

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION

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6 TRANSCRIPT OF PROCEEDINGS

7 Evidentiary Hearing  
8 December 7, 2009  
9 Jefferson City, Missouri  
Volume 3

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12 In the Matter of Union Electric )  
Company d/b/a AmerenUE's Tariffs )  
13 To Increase Its Annual Revenues ) File No. ER-2010-0036  
For Electric Service )

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MORRIS L. WOODRUFF, Presiding,  
16 DEPUTY CHIEF REGULATORY LAW JUDGE.

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18 ROBERT M. CLAYTON III, Chairman,  
JEFF DAVIS,  
19 TERRY JARRETT,  
KEVIN GUNN,  
20 ROBERT S. KENNEY  
COMMISSIONERS.

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23 REPORTED BY:

24 KELLENE K. FEDDERSEN, CSR, RPR, CCR  
MIDWEST LITIGATION SERVICES

25

## 1 APPEARANCES:

2 THOMAS BYRNE, Attorney at Law  
3 P.O. Box 66149  
4 1901 Chouteau Avenue  
St. Louis, MO 63103  
(314)554-2237

5 JAMES B. LOWERY, Attorney at Law  
Smith Lewis, LLP  
6 111 South 9th Street, Suite 200  
P.O. Box 918  
7 Columbia, MO 65201  
(573)443-3141  
8 lowery@smithlewis.com

9 FOR: Union Electric Company,  
d/b/a AmerenUE.

10  
11 SHELLEY A. WOODS, Assistant Attorney General  
P.O. Box 899  
Supreme Court Building  
12 Jefferson City, MO 65102  
(573)751-3321

13  
14 FOR: Missouri Department of Natural  
Resources.

15 DIANA VUYLSTEKE, Attorney at Law  
Bryan Cave, LLP  
16 211 North Broadway, Suite 3600  
St. Louis, MO 63102  
17 (314)259-2543

18 FOR: Missouri Industrial Energy Consumers.

19 MICHAEL C. PENDERGAST, Attorney at Law  
Laclede Gas Company  
20 720 Olive Street  
St. Louis, MO 63101  
21 (314)342-0532

22 FOR: Laclede Gas Company.

23

24

25

1 LISA C. LANGENECKERT, Attorney at Law  
2 Sandberg Phoenix & von Gontard, P.C.  
3 One City Centre, 15th Floor  
4 515 North 6th Street  
5 St. Louis, MO 63101-1880  
6 (314)231-3332  
7 llangenckert@sandbergphoenix.com

8 FOR: Missouri Energy Group.

9 JOHN COFFMAN, Attorney at Law  
10 871 Tuxedo Boulevard  
11 St. Louis, MO 63119  
12 (573)424-6779

13 FOR: AARP.  
14 Consumers Council of Missouri.

15 ROGER W. STEINER, Attorney at Law  
16 Sonnenschein Nath & Rosenthal, LLP  
17 4520 Main Street, Suite 1100  
18 Kansas City, MO 64111  
19 (816)460-2545  
20 rsteiner@sonnenschein.com

21 FOR: Kansas City Power & Light.

22 THOMAS R. SCHWARZ, Attorney at Law  
23 Blitz, Bardgett & Deutsch  
24 308 East High Street, Suite 301  
25 Jefferson City, MO 65101-3237  
(573)634-2500

FOR: Missouri Retailers Association.

DOUGLAS L. HEALY, Attorney at Law  
Healy & Healy  
939 Boonville, Suite A  
Springfield, MO 65102  
(417)864-8800  
doug@healylawoffices.com

FOR: MJMEUC.

1 LEWIS R. MILLS, JR., Public Counsel  
P.O. Box 2230  
2 200 Madison Street, Suite 650  
Jefferson City, MO 65102-2230  
3 (573)751-4857

4 FOR: Office of the Public Counsel  
and the Public.

5  
KEVIN THOMPSON, Chief Staff Counsel  
6 STEVEN DOTTHEIM, Chief Deputy Counsel  
ERIC DEARMONT, Legal Counsel  
7 P.O. Box 360  
200 Madison Street  
8 Jefferson City, MO 65102  
(573)751-3234

9  
10 FOR: Staff of the Missouri Public  
Service Commission.

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1 P R O C E E D I N G S.

2 JUDGE WOODRUFF: Good morning, everyone.  
3 Let's go ahead and get started. Welcome this fine Monday  
4 morning. This is the matter of Union Electric Company  
5 doing business as AmerenUE's tariff to increase its annual  
6 revenues for electric service, File No. ER-2010-0036, and  
7 this is a hearing concerning AmerenUE's interim rate  
8 tariff.

9 We'll begin today by taking entries of  
10 appearance, beginning with AmerenUE.

11 MR. BYRNE: Thank you, your Honor. I'm Tom  
12 Byrne, attorney for AmerenUE. My address is 1901 Chouteau  
13 Avenue, St. Louis, Missouri 63103.

14 JUDGE WOODRUFF: Thank you. And for Staff?  
15 I'm sorry. Further for Ameren.

16 MR. LOWERY: That's right, your Honor.  
17 Your Honor, also appearing on behalf of AmerenUE, James B.  
18 Lowery of the law firm Smith Lewis, LLP, 111 South Ninth  
19 Street, Suite 200, Columbia, Missouri 65201.

20 JUDGE WOODRUFF: Thank you. For Staff?

21 MR. THOMPSON: Thank you, your Honor.  
22 Kevin Thompson, Steve Dottheim, Eric Dearmont of the Staff  
23 of the Missouri Public Service Commission, for the Staff.  
24 The address is Post Office Box 360, Jefferson City,  
25 Missouri 65102.

1 JUDGE WOODRUFF: Thank you. And for Public  
2 Counsel?

3 MR. MILLS: On behalf of the Office of the  
4 Public Counsel and the public, my name is Lewis Mills. My  
5 address is Post Office Box 2230, Jefferson City, Missouri  
6 65102.

7 JUDGE WOODRUFF: Okay. And for MIEC?

8 MS. VUYLSTEKE: Diana Vuylsteke, Bryan  
9 Cave, LLP, 211 North Broadway, Suite 3600, St. Louis,  
10 Missouri 63102.

11 JUDGE WOODRUFF: Thank you. And for  
12 Laclede?

13 MR. PENDERGAST: Michael C. Pendergast  
14 appearing on behalf of Laclede Gas Company. My business  
15 address is 720 Olive Street, St. Louis, Missouri 63101.

16 JUDGE WOODRUFF: For Noranda?

17 MS. VUYLSTEKE: Your Honor, I apologize.  
18 Noranda is a member of the Missouri Industrial Energy  
19 Consumers, and I'll enter my appearance on behalf of  
20 Noranda as well, though. Diana Vuylsteke, 211 North  
21 Broadway, Suite 3600, St. Louis, 63102.

22 JUDGE WOODRUFF: Okay. And Midwest Energy  
23 Users? Counsel for that entity called me yesterday or on  
24 Friday and indicated he would not be here. So  
25 Mr. Woodsmall indicated he would not be here. So we'll

1 proceed without them.

2 For MEG?

3 MS. LANGENECKERT: Lisa Langeneckert  
4 appearing on behalf of the Missouri Energy Group, law firm  
5 of Sandberg Phoenix & von Gontard, 515 North 6th Street,  
6 Suite 1500, St. Louis, Missouri 63101.

7 JUDGE WOODRUFF: Thank you. And for AARP  
8 and Consumers Council?

9 MR. COFFMAN: Appearing on behalf of AARP  
10 and the Consumers Council, I'm John B. Coffman. Address  
11 is 871 Tuxedo Boulevard, St. Louis, Missouri 63119.

12 JUDGE WOODRUFF: All right. And  
13 municipalities? Their counsel also called on Friday and  
14 indicated they would not be here.

15 Missouri Retailers?

16 MR. SCHWARZ: Tim Schwarz with the firm  
17 Blitz, Bardgett & Deutsch, representing Missouri Retailers  
18 Association.

19 JUDGE WOODRUFF: Thank you. Natural  
20 Resources?

21 MS. WOODS: Good morning, your Honor.  
22 Shelley Ann Woods, Assistant Attorney General, Post Office  
23 Box 899, Jefferson City, Missouri 65102, appearing on  
24 behalf of the Missouri Department of Natural Resources.

25 JUDGE WOODRUFF: Thank you. The NRDC?

1     Anyone here for NRDC?  No.

2                     For ACORN?  Don't see anyone for ACORN.

3     For the Unions?  They also -- I excused them from

4     appearing also.  For Charter?  Absent.

5                     MJMEUC?

6                     MR. HEALY:  Doug Healy, Healy & Healy,

7     939 Boonville, Suite A, Springfield, Missouri 65802.

8                     JUDGE WOODRUFF:  Thank you.  For KCPL?

9                     MR. STEINER:  Roger W. Steiner with the law  
10    firm Sonnenschein, Nath & Rosenthal appearing on behalf of  
11    Kansas City Power & Light Company.  My address is 4520  
12    Main Street, Kansas City, Missouri 64111.

13                    JUDGE WOODRUFF:  And I believe that's all  
14    the parties.  Have I missed anyone?

15                    (No response.)

16                    JUDGE WOODRUFF:  All right.  Well, then,  
17    any preliminary matters anyone wants to bring up before we  
18    get started?  Yes, for Ms. Woods.

19                    MS. WOODS:  Your Honor, the Missouri  
20    Department of Natural Resources has not prefiled any  
21    testimony in this matter and does not really take a  
22    position.  I'd ask that it be excused from these  
23    proceedings.

24                    JUDGE WOODRUFF:  Anyone object?

25                    (No response.)



1 JUDGE WOODRUFF: Hearing none, you are  
2 excused.

3 MS. WOODS: Thank you.

4 JUDGE WOODRUFF: Anyone else with a similar  
5 motion?

6 (No response.)

7 JUDGE WOODRUFF: Okay. Any other  
8 preliminary matters? Mr. Dottheim?

9 MR. DOTTHEIM: Yes, Judge Woodruff. The  
10 Staff noticed in its statement of position an editing  
11 error that we need to correct as far as the period for the  
12 interim relief that AmerenUE has identified. The Staff --  
13 if the Commission were to adopt interim rate relief, the  
14 Staff does not dispute that period. It's whether there  
15 should be some adjustments to that plant.

16 I have a corrected page that's red lined.  
17 I could distribute those, and I could make a filing in the  
18 official case papers.

19 JUDGE WOODRUFF: That would be fine. And  
20 while you're doing that, we'll go off the record and we'll  
21 go ahead and premark exhibits before we start on opening  
22 statements. At this point we're off the record.

23 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

24 (EXHIBITS A THROUGH S WERE MARKED FOR  
25 IDENTIFICATION BY THE REPORTER.)

1 JUDGE WOODRUFF: We're ready for opening  
2 statements, beginning with Ameren.

3 MR. BYRNE: Your Honor, one other  
4 preliminary matter that I was wondering if we might ought  
5 to address is the public notice to Dexter situation, since  
6 we have all the parties here.

7 JUDGE WOODRUFF: That's something that the  
8 parties probably don't know about yet. On Friday I  
9 discovered that we had provided an incorrect address for  
10 the local public hearing in Dexter. The National Guard  
11 Armory down there apparently has changed locations on us,  
12 and we used the old address.

13 So somehow we're going to need to notify  
14 the people in Dexter that the address was incorrect. I'm  
15 not exactly sure how to do that. I will, of course, do  
16 official notice in the -- notice of correction in the  
17 record to correct for the parties. I'll leave that for  
18 some discussion amongst the parties today, and we'll take  
19 it up later if you have a chance to talk, figure out how  
20 we can best do that.

21 Okay. Opening statements then for Ameren.

22 MR. BYRNE: Thank you, your Honor. May it  
23 please the Commission? I'm Tom Byrne. I'm an attorney  
24 for AmerenUE, and I'd like to start by thanking the  
25 Commission for holding this hearing on what AmerenUE

1 believes is an important public policy issue for the State  
2 of Missouri.

3 I'm here today for the same reason that I  
4 appeared before you at the oral argument a couple of  
5 months ago. I'm here because my company, AmerenUE, is  
6 facing a situation where it is chronically and  
7 consistently unable to earn anywhere close to its  
8 authorized return on equity and is experiencing  
9 significant negative free cash flow due to excessive  
10 regulatory lag that exists in the state of Missouri, the  
11 lag between the time costs are incurred and investment is  
12 made and when those costs are finally reflected in rates  
13 many months or even years later.

14 Because of excessive regulatory lag,  
15 AmerenUE has lost literally hundreds of millions of  
16 dollars in Commission-authorized return over the past few  
17 years. If something is not done to address this issue,  
18 the company faces the prospect of chronic under-earnings  
19 and weaker cash flows in the future, which over the long  
20 run will not be a good thing for the company, its  
21 customers or the State of Missouri.

22 We are requesting the approval of  
23 \$37.3 million in interim rates in this proceeding, less  
24 than 10 percent of our rate increase request, to provide  
25 recognition of the cost of plant that is already in

1 service, iron that is already in the ground serving  
2 customers. These rates would be fully refundable to  
3 customers with interest in the unlikely event that the  
4 final rate increase approved by the Commission in this  
5 case is not at least that amount.

6 Approval of these interim rates would be a  
7 small but important step to help mitigate regulatory lag,  
8 provide the company with an ability to more timely recover  
9 at least these plant costs, and have a better opportunity  
10 to earn something closer to its authorized rate of return.

11 I'd like to take the remainder of my time  
12 to address three questions. First, what exactly is  
13 causing AmerenUE to experience regulatory lag? And  
14 second, why should this Commission care if AmerenUE is  
15 experiencing excessive regulatory lag? And third, what is  
16 the Commission legally permitted to do if it wants to  
17 address regulatory lag?

18 With regard to the first question, what is  
19 causing the problem, the problem is simply due to the fact  
20 that AmerenUE's costs, and especially its capital  
21 investment in its system, are increasing at a much faster  
22 clip than rates can keep up.

23 Missouri's ratemaking process is among the  
24 slowest in the country. Absent a settlement, the  
25 Commission takes 11 months to process a rate case. Rates

1 are based on historic as opposed to forecasted costs. The  
2 use of riders is limited. Recovery of construction work  
3 in progress or CWIP costs is not permissible, and there's  
4 basically no way for an electric utility to recover the  
5 costs of plant placed in service between rate cases.

6 This leads to a great deal of regulatory  
7 lag which in the operating environment we have seen for  
8 some time, and we expect to see for the foreseeable  
9 future, puts AmerenUE and other Missouri utilities in a  
10 position where they have no reasonable opportunity to earn  
11 their Commission-authorized rate of return.

12 The only way that utilities can address  
13 this problem by themselves is to forego making important  
14 investments that this Commission, our customers and other  
15 stakeholders think we should be making.

16 You may remember the chart that I've put up  
17 on the board from our oral argument. Again, this shows  
18 the very significant financial impact regulatory lag has  
19 had on AmerenUE's earnings over the last few years. For  
20 example, I don't know if you can see it, but over the -- I  
21 guess maybe the -- I'll point to it.

22 The third to last line is AmerenUE's  
23 earnings for the 12 months ended June 2009, and we earned  
24 just below 6 percent, which is more than 400 basis points  
25 below our authorized return. This translates into an

1 earnings shortfall below the company's  
2 Commission-authorized return of more than \$200 million  
3 over just that 12-month period. We simply cannot sustain  
4 under-earnings of this magnitude over the long run.

5                   We have three more months of data since the  
6 oral argument. That was the last month that I showed you  
7 in the oral argument, but the situation has not improved.  
8 We earned what is -- what's shown on that chart in the  
9 second to last bar, our earnings were down a little bit.  
10 For the 12 months ending July 2009, they were 5.56  
11 percent, and in August they were 5.91 percent.

12                   And what's not shown on that chart but is  
13 in Mr. Weiss' testimony is we have data for September, and  
14 for the 12 months ended September we earned 6.18 percent.  
15 And this trend will continue unless something is done.

16                   The problem can perhaps be more clearly  
17 illustrated by examining some specific capital investments  
18 made by the company and the delays in recovering them.  
19 For example, the company made capital investments totaling  
20 approximately \$183 million in the fourth quarter of 2008,  
21 about a year ago, and so far we haven't recovered any of  
22 the return, taxes or depreciation associated with that  
23 \$183 million investment. And unless interim rates are  
24 approved, we won't recover any of the cost of that  
25 investment until this rate case is completed and new rates

1 are set in June of 2010, which is 18 to 20 months after  
2 the investment that I'm talking about was made.

3                   It's important to point out that the cost  
4 of those investments over the period prior to the rate  
5 increase, in other words prior to June 2010 are lost  
6 forever to the company. They are not simply pushed back  
7 into the future as the term regulatory lag might suggest.

8                   Regulatory lag doesn't just mean delay in  
9 recovering costs. It means that a utility will never be  
10 able to recover part of its legitimate cost of service due  
11 to delays in the regulatory process, and that failure to  
12 recover those costs will result in lower earnings.

13                   This would be like if someone asked you to  
14 invest \$10,000 in an investment, promising a fair rate of  
15 return, but that return would only begin to be paid 18 to  
16 20 months after you made the investment. Obviously no  
17 rational person would make such an investment, but that is  
18 exactly what AmerenUE and the other Missouri utilities are  
19 being asked to do.

20                   In addition to the significant earnings  
21 impact, regulatory lag also impacts AmerenUE's free cash  
22 flow which is an important credit metric. In fact, our  
23 negative free cash flow has grown to over \$1 billion --  
24 that's billion with a B -- and it is increasing every  
25 year. So that's the problem.

1                   The second question I'd like to address is,  
2   why should this Commission care? And I think there are at  
3   least three reasons why the Commission should care.  
4   First, the Commission has a statutory obligation to  
5   balance the interests of customers and shareholders in  
6   setting rates and enacting regulations. If a utility  
7   can't recover its legitimate costs and has no reasonable  
8   chance to earn its authorized return, then that balance is  
9   not being achieved.

10                  Second, over the long term, a utility that  
11   can't recover its costs or earn its authorized rate of  
12   return becomes financially weak. Financially weak  
13   utilities have less ability to invest in needed  
14   infrastructure and less ability to access capital on the  
15   best and lowest cost terms.

16                  Third, and perhaps most significantly, if  
17   utilities cannot recover their costs in Missouri, it will  
18   provide a strong disincentive to invest in Missouri  
19   infrastructure. We are at a point in this state where we  
20   need strong investment by utilities for reliability, to  
21   promote energy efficiency, renewables, to build  
22   transmission facilities and other necessary  
23   infrastructure, which creates jobs and attracts industry  
24   to the state. Our customers expect us to make this kind  
25   of investment, and it is good public policy to encourage



1 this type of investment.

2 AmerenUE has, in fact, invested literally  
3 billions of dollars in Missouri infrastructure over just  
4 the past few years, but if this is the impact on our  
5 earnings, we will have no choice but to reduce our  
6 investment in these important areas.

7 In my view, the Commission's greatest  
8 incentive to help reduce regulatory lag is to help  
9 encourage this investment and help Missouri be a leader in  
10 areas like reliability, energy efficiency and renewables,  
11 not to mention job creation.

