

Exhibit No.:

Issues: Effect of Transfer on Service in Missouri

Witness: Craig D. Nelson

Type of Exhibit: Surrebuttal Testimony

Sponsoring Party: Union Electric Company
d/b/a AmerenUE

Case No.: EO-2004-0108

Date Testimony Prepared: March 1, 2004

MISSOURI PUBLIC SERVICE COMMISSION

Case No. EO-2004-0108

SURREBUTTAL TESTIMONY

OF

CRAIG D. NELSON

ON BEHALF OF

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

FILED⁴

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Missouri Public
Service Commission

St. Louis, Missouri
March 1, 2004

Exhibit No. 6
Case No(s) EO-2004-0108
Date 3-25-04 Rptr XF

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

**In the Matter of the Application of Union)
Electric Company d/b/a AmerenUE for)
an Order Authorizing the Sale, Transfer)
an Assignment of Certain Assets, Real Estate)
Leased Property, Easements and Contractual)
Agreements to Central Illinois Public)
Service Company d/b/a AmerenCIPS, and)
in Connection Therewith, Certain Other)
Related Transactions.)**

Case No. EO-2004-0108

AFFIDAVIT OF CRAIG D. NELSON

STATE OF MISSOURI)

) ss

CITY OF ST. LOUIS)

Craig D. Nelson, being first duly sworn on his oath, states:

1. My name is Craig D. Nelson. I work in St. Louis, Missouri, and I am employed by Ameren Services Company as Vice President – Corporate Planning.

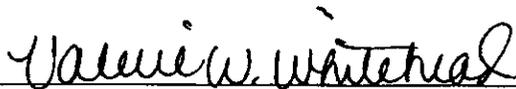
2. Attached hereto and made a part hereof for all purposes is my Surrebuttal Testimony on behalf of Union Electric Company d/b/a AmerenUE consisting of 25 pages, including Schedule 1, all of which have been prepared in written form for introduction into evidence in the above-referenced docket.

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



Craig D. Nelson

Subscribed and sworn to before me this 1st day of March, 2004.



Notary Public

My commission expires:

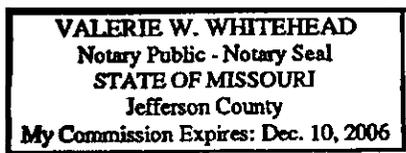


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1 **I. EXECUTIVE SUMMARY OF TESTIMONY.**

2

3 **Q. Please provide an executive summary of your testimony.**

4 **A.** The issue in this case is whether the Metro East Transfer is detrimental to the
5 public, meaning whether the Transfer will negatively impact AmerenUE's ability
6 to provide reliable, safe and adequate service to the public in Missouri.

7 The Metro East Transfer does not have a detrimental effect to the public.
8 In fact, it actually enhances AmerenUE's already strong ability to provide safe,
9 reliable and adequate service. No witnesses have testified to the contrary. In
10 addition, since none of the property to be transferred is located in Missouri, the
11 Transfer will have no adverse effect on the tax revenues of any Missouri political
12 subdivision. (see paragraph 12 of the Application)

13 The issues which should **not** be addressed in this case include (1) whether
14 the Joint Dispatch Agreement ("JDA") should be amended and (2) whether there
15 are ratemaking consequences as a result of this transfer. In the Company's last
16 retail electric rate proceeding before the Commission the Commission Staff
17 ("Staff") had a full opportunity to address the ratemaking impacts of the JDA and
18 did factor those impacts into their assessment of whether to support the
19 Stipulation and Agreement which resolved all of the pending issues in Case No.
20 EC-2002-1. In effect, Staff is proposing ratemaking adjustments in the present
21 case related to the JDA to take into account the results of the Transfer. This is
22 single issue ratemaking and is not appropriate. The Company does not believe
23 this is the appropriate case for proposing such adjustments. It's also an attempt
24 by Staff to get a second bite of the apple.

1 Staff should wait until the next rate proceeding when all of the Company's
2 costs can be examined in a comprehensive and thorough manner, as was the case
3 in the Settlement of EC-2002-1. If ratemaking impacts do occur, or are alleged to
4 occur, then the Commission and any other proper party will, at the appropriate
5 future point in time in a ratemaking proceeding, have an opportunity to address
6 those ratemaking impacts. Any such ratemaking proceeding would not, however,
7 occur until at least 2006 due to the current rate moratorium in effect as a result of
8 the Commission's order in the EC-2002-1 case. In the meantime, Missouri
9 customers are not harmed.

10 In summary, there is nothing about the Metro East Transfer that has any
11 present or even immediate detrimental effect to Missouri.

12 **II. EFFECT OF THE METRO EAST TRANSFER ON AMERENUE'S**
13 **ABILITY TO SAFELY AND ADEQUATELY PROVIDE UTILITY**
14 **SERVICE.**

15
16 **Q. Does any of the Rebuttal Testimony filed in this case allege, imply, or even**
17 **suggest that the Metro East Transfer would in any way affect AmerenUE's**
18 **ability to continue to provide reliable, safe, and adequate service to the public**
19 **in Missouri?**

20 **A.** No. All of the rebuttal witnesses essentially argue either that there might be
21 negative financial (i.e. ratemaking) consequences as a result of the Metro East
22 Transfer or that they lack sufficient information to determine what kind of
23 ratemaking consequences might or might not occur in the future as a result of the
24 Transfer. At best, their arguments are speculative. Future and uncertain
25 ratemaking consequences are not properly an issue in this case. Instead, the issue

1 in this case is whether the Metro East Transfer is detrimental to the public,
2 meaning whether the Transfer will negatively impact AmerenUE's ability to
3 provide reliable, safe and adequate service to the public in Missouri. The
4 Company's attorneys will address this legal point in more detail in one or more
5 filings with the Commission.

