

Exhibit No.:
Issue: EEInc.
Witness: Robert E. Schallenberg
Sponsoring Party: MoPSC Staff
Type of Exhibit: Surrebuttal Testimony
Case No.: ER-2007-0002
Date Testimony Prepared: February 28, 2007

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

SURREBUTTAL TESTIMONY

OF

ROBERT E. SCHALLENBERG

UNION ELECTRIC COMPANY

D/B/A AMERENUE

CASE NO. ER-2007-0002

Jefferson City, Missouri
February 2007

**** Denotes Proprietary Information ****
****Denotes Highly Confidential Information****

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

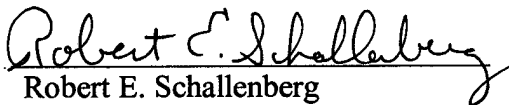
In the Matter of Union Electric Company)
d/b/a AmerenUE for Authority to File Tariffs)
Increasing Rates for Electric Service)
Provided to Customers in the Company's)
Missouri Service Area.

Case No. ER-2007-0002

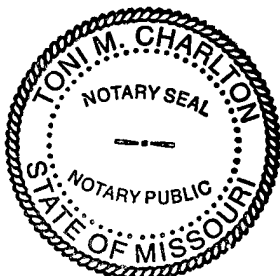
AFFIDAVIT OF ROBERT E. SCHALLENBERG

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Robert E. Schallenberg, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, consisting of 26 pages to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.


Robert E. Schallenberg

Subscribed and sworn to before me this 28th day of February, 2007.





TONI M. CHARLTON
Notary Public - State of Missouri
My Commission Expires December 28, 2008
Cole County
Commission #04474301

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ROBERT E. SCHALLENBERG
UNION ELECTRIC COMPANY
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1 utilization of AmerenUE's share of the energy and capacity from the Joppa Plant owned by
2 EEInc. to serve AmerenUE's retail customers. These increased fuel and purchase power costs
3 result from AmerenUE's use of higher cost generation or purchased power to serve its
4 Missouri retail customers than would be available to serve these customers from the
5 AmerenUE share of the Joppa Plant. The AmerenUE share of the Joppa Plant is being sold
6 instead to serve the wholesale market with AmerenUE recording the profit from these sales
7 in accounts that AmerenUE does not use to reduce the cost of service that it proposes to be
8 used to set the rates in this case. These profits are recorded as below-the-line profits in the
9 sense that the AmerenUE intends for these profits not to be used to establish rates in this
10 case. My surrebuttal testimony will address the misuse of the term below-the-line in the
11 AmerenUE rebuttal testimony to create an impression that is not true. The lost off system
12 sales are the result of not having the energy from the Joppa Plant available for off system
13 sales during the times that the Joppa energy would not be needed to serve AmerenUE retail
14 customers. The value of the increased costs and lost revenue will be quantified in the
15 reconciliation of the differences between the Staff and AmerenUE positions regarding cost of
16 service related to this issue.

17 AmerenUE is seeking to include these increased costs and lost revenues in the cost of
18 service that will be used to determine the level of rates that AmerenUE will be authorized to
19 charge its Missouri retail customers, thus creating a higher rate level than would result from
20 the continued utilization of the Joppa energy on a cost basis. It is a regulatory requirement
21 that only prudently incurred costs and prudent investment including an appropriate return on
22 these investments is permitted to be covered in rates.

1 It is Staff's position that not only was AmerenUE imprudent in that AmerenUE failed
2 to make every reasonable effort to prevent or minimize the increased costs and revenue loss
3 related to this issue but AmerenUE was directly responsible for creating the situation that
4 caused increased costs and revenue loss related to this issue.

5 **ELECTRIC Energy, Inc. (EEINC.)**

6 Q. Are you aware of any instances where AmerenUE has acknowledged that its
7 rates in this case will only be based on prudently incurred costs?

8 A. Yes. AmerenUE informed its customers of this requirement in its January
9 2007 Amerenlines customer bill insert discussing this rate case, where it states: "Under
10 Missouri regulation, AmerenUE can recover from its customers prudently incurred electric
11 operations costs and prudently incurred investments, including an appropriate return on those
12 investments."

13 Q. Has Ameren acknowledged at the Federal Energy Regulatory Commission
14 (FERC) the jurisdiction of the Missouri Commission regarding this issue but AmerenUE has
15 not noted this fact in the rebuttal testimony of Messrs. Moehn, Svanda or Downs?

16 A. Yes. Counsel for the Staff has advised me that the prudence criteria standard
17 and the Commission retail ratemaking treatment jurisdiction for this issue was acknowledged
18 in the Federal Energy Regulatory Commission (FERC) filings by Ameren and FERC orders
19 in those proceedings. OPC filed a Protest in the FERC proceeding, Docket No. EC04-81,
20 where Ameren, Dynegy, Illinois Power sought FERC authorization to merge. At pages 43
21 and 44 of Applicants' (Ameren, Dynegy, Illinois Power, et al.) May 25, 2004 Motion For
22 Leave To Submit Answer And Answer, in FERC Docket No. EC04-81 Applicants told the
23 FERC that the EEInc. issue is a Missouri Commission issue. In fact, Ameren stated that "[if]

1 any entity should have the right to compel AmerenUE to purchase capacity or energy from
2 EEInc. to serve native load, it should be the MoPSC, as part of a prudence review of
3 AmerenUE's retail rates, or some similar proceeding":

4 IV.A.2.c. The Missouri Office of the Public Counsel's Concerns
5 About AmerenUE's Rights To Power From EEInc
6 Facilities Are Erroneous And Should Be Addressed By The
7 MoPSC, Not FERC.
8

9 In protest, MOPC raises certain concerns related to the proposed
10 acquisition of a 20 percent ownership interest in EEInc by AER. . . .
11 according to MOPC, Missouri ratepayers have historically supported
12 the costs of the EEInc capacity and output, and should continue to
13 have access to the 40 percent of output to which AmerenUE is entitled.
14 [footnote omitted.]