12 The third question I want to address is,  
13 what can this Commission legally do if it wants to address  
14 regulatory lag? And the truth is the Commission can do a  
15 lot. It can take steps to reduce regulatory lag in rate  
16 cases to the extent those steps are within its discretion,  
17 and it can lobby the Legislature to enact statutes that  
18 reduce regulatory lag. And right now in this case, it can  
19 approve AmerenUE's proposed interim rates.

20 There is absolutely no question that the  
21 Commission has the legal power to do this if it chooses  
22 and as the Commission has itself recently recognized.

23 Although approval of our proposed interim  
24 rates would only be one small step toward reducing  
25 regulatory lag associated with plant investment, it would

1 send an important signal to utilities and investors that  
2 this Commission is serious about ensuring that utilities  
3 have a fair chance to recover their prudently incurred  
4 costs and have a reasonable opportunity to earn their  
5 authorized rate of return.

6 It would also signal to utilities and  
7 investors that this Commission is serious about attracting  
8 utility infrastructure investment for the future in this  
9 state along with the jobs that go with it. Thank you.

10 JUDGE WOODRUFF: Thank you.

11 COMMISSIONER DAVIS: Judge, can I ask Mr.  
12 Byrne a couple of questions?

13 JUDGE WOODRUFF: Go right ahead.

14 COMMISSIONER DAVIS: Mr. Byrne, is it fair  
15 to say that you don't have to -- AmerenUE doesn't have to  
16 ask for a six-month update in the rate case?

17 MR. BYRNE: That's fair to say.

18 COMMISSIONER DAVIS: So we could  
19 conceivably get done with the rate case much more  
20 expeditiously if there wasn't that six-month update,  
21 correct?

22 MR. BYRNE: I don't -- I think the way the  
23 structure is set up in Missouri would -- I think the Staff  
24 would still want five or six months.

25 COMMISSIONER DAVIS: You think they'd still

1 want 11 months?

2 MR. BYRNE: Yes, I do.

3 COMMISSIONER DAVIS: In the -- in the  
4 larger rate case, do those rate schedules filed by  
5 AmerenUE, if enacted, would they afford AmerenUE the  
6 opportunity to earn its allowed return on equity when the  
7 Commission sets rates in the full-blown rate case?

8 MR. BYRNE: I don't believe they  
9 necessarily will because of the regulatory lag. If you  
10 look back at the chart, let me put it back up, you know,  
11 we -- we got a rate decision in March of this year, and  
12 our earned returns have been significantly below the  
13 authorized return since then. So I think the level of  
14 investment, you know, the cutoff date for a rate case, for  
15 example, the last rate case where we got the Order in  
16 March 2009, the cutoff date was September 2008 for known  
17 and measurable changes and updates.

18 So the level of investment and the level of  
19 cost increases since September of 2008 made it so that we  
20 could not earn our authorized rate of return even  
21 immediately after the rates were approved and were  
22 significantly below our authorized rate of return.

23 COMMISSIONER DAVIS: Now, you recall the  
24 response to Mr. Mills' motion for summary judgment or in  
25 the alternative a directed verdict --

1 MR. BYRNE: Yes.

2 COMMISSIONER DAVIS: -- that you and  
3 Mr. Lowery filed?

4 MR. BYRNE: Yes.

5 COMMISSIONER DAVIS: Is it fair to say that  
6 if you read that document that you and Mr. Lowery filed,  
7 that in essence you're saying that it's purely in the  
8 Commission's discretion whether we grant or deny  
9 AmerenUE's request?

10 MR. BYRNE: Yes.

11 COMMISSIONER DAVIS: Okay. Now, in the --  
12 in the issues that Staff outlined today in your -- I guess  
13 your prehearing position statement, at the bottom of page  
14 3, I think it's Roman numeral I(a), I mean, you almost  
15 seem to be arguing for good cause or sufficient  
16 justification, but is it good cause, sufficient  
17 justification, or is it just whatever we decide to make  
18 it?

19 MR. BYRNE: I believe the Legislature has  
20 left it in your discretion. You can -- I guess you could  
21 call that good cause, but it's really -- it is in your  
22 discretion.

23 COMMISSIONER DAVIS: Okay. In your  
24 response to OPC's motion, I think it was numbered  
25 paragraph 1, you stated that there's no such standard in

1 Missouri law that governs the Commission's decision on an  
2 interim rate request; is that correct?

3 MR. BYRNE: I don't have the pleading in  
4 front of me, but yes, that sounds correct.

5 COMMISSIONER DAVIS: Interim rate requests  
6 aren't mentioned anywhere in the statutes, are they?

7 MR. BYRNE: No. No, your Honor, they're  
8 not.

9 COMMISSIONER DAVIS: So, I mean, you're  
10 principally relying on the Laclede Gas case; is that  
11 correct?

12 MR. BYRNE: Well, I think there's several  
13 cases that talk about interim rates. The Fischer case is  
14 another one. There are others.

15 COMMISSIONER DAVIS: All right. Thank you,  
16 Judge.

17 JUDGE WOODRUFF: All right. Then opening  
18 from Staff.

19 MR. THOMPSON: May it please the  
20 Commission?

21 About three months ago, on September 14th,  
22 this Commission heard oral argument as to the appropriate  
23 standard to apply to an interim rate relief request.  
24 Since that time, the Commission has suspended the proposed  
25 interim rate tariff, established a procedural schedule,

1 and now enters upon an evidentiary hearing on this tariff.

2                   As is traditional in cases before this  
3 Commission, the parties have filed prepared testimony and  
4 have submitted an agreed list of issues to be considered.  
5 There are five issues. The first one is, do the  
6 circumstances presently encountered by AmerenUE warrant  
7 the Commission authorizing AmerenUE interim rate relief as  
8 generally proposed by AmerenUE? Should there be criteria  
9 for the Commission to use to decide whether interim rate  
10 relief is warranted? If so, what should those criteria  
11 be?

12                   Staff asserts that AmerenUE's present  
13 circumstances do not warrant interim rate relief. Staff  
14 further asserts that the granting of such relief must be  
15 governed by criteria, and those criteria are the so-called  
16 emergency/near emergency standard.

17                   Under that standard, interim rate relief is  
18 appropriate where the utility establishes facts showing  
19 the existence of a deteriorating financial condition which  
20 would impair the continuation of adequate service or  
21 render the utility unable to maintain its financial  
22 integrity such that immediate rate relief is required.

23                   In the past this Commission has held that  
24 to be eligible for interim rate relief, the utility must  
25 show that it needs the additional funds immediately, the

1    need cannot be postponed, and no alternative exists to  
2    meet the need other than an increase in rates.

3                   As an administrative agency, a creature of  
4    statute, this Commission has those powers expressly  
5    conferred upon it by the General Assembly and such others  
6    as are necessarily implied. The power to grant an interim  
7    rate increase is just such an implied power. It is  
8    inherent in the Commission's express authority to set just  
9    and reasonable rates upon due consideration of all  
10   relevant factors.

11                  The Western District of the Missouri Court  
12   of Appeals stated exactly this in the Fischer case in  
13   1984. I quote, the Commission's authority to grant an  
14   interim rate increase is necessarily implied from the  
15   statutory authority granted to enable it to deal with a  
16   company in which immediate rate relief is required to  
17   maintain the economic life of the company so that it might  
18   continue to serve the public.

19                  The Commission's authority to grant an  
20   interim rate increase, although not statutory, is well  
21   established. It is, however, an extraordinary power. It  
22   is one that must be exercised sparingly and only in  
23   appropriate circumstances.

24                  An interim rate can never be a just and  
25   reasonable rate. Why? Because it is set without due

1 consideration of all relevant factors. It is generally  
2 set with consideration, in fact, of only one factor, that  
3 is the very emergency facing the utility that calls the  
4 interim rate increase into existence.

5                   Because it is not just and reasonable and  
6 cannot be just and reasonable, the interim rate is subject  
7 to refund. There is a true-up at the end of some  
8 predetermined period. Why? Because the customers have  
9 inevitably paid too much or too little. That's what  
10 happens when a rate is set without considering all  
11 relevant factors.

12                   Your Order of October 7th that set this  
13 proceeding today summarized the arguments offered on  
14 September 14th. The parties opposing the interim rate  
15 increase contend the Commission should apply an emergency  
16 or near emergency standard. AmerenUE concedes it is not  
17 facing an emergency or near emergency.

18                   However, AmerenUE argues the Commission  
19 should apply a more flexible good cause shown standard.  
20 Staff responds that a completely ad hoc standard such as  
21 the good cause shown standard proposed by AmerenUE is no  
22 standard at all.

23                   Regulatory lag is a normal and inevitable  
24 part of utility regulation. You know that regulatory lag  
25 cuts both ways, sometimes to the benefit of the customer



1 and sometimes to the benefit of the utility.

2                   In support of this extraordinary request  
3 for extraordinary relief, Ameren states that it has  
4 chronically been unable to earn anywhere close to its  
5 authorized return on equity over the past several years,  
6 despite having received two rate increases since June of  
7 2007. That's the justification offered for this  
8 extraordinary relief.

9                   The second issue formulated by the parties  
10 is this: If the circumstances presently encountered by  
11 AmerenUE warrant the Commission authorizing AmerenUE  
12 interim rate relief as generally proposed by AmerenUE, has  
13 AmerenUE provided adequate justification for the proposed  
14 level of interim rate relief? Should there be criteria  
15 for the Commission to use to determine the appropriate  
16 level of interim rate relief? If so, what should those  
17 criteria be?

18                   Staff asserts that the conditions presently  
19 experienced by AmerenUE do not warrant interim rate  
20 relief. Staff further asserts that there must be criteria  
21 by which to determine the appropriate level of interim  
22 rate relief, and those criteria are that interim relief  
23 shall be that amount and no more than that amount  
24 reasonably necessary to preserve the financial integrity  
25 of the utility and to ensure that adequate service

1 continues without interruption.

2                   In the event that you are persuaded by  
3 AmerenUE and decide to grant interim rate relief in this  
4 case, Staff urges that you calculate the amount as  
5 proposed by Staff expert Steve Rackers, which is to take  
6 net plant from the true-up date of the prior rate case to  
7 the most recent month for accounting data was available at  
8 the time of the filing of the present rate case minus  
9 related accumulated deferred income tax, plant serving new  
10 customers, and related cost savings due to efficiencies.

11                   That amount, as Mr. Rackers will testify,  
12 comes to about \$9 million less than the figure identified  
13 by AmerenUE.

14                   The third issue identified by the parties  
15 is this: If the Commission finds that the circumstances  
16 presently encountered by AmerenUE warrant the Commission  
17 authorizing Ameren UE interim rate relief as proposed by  
18 AmerenUE, may and should the Commission adopt criteria for  
19 interim rate relief with greater applicability than the  
20 instant case?

21                   Staff repeats that the circumstances  
22 presently encountered by AmerenUE do not warrant interim  
23 rate relief. Staff further points out that it is well  
24 established in Missouri law that an administrative agency  
25 such as this Commission cannot lawfully adopt a policy of

1 general applicability outside of a rulemaking. The case  
2 is *Enemy Hospitals vs. Department of Social Services*, 850  
3 SW 2nd 71, Missouri Supreme Court en banc 1993, and that  
4 case has numerous progeny.

5 To do so might well render the Commission  
6 liable for the attorneys' fees and costs of whoever  
7 challenges the unpromulgated rule. That's Section  
8 536.021.9.

9 The fourth and fifth issues identified by  
10 the parties are these, and I conflate them for  
11 convenience: Is any interim rate relief criteria other  
12 than the emergency/near emergency criteria lawful?  
13 If the emergency/near emergency criteria is not the sole  
14 lawful criteria for interim rate relief, what other  
15 criteria are lawful?

16 Staff believes that only the so-called  
17 emergency/near emergency standard is lawful. By lawful I  
18 mean certain to be approved by reviewing courts. No other  
19 criterion has been approved by Missouri courts. The  
20 language in the *Laclede* decision that suggests that some  
21 other appropriate basis may exist is frankly dicta.

22 It is true that the Commission has granted  
23 interim rate relief outside of the emergency/near  
24 emergency standard a very few times, but each of those  
25 cases represented a unique situation, and none of them was

1 reviewed or approved by a court.

2 Today you will hear from nine witnesses,  
3 including two witnesses for the Staff. There will be four  
4 company witnesses, one witness for Public Counsel, and one  
5 witness each for each of two intervenors. The Staff  
6 witnesses are Steve Rackers and David Murray.

7 Steve Rackers is a senior auditor on the  
8 Commission's auditing staff. He will tell you that  
9 Mr. Baxter is incorrect in his assertion that AmerenUE's  
10 actual return on equity has been consistently below the  
11 authorized return by a significant amount. He will  
12 explain that Mr. Baxter reached that conclusion by relying  
13 on certain numbers and ignoring others.

14 He will also tell you how the interim rate  
15 relief proposed by AmerenUE should be calculated should  
16 you decide to grant it. In particular, he will explain  
17 that the additions to plant in service that AmerenUE  
18 relies upon produce nearly \$9 million less than AmerenUE  
19 has represented. These calculation errors he points out  
20 highlight the problem with focusing on only a few  
21 components of the cost of service in an interim rate  
22 proceeding rather than considering all relevant factors.

23 David Murray is the manager of the  
24 Commission's financial analysis staff. He will tell you  
25 that the benefits of the interim rate increase are

1   afemoral. Why? Because none of these benefits will be  
2   realized if the proposed interim rate relief does not  
3   favorably impact AmerenUE's credit rating, and Mr. Murray  
4   will explain to you it will not. Why? Because AmerenUE's  
5   creditworthiness has been and is continuously diminished  
6   by its association with Ameren's unregulated enterprises  
7   and its Illinois operating companies.

8                   Mr. Murray will point out that this  
9   Commission's grant of a fuel adjustment clause to  
10  AmerenUE, for example, had no beneficial effect on  
11  AmerenUE's credit rating. Thus, your grant of the  
12  requested interim relief to AmerenUE will also not improve  
13  its credit rating. The benefits touted by Mr. Nickloy  
14  will simply not appear.

15                  Let me remind you, in conclusion, that the  
16  actions of this Commission will be upheld if they are  
17  lawful and reasonable. A Commission action is lawful if  
18  the Commission acts within the scope of its statutory  
19  authority. A Commission action is reasonable if it is  
20  supported by competent and substantial evidence of record.

21                  We know that the emergency/near emergency  
22  standard is lawful. In 1976, as I stated before, in the  
23  Laclede case, the Western District of the Missouri Court  
24  of Appeals held that the Commission has power in a proper  
25  case to grant interim rate increases within the broad

1 discretion implied from the Missouri file and suspend  
2 statutes and from the practical requirements of utility  
3 regulation.

4                   With respect to a governing standard, the  
5 Laclede court held that, since no standard is specified,  
6 the determination as to whether or not to do so  
7 necessarily rests in the Commission's sound discretion.

8                   Three years later, the Missouri Supreme  
9 Court in the Utility Consumers Council case stated that an  
10 interim rate increase may be requested where an emergency  
11 need exists.

12                   I will repeat what I told you in September.  
13 Your authority to grant interim rate relief is similar to  
14 that of a court issuing a temporary restraining order or  
15 TRO. It is the exigency of the circumstances that  
16 authorizes the court's summary action. So that an Order  
17 that is lawful in the face of an emergency may well be  
18 unlawful where no emergency exists.

19                   It is the same with interim rate relief.  
20 It is the exigency of the circumstances that authorizes  
21 and empowers this Commission to take a reasonable action  
22 to meet those exigent circumstances.

23                   With respect to reasonableness, it is  
24 Staff's position that AmerenUE's request is unreasonable  
25 and should be denied. Why? Because AmerenUE admits that

1 it cannot show that it faces threatening circumstances  
2 such that this relief is necessary and justified.

3 If you do grant AmerenUE's request for  
4 interim relief, then I predict that such requests will  
5 become commonplace. The support offered to UE by Laclede  
6 Gas Company and Kansas City Power & Light Company in this  
7 case show as much. If you grant Ameren's request, how  
8 will you ever be able to deny that of any other company?

9 Mr. Byrne complained of the careful and  
10 deliberate process of ratemaking in Missouri, one of the  
11 longest in the United States he said. He called it slow.  
12 I call it prudent. Here in the Show Me State, utilities  
13 are required to show that a rate increase is justified.  
14 If you grant AmerenUE's request, Missouri utilities will  
15 be able to get a rate increase without showing much of  
16 anything at all.

17 Thank you very much.

18 JUDGE WOODRUFF: Thank you.

19 COMMISSIONER DAVIS: Judge, I've got some  
20 questions for Mr. Thompson here.

21 So we have to consider all relevant  
22 factors, Mr. Thompson?

23 MR. THOMPSON: Absolutely not.

24 COMMISSIONER DAVIS: No. Doesn't UCCM say  
25 that we have to?

1                   MR. THOMPSON: That is correct, if you're  
2     doing standard 11-month file and suspend ratemaking or  
3     complaint-based ratemaking.

4                   COMMISSIONER DAVIS: Okay. Mr. Thompson,  
5     to the best of your knowledge, are there any other  
6     relevant factors in this case that Staff or the other  
7     parties haven't raised in their prefiled testimony?

8                   MR. THOMPSON: I'm not aware of any.

9                   COMMISSIONER DAVIS: Okay. Mr. Thompson,  
10    is it possible that you and all the other parties have the  
11    standards screwed up?

12                  MR. THOMPSON: Sure.

13                  COMMISSIONER DAVIS: Mr. Thompson, are you  
14    familiar with the rules or canons of statutory  
15    construction?

16                  MR. THOMPSON: Yes, sir.

17                  COMMISSIONER DAVIS: So is it fair to say  
18    that the primary rule of statutory construction is to  
19    ascertain the intent of the Legislature from the language  
20    used, to give effect to that intent if possible and to  
21    consider words in their plain and ordinary meaning?

22                  MR. THOMPSON: Yes, sir.

23                  COMMISSIONER DAVIS: Do you think this  
24    tribunal can simply imply additional words into a statute  
25    that don't exist?



1 MR. THOMPSON: No, sir.

2 COMMISSIONER DAVIS: Can we omit words from  
3 a statute?

4 MR. THOMPSON: No, sir.

5 COMMISSIONER DAVIS: And isn't it another  
6 rule of statutory construction that if you have two  
7 statutes, one general and one specific, or maybe in this  
8 case one implied or nebulous, and you can't read them in  
9 harmony, then the specific statute controls over the more  
10 general one?

11 MR. THOMPSON: That's true if, in fact,  
12 they cannot be harmonized.

13 COMMISSIONER DAVIS: Okay. Is this a  
14 hearing, Mr. Thompson?

15 MR. THOMPSON: As far as I know, yes, sir.

16 COMMISSIONER DAVIS: Is AmerenUE seeking to  
17 increase a rate?

18 MR. THOMPSON: Yes, sir.

19 COMMISSIONER DAVIS: Okay. I'm going to  
20 read to you, Mr. Thompson, the second sentence of 393.150  
21 subsection 2. At any hearing involving a rate sought to  
22 be increased, any, the burden of proof to show that the  
23 increased rate or proposed increased rate is just and  
24 reasonable shall be upon the gas corporation, electrical  
25 corporation, water corporation or sewer corporation, and

1 the Commission shall give to the hearing and decision of  
2 such questions preference over all other questions pending  
3 before it and decide the same as speedily as possible.