6 **Q. For the record, will the Metro East Transfer have any detrimental effect**
7 **whatsoever on AmerenUE's ability to continue to adequately serve its**
8 **remaining customers in Missouri?**

9 A. No. To the contrary, there will be a positive effect. The transfer of the load
10 served by the assets that will be transferred to AmerenCIPS, and the resulting
11 additional generating capacity available to serve AmerenUE's customers (who
12 will now exclusively be Missouri customers), will enhance AmerenUE's already
13 strong ability to provide safe, reliable and adequate service. As my Direct
14 Testimony indicates, the transaction is designed to maintain the status quo with
15 respect to the capital structures of AmerenUE and AmerenCIPS, meaning
16 AmerenUE's return on equity will be unaffected. Further, as I discuss below,
17 AmerenUE is committed to ensuring that appropriate liabilities are properly
18 allocated to AmerenCIPS so that the financial ability of AmerenUE is not in any
19 way negatively impacted.

20 **Q. Does the Metro East Transfer have any effect on Missouri tax revenues?**

21 A. Since none of the property to be transferred is located in Missouri, the Transfer
22 will have no adverse effect on the tax revenues of any Missouri political
23 subdivision. (see paragraph 12 of the Application)

1 **Q. Does the Metro East Transfer have any effect on AmerenUE's utility**
2 **operations at all?**

3 A. In a material way, no. However, I am told that I was mistaken with respect to two
4 minor aspects of my Direct Testimony relating to the natural gas operations being
5 transferred to AmerenCIPS. I want to take this opportunity to correct those
6 mistakes. The Surrebuttal Testimony of Mr. James Massmann also addresses
7 these issues in more detail. In brief, I now understand that there is one firm gas
8 transportation contract that is currently used to supply both AmerenUE's Metro
9 East Local Distribution Company ("LDC") area in Illinois that will be transferred
10 and also its Fisk/Lutesville LDC area in Missouri. I also understand that there has
11 historically been an operating connection between the LDC operations in Illinois
12 and natural gas supply at two Missouri AmerenUE generating plants, Venice and
13 Meramec. As Mr. Massmann's Surrebuttal Testimony explains, however, there
14 will be no material impact, and certainly no detriment, to AmerenUE's Missouri
15 operations when these two minor connections relating to the natural gas
16 operations being transferred no longer exist.

17 **III. RESPONSE TO DR. PROCTOR'S REBUTTAL TESTIMONY.**

18
19 **Q. What issues with regard to Dr. Proctor's Rebuttal Testimony do you wish to**
20 **address?**

21 A. I wish to address Dr. Proctor's comments regarding the JDA, and his contentions
22 that it should be changed as a result of this proceeding.

23 **Q. What is your overall response to Dr. Proctor's comments regarding the**
24 **JDA?**

1 A. Whether the JDA should be changed should not be addressed in this case. It
2 should not be an issue because all of Dr. Proctor's comments relate solely to
3 possible, future ratemaking consequences of the JDA that may never materialize.
4 Given that AmerenUE's rates are fixed until at least July 1, 2006, there is no
5 present ratemaking consequence arising from the Metro East Transfer related to
6 the JDA, and there may never be.

7 Further, I note that in the Company's last retail electric rate proceeding
8 before the Commission the Staff had a full opportunity to address the ratemaking
9 impacts of the JDA and did factor those impacts into their assessment of whether
10 to support the Stipulation and Agreement which resolved all of the pending issues
11 in Case No. EC-2002-1. In particular, Dr. Proctor submitted testimony in Case
12 No. EC-2002-1 in which he proposed certain ratemaking adjustments based on his
13 review of the JDA. (Attached as Schedule 1 to my surrebuttal is a copy of the NP
14 version of Dr. Proctor's Direct Testimony in that case which contains his
15 recommendations.) Certainly the Staff factored in Dr. Proctor's recommendation
16 when concluding what would be a fair and reasonable settlement. Certainly the
17 Company believed that the ratemaking impacts of the JDA represented a
18 significant component of the Stipulation reached by the parties.

19 Dr. Proctor's contentions that the JDA should be changed as a result of the
20 Transfer in effect focuses on only one type of cost that AmerenUE would be
21 incurring after the Transfer to the exclusion of all others. In effect, Staff is
22 proposing ratemaking adjustments in the present case related to the JDA to take
23 into account the results of the Transfer. This is single issue ratemaking and is

1 not appropriate. The Company does not believe this is the appropriate case for
2 proposing such adjustments. Instead, Staff should wait until the next rate
3 proceeding when all of the Company's costs can be examined in a comprehensive
4 and thorough manner, as was the case in the Settlement of EC-2002-1.

5 **Q. What is your understanding as to why Dr. Proctor is attempting to tie the**
6 **JDA to the matter before the Commission in this case?**

7 A. As I understand his testimony, Dr. Proctor argues that two things about the JDA
8 need to be changed in order for him to support the Metro East Transfer as not
9 detrimental to the public. First, he argues that the formula in the JDA that
10 allocates profits from off-system power sales should be changed so that the
11 allocation is based upon generating output, and not on load as presently provided
12 for in the JDA. Second, he argues that the JDA should be changed so that energy
13 transfers between the generating parties to the JDA are at market price instead of
14 at incremental cost, as presently provided for in the JDA.

