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Issues:	Corporate Governance Principles - Electric Energy, Inc.
Witness:	Prof. Robert C. Downs
Sponsoring Party:	Union Electric Company
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MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. ER-2007-0002

SURREBUTTAL TESTIMONY

OF

PROFESSOR ROBERT C. DOWNS

ON

BEHALF OF

UNION ELECTRIC COMPANY
d/b/a AmerenUE

St. Louis, Missouri
February, 2007

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SURREBUTTAL TESTIMONY

OF

PROFESSOR ROBERT C. DOWNS

CASE NO. ER-2007-0003

I. INTRODUCTION

Q. Please state your name and business address.

A. My name is Robert C. Downs. My business address is University of Missouri-Kansas City School of Law, 5100 Rockhill Road, Kansas City, Missouri 64110.

Q. Are you the same Robert C. Downs that filed Direct and Rebuttal Testimony in this proceeding?

A. Yes, I am.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to respond to the testimonies of Robert Schallenberg, Michael Brosch, and Ryan Kind relating to EEInc.

Q. Please summarize your testimony.

A. These witnesses advocate a large adjustment to AmerenUE's cost of service purportedly to take into account the higher cost of power AmerenUE will have to purchase because it can no longer purchase power from EEInc. at a cost-based price. These witnesses justify their adjustment by blaming AmerenUE for this state of affairs, claiming that it is AmerenUE's "imprudence" that is responsible for these higher power costs.

Since the facts are not in dispute, as Mr. Moehn's Surrebuttal Testimony again makes clear, these witnesses for the other parties ultimately rest their argument on legal conclusions. Of course, since not one of them is competent to offer legal opinion testimony,

they deny this. These denials are transparently false. All rest their argument for an adjustment on a claim that AmerenUE in some way had a "right" to compel EEInc. to sell its power at a below market price, and that, logically, EEInc. in some way had an obligation to sell power to AmerenUE at a below market price. There is no way to understand the "right" of one corporation to compel another to do its bidding (and against that other corporation's obvious best interest) other than as a legal right. If the law does not give AmerenUE the right these witnesses claim (and correspondingly impose an obligation on EEInc.), nothing else does.

And the law does not give AmerenUE the right these witnesses claim. To the contrary, if any member of EEInc.'s Board of Directors acted at the behest of AmerenUE as these witnesses urge, they would be violating basic legal duties to their corporation.

The basic principles and conclusions of law that govern here are as follows:

- EEInc. is an Illinois corporation distinct from AmerenUE. It is not a division of AmerenUE; it is not bound to serve AmerenUE's interests; and it is not in any other way subordinate to AmerenUE.
- Like all boards of directors, EEInc.'s Board of Directors has the ultimate responsibility for managing the business affairs of EEInc.
- Shareholders are not entitled to manage a corporation in which they own stock.
- Directors have legal duties and obligations that arise from sources of law outside the corporation or the documents creating the corporation and governing its operations, such as by-laws. These other sources of law include statutes and the common law. These other sources of law

are superior to corporate documents. This means, for example, that by-laws cannot override legal duties imposed by statute or the common law.

- EEInc.'s Directors, like all corporate directors, have a duty of undivided loyalty to EEInc.
- EEInc.'s Directors, like all corporate directors, have a fiduciary duty to EEInc. A fundamental component of that duty is to maximize the profits of the corporation.
- An individual serving on a board of directors can, and often does, "wear two hats." That is, a corporation will often seek as directors individuals experienced in business who are currently employed by, or on the boards of, other corporations. However, such an individual cannot legally wear both hats at the same time. That means that, while acting as a director of one corporation, that individual must act only in the best interests of that corporation, not any other entity in which he may have an interest.
- The power produced by the Joppa Plant is a corporate asset of EEInc.
- Selling its power at a fair market price is a corporate opportunity of EEInc.
- EEInc.'s Board ultimately makes the decision at what price to sell EEInc.'s power.

- Directors cannot legally defer to the wishes of control shareholders to transfer corporate assets to those shareholders at a below fair market price.
- A director's use of corporate assets to further his own goals is a violation of his fiduciary duties. Similarly, a director may not take the corporation's assets to help another corporation in which he has an interest. Thus, EEInc.'s Directors who have some interest in AmerenUE cannot legally vote to sell EEInc.'s power to AmerenUE at a below market price.
- A contract pricing mechanism for the sale of any commodity, including that in the Power Supply Agreement between EEInc. and AmerenUE, does not give the buyer ownership rights of any kind concerning the assets of the seller or that commodity, nor does it create legal entitlements beyond the term of the contract.