4 So you're saying that any hearing is still  
5 not this hearing, right?

6 MR. THOMPSON: I'm saying that the power to  
7 grant interim rate relief is implied. It's not expressly  
8 granted. It has been approved by Missouri courts, at  
9 least in the emergency/near emergency circumstances.

10 And I'm further saying that an interim rate  
11 by its very nature cannot be just and reasonable because  
12 it is not granted after due consideration of all relevant  
13 factors. How do we know that? Because all relevant  
14 factors are not presented to the Commission in the request  
15 for interim rate relief.

16 The fact that I was unable to tell you  
17 whether there were relevant factors that have not been  
18 presented in the filed testimony of the parties here today  
19 does not mean that there are not such factors. It is only  
20 through the normal ratemaking process that all factors are  
21 brought out.

22 COMMISSIONER DAVIS: Mr. Thompson, are you  
23 familiar with the Laclede -- the Laclede case from '76?

24 MR. THOMPSON: Generally, yes, sir.

25 COMMISSIONER DAVIS: Okay. Was 393.150 an

1 issue in front of the Western District Court of Appeals?

2 MR. THOMPSON: I don't recall.

3 COMMISSIONER DAVIS: You don't recall?

4 MR. THOMPSON: No, sir.

5 COMMISSIONER DAVIS: Do you recall if it  
6 was an issue in front of the Fischer court?

7 MR. THOMPSON: I do not recall.

8 COMMISSIONER DAVIS: Do you recall if it  
9 was an issue in front of the UCCM court?

10 MR. THOMPSON: The UCCM court reviewed all  
11 of the ratemaking statutes in the process of setting the  
12 scene for the decisions that it made in that case. It may  
13 have mentioned that one as well.

14 COMMISSIONER DAVIS: But it's possible if  
15 those were -- if those courts were deciding the issues  
16 based on what was placed in front of them, that they could  
17 never reach this issue, correct?

18 MR. THOMPSON: Yes, sir.

19 COMMISSIONER DAVIS: Thank you,  
20 Mr. Thompson.

21 MR. THOMPSON: Thank you, sir.

22 JUDGE WOODRUFF: Thank you.

23 COMMISSIONER JARRETT: Judge, I have a  
24 couple questions.

25 JUDGE WOODRUFF: Commissioner Jarrett.

1 COMMISSIONER JARRETT: Mr. Thompson, good  
2 morning.

3 MR. THOMPSON: Good morning, sir.

4 COMMISSIONER JARRETT: I wanted to clarify,  
5 I guess, your position. You talked about in the context  
6 of a normal rate case. What is a normal rate case?

7 MR. THOMPSON: A normal rate case is the  
8 standard 11-month-long file and suspend proceeding or the  
9 generally even longer complaint-based proceeding.

10 COMMISSIONER JARRETT: Okay. Let's talk  
11 about the file and suspend. In this case, Ameren filed a  
12 tariff. We have a tariff before us today that they filed;  
13 isn't that correct?

14 MR. THOMPSON: That is correct, sir.

15 COMMISSIONER JARRETT: We suspended it, the  
16 Commission suspended that?

17 MR. THOMPSON: Yes, sir.

18 COMMISSIONER JARRETT: And we can take 11  
19 months under the statute to decide that case, right?

20 MR. THOMPSON: Yes, sir.

21 COMMISSIONER JARRETT: So we can -- so why  
22 isn't this a standard 11-month standard file and suspend  
23 rate case?

24 MR. THOMPSON: Well, Staff is only offering  
25 two witnesses today. Whereas, in the underlying full rate

1 case, I think there's quite a few other witnesses that  
2 Staff would offer.

3 COMMISSIONER JARRETT: All right. Well,  
4 was Staff limited in providing any witnesses? I mean, did  
5 the Commission say, Staff, you can only have certain  
6 witnesses?

7 MR. THOMPSON: No, the Commission did not  
8 say that.

9 COMMISSIONER JARRETT: If you feel like you  
10 needed 20 witnesses today to talk about the tariff in this  
11 case, do you believe the Commission would have allowed you  
12 to have those witnesses?

13 MR. THOMPSON: I don't know. We offered  
14 the witnesses that we thought were necessary to meet the  
15 five issues that the parties have identified. Those five  
16 issues do not encompass all of the issues that will be  
17 brought to this Commission in the underlying rate case.  
18 There will be many additional issues.

19 COMMISSIONER JARRETT: And so you don't  
20 feel like you were able to address all of the issues?  
21 Weren't you given the opportunity to set up all the issues  
22 you believe were relevant?

23 MR. THOMPSON: That's true. We did set up  
24 all the issues that we believed were relevant to  
25 consideration of this tariff.

1 COMMISSIONER JARRETT: Okay. Thank you.

2 MR. THOMPSON: Thank you.

3 JUDGE WOODRUFF: Mr. Chairman.

4 CHAIRMAN CLAYTON: Thank you, Judge.

5 Mr. Thompson, I just want to go back, and I'm referring to  
6 the Staff's Statement of Positions, Item 4 and 5, and I  
7 just wanted to see if you could one more time cite what  
8 authority Staff would refer to in stating the proposition  
9 that the Commission does not have the legal authority to  
10 grant an interim rate increase on any other standard aside  
11 from an emergency standard.

12 And I don't want you to go into the  
13 rulemaking. I understand the general applicability item  
14 that is included in Item No. 3. But specifically on  
15 Items 4 and 5, can you restate or refresh my recollection  
16 of what authority would guide you in that way?

17 MR. THOMPSON: I'm guided by the Laclede  
18 case, of course, the Fischer case, and the UCCM case. The  
19 courts have scrutinized and approved the exercise of this  
20 implied authority where there is an emergency. The courts  
21 have never had an opportunity yet to look at the exercise  
22 of this authority in any other circumstances. It could  
23 be, in fact, the Laclede court said as much, that it could  
24 be that a situation might arise where interim relief is  
25 justified even though there's no emergency.

1                   And, in fact, this Commission has granted  
2   such relief sparingly over the years. But each of those  
3   circumstances was a unique and almost unrepeatable  
4   circumstance, and as I said, the courts haven't looked at  
5   them. So I can tell you that, yes, you can do it if  
6   there's an emergency or near emergency.

7                   If you want to know if you can do it under  
8   other circumstances, I've got to say, gosh, I don't know.  
9   It would depend upon how persuasive those circumstances  
10  were in convincing a court that summary relief was  
11  necessary.

12                  CHAIRMAN CLAYTON: So there is no authority  
13  which would state that we either have to use the emergency  
14  standard or that -- or that we are prohibited from using  
15  some other standard? There's nothing that clearly states  
16  that?

17                  MR. THOMPSON: That is correct, sir.

18                  CHAIRMAN CLAYTON: So potentially the  
19  Commission could attempt to implement some standard, but  
20  it would be subject to review, and I think you're -- what  
21  you're saying here is that we would -- we would be leaving  
22  it to the court's discretion and there is some uncertainty  
23  associated with that?

24                  MR. THOMPSON: Absolutely, yes.

25                  CHAIRMAN CLAYTON: In stating its position,

1 Staff has suggested that anything other -- the emergency  
2 standard or some standard of unique and limited  
3 circumstances would be applicable. Can Staff identify any  
4 other circumstances other than just financial emergency  
5 where it would be appropriate? Are there any other  
6 circumstances that Staff would be able to identify where  
7 an interim rate increase would be appropriate?

8 MR. THOMPSON: I think Staff's view, sir,  
9 would be that interim rate relief is appropriate where the  
10 public interest demands it. There can be exigent  
11 circumstances that are not financial.

12 CHAIRMAN CLAYTON: Can you give me an  
13 example of what -- give me an example that would meet --  
14 and obviously this is hypothetical, but give me an example  
15 from Staff's perspective where the public interest demands  
16 it.

17 MR. THOMPSON: How about perhaps a  
18 catastrophic and unexpected system failure where the  
19 company's financial reserves and the normal process of  
20 borrowing were simply not adequate to meet the requirement  
21 that action be taken immediately to address the failure?

22 CHAIRMAN CLAYTON: Okay. Any other  
23 examples? I know this is dropping on you.

24 MR. THOMPSON: That's the only one I can  
25 come up with.



1                   CHAIRMAN CLAYTON: In terms of the history  
2 of what has happened at the Commission, can you give me an  
3 example in the circumstances where an interim rate  
4 increase has been authorized, what criteria led to a  
5 finding of the public interest warranted implementation of  
6 an interim rate increase?

7                   MR. THOMPSON: Let me say first of all, I  
8 don't think that language involving the public interest  
9 has ever appeared anywhere. That is simply my  
10 distillation of what I think would permit expanding the  
11 interim rate relief power beyond financial emergency. So  
12 that's purely my statement.

13                  CHAIRMAN CLAYTON: Let me limit my question  
14 to this. In the circumstance of a larger utility with  
15 large service territory, how many interim rate increases  
16 have been granted in recent memory?

17                  MR. THOMPSON: I frankly don't know.

18                  CHAIRMAN CLAYTON: Now, looking at  
19 Mr. Dottheim is a fair --

20                  MR. THOMPSON: I think we covered them all  
21 in our written memorandum that we filed some months ago.  
22 I didn't review that for this morning. I apologize.

23                  CHAIRMAN CLAYTON: No. That's all right.  
24 May I ask Mr. Dottheim?

25                  MR. THOMPSON: Certainly.

1                   MR. DOTTHEIM: Well, and we could also  
2 cover that in a brief if we haven't adequately addressed  
3 that.

4                   Frankly, my experience with the interim  
5 rate increases occurred in the very early '80s. I came to  
6 the Commission in 1979, and it was a period of heavy base  
7 load construction for the electric industry. It also was  
8 a time of double digit inflation, and the double digit  
9 inflation, of course, was not just limited to the electric  
10 industry, so the telecommunications industry and the gas  
11 industry also were experiencing that.

12                  I do know that Kansas City Power & Light  
13 received an emergency/near emergency -- I think it was  
14 actually an emergency rate increase case using -- using  
15 the Commission's emergency/near emergency standard in the  
16 context of the Iatan 1 case. The case number for the  
17 emergency interim case is ER-80-204.

18                  And part of the interesting I would note  
19 about the case, there was an evidentiary hearing. The  
20 Staff agreed that Ameren -- excuse me, that Kansas City  
21 Power & Light should receive rate relief. It was a  
22 question, if I recall correctly, where Kansas City Power &  
23 Light did not have the interest coverages to continue to  
24 finance, and it was in the construction period involving  
25 Wolf Creek having just completed Iatan 1.

1                   And Staff and the company I think had  
2   reached agreement in recommending to the Commission that  
3   an interim rate increase amount be 29 million, so that the  
4   company in the future could engage in certain financings.  
5   As a result of the hearing, my recollection is the Office  
6   of Public Counsel opposed the relief.

7                   There was testimony that Kansas City Power  
8   & Light was in an austerity program. And the Commission  
9   lowered the amount of the rate relief it granted, I think  
10  from 29 million to 25 million based upon the austerity  
11  program, the savings that it projected.

12                  CHAIRMAN CLAYTON: Thank you, Mr. Dottheim.  
13  I remember reading each of these items in the Briefs. I  
14  just didn't remember the specific details, and I didn't  
15  mean to get into too much specificity with each of the  
16  cases. But I'll go back and review that so we don't have  
17  to do that here today.

18                  Is there anything you want to add? I have  
19  one more question for Mr. Thompson.

20                  MR. DOTTHEIM: Yeah. There's also -- I  
21  think it may be mentioned in the Brief, but it may not be  
22  mentioned in great detail. There also in the early '80s  
23  was a Gas Service Company case, which is the predecessor  
24  of MGE, and it came in for interim rate relief because of  
25  an inability to finance.

1                   And it might be argued that the Commission  
2   was able to effectuate a change in management in that case  
3   because it did not initially grant interim rate relief.  
4   That case number I think is something like GR-83-207. And  
5   if we haven't mentioned that or gone into any detail, we  
6   can do that in the Brief that will come out of this  
7   evidentiary hearing.

8                   It's an interesting case. Sometimes  
9   commissions wonder what they can effectuate as far as  
10  management of the utilities are concerned. That case is  
11  interesting from that perspective.

12                  CHAIRMAN CLAYTON: Mr. Thompson, last  
13  question. I just want to be clear as we go into receiving  
14  the evidence. There is a difference of position in terms  
15  of factual position in this case, a difference of some  
16  \$9 million --

17                  MR. THOMPSON: Yes, sir.

18                  CHAIRMAN CLAYTON: -- on just the limited  
19  items included for this interim hearing?

20                  MR. THOMPSON: Yes, sir.

21                  CHAIRMAN CLAYTON: Thank you very much.

22                  JUDGE WOODRUFF: Commissioner Gunn, do you  
23  have any questions? I'm sorry.

24                  MR. DOTTHEIM: And I'm sorry. I don't mean  
25  to belabor this, but the Gas Service case was also unique

1 from the perspective of, if I recall correctly, the Staff  
2 was not actually able to do an audit in that case because  
3 there was a Kansas City Power & Light case that was  
4 pending, there was a pending permanent Gas Service Company  
5 case, and what was also pending was the Southwestern Bell  
6 divestiture from AT&T case.

7 So it was actually a case where the  
8 Commission was acting without, if I recall correctly,  
9 without a scaled-down audit on the Staff for purposes of  
10 even the emergency case, near emergency case.

11 JUDGE WOODRUFF: All right. Thank you.  
12 Commissioner Gunn?

13 COMMISSIONER GUNN: Thanks. I just have a  
14 couple questions. Just to clarify, you're saying that  
15 clearly we would -- under an emergency situation we would  
16 have the authority to grant interim rates; that's  
17 established in law?

18 MR. THOMPSON: Yes, sir.

19 COMMISSIONER GUNN: And that when you get  
20 to near emergency or something less than that, it becomes  
21 a little bit cloudier?

22 MR. THOMPSON: Yes, sir.

23 COMMISSIONER GUNN: But there is some  
24 support for us granting these interim rate reliefs within  
25 the law?

1 MR. THOMPSON: Yes, sir.

2 COMMISSIONER GUNN: So do you believe that  
3 then it comes down to a legal question or a policy  
4 question as to whether or not we should -- we should grant  
5 this particular request?

6 MR. THOMPSON: I guess it's both. I guess  
7 it's both. And I'm not trying to waffle. The policy  
8 issue it seems to me is, does the Commission view the  
9 power to grant interim relief, does it view that as  
10 something broad or something narrow?

11 Is it something the Commission want to do a  
12 lot or something the Commission want to do occasionally?  
13 Is that a tool you want to have available for when an  
14 emergency strikes and the people of Missouri need  
15 immediate relief of some kind that can only happen if you  
16 give the utility some money quickly?

17 Or is it something that you want to be able  
18 to do whenever a utility comes in and makes a compelling  
19 case that they're not earning the way they would like to,  
20 that maybe things would be better for them down at the  
21 bank if they only had a little bit more support from this  
22 Commission in the form of rate relief?

23 So that to me at least is the policy  
24 question.

25 COMMISSIONER GUNN: And I agree with you,

1 and that's -- and that's one of the things that I'm --  
2 I'll ask you, and I'll probably ask maybe some of the  
3 other parties to touch upon. I know where Ameren's going  
4 to fall down on this.

5 MR. THOMPSON: I also think it's a legal  
6 question.

7 COMMISSIONER GUNN: And I understand that,  
8 because there is an open question as to whether a court  
9 would uphold our granting of a --

10 MR. THOMPSON: Exactly.

11 COMMISSIONER GUNN: -- interim rate relief  
12 on something less than the standard. But that ties in to  
13 a little bit of the policy question, I think, because if  
14 we're going to go forward, it's going to get reviewed.

15 MR. THOMPSON: Right.

16 COMMISSIONER GUNN: So then from a policy  
17 perspective, and you brought up the case that said that --  
18 brought up the analogy that this was similar to a TRO.

19 MR. THOMPSON: Absolutely. I believe it  
20 is.

21 COMMISSIONER GUNN: And I think that's an  
22 interesting analogy, and I'll turn that a little bit.  
23 When you have a small -- a small portion of a much larger  
24 rate increase -- and this is going to be a hypothetical.  
25 I'm not saying that these facts are true -- that has been

1 deemed prudent or at least there appear to be no issues by  
2 the Staff or auditors as to whether the investment was  
3 appropriate or not, that is subject to refund, so you have  
4 consumer protections, or at least some consumer  
5 protection, that may incentivize investment, future  
6 investment, and that may improve the financial health of  
7 the company at least in the short term, what's the harm in  
8 doing it?

9 I'm not saying we -- I'm not asking you to  
10 say whether it's -- whether we should, but what's the harm  
11 in doing that when you have all these protections in  
12 place? The Staff's reviewed a relatively small part.  
13 Everybody kind of agrees that this stuff is going to be  
14 allowable in a much larger context. So what is the  
15 fundamental harm in allowing them to start recovering that  
16 six months or five months earlier than they normally  
17 would?

18 MR. THOMPSON: From a public policy  
19 perspective, there may be no harm. It may be a good  
20 thing. It may allow investment and building that  
21 otherwise wouldn't occur.

22 On the other hand, if it's granted to  
23 permit construction, it may be seen as a direct violation  
24 of the anti-CWIP statute.

25 COMMISSIONER GUNN: We're talking about



1 plant that's already -- let's take that out. We're not  
2 saying future construction. We're saying plant that's in  
3 service. Are there other --

4 MR. THOMPSON: Let's say they build a new  
5 plant, and the day the plant is finished they time a rate  
6 case so that they file it as soon as the plant has come  
7 online, and they -- in that rate case they ask for an  
8 interim relief, for interim rate relief approximately  
9 equivalent to what they've spent on the plant.

10 That is essentially the situation we face  
11 here. Ameren doesn't have any particular large plant. I  
12 can think a few years ago about the St. Joseph water  
13 treatment plant, for example, that might have qualified  
14 for that kind of treatment if that was the sort of thing  
15 being done at the time.

16 I think the evils, if there are evils, are  
17 all the ones that I mentioned in my opening statement. I  
18 think it would render a request for interim relief a  
19 commonplace. If the Commission decides that the policy it  
20 wants to adopt is to broaden and loosen the criteria by  
21 which it grants interim relief, then I assume you would  
22 grant in a situation like the hypothetical and probably in  
23 a situation like this.

24 But if you see it as a narrow power to be  
25 used when there's an extraordinary event or an

1 extraordinary crisis facing the people of the state, then  
2 I think you would deny it.

3 COMMISSIONER GUNN: That's all I have.  
4 Thank you.

5 MR. THOMPSON: Thank you, sir.

6 JUDGE WOODRUFF: Thank you, Mr. Thompson.

7 MR. THOMPSON: Thank you.

8 JUDGE WOODRUFF: Public Counsel.

9 MR. MILLS: Judge, by your leave, I've got  
10 a prepared opening, and I'll give it if you want, but you  
11 all know what I think about the interim rate increase  
12 request. I'm not sure there's a whole lot more I can say.