15 **Q. How is either proposed change to the JDA relevant to a present**
16 **determination of whether or not the Metro East Transfer is detrimental to**
17 **the public?**

18 A. As I noted above, I do not believe either of Dr. Proctor's proposed changes is
19 relevant to any issue other than possible, future ratemaking impacts that might or
20 might not ever occur. Further, if ratemaking impacts do occur, or are alleged to
21 occur, then the Commission and any other proper party will, at the appropriate
22 future point in time in a ratemaking proceeding, have an opportunity to address
23 those ratemaking impacts. Any such ratemaking proceeding would not, however,

1 occur until at least 2006 due to the current rate moratorium in effect as a result of
2 the Commission's order in the EC-2002-1 case. There is nothing about the Metro
3 East Transfer that has any present or even immediate detrimental effect to
4 Missouri in general, or to AmerenUE's Missouri rates in particular, regarding the
5 JDA's current allocation of profits on short term sales, or on the market price
6 versus incremental cost aspects of the JDA which have existed since the JDA was
7 entered into as of January 1, 1998 when the merger of Union Electric and
8 CIPSCO Incorporated occurred.

9 **Q. Please discuss further your understanding of Dr. Proctor's position on the**
10 **Transfer and the JDA.**

11 A. As I understand it, Dr. Proctor has concluded that the JDA should be amended in
12 connection with the Metro East Transfer. He believes that absent such an
13 amendment AmerenUE would likely receive a lower percentage of profits from
14 off-system power sales after the Metro East Transfer because AmerenUE's load
15 will decrease. This future impact is speculative. As I've stated above, that is still
16 a future ratemaking impact that should in fact not be an issue in this case.

17 **Q. Has AmerenUE offered to address Dr. Proctor's point on the JDA?**

18 A. Yes. In January of this year, the Company met with Staff and the Office of the
19 Public Counsel ("OPC"), who chose to participate by telephone. At the meeting,
20 in order to settle the case, the Company offered to agree, as a condition of the
21 Commission's approval of the Metro East Transfer, to amend the JDA
22 concurrently with the closing of the Metro East Transfer to provide that profits

1 from off-system sales would be allocated based upon generating output, and not
2 based on load requirements as is currently the case.

3 As discussed above, because the future, possible ratemaking impacts of
4 the JDA after the Metro East Transfer would occur are so speculative, I do not
5 believe it is necessary for the Commission to impose as a condition for approving
6 the Transfer any amendment of the JDA.

7 My position on this point is consistent with recent Commission orders
8 authorizing transfers of customers and facilities between the Company and
9 electric cooperatives. (See, for example, Case No. EC-2002-178, Report and
10 Order issued January 24, 2002, involving the transfer of customers and facilities
11 from AmerenUE to Gasconade Electric Cooperative.)

12 Thus, the Company strongly recommends that the Commission approve
13 the Transfer without any such condition.

14 However, if the Commission believes that it is imperative to accept the
15 Company's offer as a condition to approving the Transfer, then the Company is
16 willing to agree to this condition. Specifically, if the Commission concludes that
17 this is necessary, AmerenUE is prepared to use its best efforts to amend the JDA
18 to provide that profits from off-system power sales are to be allocated to
19 AmerenUE based upon generating output and not based on load. This "best
20 efforts" condition is required because the amendment to the JDA would be subject
21 to regulatory approval by the Federal Energy Regulatory Commission ("FERC")
22 and by this Commission, and possibly by the Illinois Commerce Commission
23 ("ICC").

1 Q. What would be the effect of that amendment?

2 A. It would make it even more clear that the Metro East Transfer will not be
3 detrimental to Missouri, and that Missouri will significantly benefit from the
4 Transfer. Further, it would benefit Missouri in the long-term. Under the current
5 terms of the JDA, the Transfer is the least cost option by \$2.4 million per year.
6 With the offered amendment, the Transfer is the least cost option by \$9.5 million
7 per year (i.e., revenue requirements are \$9.5 million per year lower than the next
8 best option). Thus, the amendment further decreases future revenue requirements
9 and increases the value of the transfer by approximately \$7 million a year (\$9.5
10 million - \$2.4 million). The increase is due to our expectations that AmerenUE's
11 share of profits from off-system sales will increase by approximately \$7 million
12 annually.

13 As Mr. Richard Voytas explains in more detail in his Surrebuttal
14 Testimony, he has calculated the present value of savings in future revenue
15 requirements over a 20-year time frame, as compared to the next best option.
16 When this increase in AmerenUE's share of profits from off-system sales is taken
17 into account, the \$11 million advantage in the present value of savings supporting
18 the Metro East Transfer as AmerenUE's least-cost resource option (as initially
19 discussed in Mr. Voytas' Direct Testimony) balloons to become a \$79 million
20 advantage in present value savings. This not only means that the Metro East
21 Transfer would have no detrimental effect on AmerenUE's ability to reliably
22 serve its customers, but it establishes by a wide margin that the Metro East

1 Transfer provides a tangible financial benefit to Missouri in terms of meeting
2 AmerenUE's long-term generating and capacity needs at the lowest cost possible.