15 MOPC recently raised these same issues before the Missouri Public
16 Service Commission ("MoPSC") in AmerenUE's Metro East
17 proceeding, in which AmerenUE has requested MoPSC authority to
18 transfer its Illinois-based assets to AmerenCIPS. In particular, MOPC
19 has asked the MoPSC to require AmerenUE to extend its agreement to
20 purchase energy from EEInc. [footnote omitted.] . . . This issue
21 remains pending before the MoPSC and falls squarely within the area
22 of primary jurisdiction of the MoPSC – retail utility rates. The
23 Commission should not concern itself with these state retail rate issues
24 – which are nonetheless false – and should instead require MOPC to
25 continue to litigate its issues at the MoPSC.

26 . . . If any entity should have the right to compel AmerenUE to
27 purchase capacity or energy from EEInc to serve native load, it should
28 be the MoPSC, as part of a prudence review of AmerenUE's retail
29 rates, or some similar proceeding. The Commission should not allow
30 itself to be dragged into these issues by the MOPC.

31 Q. Is the Staff proposing that this Commission order AmerenUE to purchase
32 capacity or energy from EEInc. to serve its Missouri customers?

33 A. No, although Mr. Svanda, at page 3, lines 8-14, and page 9, lines 5-10, seems
34 close to suggesting that this is what Staff has proposed. Staff is not proposing that the
35 Commission order AmerenUE to purchase capacity or energy from EEInc. to serve its
36 Missouri retail customers. Staff would no more recommend that the Commission order

1 AmerenUE to purchase from a lower cost vendor should AmerenUE choose to imprudently
2 act otherwise. Staff is proposing that the Commission not set rates for Missouri retail
3 customers that reflect the higher cost or lost revenues resulting from AmerenUE's failure to
4 use reasonable efforts available to it to avoid negative effects on AmerenUE's cost to serve
5 its retail customers.

6 Counsel for the Staff has also advised me that on July 29, 2004 the FERC issued an
7 Order Authorizing Disposition Of Jurisdictional Assets And Accepting Power Purchase
8 Agreements Subject To Conditions in which it stated in relevant part OPC's EEInc. issues
9 were a state commission matter:

10 66. . . . Regarding MOPC's request that Applicants commit that
11 AmerenUE's current 40 percent entitlement to the output of the
12 Joppa Facility be preserved, Applicants argue that this is a state
13 retail ratemaking issue that will be addressed by the Missouri
14 Commission.

15

16
17 67. . . . Regarding MOPC's request that Applicants commit that
18 AmerenUE's current entitlement to the output of the Joppa
19 Facility be preserved, we agree with Applicants that the issue is
20 under the state's jurisdiction. The Missouri Commission has
21 intervened in the proceeding but has not filed comments or a
22 protest. . . .

23
24 Counsel for the Staff also informed me that OPC and MIEC filed Requests For
25 Rehearing and Ameren, Dynegy and Illinois Power filed on September 7, 2004 Motion For
26 Leave To Submit Answer And Answer To Requests For Rehearing wherein it stated at
27 pages 3-4 that the Missouri Commission has primary jurisdiction:

28 On July 29, 2004, the Commission issued its order approving, among
29 other things, the sale of Illinova Generating's interest in EEInc to
30 AER. In doing so, *the Commission expressly declined to condition its*
31 *approval on the requests of MOPC and MIEC.* Rather, the
32 Commission sided with Applicants, stating "we agree with Applicants
33 that the issue is under the state's jurisdiction." [footnote omitted.]

1 Applicants believe that the Commission properly decided this issue,
2 and nothing stated by MOPC or MIEC in their requests for rehearing
3 should persuade the Commission to change its position.

4 Indeed, the requests for rehearing of MOPC and MIEC are little more
5 than the rehashing of the same unfounded arguments raised in their
6 respective protests. [footnote omitted.] In all four pleadings – the
7 MOPC Protest, the MIEC Response, and both the MOPC and MIEC
8 requests for rehearing – the core of MOPC’s and MIEC’s claims is
9 their theory that, if Ameren UE fails to continue receiving 40 percent
10 of the capacity and energy of EEInc’s Joppa facility, Missouri
11 ratepayers will somehow be harmed. Not only are these arguments
12 just as speculative now as they were when the MOPC Protest and
13 MIEC Response were filed, but they (continue to) fall squarely within
14 the primary jurisdiction of the Missouri Public Service Commission
15 (“MoPSC”). This, precisely, is what the Commission held in the July
16 29 Order. [footnote omitted.] No different outcome is warranted here.

17 Counsel for the Staff has advised me that the FERC’s April 18, 2005 Order Denying
18 Rehearing unequivocally pointed again to the Missouri Commission’s jurisdiction:

19 10. . . . MOPC’s request for clarification appears to be an attempt to
20 undermine the Commission’s clear articulation of the appropriate
21 forum for MOPC’s concerns: the Commission has no jurisdiction over
22 AmerenUE’s retail rates or the manner in which it procures capacity or
23 energy to serve its native load, except to the extent wholesale
24 competition could be harmed, which is not at issue here. Clearly, the
25 July 29 Order did not preempt state authority over retail rates. No
26 further clarification is required.