13 Let me just -- since we've spent a lot of  
14 time already and we've got a lot of witnesses to go, let  
15 me just jump right in to the questions that Commissioner  
16 Gunn was asking, and they really have to do, I think, with  
17 sort of the confluence of policy and law.

18 And I disagree with Mr. Thompson. I do not  
19 think that you have discretion to authorize an interim  
20 rate increase without an emergency. I think the only  
21 arguable case that says that you might is the Laclede  
22 case, and really what was going on in the Laclede case is  
23 that there was an emergency.

24 And what the court found was that you have  
25 certain explicit statutory authority, but you do not have

1 explicit statutory authority to address an interim rate  
2 increase. And so you have discretion to do that in an  
3 emergency, but only in an emergency. They went so far as  
4 to speculate that there may be some other cases in which  
5 that implied authority would be available. But I think if  
6 you start going down that path and trying to come up with  
7 scenarios in which it would be appropriate to authorize an  
8 interim rate increase based on the language in Laclede,  
9 you come to an emergency or something very, very close to  
10 an emergency.

11 And Commissioner Clayton asked under what  
12 circumstances would it be appropriate? Well, some of them  
13 are fairly obvious. If a utility is about to go bankrupt,  
14 if safe and adequate service won't be able to be rendered,  
15 I mean, those are the two kinds of situations that I would  
16 say are either an emergency situation or a near emergency  
17 situation which would allow you to do something that the  
18 statutes don't explicitly allow you to do.

19 Another would be perhaps, you know, if the  
20 utility's costs are going to increase so dramatically so  
21 quickly, for example, as a result of a ratings downgrade  
22 to below investment grade, that perhaps you'd want to  
23 increase rates on a non-all-relevant-factors basis.

24 But any of those things look almost like an  
25 emergency or near emergency. So I think once you start

1 looking at situations in which you should act outside of  
2 your statutory authority, you're going to find that there  
3 are very, very few.

4                   And I think because you have statutory  
5 authority, and because your authority is limited  
6 explicitly by statute, you can't stretch your implied  
7 authority to do something in situations where you have  
8 explicit statutory authority to deal with.

9                   So, for example, you have explicit  
10 statutory authority to deal with utilities that are  
11 under-earning, whether or not you consider that to be a  
12 significant amount or an insignificant amount. You have  
13 statutory authority to raise rates after consideration of  
14 all relevant factors. That's explicitly granted to you in  
15 the statutes.

16                   You can't go out and grab some implicit  
17 authority to deal with that situation on a different basis  
18 than the explicit authority that's granted to you in  
19 statute. So the implicit authority must be to deal with  
20 situations other than routine under-earnings for which you  
21 have explicit statutory authority to deal with.

22                   So that's sort of a long way around of  
23 saying I don't really think you can reach the sort of  
24 policy questions that Mr. Thompson was saying because I  
25 don't think you can simply say we have this broad

1 discretion and we can exercise it in any way we want to.  
2 I think your discretion is much, much more limited than  
3 that. I don't think there's any way to read the Laclede  
4 case, the UCCM case and the Fischer case to broaden it.

5 JUDGE WOODRUFF: Thank you, Mr. Mills.

6 MR. MILLS: I'll answer questions from  
7 here.

8 CHAIRMAN CLAYTON: Thank you, Judge.  
9 Mr. Mills, just very quickly I want to ask you, the  
10 request at issue involves, I think, just a single issue.  
11 It's capital investment in plant. You would agree with  
12 that?

13 MR. MILLS: Yes.

14 CHAIRMAN CLAYTON: And you would agree that  
15 there's maybe a 9 or \$10 million difference in the  
16 positions of the parties on that investment?

17 MR. MILLS: I believe Staff is really the  
18 only party that has even looked at the question of whether  
19 or not the amount was calculated correctly. That is the  
20 quantification that Staff did.

21 CHAIRMAN CLAYTON: Let me ask the next  
22 question. Are there any instances in which Public Counsel  
23 wants to encourage investment, capital investment in  
24 infrastructure or plant?

25 MR. MILLS: Certainly. I think most

1 utilities are constantly investing in their systems, as  
2 they should be. That's part of the regulatory compact.  
3 The deal is they invest in their systems and then they get  
4 to recover those investments.

5 CHAIRMAN CLAYTON: So there is a public  
6 interest or consumer benefit that comes from investment  
7 in -- from infrastructure?

8 MR. MILLS: Yes.

9 CHAIRMAN CLAYTON: And I guess we could put  
10 the caveat that it would be a prudent investment in  
11 infrastructure. Would you agree with that?

12 MR. MILLS: Yes.

13 CHAIRMAN CLAYTON: Now, in this case we  
14 have a request for an interim rate increase associated  
15 with investment in infrastructure. From the consumer  
16 standpoint, is there ever a circumstance -- if we removed  
17 the discussion about emergency, is it ever appropriate for  
18 the Commission to incent capital investment in  
19 infrastructure using an interim rate increase request?

20 MR. MILLS: Well, let me -- before I even  
21 address that question, let me reiterate my position, that  
22 I think the current regulatory compact does provide an  
23 incentive for a utility to invest in infrastructure. I  
24 think you've got 100 years of experience to bear that out.

25 So what you're talking about is some sort

1 of change that would provide additional incentive to do  
2 some sorts of infrastructure investment. And I think --  
3 personally, I believe that we have struck the balance  
4 correctly. I think if you make the incentives too great,  
5 you run the risk that utilities will overinvest in their  
6 system because they can recover profit on those  
7 investments.

8 I think the current system offers just  
9 exactly the right amount of incentive, and if you were to  
10 try to encourage those, increase those incentives, you may  
11 encourage unnecessary plant construction.

12 CHAIRMAN CLAYTON: Let me, I think, repeat  
13 my question, and then try to give me a -- try to give me a  
14 yes or no.

15 MR. MILLS: Okay.

16 CHAIRMAN CLAYTON: Would an interim rate  
17 request ever be an appropriate vehicle to incent prudent  
18 investment in infrastructure?

19 MR. MILLS: I can't say that it never would  
20 be, but I can't think of a circumstance in which it would  
21 be. If it ever would be, it would be very, very rare.

22 CHAIRMAN CLAYTON: Okay. Thank you.

23 JUDGE WOODRUFF: Commissioner Jarrett.

24 COMMISSIONER JARRETT: Good morning,

25 Mr. Mills.

1 MR. MILLS: Good morning.

2 COMMISSIONER JARRETT: I had a quick  
3 question. I didn't ask this question of Mr. Byrne or  
4 Mr. Thompson. Maybe they can chime in if they want to.  
5 All of you have mentioned the Laclede case, and I believe  
6 the others mentioned the UCCM case, and Mr. Dottheim  
7 mentioned some other cases. I wanted to explore the  
8 procedural posture of those cases in comparison to this  
9 case.

10 For example, in the Laclede case, did  
11 Laclede file a tariff, an interim rate tariff in that  
12 case? Do you know?

13 MR. MILLS: You're going back to 1976, and  
14 I do not know. I would -- honestly, I can't answer that.  
15 I'm sorry.

16 COMMISSIONER JARRETT: So you don't know,  
17 then, if the Commission suspended that tariff and then  
18 held a hearing under 393.150?

19 MR. MILLS: It's my recollection that  
20 they -- that they did hold a hearing.

21 COMMISSIONER JARRETT: But did they suspend  
22 the tariff?

23 MR. MILLS: That I don't know.

24 COMMISSIONER JARRETT: And wasn't the  
25 analysis that the court used in the Laclede case the



1 393.140 and talked about in 393.140 we had this implied  
2 power, but in this case, a tariff was filed and we  
3 suspended it under 150. So tell me how the Laclede case  
4 applies if we're using a 150 standard versus a 140  
5 standard.

6 MR. MILLS: I don't really think that  
7 there's a difference. I think in any event you need to  
8 examine all relevant factors. In fact, the court in  
9 Laclede addressed the question of whether or not you need  
10 to address all relevant factors in an interim case, and  
11 they said you can't necessarily. Otherwise, it would be  
12 just a regular case.

13 COMMISSIONER JARRETT: Well, under the 140  
14 scenario because if you don't suspend the tariff,  
15 obviously we have 30 days, and if we don't suspend the  
16 tariff, it's going to be decided. But if we suspend the  
17 tariff, we've got the full 11 months to --

18 MR. MILLS: Right.

19 COMMISSIONER JARRETT: -- to consider the  
20 interim rate increase. So why couldn't in that context we  
21 consider all relevant factors to that tariff?

22 MR. MILLS: I guess I'm not seeing the  
23 logic of saying you can have some rate increases for which  
24 all relevant factors are not the same as all relevant  
25 factors for other rate increases.

1                   COMMISSIONER JARRETT: It depends on what  
2 the tariff is and what they're asking for, right? I mean,  
3 each case is different?

4                   MR. MILLS: Right.

5                   COMMISSIONER JARRETT: The factors we  
6 consider in each rate case is different. This is a rate  
7 case where they filed a tariff, we've suspended it, and  
8 now we're having a hearing.

9                   MR. MILLS: But we're not considering all  
10 relevant factors about a rate increase.

11                  COMMISSIONER JARRETT: Didn't we ask you to  
12 give us your position on what all the relevant factors  
13 were for this -- for this tariff?

14                  MR. MILLS: I never saw an Order to that  
15 effect. Certainly we did not present all relevant factors  
16 that should be presented before granting a rate increase.

17                  COMMISSIONER JARRETT: Have you been told  
18 that you can't present all relevant factors that you  
19 consider relevant to this tariff?

20                  MR. MILLS: We certainly haven't been given  
21 adequate time to investigate all relevant factors. We  
22 haven't been told that we can't do it. We've not been  
23 allowed to do it given the time constraints.

24                  COMMISSIONER JARRETT: Okay. Mr. Dottheim  
25 seems to want to say something here.

1                   MR. DOTTHEIM: Commissioner Jarrett, let me  
2 see if I can recall correctly. The Staff raised in one of  
3 its filings in this case, AmerenUE proceeded a little bit  
4 differently. I don't think it ultimately is a problem.  
5 It was raised as an issue. The Staff mentioned it.

6                   Traditionally when interim relief has been  
7 filed for, there have been two cases. There's been the  
8 permanent case filed for first by the utility and a  
9 separate interim case, and I believe that both cases have  
10 involved tariffs. There were instances where the interim  
11 case may have been filed on the very same day that the  
12 permanent case was or instances where the interim case was  
13 filed subsequent to the permanent case.

14                  For example, if my memory serves me  
15 correctly, I gave the example of the Kansas City Power &  
16 Light interim rate case in 1979-1980 that was Case No.  
17 ER-80-204. The permanent rate case that that interim rate  
18 case was in the context of was ER-80-48. So by the  
19 numbering itself, it shows that the interim case was filed  
20 after the permanent case.

21                  And I am not absolutely certain. I would  
22 have to check. I just frankly joined the Commission when  
23 those cases were occurring, but I think there were tariffs  
24 because the Staff -- once an interim rate was granted, the  
25 Staff always tried to be certain that the interim tariffs

1 had on them interim subject to refund so that there was  
2 never -- because of an experience where there were tariffs  
3 which didn't have on it interim subject to refund, the  
4 Commission's Report and Order said interim subject to  
5 refund, and there was some concern as to whether there  
6 might be an argument that the rates really weren't interim  
7 subject to refund because the tariffs didn't say interim  
8 subject to refund.

9                   The Gas Service case which I mentioned, I  
10 think that's another instance where the interim case was  
11 filed after the permanent. But I -- and as the Staff  
12 indicated in its filing in the present proceeding, the  
13 fact that there isn't a separate interim case for the  
14 AmerenUE interim request, I don't believe that causes any  
15 problems in particular because of a 1982 Western District  
16 Court of Appeals decision involving Missouri Public  
17 Service Company which found interim rate cases to be  
18 ancillary to permanent rate cases.

19                   And I'm not sure whether that's the case  
20 which some counsel may have referred to as the Fischer  
21 case because that Missouri Public Service Company case, at  
22 the time Jim Fischer was the Public Counsel, and it  
23 involved an interim request, but ironically the -- if I  
24 recall correctly, the Western District Court of Appeals  
25 decision was in essence dealing with an Accounting

1 Authority Order because the Commission denied the interim  
2 rate request, if I recall correctly.

3 COMMISSIONER JARRETT: I guess what I'm  
4 trying to determine is what standard I need to use to  
5 decide this case. I guess that's sort of the 800-pound  
6 gorilla in the room. And both Staff and Public Counsel  
7 have argued sort of we should use the same sort of  
8 criteria that were talked about in the Laclede and the  
9 UCCM cases.

10 And I'm just trying to determine, is this  
11 case procedurally the same? I mean, here tariffs were  
12 filed. We suspended the tariffs under 150, and 150 sets  
13 out in plain language what the standard is, just and  
14 reasonable rates considering all relevant factors. And,  
15 you know, if we're in 150, it seems to me if the other  
16 cases were in 140, I'm just trying to determine, were the  
17 tariffs suspended in those cases and we still apply an  
18 emergency standard?

19 MR. DOTTHEIM: Commissioner, we can -- for  
20 purposes of a Brief, we can go back and put that in the  
21 Brief for a certainty if it exists in the record, but I  
22 think procedurally we are.

23 COMMISSIONER JARRETT: This is a new  
24 animal.

25 MR. DOTTHEIM: Well, I think the standard

1 or the discretion that AmerenUE is asserting, the  
2 proposal, AmerenUE's proposal is unique. The Staff  
3 attempted to give a -- in its initial filing, I think it  
4 was on August 27th, to give a historical perspective of  
5 other criteria or standards that other utilities,  
6 including AmerenUE or UE has sought to have the Commission  
7 adopt over the years. We sought to give a historical  
8 perspective of that.

9                   So I don't recall AmerenUE's proposal in  
10 this proceeding ever having been put before the Missouri  
11 Public Service Commission before.

12                   MR. MILLS: Commissioner, given your  
13 question, I can assure you that I will, and I expect other  
14 parties will as well, compare the procedural posture of  
15 this case to the Laclede case.

16                   COMMISSIONER JARRETT: I mean, I can  
17 understand certainly that when you're talking about a  
18 situation in the 140 where we don't suspend the tariff, we  
19 have 30 days to make a decision on that, that obviously  
20 you're not going to be able to look at all relevant  
21 factors. You may look at some sort of heightened  
22 standard, such as emergency/near emergency, good cause,  
23 whatever it is, because you're operating under a 30-day  
24 time limit.

25                   But once we suspend the tariff under 150,

1 we can take 11 months. It's just another rate case. It  
2 just happens to be maybe a different kind of tariff than  
3 we normally look at under -- under 150, but it is a 150  
4 situation, so --

5 MR. LOWERY: Commissioner -- I apologize,  
6 Mr. Dottheim. Commissioner Jarrett, could I address at  
7 least in part your question?

8 COMMISSIONER JARRETT: Certainly, yeah.

9 MR. LOWERY: I have the Laclede decision  
10 from the Commission in front of me. I also have the Court  
11 of Appeals decision in front of me. What happened in that  
12 case is you suspended the tariffs they filed to initiate  
13 the rate case, and then they asked that you lift the  
14 suspension in part by about half of the amount that was  
15 requested in the initial filing. And then you held a  
16 hearing, and you determined not to lift that suspension,  
17 denied the request to lift the suspension and to  
18 implement, I think it was about \$5.4 million.

19 Another thing I want to point out about the  
20 Laclede case, I think Mr. Mills said there was an  
21 emergency there. I'll take issue with that. There was no  
22 emergency in the Laclede case. In fact, Laclede argued  
23 that because we were earning approximately 20 percent  
24 below our authorized return -- or 20 basis points below  
25 our authorized return, that our rates were unjust and

1 unreasonable and you must without any discretion, you had  
2 no choice but to implement those interim rates.

3 MR. THOMPSON: Commissioner, if I may?

4 COMMISSIONER JARRETT: Sure.

5 MR. THOMPSON: In the UCCM case, the  
6 Supreme Court addressed, I think, exactly your question.  
7 It pointed out that the Commission can allow a tariff to  
8 go into effect, but that it can only do so after  
9 considering all relevant factors. So it would appear from  
10 the UCCM case that it doesn't make any difference.

11 COMMISSIONER JARRETT: You mean if a  
12 tariff's filed, we have to suspend it?

13 MR. THOMPSON: No, you don't have to  
14 suspend it.

15 COMMISSIONER JARRETT: It can just go into  
16 effect by operation of law 30 days after it's filed,  
17 correct?

18 MR. THOMPSON: That is correct. But what  
19 the Supreme Court pointed out was that you can allow that  
20 to happen only after consideration of all relevant  
21 factors. And let me add that they're talking about a  
22 permanent rate where, when paid, the money is the property  
23 of the company. They're not talking about an interim rate  
24 subject to refund.

25 COMMISSIONER JARRETT: Good. Well, I would



1 appreciate handling that in the Briefs perhaps. I'm sorry  
2 to belabor the point.

3 MR. MILLS: And to Mr. Lowery's point, if I  
4 said that there was an emergency situation in Laclede, I  
5 misspoke. He's quite correct, there was not, and so the  
6 court found.

7 JUDGE WOODRUFF: Further questions from the  
8 Commissioners?

9 COMMISSIONER GUNN: I think -- I just want  
10 to -- I think this goes to the heart of, I think, what  
11 Commissioner Davis and Commissioner Jarrett have been  
12 talking about. Do the parties view this proceeding as an  
13 ancillary proceeding to the -- a sub-proceeding to the  
14 major rate -- to the permanent rate case or is it a  
15 separate and distinct case under the file and suspend  
16 under 150? I think that has been a constant theme  
17 throughout.

18 MR. MILLS: It is necessarily ancillary, is  
19 what the Western District Court held. It has to be  
20 ancillary. That's the only way it can happen.

21 MR. LOWERY: On that point, I think we all  
22 agree.

23 MR. THOMPSON: Staff agrees.

24 COMMISSIONER GUNN: So essentially the  
25 tariff is a sub tariff of the broader -- the larger tariff

1     that has been filed that has been -- that has also been  
2     suspended?

3                     MR. THOMPSON: That is correct.

4                     MR. MILLS: Yes.

5                     MR. BYRNE: Yes.

6                     COMMISSIONER GUNN: It will become wholly  
7     subsumed by the larger tariff taking into account all  
8     relevant --

9                     MR. BYRNE: Yes.

10                    COMMISSIONER GUNN: -- all the other  
11     relevant factors?

12                    MR. COFFMAN: The courts have been very  
13     clear on that.

14                    MR. BYRNE: Ultimately all relevant factors  
15     will be taken into account in the final.

16                    COMMISSIONER GUNN: Right. But this is --  
17     but there are no -- okay. I think you've answered my  
18     question. This is a small part of a large case, even  
19     though we went through the file and suspend procedure as  
20     if it was a standalone tariff?

21                    MR. MILLS: But even so, yes, I think it's  
22     still necessarily ancillary to the main proceeding.