3 **Q. What about Dr. Proctor's desire that energy transfers under the JDA be**
4 **priced at market as opposed to incremental cost?**

5 A. As discussed above, the Metro East Transfer does not affect or change the rates
6 that are currently being paid by AmerenUE's Missouri electric ratepayers.
7 Consequently, financial results to AmerenUE as a result of the current transfer-
8 pricing mechanism under the JDA as it exists today cannot harm Missouri
9 customers as a result of the Metro East Transfer. Therefore, Dr. Proctor's desire
10 that the JDA be amended relating to transfer pricing should be irrelevant to the
11 issue of whether the Metro East Transfer is detrimental to the public interest.
12 Furthermore, amending the JDA to address the transfer pricing issue is a complex
13 issue that would require AmerenUE, Staff and OPC to engage in additional study,
14 and in substantial discussions, in order to work together to consider and
15 potentially develop alternative approaches to address Dr. Proctor's concerns in the
16 long-term. Transfer pricing at market is a complex analysis to perform in light of
17 the fact that there is not a market price clearinghouse from which to obtain
18 accurate hourly market price information. It is even more difficult to develop an
19 operating scheme to jointly dispatch generation under a transfer with a market
20 price scenario. AmerenUE has offered to begin meeting with Staff and OPC soon
21 on a regular basis to develop alternative approaches to this issue. As with our
22 previous offer, in regard to profits from off-system power sales, we strongly
23 believe that the Commission should not impose this offer to study alternatives as a

1 condition to approving the Transfer. However, should the Commission conclude
2 otherwise, , the Company would be agreeable to this condition.

3 **IV. RESPONSE TO MR. MEYER'S AND MS. FISCHER'S REBUTTAL**
4 **TESTIMONY – COST AND LIABILITY ISSUES**

5 **Q. Staff Witnesses Greg Meyer and Janis Fischer raised concerns about the**
6 **allocation of costs to AmerenCIPS as part of the Metro East Transfer. Please**
7 **address their concerns.**

8 A. As I understand their testimony, they raise the following issues:

9 1. They want assurance that administrative and general (A&G") costs
10 (i.e. overhead) that are allocated principally as a result of the services provided by
11 Ameren Services to the various Ameren companies (such as AmerenUE and
12 AmerenCIPS) will be allocated or reallocated fairly and appropriately after
13 AmerenUE's Illinois load is transferred to AmerenCIPS. Their issue is that if the
14 size of AmerenUE's operations is getting somewhat smaller, then AmerenUE's
15 cost allocations should be reduced by a corresponding amount; and

16 2. They want assurance that liabilities, such as potential
17 environmental liabilities or potential personal injury or property damage liabilities
18 are fairly and appropriately allocated between AmerenUE and AmerenCIPS.

19 **Q. What is AmerenUE's response to these concerns?**

20 A. I want to be clear that the concerns that Mr. Meyer and Ms. Fischer raise are all
21 questions about whether or not there may, or may not be, rate impacts to
22 AmerenUE customers in the future once the AmerenUE rate moratorium is over
23 in 2006. None of these concerns has anything to do with AmerenUE's ability to
24 provide reliable and safe service after the Metro East Transfer. We therefore do

1 not believe that these concerns are necessary as part of the review by the
2 Commission of whether the Metro East Transfer is detrimental to the public.
3 AmerenUE therefore does not believe the Commission should impose any
4 conditions in this regard on AmerenUE, nor does AmerenUE believe the
5 Commission should deny approval of the Metro East Transfer on this basis.

6 However, AmerenUE has no objection to addressing their concerns, and is
7 providing additional information to explain further that there will be no detriment
8 to the public in Missouri on these issues. With regard to the allocation of A&G
9 costs, Mr. Gary Weiss provides information in his Surrebuttal testimony on how
10 we will ensure that such costs are allocated properly to reflect that AmerenUE
11 will no longer have an Illinois jurisdiction after the Metro East Transfer occurs.
12 As Mr. Weiss explains, we will ensure that all appropriate costs related to the
13 Illinois operations being transferred will be allocated to AmerenCIPS. With
14 regard to liabilities, Mr. Michael Getz discusses in his Surrebuttal how the
15 Company will implement the terms of the Asset Transfer Agreement (“ATA”)
16 attached to my Direct Testimony. The ATA generally provides that AmerenUE
17 would transfer to AmerenCIPS certain defined liabilities which arise before the
18 closing and which relate to the operation of the “Business”. The Business is
19 basically defined as AmerenUE’s electric utility transmission and distribution
20 facilities together with its LDC gas utility facilities. (See Schedule 1 to my Direct
21 Testimony, pp. 6-7) The ATA provides that a balance sheet will be prepared at
22 closing and list all of the assets and liabilities of the Business. (Section 2.1(a);
23 Schedule 1, p. 11) As Mr. Getz explains, the Company expects that the balance

1 sheet that it will prepare in accordance with the ATA will transfer to AmerenCIPS
2 its proper and proportionate share of all of the Company's liabilities which arise
3 before the closing and which relate to the Business. We believe that this is fair
4 and appropriate, and further that it will impose no detriment to Missouri.

5 **Q. Mr. Meyer and Ms. Fischer also raised concerns about the price being paid**
6 **by AmerenCIPS for the assets to be transferred. Please respond to their**
7 **concerns.**

8 A. First, I believe their concerns stem from their belief that a fair allocation of
9 liabilities to AmerenCIPS needs to occur. The clarifications and additional
10 information which AmerenUE is providing as described above should adequately
11 address those concerns so the transfer price should not be an issue. Second,
12 whether the transfer price ought to be higher, lower, or remain as proposed, like
13 *many other issues raised by Staff, in any event has nothing to do with the issue*
14 *that is before the Commission; namely, whether or not the transfer is detrimental*
15 *to the public. The transfer will not have a detrimental impact on AmerenUE's*
16 *ability to reliably and safely serve its customers, all of whom will be Missouri*
17 *customers. The transfer will not have any material effect on AmerenUE's*
18 *financial strength; in fact, the only evidence before the Commission through the*
19 *direct, rebuttal and surrebuttal testimony that has been filed is that there are*
20 *financial benefits associated with meeting AmerenUE's long-term generating*
21 *needs by transferring the Illinois load to AmerenCIPS. With the exception of*
22 *transmission assets that are used to serve the entire Ameren control area, all of the*
23 *assets to be transferred have been used solely to serve Illinois customers. All of*

1 those assets have been paid for solely by Illinois customers. As I explained in my
2 Direct Testimony, the consideration to AmerenUE for the assets is designed to
3 maintain the status quo so that there is no effect, one way or the other, on the
4 capital structures of either AmerenUE or AmerenCIPS. If and to the extent Mr.
5 Meyer or Ms. Fischer suggest that a higher price should be charged to
6 AmerenCIPS, the only result of that higher price would be to potentially give
7 Missouri customers a windfall for assets Missouri customers never paid for.

