

FILED³
APR 16 2007
**Missouri Public
Service Commission**

Exhibit No.: **036**
Issues: EEInc.
Witness: Michael L. Moehn
Sponsoring Party: Union Electric Company
Type of Exhibit: Rebuttal Testimony
Case No.: ER-2007-0002
Date Testimony Prepared: January 31, 2007

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. ER-2007-0002

REBUTTAL TESTIMONY

OF

MICHAEL L. MOEHN

ON

BEHALF OF

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

St. Louis, Missouri
January, 2006

Ameren UE Exhibit No. 36
Case No(s) ER-2007-0002
Date 3/20/07 Rptr MV

TABLE OF CONTENTS

I. ELECTRIC ENERGY, INC.....	2
II. DEMAND SIDE MANAGEMENT.....	20

I. ELECTRIC ENERGY, INC.

Q. Before we get into specific comments, please address some of the general issues raised by the various witnesses. A number of the witnesses have testified that AmerenUE ratepayers have provided many years of support of EEInc.; that AmerenUE ratepayers have assumed the risk associated with EEInc., and because of these factors AmerenUE should continue providing to their ratepayers cost-based power from EEInc. as long as EEInc.'s costs of producing power is below the market price for power. Can you please address these general issues?

A. Yes. First, it is important to properly characterize this unique notion of "support," sometimes also referred to in the various testimonies as financial support. Ratepayers no more provided "support" to EEInc. than I have provided "support" to Schnuck's or Target by shopping there over the years. When I shop there, I exchange money for goods. What occurred from 1954-2005 between EEInc. and AmerenUE was an unremarkable exchange of value seen in any sale of a commodity, pure and simple. As a result of AmerenUE's purchase of power from EEInc., its ratepayers received reliable, low-cost power, including capacity (MW) and energy (MWh).

Q. Given that this sale by EEInc. and purchase by AmerenUE – a straightforward exchange of value -- has occurred between these parties for over 50 years under terms of a signed agreement, would it convey any ongoing privileges or rights to the purchasing party, in this case AmerenUE, if and when that agreement expired under its own terms?

A. No.

1 **Q. Have AmerenUE ratepayers assumed any risk associated with EEInc.?**

2 A. No. Clearly, the facts of the case demonstrate, and all parties appear to have
3 agreed, that AmerenUE's equity investment in the stock of EEInc. was made as a below-the-
4 line investment with shareholder money, not with ratepayer money. The significance of this
5 investment being below-the-line lies in the fact that for ratemaking purposes, below-the-line
6 investments are excluded from any rate base, cost of capital, or other calculation relating to
7 the utility's cost to serve its utility customers. Consequently, ratepayers do not bear any
8 responsibility for potential losses on these non-regulated investments. It follows therefore,
9 that any risk associated with this investment, had it been related to the construction of the
10 Joppa Plant, or related to the ongoing operations of EEInc., falls clearly on AmerenUE's
11 shareholders and not on AmerenUE's ratepayers. In sum, shareholders took the investment
12 risk and are entitled to the investment rewards.

13 **Q. In reading the pre-filed testimony and listening to the depositions, there is**
14 **a general perception on the part of the various witnesses that the provisions of the**
15 **Power Supply Agreement ("PSA") required the Sponsoring Companies to pay for any**
16 **EEInc.'s Joppa plant costs not paid for by the Atomic Energy Commission/Department**
17 **of Energy ("AEC/DOE"), and that this requirement constitutes a burden of risk on**
18 **AmerenUE's ratepayers. Can you please address this perception?**

19 A. Yes. The PSA obligates the ratepayers to nothing. It was an agreement by
20 AmerenUE to purchase power under certain terms, and, because the investment in EEInc.
21 was below-the-line, any uneconomic or imprudent consequence of that agreement (that is, the
22 "risk" of the agreement) can only fall on AmerenUE's shareholders. Ratepayers paid for,
23 and were "at risk" to pay for, only prudent costs for capacity and energy they actually

1 received. The PSA was actually a great deal for AmerenUE, allowing it to provide low-cost
2 power to its ratepayers, and, not surprisingly, the cost of the PSA has always been ruled as a
3 prudent expense incurred by AmerenUE on behalf of its customers.

4 **Q. Did the inclusion of AmerenUE's share of EEInc.'s Joppa plant costs in**
5 **the fuel and purchased power component of the utility's cost of service shift a risk to**
6 **ratepayers?**

7 A. No. The costs paid by AmerenUE under the prescribed formulas set out in the
8 PSA were included in the company's cost of service as a component of fuel and purchased
9 power expenses. Had costs been passed through the PSA to AmerenUE without an
10 equivalent delivery of MWs or MWhs to AmerenUE that benefited ratepayers, AmerenUE
11 would not have sought recovery of those costs. Nor would I have expected the Missouri
12 Commission to have ever allowed costs not associated with power or capacity that served
13 ratepayers to have ever been paid for by ratepayers. This is because for all purposes –
14 accounting and ratemaking – AmerenUE's investment in EEInc. has always been a below-
15 the-line investment.