27 Finally, counsel for the Staff has informed me that on September 15, 2005, as
28 amended on November 3, 2005, EEInc. filed an application with the FERC for market-based
29 rate authority, with an accompanying tariff, in FERC Docket No. ER05-1482. The Missouri
30 Commission and the Missouri Industrial Energy Consumers filed Notices Of Intervention
31 and OPC filed a Motion To Intervene And Protest. FERC’s December 8, 2005 Order
32 Granting Market-Based Rate Authorization to EEInc looks to the Missouri Commission for
33 resolution of issues relating to retail rates:

34 34. The Missouri Office’s concerns essentially center on the
35 argument that it already made full payment of AmerenUE’s

1 share of all capital costs on a front-loaded basis and no longer
2 will have the right to receive power from the plant once its
3 contract expires. In particular, the Missouri Office argues that
4 “Missouri ratepayers’ historic cost support of the EEInc power
5 supply entitles them to the full value of the plant for its
6 remaining life.” This argument is not relevant to the decision of
7 this Commission as to whether EEInc meets this Commission’s
8 standards for market-based rate authority and further is an issue
9 that is better resolved at the state level. In addition, the Missouri
10 Commission has intervened in this proceeding but has not filed
11 comments or protested the application.

12 Q. Are Messrs. Moehn (Rebuttal Testimony, page 3, lines 2-4) and Svanda
13 (Rebuttal Testimony, page 3, lines 3-5 and page 18, lines 4-5) correct in their assertions that
14 the EEInc.’s Joppa unit has always been recognized to be a below the line investment by the
15 Staff?

16 A. No. In fact, AmerenUE’s share, 40%, of EEInc.’s Joppa unit has always been
17 treated as an “above-the-line” investment. The term “below-the-line” is typically used to
18 indicate that the item is not considered in the ratemaking process. This is not true for the
19 costs related to AmerenUE’s share, 40%, of EEInc.’s Joppa unit.

20 Q. AmerenUE witness Mr. David Svanda at page 9, line 10 of his Rebuttal
21 Testimony, accuses the other parties, among other things, of making “an alarming distortion
22 of the familiar concept of prudence.” Do you have a response?

23 A. Yes. The Staff is approaching this matter as a retail ratemaking issue and
24 whether the increased costs and lost revenues related to this issue should be used to establish
25 the level of rates in this case. Staff is agreeing with the aforementioned FERC filings of Ameren
26 and Orders of the FERC that this matter is a Missouri jurisdictional issue, and I am advised
27 by Staff counsel that Staff’s briefs’ will also address in what capacity the Joppa Plant may be
28 viewed as part of the AmerenUE system.

1 Staff is using the prudence standard to determine the proper ratemaking treatment for
2 the monies related to this issue. The Staff's prudence review centers on the question as to
3 whether AmerenUE used every reasonable effort to minimize its costs of doing business
4 relative to matters that resulted in the increased fuel and purchase power costs and lost off-
5 system sales involved in this issue. If the Commission finds that AmerenUE was not prudent
6 in its actions relative to this issue, then the Commission should not include the increased
7 costs and lost off-system sales impact of this issue in the cost of service used to determine
8 the level of rates Missouri ratepayers will be required to pay as a result of this case.

9 It is Staff's position that AmerenUE was imprudent in that it not only did make every
10 reasonable effort to prevent or minimize the increased costs and revenue loss related to this
11 issue but it was directly responsible for creating the situation that caused increased costs and
12 revenue loss related to this issue.

13 Q. How does AmerenUE describe in its rebuttal testimony its view of the
14 situation related to the opportunity for AmerenUE to purchase cost-based power through a
15 power supply agreement from its share of the EEInc. Joppa Plant that would avoid the
16 increased costs and revenue loss related to this issue?

17 A. Mr. Moehn states in his Rebuttal Testimony at page 7, lines 3-6: "AmerenUE
18 did not choose to forgo any such opportunity because such opportunity did not exist after the
19 expiration of the then current PSA on December 31, 2005. The Board of Directors of EEInc.
20 made the decision to sell power from the Joppa Plant at market-based prices." Neither
21 Ameren nor AmerenUE raised the matter to EEInc. regarding extension of the then current
22 cost-based power supply agreement terms beyond December 31, 2005. (AmerenUE response
23 to AG Data Request No. 25 and Deposition of Gary L. Rainwater, p. 97, line 11 through

1 p. 99, line 12.). It was the position of AmerenUE that it had the discretion to direct its
2 investment in the EEInc. Joppa Plant to serve more profitable markets than service to its
3 Missouri customers. AmerenUE maintains that the Joppa Plant is a below-the-line asset
4 owned by shareholders and never was used in a way that put UE customers at risk for the
5 cost of those assets. ** _____

6 _____
7 _____
8 _____ ** (AmerenUE response to OPC Data Request No.
9 2005).