23                    COMMISSIONER GUNN: It is impossible for it  
24     to be a standalone tariff?

25                    MR. MILLS: I agree.

1 COMMISSIONER GUNN: Parties agree?

2 MR. BYRNE: Yes.

3 COMMISSIONER GUNN: Thank you. I don't  
4 have any other questions. Thanks.

5 JUDGE WOODRUFF: Thank you, Mr. Mills.

6 COMMISSIONER DAVIS: Whoa. Easy.

7 JUDGE WOODRUFF: I'm sorry. Getting ahead  
8 of myself.

9 COMMISSIONER DAVIS: Mr. Mills, does this  
10 Commission have any power to suspend a rate schedule  
11 independent of Section 393.150?

12 MR. MILLS: I haven't thought about that  
13 question. I don't know that you do. Do you mean some  
14 sort of implied authority or some other section of the  
15 statute?

16 COMMISSIONER DAVIS: Either.

17 MR. MILLS: I don't think you would have  
18 any implied authority to act when you have explicit  
19 authority to do something.

20 COMMISSIONER DAVIS: Okay. Once we  
21 suspended this tariff pursuant to 393.150, aren't we  
22 required to hold a full hearing?

23 MR. MILLS: There is that argument. I  
24 certainly made a counter-argument in my Motion for Summary  
25 Determination or Directed Verdict. I don't think you have

1 to have a hearing in every case when there is no need for  
2 one. I think the Devenberfer case points that out in the  
3 cases on summary determination and directed verdicts as  
4 well.

5 COMMISSIONER DAVIS: So you sort of agree  
6 with Mr. Byrne, then, that this is purely at our  
7 discretion and we can just -- if three of us wanted to, we  
8 could bounce them out of here today?

9 MR. MILLS: Are you asking me do I believe  
10 the Commission has discretion to reject the tariff without  
11 conducting a full hearing?

12 COMMISSIONER DAVIS: Yes.

13 MR. MILLS: Yes, I believe you do.

14 COMMISSIONER DAVIS: Okay. Obviously we  
15 have Staff's adjustments that have been recommended by  
16 Mr. Rackers. We have Mr. Gorman's proposed adjustment  
17 related to the change in capital structure. Are there any  
18 other relevant factors in this case that Staff, Public  
19 Counsel, any of the other parties haven't raised in their  
20 prefiled testimony?

21 MR. MILLS: I'm sure there are. There's  
22 questions about payroll, questions about off-system sales,  
23 questions about cost of capital. There's any host of  
24 relevant factors that need to be examined before you look  
25 at a rate increase other than an emergency situation.

1                   COMMISSIONER DAVIS: And are you waiting on  
2 the Staff audit to look at those or --

3                   MR. MILLS: We have been consumed by the  
4 interim phase of this case. We have hardly even begun to  
5 look at the general rate case. I think some of the other  
6 parties are in the same situation. This has been a  
7 incredibly time-consuming situation.

8                   COMMISSIONER DAVIS: Would you agree with  
9 me that this whole interim tariff debate is a legal  
10 fiction and there's no grounding in the statutes?

11                  MR. MILLS: There is no explicit authority  
12 in the statutes for you to grant interim rate increases,  
13 that is correct.

14                  COMMISSIONER DAVIS: My impression, and you  
15 tell me where I'm wrong, Mr. Mills, but essentially there  
16 is only one type of tariff under the statutes, and we can  
17 either handle that tariff without a full hearing, sort of  
18 a maybe -- I'm not sure if a Laclede model is the right  
19 word, or with a full hearing. Is that a fair  
20 characterization?

21                  MR. MILLS: I'm not sure I'm following you.  
22 Are you saying you have two choices, you can file and not  
23 suspend or file and suspend?

24                  COMMISSIONER DAVIS: I'm saying that --  
25 yeah. If -- let's just go with that. I'll say yes.

1                   MR. MILLS: In fact, I may be at odds with  
2 some other counsel here, probably including the Staff, but  
3 I don't believe that you even have the authority to not  
4 suspend a general rate increase tariff under most  
5 circumstances for a utility.

6                   I think the UCCM case says that you have to  
7 consider all relevant factors, and you have -- if you want  
8 to allow a rate increase without suspension, I think you  
9 have to somehow make the case that you have considered all  
10 relevant factors in failing to suspend. I think to fail  
11 to suspend a general rate increase for a major utility  
12 would be a violation of the law.

13                  COMMISSIONER DAVIS: Okay. Thank you,  
14 Mr. Mills.

15                  MR. MILLS: Thank you.

16                  JUDGE WOODRUFF: Anything else from the  
17 Commission? Thank you, Mr. Mills. For MIEC?

18                  MS. VUYLSTEKE: May it please the  
19 Commission?

20                  The Commission issued an Order in this case  
21 on October 7th, and in that Order the Commission said  
22 that, by definition, an interim rate increase is  
23 considered without all relevant factors, without a full  
24 audit and review. I think the fundamental point in this  
25 case that has to guide the Commission is a legal question,

1 and there are also numerous important policy questions  
2 that, as Commissioner Gunn points out, flow into that.

3 But the legal question is, can the  
4 Commission decide in this case that Ameren's rate filing  
5 would, if approved, would result in just and reasonable  
6 rates? Ameren's filing in this case is factually  
7 unsupported by the evidence. That is reason alone to  
8 reject it.

9 There is evidence in this case from the  
10 Staff and from Mr. Gorman that there are numerous problems  
11 with Ameren's proposal, and even if any of it, there's a  
12 small portion, I believe about \$5 million, that can be  
13 viewed as uncontested, but even that small amount Ameren  
14 distorts its relationship to the overall rate increase,  
15 which is \$400 million. That's a very small part.

16 What Ameren's proposing here is actually a  
17 very significant part of the non-fuel costs of its overall  
18 rate increase. So this is a very significant  
19 determination for the Commission to make. It is factually  
20 unsupported.

21 And then if you move on to the requirement  
22 of consideration of all relevant factors, the Commission  
23 is very focused on that. All relevant factors is  
24 declining costs and increasing costs. If you isolate out  
25 one item of increasing cost, like a plant addition, and

1   you don't consider the myriad of other reasons that  
2   Ameren's other costs could be going down, then you're not  
3   setting a just and reasonable rate. And the evidence here  
4   shows that there are numerous factors that the parties  
5   have not had the opportunity to consider.

6                   Now, you have asked on 11 -- we could  
7   decide a rate case on less than 11 months, and it's true  
8   that you could, but at some point you run into a major  
9   constitutional issue of due process in the rights of  
10   consumers to be heard. You have set a direct testimony  
11   filing date of December 18th, and the parties are engaged  
12   in an enormous effort to evaluate AmerenUE's rate increase  
13   filing.

14                   The Commission certainly, as Commissioner  
15   Jarrett has pointed out, has an obligation to consider the  
16   unique facts and circumstances, and this case does stand  
17   on its facts. But I would also remind the Commission  
18   that, as an administrative body, as you well know, you  
19   have certain principles that due process requires you to  
20   abide by a consistency in the application of those  
21   principles.

22                   It's often said the Commission is not bound  
23   by precedent. It may not be bound by precedent, but due  
24   process requires that it not act arbitrarily and  
25   capriciously to change a policy that's been in place for



1 decades, to suddenly change that policy in such a way that  
2 the parties don't have a full and fair opportunity to  
3 present their case.

4                   On a policy basis, I would like to remind  
5 the Commission, as if you need to be reminded, but  
6 utilities can include the costs of rate cases in their  
7 rates. Ratepayers pay for that cost. In every forum, we  
8 have proclaimed that we are glad to pay that cost. The  
9 price of this Commission's regulation of AmerenUE and  
10 other utilities is borne by the ratepayers through an  
11 assessment.

12                   And we are frequently told by the utilities  
13 that fuel adjustments and environmental cost adjustments  
14 and all kinds of adjustments and trackers are far  
15 preferable to the costly and expensive process of setting  
16 rates in a rate case, and we always say it's worth it.  
17 It's well worth it, because if you cannot get the rates  
18 right by looking at all factors, the cost to the economy  
19 of Missouri would be enormous.

20                   And we continue to maintain that, but the  
21 Commission does have to set some boundaries on the process  
22 or the costs will be limited and the process will become  
23 out of control. We will end up with an interim rate  
24 increase proposal if you allow it in this case as part of  
25 every single rate case filed by every major utility in the

1 state. There will simply be no reason, no standard for  
2 you to judge whether or not we are going to end up with  
3 these -- you know, Ameren's often talked about mini rate  
4 cases. They don't want to consider increasing costs and  
5 declining costs or overearnings in the context of a fuel  
6 adjustment or an environmental adjustment.

7 But here a mini rate case is exactly what  
8 they've proposed, and in this case the parties -- there's  
9 been no demonstration under the facts or the law that  
10 Ameren meets any standard that's been set out by this  
11 court or any commission for interim rate relief.

12 Now, I want to just briefly get into a  
13 couple of aspects of this that have been pointed out in  
14 the pleadings but I just want to briefly emphasize.  
15 Ameren says now that it's not earning its authorized  
16 return, but during the very period for which it claims in  
17 this case that it's under-performing, it has awarded its  
18 executives incentive compensation. I think that's very  
19 important for you to consider.

20 It also is important for you to consider  
21 that Ameren over the course of several decades and until  
22 just a couple of years ago exceeded its authorized return,  
23 and regulatory lag that it now complains of benefited  
24 Ameren shareholders to the tune of hundreds of millions of  
25 dollars.

1                   For the Commission to now change the rules,  
2     to give the utilities an incentive to make investments  
3     they have a legal duty to make we submit would be unjust  
4     and unreasonable

5                   And I think it's very important to address  
6     this argument that AmerenUE or other utilities would lack  
7     incentives unless they're given a regulatory advantage of  
8     interim ratemaking. The utilities have an incentive to  
9     make proper investments. They claim a strong disincentive  
10    is presented by regulatory lag, and that to do more than  
11    the bare minimum, they need some kind of what they call an  
12    enhancement.

13                  And we are kind of shadowed with a cloud in  
14    this case that Ameren if it is not permitted to have this  
15    enhancement might, and I use the words from testimony,  
16    might defer or simply not make these investments.

17                  We have much more confidence in Ameren's  
18    ability to meet the requirements of the future. We think  
19    that the evidence shows that the fundamental regulatory  
20    framework has put the right incentives in place, and I  
21    would point you to Ameren's testimony on the interim rate  
22    increase to demonstrate this.

23                  Ameren testifies that regulatory lag has  
24    incentivized it to be more efficient, but that it will  
25    continue to make reliability and environmental

1 expenditures and will not tighten its belt at the expense  
2 of providing safe, reliable service to customers.

3                   If you step back and take a look, Ameren's  
4 own evidence in this case shows that the right incentives  
5 are in place. Ameren has a legal duty to comply with  
6 policy, with law, to make investments in the digital age  
7 and the Smart Grid and energy efficiency. These are  
8 critical investments that utilities -- Ameren has monopoly  
9 privilege to provide service. We are captive customers.  
10 And it is a privilege that carries with it the  
11 responsibility to provide safe and reliable service and to  
12 meet all legal requirements imposed by this Commission and  
13 by the Legislature.

14                   To say that it needs additional incentives  
15 piled on top of the return that's allowed its  
16 shareholders, a return that reflects its risk, a return  
17 that rewards it for good service and making investments I  
18 think is beyond just and reasonable ratemaking.

19                   I think that the Commission needs to  
20 consider this case against the backdrop of the worst  
21 economic crisis in recent Missouri history. Missouri is  
22 losing jobs and employers of every size, and families are  
23 struggling. Our state's economy is in crisis. We need it  
24 to grow. We need manufacturers to grow. We need to  
25 preserve one of Missouri's greatest economic assets, which

1 is reasonable rates to attract investment.

2                   Interim rates take us in the opposite  
3 direction. They're bad policy. They create rate  
4 volatility. They increase a cost that is beyond the  
5 customers' ability to effectively control relative to the  
6 utility's ability to control the cost. And they put  
7 consumers in a position of having to constantly battle  
8 rate increases. They put the Commission in a position  
9 where it cannot fully and effectively evaluate the  
10 utility's proposals, which are complex, and the utility  
11 controls the information and controls the timing.

12                   We ask for a fair process that considers  
13 all relevant factors.

14                   JUDGE WOODRUFF: Thank you. Questions from  
15 the Commission?

16                   CHAIRMAN CLAYTON: Just one question. I  
17 want to ask you just a single question I asked Mr. Mills  
18 earlier. From your client's perspective, would an interim  
19 rate increase ever be an appropriate vehicle to incent  
20 additional prudent investment, capital investment in  
21 infrastructure?

22                   MS. VUYLSTEKE: No. For the reasons in my  
23 opening statement, it would be unlawful and bad public  
24 policy to do so. Utilities are awarded in their rate of  
25 return for making those investments.

1                   CHAIRMAN CLAYTON: Thank you.

2                   JUDGE WOODRUFF: Anyone else? Thank you.  
3 For Laclede?

4                   MR. PENDERGAST: Thank you. May it please  
5 the Commission?

6                   Laclede supports the request AmerenUE has  
7 made in this case to put a small fraction of its requested  
8 rate increase into effect on an interim subject to refund  
9 basis. We support that request because we believe it's  
10 critical to provide more timely recognition of the costs  
11 incurred to provide utility service, whether those costs  
12 are going up or going down, so that ratepayers are charged  
13 more accurately for what it actually costs to serve them,  
14 and investors are compensated more accurately for what  
15 they have actually contributed to make those services a  
16 reality.

17                   We also believe that after decades of truly  
18 astounding advancements in the ability to gather, track  
19 and quickly analyze the kind of information that goes into  
20 setting rates, that we now have the means to do just that  
21 in a way that's transparent, fair and fully consistent  
22 with whatever legal obligations the Commission has to  
23 consider all relevant factors when setting rates.

24                   Now, those who have urged the Commission to  
25 reject any movement in this direction, that it should

1   instead determine that it's completely powerless to  
2   approve interim rates under the facts presented in this  
3   case, or that it should determine as a matter of policy  
4   that interim rate relief should only be granted when a  
5   utility is on the doorstep of financial insolvency raised  
6   a number of arguments. And I think if you look at those  
7   arguments rather carefully, they just don't hold water.

8                   Let's take them one at a time; namely, the  
9   idea that the Commission has to have a standard or  
10  criteria other than just good cause in order to grant  
11  interim rate relief. The Commission's statutes are  
12  littered with general requirements that don't have the  
13  kind of specificity that the parties would urge the  
14  Commission needs to approve before it can grant interim  
15  rate relief.

16                  You have the obligation to set rates that  
17  are just and reasonable. You have the opportunity to --  
18  or the obligation to ensure that service is safe and  
19  adequate. If you approve a merger, you have the  
20  obligation to make sure that it's not detrimental to the  
21  public interest. In none of these instances has the  
22  Legislature tried to tie your hands and say that you have  
23  to have a specific set of circumstances or criteria in  
24  order to go ahead and make those determinations.

25                  And I would submit to you that the same is

1 true in granting interim rate relief. In fact, I was kind  
2 of struck by Staff. They indicated to you that you might  
3 have to pay some legal expenses in the event you were to  
4 go ahead and issue in this case a rule of general  
5 applicability. And in essence, isn't that exactly what  
6 most of the parties are urging you to do in this case?  
7 Aren't they saying that you have to have a general rule,  
8 that you can only provide interim rate relief if there's  
9 an emergency or a near emergency situation?

10 Well, if that's the case, I'm not aware  
11 that you promulgated a rule to that effect. And if the  
12 parties are urging you to go ahead and adopt that as a  
13 standard, it would seem to me that that prospect for  
14 having to pay legal expenses would be very real.

15 I just don't think that the standard or  
16 having to set a pre-existing standard other than good  
17 cause is a legitimate issue.

18 There have been some concerns raised about  
19 fairness, and I think the argument has been made that for  
20 years Ameren, perhaps other utilities, unfortunately not  
21 Laclede, were in a position where rates were declining or  
22 costs were declining, and at that point they did not argue  
23 about regulatory lag.

24 Well, my recollection is that for at least  
25 six years AmerenUE had an alternative regulation plan in



1 effect where it each year granted credits and reductions  
2 to customers without the necessity for a hearing in order  
3 to pass along savings that it was achieving. From what I  
4 recall, the parties willingly participated in that  
5 process, were happy to have those credits and declining  
6 costs reflected.

7 And I think now that the situation has  
8 changed around, coming up with measures that can recognize  
9 inclining costs on a prompt basis is equally appropriate.

10 Finally, all relevant factors, we've heard  
11 a lot about that. Let me suggest to you that one of the  
12 all relevant factors that you can take into consideration  
13 is the fact that this interim rate request is being  
14 proposed on an interim basis subject to refund. That's a  
15 relevant factor. That's a factor that goes ahead and  
16 suggests that there are adequate consumer safeguards so  
17 that, in the event it's determined that this small  
18 fraction of a rate relief request is inappropriate,  
19 consumers will be protected.

20 And the use of interim rates is not nearly  
21 as narrow and pinched as the folks here would have you  
22 believe. As you know, we operate under a PGA mechanism  
23 where every year we file interim rates in order to reflect  
24 both increases and decreases in gas costs. They, like the  
25 request in this proceeding, are subject to refund with

1 interest in the event that the Commission determines that  
2 rates were excessive.

3 Those -- that structure has been carefully  
4 reviewed by the Western District Court of Appeals and has  
5 been found to be entirely lawful.

6 The Western District Court of Appeals has  
7 also determined that the use of Accounting Authority  
8 Orders is appropriate. That's a situation where you have  
9 a specific cost that you've incurred. You've come to the  
10 Commission. You asked for the opportunity to defer that  
11 cost. And the courts have determined, even though it's  
12 only one cost you're looking at, because it will not be  
13 recovered until all relevant factors are considered in a  
14 rate case, it's appropriate and lawful to use that kind of  
15 mechanism.

16 Of course the interim rates at issue here  
17 will be considered in a rate case where all relevant  
18 factors will be taken into consideration before they are  
19 made permanent. So I think the courts have provided you  
20 with plenty of ammunition to determine that you can do  
21 what Ameren has requested in this case.

22 Also, from the standpoint of all relevant  
23 factors, I don't know if people would have you believe  
24 that just two weeks from when everybody files their direct  
25 testimony, after months and months of utilities filing

1 surveillance reports which are designed to provide you  
2 with the information you need to determine whether a  
3 complaint should be filed because a utility is  
4 overearning, after having engaged in an extensive audit,  
5 that we're completely adrift in determining whether this  
6 10 percent of a rate request is inappropriate.

7                   Everybody had the opportunity to come in,  
8 file testimony, whatever they thought was relevant. They  
9 have done so. If people thought that even a 10 percent  
10 increase was inappropriate, they were certainly free based  
11 on the audit that's been performed, based on the  
12 surveillance reports they received, to provide you with  
13 evidence to that effect.

14                   And while some have questioned the  
15 calculations, I don't believe anybody has made that what  
16 case, and they've given -- they've been given an  
17 opportunity to do so. I certainly think that that's a  
18 relevant factor that you can take into consideration.