16 **Q. If the Joppa Plant had been unable to deliver power under terms of the**
17 **PSA, would any risk have been put on AmerenUE ratepayers?**

18 A. No. Again, if the Joppa Plant had experienced some type of catastrophic
19 failure, had regulation made a coal plant undesirable, or had other equally bad and
20 unforeseen events happened at EEInc, AmerenUE would not have sought recovery from
21 ratepayers because AmerenUE's shareholders were at risk for this unregulated investment.
22 Moreover, as noted above, AmerenUE had no assurance of any kind from the Missouri
23 Public Service Commission that any detrimental financial effects of these events could be

1 included in and recovered through rates. AmerenUE's shareholders would have had to
2 absorb any losses that would have resulted from such events.

3 **Q. In paying for EEInc. power from the Joppa plant under terms of the PSA**
4 **since the 1950s, has there ever been a year whereby AmerenUE was charged costs and**
5 **its ratepayers did not receive a commensurate benefit in return?**

6 A. No. In every year, AmerenUE received a level of power, be it capacity and/or
7 energy, from EEInc. to serve its ratepayers that was commensurate with the charges paid by
8 those ratepayers. Costs not associated with power or capacity purchased to serve ratepayers,
9 or for any costs for power or capacity that the Commission determines to be imprudent,
10 would be excluded from AmerenUE's rates, and those costs would be paid exclusively by
11 AmerenUE's shareholders.

12 **Q. Has the Missouri Public Service ever ruled any of the EEInc. purchased**
13 **power expenses to be imprudent?**

14 A. To my knowledge, no. Power purchased from EEInc. has always been
15 economical. In fact, over the roughly 50 years that AmerenUE had purchased power
16 agreements with EEInc., none of the parties who now apparently want to recharacterize the
17 below-the-line treatment of AmerenUE's investment in EEInc. ever questioned the terms,
18 price, or structure of the agreements under which AmerenUE obtained power that it used to
19 serve ratepayers.

20 **Q. Does EEInc. have any subsidiary companies?**

21 A. Yes.

1 **Q. Please describe the nature of these subsidiaries.**

2 A. I understand that EEInc. has a number of subsidiaries, including a railroad
3 company and a power generating subsidiary.

4 **Q. Have any of these subsidiary companies experienced any financial losses?**

5 A. Yes, it is my understanding that its Midwest Electric Power generating
6 subsidiary has experienced losses in recent years. I also understand that in recent years
7 EEInc. wrote off approximately \$1.7 million related to an abandoned project to construct a
8 coal transfer terminal.

9 **Q. How were these losses allocated under the PSA?**

10 A. These losses were not included in any costs to DOE or the Sponsoring
11 Companies under terms of the PSA.

12 **Q. Who bore the risks for these losses?**

13 A. Like any other cost not included in prudently incurred charges for capacity or
14 energy bought by AmerenUE to serve ratepayers, the shareholders of EEInc. bore 100% of
15 the earnings impact of these losses.

16 **Q. In consideration of the facts you have just stated, is there any evidence**
17 **supporting the claim that AmerenUE ratepayers have shouldered any risk associated**
18 **with EEInc.'s Joppa Plant?**

19 A. No. Any risk associated with the operation or construction of the Joppa Plant
20 has always been borne by AmerenUE shareholders.

21 **Q. Let us now focus on some of the specific comments made by the various**
22 **witnesses. In his direct testimony, Mr. Higgins states that AmerenUE has "chosen to**

1 **forego the opportunity to purchase cost-based power from its share of the EEInc. Joppa**
2 **generating plant.” Is this a fair assessment of the situation?**

3 A. No, it is not. AmerenUE did not choose to forgo any such opportunity
4 because such opportunity did not exist after the expiration of the then current PSA on
5 December 31, 2005. The Board of Directors of EEInc. made the decision to sell power from
6 the Joppa Plant at market-based prices.

7 **Q. Does AmerenUE in any way have control over EEInc.’s operation and**
8 **maintenance of the Joppa Plant?**

9 A. No, it does not. The daily operations, maintenance and planning of Joppa
10 Plant are the sole responsibility of the management of EEInc. AmerenUE, like all the
11 Sponsors, was required to submit to EEInc. by August 1st of each year a schedule of their
12 “Weekly Percentage of Joppa Plant” for the next year. This information aided the
13 management of EEInc. in scheduling any necessary planned outages on the Joppa units, but it
14 hardly amounted to control of EEInc.’s operation of the Joppa Plant.

15 **Q. Mr. Higgins later in his testimony states that “it is clear from the history**
16 **of the plant that Missouri retail customers have played an important role in assuring**
17 **the financial viability of the facility.” Would you agree with this statement?**

18 A. AmerenUE’s retail customers played no more of a role in “assuring the
19 financial viability” of the Joppa Plant than do customers of any business play a role in
20 assuring the viability of that business by purchasing the goods and services of that business.
21 EEInc. sold a product; AmerenUE purchased that product to serve its ratepayers; and the cost
22 of that product was properly included in AmerenUE’s cost of service to serve those
23 ratepayers. Moreover, as a result of these purchases, AmerenUE ratepayers have received a

1 tremendous value in the form of reliable, low-cost power and, in recent years, at prices
2 significantly below the then prevailing market prices.