II. RESPONSE TO REBUTTAL TESTIMONY OF ROBERT E. SCHALLENBERG

Q. In his testimony, on pages 16 – 17, Mr. Schallenberg states that he "was aware that AmerenUE intended to terminate on January 1, 2006 its use of the capacity and energy associated with its forty percent (40%) ownership of EEInc. to serve AmerenUE's customers at cost based rates" and further that "AmerenUE engaged in an imprudent decision to sell the power from the capacity and energy associated with its forty percent (40%) ownership of EEInc. into the open market . . ." and that "This Ameren decision was not based on any analysis that showed that such a decision was

beneficial to either the reliability or costs of AmerenUE's utility operations in Missouri." Do you have an opinion regarding these assertions?

A. Yes, I do. Mr. Schallenberg is making several assumptions regarding the legal rights and duties of AmerenUE, EEInc. and the power sales contract. First, AmerenUE did not "terminate" the contract between AmerenUE and EEInc. That contract expired, by operation of law, and in accordance with its own terms, on December 31, 2005. Secondly, Mr. Schallenberg implies that AmerenUE had the legal right to continue the power supply contract with EEInc. That is a legal conclusion. It is also an erroneous legal conclusion, not supported by the law or the facts. Mr. Schallenberg's underlying assumption, also a legal conclusion, is that the shareholder's of a corporation are entitled to direct the corporation to enter into contracts with the shareholders. This conclusion of law is also erroneous. The law of Missouri and Illinois clearly places the responsibility and right to manage the affairs of the corporation on the Board of Directors of the corporation. Another assumption implicit in Mr. Schallenberg's opinion that AmerenUE could have continued the power supply contract with EEInc. is that AmerenUE as a large shareholder could have and should have forced the issue by insisting that directors of EEInc. who were also affiliated with AmerenUE vote to continue the contract for the benefit of AmerenUE. This is also a legal question to which Mr. Schallenberg is suggesting an erroneous legal conclusion. The directors of a corporation have the fiduciary duties owing to the corporation, among which are the duty of care and the duty of loyalty**.** The directors are the people who decide what to do with the corporation's assets, and have the duty to protect the corporation and its assets, as well as many other responsibilities. Shareholders are not entitled to take the corporate assets for less than the fair market value of those assets. The analysis here is quite similar to the "corporate

opportunity" doctrine in corporate law. Insiders, including large shareholders, are not entitled to usurp corporate opportunities for their own benefit. The electric power generated from the Joppa Plant is an asset of EEInc. The ability to sell that power for fair market value is a corporate opportunity of EEInc. The Board of Directors of EEInc. has the fiduciary duty to protect that assets and not permit the shareholders, or anyone else, to take the power without paying fair market value for it. Mr. Schallenberg seems to be suggesting that AmerenUE "should" have usurped EEInc.'s corporate opportunity and taken the electric power for less than its fair market value.

Q. On page 19, Mr. Schallenberg says that "The Agreement expired by AmerenUE not consistent with its rights and regulatory obligations to its customers, . . ." and "AmerenUE had a ownership percentage significant enough to effectively extended the contract on its existing terms." Do you have a legal opinion regarding the accuracy or legitimacy of those statements?

A. Yes I do. Mr. Schallenberg completely ignores the legal separation of AmerenUE and EEInc. and misstates the legal rights of AmerenUE as a shareholder of EEInc. He asserts that AmerenUE had the "legal right" to extend the contract with EEInc., which is an erroneous legal conclusion. He also seems to believe that AmerenUE, because of its position as a shareholder, could extend the contract with EEInc. Of course, AmerenUE owns only a minority of the shares – 40%. Regardless of the percentage of EEInc. shares owned by AmerenUE, Mr. Schallenberg simply does not accurately state the legal rights of shareholders. It is the job of the directors of EEInc. to decide what is in the best interests of EEInc., and they are not entitled to defer to the wishes of a majority shareholder, a large shareholder, or any shareholder unless those wishes are also in the best interests of EEInc. It