8 **V. RESPONSE TO MS. FISCHER – AFFILIATE TRANSACTION RULES**

9
10 **Q. A substantial part of Ms. Fischer’s Rebuttal Testimony appears directed at**
11 **arguing that the Commission’s affiliate transaction rules apply to the Metro**
12 **East Transfer, and that AmerenUE’s evidence of compliance with those rules**
13 **or in support of a variance or waiver from the requirements of those rules is**
14 **inadequate. How do you respond?**

15 **A.** Ms. Fischer’s testimony in this regard is related to the “transfer price” issues I
16 address above. It is my understanding that it is not at all clear that the affiliate
17 transaction rules apply to the Metro East Transfer because the transfer is really
18 nothing more than a reorganization of the business of two Ameren utility
19 operating subsidiaries along state jurisdictional lines. I understood that the
20 affiliate transaction rules were designed to prevent the regulated utility from
21 subsidizing the operations of its non-regulated affiliates. As I explained earlier,
22 the assets at issue were paid for by Illinois customers, and nothing about the
23 proposed transaction subsidizes AmerenCIPS, regardless of the “transfer price”

1 used. Quite frankly, it does not make sense to apply the affiliate transaction rules
2 here.

3 **Q. You indicated that subsidization of AmerenCIPS is not an issue. If the**
4 **Commission decides that the affiliate transaction rules do apply despite the**
5 **lack of any subsidization, should the rules be waived?**

6 A. Absolutely. We have presented evidence demonstrating that the transfer meets
7 the not detrimental to the public standard. Therefore, by definition, Missouri
8 customers are, at a minimum, not in any way harmed by the transfer.
9 Furthermore, we have presented evidence that there is a net benefit from meeting
10 AmerenUE's resource needs as proposed. Staff in particular raised some
11 questions about how clearly that benefit was demonstrated, but the JDA condition
12 which the Commission might impose would make what was already a winning
13 proposal for Missouri before an even clearer winning proposition by a wide
14 margin now. Even if we could (and we do not believe we can) figure out some
15 "fair market value" for the assets, all that would do (if we assume, as Staff must,
16 that the "fair market value" is higher than we have proposed) is produce an unfair
17 windfall for Missouri at the expense of Illinois customers who have already paid
18 for the assets to be transferred. If the transaction does not occur, Missouri will
19 not benefit from the clearly least-cost generating resources we seek to make
20 available to Missouri, nor will Missouri benefit from having a Missouri-only
21 utility under its jurisdiction. Frankly, regulation of AmerenUE as a Missouri-only
22 utility ought to make the regulatory process easier, and cheaper, for all – for the
23 Commission, for Staff, for Public Counsel and for AmerenUE. That brings me

1 back to my original statement in my Direct Testimony – AmerenUE has no
2 intention of “selling” the Metro East assets to a third party. Trying to apply the
3 affiliate transaction rules to this transfer is like trying to force the proverbial
4 square peg into a round hole – it doesn’t fit, and it can’t be made to fit. However,
5 if it is insisted that an attempt be made to “make it fit,” a variance or waiver from
6 the affiliate transaction rules is appropriate here. I therefore ask the Commission,
7 to the extent it deems necessary, to consider the Company’s Application and my
8 Direct and Surrebuttal Testimony to be a request for a variance, and ask that a
9 variance be granted.

10 **VI. RESPONSE TO MR. GREG MEYER – DESCRIPTION OF THE ASSETS**
11 **TO BE TRANSFERRED**

12
13 **Q. Mr. Meyer indicates that Staff does not believe the list of assets to be**
14 **transferred is adequate, and indicates that if authority for the Metro East**
15 **Transfer is given, the authority should only extend to those assets listed on a**
16 **specific list approved by the Commission. Please address Mr. Meyer’s**
17 **contention regarding the adequacy of the asset list, and his suggested**
18 **condition.**

19 **A.** Let me first say that I believe Staff was provided with, at or near the time Mr.
20 Meyer filed his Rebuttal Testimony, a complete list of all fixed assets that would
21 be transferred as those assets existed as of December 31, 2003. It is my
22 understanding that Mr. Meyer had not seen that list when he prepared his Rebuttal
23 Testimony. Perhaps the list he has been provided addresses this concern.
24 Naturally, that list will change between December 31, 2003 and the closing (for
25 example, a motor vehicle on the list may be replaced with a new one, or other

1 items may go into or come out of service). If Mr. Meyer still has concerns,
2 however, then I disagree with the condition suggested in his Rebuttal Testimony.
3 I disagree because requiring specific approval of only specific items on an item-
4 by-item list is unrealistic, assumes incorrect facts about the terms of the ATA that
5 governs the transaction, and is unnecessary in any event.