3 **Q. Please explain.**

4 A. As presented on Schedule MLM-1, which is attached to my testimony, from
5 1954 - 2005, the AEC/DOE and the other Sponsoring Companies (other than AmerenUE)
6 took the lion's share (roughly 85%) of the output of the Joppa Plant while paying for a
7 similar level (84%) of EEInc.'s total costs associated with producing that output. Similarly,
8 AmerenUE ratepayers paid for only 16% of EEInc.'s total Joppa Plant costs while receiving
9 approximately 15% of the total MWhs generated by the Joppa Plant over this same period.
10 The bottom line is that the cost paid by each party was a function of the value received in
11 power.

12 **Q. Can you quantify the value of the power received by AmerenUE from**
13 **EEInc. and used to serve AmerenUE's ratepayers?**

14 A. I have not quantified the benefit on a yearly basis. However, over the period
15 from 1954-2005, the average annual cost of EEInc.'s power to AmerenUE was \$14.19/MWh,
16 including costs for demand and energy. I think everyone will agree that this was a good price
17 and good value.

18 **Q. So even though the shareholders of AmerenUE owned a 40% share in the**
19 **stock of EEInc, AmerenUE actually paid for a much smaller percentage of the plant's**
20 **costs?**

21 A. Yes.

22 **Q. Mr. Higgins further discusses the "financial support" provided to EEInc.**
23 **by an amendment to the Intercompany Agreement in 1977 to cover a new \$10 million**

1 **bond issuance. Under the terms of this amendment, the Sponsoring Companies**
2 **committed to cover EEInc.'s operating and other expenses in the event that EEInc. was**
3 **unable to generate or deliver any power to the Sponsoring Companies. In return for**
4 **this "guaranty" the Sponsoring Companies, including AmerenUE, were "assured of a**
5 **continuous source of economical power." Does this "guaranty" provide AmerenUE**
6 **with an ongoing entitlement to cost-based power out of Joppa Plant?**

7 A. No, it does not. Unlike a typical investor-owned utility, EEInc. has no
8 jurisdictional customers from which to recover such costs. In order to sell these bonds, the
9 prospective bondholders wanted assurance of being repaid for their investment.

10 The financial backstop provided by the PSA allowed EEInc. to finance these
11 bonds at more favorable terms that they may have otherwise have been able to obtain absent
12 the PSA. This not only provided a benefit to the DOE, but also to the Sponsoring Companies
13 through lower power costs since the terms of their PSA, including pricing provisions, mostly
14 mirrored those found in the EEInc./DOE agreement. The benefit of these lower power cost
15 went to the DOE and ultimately to the ratepayers of the Sponsoring Companies, including
16 AmerenUE's ratepayers. Any risk that AmerenUE, as one of the Sponsoring Companies,
17 would have had to make payments to EEInc., but not receive power from it was borne
18 entirely by the shareholders of AmerenUE. Because EEInc. was a below-the-line investment
19 of AmerenUE's shareholders, AmerenUE would not have sought to recover such costs in its
20 cost of service, and this Commission certainly would not have approved including such
21 expenses in AmerenUE's cost of service.

22 **Q. Is the debt offering reference by Mr. Higgins still outstanding?**

23 A. No, the debt offering in question has been retired.

1 **Q. Did the bondholder have to exercise its right to make AmerenUE cover**
2 **EEInc's financial obligations associated with the bond?**

3 A. No, EEInc. satisfied all financial obligations associated with the debt issued
4 during its term of issuance. AmerenUE never incurred any expense associated with its
5 guarantee.

6 **Q. Can you cite a specific example where the terms of the EEInc. power**
7 **agreements have provided value to AmerenUE's ratepayers?**

8 A. Yes. In EEInc's 1991 private placement of \$60 million of senior notes needed
9 to finance life extension projects and compliance with Phase I of the Clean Air Act, Duff &
10 Phelps Credit Rating Co. assigned an AA- rating to the notes. In doing so, Duff & Phelps
11 stated, "Our rating recognizes the strength of the purchase power contract EEI has with the
12 DOE and the four investor-owned utility participants." That strong credit rating translates
13 into lower borrowing costs for EEInc. and, consequently, lower costs that lower the price of
14 power bought by AmerenUE to serve ratepayers. This is a ratepayer benefit, not a risk. The
15 risk, if default or catastrophe occurred, was on shareholders.

16 **Q. Mr. Higgins stated that AmerenUE has a dual role as an owner and**
17 **customer of EEInc. and that the prudent course of action would have been to negotiate**
18 **a replacement PSA on cost-based terms to replace the agreement that expired on**
19 **December 31, 2005. Does this dual role as owner/customer entitle AmerenUE's retail**
20 **customers to a continuation of cost-based power out of EEInc.'s Joppa facility?**

21 A. No, it does not. It is important to separate AmerenUE's role as a shareholder
22 and AmerenUE's role as a customer. AmerenUE, "the shareholder," is the owner of record
23 through its investment of shareholder funds in the initial funding of 40% of the equity

1 investment in the Joppa facility back in 1951. AmerenUE, "the utility," has been a customer
2 of EEInc. through the various PSAs that have been executed and amended over this 50-plus-
3 year period. Through its obligations to pay for power under the PSAs, the retail customers of
4 AmerenUE, "the utility," received the benefit of reliable, low-cost generation. However,
5 such obligations and benefits ended with the expiration of the most recent PSA on December
6 31, 2005. Since there is no continuing cost obligation, there can be no continuing benefits.
7 This is no different from any other power purchase agreement AmerenUE has with other
8 suppliers.