is also a legal question as to whether AmerenUE and Kentucky Utilities could have together insisted on the sale of EEInc.'s power to themselves at below market rates. His assumption that they could do so is contrary to the corporate laws of both Missouri and Illinois. It is, again, the responsibility of the EEInc. directors to decide what to do with EEInc. assets. Likewise, Mr. Schallenberg's statement that AmerenUE was diverting the Joppa Plant power away from the AmerenUE customers is a misstatement of the law, and raises the implication that the AmerenUE customers are "legally entitled" to receive the Joppa Plant power (perhaps forever) at a price less than the fair market value of that power. Of course, no such legal right exists, and is at the very minimum inconsistent with the power supply contract termination date.

Q. On pages 19 to 21, Mr. Schallenberg suggests that certain statements made by Union Electric to the Commission in 1952, and its involvement in a bond issue of EEInc. in 1977, and an EEInc. bylaw provision relating to voting, creates the ability of AmerenUE to continue to purchase power from the Joppa Plant (presumably at below market rates.) Do you have a legal opinion regarding this suggestion or conclusion?

A. Yes I do. It is clearly a legal conclusion as to whether any of these matters creates any rights at all for AmerenUE or its customers. In my opinion, it is also an erroneous legal conclusion. There is nothing in the statements to the Commission in 1952 that rises to the level of a promise, let along an enforceable promise, that EEInc. would forever continue to sell power to AmerenUE, or that it would forever sell such power at below fair market value. Likewise, there is nothing in the bond guarantee that creates any legal obligation upon EEInc. or legal right in AmerenUE to a sale of Joppa Plant power, or

that such sales would or must continue indefinitely into the future. With regard to the EEInc. bylaw voting provision, contained in "Article II, Section 6. Voting", it is a legal question as to the meaning of the provision and as to its applicability to a decision by EEInc. to sell its power to anyone other than shareholders. Frankly, the suggestion by Mr. Schallenberg that it does require such sales is contrary to the express language in that bylaw section. The 75% vote of shareholders for certain significant corporate decisions applies to a number of issues, one of which is subparagraph (e) (emphasis added) :

> (e) decisions to allocate the sale of the generating capacity of EEInc. among the EEInc. stockholders in a manner other than in accordance with their percentages of ownership of EEInc. stock, in the event of such capacity available for sale to parties other than the U.S. Enrichment Corporation changes materially; . . .

This language is quite clear. It refers to the allocation of power among the shareholders. It does not say what amount of power must be sold to shareholders or that any amount need be sold to shareholders. Nor does it refer to the price at which power is to be sold. It is intended, in my opinion, to keep one shareholder from taking more than a pro-rata amount of power that *is* being sold to shareholders. It is also states that power may be available for sale to parties other than the U.S. Enrichment Corporation. Although shareholders might be included in such "parties other than", it does not require that sales be made only to shareholders.

It is also a legal conclusion that a bylaw provision that did require such sales, (which it obviously did not require) would be enforceable in any event. Bylaw provisions that usurp the duties and obligations of the corporate directors are not enforceable. For example, bylaw provisions that required corporate waste, eliminated the duty of loyalty of directors, or permitted the corporation to have directors who were not required to discharge their obligations to protect the corporation's assets would not be enforceable, even approved

by 100% of the corporation's shareholders. Here, there is no need to fully articulate this issue, because the bylaw clearly does not create any right of shareholders to purchase any power (other than their pro-rata of such power as may be sold to shareholders) or to purchase power at below fair market value.

Q. On page 23 and 24, Mr. Schallenberg cites various provisions of the Power Supply Agreement between EEInc. and AmerenUE and Kentucky Utilities, identifying "Component A" and "Component D", and then concludes that because customer utilities (AmerenUE and Kentucky Utilities) paid a return on equity (in Component D) that it is receiving a "double recovery since the return costs were already included (in) the demand charges booked above the line." Do you have an opinion regarding the accuracy of these conclusions?