10 Q. Does the Staff concur with AmerenUE's description of the situation?

11 A. No. The decision that created this issue was made by AmerenUE not EEInc.
12 For the period 1953-2003, in the federal Form No. 1 Annual Reports, at page 102, EEInc.
13 stated to FERC and its predecessor, the Federal Power Commission, that EEInc. is directly
14 controlled by the Sponsoring Companies through their ownership of the voting securities of
15 EEInc. It should be noted that EEInc. omitted this statement from its 2004 and 2005 Form
16 No. 1 Annual Reports to FERC. AmerenUE has held a 40% control during this period.
17 AmerenUE, by itself, held more than the necessary share of votes under the EEInc. Bylaws to
18 continue to purchase power from EEInc after December 31, 2005. "Article II, Section 6.
19 Voting." of the EEInc. Bylaws provides that "decisions to allocate the sale of generating
20 capacity of EEInc. among the EEInc. stockholders in a manner other than in accordance with
21 their percentages of ownership of EEInc. stock in the event of such capacity available for sale
22 to parties other than the U.S. Enrichment Corporation" and "a material change in the business
23 purpose or objectives of EEInc" constitute "corporate restructuring transactions" and "other

1 major corporate actions.” “Article II, Section 6. Voting.” of the EEInc Bylaws also provides
2 that when any holder of voting capital of EEInc., including such holder’s affiliates, owns in
3 excess of 50% of the voting capital stock of EEInc., “all corporate restructuring transactions
4 and other major corporate actions shall be decided by the vote of the holders of 75% or more
5 of the outstanding shares of the Corporation entitled to vote.” This latter provision is
6 applicable because AmerenUE and its affiliate Ameren Energy Resources Company,
7 combined, own 80% of the voting capital stock of EEInc.¹ AmerenUE owned 40% of the
8 voting capital stock of EEInc. and could use this leverage to achieve cost based rate terms for
9 its allocated share of the generating capacity of EEInc. ** _____

10 _____
11 _____
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16 _____ ** AmerenUE rebuttal
17 testimony acknowledges that an exempt wholesale generator (EWG) with market based rate

¹ AmerenUE owns 40% of the stock of EEInc and Ameren Energy Resources Company owns 40% of the stock of EEInc. as a result of the following FERC Dockets. On December 13, 2001 in FERC Docket No. EC02-34-000, AmerenCIPS and Ameren Energy Resources Company filed, pursuant to Federal Power Act (FPA) Section 203, for authorization for AmerenCIPS to transfer its 20% common stock interest in EEInc to Ameren Energy Resources Company. FERC issued its Order Authorizing Disposition Of Jurisdictional Facilities on February 25, 2002. In FERC Docket No. EC04-81-000, the Merger Application of Ameren, Dynegy, Inc., Illinova Corporation and Illinova Generating Company, the FERC issued on July 29, 2004 its Order Authorizing Disposition Of Jurisdictional Assets And Accepting Power Purchase Agreements Subject To Conditions. The FERC authorized Illinova Generating Company to transfer its 20% interest in EEInc. to Ameren Energy Resources Company. Prior to this merger with Ameren, Illinois Power Company had become a direct wholly owned subsidiary of Illinova.

1 authority such as EEInc. is not precluded from selling power at cost based rates. (David A.
2 Svanda, Rebuttal Testimony, p. 14, lines 21-22).

3 The fact that EEInc. can arrange to sell its power on different terms is shown by the
4 fact that ** _____

5 _____
6 _____
7 _____
8 _____
9 _____
10 _____ ** (AmerenUE Response to OPC Data Request No. 2005).

11 Q. Does the Staff fundamentally view the EEInc. issue as a prudence question?

12 A. Yes. There is a difference of opinion between AmerenUE and the Staff
13 regarding the relevance and the significance of the prudence element of AmerenUE's actions
14 related to this issue versus the relevance and the significance of the legality of AmerenUE's
15 actions. Over my approximate 30 years of regulatory experience, there appears to me to be a
16 relationship between legality and prudence but the relationship is not absolute or constant.
17 For example, not all actions found to be imprudent actions are also found to be illegal. It is
18 not unusual that a utility action that is deemed to be imprudent is deemed to be legal, and a
19 utility action that is deemed to be legal is not deemed to be prudent. "Legality" or
20 "lawfulness" is an element of any prudence review considered when determining what was
21 the reasonable course of action or whether the course of action taken was prudent. Certain
22 prudent actions may be found to be illegal at a later date. Mr. Downs' rebuttal testimony
23 appears to address the "legality" of AmerenUE's actions and seems to offer a legal opinion

1 that any other options that have been suggested were illegal. Regarding the question of the
2 lawfulness of AmerenUE's actions, that will be argued in the Staff's briefs. I am only
3 challenging the prudence of the new EEInc. purchased power supply agreement related to
4 AmerenUE's share of the capacity and energy from the Joppa Plant. Counsel for the Staff
5 will address in Staff's briefs in what capacity the Joppa Plant may be viewed as part of the
6 AmerenUE system.

7 AmerenUE attempts to address the prudence element of this issue in its rebuttal
8 testimony by attempting at times to separate the prior Power Supply Agreement between
9 EEInc. and the Sponsoring Companies of which AmerenUE is a Sponsoring Company from
10 AmerenUE's stock ownership of EEInc. which makes AmerenUE a Sponsoring Company.
11 At other times AmerenUE acknowledges the relationship between its stock ownership of
12 EEInc. and the prior Power Supply Agreement.

13 Q. Do you agree with (1) Mr. Moehn equating at pages 15 to 16 of his Rebuttal
14 Testimony the Power Supply Agreement between EEInc. and the Sponsoring Companies with
15 any other purchased power agreement between electric utilities, (2) Mr. Moehn's comparison
16 of the Power Supply Agreement with the purchased power agreements between UE and
17 Arkansas Power & Light Company / Entergy Arkansas at pages 12-13 of his Rebuttal
18 Testimony, or (3) Mr. Svanda's statement at page 10 of his Rebuttal Testimony that the Staff
19 mischaracterizes commonplace aspects of cost plus contracts?