9 **Q. To your knowledge, is there any language in the PSA between EEInc. and**
10 **the Sponsoring Companies that conveys any ongoing entitlement to cost-based power**
11 **from the Joppa Plant after termination of this agreement?**

12 A. I am not a lawyer, but to my knowledge, there is no such language, nor would
13 I expect there to be.

14 **Q. Is the absence of such language consistent with standard utility practice**
15 **regarding purchased power agreements?**

16 A. To my knowledge, yes, it is.

17 **Q. Is there any binding obligation of any kind on the part of ratepayers to**
18 **cover costs associated with EEInc.'s Joppa Plant at any cost?**

19 A. No. As I noted earlier, ratepayers were required to pay for, and did pay for,
20 prudently incurred power costs. Since power costs from the Joppa Plant were so low there
21 was never a question of whether they were prudently incurred. Had something happened at
22 Joppa that made that power high cost power, consistent with the below-the-line character of
23 the EEInc. investment, AmerenUE would not have sought to pass those costs through its cost

1 of service as part of its purchased power expenses. In addition, there would be no reason to
2 expect that the Commission would permit such costs, if imprudent, to be included in
3 AmerenUE's cost of service. Shareholders bore that risk, just as shareholders bear the risk of
4 financial losses at EElnc. today.

5 **Q. Can you think of an example where stakeholders have sought to disallow**
6 **costs they believed to be imprudent?**

7 **A.** Yes. In the current case, various stakeholders are attempting to disallow
8 certain costs associated with the purchase and ratebasing of the Pinckneyville, Kinmundy,
9 and Peno Creek combustion turbines. AmerenUE's shareholders bear the risk that their
10 position will prevail.

11 **Q. Can you cite another AmerenUE purchased power agreement that does**
12 **not convey an ongoing entitlement to power after the expiration date of the agreement?**

13 **A.** Yes. As part of the transaction to acquire the Missouri operations of Arkansas
14 Power & Light Company ("AP&L") from Entergy in 1992, AmerenUE signed a long-term
15 purchased power agreement for 120 MW - 160 MW of capacity and energy to serve the newly
16 acquired load. This cost-based contract provided capacity and energy for an initial period of
17 ten (10) years with costs based on specific demand and energy formulas. Under terms of the
18 agreement, AmerenUE had the right to extend the agreement for an additional period of six (6)
19 years beyond the initial period and, if AmerenUE elected to extend the agreement, it was to
20 remain in effect beyond the six (6) extension period on a year-to-year basis until cancelled by
21 either party upon at least sixty (60) months prior written notice. While it is clear that the initial
22 agreement allowed AmerenUE to extend the agreement, at its option, it is also clear that there

1 was no ongoing right or entitlement by AmerenUE to such power beyond the end of the
2 contract term.

3 **Q. Is the original agreement with AP&L still in effect?**

4 A. No. The original agreement was terminated, replaced and superseded by a
5 Service Agreement mutually agreed upon between Entergy Arkansas, Inc. ("EAI", formerly
6 AP&L) and AmerenUE, dated April 1, 1999. Since that time, EAI has given the necessary
7 sixty (60) months notice to AmerenUE that it will terminate the Service Agreement effective
8 August 25, 2009.

9 **Q. Will AmerenUE have any ongoing rights to that capacity after the**
10 **effective termination date of the current agreement?**

11 A. No, it will not.

12 **Q. To your knowledge, are there any other power suppliers who currently**
13 **sell cost-based power to AmerenUE?**

14 A. To my knowledge, there are no other suppliers who are selling power to
15 AmerenUE at cost-based rates.

16 **Q. Mr. Higgins uses Arizona Public Service ("APS") as an example of a**
17 **utility attempting to purchase "below-the-line" generation resources from an**
18 **unregulated affiliate for the benefit of its retail customers. In his direct testimony**
19 **example, he provides evidence that the unregulated "below-the-line" generation in**
20 **question built by an unregulated affiliate of APS was "not sized, sited or constructed by**

1 **happenstance or on speculation,” but was “expressly built to service APS load.” Do you**
2 **agree with his use of this example to support his direct testimony in this case?**

3 A. No, I do not. While the APS example Mr. Higgins illustrates is indeed a
4 rather unique situation involving the access to and purchase of “below-the-line” generation of
5 an unregulated affiliate by the regulated utility for the benefit of its retail customers, its
6 situation of how it attained such status is far different from that of AmerenUE’s former
7 access to and purchase of such “below-the-line” generation from EEInc.