A. Yes I do. First, the construction of a contract is a legal question. Secondly, the component parts of the Power Supply Contract, to which Mr. Schallenberg refers, together with the other Component parts, constitute a pricing mechanism for the electric power. It is common to see supply contracts that are based upon costs plus a mark up, include an element of cost related to the use of capital. But it is still just a pricing mechanism for the power. The customer does not thereby become an owner of the company or generate ownership rights in the product, or create legal entitlements beyond the term of the contract. It appears to me to be another attempt to suggest that AmerenUE's ratepayers have taken the risks and paid the costs of EEInc. and thus are somehow legally entitled to insist on receipt of the power at below fair market value. As has been discussed in my prior testimony, for most of the five decades of the Power Supply Contract, and the contract between the government and EEInc., the government took the lion's share of the power. Thus, if the "support"

argument had any value, which I believe it does not, it would be the Government that would have these rights, not AmerenUE, Kentucky Utilities and other EEInc. shareholders. Also pertinent to this topic is the fact that other risks and costs of the EEInc. business were specifically not included in the pricing system. In particular, the Power Supply Agreement (1987), paragraph 3.09 specifically stated that the Freezer Sublimer System that was being considered by EEInc. would be excluded from the pricing formula. EEInc. was projecting a cost of $65,000,000 for that project, none of which would be included in the pricing of power to AmerenUE, Kentucky Utilities, or the other EEInc. shareholders who were also parties to the Power Supply Agreement.

Q. On page 24, Mr. Schallenberg states that "Kentucky Utilities noted in these FERC dockets that it could not commit and had not committed to using the capacity presently available pursuant (to) the Power Supply Agreement between EEInc. and Kentucky Utilities beyond the existing term of the agreement (i.e. December 31, 2005) because Kentucky Utilities' contractual rights to that capacity would expire on December 31, 2005." He also states conclusions regarding whether AmerenUE and Kentucky Utilities could "block a change in allocation of capacity and energy from the generation facilities owned by EEInc. Do you have an opinion regarding this testimony?

A. Yes I do. First, it is accurate, as Kentucky Utilities stated, that their contractual rights to electric power from EEInc. expired when the contract expired. That is also the case for AmerenUE. Secondly, Mr. Schallenberg's reference to the bylaws and the ability of one shareholder to "block" a reallocation of power from EEInc. is implicit with the same misreading error of the bylaw. The bylaw only applies to reallocation of power among

the stockholders, and does not speak to the issue of whether stockholders are entitled to purchase power, as I earlier discussed in this testimony. If there is no sale of power to the stockholders, then there is no "blocking" issue at all.

Q. On page 26 and 27, Mr. Schallenberg refers to the EEInc. FERC Form 1 Annual Report in which he says that the report refers to the "obligations of AmerenUE with the other Sponsoring Companies and DOE as absolute, unconditional, and shall not be discharged or affected by the failure, impossibility or impracticality of EEInc. to generate or deliver electricity." He then suggests that this shows that the Power Supply Agreement was not an agreement "from an independent separate third party supplier." Do you have an opinion regarding this testimony?

A. Yes, I do. The contract speaks for itself. It and the Power Contract with the Government are detailed, lengthy, comprehensive agreements. By their terms they express the rights and obligations of the parties. There is certainly nothing legally improper or wrong about entering into a contract where payments are made uniform and regular to make sure that the supplier is not so financially damaged by production problems that the supplier could not function in the future. This payment requirement could perform such a purpose. In the gas industry, parties would often enter into "take or pay" clauses that required the customer to continue to pay for gas, even if they did not want it or need it at the time. Such clauses were intended to protect the gas pipeline in its need to recover the significant costs associated with establishing the gas wells and pipeline delivery systems. Likewise the drillers who drill the gas wells may want the pipeline to take their gas or pay anyway, to make it possible to cover the costs of the drilling.

In any event, such provisions do not create ownership rights for the customers in EEInc. Nor do they create any right to continued power or to power at below fair market value prices.

III. RESPONSE TO REBUTTAL TESTIMONY OF MICHAEL L. BROSCH.

Q. On page 9 of his Rebuttal Testimony, Mr. Brosch asserts that the treatment of the EEInc. Joppa Plant has always been treated as "jurisdictional" by AmerenUE and the Commission. Do you have an opinion regarding this testimony?

A. Yes, I do. First, the question of whether a portion of the business is "jurisdictional" or not is a legal question. The Commission cannot as I understand it establish a legal principle, but the Commission is bound to follow and apply the law. Mr. Brosch reaches his legal conclusion that the Joppa Plant was "jurisdictional" based upon the same arguments made by Mr. Schallenberg, that a return on the capital of EEInc. was paid in the contract pricing terms. Thus, they are claiming that the pricing method adopted by the parties that paid a return to EEInc. for the use of capital, translates into an "above the line" asset at the AmerenUE level. This argument, of course, ignores the legal status of EEInc. and AmerenUE as separate corporate entities.