6 As with liabilities, the ATA provides that a schedule be prepared
7 immediately before the closing that will detail all of the assets “used in or related
8 to the operation of the Business at the Facilities.” (Section 1.2; Schedule 1, p. 9)
9 In fact, as my Direct Testimony and the ATA provide, all assets owned by
10 AmerenUE in the State of Illinois will be transferred with the exception of the few
11 transmission assets described at lines 11 – 19 at page 7 of my Direct Testimony.
12 As my Direct Testimony also states (P. 9 at l. 1-3), and except with regard to the
13 two minor natural gas issues I mention above (as further explained in Mr. James
14 Massmann’s Surrebuttal Testimony), none of the assets to be transferred, with the
15 exception of transmission assets that are used to serve the entire Ameren control
16 area, have ever been used to provide public utility service to AmerenUE’s
17 Missouri retail customers. There is simply no reason to impose a burdensome
18 requirement requiring AmerenUE to come back to the Commission to approve the
19 transfer of a pump that might have accidentally been left off of the list, or to
20 approve the transfer of a piece of equipment that replaced an older piece, etc. I
21 respectfully submit that the Commission should not be, nor should it want to be,
22 in the business of micro-managing the details of closing asset transfers to the
23 degree apparently advocated by Staff.

1 **Q. Did Mr. Meyer express any related concerns?**

2 A. Yes. At page 16, l. 6-25 and page 17, l. 1-3 of his Rebuttal Testimony, Mr. Meyer
3 objects to AmerenUE's request that the Commission's authorization allow
4 AmerenUE to execute and perform documents that are "incidental" to the transfer.
5 Mr. Meyer also objects to our request that the Commission grant any other relief
6 "deemed necessary" by the Commission to accomplish the transfer.

7 **Q. Do you understand Mr. Meyer's concerns?**

8 A. Honestly, no. I have been involved in a number of asset transfers, both between
9 affiliated companies and with third parties, and I believe every agreement I have
10 ever seen provided for the ability to execute documents that are necessary to
11 conclude that transaction and that are incidental to it. An example might be the
12 need to sign a lease assignment document for a real estate lease currently in
13 AmerenUE's name that will need to be assigned to AmerenCIPS. Another
14 example might be the need to sign a governmental agency's form to transfer a
15 permit. Our request does not allow any material change to the terms of the
16 transfer – the document must be incidental to the transactions "which are the
17 subject of the form of the Asset Transfer Agreement," a copy of which is
18 Schedule I to my Direct Testimony. That Agreement is quite specific in
19 describing the asset transfer. Again, unless the Commission wants us back before
20 it for every minute detail of effectuating the transfer, our request should be
21 granted as necessary to implement the Commission's order approving the transfer.

1 **Q. Can you comment on item 2) mentioned by Mr. Meyer on page 16 of is**
2 **Rebuttal Testimony regarding the Company's request for the Commission to**
3 **grant further relief?**

4 A. Yes. This concern is even more puzzling. We simply asked the Commission to
5 grant whatever further relief the Commission thinks is necessary to accomplish
6 the transfer.

7 **Q. Are Mr. Meyer's concerns consistent with past Commission practice with**
8 **regard to these issues?**

9 A. No. In fact, he expresses concerns that the Commission has expressly rejected.
10 In the Commission's October 12, 1994 Report and Order in Case No. GM-94-
11 252, an asset transfer case involving Missouri Gas Company, an intervenor
12 objected to what was the Commission's standard language authorizing the parties
13 to the transfer to engage in all "related transactions" necessary to complete the
14 transfer. The Commission rejected those concerns because it allowed the parties
15 to have the authority they need to proceed with the transaction "without seeking
16 Commission approval for every detail." That is all we have asked for in this case.

17 **VII. ISSUES RELATING TO "HOLD HARMLESS" CONDITION RELATING**
18 **TO ILLINOIS TRANSMISSION ASSETS**

19
20 **Q. Both Dr. Proctor and Staff witness Alan Bax express certain potential**
21 **concerns about transmission costs on transmission lines that will be**
22 **transferred to AmerenCIPS as part of the Metro East Transfer. Is**
23 **AmerenUE able to address those concerns?**

24 A. Yes. As I have discussed with other issues, the Company believes that these
25 concerns relate to future, possible impacts that might result from the Transfer. As

1 a result, we do not believe that the Commission needs to address them here. In
2 any case, we do not believe that it is necessary for a hold harmless commitment as
3 requested by Staff. As discussed in more detail in Mr. Edward Pfeiffer's
4 testimony, the Transfer should have no impact whatsoever on AmerenUE's ability
5 or cost to transmit power from its generation located in Illinois into Missouri to
6 serve its bundled load. Therefore, we do not believe it is necessary to make any
7 such commitment.

8 **VIII. RESPONSE TO MR. RYAN KIND'S REBUTTAL TESTIMONY**

9
10 **Q. In opposing the Metro East Transfer, Public Counsel witness Ryan Kind**
11 **includes a number of allegations, or expressions of what he "believes" or**
12 **"thinks", all of which seem to revolve around the fact that AmerenUE is part**
13 **of the holding company structure approved by the Commission in Case No.**
14 **EM-96-149. How do you respond?**

15 **A.** I am quite certain that there is little that I or anyone else at AmerenUE can say
16 that would change Mr. Kind's oft-repeated criticism of the way Ameren
17 Corporation and its subsidiaries, including AmerenUE, have structured their
18 businesses. I note that he makes these criticisms despite the fact that this
19 Commission approved the merger of Union Electric and CIPSCO Incorporated,
20 which led to the creation of Ameren Corporation and the holding company
21 structure seven years ago in Case No. EM-96-149. I would also note that the
22 OPC was a signatory to the Stipulation and Agreement in Case No. EM-96-149 in
23 which the parties recommended that the Commission approve the merger. As a
24 result, it appears that Mr. Kind's criticisms of Ameren's holding company

1 structure are inconsistent with OPC's support for the Stipulation in the UE-
2 CIPSCO merger case.