20 A. No. The EEInc. Power Supply Agreement with its owners, including
21 AmerenUE, is more akin to an operating agreement between multiple owners of a generating
22 unit than a separate, independent wholesale power supply agreement. The EEInc. Power
23 Supply Agreement is related to ownership and not related to a separate, independent

1 wholesale power supply transaction designed to meet an electric utility system's need for a
2 set time period. The EEInc. Power Supply Agreement contained a contract term designed to
3 match the term of the DOE contract and not EEInc. owner system needs. (Deposition of
4 Mr. Gary L. Rainwater, p. 97, line 11 through p. 111, line 10 through line 14). AmerenUE
5 acknowledges that the contract duration was an element of the contract that could be changed
6 at any time. AmerenUE attempts to compare the EEInc. Power Supply Agreement to a power
7 supply agreement with a non-affiliated power supplier. EEInc. is not a non-affiliated power
8 supplier. AmerenUE has no control over a non-affiliated power supplier unlike the situation
9 it is in with its percentage ownership share of the stock of EEInc.

10 The comparability Mr. Moehn tries to make in his rebuttal testimony using the
11 purchased power agreements of UE and Arkansas Power & Light Company / Entergy
12 Arkansas for comparison with the Power Supply Agreement of EEInc. and the Sponsoring
13 Companies is more akin to the power supply agreement of the Department of Energy (DOE)
14 and EEInc. than the Power Supply Agreement of the Sponsoring Companies and EEInc.
15 because DOE has a defined load that will be supplied by EEInc. through Joppa Plant
16 generation or energy provided by the Sponsoring Companies. UE has the defined load that
17 will be served by supplier Arkansas Power & Light Company / Entergy Arkansas. The
18 Sponsoring Companies have no long term defined firm load that was being served by the
19 Power Supply Agreement with EEInc. The Sponsoring Companies committed to buy the
20 power from the EEInc. Joppa Plant whenever DOE did not commit to the generation. The
21 Sponsoring Companies' Power Supply Agreements with EEInc. were financial commitments
22 by the Sponsoring Companies to make whatever proportionate payments were needed to pay
23 EEInc. costs whether energy was generated or not. The Sponsoring Companies' Power

1 Supply Agreements were financial backstops to substitute for the low amount of equity
2 invested in EEInc. by the Sponsoring Companies.

3 A key point of disagreement in this issue is the validity of the position that
4 AmerenUE had no effective options available to effectuate an extension of its EEInc. Power
5 Supply Agreement at cost based rates after the expiration of the then current Power Supply
6 Agreement because the EEInc. Board of Directors made the decision to sell power from the
7 Joppa Plant at rates higher than the prior cost based rates. The specification of what
8 constitutes market-based rates can be different depending on the entities involved in a
9 particular transaction. For example, ** _____
10 _____
11 _____
12 _____

13 _____ ** (AmerenUE Response to OPC Data Request No. 2169). Thus, Kentucky
14 Utilities' market based rate was lower than the rate offered by EEInc.

15 The issue of prudence is addressed by AmerenUE by solely asserting it had no control
16 over a legal situation. Issues such as ratepayer support or prior ratepayer benefit are
17 tangential to the prudence of AmerenUE actions related to AmerenUE access to the capacity
18 and energy of the Joppa Plant. Staff not covering the assertions of ratepayer support or prior
19 ratepayer benefit in greater detail does not indicate Staff support for AmerenUE's assertions,
20 but merely indicate that these areas are not justification for AmerenUE to not make every
21 reasonable effort to minimize its cost of operations. Staff asserts that AmerenUE had
22 effective options available to obtain a continuation of then existing EEInc. Power Supply
23 Agreement on cost based terms and avoid the increased costs and lost revenue impacts

1 AmerenUE is now seeking to recover from its Missouri customers while retaining for itself
2 the gains achieved by this scheme.

3 Q. How do you address Messrs. Moehn's and Svanda's contentions in their
4 rebuttal testimonies that no ratepayers' dollars were put at risk respecting the AmerenUE
5 investment in EEInc. relative to the Joppa Plant?

6 A. I would agree partially. No ratepayer dollars are put at risk until the matter
7 comes before the Commission for a ratemaking determination. However, this point is not
8 unique to AmerenUE investment in EEInc. relative to the Joppa Plant. This same contention
9 applies equally to the building or acquisition of AmerenUE's other generators. This point
10 does not distinguish AmerenUE investment in EEInc. relative to the Joppa Plant from
11 AmerenUE's investment in its other generating stations.

12 Q. How do you respond to Mr. Moehn's testimony on page 7, lines 7-14
13 regarding AmerenUE's control of EEInc's operation and maintenance of Joppa Plant?

14 A. AmerenUE does have a significant degree of degree control over EEInc. as
15 previously noted in the majority of the EEInc. annual reports to its federal regulator. No other
16 owner has a larger voting percentage. With its 40% of EEInc. stock, AmerenUE can vote on
17 matters as to who will be EEInc.'s officers. In fact several EEInc. officers have Union
18 Electric backgrounds. Mr. Naslund and Mr. Whiteley are EEInc. directors specifically
19 representing AmerenUE. Mr. Naslund, an AmerenUE officer, advises EEInc. on operational
20 matters. AmerenUE has a 40% vote on all matters brought to the EEInc. Board regarding
21 matters such as power supply agreements.