8 **Q. Please explain.**

9 A. The APS affiliate in Mr. Higgins example, Pinnacle West Energy Corporation
10 (“PWEC”), was established to house the unregulated generation business of Pinnacle West at
11 a time when the State of Arizona was planning to transition to a deregulated environment.
12 Under that regulatory mandate, the state’s utilities would have been forced to separate
13 generation from the transmission and distribution parts of their businesses. Regulated
14 generation within APS would have been transferred to PWEC, and any new future generation
15 would have been built within PWEC.

16 With the abrupt changes in the California power markets, the State of Arizona
17 changed course and delayed any further transition to a deregulated market. APS’ regulated
18 generation thus remains in the utility APS and the recently completed “below-the-line”
19 generation in PWEC referenced by Mr. Higgins was eventually transferred to APS and
20 included in rate base as the result of the Arizona Corporations Commission’s order in APS’
21 retail rate case settled in 2004. Furthermore, the PWEC capacity transferred to APS was
22 included, not at the original cost-based price of construction, but at a lower value that more

1 closely reflected a competitive, market-based value to APS' ratepayers. APS shareholders
2 absorbed the costs.

3 Unlike the Arizona plants, EEInc's Joppa Plant was never sited, sized or
4 constructed to serve the retail load of any of its Sponsoring Companies, including
5 AmerenUE, but was constructed for the purpose of serving the AEC/DOE load at Paducah,
6 Kentucky. The Sponsoring Companies, including AmerenUE, signed a PSA with EEInc. to
7 purchase excess Joppa power not used by the AEC/DOE. While the retail customers of
8 AmerenUE have enjoyed for many years the benefits of a relatively small portion of Joppa's
9 low cost power, such PSAs did not provide the retail customers of AmerenUE with any
10 ongoing claim, or entitlement, to such power after the PSA expired in December 2005.

11 **Q. Can you identify any other situation in the utility industry where a power**
12 **purchase agreement has granted the purchaser of such power any ongoing claim to, or**
13 **benefits from, such capacity after the expiration of the related power purchase**
14 **agreement?**

15 A. No, I cannot.

16 **Q. Mr. Brosch, in his direct testimony, attempts to equate the contractual**
17 **relationship between EEInc. and AmerenUE set out in the PSA, which includes the**
18 **recovery of operating expenses and a reasonable return on investment, with an ownership**
19 **interest in EEInc.'s capacity as if it was included in AmerenUE's rate base. Is this a**
20 **reasonable argument?**

21 A. No, it is not. The terms of the PSA between EEInc. and the Sponsoring
22 Companies are no different from any other long-term purchased power agreement ("PPA")
23 utilities frequently enter into on behalf of their retail customers.

1 While the exact terms are dependent on the particular situation between a
2 buyer and seller in their respective power markets, PPAs typically provide for the recovery of
3 operating expenses, as well as a return on the supplier's capacity being made available for
4 purchase. Simply because a PPA may contain both an expense component, as well as a
5 capital recovery and/or return component, does not give any rights of ownership to the
6 purchasing party beyond the terms of the specific PSA.

7 This is no different that if someone shops for many years at the retailer where
8 dollars are exchanged for various goods and/or services. What has occurred is a simple
9 financial transaction between two parties to their mutual benefit. If the retailer is to remain
10 in business over the long term, we can assume that the retailer has included in the price of the
11 goods or services sold, the cost to produce or acquire the good or services (including an
12 appropriate level of depreciation of the store), plus a necessary profit margin to justify the
13 risks of remaining in business. And the mere fact that there has been a history of financial
14 transactions over an extended period of time does not give that consumer any ownership
15 rights in, or other ongoing benefits from, the retailer; just as the absence of itemized profit
16 margins on the bill does not imply that the retailer does not include them in his pricing
17 decisions.

18 **Q. Were AmerenUE's costs under the terms of the PSA the same as they**
19 **would have been if AmerenUE had owned directly, in rate base, its 40% sponsorship**
20 **share of Joppa capacity?**

21 **A. No, they would not have been the same for two reasons. First, looking only at**
22 the time period covered by the latest PSA (1987-2005), AEC/DOE and the three other
23 Sponsoring Companies picked up roughly 80% of the total costs of EEInc.'s Joppa Plant,

1 including both a recovery of expenses and a return on capital. As a result, AmerenUE's
2 ratepayers in the end only paid for, through prudent fuel and purchased power expenses
3 included in rates, roughly 20% of the total costs associated with EEInc.'s Joppa Plant, far less
4 than the amount they would have paid had AmerenUE's 40% share of EEInc. been included
5 in rate base over this same period.

6 Secondly, the return on equity component of the PSA, commonly referred to
7 as Component D, provided for a return on equity of 15% on the capital investment made by
8 the Sponsoring Companies. In EEInc's case, its capital structure was highly leveraged. Of
9 the original cost of the facility, roughly \$195 million of debt was secured from two
10 institutional investors, with the remaining \$6.2 million of initial investment being funded by
11 the Sponsoring Companies through their purchase of capital stock in EEInc. Furthermore,
12 the amount of the Sponsoring Companies' equity investment in EEInc. has remained fixed at
13 this level over time.