19                   Finally, I guess one of the things that we  
20 do all agree on is that regulatory lag can have an impact  
21 on incentives. On the one hand, you have AmerenUE saying  
22 that it provides a disincentive to investing in the sort  
23 of capital projects, most of which are wages, or at least  
24 for Laclede they are, and salaries of the workers that go  
25 out and install the plant necessary to provide utility

1 service, some of which is actually the physical components  
2 of the plant.

3 But you have Ameren saying that on the one  
4 hand. You have the other parties on the other hand saying  
5 that that sort of regulatory lag is necessary to make sure  
6 you don't overspend, that you don't invest in things you  
7 don't have to invest in.

8 I think we have to go ahead and be a little  
9 realistic about what's actually trying to be accomplished  
10 here. It's not something where Ameren is proposing to  
11 recover all of its capital investments the moment that  
12 they are made. Rather, it's just to shorten by a few  
13 months the amount of time during which they will have to  
14 go without receiving any compensation whatsoever for the  
15 money that's been spent.

16 And I think it's reasonable under the  
17 regulatory paradigm to say that when investors spend  
18 significant amounts of money that they know they're not  
19 going to be able to fully recover for 20 or 30 years, and  
20 they're spending real dollars today to do that, that at  
21 the very least shortening by a modest amount, a few  
22 months, the amount of time where they don't get any return  
23 on or return of that investment is not an unreasonable  
24 exercise of your regulatory powers.

25 One final thing. There was some concern

1 about every utility might seek this interim rate relief if  
2 Laclede is successful. We have filed a rate case, and we  
3 have not asked for interim rate relief. Thank you very  
4 much.

5 JUDGE WOODRUFF: Mr. Pendergast, we have  
6 questions, I believe.

7 MR. PENDERGAST: Oh, sure.

8 CHAIRMAN CLAYTON: Mr. Pendergast, just  
9 very quickly, I just -- I wanted to go over just some  
10 quick discussion of this standard. It's been suggested by  
11 some parties that to grant an interim rate increase on any  
12 other reason or basis other than an emergency would be  
13 unlawful. And I guess first, my first question is, you  
14 disagree with that position?

15 MR. PENDERGAST: I do disagree with that  
16 position.

17 CHAIRMAN CLAYTON: In this circumstance  
18 that -- the request that Ameren has made, what basis  
19 should the Commission decide that this is appropriate --  
20 that this is an appropriate request? Should we make a  
21 finding of good cause, and if so, what equals good cause  
22 in this instance?

23 MR. PENDERGAST: I think in this particular  
24 instance, what I would note for the good cause is that  
25 significant evidence was presented showing a chronic and

1 consistent under-earning, that the amount requested is all  
2 based on capital plant that nobody has questioned is  
3 legitimately incurred and real and is already plant in  
4 service, that the utility has offered to provide or to put  
5 those rates into effect on an interim subject to refund  
6 basis with interest so that, upon conclusion of the  
7 hearing, when all relevant factors other than the ones  
8 that have already been presented are determined, if it's  
9 determined to be excessive, that refunds to consumers will  
10 be issued or at least adjustments to rates will be issued,  
11 and that under all of those circumstances, it's a  
12 reasonable thing to do.

13                   And I guess the only other thing would be,  
14 everybody had an opportunity to come in and demonstrate  
15 the 10 percent even with all these consumer protections is  
16 not sufficient, and nobody's taken that opportunity to  
17 show that it's not a reasonable amount of relief at this  
18 time.

19                   CHAIRMAN CLAYTON: All right. You threw  
20 out a lot of stuff there. You mentioned that this is  
21 already capital plant in service, that they made the  
22 expenditure. You mention that there's a chronic  
23 under-recovery or --

24                   MR. PENDERGAST: Yes.

25                   CHAIRMAN CLAYTON: -- chronic circumstance

1 of not earning their authorized rate of return. How would  
2 you describe or define chronic under-recovery?

3 MR. PENDERGAST: Well, I guess it's one of  
4 those things that you know it when you see it, and if I  
5 look at that chart, that seems to me to be a pretty good  
6 indication of what I would consider to be a chronic  
7 under-recovery.

8 CHAIRMAN CLAYTON: Is it a matter of time?  
9 Is it a matter of amount? Where would you draw the line  
10 to say that it was not chronic under-recovery, say, on  
11 amount?

12 MR. PENDERGAST: Well, I can certainly say  
13 that if it were another situation like the Laclede case  
14 back in 1976 where we were complaining about a 20 basis  
15 point under-recovery, as the courts determined, that would  
16 not be enough to compel anybody to exercise their  
17 jurisdiction.

18 But I think you're talking about 3 or 400  
19 basis points here, and whether you have to get to that  
20 point in order to make that determination, I don't know,  
21 but certainly that, in my opinion, would be sufficient.

22 CHAIRMAN CLAYTON: Should the Commission  
23 define that amount in this case?

24 MR. PENDERGAST: You know, I think the  
25 Commission should note it, and I think the Commission

1     could say that that is one of the factors that lead us to  
2     conclude that interim rate relief is appropriate. I don't  
3     know that establishing a specific standard that says, you  
4     know, it has to be 200 basis points for a year or more  
5     is -- you need to go that far.

6                     CHAIRMAN CLAYTON: Would we also have to  
7     define it by time, for how long a period of time a company  
8     is earning below their authorized return?

9                     MR. PENDERGAST: Well, I guess in this  
10    particular instance, being able to go ahead and say that  
11    even with rate relief recently granted that under-earning  
12    is occurring would be enough of a factor to me to warrant  
13    that sort of rate relief. In other words, we've employed  
14    the traditional methods of attempting to go ahead and  
15    address this situation, and they have proved not to be  
16    effective.

17                    CHAIRMAN CLAYTON: Should we define a  
18    certain amount of capital investment that would trigger  
19    further analysis to the definition of chronic under-  
20    recovery?

21                    MR. PENDERGAST: You know, I'm not really  
22    sure. You know, obviously from an absolute value  
23    standpoint, some utilities are bigger than others and, you  
24    know, what may be, you know, a relatively small amount to  
25    Ameren might be a relatively large amount to another



1 utility.

2 But I think that, you know, once again, the  
3 magnitude of the under-recovery, particularly when  
4 existing processes have been followed, seems to be a key  
5 criteria to me.

6 CHAIRMAN CLAYTON: Does it matter that the  
7 Commission define the causes of the under-recovery?

8 MR. PENDERGAST: I think --

9 CHAIRMAN CLAYTON: I guess I'll throw out  
10 examples, whether it be rescission or whether it be  
11 implications from the last rate case. I mean, does it  
12 matter from your perspective why the utility's  
13 under-recovering, and should this Commission -- should we  
14 matter why they're under-recovering in deciding whether to  
15 grant an interim rate increase?

16 MR. PENDERGAST: I think it matters at  
17 least to this extent, and I guess I don't want to sound  
18 repetitious, but it matters from the standpoint of, you  
19 know, we've made an effort to follow the existing  
20 procedures, to provide rate relief under the general rate  
21 case format, and even with that effort, you know,  
22 significant under-recoveries are occurring, significant  
23 failures to recover investment and earn authorized  
24 returns, that that's a key reason, I think, to go ahead  
25 and cite for granting such relief.

1                   CHAIRMAN CLAYTON: On page 2 of your  
2 Statement of Position under Item No. 3, you make a  
3 reference to exigent circumstances of this interim rate  
4 request. Aside from the amount of capital plant in serve  
5 and defining the term chronic under-recovery, are there  
6 any other specific facts that you would point to in this  
7 case that would justify an interim rate increase?

8                   MR. PENDERGAST: I guess I'd look at the  
9 fact that Ameren has filed for, you know, \$400 million. I  
10 realize some of that's associated with fuel and some of  
11 it's associated with non-fuel items. And if you look at  
12 the recent history of -- at least the recent history of  
13 utility filings, generally speaking, most utilities have  
14 been able to come in and demonstrate that a significant  
15 portion of what they requested is appropriate.

16                   And everybody's had their opportunity to do  
17 most of their audit now and respond, and nobody's really  
18 said they're not going to get at least 10 percent of their  
19 requested rate. I think under those circumstances, that's  
20 a factor that I'd go ahead and consider.

21                   CHAIRMAN CLAYTON: Is it Laclede's position  
22 that an interim rate increase is an appropriate way or  
23 appropriate vehicle to incent prudent investments in  
24 infrastructure?

25                   MR. PENDERGAST: Yeah, I think it certainly

1 helps.

2 CHAIRMAN CLAYTON: Are there examples of  
3 infrastructure that Laclede would offer, just briefly?

4 MR. PENDERGAST: Well, I think there's -- I  
5 just said we didn't seek interim rate relief, and one of  
6 the reasons we didn't seek interim rate relief is we have  
7 an alternative available to us that's not available to  
8 Ameren, and that's the ISRS mechanism. And that doesn't  
9 recover all plant, but it does allow us to go ahead and  
10 make safety related investments, public improvement  
11 related investments, and have a reasonably timely basis  
12 for collecting it.

13 And I think that has had an impact. I know  
14 that in the past you've raised questions about whether or  
15 not we're doing enough under our particular safety  
16 programs given the fact that we had an ISRS mechanism  
17 available. I think you'll find that more recently as new  
18 construction has gone down, we've used that mechanism as  
19 an opportunity to go ahead and get ahead on some things,  
20 like gas iron main program and that sort of thing.

21 So I think it does provide an incentive to  
22 go ahead and make these kinds of investments that are  
23 necessary to provide service.

24 CHAIRMAN CLAYTON: Last question. In terms  
25 of regulatory lag, aside from the file and suspend method

1    where a complaint is filed against a utility, is it lawful  
2    to do an interim rate reduction at the start of a case  
3    where you have a complaint filed?

4                   MR. PENDERGAST:  I -- right at the start of  
5    the case, I don't know that I would say it would.  If the  
6    case were postured to where it had gotten to a point like  
7    it was today and, you know, five or six months had  
8    transpired, people had had an opportunity to go ahead and  
9    do an audit and, you know, the amount of the reduction was  
10   relatively a small portion of the other, I think it  
11   probably would be appropriate to look at that and do that.

12                  CHAIRMAN CLAYTON:  Should any policy that  
13   the Commission decide to implement associated with interim  
14   rate changes, should they be identical on whether it be  
15   associated with the file and suspend method versus during  
16   a complaint process?

17                  MR. PENDERGAST:  I think you ought to look  
18   at it both ways.  I think you'd want to go ahead and have  
19   symmetry.  One of the things that Mr. Buck addresses in  
20   his testimony is with the tremendous amount of  
21   information, management, technology we have today, being  
22   able to determine where a utility is at any given point in  
23   time in its regulatory earnings ought to be something that  
24   we can not only achieve, but that we can go ahead and use  
25   to set rates more quickly, whether those rates are going

1 up or they're going down based on whether costs are  
2 declining or going down and based on a consideration of  
3 everything. And so, yeah, I think symmetry is an  
4 appropriate objective to pursue.

5 CHAIRMAN CLAYTON: Thank you.

6 JUDGE WOODRUFF: Anything else from the  
7 Commissioners?

8 COMMISSIONER KENNEY: Mr. Pendergast,  
9 thanks for your presentation. You indicated Laclede has a  
10 mechanism available to it that Ameren doesn't, the ISRS  
11 mechanism, correct?

12 MR. PENDERGAST: Yes.

13 COMMISSIONER KENNEY: Is it your opinion,  
14 then, or do you have an opinion about which is the more  
15 appropriate method for mitigating regulatory lag, the ISRS  
16 method versus the granting of interim rate relief?

17 MR. PENDERGAST: You know, I think they're  
18 both appropriate. You know, I guess the benefits of the  
19 ISRS mechanism is that it's very specific about how you're  
20 going to calculate your costs. You know, it's been in  
21 effect now for a number of years. Staff has proposed some  
22 tweaks to that that we've been able to agree to, and so  
23 it's a little more defined than the interim rate process.

24 Clearly in the absence of that, I think  
25 interim rates is another way to skin the cat and a

1 reasonable way to skin the cat.

2 COMMISSIONER KENNEY: Would it be your  
3 opinion that the ISRS method would provide at least a bit  
4 more certainty and would actually be a more effective,  
5 efficient and certain way of dealing with perceived  
6 problems with regulatory lag?

7 MR. PENDERGAST: You know, it's worked well  
8 for us, and I think, you know, it would work well as well  
9 for the electrics. I think the electrics are planning on  
10 proposing a mechanism like that, as they did in the last  
11 legislative session, and I think that it's something that  
12 has proved itself to be very valuable on our side. I  
13 think it would be valuable for them as well.

14 But at the same time, I think in the  
15 absence of that, the interim rate approach is a reasonable  
16 method of dealing with the situation as well.

17 COMMISSIONER KENNEY: Final question. If  
18 the ISRS method were available to the electrics, would you  
19 agree then that would obviate the need for interim rate  
20 relief?

21 MR. PENDERGAST: Well, you know, I guess  
22 that would be a question better posited to the electrics.  
23 I do know that the ISRS is primarily designed to address  
24 only certain non-revenue-producing investments, primarily  
25 those that are safety related and ones that are required

1 to be made because of public improvements. You know, most  
2 of our investment is pipes in the ground, mains,  
3 distribution and service lines.

4 With the electrics, they have power plants  
5 and environmental additions to those power plants as well  
6 as large transmission lines that, you know, I'm not sure  
7 to what degree their ISRS mechanism would go ahead and  
8 fully permit them to recover those items.

9 Given the nature, different nature of our  
10 physical assets, it might not work quite as well for them  
11 as it does for us. Certainly it would be an improvement  
12 on the existing process.

13 MR. BYRNE: Commissioner Kenney, could I  
14 briefly address that question --

15 COMMISSIONER KENNEY: Sure.

16 MR. BYRNE: -- if you're interested? I  
17 guess really Mr. Pendergast is right. It depends on what  
18 the scope of the ISRS would be. We do have a different  
19 situation on the electric side. There are more and  
20 different kinds of investments that we make. A lot of on  
21 the gas side what's being done is sort of safety related,  
22 replacement of pipe that's clearly covered by the ISRS.

23 If the ISRS was -- if the scope of the ISRS  
24 was broad enough to cover the investments that we need to  
25 make, then it probably would. But if it wasn't broad

1 enough, you may need interim relief in addition to that.

2 COMMISSIONER KENNEY: I guess the order of  
3 questioning here is a little informal. Since you spoke  
4 up, Mr. Byrne, it's probably a question I should have  
5 posed to you when you were standing at the podium. Since  
6 you started speaking again, I'll ask you now.

7 As just a general philosophical matter, if  
8 you have an issue like regulatory lag and its perceived  
9 problems that is a problem of general applicability, it's  
10 not peculiar to Ameren, it's a problem of general  
11 applicability, right? Would you agree with me on that  
12 statement?

13 MR. BYRNE: I think there is some general  
14 applicability, but I think it may be worse for Ameren than  
15 some utilities. As Mr. Pendergast said, they've got an  
16 ISRS. At least right now it's worse for Ameren than other  
17 utilities, although it does have general applicability.

18 COMMISSIONER KENNEY: It's at least  
19 generally applicable to the electrics?

20 MR. BYRNE: Yes. Well, there are different  
21 regulatory situations. I know Kansas City Power & Light  
22 and Empire have regulatory plans that put them maybe in a  
23 little different situation. So I'm not even 100 percent  
24 sure it's equally applicable to all electric utilities.

25 COMMISSIONER KENNEY: Well, as just a



1 larger philosophical regulatory issue, would it be  
2 preferable to deal with problems that are generally  
3 applicable with a solution that is also generally  
4 applicable rather than dealing with it on a piecemeal  
5 basis rate case by rate case, just generally speaking?

6 MR. BYRNE: I guess -- I guess there could  
7 be a general -- you know, it's certainly possible that  
8 there could be a general solution to the problem either  
9 through legislation or maybe rulemaking at the Commission,  
10 but I don't think that suggests that the Commission  
11 shouldn't address this issue here in this case since it's  
12 been brought before it.

13 COMMISSIONER KENNEY: Thank you.

14 JUDGE WOODRUFF: Anything else from the  
15 Commissioners? Thank you, Mr. Pendergast.

16 We've now been going for two hours and 15  
17 minutes. I'm sure that there's people in the room who  
18 would like to take a break. We'll take a break now.  
19 We'll come back at 11 o'clock.

20 (A BREAK WAS TAKEN.)

21 JUDGE WOODRUFF: Before we broke, we were  
22 hearing opening statements, and the next on the list is  
23 MEG.

24 MS. LANGENECKERT: Good morning. May it  
25 please the Commission?

1                   In the interest of time, I won't go through  
2 my whole opening statement. My colleagues from Staff, OPC  
3 and MIEC have raised excellent points why it is not  
4 appropriate for AmerenUE to receive interim rate relief at  
5 this time from both a legal and a policy standpoint.

6                   I just want to stress that regulatory lag  
7 has also been present in Missouri, yet AmerenUE was able  
8 to overearn under this same regulatory lag for years, and  
9 this was without the fuel adjustment clause and the  
10 environmental cost recovery mechanism that they presently  
11 are allowed under statute. They never asked for interim  
12 decreases during that overearning time.

13                  The ROE takes into account regulatory lag  
14 and compensates appropriately for that lag. If companies  
15 receive an interim increase, then its ROE should be lower  
16 as the need to recognize regulatory lag no longer is  
17 necessary.

18                  MEG asks the Commission to disallow the  
19 interim rate increase for AmerenUE.

20                  JUDGE WOODRUFF: Thank you. Opening for  
21 AARP?

22                  MR. COFFMAN: Thank you. May it please the  
23 Commission? John Coffman representing AARP and the  
24 Consumers Council of Missouri.

25                  I can cut my opening short because I think

1 I can for the most part endorse the legal opinions and  
2 statements of the Office of the Public Counsel. We  
3 believe that the Commission standard in this case is the  
4 emergency/near emergency standard. We believe that any  
5 order the Commission might issue based on this hearing  
6 would need to be just and reasonable and would need to  
7 consider all relevant factors based upon the Laclede case  
8 that we've been discussing and the UCCM1 case, which my  
9 client took to the Missouri Supreme Court.

10 We do not believe that a due cause standard  
11 would be lawful, essentially a no -- a no standard ad hoc  
12 approach. We certainly do not think that merely to -- the  
13 reasoning that you can certainly -- that you could base  
14 this on simply reducing regulatory lag, we do not believe  
15 that that would be just and reasonable.

16 And I'm glad that Ms. Langeneckert  
17 addressed the fact that in the 1990s regulatory lag was  
18 working the other way back when we had rate complaint  
19 cases that went on sometimes up to two years because the  
20 system was already set up with an 11-month deadline for  
21 rate increases and no deadline for rate reductions.

22 During that time we saw alternative  
23 regulation that had returns on equity above 12 percent and  
24 rate reductions that were delayed much longer than the  
25 11-month period. During that entire time, I'm not aware

1     that consumer advocates asked for any reduction of the  
2     regulatory lag, and that is because regulatory lag is not  
3     an evil. It is actually an essential and integral part of  
4     rate of return regulation. And without it, we might as  
5     well abandon the entire approach and approve expenses and  
6     give some kind of risk free rate of return to this  
7     utility.