As an additional effort to undermine the right of EEInc. (and perhaps AmerenUE) to factor a return on equity into the pricing formula, Mr. Brosch states that "Owning the stock in EEInc. represented little if any risk of loss to the owners, given these power sale arrangements and the financial guarantees and repayment commitments that were secured by AmerenUE, with Commission approval….." As set out in the Surrebuttal of Mr. Moehn, the fact that a pro-rata share of the full costs of producing the Joppa Plant power was included in the price of that power is common in such power contracts. Indeed, a pro-rata

portion of the costs of producing any commodity must be included in its price if the seller is not to go bankrupt, much less make a profit. The fact that a price includes the seller's costs does not give the buyer any ownership-like rights to the commodity or any legal entitlement to buy the commodity in the future on terms favorable to the buyer.

Moreover, Mr. Brosch's characterization that the owners had no risk of loss is not accurate. As Mr. Moehn also points out, if one of the many risks to which EEInc.'s operations was subject had materialized – a major outage of the Joppa Plant, for example – AmerenUE's shareholders would have had to pay the resulting costs. AmerenUE would not have sought, and the Commission clearly would not have allowed such costs to be recovered in rates. In addition, as discussed above in the response to Mr. Schallenberg's Rebuttal Testimony, there were other costs of the EEInc. business that were not covered by the Power Supply Agreement, including the other businesses that EEInc. held as subsidiary corporations, and at least the Freezer Sublimer System, excluded from the pricing (and risk) by section 3.09 of the agreement. And, as Mr. Moehn has pointed out, subsidiaries of EEInc. lost money, and those losses were not passed on to AmerenUE's ratepayers in any way.

Q. On page 10 of his Rebuttal Testimony, Mr. Brosch states his belief that "AmerenUE management has a dual responsibility to both its investors and its ratepayers," and suggests that some balancing needs to be done between the two groups. Do you have an opinion regarding that testimony?

A. Yes, I do. First, the obligations of AmerenUE to its shareholders and ratepayers are questions of law. Second, the "balancing" that Mr. Brosch suggests is that the scale be balanced 100% in favor of ratepayers and zero percent in favor of shareholders. I know of no legal authority that would support that legal conclusion. Mr. Brosch also makes

the same arguments as Mr. Schallenberg, that the shareholders of EEInc. (which include AmerenUE and Kentucky Utilities) have the legal right to insist on the sale of power at below market rates, to the shareholders of EEInc. The answers to that unfounded legal conclusion are more fully contained in the response to Mr. Schallenberg's Rebuttal Testimony, above.

Q. On page 11 of Mr. Brosch's Rebuttal Testimony, he begins by saying he is not an attorney and then provides testimony about the bylaws of EEInc. and drawing conclusions regarding the meaning and effect of those bylaws. Do you have an opinion regarding that testimony?

A. Yes, I do. First, the legal effect of corporate bylaws are legal questions. Second, the portion of the bylaw contained in Article II, Section 6. Voting, that Mr. Brosch includes, omits the relevant part regarding its applicability to power sales. It omits the language of subparagraph (d) which states that "decisions to allocate the sale of the generating capacity of EEInc. among the EEInc. stockholders in a manner other than in accordance with their percentages of ownership of EEInc. stock, in the event such capacity available for sale to parties other than the U.S. Enrichment Corporation changes materially…."

Mr. Brosch has reached the same erroneous legal conclusion that this bylaw gives stockholders the right to insist upon the sale of power to themselves and at below market rates. This is simply wrong, for all the reasons given in my response to Mr. Schallenberg's Rebuttal Testimony, above.

Q. Mr. Brosch makes a "risk – reward" argument on page 12. Do you agree with that conclusion?

A. No, I do not. Companies all over the world attempt to reduce their risks by long term output agreements, and sometimes parties (customers) to those agreements, as well as shareholders, are willing to make financial and other commitments on behalf of the supplier. But, to my knowledge, those customers have never been found to have "earned" an ownership interest in the supplier as a result of such commitments (unless negotiated for in the process of giving the guarantee or commitment,) and those shareholders have never been found to have created a right to purchase the assets of the supplier for less than the fair market value of those assets. In the parlance of the "economic analysis of law," all risks that parties take are fully contained in the contractual agreements between them. To reallocate those risks and rewards, after the fact, would in Mr. Brosch's terms create a "windfall" for the shareholder/customers.