22 Q. Does AmerenUE attempt to assert in the Rebuttal Testimony of Messrs.
23 Moehn and Svanda that a different relationship exists regarding the Joppa plant, relative to

1 the AmerenUE ownership of EEInc. stock, separate and apart of AmerenUE's ownership of
2 other generating facilities?

3 A. Yes. A significant factor is AmerenUE labeling its EEInc. investment related
4 to the Joppa unit as a "below the line" investment. However, at no time does AmerenUE
5 claim that all relevant costs for AmerenUE's share of the Joppa Plant have been excluded
6 from rates. In fact, AmerenUE's Missouri regulatory treatment of its ownership of EEInc.
7 stock relative to the Joppa Plant has been similar if not better than the regulatory treatment
8 afforded AmerenUE's ownership of its other generating facilities.

9 Q. How do you respond to Mr. Swanda's Rebuttal Testimony on page 16, line 18
10 through page 17, line 22?

11 A. AmerenUE has generation assets besides the Joppa Plant that have a cost
12 structure that would be below the value that AmerenUE could receive for those assets'
13 generation in the off-system market. This fact is seen in the significant levels of off-system
14 sales enjoyed by AmerenUE. This fact does not justify the removal of any of these units from
15 AmerenUE's cost of service to increase Ameren's overall profits at the expense of
16 AmerenUE's Missouri retail customers paying higher rates. This situation is the classic
17 affiliate abuse issue. A comparison of actions of AmerenUE on this matter to the actions of
18 the non-affiliated Kentucky Utilities shows that the utility with the affiliation is the less
19 active in pursuing its rights to seek the lower overall cost of service for its customers.

20 Kentucky Utilities actions provide the basis for the determination of prudent actions
21 that should have been taken by AmerenUE. Given the present ownership of EEInc. shares,
22 any two owners that vote together represent a majority. It is unusual in a prudence review to

1 have an actual baseline of the actions that were reasonable under the facts and circumstances
2 at the time, as is the case with the conduct of Kentucky Utilities.

3 Q. Do you agree with Mr. Moehn's rebuttal testimony on page 16, line 18
4 through page 17, line 22?

5 A. No. His conclusion is based on the premise that the owner of the generator
6 would not use off-system sales, in this case, Atomic Energy Commission (AEC)/ Department
7 of Energy (DOE) revenues, to determine its overall cost of service. This premise is flawed.
8 AmerenUE would be entitled to 40% of the benefit of these sales as much as it is responsible
9 for 40% of the costs.

10 The AmerenUE ratepayers paid rates that included all the costs of ownership of the
11 Joppa Plant on similar terms as AmerenUE's other generating units. The inclusion of
12 AmerenUE's stock in rate base would only require a reduction in the EEInc. demand charge
13 to remove the return on equity component to avoid double recovery of costs.

14 I do agree with Mr. Moehn's Rebuttal Testimony on page 17, that there existed a
15 relationship between the Sponsoring Companies' Power Supply Agreements and the EEInc.
16 capital structure that made the Power Supply Agreements unique from typical non-affiliated
17 power supply agreements. It was the nature of the commitments in the Sponsoring
18 Companies' Power Supply Agreements and the EEInc. that reduced the amount of money
19 that the Sponsoring Companies were required to invest in EEInc. Initially, AmerenUE
20 invested approximately 5% equity in the EEInc. Joppa Plant project.

21 Q. Do you agree with Mr. Moehn's Rebuttal Testimony on page 19 that
22 shareholders of EEInc. have always taken the investment risk?

1 A. Yes, but this fact is no different for the investment risk in AmerenUE's other
2 generating units. In fact, the EEInc. power contracts mitigated this risk relative to
3 AmerenUE's other generating units through the use of accelerated cost recovery
4 mechanisms.

5 Q. Was there any actual distinction regarding AmerenUE's assumed risk relative
6 to its investment in the EEInc. Joppa Plant compared to AmerenUE's other generating units?

7 A. No. The ratepayer relationship noted in the AmerenUE Rebuttal Testimony
8 (e.g., responsibility for potential losses, prudent costs for capacity and energy, power supply
9 agreement ratepayer obligations, potential losses on investment) relative to the EEInc. Joppa
10 unit (i.e., EEInc. \$1.7 million writeoff) apply equally to AmerenUE's other generating units.
11 AmerenUE incurred a \$100 million loss on its investment in Callaway and will absorb costs
12 relative to its investment in Taum Sauk, both of these units are rate base generators.

13 The AmerenUE investment in EEInc. was not treated below-the-line as stated in
14 AmerenUE's Rebuttal Testimony any differently than the interest and profit on investment in
15 AmerenUE's other generating units is below-the-line. The interest and profit for the Joppa
16 Plant was recorded in purchased power expense while the interest and profit for AmerenUE's
17 other generating units is recorded in below-the-line accounts thus requiring rate base
18 treatment to place these costs in AmerenUE's cost-of-service for ratemaking purposes. The
19 Commission's actual cost of service formula in its orders does not use the above or below the
20 line methodology. Above-the-line or below-the-line treatment in public utility regulation
21 indicates whether an item has or has not been included in the rates charged to ratepayers. In
22 the case of the AmerenUE costs related to AmerenUE's ownership in EEInc., Joppa Plant

1 capacity and energy has been included in rates charged to Missouri retail customers including
2 costs for depreciation or amortization, interest, and profit.