8                     Regulatory lag is essential to promote  
9     prudent and reasonable investment, is the best incentive  
10    we have to do that, and, in fact, it's the one that is  
11    designed to promote the kind of practices that companies  
12    who are not natural monopolies face in the competitive  
13    world.

14                    I agree that the Commission's mission is to  
15    balance the interests of shareholders and ratepayers, but  
16    I would note that the courts have said that it is the  
17    rate-paying public that should be your guiding star, and  
18    that the rate-paying public's protection is what underlies  
19    the Public Service Commission Act in Missouri.

20                    UE's request that the Commission move away  
21    from its emergency/non-emergency standard to a weaker  
22    standard of some sort is in our mind simply one more in a  
23    long list, long series of requests for piecemeal  
24    regulation, for surcharges and single issue ratemaking  
25    mechanisms. We do not believe that these are in the best

1 interests of the public. We do not believe that the fuel  
2 adjustment clause is fair and it does not fairly serve  
3 consumers. We do not believe that the ISRS, the  
4 infrastructure replacement surcharge, has been appropriate  
5 or fair to consumers, and in some cases has allowed  
6 overearnings and overcharges to consumers because of its  
7 piecemeal approach.

8                   This request for an ad hoc interim rate  
9 standard would no doubt lead to two rate case hearings in  
10 many, many Public Service Commission cases, and the  
11 additional regulatory lag would no doubt increase rate --  
12 or rate case -- additional rate case expense would no  
13 doubt increase rates for consumers as virtually all rate  
14 case expense is usually passed on to consumers.

15                   My clients do not have that ability to pass  
16 on its rate case expense to someone else other than its  
17 members. And in that regard, let me just emphasize  
18 something that is probably even more important to my  
19 clients. With every additional ratemaking method that is  
20 added, every other mechanism, new piecemeal surcharges,  
21 you know, we're facing the ECRM staring us down, and we'll  
22 get to that later in this case, and no doubt even more  
23 legislative mechanisms to be considered again this  
24 upcoming year. Every one of those creates more hearings  
25 and more cases that to participate in groups like those

1     that I represent have to look for resources.

2                     If most general rate cases are now going to  
3     involve an interim phase, it makes it all that much harder  
4     to be able to produce for you the arguments and the  
5     evidence that we'd like to. We'd like very much to have  
6     the ability to present evidence to you. My client did not  
7     have the resources to do that in this interim phase.

8                     And then I have to comment on an argument I  
9     guess that came out in AmerenUE's position statement which  
10    I was taken somewhat aback by, and that's the -- just the  
11    argument that the amount here is so small that maybe that  
12    should be a factor.

13                    Their words are something to the effect  
14    that, heck, this is such a small amount, it's less than 10  
15    percent of the general underlying request. It just  
16    amounts to spare change that's in the pockets of  
17    ratepayers or the change that's lying around on their  
18    dresser, I think is their words, as if to suggest that  
19    nobody's really going to miss it if those coins are swept  
20    off the dresser into the pocket of AmerenUE before all the  
21    evidence is put on in this case.

22                    What's the harm? I think there definitely  
23    is harm out there. In the aggregate it is a lot of money,  
24    and I think it should go without saying, but in this very  
25    difficult economic time, most of the consumers that I

1 represent, residential consumers, they're counting every  
2 nickel and dime on their dresser, and they will miss them  
3 if those are not there.

4                   Just simply ask that you continue with the  
5 approach this Commission has almost completely  
6 consistently over the last 60 used for interim rate cases,  
7 that is an emergency standard. I think, you know, perhaps  
8 there would be natural disasters that I think might amount  
9 to a financial emergency. There might be other instances  
10 that have not been reviewed by the Commission before, but  
11 certainly not this due cause or regulatory lag approach.

12                   I think I would -- this would be maybe the  
13 only point I would disagree with Lewis Mills' statement.  
14 I would not agree that a potential downgrade to  
15 non-investment levels necessarily would approach given the  
16 opinion of my clients regarding the reliability of credit  
17 rating agency pronouncements.

18                   In closing, in the spirit of the holidays,  
19 I would simply ask that you follow the example of the Wise  
20 Men of yore and follow the guiding star.

21                   COMMISSIONER JARRETT: I just had a  
22 question. Did I hear you correctly when you said your  
23 client doesn't have the resources to adequately present  
24 evidence? Who are you representing again?

25                   MR. COFFMAN: AARP and the Consumers

1 Council of Missouri. They did decided that they did not  
2 have the resources to put on evidence in this.

3 COMMISSIONER JARRETT: The American  
4 Association of Retired Persons, AARP, how many members do  
5 they have nationally? Millions?

6 MR. COFFMAN: I don't know nationally, but  
7 yeah.

8 COMMISSIONER JARRETT: What's the annual  
9 budget of the AARP?

10 MR. COFFMAN: I couldn't tell you.

11 COMMISSIONER JARRETT: But they don't have  
12 resources?

13 MR. COFFMAN: Not for this. They have  
14 other --

15 COMMISSIONER JARRETT: Well, they sure have  
16 a lot of commercials on TV. They certainly have resources  
17 to pay millions of dollars for commercials on TV. I find  
18 it hard to believe that the AARP doesn't have adequate  
19 resources to present evidence in a little old rate case in  
20 the state of Missouri.

21 MR. COFFMAN: Well, regardless of what you  
22 think of the resources, it will certainly be additional  
23 resources that they would have to expend --

24 COMMISSIONER JARRETT: I understand. I  
25 understand.



1                   MR. COFFMAN:  -- if what the electric  
2   company's proposing becomes the regular procedure here.

3                   COMMISSIONER JARRETT:  I understand.  Thank  
4   you.

5                   JUDGE WOODRUFF:  Thank you, Mr. Coffman.

6                   MR. COFFMAN:  Thank you.

7                   JUDGE WOODRUFF:  And for Missouri  
8   Retailers?

9                   MR. SCHWARZ:  May it please the Commission?

10                  I think that it is unequivocal from the  
11   UCCM case that when the Commission sets rates, it is  
12   required by law to consider all relevant factors.  In the  
13   96 years that the Commission has been in existence, prior  
14   commissions have identified a number of situations in  
15   which a particular factor so predominates, is so important  
16   and so overwhelming that the other relevant factors pale  
17   in comparison.

18                  And I think that's what you have under the  
19   general rubric of emergency rate relief.  That is, it  
20   remains the bedrock of the law that the Commission  
21   considers all relevant factors when setting rates.

22                  Furthermore, the law also requires when  
23   this Commission issues its decision on this interim  
24   proceeding, it will have to state both findings of fact  
25   and conclusions of law, and the conclusion of law that

1 this Commission states will have to identify the specific  
2 authorization in law for the basis for granting relief.  
3 And if it is something other than all relevant factors,  
4 the Commission will have to identify the source authority  
5 in the law that permits it to do so when considering fewer  
6 than all relevant factors.

7 I would suggest to you that what Ameren and  
8 Laclede have suggested is simply not adequate for the  
9 purposes. The law requires, the parties are entitled to  
10 and the courts will expect an explicit statement of the  
11 lawful authority to set rates on fewer than all relevant  
12 factors.

13 My clients in this proceeding are  
14 significantly and principally interested in rate design.  
15 In the principal rate case, AmerenUE has -- its own  
16 studies indicate that the general service customers are  
17 paying relatively more for their service than are other  
18 rate classes. We're entitled to have that issue addressed  
19 by the Commission every time it sets rates.

20 And there is neither time nor resources,  
21 either of the Commission or of the parties, to do that in  
22 something less than the time allotted. There are hundreds  
23 of accounts, tens of thousands of transactions, dozens of  
24 generating facilities, and miles of transmission and  
25 distribution property, all of which have to be examined in

1 presenting all relevant factors for the Commission's  
2 consideration.

3                   As Commissioner Davis has pointed out, I  
4 think, earlier in these proceedings, all rates are  
5 interim. No party has a right or a property interest in  
6 preserving a particular rate as currently constituted.  
7 And whether -- whether or not any proponent cites to the  
8 Commission a specific authorization in law for considering  
9 something other than all relevant factors, the Commission  
10 has an independent obligation under the law to provide  
11 that in its conclusions of law.

12                   And I think given the length of the  
13 proceedings, that ends my opening statement.

14                   JUDGE WOODRUFF: Any Commissioners have  
15 questions?

16                   COMMISSIONER JARRETT: I do. So if I  
17 understand you correctly, counsel, we always have to  
18 consider all relevant factors?

19                   MR. SCHWARZ: Yes.

20                   COMMISSIONER JARRETT: Except in an  
21 emergency situation we can sort of waive that?

22                   MR. SCHWARZ: No. No. I would --

23                   COMMISSIONER JARRETT: Help me understand  
24 what you're saying.

25                   MR. SCHWARZ: I would say that there may be

1    circ -- there may be circumstances, there may be a  
2    situation where one particular factor or a small group of  
3    factors are so dominant, so overwhelming that the other  
4    factors combined won't address the problem, and they  
5    generally have -- the courts have approved that under the  
6    general rubric, I think, what people in these proceedings  
7    have said is emergency circumstances, when the threat to  
8    the utility is so significant and so specifically  
9    identifiable that, if you address this, you are  
10   essentially addressing all relevant factors.

11                   COMMISSIONER JARRETT:   Okay.

12                   MR. SCHWARZ:   And I -- I would think that  
13   they would fall generally into financial and physical.  
14   That is, you know, there was a tornado or some kind of  
15   storm that physically damaged property that might require  
16   some kind of rate relief, or it could be financial  
17   exigencies.   But I think that it has to be something that  
18   is so extraordinary and so immediate that other relevant  
19   factors pale to the point of non-consideration.   But the  
20   law is, in setting rates, the Commission has to consider  
21   all relevant factors.

22                   COMMISSIONER JARRETT:   Thank you.

23                   JUDGE WOODRUFF:   Commissioner Davis, did  
24   you have anything?

25                   COMMISSIONER DAVIS:   Mr. Schwarz, do you

1 believe in Santa Claus? Let me --

2 MR. SCHWARZ: Well, I believe -- I believe  
3 that at this particular time of the year, that the spirit  
4 of almost everybody is somehow lightened and heartened and  
5 more charitable. And I would say that while I'm not sure  
6 there is a physical presence of Santa Claus, I think the  
7 theoretical construct is something I'd like to believe in.

8 COMMISSIONER DAVIS: Would you agree  
9 that -- would you agree with me that if Santa is going to  
10 come, that it should be on or about the 25th of December?

11 MR. SCHWARZ: I think that's typical, yes,  
12 and it certainly makes it easier for those of us raising  
13 children to deal with.

14 COMMISSIONER DAVIS: Right. And Staff's  
15 direct testimony is due in this case on December 18th,  
16 correct?

17 MR. SCHWARZ: Yes, my recollection.

18 COMMISSIONER DAVIS: So there will be an  
19 entire class cost of service study here before us on the  
20 18th, won't there?

21 MR. SCHWARZ: Yes, unless -- I'm assuming  
22 that Staff is going to do so. I haven't --

23 COMMISSIONER DAVIS: Mr. Dottheim, can the  
24 record reflect that Mr. Dottheim is shaking his head yes?

25 MR. DOTTHEIM: Yes. The Staff is intending

1 to file its case in chief, its direct case on  
2 December 18th, which will be the revenue requirement part  
3 of the Staff's case. The rate design part of that case  
4 will follow, but the revenue requirement I think --

5 COMMISSIONER DAVIS: Will all be due on the  
6 18th?

7 MR. DOTTHEIM: Yes. The revenue  
8 requirement portion of the case will be due on the -- on  
9 December 18th.

10 COMMISSIONER DAVIS: That's everything,  
11 correct?

12 MR. DOTTHEIM: Other than --

13 COMMISSIONER DAVIS: Everything other than  
14 rate design?

15 MR. DOTTHEIM: No. It won't be a customer  
16 class cost of service. It will be the Staff's full  
17 revenue requirement --

18 COMMISSIONER DAVIS: Right.

19 MR. DOTTHEIM: -- determination looking at  
20 all of the relevant factors that the Staff is going to  
21 look at in the case other than what the Staff will look at  
22 for purposes of true-up.

23 COMMISSIONER DAVIS: Mr. Schwarz, that's 11  
24 days from now, correct?

25 MR. SCHWARZ: Granted.

1                   COMMISSIONER DAVIS: Okay. Do you want to  
2 argue about it?

3                   MR. SCHWARZ: No. I was just trying to  
4 think what the date was is all.

5                   COMMISSIONER DAVIS: Now, I think I saw  
6 somewhere where Public Counsel may have defined single  
7 issue ratemaking as when the Commission considers one  
8 factor to the exclusion of all others. Do you think  
9 that's a fair characterization?

10                  MR. SCHWARZ: Fair.

11                  COMMISSIONER DAVIS: So we do have an  
12 opportunity here to consider all relevant factors, do we  
13 not?

14                  MR. SCHWARZ: Certainly in the context of  
15 the tariffs that the Commission has suspended, which to  
16 the extent that you can have permanent rates people talk  
17 about as permanent rates, the ones that are suspended  
18 until next June or July or whenever the operation of law  
19 date is.

20                  The interim tariffs, I don't know. I guess  
21 they're subject to refund, so you would have to include in  
22 your decision in that aspect of the case, you would have  
23 to, I assume, adopt by reference or something whatever  
24 findings you make if you choose to consider the interim  
25 rate case. But no, when you set rates, you have to

1 consider all relevant factors.

2 COMMISSIONER DAVIS: We can bank on that?

3 MR. SCHWARZ: I think so. UCCM is still  
4 good law, and there are exceptions, as I've noted and the  
5 parties have noted, but UCCM is still good law. In  
6 setting rates, you have to consider all relevant factors.

7 COMMISSIONER DAVIS: All right. Thank you,  
8 Mr. Schwarz.

9 COMMISSIONER JARRETT: I have one more  
10 question. And who considers what are all the relevant  
11 factors?

12 MR. SCHWARZ: Well, I think that the  
13 parties raise all relevant factors in the testimony that  
14 they bring to the Commission. That is, the Staff and to  
15 the extent other parties participate in the revenue  
16 requirement, they will review all of the, you know,  
17 hundreds of FERC accounts. They will review transactions  
18 that the company has had during the test year within those  
19 accounts. They will make their own independent judgments.  
20 They review the depreciation studies. I mean, yes,  
21 they -- the parties bring as many factors as they consider  
22 relevant to the Commission's attention through the rate  
23 case proceeding.

24 COMMISSIONER JARRETT: Well, I'll answer my  
25 question for you. Section 393.270.4, in determining the



1 price to be charged for gas, electricity or water, the  
2 Commission may consider all facts which in its judgment  
3 have any bearing upon a proper determination of the  
4 question.

5 So isn't it the Commission's judgment, the  
6 Commission determines what are the relevant factors --

7 MR. SCHWARZ: That's --

8 COMMISSIONER JARRETT: -- for it to  
9 consider?

10 MR. SCHWARZ: That's correct. The  
11 Commission can say that -- can decide that Account 369 is  
12 really not something that you want to consider. In that  
13 case, you would have to make a fact finding, I think, that  
14 a particular -- the evidence didn't justify applying --  
15 you know, once you make that determination, I think you  
16 then pass over into the fact finding realm.

17 COMMISSIONER JARRETT: No further  
18 questions. Thank you.

19 JUDGE WOODRUFF: Thank you, Mr. Schwarz.  
20 MJMEUC?

21 MR. HEALY: At this time we'd like to waive  
22 our opening if that's acceptable.

23 JUDGE WOODRUFF: Thank you. KCPL?

24 MR. STEINER: KCPL also waives its opening  
25 statement.

1 JUDGE WOODRUFF: Very good. I believe  
2 that's all the opening statements, then, so we'll move on  
3 to taking testimony, and I believe the first witness is  
4 Mr. Baxter. Mr. Baxter, if you'll please raise your right  
5 hand, I'll swear you in.

6 (Witness sworn.)

7 JUDGE WOODRUFF: Thank you very much. You  
8 may inquire.

9 WARNER BAXTER testified as follows:

10 DIRECT EXAMINATION BY MR. LOWERY:

11 Q. Would you please state your name for the  
12 record.

13 A. My name is Warner Baxter.

14 Q. Mr. Baxter, am I correct that you caused to  
15 be prepared and filed in this docket three pieces of  
16 testimony, direct testimony, rebuttal testimony and  
17 surrebuttal testimony on interim rates that have been  
18 marked Exhibits A, B and C?

19 A. That's correct.

20 Q. Mr. Baxter, if I were to ask you the same  
21 questions posed in those three pieces of testimony, would  
22 your answers be the same?

23 A. They would.

24 Q. I take it you have no corrections then to  
25 that testimony?

1           A.       I do not.

2                   MR. LOWERY: With that, your Honor, I'll  
3 move for the admission of Exhibits A, B and C and tender  
4 the witness for cross-examination.

5                   JUDGE WOODRUFF: Exhibits A, B and C have  
6 been offered. Are there any objections to their receipt?  
7 Mr. Dottheim.

8                   MR. DOTTHEIM: Yes. I'm not going to  
9 formally object. I'd just like to raise a point since  
10 we're at the beginning of this rate case, and if I could  
11 refer to what's Exhibit C, Mr. Baxter's surrebuttal  
12 testimony, page 6, line 14, and the question is, do you  
13 have any other response to the rebuttal testimonies filed  
14 by Staff and the Office of the Public Counsel? Answer:  
15 Yes. I think the most significant aspect of the Staff and  
16 Public Counsel testimony is what it does not say.

17                   I'm not going to object because I think  
18 Mr. Baxter deals basically with matters that are being  
19 addressed, and maybe the question might be phrased  
20 differently, but I hope we're not entering into an era  
21 where a witness can say I think the most significant  
22 aspect of such and such party's testimony is what it does  
23 not say and, therefore, launch into areas that are really  
24 not responsive to the testimony it's supposed to be  
25 responsive to.

1 JUDGE WOODRUFF: Anything further?

2 COMMISSIONER DAVIS: Mr. Dottheim -- can I  
3 inquire of Mr. Dottheim?

4 JUDGE WOODRUFF: Yes. Go right ahead.

5 COMMISSIONER DAVIS: Now, I've only been  
6 here for about five and a half years and you've been here  
7 probably better than 30, but my impression of the last  
8 five and a half years is that we have a long and rich  
9 tradition here of just letting people get up and spout off  
10 about whatever they want to spout off about. Is that not  
11 correct?

12 MR. DOTTHEIM: I think at least in the  
13 filing of testimony, we try to be a little bit more  
14 rigorous than that. Usually some of the parties and  
15 hopefully the Staff when it asks a question, it says, do  
16 you have a response to the rebuttal testimony of the Staff  
17 witness at page, where he says at page 12, lines 12 to  
18 14X, and therefore it is very clear that the testimony is  
19 responsive to testimony that has already been filed.

20 I think generally some parties or many  
21 parties have gotten away from trying to show that their  
22 testimony truly is responsive to the testimony that it is  
23 arguably responding to. Sometimes parties do not address  
24 testimony, for example, in direct hoping that or fearful  
25 that it will be responded to and then hope that they can

1   reply in surrebuttal where there is no response to it, and  
2   therefore they hold back, and so that is what I am  
3   attempting to address.