14 Had AmerenUE funded the construction of such capacity under traditional
15 rate base methodology, the funding would have been made with a capital structure closer to a
16 traditional debt/equity split of around 50% debt and 50% equity. The effect would have been
17 a much higher cost of capital applied to such a rate base investment, which ultimately would
18 have included in AmerenUE's cost of service as a component of power purchased by
19 AmerenUE to serve ratepayers.

20 Third, AmerenUE owns stock in EEInc. AmerenUE does not own the
21 generating units. The only investment is in stock, and that stock is not in rate base. The
22 book value of the plant owned by EEInc., not by AmerenUE, is not in AmerenUE's rate base.

1 **Q. Referring back to Mr. Brosch's direct testimony, he further opines that**
2 **AmerenUE's investment in EEInc. should be considered a regulatory asset, and**
3 **therefore as such should convey certain ongoing rights and benefits to AmerenUE**
4 **ratepayers beyond the terms of the recently expired PSA. Do you agree with his**
5 **assessment of AmerenUE's investment in EEInc. as a regulatory asset?**

6 A. No, I do not. In fact, in his own words, he considers AmerenUE's investment
7 in EEInc. a regulatory asset, "although not in the traditional accounting definition of this
8 term."

9 In reality, we do operate in a legal and regulatory environment that does
10 follow and apply traditional accounting definitions and rules. Operating in an environment
11 with clear and specific accounting rules is a good thing. These rules provide clearly defined
12 boundaries and limitations in order to avoid the type of confusion Mr. Brosch is attempting to
13 introduce through his novel interpretation and definition of a "regulatory asset." Since we
14 cannot arbitrarily change accounting definitions to suit our whims, there can be no argument
15 for a regulatory asset no matter how much Mr. Brosch wishes to stretch the accounting
16 definition.

17 Furthermore, as the facts have been stated before in my direct testimony, the
18 investment in the capital stock of EEInc. was made by AmerenUE's shareholders and has
19 been maintained as a below-the-line investment since EEInc's inception. Any risks Mr.
20 Brosch characterizes as having been supported "largely at ratepayer risk and expense" have
21 in fact been borne entirely by shareholders.

1 **Q. How would you address the issue of “windfall profits” raised by Mr.**
2 **Brosch and his argument for sharing such profits with AmerenUE’s ratepayers?**

3 A. When EEInc. was established in 1950, the utility environment was based
4 solely on cost-based tariffs and contracts. An unregulated environment that would develop
5 some fifty years later, where suppliers and buyers are free to engage in an unfettered
6 competitive generation market, was not foreseen at the time. To that extent, the ability of
7 EEInc. to sell power at market rates was not expected 50 or so years ago. However, over the
8 last several years, we have seen the development of unregulated wholesale markets. EEInc.
9 applied for and received exempt wholesale generator status, and applied for and was granted
10 the right to sell power at market prices by the Federal Energy Regulatory Commission
11 (“FERC”). Because the world has changed, the shareholders of EEInc. who have always
12 taken the investment risk in EEInc. are now able to experience greater returns, but those
13 returns are not a windfall of any kind.

14 Mr. Brosch’s attempt to suggest that these so-called “windfall profits” be
15 shared with ratepayers is nothing more than a roundabout attempt to confiscate unregulated
16 assets for the benefit of regulated customers when, in fact, these customers do not have now,
17 nor have they ever had, any legal claim on such assets, nor were they at risk for paying
18 unreasonable power or capacity costs incurred by AmerenUE from this unregulated company
19 or any costs associated with catastrophic events at EEInc.

20 **Q. Mr. Brosch compares EEInc’s return on equity (“ROE”) for the period**
21 **before and after the expiration of the PSA. Is there any merit to this comparison?**

22 A. No. ROE is an inappropriate measure due to the highly leveraged nature of
23 EEInc’s capital structure. Any significant change in revenues, which has occurred since

1 moving from cost-based contracts to market-based pricing, absent any significant changes in
2 costs, will translate to similar significant increases in net income and therefore much
3 increased returns on equity.

4 **Q. Was the 15% return on equity rate set forth in the PSA reasonable?**

5 A. Yes. The ROE included in the PSA [Mod. 12] was adjusted to reflect
6 comparable risk returns during a time period of relatively high interest rates in the mid-to-
7 late-1980s.

8 Furthermore, it is important to remember that the ROE component charged to
9 DOE and the Sponsoring Companies was calculated on a fixed dollar amount of investment.
10 While the rate of return is higher than currently allowed regulated ROEs, the actual dollar
11 amount of the ROE component has remained quite small.