3 AmerenUE never made the representation before this case that it would not seek
4 recovery from ratepayers from some catastrophic failure respecting the Joppa Plant. Such a
5 hindsight assertion at this time is not appropriate for a prudence review nor is it relevant
6 since ratepayers have paid rates sufficient to allow recovery of the AmerenUE investment in
7 EEInc. This assertion is hypothetical since AmerenUE has never experienced any such loss
8 relative to its investment in the EEInc. Joppa Plant. The new AmerenUE representation that
9 it would not seek recovery from ratepayers from some catastrophic failure at the Joppa Plant
10 is not a distinguishing factor respecting the Joppa Plant since this same situation can occur at
11 other AmerenUE generating facilities (e.g., Taum Sauk). AmerenUE is providing no less
12 assurance to this Commission regarding catastrophic, unfortunate and unforeseen events
13 regarding its ownership in EEInc.'s Joppa Plant than it has relative to its other generating
14 units on occasion.

15 The fact that an asset has been beneficial to consumers in the past does not make a
16 decision to discontinue those benefits to consumers at a later date prudent. AmerenUE notes
17 that it wants to sale the energy at market rates but AmerenUE makes no representation that it
18 would make this decision if market rates were less than costs.

19 Q. How do you respond to Mr. Svanda's statements at page 10, lines 1-7 of his
20 Rebuttal Testimony?

21 A. Mr. Svanda's statements regarding the fact that the Joppa Plant costs to
22 produce power today is below the market price of the power applies to a majority of the
23 AmerenUE generators not just the Joppa Plant. The fact that is ignored by Mr. Svanda's

1 Rebuttal Testimony is that cost based rates are typically higher than market based rates in the
2 initial years of a coal baseload unit. Customers usually have to pay higher costs in the early
3 years in order to begin to enjoy an overall benefit over the life of the unit. This principle is
4 particularly true regarding the costs of EEInc.'s Joppa Plant because the recovery of those
5 costs was based upon accelerated cost recovery methodologies resulting in the power costs
6 being higher in the initial years with substantial benefits being realized after the expiration of
7 the accelerated cost recovery methodologies.

8 Q. What were these accelerated cost recovery methodologies?

9 A. Initially the Power Supply Agreement provided for utility plant being
10 amortized on a 25-year sinking fund basis with interest at rates corresponding to those of the
11 First Mortgage Sinking Fund Bonds. This resulted in EEInc. reporting to FERC on page 112
12 of its 1980 Form No. 1 Annual Report: "The majority of the utility plant is fully amortized.
13 The remaining utility plant is being amortized as prescribed by the Power Contract, on a
14 sinking fund or straight line basis corresponding with either the retirement of related debt or
15 the remaining life of the Power Contract." EEInc. would report in later Form No. 1 Annual
16 Reports that certain utility plant additions were being depreciated as provided under the
17 Modified Accelerated Cost Recovery System for both book and tax purposes. As a rule, the
18 EEInc. investment is depreciated over a period less than the life of the plant. AmerenUE's
19 other generating units have not been depreciated following such an aggressive approach in
20 terms of seeking investment recovery over a period shorter than their useful lives.

21 Q. How could such accelerated cost recovery methods be found to be prudent at
22 the time?

1 A. I can find no record that such methodologies were specifically examined.
2 However, accelerated cost recovery methods can be prudent from a customer rate level
3 perspective if one enjoys a significant period of time after the accelerated cost recovery
4 scheme expires to realize net present value benefits greater than the extra costs paid during
5 the accelerated cost recovery period. If one equates intergenerational equity as an element of
6 prudence, then one would not find such an approach prudent. However, that question is moot
7 at this stage since no one challenged the prudence of the Power Supply Agreement during the
8 time of the accelerated cost recovery charges.

9 In prior rate cases, prudence reviews of the AmerenUE power supply costs were
10 conducted under the representation that the AmerenUE would continue to use its share of the
11 Joppa Plant capacity and energy as long as it was economic to do so and it was never
12 represented that AmerenUE could choose to terminate use of this capacity and energy
13 whenever the then current Power Supply Agreement concluded, and as a consequence there
14 would be no future power supply agreement and therefore no retail ratemaking recognition
15 of any future power supply agreement. Under these new conditions that the Joppa capacity
16 and energy will not be used serve to AmerenUE's customers, it is possible that the Joppa
17 Plant energy and capacity would not be economic given the significant fixed costs associated
18 with the Power Supply Agreement.

19 Q. Does Mr. Moehn's Rebuttal Testimony on page 8, lines 12 through 17, prove
20 that EEInc's power "was a good price and good value"?

21 A. No. Mr. Moehn's fifty (50) year average price does not show that in any
22 given year EEInc.'s power cost relative to AmerenUE's alternative system average price
23 "was a good price and good value." In the years 1954 through 1968 the price of the EEInc.

1 power was less than \$4 per Mwh. A valid analysis to determine the value of the EEInc.
2 capacity and energy over a specific period would need to determine comparable alternative
3 costs for this time period. The fact that these prices are attractive from today's perspective or
4 hindsight does not prove they were a good value at the time. During the period 1979 through
5 1995, these prices exceed \$20 per Mwh with a high of \$60 per Mwh. During the period 1969
6 through 1978, prices fluctuated between a low of \$4 per MWH to a high of \$16.50 per Mwh
7 using Mr. Moehn's data. While it is likely that EEInc.'s power cost is cost effective in the
8 later years, it just as likely that its price was not cost effective in the earlier years or in
9 specific years. This fact would apply equally to most of AmerenUE's other generating units
10 as well. This is especially true given the fact the AmerenUE never entered into these Power
11 Supply Agreements as "pure" economic arms-length transactions. No definitive study could
12 be attempted without defining the AmerenUE alternative to EEInc. in the 1954 through 2005
13 period. I have encountered some data issues that I will seek to resolve with AmerenUE
14 before the hearing of this issue. I do not expect that resolution of these data issues would
15 change Mr. Moehn's conclusions given his approach nor my disagreement with his
16 methodology.