3 In any case, it has been our experience that Mr. Kind often raises these
4 same issues, particularly when he has no independent evidence to rebut head-on
5 the evidence presented by AmerenUE. Most of his criticisms are not relevant to
6 whether the particular transfer at issue in this case is or is not detrimental to the
7 public. I do feel compelled, however, to respond specifically to a few of Mr.
8 Kind's points.

9 **Q. Please continue.**

10 A. Mr. Kind, after stating what he "believes" to be true (at p. 5, l. 10, 24 of his
11 Rebuttal Testimony), speculates about the basis for my Direct Testimony relating
12 to the purposes of the proposed Metro East Transfer. The transfer of the
13 Pinckneyville and Kinmundy plants, which is supported by this Commission itself
14 in terms of its being consistent with the Stipulation in EC-2002-1, is not an issue
15 in the present case because that transfer does not impact the question of whether
16 the Metro East Transfer is detrimental to the public. To the extent then that Mr.
17 Kind spills much ink debating issues relating to Pinckneyville and Kinmundy I
18 would agree that I not only "prefer" that those transfers not be an issue, but I
19 would submit that they in fact are not an issue because they do not bear on
20 whether or not the Metro East Transfer is detrimental.

21 **Q. Is Mr. Kind correct that Mr. Baxter's comments to the Edison Electric**
22 **Institute are "inconsistent" with your Direct Testimony?**

1 A. No. When discussing the reasons for the transfer, Mr. Baxter cited the desire to
2 simplify what is today dual regulation of AmerenUE's business by the ICC and
3 by this Commission, and he also cited the desire to facilitate the transfer of
4 Pinckneyville and Kinmundy. I cited the desire to align AmerenUE's business
5 with the "regulatory regimes" in each state and the need to find a good way to
6 meet AmerenUE's long-term capacity and energy needs. With regard to
7 regulation in two separate states, I chose different words, but my reasons are the
8 same as Mr. Baxter's. With regard to meeting resource needs, Mr. Baxter was
9 focused on one way that AmerenUE is meeting its resource needs – the transfer of
10 Pinckneyville and Kinmundy, a transfer that Missouri supports. I, not
11 surprisingly since it is the subject of this case, discussed another part of meeting
12 those resource needs -- freeing up AmerenUE generation to serve Missouri load
13 by shedding AmerenUE's Illinois load. Mr. Kind is simply engaged in
14 "conspiracy theory" thinking. If any Ameren entity – whether it be Ameren
15 Corporation, AmerenCIPS, or Ameren Energy Marketing -- may gain some
16 benefit from a decision by AmerenUE, AmerenUE "must" somehow lose, or so
17 Mr. Kind apparently believes. AmerenUE does not "lose" in the proposed
18 transfer. In fact, AmerenUE wins, although all we have to show is that
19 AmerenUE does not lose. We have done so, and more, Mr. Kind's "beliefs,"
20 "thoughts" and other speculation, notwithstanding.

21 **Q. Mr. Kind contends that AmerenUE should assume that it will renew its**
22 **contract with Electric Energy Inc. ("EEInc.") for the supply of power.**
23 **Please respond.**

1 A. Once again, Mr. Kind raises an “issue” that is not an issue in this case. Let me
2 begin my response by reciting a series of facts:

- 3 1. AmerenUE owns 40% of the shares of common stock of EEInc.
- 4 2. AmerenUE does not own EEInc.’s generating plants.
- 5 3. EEInc.’s generating plants have never been included in the
6 Company’s rate base in Missouri.
- 7 4. The power purchase costs under the EEInc./AmerenUE power
8 supply agreement have been included in cost of service, as have
9 costs from other purchased power contracts.
- 10 5. EEInc. is an Illinois corporation and all of its assets are located in
11 Illinois.
- 12 6. I understand that the Commission does not have jurisdiction over
13 EEInc. – it is not a regulated utility in Missouri.
- 14 7. As explained by Mr. Voytas, EEInc. has chosen not to bid on
15 AmerenUE RFP’s for power supply.
- 16 8. The EEInc./AmerenUE power supply agreement expires on
17 December 31, 2005.

18 Accordingly, it is not proper, nor does it make any sense whatsoever, for
19 the Commission to order UE to compel EEInc. to enter into a contract to sell UE
20 power at cost based rates. What Mr. Kind is proposing is reverse affiliate abuse,
21 as discussed by Mr. Voytas. The Commission’s affiliate rules suggest EEInc.
22 must sell to AmerenUE at the lower of cost or market unless a waiver is obtained.
23 EEInc. is not able to sell at a price less than market price and still act responsibly

1 to its shareholders. As a result, the Commission's affiliate rules serve to deter
2 EEInc. and UE from entering into the contract desired by Mr. Kind. For all these
3 reasons, the Commission should not impose a condition on AmerenUE that it
4 unilaterally enter into a contract that EEInc. is unwilling to enter into.

5 **Q. Does this conclude your surrebuttal testimony?**

6 **A.** Yes, it does.

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DIRECT TESTIMONY
OF
MICHAEL S. PROCTOR
UNION ELECTRIC COMPANY
d/b/a AMERENUE
EC-2002-1

Q. What is your name and business address?

A. My name is Michael S. Proctor. My business address is 200 Madison St.,
P.O. Box 360, Jefferson City, Missouri 65102-0360.

Q. By whom are you employed and in what capacity?

A. I am employed by the Missouri Public Service Commission (Commission)
as Manager of Economic Analysis in the Energy Department.

