, but rather only those costs incurred in the test year. While  
8 additional expenditures would likely be incurred to complete numerous projects ongoing  
9 as of the end of the test year, the Company is not seeking to recover the entire cost of  
10 such projects.

11 It is inconceivable to believe that the Commission Staff or the OPC would  
12 be in favor of allowing the Company to include all of the costs associated with initiatives  
13 that were commenced but not completed in the test year. It is equally unjust that the OPC  
14 should attempt to include items from outside the test year.

15 The test year concept needs to be validated and upheld. Changes to actual  
16 test year expenditures should be limited to those known and measurable changes as of the  
17 end of the update period.

18 **Q. Please discuss the third flaw in Mr. Robertson's proposed adjustment.**

19 **A.** Mr. Robertson's proposed adjustment, if adopted, would understate test  
20 year expenses and plant in service. Mr. Robertson reduces test year amounts by the total  
21 costs expensed and capitalized by the total insurance proceeds, despite the fact that the  
22 total costs were not included in the test year. As he states on page 19, line 5 of his  
23 rebuttal testimony, the Company incurred costs associated with the Venice power plant

1 fire of \$28,427,112, of which \$9,745,453 was expensed and \$18,681,659 was capitalized.  
2 On a jurisdictionalized basis, \$8,645,002 of expense was included in the test year and  
3 \$17,002,816 was included in plant in service as of September 30, 2001. Mr. Robertson  
4 proposes to offset the actual expenditures by total insurance recoveries, which amounted  
5 to \$19,268,140 or \$17,393,350 on a jurisdictional basis.

6 As proposed, Mr. Robertson's adjustment reduces expense levels by  
7 \$9,876,537, or approximately \$1.2 million more than was even included in expenses (i.e.,  
8 \$9,876,537 minus \$8,645,002). Similarly, he proposes to reduce rate base by \$7,516,813  
9 (i.e., \$17,393,350 minus \$9,876,537), which would reflect insurance proceeds associated  
10 with plant in service which the Company has not included in rate base. As I mentioned  
11 previously, the Company has included in rate base only plant in service as of June 30,  
12 2001, updated for known and measurable changes through September 30, 2001.  
13 Mr. Robertson is proposing to reduce rate base by the residual amount of total insurance  
14 proceeds less total expenses incurred. The net effect is that Mr. Robertson is proposing a  
15 reduction of rate base associated with plant in service which the Company has not yet  
16 included in rate base. Therefore, the effect of Mr. Robertson's adjustment is to  
17 understate both operating expenses and rate base.

18 For the above reasons, Mr. Robertson's proposed adjustment should be  
19 rejected.

20 **V. ENVIRONMENTAL EXPENSE**

21 **Q. Please summarize Mr. Robertson's proposed adjustment related to**  
22 **environmental expenses.**

1           A.     Mr. Robertson proposes to include only those environmental cash  
2 expenditures actually incurred during the test year ended June 30, 2001 associated with  
3 the remediation of Company owned electric property that is currently considered to be  
4 used and useful.

5           **Q.     Do you agree with Mr. Robertson's proposed adjustment?**

6           A.     Absolutely not. Unlike Mr. Robertson's "all in" proposal with regards to  
7 expenditures associated with the Venice power plant fire, he is now proposing to limit  
8 environmental expense included in the test year to the amount of related cash  
9 expenditures excluding the update period. It appears that Mr. Robertson believes that a  
10 test year should be customized for each issue to achieve a desired result. Such a  
11 manipulation of the ratemaking process cannot be allowed.

12          **Q.     Should the Company's recovery of environmental expenses be limited**  
13 **to only its out-of-pocket cash expenditures?**

14          A.     Absolutely not. As I stated in my rebuttal testimony, the Company  
15 records its environmental liability and related expense on the accrual basis of accounting,  
16 consistent with GAAP. Therefore, the Company is required to accrue its best estimate of  
17 its liability for environmental costs when (1) the event giving rise to an expected cash  
18 expenditure has occurred and payment is probable, and (2) the amount of the expenditure  
19 is reasonably estimable. The costs included in the Company's test year are real and well  
20 substantiated.

21          **Q.     Is the Company financially harmed if Mr. Robertson's proposed**  
22 **adjustment is adopted?**

1           A.     Yes. In this case, since the Company has relatively low out-of-pocket  
2 cash expenditures, Mr. Robertson proposes to limit recovery to those cash outlays. In a  
3 year where the Company incurs large outlays of cash, the OPC would likely propose to  
4 limit the recovery of such expenditures to a "normalized" level of expenses. Further, if  
5 the cash outlays fall outside of a test year period for a rate proceeding, the OPC would  
6 likely argue that such costs are out-of-period costs and should be excluded from test year  
7 expenses. Such a "delay and deny" tactic would ultimately preclude the Company from  
8 recovering expenses incurred to provide electric service to our customers. Further, it may  
9 result in significant intergenerational inequity. Such a regulatory policy is unacceptable  
10 and should be rejected.