17 Q. Did AmerenUE ever represent that the Joppa Plant would be used to serve the
18 Union Electric service territory over a period of time that would justify any such accelerated
19 cost recovery approach?

20 A. Yes. Union Electric never indicated that the Joppa Plant capacity and energy
21 would be used for any purpose other than serving its native load customers until after its
22 merger with Central Illinois Public Service Company (CIPS) and restructuring as a
23 subsidiary of a non-exempt public utility holding company. In fact, before its affiliation with

1 the Ameren entities, Union Electric built and owned a transmission line to connect the Joppa
2 Plant capacity and energy to its system, and represented its plans to continue to use and
3 expand its use of the Joppa Plant capacity and energy to serve its native load customers after
4 the then existing Power Supply Agreement's December 31, 2005 expiration date.

5 Beginning in the early 1950s with Union Electric's applications for Commission
6 authority respecting EEInc. and continuing through the 1990's in Union Electric's electric
7 supply resource plans, representations were made by Union Electric that indicated that the
8 Joppa Plant would serve Union Electric customers over a period different than any existing
9 EEInc. power supply agreement termination date. There was no representation by Union
10 Electric/AmerenUE that it was only planning to use its share of Joppa Plant capacity and
11 energy through the life of some existing contract, which was subject to change upon a vote of
12 the EEInc. Board. Union Electric's building and owning a transmission line to connect its
13 system to the Joppa Plant as well as a commitment to supply power to the Joppa Plant for
14 station use and construction as well as supply backup to serve the DOE needs is more akin to
15 the relationship existing between AmerenUE and its other generating units than a condition
16 common in non-affiliated, wholesale power supply agreements.

17 Q. What documents does the Staff have that support your testimony that Union
18 Electric/AmerenUE planned to continue use its share of the Joppa Plant after the expiration
19 of the current Power Supply Agreement?

20 A. Attached to my Surrebuttal Testimony are three schedules. Schedule 1
21 attached to my Surrebuttal Testimony is a copy of the June 1995 "Energy Resource Plan" for
22 Union Electric. Page number 1 of this document (Schedule 1-2) describes the Union Electric
23 ownership of EEInc. in conjunction with Union Electric's other generating units. On page

1 number 26 of the document (Schedule 1-27), a discussion of the Joppa Plant begins. A
2 discussion of the Arkansas Power & Light Company (AP&L) purchased power agreement
3 follows. It is interesting to note that the discussion regarding the purchased power agreement
4 with AP&L mentions the contract termination date with the option to extend while the Joppa
5 Plant discussion makes no mention of any contract termination date. On page number 30 of
6 the document (Schedule 1-31), Union Electric mentions its opportunity to purchase
7 additional energy from the Joppa Plant and extend the AP&L contract. On page number 31 of
8 the document (Schedule 1-32), the additional Joppa Plant energy is listed as one of the
9 “Possible Additional Resource Opportunities”. On page number 33 of the document
10 (Schedule 1-34), it is mentioned that the additional Joppa energy purchase passed the system
11 level screening analysis as a future resource candidate. Page number 33 of the document also
12 states that Table 4-3 shows the preferred all supply-side resource plan resulting from the
13 quantitative screening analysis. Table 4-3 on page number 36 of the document
14 (Schedule 1-37) shows 405 MW of Joppa Plant available from 1995-2014. Page number 46
15 of the document (Schedule 1-47) states that the sensitivity, scenario, and risk analyses show
16 that the DSM-20 plan is preferred and Union Electric’s preferred resource plan is shown in
17 Table 6-7 and is based on the DSM-20 plan. Table 6-7 on page number 54 (Schedule 1-55)
18 shows 405 MW of Joppa Plant available from 1995-2014. The planning period for this
19 document goes through 2014 and at no time indicates any loss of Joppa Plant capacity and
20 energy.

21 Schedule 2 attached to my Surrebuttal Testimony is a copy of Union Electric’s
22 October 1997 “Risk & Uncertainty Analysis Briefing” resource planning document. Page 3
23 of this document (Schedule 2-3) entitled “Optimized Expansion Plans For Various

1 Sensitivities” continues to show the use of Union Electric’s share of the Joppa Plant through
2 2014 and shows the extra Joppa occurring as early as 2010, but more important to this issue
3 is what the document does not show. The document does not show an entry in 2005 “Extend
4 Joppa” as it shows an entry in 2002 “Extend AP&L,” nor does the document analyze any risk
5 scenario that Union Electric’s share of the Joppa Plant would not be available. “Extend
6 AP&L” is explained in a footnote as: “Extend The Present Purchase Contract With AP&L
7 From 2002 to 2008.”

8 Schedule 3 attached to my Surrebuttal Testimony are copies of AmerenUE’s
9 responses to certain Office of the Public Counsel’s Data Requests in Case No. EC-2002-1.
10 These responses show AmerenUE’s 10 year forecast resource plans commencing for the
11 years 1998, 1999, and 2000. **
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Q. Does this conclude your surrebuttal testimony?

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A. Yes.