12 **II. DEMAND SIDE MANAGEMENT**

13 **Q. What is your response regarding the direct testimony of Staff witness**
14 **Lena Mantle who recommended that the Commission allow AmerenUE to use a non-**
15 **traditional cost recovery methodology to recover current and future demand-side**
16 **resource analysis and implementation costs?**

17 A. My understanding is that Ms. Mantle proposed that demand-side costs that
18 were incurred in the test year not in the context of the collaborative process resulting from
19 Case No. EC-2002-1 be placed in a regulatory asset account, assuming Commission approval
20 of this methodology. AmerenUE would amortize the costs over a ten (10) year period.
21 AmerenUE would be allowed to place the demand-side costs for each year subsequent to the
22 test year in this case in the regulatory account. The amounts accumulated in this regulatory
23 asset account should be allowed by the Commission to earn a return not greater than

Rebuttal Testimony of
Michael L. Moehn

1 AmerenUE's AFUDC rate. Based on my understanding, I support Ms. Mantle's
2 recommendation.

3 **Q. Does this conclude your rebuttal testimony?**

4 **A. Yes.**

**Summary of EEInc Sales (\$)
1954-2005**

Year	To All Parties	To DOE and Sponsors, excluding UE*		To UE	
		\$ Sales	% Total	\$ Sales	% Total
1954	\$14,974,341	\$14,414,632	96.3%	\$559,709	3.7%
1955	\$24,678,738	\$22,791,951	92.4%	\$1,886,787	7.6%
1956	\$29,063,024	\$27,230,413	93.7%	\$1,832,611	6.3%
1957	\$29,731,495	\$27,543,954	92.6%	\$2,187,541	7.4%
1958	\$29,824,441	\$27,788,293	93.2%	\$2,036,148	6.8%
1959	\$30,586,085	\$28,270,620	92.4%	\$2,315,465	7.6%
1960	\$30,533,539	\$28,313,071	92.7%	\$2,220,468	7.3%
1961	\$30,598,414	\$28,314,110	92.5%	\$2,284,304	7.5%
1962	\$31,106,839	\$28,586,680	91.9%	\$2,520,159	8.1%
1963	\$30,769,196	\$28,229,662	91.7%	\$2,539,534	8.3%
1964	\$31,134,167	\$27,438,065	88.1%	\$3,696,102	11.9%
1965	\$30,695,859	\$25,941,122	84.5%	\$4,754,737	15.5%
1966	\$31,718,763	\$24,454,139	77.1%	\$7,264,624	22.9%
1967	\$32,235,434	\$22,476,674	69.7%	\$9,758,760	30.3%
1968	\$32,385,406	\$22,874,360	70.6%	\$9,511,046	29.4%
1969	\$33,951,123	\$23,953,664	70.6%	\$9,997,459	29.4%
1970	\$36,939,813	\$27,507,628	74.5%	\$9,432,185	25.5%
1971	\$42,209,275	\$35,167,807	83.3%	\$7,041,468	16.7%
1972	\$49,620,494	\$41,954,262	84.6%	\$7,666,232	15.4%
1973	\$53,187,038	\$44,819,448	84.3%	\$8,367,590	15.7%
1974	\$70,730,469	\$61,483,464	86.9%	\$9,247,005	13.1%
1975	\$91,218,468	\$80,772,523	88.5%	\$10,445,945	11.5%
1976	\$93,456,716	\$81,095,986	86.8%	\$12,360,730	13.2%
1977	\$105,719,865	\$92,280,813	87.3%	\$13,439,052	12.7%
1978	\$104,888,409	\$98,288,484	93.7%	\$6,599,925	6.3%
1979	\$120,585,067	\$89,596,218	74.3%	\$30,988,849	25.7%
1980	\$112,652,386	\$76,731,582	68.1%	\$35,920,804	31.9%
1981	\$112,628,837	\$83,384,183	74.0%	\$29,244,654	26.0%
1982	\$109,869,728	\$81,956,579	74.6%	\$27,913,149	25.4%
1983	\$114,827,335	\$92,896,089	80.9%	\$21,931,246	19.1%
1984	\$154,938,576	\$146,005,182	94.2%	\$8,933,394	5.8%
1985	\$147,632,345	\$144,198,409	97.7%	\$3,433,936	2.3%
1986	\$128,454,109	\$125,844,413	98.0%	\$2,609,696	2.0%
1987	\$111,114,499	\$107,830,540	97.0%	\$3,283,959	3.0%
1988	\$124,126,548	\$116,127,541	93.6%	\$7,999,007	6.4%
1989	\$140,808,007	\$131,204,372	93.2%	\$9,603,635	6.8%
1990	\$141,324,157	\$130,288,214	92.2%	\$11,035,943	7.8%
1991	\$140,305,400	\$128,503,445	91.6%	\$11,801,955	8.4%
1992	\$144,606,839	\$132,345,191	91.5%	\$12,261,648	8.5%
1993	\$166,367,960	\$147,981,012	88.9%	\$18,386,948	11.1%
1994	\$158,242,875	\$142,517,514	90.1%	\$15,725,361	9.9%
1995	\$159,807,659	\$143,891,739	90.0%	\$15,915,920	10.0%
1996	\$157,619,525	\$141,712,755	89.9%	\$15,906,770	10.1%
1997	\$155,998,309	\$140,063,020	89.8%	\$15,935,289	10.2%
1998	\$146,799,196	\$130,253,587	88.7%	\$16,545,609	11.3%
1999	\$148,331,228	\$125,939,671	84.9%	\$22,391,557	15.1%
2000	\$154,366,327	\$121,981,059	79.0%	\$32,385,268	21.0%
2001	\$159,579,268	\$118,310,539	74.1%	\$41,268,729	25.9%
2002	\$165,748,719	\$115,041,983	69.4%	\$50,706,736	30.6%
2003	\$157,622,656	\$99,872,246	63.4%	\$57,750,410	36.6%
2004	\$158,426,425	\$90,608,208	57.2%	\$67,818,217	42.8%
2005	\$164,612,509	\$99,948,778	60.7%	\$64,663,731	39.3%
Total	\$4,979,353,900	\$4,177,025,894	83.9%	\$802,328,006	16.1%