Q. Have you previously filed direct testimony in this case?

A. No.

Q. What is your education background and work experience?

A. I have Bachelors and Masters of Arts Degrees in Economics from the
University of Missouri at Columbia, and a Ph.D. degree in Economics from Texas A&M
University. My previous work experience has been as an Assistant Professor of
Economics at Purdue University and at the University of Missouri at Columbia. Since
June 1, 1977, I have been on the Staff of the Commission and have presented testimony
on various issues related to weather normalized energy usage and rate design for both
electric and natural gas utilities. With respect to electric issues, I have worked in the
areas of load forecasting, resource planning and transmission pricing. In 1997 and 1998,

1 I served as the Staff Vice Chair of the Market Structure and Market Power working group
2 of the Commission's Task Force on Retail Competition. From December of 2000 until
3 the Southwest Power Pool's (SPP's) application as a Regional Transmission Organization
4 (RTO) was rejected by the Federal Energy Regulatory Commission in the summer of
5 2001, I served as chairman of the Forward Congestion Markets Subgroup of the SPP's
6 Congestion Management Systems Working Group.

7 Q. What are your current duties in the Energy Department as Manager of
8 Economic Analysis?

9 A. I supervise the Economic Analysis group within the Energy Department.
10 This group is responsible for various issues related to weather normalization of sales,
11 class cost of service and rate design. I am also responsible for the review of the
12 economic analysis performed by Missouri, investor-owned, electric utilities for their
13 resource plans. In addition to my supervisory role, I have focused my attention on the
14 development and structure of RTOs for the purpose of increasing efficiency and
15 reliability in the competitive supply of electricity. Because of the restructuring of the
16 electric industry toward the increased competitive supply of electricity, I have also
17 focused on the issue of market power within the electric industry.

18 **RECOMMENDATIONS**

19 Q. In this instant case, what is the purpose of your direct testimony?

20 A. My direct testimony in this case addresses issues with respect to the
21 Ameren Joint Dispatch Agreement (JDA) between Union Electric Company (UE or
22 AmerenUE) and Ameren Energy Generating Company (AEG), the exempt wholesale
23 generator that now owns the generation assets of Central Illinois Public Service Company

1 (CIPS or AmerenCIPS) and Ameren Energy Marketing (AEM), the marketing
2 representative for AEG. In addition, I will address issues related to how UE met its
3 reserve requirement for the summer of 2001, which the Commission has included in its
4 update period for this case.

5 Q. What is your recommendation regarding the JDA?

6 A. The current Ameren JDA is deficient and, as a consequence, its terms
7 should not be followed with respect to setting the revenue requirements for UE's
8 Missouri retail customers. The Ameren JDA allocates the monthly profit margins from
9 Off-System Sales between UE and AEG/AEM, according to UE's and AEG/AEM's
10 share of monthly Load Requirements. As I will further explain in my direct testimony,
11 this is an inequitable allocation of profits from Off-System Sales and therefore, at a
12 minimum, the monthly profit margins from Off-System Sales should be allocated based
13 on the contribution of UE's and AEG/AEM's share of monthly energy from Resources
14 jointly used to meet Load Requirements plus Off-System Sales. In brief, I am
15 recommending that UE's allocation of monthly profit margin be increased because of the
16 lost opportunity to sell into the wholesale electricity market that UE experiences when it
17 transfers electricity from its cheaper resources to meet the Load Requirements for
18 AEG/AEM.

19 Q. What is your recommendation regarding UE meeting its capacity reserve
20 requirement for the summer of 2001?

21 A. The current Ameren JDA has no explicit pricing for capacity transfers
22 between UE and AEG/AEM as may be necessary for each entity to meet a minimum
23 capacity reserve requirement. Reserve requirements are necessary to maintain adequate

1 levels of generation capacity to provide reliable supplies of electricity to Ameren (UE
2 and CIPS) customers at reasonable prices. As will be explained further in my direct
3 testimony, the lack of such conditions, along with an implicit Ameren policy to build new
4 generation capacity in AEG rather than in UE, leads to the possibility of affiliate abuse.
5 Affiliate abuse occurs when such policies place the regulated company (UE), in situations
6 where in order to have adequate capacity, it must purchase capacity and energy from the
7 unregulated affiliate (AEG) or its marketing agent (AEM) at market prices, that are
8 higher than what would otherwise be the regulated cost of that same capacity and energy.
9 Because this situation of paying market price when it is higher than cost occurs for the
10 capacity purchased by UE for June, 2001 through May, 2002, I am recommending that
11 the cost of the capacity purchases made by UE to meet its reserve requirements for its
12 summer 2001 peak be replaced with the cost of building, operating and maintaining
13 combustion turbines identical to those brought on line in 2001 by AEG at Columbia,
14 Missouri and Pinkneyville, Illinois.

15 **JOINT DISPATCH AGREEMENT - ALLOCATIONS**

16 Q. What is a JDA?

17 A. A JDA is an agreement (contract) that sets out all of the conditions by
18 which two or more (usually affiliate) companies will jointly dispatch their electric supply
19 resources (Resources) and Off-System Purchases to meet their joint load, including both
20 Load Requirements and Off-System Sales. Resources include both Generating Resources
21 and longer-term purchase power contracts for capacity and energy. The Ameren JDA
22 defines: 1) Generating Resources as " all power generating facilities owned by a Party
23 available to meet the capacity and energy needs of the Parties;" 2) Load Requirements as

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent to all parties of record this 1st day of March, 2004 by electronic mail (e-mail) or U.S. Mail.

/s/ Joseph H. Raybuck