11           **Q.     Has the Commission previously ruled on the use of accrual**  
12 **accounting?**

13           A.     Yes, in the Commission's Report and Order in Case No. EO-96-14, dated  
14 December 23, 1999, the Commission found that the Company appropriately employed  
15 accrual accounting with regard to injuries and damages and should be allowed to recover  
16 both claims paid and an increase in the accrual. (see Page 50)

17           **Q.     Is there any valid reason to deviate from the Commission's previous**  
18 **position on the issue of accruals?**

19           A.     No, if the Company sufficiently demonstrates the reasonableness of its  
20 accrual associated with environmental expenses, it should be allowed to recover such  
21 accrued amounts.

1           **Q.     Do you agree with Mr. Robertson's proposed recommendation to**  
2     **limit the recovery of remediation expenses to those applicable only to electric assets**  
3     **that are currently used and useful?**

4           **A.     No. Mr. Robertson attempts to create artificial hurdles for whether the**  
5     **Company's remediation expenses should be properly recovered from customers. Ideally,**  
6     **rates should reflect costs incurred to provide electricity to current customers. The costs**  
7     **in question were incurred as a result of environmental regulations and laws that did not**  
8     **exist at the time that some of the sites were being used. The Company is now responsible**  
9     **for the remediation of the sites. Such remediation efforts help to ensure the safety of our**  
10    **customers and are appropriately recovered from current customers.**

11                   **It is important to recognize that Mr. Robertson does not argue that the**  
12    **expenditures were not incurred. Nor does he suggest that the expenditures were**  
13    **unnecessary or imprudently incurred. He is merely attempting to shift responsibility to**  
14    **prior customers, thereby denying the Company the opportunity to recover the remediation**  
15    **expenses that it has prudently incurred. Mr. Robertson's proposed adjustment would**  
16    **result in shortsighted regulatory policy and should be rejected.**

17                                   **VI.   LEGISLATIVE EXPENSE**

18           **Q.     Have you reviewed OPC witness Robertson's testimony pertaining to**  
19    **legislative expenses?**

20           **A.     Yes, I have.**

21           **Q.     Please summarize Mr. Robertson's proposed adjustment.**

1           A.     Mr. Robertson proposes to exclude from the Company's test year  
2 expenses which he suggests were incurred while lobbying for the passage of electric  
3 restructuring legislation.

4           **Q.     How do you respond to Mr. Robertson's proposed adjustment?**

5           A.     First, it is important to recognize that this proceeding is not the proper  
6 forum for expressing each party's views on electric restructuring. Clearly, Mr. Robertson  
7 has allowed his obvious bias against restructuring to taint his view of the reasonableness  
8 of the costs incurred by the Company to identify, analyze and monitor legislative  
9 initiatives that may impact the Company and its customers.

10                   The Company routinely monitors legislative initiatives both on the state  
11 and federal levels. It is incumbent upon the Company to keep abreast of such initiatives  
12 that may impact its operations. Such legislative costs should be included in the  
13 Company's cost of service because they are ordinary and necessary business expenses.

14           **Q.     Are these legislative expenses properly included in test year expenses?**

15           A.     Yes. As Mr. Robertson states in his rebuttal testimony, in Re: Kansas City  
16 Power and Light Company, the Commission concluded:

17                   ... the mere fact that an activity might fall within the very broad  
18 general definition of lobbying as used by Public Counsel should  
19 not necessarily mean that it is an improper expense for ratemaking  
20 purposes. The question is one of benefit or lack of benefit to the  
21 ratepayers.

22  
23           **Q.     How did the Company's customers benefit from the legislative**  
24 **initiatives?**

25           A.     Given that the proposed legislation in question did not pass, it is difficult  
26 to gauge the benefit of the Company's legislative initiatives to its customers. The

1 Company was, however, involved with legislative discussions to ensure that the proper  
2 customer safeguards and benefits existed in any electric restructuring legislation.

3 The legislative proposal included choice for some customers. It also  
4 included a five-year rate freeze. Further, it was expected that the legislation would have  
5 led to additional investment in generation assets within Missouri, which would, in turn,  
6 have likely reduced generation costs, thereby potentially reducing rates.

7 While Mr. Robertson discounts these benefits, clearly they are to the  
8 benefit of electric customers in the State of Missouri. Given the reasonableness of the  
9 Company's actions with regard to the proposed legislative initiatives and the obvious  
10 benefit to the Company's customers of such activities, the legislative expenses should be  
11 accorded normal ratemaking treatment and be included in test year expenses.

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

13 **A. Yes it does.**

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

**AFFIDAVIT OF MARTIN J. LYONS**

**STATE OF MISSOURI            )**  
**CITY OF ST. LOUIS         ) ss**

**Martin J. Lyons, being first duly sworn on his oath, states:**

1. My name is Martin J. Lyons. I work in St. Louis, Missouri and am employed by Ameren Corporation as Controller.

2. Attached hereto and made a part hereof for all purposes is my Cross-Surrebuttal Testimony on behalf of Union Electric Company d/b/a AmerenUE consisting of 13 pages, which has been prepared in written form for introduction into evidence in the above-referenced docket.

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

and correct.

  
\_\_\_\_\_  
Martin J. Lyons

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

*Rebby Anzalone*  
Notary Public  
REBBY ANZALONE

My commission expires:

