

1 A. Sure.

2 Q. And you think that evidence should have some
3 factual and analytical basis?

4 A. Of course.

5 Q. How is the economic development climate in
6 Michigan?

7 A. You're asking today?

8 Q. Yes, sir.

9 A. Not very good.

10 Q. How was the economic development climate
11 in Michigan when you were a commissioner?

12 A. Better than it is today.

13 Q. Vis-a-vis the rest of us, how was it?

14 A. Better than it is today.

15 Q. Vis-a-vis Missouri, how was it?

16 A. I would guess Michigan was in a better spot
17 than Missouri when I served on the commission.

18 Q. What about utility rates compared to
19 Missouri or Michigan utility rates compared to
20 Missouri utility rates?

21 A. As a general matter, higher, but there would
22 be exceptions.

23 Q. For electric are they generally higher?

24 A. Yes. And again, there are Michigan service
25 territories, for example, served by AEP where that may

1 not be the case, but as a general matter, higher.

2 Q. And were they higher as a result of the
3 Michigan regulatory policy?

4 A. Michigan history, including its regulatory
5 history.

6 Q. When you were a commissioner in Michigan,
7 were you involved in any stranded costs cases?

8 A. Yes.

9 Q. Tell me about those cases.

10 A. It was a part of Michigan's restructuring
11 that utilities were allowed stranded costs for their
12 stranded assets.

13 Q. And so those stranded costs were required to
14 be paid by ratepayers, is that what you mean?

15 A. They were in fact securitized.

16 Q. And were they placed in rates?

17 A. Yes.

18 Q. And so explain how that fits with the
19 regulatory compact that you talked about, your view.

20 A. Well, it fits with Michigan Acts 141 and
21 142, which was the restructuring act and
22 securitization act respectively.

23 Q. Why did Michigan have to restructure?

24 A. Michigan went through a restructuring
25 because of its costs, prices to customers, and as a

1 probably philosophical expectation that trying to
2 replicate markets is not as good as markets
3 themselves.

4 Q. How has that worked out?

5 A. Depends on who you ask.

6 Q. I'm asking you.

7 A. It has -- well, for me it depends on the
8 class of customers that you're considering.

9 Q. Okay. Let's start with the residential
10 ratepayers. How has that worked out for them?

11 A. Residential ratepayers got a very good deal
12 because their rates were reduced and frozen. The
13 commercial class benefited significantly as a result
14 of restructuring, and the industrial general class of
15 customers did well early on and have done less well of
16 late.

17 Q. Does that mean their rates are higher?

18 A. I have not looked at that.

19 Q. Okay. What do you mean by less well?

20 A. Some of the industrial customers of Michigan
21 were granted special rate contracts to transition them
22 from a regulated climate to a restructured climate.
23 Some of them did not pursue as aggressively as they
24 might have new relationships with employers, and so
25 they have not benefited as much as probably the

1 legislation thought they might.

2 Q. But let's take it beyond Michigan. How are
3 rates in we'll say the unbundled states versus rates
4 in traditional states like Missouri?

5 A. I think, speaking in generalities again,
6 that prices have risen further and faster in the
7 restructured states. And I would say many believe
8 that's in part because the costs flow through faster.

9 Q. Are you still a big fan of markets then in
10 terms of rate regulation?

11 A. I think markets have served this country
12 extremely well in comparison to most any other type of
13 economic process, and so my inclination is to be
14 supportive of markets and free enterprise, and
15 whenever it's appropriate to have market forces
16 working to allow them to work.

17 Q. You think Missouri should unbundle its
18 rates?

19 A. I'm not advising on that, no.

20 Q. I'm asking you, do you think they should?

21 A. I think Missouri has been very well served
22 by what they have in place now.

23 Q. So, the regulators have been doing a good
24 job in Missouri?

25 A. Well, I guess I'm not going to be critical

1 of regulators in any state, if that's what you're
2 asking me to do.

3 Q. Well, no. I'm just asking, have they been
4 doing a good job?

5 A. Missouri has a very good reputation at its
6 commission.

7 Q. I'm not asking you to personally criticize
8 any of our fine commissioners. I'm just talking about
9 regulation in general. So, you would not support
10 unbundling in Missouri, you think that regulator rates
11 is working fine?

12 A. Is this question somehow about my testimony?

13 Q. No, it's about your philosophy.

14 A. Okay.

15 Q. I think it's relevant. I mean it's a
16 deposition. If Mr. Byrne wants to pose an objection,
17 he can do it, and then you need to go ahead and answer
18 the question.

19 MR. BYRNE: Okay, I'll impose an objection
20 that it's irrelevant. Now you can go ahead and
21 answer. Thanks for the suggestion.

22 Q. (By Mr. Micheel) And the question again is,
23 have the Missouri commissioners been doing a good
24 job?

25 A. Is that the question? I thought it was

1 recommending unbundling.

2 Q. Okay.

3 A. All right. I have no advice for the
4 Missouri legislature in that regard.

5 Q. Turning to your surrebuttal testimony, do
6 you have it there, sir?

7 A. I do.

8 Q. I'm looking at Page 4 of that.

9 A. Yes.

10 Q. And you note -- you say, "It provides a
11 commissioner no help in the process to say, as does
12 Dr. Woolridge, that the company's requested ROE is
13 extremely overstated and not reflective of current
14 market fundamentals;" is that right?

15 A. Yes, I find that, yes.

16 Q. And can you explain to me why it's not
17 helpful to the process?

18 A. Well, it isn't helpful because it's out of
19 context of what the financial world is expecting these
20 days.

21 Q. Did you do any studies indicating what the
22 financial world is expecting these days?

23 A. I think we established earlier I didn't do
24 any of my own studies, no.

25 Q. Are you qualified to make any conclusion or

1 statement like that? You're not a financial analyst,
2 are you?

3 A. I'm not a certified financial analyst, no.

4 Q. Who did you talk to in the financial world
5 that told you that the ROEs represented by all of the
6 other intervenor witnesses here are not appropriate,
7 who in the financial world?

8 A. Well, I would call it more a survey of the
9 literature than individual discussions if you're
10 looking for names.

11 Q. What literature did you survey?

12 A. The financial literature that relates to
13 utilities in the country, Moody's and Fitch and those
14 sources.

15 Q. Now, when I look at Page 12 of your
16 surrebuttal testimony, sir, at the top of the page
17 there you say, "Clearly, the proposed ROEs of
18 recommended by the other parties in this case would be
19 viewed as utterly unreasonable in the real world." Do
20 you see that?

21 A. At the very top, yes.

22 Q. Yes, sir.

23 A. Yes.

24 Q. I think there's a grammatical error, but
25 what did you do to determine that it would be viewed

1 utterly unreasonable in the real world?

2 A. Again, a survey of the literature and what's
3 going on on Wall Street with respect to views towards
4 utilities.

5 Q. You did none of your own study, did you?

6 A. No. We can continue to establish, no, I
7 didn't do my own study.

8 Q. Did you talk or did you do any discovery of
9 any of these other ROE witnesses to determine whether
10 or not they believed that their recommendations would
11 be unreasonable in the real world?

12 A. I did not carry out discovery.

13 Q. So, that's just your hypothesis?

14 A. It's my observation.

15 Q. On Page 5 of your surrebuttal testimony, you
16 indicate that access to low cost capital is important
17 and that such access to capital gives the company the
18 capability to undertake discretionary investments that
19 create long-term benefits for customers. Do you see
20 that?

21 A. I do.

22 Q. Do you have any confidence that UE will make
23 those discretionary investments?

24 A. I guess I do based on their operating
25 history. They have a good track record.

1 Q. And how did you determine that?

2 A. Based on others' opinions of their level of
3 service.

4 Q. Whose opinions?

5 A. Service awards and where they rank in
6 comparison to others, J.D. Powers, those types.

7 Q. Well, who else did you talk to about
8 AmerenUE, discretionary investments that they've made?

9 A. I think I'm saying in a going forward
10 context here.

11 Q. Do you know of any discretionary investments
12 that Ameren has made in the past?

13 A. On a firsthand basis, no.

14 Q. Is it your testimony that we should give
15 them a higher ROE in hopes that they will make some
16 good discretionary investments?

17 A. It's my testimony that they would not have
18 achieved the levels of customer satisfaction that they
19 achieved unless they were making wise investment
20 decisions.

21 Q. So, your view is based on customer
22 satisfaction?

23 A. Sure.

24 Q. Have you reviewed any transcripts of local
25 public hearings held in this case?

1 A. No, I've not.

2 Q. Do you think you should?

3 A. I'm not sure what you're suggesting. Should
4 I?

5 Q. Do you think it would be important to find
6 out what the current customers think about the
7 company's level of service?

8 A. It would be a snapshot in time.

9 Q. When you were a commissioner did you take
10 into account what the customers thought in determining
11 your outcome?

12 A. That's always a part of the balance, I
13 think, in a commissioner's activities.

14 Q. And so should the commissioner take that
15 into account?

16 A. Commissioners should be balancing a whole
17 plethora of interests, absolutely.

18 Q. When you were a commissioner in Michigan,
19 did you err on the high side of the range of ROEs?

20 A. On rates of return, I guess, return on
21 equity, I have always been on the high side believing
22 that investment should be incented.

23 Q. And you think that's the only way to incent
24 investment is to give them a high ROE?

25 A. I think it's one of the tools in the

1 toolbox.

2 Q. Do you think that when you use the term err,
3 I mean aren't you supposed to base it on the evidence
4 presented?

5 A. It is an evidentiary proceeding, yes.

6 Q. Now, you also say, and it's Page 6 of your
7 surrebuttal, that AmerenUE has maintained a healthy
8 return for its investors while charging its customers
9 some of the lowest rates in the country; is that
10 correct?

11 A. Yes.

12 Q. That's the past; is it not?

13 A. That's correct.

14 Q. And that's where they had a fuel adjustment
15 clause; is that correct?

16 A. It would have to be.

17 Q. And that's before they didn't have this
18 proposed 12 percent return on equity; is that correct?

19 A. This is a forward looking proposal, yes.

20 Q. And are you aware that AmerenUE hasn't had a
21 rate case in 20 years?

22 A. I'm aware of that.

23 Q. Are you aware that AmerenUE has indeed
24 reduced their rates over a number of years?

25 A. Yes.

1 Q. Are you aware given all of that that Ameren
2 has still remained healthy?

3 A. Yes.

4 Q. Now, you talk about there's a whole bunch of
5 reality facing electric utilities on Page 7. Starting
6 on Page 7 of your surrebuttal testimony you talk about
7 financial market conditions, global conditions, and
8 the stability of the electric industry; is that right?

9 A. Yes, I do.

10 Q. Again, where you say on Page 8 most
11 financial analysts agree, what study did you do to
12 figure that out, or what is that about?

13 A. Survey of the literature.

14 Q. Okay. Now, you talk about the impact of
15 globalization, the competition for fuel. How much
16 coal does the United States export?

17 A. I don't know tonnages.

18 Q. How much coal does the United States import?

19 A. I don't know those tonnages either.

20 Q. Are we a net importer or net exporter?

21 A. Net exporter.

22 Q. So, we have more coal than we need?

23 A. Well, I don't know if it's more than we
24 need.

25 Q. You talk about the regulatory and political

1 environment down on Page 9. Industry is coping with
2 the upheaval of the restructuring of energy markets at
3 the state and federal level; is that correct?

4 A. Yes.

5 Q. And you support that upheaval, correct?

6 A. Yes.

7 Q. And so it's your testimony that this
8 restructuring of the energy market has increased
9 cost of capital, right?

10 MR. BYRNE: Where are you? What line are
11 you on, Doug?

12 MR. MICHEEL: Line 19.

13 Q. (By Mr. Micheel) "First, the industry is
14 still coping with the upheaval of the restructuring of
15 energy markets." And you support that upheaval,
16 correct?

17 A. What I supported was the restructuring acts
18 that occurred in Michigan.

19 Q. Did you support anything at the federal
20 level?

21 A. I was supportive of the creation of RFOs,
22 for example.

23 Q. Did you ever, for example, provide testimony
24 to any house subcommittees indicating that you were in
25 favor of unbundling or restructuring the energy

1 market?

2 A. I provided testimony as the president of
3 NARUC and in that context would have been speaking
4 about some balance.

5 Q. Did you ever provide any testimony while you
6 were a commissioner at the Michigan Public Service
7 Commission?

8 A. That would have been coincident.

9 Q. And that testimony was in support of
10 restructuring, correct?

11 A. That's right.

12 Q. And Missouri is not a restructured state,
13 right?

14 A. I think that's right, also.

15 Q. Now, you note on the top of Page 10 of your
16 surrebuttal testimony that the utility becomes more
17 risky and unpredictable, and you cite a quote from
18 Fitch therein talking about Illinois and Maryland; is
19 that correct?

20 A. Yes.

21 Q. Illinois, is that an unbundled state?

22 A. You're using the term unbundled. I would
23 say it's a restructured state.

24 Q. Okay. Is Illinois a restructured state?

25 A. Yes.

1 Q. Is Maryland a restructured state?

2 A. Yes.

3 Q. And that means they don't have what we have
4 here in Missouri, which is rate based rate return
5 regulation?

6 A. By and large, that's correct.

7 Q. And those are where the high increases are
8 happening. Is that where the legislature is getting
9 involved?

10 A. It is where the legislature has reduced or
11 just frozen rates.

12 Q. Because they are not really happy with the
13 restructuring results?

14 A. No. They did it as part of the political
15 deal to begin the restructuring process.

16 Q. You talk about the other parties recommended
17 allowed ROEs of 9 and 9.8 for AmerenUE, and AmerenUE's
18 witnesses recommended 12 percent, and you indicated
19 that those are, in your mind, outside the realm of
20 reasonableness, is that a fair characterization?

21 A. Where are you?

22 Q. Page 10 of your surrebuttal testimony, sir.
23 Looking at the question that starts on line 17 and
24 goes through Line 26.

25 A. Uh-huh.

1 Q. Is that -- and you're giving your reactions.
2 I'm trying to understand. You're saying that 9 to 9.8
3 is outside the realm of reasonableness?

4 A. I believe so.

5 Q. And you come to that conclusion based on
6 average ROEs allowed by the state regulatory
7 commission?

8 A. That and the comments of the financial
9 community.

10 Q. Now, you note that there are only a few,
11 mostly wires-only, electric utilities located in the
12 Northeast, New Hampshire, Connecticut, New Jersey, and
13 New York that have received single digit rates of
14 return in 2006.

15 A. Yes.

16 Q. Do you see that?

17 A. Yes.

18 Q. Are those people living in the real world?

19 A. I think they are living in a different world
20 from a vertically integrated utility.

21 Q. Well, are those states unbundled states? Or
22 restructured states, I'm sorry, let me use your term.

23 A. They would probably fit in that
24 classification, although some of those entities that
25 received the lower ROEs have existed for very long

1 periods of time that are probably outside the context
2 of restructuring as a concept.

3 Q. Are any of those utilities that received
4 single digit ROEs vertically integrated utilities?

5 A. Well, the wires-only -- they are wires-only,
6 so I don't think that fits the definition.

7 Q. Well, you say mostly wires-only. That's my
8 concern there, sir. If they were all wires-only, why
9 did you say mostly wires-only? Help me understand
10 that.

11 A. Probably because I did not go back and see,
12 for example, based on where some of those are located
13 if they might also have some residual hydropower or
14 some things like that.

15 Q. So, it's -- can you tell me which utilities
16 received the single digit ROEs there?

17 A. I don't have the names in front of me. They
18 were part of a list.

19 Q. Who provided you with the list?

20 A. I think it was a published report. I'm not
21 sure.

22 Q. Will I be able to find that list in your
23 workpapers?

24 A. Yes.

25 Q. Okay. Those PSCs that gave the single digit

1 return, did they fail in their duty?

2 A. Well, as we went down this path before, I'm
3 not going to render judgments to you on commissioners.

4 Q. Well, you've rendered judgments about other
5 people's testimony, you've rendered judgment about Mr.
6 Hill's testimony and Dr. Woolridge's testimony, that
7 they are utterly bad and whatnot. Let me ask you
8 again, did those commissions fail in their duty?

9 A. I haven't looked at those records, so it's
10 hard for me to answer from here.

11 Q. Well, how -- okay. So, you're just not
12 going to answer that?

13 MR. BYRNE: No --

14 THE WITNESS: I did answer it.

15 Q. (By Mr. Micheel) Okay. Well, you come to
16 the conclusion on Page 12 that the proposed ROEs
17 recommended by the other parties in this case would be
18 viewed as utterly unreasonable in the real world,
19 is that fair?

20 A. Yes.

21 Q. So, can I infer from that that those PSCs
22 that gave single digit ROE returns were utterly
23 unreasonable in the real world?

24 MR. BYRNE: I'm going to object to the
25 question. It has been asked and answered. He said he

1 had not reviewed the records.

2 Q. (By Mr. Micheel) Go ahead and answer.

3 A. These are once again wires-only companies,
4 and that's a different animal than a vertically
5 integrated utility.

6 Q. So, is it your testimony that it's
7 appropriate for wires-only companies to get single
8 digit ROEs?

9 A. What I'm saying is that the financial
10 community would view for a vertically integrated
11 utility 9 percent as outside of the real world.

12 Q. And is it your testimony that commissions
13 should just regulate to what the financial community
14 wants?

15 A. No, I don't think I said that anywhere. I
16 talk about the balance of interests that commissioners
17 need to take into account.

18 Q. So, the financial community is just one of
19 those communities?

20 A. Absolutely.

21 Q. What are the other ones?

22 A. The whole range of customers, shareholders,
23 the public policy interests that come into play that
24 are really ancillary, like environmental issues,
25 things like that.

1 Q. Now, when you were commissioner, did you
2 hold what the financial community said more important
3 than those other players?

4 A. They were one of the -- they were one of the
5 many interests and they -- I would say there wasn't
6 any that was held higher. There was a continual
7 balancing attempt.

8 Q. In this decision should our public service
9 commissioners hold what the financial community
10 believes higher than any other belief?

11 A. They should be balancing all of those
12 interests simultaneously.

13 Q. Now, your testimony doesn't talk about any
14 of those other interests, does it?

15 A. Absolutely. It talks throughout about the
16 balancing of interests between shareholders,
17 customers, and the other parties.

18 Q. Let me ask you this, on Page 13 of your
19 surrebuttal testimony, you say Line 11, "First, the
20 high end, the 12 percent proposed by the company's
21 witnesses, is not by any means an extreme." Do you
22 see that?

23 A. I do.

24 Q. Is it an outlier?

25 A. Well -- well, it is one of the bookends in

1 the proposals before the commission.

2 Q. Well, you characterize it as not an extreme
3 outlier, and my question is, is it an outlier, is 12
4 percent an outlier?

5 A. No.

6 Q. What do you mean when you use the term
7 outlier there?

8 A. Outlier would be -- well, outlier would be
9 at the extreme or -- I'm sorry, outlier would be
10 approaching the extreme. Extreme would be well beyond
11 what any reasonable party could reach as a conclusion.

12 Q. Okay. Up there on top of Page 13 and
13 throughout here, you've given various ROEs that have
14 been authorized; have you not?

15 A. Yes.

16 Q. Are any of them as high as 12 percent?

17 A. Yes.

18 Q. And those are the FERC ones; is that
19 correct?

20 A. Correct.

21 Q. That's electric transmission, right?

22 A. By and large, yes, it is.

23 Q. Well, FERC doesn't regulate any vertically
24 integrated utilities for rates, does it?

25 A. Not that I'm aware of.

1 Q. Transmission, is it kind of a different
2 animal, kind of like wires-only, isn't it?

3 A. It's in the same class.

4 Q. So, for the vertically integrated utilities,
5 is 12 percent the highest number that you have in
6 your testimony?

7 A. Yes.

8 Q. So, would that be an outlier, sir?

9 A. Well, it's the bookend, as I characterized
10 it before.

11 Q. Is the top bookend an outlier?

12 A. Probably not in today's financial world.

13 Q. Is the 9 percent bookend, is that an
14 outlier?

15 A. In today's financial world, yes.

16 Q. And how do you come to that conclusion?
17 What studies have you done to conclude that?

18 A. Based on -- I have not conducted any of my
19 own studies.

20 Q. Okay. Would 13 percent be too high? 13
21 percent return on equity, would that be too high?

22 A. Well, I do know that, for example, some of
23 the, again, FERC approved rates are up to 13.88, I
24 believe it is.

25 Q. For vertically integrated utilities such as

1 AmerenUE, would a 13 percent return on equity be too
2 high?

3 A. I'm not aware of anybody getting 13 percent
4 right now.

5 Q. So, that would be too high in your opinion?

6 A. Just as a conversational item for those of
7 us around the table, yes, but I haven't again looked
8 for whether or not 13 percent is --

9 Q. Would a 9.8 percent return on equity be too
10 low?

11 A. In today's world, yes.

12 Q. Would 10 percent be too low?

13 A. Yes.

14 Q. 10.1?

15 A. Yes.

16 Q. 10.2?

17 A. Yes.

18 Q. 10.3?

19 A. Yes.

20 Q. 10.4?

21 A. Yes.

22 Q. 10.5?

23 A. Yes.

24 Q. 10.6?

25 A. I'm just responding to you, you know, kind

1 of automatically, but, yes.

2 Q. You're being truthful, though, aren't you?
3 You understand this is a deposition and you're sworn
4 to tell the truth?

5 A. Absolutely.

6 Q. Okay. I mean I'm not playing a game with
7 you here, sir. I'm trying to understand your
8 testimony.

9 MR. BYRNE: You know, I'm going to object to
10 these questions. He said he has not conducted a
11 study. Asking him to narrow down with some degree
12 of specificity without having conducted a study is not
13 reasonable.

14 MR. MICHEEL: Well, Tom, he talks
15 about ROE ranges and he talks about what's
16 appropriate. And then when I try to ask him what are
17 the outliers, what are not appropriate, he doesn't
18 want to answer. I'm just trying to understand and I
19 think I have every right to do that.

20 MR. BYRNE: Well, I'm not telling him not to
21 answer. I'm objecting.

22 MR. MICHEEL: What is the basis for your
23 objection?

24 MR. BYRNE: My objection is that he -- my
25 objection is he didn't conduct a study and so he --

1 MR. MICHEEL: I didn't ask him if he
2 conducted a study. I asked him if 10.6 -- I was
3 asking him if that's too low. Yes, I did ask him if
4 he conducted a study about 13 times, but not on these
5 questions, Tom. You're right, I have asked him if he
6 conducted a study, but that's not the question
7 pending.

8 Q. (By Mr. Micheel) And is a 10.6 return on
9 equity too low in today's environment?

10 A. I think in today's environment the 12
11 percent request is reasonable. I've laid out a whole
12 number of variables that utilities in today's world
13 are facing, whether that's global pressures or
14 economic or environmental uncertainties, and the fact
15 that companies need to -- utilities need to remain
16 financially healthy to be viable and to provide
17 service expectations going into the future. And so
18 the details of the ROE analyses are truly better
19 covered by the witnesses that are on the record as the
20 capital witnesses for the company.

21 Q. Do you think that Dr. Woolridge or Mr. Hill
22 or Mr. Gorman or any of the other witnesses don't
23 believe that their ROE recommendations are appropriate
24 and would allow the company to receive a reasonable
25 return on its investment?

1 A. I'm sure they do believe that.

2 Q. And you've conducted -- well, you know, let
3 me just go to your rebuttal testimony because it's
4 getting late. I know you've got something at 1:30.
5 You indicated that you're a career public servant
6 with --

7 A. What page?

8 Q. I'm on Page 2, Line 1 of your rebuttal
9 testimony.

10 A. Yes.

11 Q. You're not a public servant now; are you,
12 sir?

13 A. No.

14 Q. Okay. How did you come to the conclusion at
15 Page 5 of your testimony --

16 MR. BYRNE: Rebuttal?

17 MR. MICHEEL: Rebuttal testimony, I'm on
18 rebuttal testimony.

19 Q. (By Mr. Micheel) Lines 18 through 21,
20 that 50 years ago the building of EEInc. combustion
21 turbines at Joppa was a risky plan. How did you come
22 to that conclusion?

23 A. Because it had never been done before and
24 the SEC seemed to be saying the same sort of thing,
25 they hadn't viewed this sort of thing, hadn't done it,

1 our Department of Defense hadn't done this sort of
2 thing, so just a common understanding of what's
3 entailed in risk.

4 Q. I'm going to go to your direct testimony now
5 to try to finish this up before 1:30. On Page 17 of
6 your direct testimony --

7 A. Hold on, I'm shuffling. Page 17 you said?

8 Q. Yes. "For the utilities' shareholders, many
9 of which are senior citizens and state residents" --

10 A. What line?

11 Q. 11 and 12.

12 A. Okay.

13 Q. How did you come to that conclusion, that
14 many of them are senior citizens and state residents?

15 A. I, in fact, asked that question of Ameren,
16 if the profile of their investment community was
17 similar to the investment profile of utilities that
18 I'm familiar with.

19 Q. Who at Ameren did you ask?

20 A. It would have been Tom and directed through
21 Tom.

22 Q. Okay. On Page 18 at Lines 11 through 16,
23 you say, "Some advocates who take a short-time view,
24 intentionally or unintentionally, use the seemingly
25 endless sets of numbers and data and the complexity of

1 ratemaking to argue for low, lower, and lowest rates
2 now." Is it your view that that's what the
3 intervenors are doing in this case?

4 A. That is my view, that that would be the
5 effect of what's being asked for.

6 Q. And how did you arrive at that? Did you ask
7 any discovery questions of the intervenor witnesses?

8 A. I did not do discovery.

9 Q. You're not a mind reader, are you?

10 A. No, I'm not.

11 Q. Do you believe that the parties who -- for
12 example, the staff, who's recommend rate reduction in
13 this case, believe that's the appropriate course of
14 action?

15 A. I don't know if they believe that's the
16 appropriate course of action. Starving a company
17 would have that effect.

18 Q. And what analyses have you done to indicate
19 that reducing UE rates would starve that company?

20 A. I guess it would be my observation in the
21 course of the years that I was an active commissioner.

22 Q. Okay. UE has reduced rates in the last 20
23 years. Do you view it as a starved company?

24 A. No, I do not.

25 Q. So, the company has reduced rates and

1 flourished; is that correct?

2 A. They are not fully incompatible, that's
3 right.

4 Q. In fact, AmerenUE under this regulatory
5 regime has done that; is that correct?

6 A. They have done very well.

7 Q. You've provided no analysis that indicates
8 any of the recommendations made by any of the
9 intervenor parties with respect to a rate reduction
10 would in your words, quote, unquote, "starve the
11 company," to use your words?

12 A. I have once again not done my own analysis.

13 Q. Has anyone done any analysis that a rate
14 decrease would starve the company? Have you seen any?

15 A. I have not been exposed to such.

16 Q. Have you reviewed all the testimony?

17 A. I've probably missed some the last week
18 or so but pretty much I have.

19 Q. Okay. And in fact, at Page 19 of your
20 direct testimony, at the bottom of Page 19, Lines 20
21 through 23, you tout the fact that Union Electric
22 has reduced its rates and has very low rates?

23 A. If that was a question, yes.

24 MR. MICHEEL: Thanks a lot for your time,
25 Mr. Svanda. I hope you can get to your conference

1 call.

2 THE WITNESS: Thank you.

3 MR. DOTTHEIM: I have no follow-up
4 questions, so thank you everyone.

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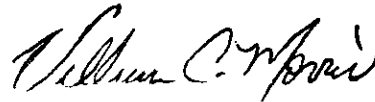
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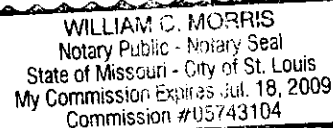
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I, WILLIAM C. MORRIS, a Registered Diplomat
Reporter and Notary Public, do hereby certify that
the witness whose testimony appears in the foregoing
deposition transcript was duly sworn by me; that the
testimony of said witness was taken by me to the best
of my ability, and thereafter reduced to typewriting
under my direction; that I am neither counsel for,
related to, nor employed by any of the parties to the
action in which this deposition was taken; and
further, that I am not a relative or employee of any
attorney or counsel employed by the parties hereto;
nor financially or otherwise interested in the outcome
of this action.

IN WITNESS WHEREOF I have hereunto set my
hand and seal this ____ day of March, 2007.



Notary Public



WILLIAM C. MORRIS
Notary Public - Notary Seal
State of Missouri - City of St. Louis
My Commission Expires Jul. 18, 2009
Commission #05743104

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Staff Exhibit No. 261
Case No(s) ER-2007-0002
Date 3/20/07 Rptr MM

October 21, 2002

Office of Public Council
Mr. Ryan Kind
200 Madison Street, Suite 650
Jefferson City, MO 65102-0360

FILE COPY

Dear Mr. Kind,

During AmerenUE's resource planning briefing session on September 24, 2002 you requested that we follow up with you on two issues concerning EEInc. First, you requested the Articles of Incorporation for EEInc and second, you requested a detailed description of the contractual arrangement between EEInc and Ameren Energy Marketing (AEM) for the output of the combustion turbines installed at the Joppa Plant. This letter is our response to these requests.



The Articles of Incorporation of Electric Energy, Inc are enclosed.

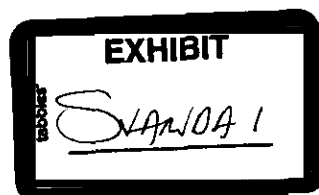
There are a total of five combustion turbines that are currently installed at the Joppa Plant that fit into two categories, the 6B Project and the 7B Project.

The 6B Project consists of two GE model 5100 combustion turbines rated at approximately 37MW each which are owned and operated by Midwest Electric Power, Inc. (MEP) a wholly-owned subsidiary of Electric Energy Inc. MEP has a power supply agreement (PSA) in place with AEM and two other parties for the output of the 6B project. The PSA allows AEM to purchase 60% of the output of the 6B Project. The price paid by AEM, and the other purchasing parties, to MEP under this PSA consist of a demand charge which includes all of the fixed costs associated with the 6B Project including a return on equity and an energy charge which consists of all variable costs associated with the energy produced by the 6B project.

The 7B Project consists of three GE model 7001B combustion turbines rated at approximately 60MW each which are owned by Ameren Energy Generating Company (AEG). AEG leases the units to Ameren Energy Development Company (AED) who then installed the units at a site leased from EEInc at the Joppa Plant. AED has a power supply agreement in place with AEM for the full output of the 7B Project. The price paid by AEM to AED under this PSA consists of a demand charge which includes all of AED's fixed costs associated with the 7B Project and an energy charge which includes all of the variable costs associated with the energy produced by the 7B project. AED also has a contract with Midwest Electric Power, Inc. for the operation and maintenance of the 7B Project.

If you have any questions concerning this information, feel free to contact me at (314) 554-2972.

Sincerely,



James C. Blessing OCT 28 2002
James C. Blessing
Consulting Planning Engineer

Enclosure

HC

ARTICLES OF INCORPORATION
OF
ELECTRIC ENERGY, INC.

PAID

DEC 13 1950

L.F. \$ 1.75
F.T. \$ 1.02
F.F. \$ 20-

RR

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.

1761 3

To EDWARD J. BARRETT, Secretary of State:

We, the undersigned,

| <u>Name</u> | <u>Number</u> | <u>Address</u> <u>Street</u> | <u>City</u> | <u>State</u> |
|-------------------|---------------|---------------------------------|-------------|--------------|
| WILLIAM A. HAMLIN | 120 Broadway, | New York, | N.Y. | |
| WILLIAM R. BADGER | 120 Broadway, | New York, | N.Y. | |
| FREDERICK FARRAN | 120 Broadway, | New York, | N.Y. | |

being natural persons of the age of twenty-one years or more and subscribers to the shares of the Corporation to be organized pursuant hereto, for the purpose of forming a corporation under "The Business Corporation Act" of the State of Illinois, do hereby adopt the following Articles of Incorporation:

ARTICLE ONE

The name of the Corporation is ELECTRIC ENERGY, INC.

PAID

DEC 16 1950

Edward J. Barrett
Secretary of State

HC

ARTICLE TWO

The address of its initial registered office in the State of Illinois is 208 South LaSalle Street, in the City of Chicago, County of Cook, and the name of its initial Registered Agent at said address is CT Corporation System.

ARTICLE THREE

The duration of the Corporation is perpetual.

ARTICLE FOUR

The purpose or purposes for which the Corporation is organized are:

(a) So far as permitted by law, to acquire, operate or engage in any public utility business or public utility holding-company business, and any other business which may be necessary, appropriate, convenient or incidental to either of the foregoing; and to acquire by purchase, lease or otherwise, and to construct, extend, own, finance, deal in, sell or otherwise dispose of, maintain and operate power generating transmission and distribution properties and facilities and all other property, real, personal and mixed, which may be necessary, appropriate, convenient or incidental to the foregoing business or businesses;

(b) To sell all or any part of the power or energy output of the Corporation or power or energy otherwise required by it to any one or more purchasers, including Federal or State governmental bodies or agencies, public utility companies, industrial and commercial concerns, cooperatives, residential customers and others; and to enter into any contracts or other arrangements which are lawful regarding any such sale of power or energy;

(c) To acquire, organize, assemble, develop, build up and operate constructing and operating and other organizations and systems, and to hire, sell, lease, exchange, turn over, deliver and dispose of such organizations and systems in whole or in part and as going organizations and systems or otherwise, and to enter into and perform contracts, agreements and undertakings of any kind in connection with any or all of the foregoing powers;

(d) To acquire all or any part of the business, good-will, rights and property of any person, firm, association or corporation; to pay for the same in cash or in stocks, bonds, notes or other obligations of the Corporation or of any other corporation, or

otherwise; to hold, utilize and in any manner dispose of the whole or any part of the business, good-will, rights, and property so acquired; to assume in connection therewith the whole or any part of the liabilities and obligations of any such person, firm, association or corporation; to conduct in any lawful manner the whole or any part of the business so acquired; and to exercise all the powers necessary or convenient in and about the conduct and management of such business;

(e) To aid in any manner permitted by law any corporation or association, domestic or foreign, or any firm or individual in which the Corporation may own any shares of stock, bonds, debentures, notes, evidences of indebtedness or other securities, contracts or obligations, or in which the Corporation may have any other legal or equitable interest; and to do any other act permitted by law to preserve, protect, improve or enhance the value of the same or the property represented thereby; and to organize or promote or facilitate the organization of subsidiary corporations;

(f) To act as agent, broker or factor for any person, individual, firm, corporation or other body;

~~(g) To make any guaranty respecting dividends, stock, bonds, contracts, or other obligations, whether of the Corporation or any other person, in so far as the same may be permitted by law.~~

(g) To purchase, acquire, hold, own and dispose of patents, copyrights and trade-marks and any licenses or other rights or interests therein and thereunder; and

(h) To purchase, acquire, hold, own and dispose of franchises, concessions, consents, privileges and licenses necessary, useful or desirable in connection with the powers herein enumerated.

ARTICLE FIVE

The aggregate number of shares which the Corporation is authorized to issue is 50,000 shares of Common Stock, \$100 par value.

ARTICLE SIX

The Corporation proposes to issue, without further report to the Secretary of State, 35,000 shares of its Common Stock, \$100 par value, at \$100 per share, the total consideration to be received therefor being \$3,500,000.

ARTICLE SEVEN

The Corporation will not commence business until at least one thousand dollars has been received as consideration for the issuance of shares.

ARTICLE EIGHT

The number of directors to be elected at the first meeting of the shareholders is 7.

ARTICLE NINE

The following provisions are inserted for the regulation of the business and for the conduct of the affairs of the Corporation, and to create, divide, limit and regulate the powers of the Corporation, the directors and the shareholders:

(a) Except as otherwise provided by law, the presence in person or by proxy at any meeting of shareholders of the holders of a majority of the outstanding shares of the Corporation entitled to vote shall be requisite and shall constitute a quorum. If, however, such majority shall not be represented at any meeting of the shareholders regularly called, the holders of a majority of the shares present or represented and entitled to vote thereat shall have power to adjourn the meeting to another time without notice other than announcement of adjournment at the meeting, and there may

successive adjournments for like cause and in like manner until the requisite amount of shares entitled to vote at such meeting shall be represented. At such adjourned meeting at which the requisite amount of shares shall be represented any business may be transacted which might have been transacted at the meeting as originally noticed.

(b) A majority of the Directors shall constitute a quorum for the transaction of business, but if at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time without notice other than announcement of the adjournment at the meeting, and at such adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the meeting as originally notified. Except as otherwise required by law, the act of a majority of the Directors present at a meeting shall be the act of the Board.

(c) No shareholder of the Corporation shall be entitled, as a matter of right, to subscribe for, purchase or receive any part of any new or additional issue of shares of the Corporation, or

of any issue of notes, bonds, or debentures, convertible into shares of the Corporation, or of any issue of warrants or options or rights to subscribe for shares of the Corporation, whether now or hereafter authorized.

(d) The Corporation shall reimburse or indemnify each present and future director and officer of the Corporation (and his heirs, executors and administrators) for or against all expenses reasonably incurred by him or imposed on him in connection with, or arising out of, any action, suit or proceeding in which he may be involved by reason of his being or having been a director or officer of the Corporation, where disposition of such action, suit or proceeding is made in favor of such director or officer; provided that no reimbursement shall be made in any case where an appeal may be taken until such time has elapsed that an appeal can no longer be taken and, in the judgment of the Board of Directors, such action, suit or proceeding will not be recommenced.

No present or future director or officer of the Corporation, or his heirs, executors or administrators, shall be liable for any act, omis-

sion, step or conduct taken or had in good faith, which is required, authorized or approved by any order or orders issued pursuant to the Public Utility Holding Company Act of 1935, the Federal Power Act, or any federal or state statute or municipal ordinance regulating the Corporation or its subsidiaries by reason of their being holding or investment companies, public utility companies, public utility holding companies or subsidiaries of public utility holding companies. In any action, suit or proceeding based on any act, omission, step or conduct, as in this paragraph described, the provisions hereof shall be brought to the attention of the court. In the event that the foregoing provisions of this paragraph are found by the court not to constitute a valid defense on the grounds of not being applicable to the particular class of plaintiff, each such director and officer, and his heirs, executors and administrators, shall be reimbursed for, or indemnified against, all expenses and liabilities incurred by him or imposed on him, in connection with, or arising out of, any such action, suit or proceeding based on any act, omission, step or conduct taken or had in good faith as in this paragraph described. Such expenses and liabilities shall include, but shall not be limited to, judg-

ments, court costs and attorneys' fees.

The foregoing rights shall not be exclusive of other rights to which any director or officer may otherwise be entitled and shall be available whether or not the director or officer continues to be a director or officer at the time of incurring such expenses and liabilities.

(e) The Board of Directors shall have power to authorize the payment of compensation and reimbursement of expenses to the Directors for services to the Corporation, including fees for attendance at meetings of the Board of Directors or the Executive Committee and all other committees and to determine the amount of such compensation and fees.

William A. Austin

William R. Adams

Frederick L. Farnan

Incorporators.

OATH AND ACKNOWLEDGMENT

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.

I, ROBERT L. COOKINGHAM, a Notary Public
do hereby certify that on the 12th day of December, 1950,

WILLIAM A. HAMLIN, WILLIAM R. BADGER
and FREDERICK FARRAN personally appeared before
me and being first duly sworn by me severally acknowledged
that they signed the foregoing document in the respective
capacities therein set forth and declared that the state-
ments therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal the day and year above written.

Robert L. Cookingham
Notary Public.

ROBERT L. COOKINGHAM.
Notary Public, State of New York
Qualified in Kings County
No. 21-5304200
Cert. filed in N. Y. Co. Clerks
Commission Expires March 20, 1952



IN THE MATTER OF

THE STATE OF NEW YORK

IN SENATE

REPORT OF THE

COMMISSIONERS OF THE LAND OFFICE

IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE

APRIL 19, 1950

ALBANY, NEW YORK

1950

PRINTED BY THE STATE PRINTING OFFICE

ALBANY, NEW YORK

1950

1950

1950

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1950

1950

1950

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1950

FILED

DEC 13 1950

Edward J. Burt
Sec'y of State

Box 3231 No. 268460

Articles of Incorporation

of

ELECTRIC ENERGY, INC.

CHICAGO

50,000 PV

Number of Authorized Shares.....

Duration Perpetual years

FILED

DEC 13 1950

Alvord J. Bennett
Sec'y of State



To all to whom these Presents Shall Come, Greeting:

Whereas, Articles of amendment to the Articles of Incorporation duly signed and verified of _____

ELECTRIC ENERGY, INC.

have been filed in the Office of the Secretary of State on the 13th day of February A. D. 1953, as provided by "THE BUSINESS CORPORATION ACT" of Illinois, in force July 13, A. D. 1933.

Now Therefore, I, ^{CHARLES F. CARPENTIER,} ~~EDWARD J. BARRETT~~ Secretary of State of the State of Illinois, by virtue of the powers vested in me by law, do hereby issue this certificate of amendment and attach thereto a copy of the Articles of Amendment to the Articles of Incorporation of the aforesaid corporation.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois.

Done at the City of Springfield this 13th day of February A. D. 1953 and of the Independence of the United States the one hundred and 77th.

(SEAL)

Charles F. Carpentier

SECRETARY OF STATE.

ARTICLES OF AMENDMENT

OF

ARTICLES OF INCORPORATION

OF

ELECTRIC ENERGY, INC.

To CHARLES F. CARPENTIER
Secretary of State
Springfield, Illinois

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of Section 55 of "The Business Corporation Act" of the State of Illinois, hereby executes the following Articles of Amendment:

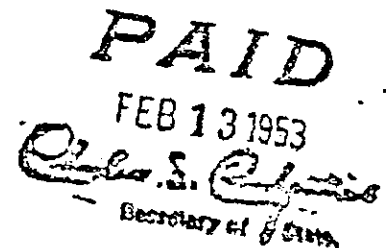
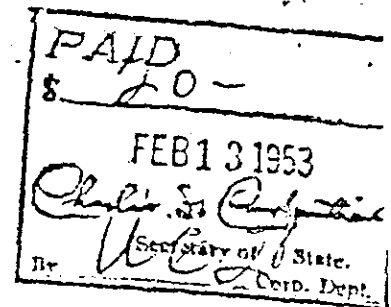
ARTICLE FIRST: The name of the corporation is: ELECTRIC ENERGY, INC.

ARTICLE SECOND: The following amendment was adopted in the manner prescribed by "The Business Corporation Act" of the State of Illinois:

RESOLVED, that * * * Article Five of the Articles of Incorporation of this Corporation be amended to read as follows:

"The aggregate number of shares which the Corporation is authorized to issue is 62,000 shares of Common Stock, \$100 par value."

ARTICLE THIRD: The number of shares of the corporation outstanding at the time of the adoption of said amendment was 35,000.

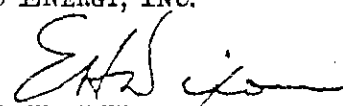


ARTICLE FOURTH: The said amendment was adopted by unanimous written consent of the shareholders, given pursuant to Section 147 of "The Business Corporation Act" of the State of Illinois.

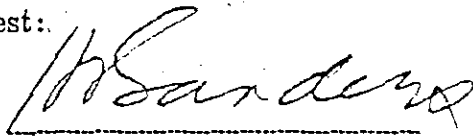
IN WITNESS WHEREOF, the undersigned corporation has caused these Articles of Amendment to be executed in its name by its Vice President, and its corporate seal to be hereto affixed, attested by its Secretary, this // 27 day of February, 1953.

ELECTRIC ENERGY, INC.

By


Its Vice President

Attest:


Its Secretary



STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

I, Alice M. Powell, a Notary Public,
do hereby certify that on the 11th day of February, 1953, ~~XXXX~~ E. H. Dixon
~~XXXX~~ personally appeared before me and, being first duly sworn
by me, acknowledged that he signed the foregoing document in the
capacity therein set forth and declared that the statements therein
contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the
day and year before written.

Alice M. Powell
Notary Public

(NOTARIAL SEAL)

ALICE M. POWELL
Notary Public, State of New York
Qualified in Queens County
No. 41-31455CO
Cert. filed in Queens, New York,
Kings & Westchester
Register's Office-Dusers, N.Y. & Kings
Commission Expires March 30, 1953

NOTARY
PUBLIC

3231-460

Increase Number of
Shares

FILED

FEB 13 1953

Charles E. Coffey
Secretary of State.

(1832)

175

5-2456

19

064 32

CERTIFICATE OF CHANGE OF REGISTERED AGENT AND REGISTERED OFFICE BY
A FOREIGN OR DOMESTIC CORPORATION OF ILLINOISSTATE OF ILLINOIS }
Massac COUNTY } ss.TO Michael J. Howlett
Secretary of State,
Springfield, Illinois

PAID

JAN 17 1974

Michael J. Howlett
SECRETARY OF STATE

The undersigned corporation, organized and existing under the laws of the State of Illinois for the purpose of changing its registered agent and its registered office, or both, in Illinois as provided by "The Business Corporation Act," of Illinois represents that:

1. The name of the corporation is Electric Energy, Inc.2. The address, including street and number, if any, of its present registered office (before change) is Post Office Box 165, Joppa, Illinois 629533. Its registered office (including street and number if any change in the registered office is to be made) is hereby changed to Same Street, in the _____ of _____ (_____) County of _____
(Zip Code)4. The name of its present registered agent (before change) is J. G. Koopman5. The name of the new registered agent is G. A. Rice, Jr.

6. The address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

7. Such change was authorized by resolution duly authorized by the board of directors.

(OVER)

IN WITNESS WHEREOF, the undersigned corporation has caused this report to be executed in its name by its _____ President, attested by its _____ Secretary, this _____

_____ 14th _____ day of _____ January _____, A. D. 19 74

Electric Energy, Inc.
(Exact Corporate Title)

By _____

President of ~~XXXXXX~~

Place
(Corporate Seal)
Here

Attest:

X. H. O'Connell

Secretary of ~~XXXXXX~~

STATE OF ILLINOIS

COUNTY OF MASSAC

ss.

I, Marshall Gregory, a Notary Public, do hereby certify that on the 14th day of January, A. D. 19 74, personally appeared before me G. A. Rice, Jr. who declares he is President of the corporation, executing the foregoing document, and being first duly sworn, acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

Place
(Notarial Seal)
Here

Marshall Gregory
Notary Public

Form BCA (12 or 110)

Box 3231 File 460-1

CHANGE OF REGISTERED AGENT
AND OFFICE OF

ELECTRIC ENERGY, INC.

P. O. BOX 165, JOPPA, ILLINOIS

Filing Fee \$1.00

NOTICE

This certificate must be filed in duplicate. The corporation cannot act as its own registered agent.

The registered office may be, but need not be, the same as the place of business of the corporation, but the registered office and the address of the registered agent must be the same.

Any subsequent change in the registered office or agent must be reported immediately to the Secretary of State on blanks furnished for that purpose.

FILED

JAN 16 1974

Michael J. Thompson

Secretary of State
(49055-40M-2.75)

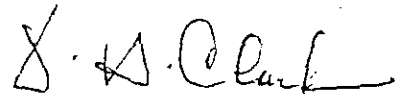
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ELECTRIC ENERGY, INC.

Certificate as to By-Laws

I, V.H. CLARK, the Secretary-Treasurer of ELECTRIC ENERGY, INC., an Illinois corporation, do HEREBY CERTIFY that attached hereto is a true and correct copy of the By-Laws of said Corporation as in effect since February 4, 1977.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Corporation this 12th day of July, 1977.



Secretary-Treasurer

[SEAL]

RECEIVED

JUN 24 1986

CORP.

AMENDMENTS TO BY-LAWS

OF

ELECTRIC ENERGY, INC.

| <u>Article/Section No.</u> | <u>Directors' Meeting</u> | <u>Resolution</u> |
|----------------------------|---------------------------|--|
| Article 2, Section 2 | 1/9/57 | <p>RESOLVED, that the By-Laws of the Corporation be amended so as to change Article 2, Section 2, thereof to read as follows:</p> <p>"The annual meeting of shareholders for the election of directors and the transaction of such other business as may properly come before the meeting shall be held at 2:00 o'clock in the afternoon, Central Standard Time, on the first Wednesday in the month of <u>May</u> in each year, unless that day shall be a legal holiday, in which event the meeting shall be held on the next succeeding business day not a legal holiday; provided, however, the first annual meeting of shareholders shall not be held earlier than one year after the organization of the Corporation."</p> |
| Article 3, Section 1 | 5/16/51 | <p>RESOLVED, that the By-laws of the Corporation be amended so as to change Article III, Section 1, thereof to read as follows:</p> <p>"The property, affairs and business of the Corporation shall be managed by a Board of <u>five</u> Directors, provided, however, that in the event of the occurrence of a vacancy or vacancies the remaining Directors may continue to act until such vacancy or vacancies shall be filled as provided herein."</p> |
| Article 3, Section 1 | 6/25/62 | <p>RESOLVED, that the By-Laws of the Corporation be amended so as to change Article III, Section 1, thereof to read as follows:</p> <p>"The property, affairs and business of the Corporation shall be managed by a Board of <u>nine</u> Directors provided, however, that in the event of the occurrence of a vacancy or vacancies the remaining Directors may continue to act until such vacancy or vacancies shall be filled, as provided herein."</p> |

AMENDMENTS TO BY-LAWS

| <u>Article/Section No.</u> | <u>Directors' Meeting</u> | <u>Resolution</u> |
|----------------------------|---------------------------|--|
| Article 2, Section 2 | 7/14/71 | <p>RESOLVED, that the By-Laws of the Corporation be amended so as to change Article 2 Section 2, as amended by Resolution of January 9, 1957, to read as follows:</p> <p>"The Annual Meeting of Shareholders for the election of Directors and the transaction of such other business as may properly come before the meeting shall be held at 10:00 o'clock in the morning, Central Standard Time, on the second Wednesday in the month of <u>April</u> in each year, unless that day shall be a legal holiday, in which event the meeting shall be held on the next succeeding business day not a legal holiday; provided, however, the first Annual Meeting of Shareholders shall not be held earlier than one year after the organization of the Corporation."</p> |
| Article 2, Section 2 | 1/12/72 | <p>RESOLVED, that the resolution made at the July 14, 1971, Board of Directors Meeting changing the date of the Annual Meeting of Shareholders be and is hereby rescinded, and further</p> <p>RESOLVED, that the Annual Meeting of the Shareholders for the election of directors and the transaction of such other business as may properly come before the meeting shall be held during the month of April in each year at 10:00 o'clock in the forenoon, Central Standard Time, on a date to be fixed by the Board, said date to be determined at least thirty (30) days prior thereto. Should the date selected be a legal holiday, the meeting shall then be held on the next succeeding day not a legal holiday.</p> |

AMENDMENTS TO BY-LAWS

| <u>Article/Section No.</u> | <u>Directors' Meeting</u> | <u>Resolution</u> |
|----------------------------|---------------------------|---|
| Article 2, Section 2 | 2/4/77 | <p>RESOLVED, that the By-Laws of the Corporation be amended so as to change Article 2, Section 2, as amended by Resolution of January 12, 1972, to read as follows:</p> <p>RESOLVED, that the Annual Meeting of the Shareholders for the election of directors and the transaction of such other business as may properly come before the meeting shall be held during the month of May in each year at 10:00 o'clock in the forenoon, Central Standard Time, on a date to be fixed by the Board, said date to be determined at least thirty (30) days prior thereto. Should the date selected be a legal holiday, the meeting shall then be held on the next succeeding day not a legal holiday.</p> |

BY-LAWS
OF
ELECTRIC ENERGY, INC.

ARTICLE I.

Offices.

The principal business office of the Corporation shall be in Joppa, Massac County, Illinois. The Corporation may also have offices at such other places as the Board of Directors may from time to time designate or the business of the Corporation may require.

ARTICLE II.

Meetings of Shareholders.

SECTION 1. *Place of Meetings.* All meetings of shareholders, whether annual or special, shall be held at the office of the Corporation in Joppa, Massac County, Illinois, unless some other place for said meeting, either within or without the State of Illinois, shall have been fixed by the Board of Directors and set forth in the notice of meeting, or in duly executed waivers of notice thereof.

SECTION 2. *Annual Meeting.* The annual meeting of shareholders for the election of directors and the transaction of such other business as may properly come before the meeting shall be held at 2:00 o'clock in the afternoon, Central Standard Time, on the first Wednesday in the month of June in each year, unless that day shall be a legal holiday, in which event the meeting shall be held on the next succeeding business day not a legal holiday; provided, however, the first annual

meeting of shareholders shall not be held earlier than one year after the organization of the Corporation.

SECTION 3. *Special Meetings.* Special meetings of the shareholders may be held at any time upon the call of the President, any two Directors, a majority of the Executive Committee or holders of at least 10% of the shares entitled to vote at such time. The notice of each special meeting shall state the purpose or purposes of the proposed meeting, and the business transacted at such meeting shall be confined to such purpose or purposes.

SECTION 4. *Shareholders' Lists.* The Secretary shall make, at least ten days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten days prior to such meeting, shall be kept on file at the registered office of the Corporation and shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original share ledger or transfer book, or a duplicate thereof kept in the State of Illinois, shall be prima facie evidence as to who are the shareholders entitled to examine such list or share ledger or transfer book or to vote at any meeting of shareholders.

SECTION 5. *Notice.* Written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than forty days before the date of the meeting, either personally or by mail, by or at the direction of the President, or the Secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If

mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the records of the Corporation, with postage thereon prepaid.

SECTION 6. Voting. Subject to the provisions of law, every shareholder of record entitled to vote shall be entitled, at every meeting of the shareholders of the Corporation, to one vote for every share standing in his name on the books of the Corporation. Any shareholder entitled to vote may vote by proxy provided that the instrument authorizing such proxy to act shall have been executed in writing by the shareholder himself or by his duly authorized attorney. No proxy shall be valid, however, after the expiration of eleven months from the date of its execution unless the persons executing it shall have specified therein the length of time it is to continue in force, which shall be for some limited period. Prior to the exercise thereof, every proxy shall be revocable at the pleasure of the person executing it or of his personal representatives or assigns. At all meetings of shareholders, except as otherwise required by law or by the Articles of Incorporation or these By-Laws, all matters shall be decided by the vote of the holders of a majority of the shares present or represented at the meeting and entitled to vote thereat. In all elections for directors, every shareholder shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. All elections of directors shall be held by ballot. A vote may be taken upon any other matter by ballot if the chairman of the meeting shall so determine, and shall be so taken upon the request of any shareholder entitled to vote on such matter.

SECTION 7. *Inspectors of Election.* At any meeting of shareholders the Chairman of the meeting shall appoint two persons, who need not

be shareholders, to act as Inspectors of Election, unless such appointment shall be waived by all shareholders present or represented at the meeting. No Director or candidate for the office of Director shall be appointed as such Inspector. Before entering upon the discharge of his duties, each Inspector shall first take and subscribe an oath faithfully to execute the duties of Inspector at such meeting with strict impartiality and according to the best of his ability. The Inspectors shall take charge of the polls and after the balloting shall make a certificate of the result of the vote taken which shall be filed with the minutes of the meeting.

SECTION 8. *Organization.* The President or, in his absence, a Vice President or a person appointed by the President, shall call meetings of the shareholders to order and shall act as chairman thereof. The Secretary of the Corporation, if present, shall act as secretary of all meetings of shareholders, and in his absence, the presiding officer may appoint a secretary.

SECTION 9. *Informal Action by Shareholders.* Any action required by the Business Corporation Act, the Articles of Incorporation, or these By-Laws to be taken at a meeting of the shareholders, or any other action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the shareholders entitled to vote with respect to the subject matter thereof.

ARTICLE III.

Directors.

SECTION 1. *Number. General Powers.* The property, affairs and business of the Corporation shall be managed by a Board of seven Directors, provided, however, that in the event of the occurrence of a vacancy or vacancies, the remaining Directors may continue to act until such vacancy or vacancies shall be filled as provided herein.

SECTION 2. *Term of Office.* The term of office of each Director shall be until the next annual meeting of shareholders or until his successor is duly elected and qualified or until the earlier death or resignation of such Director.

SECTION 3. *Resignations.* Any Director may resign at any time by giving notice of such resignation to the Board of Directors, the President, a Vice President, the Secretary or an Assistant Secretary of the Corporation. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Board of Directors or any such officer.

SECTION 4. *Meetings. Notice.* Meetings of the Board of Directors shall be held at such place, within or without the State of Illinois, as may from time to time be fixed by resolution of the Board or by the President or a Vice President and as may be specified in the notice or waiver of notice of any meeting. Meetings may be held at any time upon the call of the President or any two of the Directors by oral, telegraphic, or written notice, duly given, or sent or mailed to each Director not less than twenty-four hours before such meeting. Regular meetings of the Board may be held without notice at such time and place as shall from time to time be determined by resolution of the Board, but in any event at intervals of not more than three months.

SECTION 5. *Vacancies.* Any vacancy occurring in the Board of Directors and any Directorship to be filled by reason of an increase in the number of Directors may be filled by election at an annual meeting or at a special meeting of shareholders called for that purpose. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

ARTICLE IV.

Executive Committee and Other Committees.

SECTION 1. *Executive Committee.* The Board of Directors, by resolution adopted by a majority of the whole Board, may appoint an Executive Committee of not less than three or more than five members, to serve during the pleasure of the Board, to consist of the President and such additional Directors as the Board may from time to time designate. The President shall be Chairman of the Executive Committee.

SECTION 2. *Procedure.* The Executive Committee shall meet at the call of the Chairman or of any two members. A majority of the members shall be necessary to constitute a quorum and action shall be taken by a majority vote of those present.

SECTION 3. *Powers and Reports.* During the intervals between the meetings of the Board of Directors, the Executive Committee shall possess and may exercise all the powers of the Board in the management and direction of the business and affairs of the Corporation. The taking of action by the Executive Committee shall be conclusive evidence that the Board was not in session when such action was taken. The Executive Committee shall keep regular minutes of its proceedings and all action by the Executive Committee shall be reported to the Board at its meeting next following the meeting of the Executive Committee and shall be subject to revision or alteration by the Board; provided, that no rights of third parties shall be affected by such revision or alteration.

SECTION 4. *Other Committees.* From time to time the Board of Directors, by resolution adopted by a majority of the whole Board, may appoint other committees for any purpose or purposes, and such committees shall have such powers as shall be conferred by the resolution of appointment.

ARTICLE V.

Officers.

SECTION 1. *Executive Officers.* The Board of Directors shall elect, as executive officers, a President, a Secretary, a Treasurer, and, in their discretion, one or more Vice Presidents. Such officers shall be elected annually by the Board of Directors at its first meeting following the annual meeting of shareholders, and each shall hold office until his successor shall have been duly elected and qualified, or until he shall have died or resigned or shall have been removed by majority vote of the whole Board. The powers and duties of Secretary and Treasurer may be exercised and performed by the same person, and a Vice President may at the same time hold any other office except that of President.

SECTION 2. *President.* The President shall be a member of the Board of Directors and the chief executive officer of the Corporation. Subject to the directions of the Board of Directors and of the Executive Committee, he shall have direct charge of and general supervision over the business and affairs of the Corporation, and shall perform all duties incident to the office of a president of a corporation and such other duties as from time to time may be assigned to him by the Board of Directors or the Executive Committee.

SECTION 3. *Vice Presidents.* Each Vice President shall have such powers and shall perform such duties as from time to time may be conferred upon or assigned to him by the Board of Directors or the Executive Committee, or as may be delegated to him by the President.

SECTION 4. *Secretary.* The Secretary shall keep the minutes of all meetings of the shareholders and of the Board of Directors in books provided for the purpose; he shall see that all notices are duly given in accordance with the provisions of law and these By-Laws; he shall

be custodian of the records and of the corporate seal of the Corporation; he shall see that the corporate seal is affixed to all documents the execution of which under the seal is duly authorized, and when the seal is so affixed he may attest the same; he may sign, with the President or a Vice President, certificates of stock of the Corporation; and in general, he shall perform all duties incident to the office of a secretary of a corporation, and such other duties as from time to time may be assigned to him by the President, the Board of Directors or the Executive Committee.

The Secretary shall also keep, or cause to be kept, a stock book, containing the names, alphabetically arranged, of all persons who are shareholders of the Corporation, showing their places of residence, the number of shares held by them respectively, and the time when they respectively became the owners thereof.

SECTION 5. *Treasurer.* The Treasurer shall have charge of and be responsible for all funds, securities, receipts and disbursements of the Corporation, and shall deposit, or cause to be deposited, in the name of the Corporation, all moneys or other valuable effects in such banks, trust companies or other depositories as shall, from time to time, be selected by the Board of Directors; he may endorse for collection on behalf of the Corporation, checks, notes and other obligations; he may sign receipts and vouchers for payments made to the Corporation; singly or jointly with another person as the Board of Directors may authorize, he may sign checks of the Corporation and pay out and dispose of the proceeds under the direction of the Board; he shall render or cause to be rendered to the President and to the Board of Directors, whenever requested, an account of the financial condition of the Corporation; and in general, shall perform all the duties incident to the office of a treasurer of a corporation, and such other duties as from time to time may be assigned to him by the President, the Board of Directors or the Executive Committee.

SECTION 6. *Subordinate Officers.* The Board of Directors may appoint such assistant secretaries, assistant treasurers and other subordinate officers as it may deem desirable. Each such officer shall hold office for such period, have such authority and perform such duties as the Board of Directors may prescribe. The Board of Directors may, from time to time, authorize any officer to appoint and remove subordinate officers and to prescribe the powers and duties thereof.

SECTION 7. *Vacancies. Absences.* Any vacancy in any of the above offices may be filled for the unexpired portion of the term by the Board of Directors, at any regular or special meeting. Except when the law requires the act of a particular officer, the Board of Directors or the Executive Committee whenever necessary may, in the absence of any officer, designate any other officer or properly qualified employee, to perform the duties of the one absent for the time being, and such designated officer or employee shall have, when so acting, all the powers herein given to such absent officer.

SECTION 8. *Resignations.* Any officer may resign at any time by giving written notice of such resignation to the Board of Directors, the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon written receipt thereof by the Board of Directors or by such officer.

ARTICLE VI.

Capital Stock.

SECTION 1. *Certificates Representing Shares.* The shares of the Corporation shall be represented by certificates signed by the President or a Vice President and the Secretary or an Assistant Secretary and sealed with the seal of the Corporation. Such seal may be a facsimile. Where such certificate is countersigned by a transfer agent other than the Corporation, or an employee of the Corporation, or by a transfer clerk and registered by a registrar, the signatures of the President or

Vice President and the Secretary or Assistant Secretary upon such certificate may be facsimiles engraved or printed. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the Corporation with the same effect as if such officer had not ceased to be such at the date of its issue. No certificate shall be issued for any share until such share is fully paid.

SECTION 2. *Transfer of Shares.* The shares of the Corporation shall be transferable on the books of the Corporation by the holder thereof in person or by his attorney lawfully constituted, upon surrender for cancellation of certificates for the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, with such proof or guaranty of the authenticity of the signature as the Corporation or its agents may reasonably require. The Board of Directors may appoint one or more transfer agents and registrars of the shares of the Corporation. The Corporation shall be entitled to treat the holder of record of any share or shares as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by law.

SECTION 3. *Closing of Transfer Books and Fixing Record Date.* For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the Board of Directors may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, forty days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting.

In lieu of closing the stock transfer books, the Board of Directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than forty days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed, or the date on which the resolution of the Board of Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders.

SECTION 4. *Lost Certificates.* The Corporation may issue a new certificate for shares in the place of any certificate theretofore issued by it, alleged to have been lost or destroyed, on such terms and conditions as may be prescribed by the Board of Directors, or any committee of the Board of Directors or officers of the Corporation thereunto duly authorized by the Board of Directors, including the requirement that the owner of the lost or destroyed certificate, or his legal representative, give bond in such sum as they may direct as indemnity against any claim that may be made against the Corporation, its officers, employees or agents, by reason thereof. A new certificate may be issued without requiring any bond when, in the judgment of the Board of Directors or of any such committee, it is proper to do so.

ARTICLE VII.

Checks, Notes, etc.

SECTION 1. *Execution of Checks, Notes, etc.* All checks and drafts on the Corporation's bank accounts and all bills of exchange, promissory notes, acceptances, obligations and other instruments for the payment of money, shall be signed by the President or any Vice President and by

the Treasurer or any Assistant Treasurer, or shall be signed by such other officer or officers, person or persons, as shall be thereunto authorized by the Board of Directors or the Executive Committee.

SECTION 2. *Execution of Contracts, Assignments, etc.* All contracts, agreements, endorsements, assignments, transfers, stock powers, and other instruments shall be signed by the President or any Vice President and by the Secretary or any Assistant Secretary or the Treasurer or any Assistant Treasurer, or shall be signed by such officer or officers, person or persons, as shall be thereunto authorized by the Board of Directors or the Executive Committee or by the President pursuant to authorization by the Board of Directors.

SECTION 3. *Voting of Stock and Execution of Proxies.* The President, any Vice President or any other officer of the Corporation designated by the Board of Directors, the Executive Committee or the President, shall be authorized to attend any meeting of the stockholders of any other corporation in which the Corporation is an owner of stock and to vote such stock upon all matters coming before such meeting. The President or any Vice President may sign and issue proxies to vote shares of stock of other corporations owned by the Corporation.

ARTICLE VIII.

Waivers.

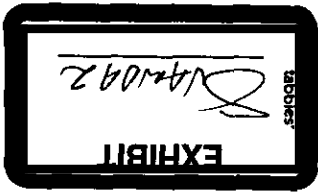
Whenever any notice whatever is required to be given under the provisions of the Business Corporation Act or under the provisions of the Articles of Incorporation or these By-Laws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE IX.**Seal.**

The seal of the Corporation shall show the year of its incorporation and shall be in such form as the Board of Directors shall prescribe. The seal on any corporate obligation for the payment of money may be a facsimile, engraved or printed.

ARTICLE X.**Amendments.**

Subject to the provisions of applicable law, these By-Laws may be altered, amended or repealed and new By-Laws adopted by the Board of Directors at any regular or special meeting at which a quorum is present, provided notice of the proposed amendment shall have been given.



Section 4. Shareholders' Lists. The Secretary shall make, at least ten days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten days prior to such

Section 3. Special Meetings. Special meeting of the shareholders may be held at any time upon the call of the Chairman of the Board, the President, any two Directors, a majority of the Executive Committee or holders of at least 10% of the shares entitled to vote at such time. The notice of each special meeting shall state the purpose or purposes of the proposed meeting, and the business transacted at such meeting shall be confined to such purpose or purposes.

Section 2. Annual Meeting. The Annual Meeting of the Shareholders for the election of directors and the transaction of such other business as may properly come before the meeting shall be held during the month of May in each year at 10:00 o'clock in the forenoon, Central Standard Time, on a date to be fixed by the Board, said date to be determined at least thirty (30) days prior thereto. Should the date selected be a legal holiday, the meeting shall then be held on the next succeeding day not a legal holiday.

Section 1. Place of Meetings. All meetings of shareholders whether annual or special, shall be held at the office of the Corporation in Joppa, Massac County, Illinois, unless some other place for said meeting, either within or without the State of Illinois, shall have been fixed by the Board of Directors and set forth in the notice of meeting, or in duly executed waivers of notice thereof.

Meetings of Shareholders

ARTICLE II

The principal business office of the Corporation shall be in Joppa, Massac County, Illinois. The Corporation may also have offices at such other places as the Board of Directors may from time to time designate or the business of the Corporation may require.

Offices

ARTICLE I

ELECTRIC ENERGY, INC.

of

BY LAWS

meeting, shall be kept on file at the registered office of the Corporation and shall be subject to inspection by any shareholders at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original share ledger or transfer book, or a duplicate thereof kept in the State of Illinois, shall be prima facie evidence as to who are the shareholders entitled to examine such list or share ledger or transfer book or to vote at any meeting of shareholders.

Section 5. Notice. Written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called shall be delivered not less than ten nor more than forty days before the date of the meeting, either personally or by mail, by or at the direction of the President, or the Secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the records of the Corporation, with postage thereon prepaid.

Section 6. Voting. Subject to the provisions of law, every shareholder of record entitled to vote shall be entitled, at every meeting of the shareholders of the Corporation, to one vote for every share standing in his name on the books of the Corporation. Any shareholder entitled to vote may vote by proxy provided that the instrument authorizing such proxy to act shall have been executed in writing by the shareholder himself or by his duly authorized attorney. No proxy shall be valid, however, after the expiration of eleven months from the date of its execution unless the persons executing it shall have specified therein the length of time it is to continue in force, which shall be for some limited period. Prior to the exercise thereof, every proxy shall be revocable at the pleasure of the person executing it or of his personal representatives or assigns. At all meetings of shareholders, except as otherwise required by law or by the Articles of Incorporation or by these By-Laws, all matters shall be decided by the vote of the holders of a majority of the shares present or represented at the meeting and entitled to vote thereat. In the event that any holder of voting capital stock of EELinc. (including, for these purposes, such holder's Affiliates) owns in excess of 50% of the voting capital stock of EELinc., then all corporate restructuring transactions and other major corporate actions shall be decided by the vote of the holders of 75% or more of the outstanding shares of the Corporation entitled to vote. Corporate restructuring transactions and other major corporate actions shall include: (a) sale of all or substantially all of EELinc's stock (or other securities) or assets; (b) issuance of new securities; (c) change in the relative percentages of ownership of stock (or securities) of EELinc. held by the current owners of EELinc.; (d) any other change in the ownership or control of EELinc.; (e) decisions to allocate the sale of the generating capacity of EELinc. among the EELinc. stockholders in a manner other than in accordance with their percentages of ownership of EELinc. stock, in the event that the amount of such

capacity available for sale to parties other than the U.S. Enrichment Corporation changes materially; and (f) a material change in the business purpose or objectives of EEInc. In all elections for directors, every shareholder shall have the right to vote, in person or by proxy, the number of shares owned by a shareholder for as many persons as there are directors to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares shall equal, or to distribute them on the same principal among as many candidates as he shall think fit. All elections of directors shall be held by ballot. A vote may be taken upon any other matter by ballot if the chairman of the meeting shall so determine, or upon the request of any shareholder entitled to vote on such matter. The above provisions, requiring a 75% or more vote of the outstanding shares for corporate restructuring transactions and other major corporate actions, shall not be changed without a vote of 75% or more of the outstanding shares of the corporation entitled to vote.

Section 7. Inspectors of Election. At any meeting of shareholders the chairman of the meeting shall appoint two persons, who need not be shareholders, to act as Inspectors of Election, unless such appointment shall be waived by all shareholders present or represented at the meeting. No Director or candidate for the office of Director shall be appointed as such Inspector. Before entering upon the discharge of his duties, each Inspector shall first take and subscribe an oath faithfully to execute the duties of Inspector at such meeting with strict impartiality and according to the best of his ability. The Inspectors shall take charge of the polls and after the balloting shall make a certificate of the result of the vote taken which shall be filed with the minutes of the meeting.

Section 8. Organization. The Chairman of the Board, or in his absence, the President or a person appointed by the Chairman of the Board, shall call meetings of the shareholders to order and shall act as chairman thereof. The Secretary of the Corporation, if present, shall act as secretary of all meetings of shareholders, and in his absence, the presiding officer may appoint a secretary.

Section 9. Informal Action by Shareholders. Any action required by the Illinois Business Corporation Act, the Articles of Incorporation, or these By-Laws to be taken at a meeting of the shareholders, or any other action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the shareholders entitled to vote with respect to the subject matter thereof.

ARTICLE III

Directors

Section 1. Number, General Powers. Except as provided in Article II, Section 6, the property, affairs and business of the Corporation shall be managed by a Board of nine Directors provided, however, that in the event of the occurrence of a vacancy or vacancies the remaining Directors may continue to act until such vacancy or vacancies shall be filled, as provided herein.

Section 2. Term of Office. The term of office of each Director shall be until the next annual meeting of shareholders or until his successor is duly elected and qualified or until the earlier death or resignation of such Director.

Section 3. Resignation. Any Director may resign at any time by giving notice of such resignation to the Chairman of the Board, the President, a Vice President, the Secretary or an Assistant Secretary of the Corporation. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Board of Directors or any such officer.

Section 4. Meetings, Notice. Meetings of the Board of Directors shall be held at such place, within or without the State of Illinois, as may from time to time be fixed by resolution of the Board or by the President or a Vice President and as may be specified in the notice or waiver of notice of any meeting. Meetings may be held at any time upon the call of the Chairman of the Board, the President or any two of the Directors by oral, telegraphic, or written notice, duly given, or sent or mailed to each Director not less than twenty-four hours before such meeting. Regular meetings of the Board may be held without notice at such time and place as shall from time to time be determined by resolution of the Board, but in any event at intervals of not more than three months. Attendance at a meeting without objection shall constitute a waiver of notice and consent to meeting or action.

Section 5. Vacancies. Any vacancy occurring in the Board of Directors and any Directorship to be filled by reason of an increase in the number of Directors may be filled by election at an annual meeting or at a special meeting of shareholders called for that purpose. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

Section 1. Executive Officers. The Board of Directors shall elect, as executive officers, a President, a Secretary, a Treasurer, and, in their discretion, a Chairman of the Board and/or one or more Vice Presidents. Such officers shall be elected annually by the Board of Directors at its first meeting following the annual meeting of shareholders, and each shall hold office until his successor shall have been duly elected and qualified, or until he shall have died or resigned or shall have been removed by majority vote of the whole Board. The powers and duties of Secretary and Treasurer may be exercised and performed by the same person, and a Vice President may at the same time hold any other office except that of President.

Officers

ARTICLE V

Section 4. Other Committees. From time to time the Board of Directors, by resolution adopted by a majority of the whole Board, may appoint other committees for any purpose or purposes, and such committees shall have such powers as shall be conferred by the resolution of appointment.

Section 3. Powers and Reports. During the intervals between the meetings of the Board of Directors, the Executive Committee shall possess and may exercise all the powers of the Board in the management and direction of the business and affairs of the Corporation. The taking of action by the Executive Committee shall be conclusive evidence that the Board was not in session when such action was taken. The Executive Committee shall be reported to the Board at its meeting next following the meeting of the Executive Committee and shall be subject to revision or alteration by the Board; provided, that no rights of third parties shall be affected by such revision or alteration.

Section 2. Procedure. The Executive Committee shall meet at the call of the Chairman or of any two members. A majority of the members shall be necessary to constitute a quorum and action shall be taken by a majority vote of those present.

Section 1. Executive Committee. The Board of Directors, by resolution adopted by a majority of the Board, may appoint an Executive Committee of not less than three or more than five members, to serve during the pleasure of the Board, to consist of the Chairman of the Board and such additional Directors as the Board may from time to time designate. The Chairman of the Board shall be Chairman of the Executive Committee.

Executive Committee and Other Committees

ARTICLE IV

Section 2. Chairman of the Board. The Chairman of the Board presides at all meetings of the Board of Directors, Executive Committees and Shareholders, and performs such other functions as may be specified by the Board of Directors.

Section 3. President. The President may be a member of the Board of Directors and is the Chief Executive Officer of the Corporation. Subject to the directions of the Board of Directors and of the Executive Committee, he shall have direct charge of and general supervision over the business and affairs of the Corporation, and shall perform all duties incident to the office of a president or a corporation and such other duties as from time to time may be assigned to him by the Board of Directors or the Executive Committee.

Section 4. Vice Presidents. Each Vice President shall have such powers and shall perform such duties as from time to time may be conferred upon or assigned to him by the Board of Directors or the Executive Committee, or as may be delegated to him by the President.

Section 5. Secretary. The Secretary shall keep the minutes of all meetings of the shareholders and of the Board of Directors in books provided for the purpose; he shall see that all notices are duly given in accordance with the provisions of law and these By-Laws; he shall be custodian of the records and of the corporate seal of the Corporation; he shall see that the corporate seal is affixed to all documents the execution of which under the seal is duly authorized, and when the seal is so affixed he may attest the same; he may sign, with the President or a Vice President, certificates of stock of the Corporation; and in general, he shall perform all duties incident to the office of a secretary of a corporation, and such other duties as from time to time may be assigned to him by the President, the Board of Directors, or the Executive Committee.

The Secretary shall also keep, or cause to be kept, a stock book, containing the names alphabetically arranged, of all persons who are shareholders of the Corporation, showing their places of residence, the number of shares held by them respectively, and the time when they respectively became the owners thereof.

Section 6. Treasurer. The Treasurer shall have charge of and be responsible for all funds, securities, receipts and disbursements of the Corporation, and shall deposit, or cause to be deposited, in the name of the Corporation, all moneys or other valuable effects in such banks, trust companies or other depositories as shall, from time to time, be selected by the Board of Directors; he may endorse for collection on behalf of the Corporation, checks, notes and other obligations; he may sign receipts and vouchers for payments made to the Corporation, singly or jointly with another person as the Board of Directors may authorize; he may sign checks of the Corporation and pay out and dispose of the proceeds under the direction of the Board; he shall render or cause to be rendered to the President and to the Board of Directors, whenever requested, an account of the financial condition of the

Corporation; and in general, shall perform all the duties incident to the office of a treasurer of a corporation, and such other duties as from time to time may be assigned to him by the President, the Board of Directors or the Executive Committee.

Section 7. Subordinate Officers. The Board of Directors may appoint such assistant secretaries, assistant treasurers and other subordinate officers as it may deem desirable. Each such officer shall hold office for such period, have such authority and perform such duties as the Board of Directors may prescribe. The Board of Directors may, from time to time, authorize any officer to appoint and remove subordinate officers and to prescribe the powers and duties thereof.

Section 8. Vacancies. Absences. Any vacancy in any of the above offices may be filled for the unexpired portion of the term by the Board of Directors, at any regular or special meeting. Except when the law requires the act of a particular officer, the Board of Directors or the Executive Committee whenever necessary may, in the absence of any officer, designate any other officer or properly qualified employee, to perform the duties of the one absent for the time being, and such designated officer or employee shall have, when so acting, all the powers herein given to such absent officer.

Section 9. Resignations. Any officer may resign at any time by giving written notice of such resignation to the Chairman of the Board of Directors, the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon written receipt thereof by the Board of Directors or by such officer.

ARTICLE VI

Capital Stock

Section 1. Certificates Representing Shares. The shares of the Corporation shall be represented by certificates signed by the President or a Vice President and the Secretary or an Assistant Secretary and sealed with the seal of the Corporation. Such seal may be a facsimile. Where such certificate is countersigned by a transfer agent other than the Corporation, or an employee of the Corporation, or by a transfer clerk and registered by a registrar, the signatures of the President or Vice President and the Secretary or Assistant Secretary upon each certificate may be facsimiles engraved or printed. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued it may be issued by the Corporation with the same effect as if such officer had not ceased to be such at the date of its issue. No certificate shall be issued for any share until such share is fully paid.

Section 2. Transfer of Shares. The shares of the Corporation shall be transferable on the books of the Corporation by the holder thereof in person or by

Section 4. Lost Certificates. The Corporation may issue a new certificate for shares in the place of any certificate issued by it, alleged to have been lost or destroyed, on such terms and conditions as may be prescribed by the Board of Directors, or any committee of the Board of Directors, including the Corporation thereunto duly authorized by the Board of Directors, or his legal representative give bond in such sum as they may direct as indemnity against any claim that may be made against the Corporation, its officers, employees or agents, by reason thereof. A new certificate may be issued without requiring any bond when, in the judgment of the Board of Directors or of any such committee, it is proper to do so.

Section 3. Closing of Transfer Books and Fixing Record Date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the Board of Directors may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, forty days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock transfer books, the Board of Directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than forty days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed, or the date on which the resolution of the Board of Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders.

his attorney lawfully constituted, upon surrender for cancellation of certificates for the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, with such proof or guaranty of the authenticity of the signature as the Corporation or its agents may reasonably require. The Board of Directors may appoint one or more transfer agents and registrars of the shares of the Corporation. The Corporation shall be entitled to treat the holder of record of any share or shares as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by law.

ARTICLE VII

Checks, Notes, etc.

Section 1. Execution of Checks, Notes, etc. All checks and drafts on the Corporation's bank accounts and all bills of exchange, promissory notes, acceptances, obligations and other instruments for the payment of money, shall be signed by the President or any Vice President or by the Treasurer or any Assistant Treasurer, or shall be signed by such other officer or officers, person or persons, as shall be hereunto authorized by the Board of Directors or the Executive Committee.

Section 2. Execution of Contracts, Assignments, etc. All contracts, agreements, endorsements, assignments, transfers, stock powers, or other instruments may be signed by the President or any Vice President or by the Secretary or any Assistant Secretary or the Treasurer or any Assistant Treasurer, or shall be signed by such officer or officers, person or persons as shall be authorized by the Board of Directors or the Executive Committee or by the President.

Section 3. Voting of Stock and Execution of Proxies. The President, any Vice President or any other officer of the Corporation designated by the Board of Directors, the Executive Committee or the President, shall be authorized to attend any meeting of the stockholders of any other corporation in which the Corporation is an owner of stock and to vote such stock upon all matters coming before such meeting. The Chairman of the Board, the President or any Vice President may sign and issue proxies to vote shares of stock of other corporations owned by the Corporation.

ARTICLE VIII

Waivers

Whenever any notice whatever is required to be given under the provisions of the Business Corporation Act or under the provisions of the Articles of Incorporation Act or these By-Laws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE IX

Indemnification

- a. The Corporation shall indemnify and hold harmless to the fullest extent permitted by law any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and

whether or not by or in the right of the Corporation, by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or enterprise, against all expenses, liability and loss (including attorneys' fees), judgments, fines, penalties and amounts paid or to be paid in settlement and all other costs reasonably incurred by such person in connection with such action, suit, proceeding or investigation, and such indemnification right shall continue as to a person who has ceased to serve in an entitled capacity and inure to the benefit of his or her heirs and legal representatives.

b. The right of indemnification conferred by these By-Laws shall include, but shall not be limited to, indemnification permitted or required under the statutes of the State of Illinois, as amended from time to time.

c. For purposes of these By-Laws:

- i. "Indemnify" shall include, but not be limited to, the payment by the Corporation, in advance of any final disposition of an action, suit, investigation or proceeding, of all expenses reasonably incurred in defending any action, suit, investigation or proceeding provided that, if and to the extent that the Illinois Business Corporation Act so requires, the payment of such expenses incurred by a director or officer in advance of the final disposition of a proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this By-Law or otherwise;

ii. "Enterprise" shall include, but not be limited to, employee benefit plans and other related corporate activities;

iii. "Expenses" and "costs" shall include expenses or costs reasonably incurred in the enforcement of rights under this By-Law and any excise taxes assessed with respect to an employee benefit plan; and,

iv. In respect of any employee benefit plan or other related corporate enterprise, "serving at the request of the Corporation as a director, officer, employee or agent" includes serving at the request of the Corporation in any capacity that involves services or duties with respect to such employee benefit plan or its participants or beneficiaries or related corporate enterprises.

d. The right to indemnification and the advancement and payment of expenses conferred in these By-Laws shall not be exclusive of any other right which

any person may have or hereafter acquire under any law (common or statutory), provision of the Articles of Incorporation of the Corporation, By-Law, agreement, vote of shareholders of disinterested directors or otherwise.

- e. The Corporation may maintain insurance, at its expense, to protect itself and any person who is or was serving as a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Illinois Business Corporation Act.

ARTICLE X

Seal

The seal of the Corporation shall show the year of its incorporation and shall be in such form as the Board of Directors shall prescribe. The seal on any corporate obligation for the payment of money may be a facsimile, engraved or printed.

ARTICLE XI

Amendments

Subject to the provisions of applicable law, these By-Laws may be altered, amended or repealed and new By-Laws adopted by the Board of Directors at any regular or special meeting at which a quorum is present, provided notice of the proposed amendment shall have been given.