Source: FERC Form 1

* Includes periodic sales to TVA during the period 1989-2003

**Summary of EEInc Sales (MWh)
1954-2005**

Year	To All Parties	To DOE and Sponsors, excluding UE*		To UE	
		MWh Sales	% Total	MWh Sales	% Total
1954	4,153,470	3,994,516	96.2%	158,954	3.8%
1955	6,620,065	6,029,657	91.1%	590,408	8.9%
1956	7,530,066	7,029,308	93.3%	500,758	6.7%
1957	7,839,304	7,236,857	92.3%	602,447	7.7%
1958	7,797,765	7,237,861	92.8%	559,904	7.2%
1959	8,064,265	7,383,564	91.6%	680,701	8.4%
1960	7,953,768	7,311,528	91.9%	642,240	8.1%
1961	8,042,538	7,381,466	91.8%	661,072	8.2%
1962	8,296,834	7,537,663	90.8%	759,171	9.2%
1963	8,351,242	7,551,609	90.4%	799,633	9.6%
1964	8,214,769	7,128,005	86.8%	1,086,764	13.2%
1965	8,165,051	6,787,769	83.1%	1,377,282	16.9%
1966	7,995,447	6,101,104	76.3%	1,894,343	23.7%
1967	8,190,608	5,565,201	67.9%	2,625,407	32.1%
1968	7,834,790	5,453,134	69.6%	2,381,656	30.4%
1969	8,045,319	5,597,846	69.6%	2,447,473	30.4%
1970	7,649,824	5,696,202	74.5%	1,953,622	25.5%
1971	6,813,261	5,796,890	85.1%	1,016,371	14.9%
1972	6,904,422	5,991,896	86.8%	912,526	13.2%
1973	7,463,016	6,446,627	86.4%	1,016,389	13.6%
1974	7,209,877	6,318,542	87.6%	891,335	12.4%
1975	6,815,536	6,140,455	90.1%	675,081	9.9%
1976	6,716,619	5,914,919	88.1%	801,700	11.9%
1977	6,896,710	6,085,888	88.2%	810,822	11.8%
1978	5,642,153	5,310,270	94.1%	331,883	5.9%
1979	6,352,050	4,921,663	77.5%	1,430,387	22.5%
1980	5,719,371	4,023,120	70.3%	1,696,251	29.7%
1981	5,201,869	3,930,335	75.6%	1,271,534	24.4%
1982	4,833,296	3,732,679	77.2%	1,100,617	22.8%
1983	5,129,240	4,294,309	83.7%	834,931	16.3%
1984	6,809,637	6,445,499	94.7%	364,138	5.3%
1985	6,220,561	6,139,864	98.7%	80,697	1.3%
1986	5,241,307	5,197,944	99.2%	43,363	0.8%
1987	4,203,852	4,137,706	98.4%	66,146	1.6%
1988	4,725,697	4,523,854	95.7%	201,843	4.3%
1989	5,932,734	5,696,635	96.0%	236,099	4.0%
1990	7,134,111	6,667,970	93.5%	466,141	6.5%
1991	6,851,619	6,386,786	93.2%	464,833	6.8%
1992	7,405,129	6,877,715	92.9%	527,414	7.1%
1993	7,142,706	6,469,680	90.6%	673,026	9.4%
1994	7,133,190	6,451,838	90.4%	681,352	9.6%
1995	7,759,134	6,999,182	90.2%	759,952	9.8%
1996	7,807,246	7,033,003	90.1%	774,243	9.9%
1997	7,984,502	7,165,497	89.7%	819,005	10.3%
1998	8,027,445	7,096,957	88.4%	930,488	11.6%
1999	8,048,338	6,809,720	84.6%	1,238,618	15.4%
2000	7,982,737	6,248,820	78.3%	1,733,917	21.7%
2001	8,087,420	6,003,541	74.2%	2,083,879	25.8%
2002	8,003,013	5,556,523	69.4%	2,446,490	30.6%
2003	8,031,614	5,128,689	63.9%	2,902,925	36.1%
2004	8,385,566	4,802,672	57.3%	3,582,894	42.7%
2005	7,814,718	4,862,919	62.2%	2,951,799	37.8%
Total	369,174,821	312,633,897	84.7%	56,540,924	15.3%

Source: FERC Form 1


* Includes periodic sales to TVA during the period 1989-2003

Schedule MLM-1
Page 2 of 4

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.)

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

True and correct:



Michael L. Moehn

Subscribed and sworn to before me this 30th day of January, 2007.

Danielle A. Moskop
Notary Public

My commission expires: July 21, 2009