IV. RESPONSE TO THE REBUTTAL TESTIMONY OF RYAN KIND.

Q. At page 16 of his Rebuttal Testimony, Mr. Kind recites that the Kentucky Utility directors were seeking to have EEInc. sell power to its stockholder/customers on a low cost basis, and then says "Presumably, if UE felt the same public interest obligations and desire to comply with state commission resource planning rules, it would have taken the same actions as KU rather than attempting to argue that such actions are not consistent with the fiduciary responsibilities of EEInc. directors and shareholders." Do you have an opinion regarding this testimony?

A. Yes, I do. First, the EEInc. directors affiliated with Kentucky Utilities have not offered any testimony in this proceeding, and no other evidence of their motivations have been offered. What kind of "obligations" those directors "felt" is purely a matter of

speculation on the part of Mr. Kind. Second, the fact that AmerenUE respects the fundamental principles of corporate law that require a director to be loyal to his corporation is hardly an indication that AmerenUE is not motivated by the public interest, as Mr. Kind implies. To the contrary, as the impact of the Enron debacle demonstrates, the rules governing the behavior of corporate directors and officers protect a broad range of very important public interests.

At bottom, though, Mr. Kind's testimony is based upon his assumption that EEInc. directors affiliated with Kentucky Utilities were legally permitted to agree (with EEInc. directors who had affiliations with AmerenUE) to sell the EEInc. power to shareholders at below market prices. Mr. Kind is not competent to offer such a legal conclusion, and his conclusion is indisputably wrong. These EEInc. directors who were affiliated with AmerenUE and Kentucky Utilities were subject to conflicts of interest since they were affiliated with the companies/customers/shareholders who were on the other side of any sale of power from EEInc. to AmerenUE and Kentucky Utilities. Accordingly, their actions as EEInc. directors are not measured by the ordinary business judgment rule. Those actions will be subject to closer scrutiny by the courts and must meet a burden of proof of entire fairness to EEInc. In my opinion, a sale of a corporation's major income producing asset to anyone, including shareholders, for substantially less than its fair market value, could not pass the entire fairness test under circumstances that permitted sales at fair market value. Approval of such an action by a board of directors would violate their fiduciary duties to the corporation.

In addition, if EEInc. had agreed to transfer its valuable assets to its shareholders for less than fair market value, there would be federal and state income tax

implications. As between EEInc. and Kentucky Utilities, the Internal Revenue Service could re-cast the transaction and attribute the unpaid value as income to EEInc., thus causing EEInc. to pay income tax on money it did not receive. Also, the benefit received by Kentucky Utilities (undervalued power from EEInc.) could be considered a dividend to Kentucky Utilities. In my opinion, these bad financial and tax consequences, in addition to the other considerations mentioned above, would make it essentially impossible for the directors of EEInc. to justify a sale of its power to Kentucky Utilities for less than fair market value.

Q. Does this conclude you Surrebuttal Testimony?

A. Yes it does.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a AmerenUE for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area.	)))))	Case No. ER-2007-0002

AFFIDAVIT OF PROFESSOR ROBERT C. DOWNS

STATE OF Missouri)
) **ss**
CITY OF Kansas City)

Robert C. Downs, being first duly sworn on his oath, states:

1. My name is Robert C. Downs. I work in Kansas City Missouri as a Professor of Law and the University of Missouri-Kansas City School of Law.

2. Attached hereto and made a part hereof for all purposes is my Surrebuttal Testimony on behalf of Union Electric Company d/b/a AmerenUE consisting of 17 pages which has been prepared in written form for introduction into evidence in the above-referenced docket.

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

Robert C. Downs
Robert C. Downs

Subscribed and sworn to before me this 26 day of February, 2007.

Norma J. Kam
Notary Public

My commission expires: 6/13/2008

"NOTARY SEAL"
Norma J. Kam, Notary Public
Jackson County, State of Missouri
My Commission Expires 6/13/2008