4                   The question doesn't -- do you have any  
5   other response to the rebuttal testimonies filed by Staff  
6   and the Office of the Public Counsel? It doesn't refer to  
7   which member of the Staff or the Office of Public Counsel.  
8   It doesn't respond to a page of the Staff or the Public  
9   Counsel's testimony or line. It doesn't refer to the  
10   subject matter that supposedly is covered in that rebuttal  
11   testimony of the unidentified Staff or Office of the  
12   Public Counsel witness.

13                   And then it says, I think the most  
14   significant aspect of the Staff and Public testimony is  
15   what it does not say. And so it's saying, well, I'm not  
16   really responding to anything that's in the rebuttal  
17   testimony of the Staff and the Office of Public Counsel  
18   witness. They didn't address these matters, and I want to  
19   address them so I'm going to.

20                   COMMISSIONER DAVIS: You hold those  
21   thoughts, Mr. Dottheim. We're going to come back and I  
22   want to ask you more questions, but let's go on.

23                   MR. COFFMAN: Your Honor, if it might be  
24   helpful, there's more than just custom behind  
25   Mr. Dottheim's concern. There's a rule, 4 CSR 240-2.070,

1 I believe, which states that rebuttal needs to be  
2 responsive to direct and surrebuttal needs to be  
3 responsive to rebuttal.

4 JUDGE WOODRUFF: Has there been an  
5 objection here?

6 MR. DOTTHEIM: No.

7 JUDGE WOODRUFF: If there's no objection,  
8 we'll move on.

9 JUDGE WOODRUFF: All right. There is no  
10 objection to the receipt of these, A, B and C, they will  
11 be received into evidence.

12 (EXHIBITS A, B AND C WERE RECEIVED INTO  
13 EVIDENCE.)

14 MR. LOWERY: In that case, your Honor, I'll  
15 hold my response for another day.

16 JUDGE WOODRUFF: Okay. For  
17 cross-examination, then, we begin with Laclede.

18 MR. PENDERGAST: No questions, your Honor.

19 JUDGE WOODRUFF: KCPL?

20 MR. STEINER: No questions, your Honor.

21 JUDGE WOODRUFF: Missouri Retailers?

22 MR. SCHWARZ: No questions.

23 JUDGE WOODRUFF: MJMEUC?

24 MR. HEALY: No questions.

25 JUDGE WOODRUFF: AARP?

1 MR. COFFMAN: No questions, your Honor.

2 JUDGE WOODRUFF: MEG?

3 MS. LANGENECKERT: No questions, your  
4 Honor.

5 JUDGE WOODRUFF: MIEC?

6 CROSS-EXAMINATION BY MS. VUYLSTEKE:

7 Q. Good morning, Mr. Baxter.

8 A. Good morning.

9 Q. Mr. Baxter, are you requesting interim rate  
10 increase to cure what you believe is excessive regulatory  
11 lag in Missouri?

12 A. I'm sorry. Repeat the question again,  
13 please.

14 Q. Is the purpose of your interim rate  
15 increase or goal to cure what you believe is excessive  
16 regulatory lag in Missouri?

17 A. It is to make progress in reducing  
18 excessive regulatory lag.

19 Q. And is it your belief that excessive  
20 regulatory lag has prevented AmerenUE from earning its  
21 authorized return on equity?

22 A. Yes.

23 Q. Do you believe that because of excessive  
24 regulatory lag in Missouri, that Ameren has not achieved  
25 an acceptable financial performance over the last several

1     years?

2             A.       Yes.

3             Q.       Are there --

4             A.       Can I qualify? AmerenUE is who I speak to.

5             Q.       Thank you. Are there other aspects of

6 Ameren's business operations that are tied to achieving

7 acceptable financial results?

8             A.       Yes.

9             Q.       Okay. Is executive incentive compensation

10 one aspect of -- one such aspect of Ameren's business?

11            A.       Yes.

12            Q.       Now, Mr. Baxter, because AmerenUE has not

13 achieved its authorized return on equity and has not

14 achieved acceptable financial results, is it reasonable to

15 believe that AmerenUE executives would not have received

16 incentive compensation that was substantially larger than

17 their base compensation?

18            A.       I'm sorry, Ms. Vuylsteke, repeat the

19 question again, please.

20            Q.       Sure. You testified that AmerenUE has not

21 achieved its authorized return on equity?

22            A.       That is correct.

23            Q.       And that is not an acceptable financial

24 result --

25            A.       Correct.



1 Q. -- to Ameren?

2 Is it reasonable to believe that Ameren  
3 executives would not receive incentive compensation that  
4 is substantially larger than their base compensation under  
5 those circumstances?

6 A. It is reasonable to believe that Ameren's  
7 executives' incentive compensation is affected by our  
8 earnings per share as well as our overall return to  
9 shareholders.

10 Q. Okay. So is it reasonable to believe that,  
11 under such circumstances, these executives would receive  
12 an incentive compensation that is larger than their base  
13 compensation?

14 A. Yes.

15 Q. Mr. Baxter, I want to show you an exhibit  
16 which is your proxy statement and shows the compensation  
17 of your executives. I'm sure you're familiar with this,  
18 and ask you a few questions about it.

19 Mr. Baxter, I've just shown you a proxy  
20 statement which outlines the total compensation for  
21 several Ameren executives.

22 A. That's correct.

23 Q. And is it true that this shows your total  
24 compensation for yourself, for Mr. Rainwater, Mr. Voss,  
25 Mr. Sullivan and Mr. Naslund, including your salary,

1 compensation based on stock and incentive plans for 2006  
2 through 2008?

3 A. Yes, it does.

4 Q. Would you agree that Tom Voss was primarily  
5 an employee of AmerenUE over this 2000 -- 2006 to 2008  
6 time period?

7 A. I can say for 2008 that would be true, and  
8 I believe it's for 2007. For 2006, he may have been the  
9 chief operating officer of all of Ameren Corporation. I'm  
10 not sure about that, but otherwise, that that would be  
11 true.

12 Q. Now, is it true that over the three-year  
13 period, that Mr. Voss' base salary compensation went up  
14 from 440,000 a year to 475,000?

15 A. Yes.

16 Q. And is it also true that over this time  
17 period, his additional compensation for stock awards,  
18 non-equity incentive plan, changes in pension value and  
19 other compensation caused his total compensation to  
20 increase from approximately 1.2 million in 2006 up to  
21 approximately 1.8 million in 2008?

22 A. Yes.

23 Q. And would you agree that's about a  
24 33 percent increase in his total compensation over this  
25 three-year period?

1           A.       Without my calculator I'm sometimes tied,  
2   but no, I think that's approximately, correct, yes.

3           Q.       And would you agree that your compensation  
4   as the then president and CEO Gary Rainwater's  
5   compensation, just as his compensation, all experienced a  
6   very significant increase over this time period?

7           A.       Are you referring then to the total  
8   compensation? You know, I agree that the --  
9   Mr. Rainwater's compensation increased during that period  
10  as well as my compensation.

11          Q.       Would you agree with me that it was a very  
12  significant increase in compensation?

13          A.       I will say that I don't know how you define  
14  significant, but in terms of in my particular situation,  
15  it went up about a third, similar to Mr. Voss', and  
16  Mr. Rainwater, it appears to be more.

17          Q.       Okay. Now, Mr. Baxter, is it normal for  
18  AmerenUE to award its key executives incentive  
19  compensation in periods where AmerenUE and its affiliates  
20  have not been achieving acceptable financial results?

21          A.       Yes.

22          Q.       Is it reasonable to conclude based on your  
23  review of the incentive compensation of those other  
24  AmerenUE executives that in terms of assessing whether or  
25  not incentive compensation should be awarded, that you've

1 concluded that AmerenUE's financial results over this time  
2 period are acceptable?

3 A. Well, I would say, Ms. Vuylsteke, that the  
4 conclusions that were made here were not my conclusions or  
5 even the conclusion of Mr. Rainwater and Mr. Voss. They  
6 were the conclusions of the human resource committee who  
7 utilizes an independent consultant and market surveys  
8 among other things to determine what they believe is  
9 appropriate incentive compensation.

10 In light of all those facts and  
11 circumstances that were taken into consideration,  
12 including performance, including many other things, not  
13 just financial performance but operating performance or  
14 even an executive's individual performance, including how  
15 we try to or how that committee and its independent  
16 consultant tries to balance those issues with what  
17 reasonable market pays for similar executives, then that's  
18 how you get to this result.

19 Q. Is it normal for AmerenUE to provide  
20 incentives to executives for periods where Ameren states  
21 that its financial results are not acceptable?

22 A. The answer, as I said before, was yes, and  
23 it was based upon what I just told you in terms of how  
24 that compensation is ultimately determined.

25 Q. And in your view, the incentive

1 compensation is not connected to the utility's financial  
2 results?

3 A. Well, certainly, Ms. Vuylsteke, there is no  
4 doubt that financial performance is one aspect that is  
5 considered. That is true.

6 MS. VUYLSTEKE: Thank you.

7 JUDGE WOODRUFF: Questions from the Bench?  
8 I'm sorry. We do have more cross-examination. I'm  
9 getting ahead of myself. Public Counsel?

10 MR. MILLS: Judge, do you want me at the  
11 podium or can I do cross from here?

12 JUDGE WOODRUFF: I prefer you at the podium  
13 if you would.

14 CROSS-EXAMINATION BY MR. MILLS:

15 Q. Mr. Baxter, do you have your testimony  
16 there with you?

17 A. I do.

18 Q. Referring to your direct testimony at page  
19 11, you talk about -- see if I can get a specific line for  
20 you. I'm sorry. It's page 14, the last answer on that  
21 page beginning on page -- on line 19, you say that you've  
22 identified meaningful cost reductions. Do you see that?

23 A. I do.

24 Q. What meaningful cost reductions have you  
25 identified?

1           A.       We have identified and, in fact,  
2     implemented several, and I've identified many others. I  
3     would say in 2009 we've identified approximately  
4     \$100 million of cost reductions in certain areas that  
5     have, for all practical purposes, been implemented at this  
6     point.

7                     In looking ahead to 2010 through 2013, we  
8     have identified certain cost reductions in excess of \$1  
9     billion across our entire system, energy delivery, power  
10    plants, administrative and general expenses, among other  
11    things.

12           Q.       And just focusing on what you've done so  
13    far and not what may or may not happen in the future, have  
14    you identified any cost reductions that you have not made?

15           A.       Yes.

16           Q.       And why have you not implemented those?

17           A.       Well, certain of those cost reductions  
18    we've identified and have not made would be consistent  
19    with our obligation to serve. We have certain tree  
20    trimming expenditures that we are obligated to do, and  
21    we've identified as an opportunity, yes, but it's part of  
22    our minimum obligation. We will not do those. Similar to  
23    just minimum reliability standards and those types of  
24    things. So things while you may have a host of projects  
25    you've identified, it doesn't mean that you ultimately

1 implement those.

2 Q. Now, from the cost reductions that you did  
3 make, have there been any adverse consequences to  
4 ratepayers from those cost reductions?

5 A. Could you explain to me what you mean by  
6 adverse consequences?

7 Q. Any sort of adverse consequences, a  
8 decrease in reliability, a decrease in customer service,  
9 for example?

10 A. Okay. So you're asking if we've had a  
11 decrease in reliability or decrease in customer service.  
12 I think in terms of some of the reductions that we have  
13 made, we have not identified specifically any specific  
14 consequences that you refer to, but certainly some of the  
15 reductions that we have made certainly increase the  
16 potential risk associated with reliability and ultimately  
17 potentially customer satisfaction.

18 Q. And how would the grant of interim relief  
19 at this point affect those decisions that have already  
20 been made?

21 A. In terms of 2009, those decisions have been  
22 made. They would not have a direct effect on those  
23 decisions that we've made.

24 Q. When did you start the voluntary separation  
25 program?

1           A.       Mr. Mills, you're referring to the program  
2       that we just talked about, the voluntary separation in  
3       this particular year?

4           Q.       Uh-huh.

5           A.       It was announced sometime in the fall and  
6       just completed within the last -- within the last 30 days.

7           Q.       Announced in the fall of 2009, this fall?

8           A.       Yes. I'm sorry. That's correct. This  
9       year.

10          Q.       Up until that point, had you done anything  
11       along the lines of voluntary separation or similar  
12       programs?

13          A.       Yes. In the past the company had done a  
14       voluntary separation program, I don't recall, several  
15       years ago, and simple answer is yes, we have done that in  
16       the past.

17          Q.       How long ago was that?

18          A.       I don't recall, Mr. Mills, but I know that  
19       it was several years ago we did do it. I think it was --  
20       it was sometime in -- I don't recall. It was in the  
21       2000s, and it may have been like 2005, but I just don't  
22       recall.

23          Q.       Let me turn to your surrebuttal testimony,  
24       if you would, please, and specifically the last sentence  
25       in the first full paragraph on page 2 beginning at line



1 13.

2 A. I'm sorry. Page again? I'm sorry.

3 Q. Your surrebuttal testimony --

4 A. Thank you.

5 Q. -- page 2, the sentence beginning on  
6 line 13. Is your testimony there that the Commission  
7 should use the same analysis in an interim increase if the  
8 utility claims an emergency or if the utility does not  
9 claim an emergency?

10 A. I'm sorry. The question again, please?

11 Q. Let me make it a little more  
12 straightforward, then.

13 A. Thank you.

14 Q. Do you believe the Commission should use  
15 the same analysis for interim rates whether or not the  
16 utility alleges an emergency?

17 A. Mr. Mills, that -- in terms of what's an  
18 emergency, I know there's been quite a bit discussed today  
19 in terms of what an emergency is from a legal perspective.  
20 I believe that our testimony states that, you know,  
21 relevant facts should be considered, and the Commission  
22 has broad discretion in determining what they believe is  
23 appropriate in terms of how they -- whether they grant  
24 interim rates and at what level.

25 Q. Was that an I don't know?

1           A.       In terms of emergency standard, I don't  
2 know in that regard.

3           Q.       Okay. Now, you state in your testimony  
4 that you could have asked for 10 or 20 percent or some  
5 other fraction of your overall rate increase; is that  
6 correct?

7           A.       Yes.

8           Q.       Why did you not do that?

9           A.       You know, when we looked at the interim  
10 rate request, there are several factors that we  
11 considered. One of the factors was the issue that you  
12 raised, should we ask for 10, 20, 30, 40, 50 percent,  
13 whatever the case may be. And the concern that we had is  
14 we knew the Commission would look at it and issues would  
15 be raised that that would be just arbitrary, and that was  
16 one issue that people may ultimately raise.

17                   And so we stepped back and said, well,  
18 maybe in this particular circumstance it would be  
19 appropriate to tie it to iron that we put into the ground,  
20 and so we indeed did that. We tied it to between the last  
21 rate case and -- or at least the true-up here from the  
22 last rate case until May, which was the most recent data  
23 that we had when we filed, we said that would be a, you  
24 know, we thought would be appropriate in terms of asking  
25 the Commission to consider that, and as it turned out, it

1 was approximately 10 percent of our overall rate increase.

2 And so those are some of the factors that we considered.

3 Q. But when Mr. Rackers, for example, pointed  
4 out that you didn't tie it accurately to the iron in the  
5 ground, the responsive testimony was, well, that doesn't  
6 matter?

7 MR. LOWERY: Objection. Assumes facts not  
8 in evidence, that it was not tied accurately. The  
9 question was argumentative.

10 MR. MILLS: I didn't ask him whether or not  
11 it was tied accurately. I said when Mr. Rackers raised  
12 questions about whether or not it was accurately tied --

13 JUDGE WOODRUFF: I'll overrule the  
14 objection.

15 THE WITNESS: Could you repeat the question  
16 again, please?

17 BY MR. MILLS:

18 Q. Yes. Is it not true that when other  
19 parties raised questions about whether or not it was  
20 accurately tied to the iron in the ground, as you put it,  
21 that you said that does not matter for the purposes of  
22 interim rate case?

23 A. That is correct. And what we said and what  
24 I stated in my testimony was that we provided a reasonable  
25 proxy, and we did tie it to -- to the plant in service,

1 but it wasn't necessary in terms of an overall interim  
2 rate increase; that, in fact, as you appointed out, we  
3 could have simply said, 10, 20, 30 percent. So it isn't  
4 so much the nature of the specific calculation from our  
5 perspective.

6                   It is that you're asking for an interim  
7 rate increase for all the policy reasons that we've cited,  
8 but it's 10 percent of our overall increase, and the  
9 Commission has the ability to look at all relevant factors  
10 and determine if that's appropriate.

11           Q.       Most of the rationale you've advanced in  
12 support of the interim rate increase would support a  
13 simple percentage as well as the calculation you've done;  
14 is that correct?

15           A.       That's correct.

16           Q.       Now, on page 3, specifically at lines 11  
17 and -- 11 through 13, you talk about the 100 percent  
18 certainty standard. Who in this case is advocating for a  
19 100 percent certainty standard?

20           A.       I'm not aware of anyone who's advocating a  
21 100 percent certainty standard.

22           Q.       Thank you. On page 4 of your surrebuttal  
23 testimony, in the second paragraph, or at least you  
24 continue in the second paragraph, you talk about the cost  
25 of equity. How much do you pay out for cost of equity on

1 an annual basis?

2 A. I'm sorry. Could you refer me again to the  
3 page or the line? You're talking about page 4?

4 Q. Page 4, and I'm talking -- you refer to the  
5 cost of equity being part of the cost of service. How  
6 much do you pay out on an annual basis for cost of equity?

7 A. In terms of the overall -- our overall cost  
8 of equity, our witness Lee Nickloy is probably the best  
9 person to address that particular issue in terms of what  
10 Ameren's overall cost of equity is. What I'm referring to  
11 here certainly relates to the return on equity that we  
12 expect to receive on our investment in plant and service.

13 Q. Is it your testimony that you pay out cost  
14 of equity in the same fashion that you pay out payroll,  
15 for example, where you cut checks to certain entities?

16 A. In my testimony here, I am saying a  
17 cost of our investment in plant in service includes a cost  
18 of equity, and so for us to make that investment in plant,  
19 to have the capital that we need or the -- the, yes, the  
20 capital to employ, we get that from various sources, and  
21 that includes both debt and equity, and we pay other costs  
22 and this is one of those components.

23 Q. And my question is, do you actually pay out  
24 money to people that's designated as cost of equity?

25 A. We -- the answer is yes, we certainly pay

1 out money to people in terms of form of dividends and  
2 otherwise. We certainly do pay to our equity shareholders  
3 forms of monies.

4 Q. So the dividends you pay out are the  
5 reflection of your cost of equity?

6 A. I wouldn't -- I would not concede that. I  
7 think that again Mr. Nickloy in terms of how overall cost  
8 of equity is determined would be the better person, but it  
9 isn't just simply dividends.

10 Q. What other amounts do you pay out that make  
11 up cost of equity?

12 A. I think, Mr. Mills, what we certainly do.  
13 is we issue equity, and there's -- in terms of the cost  
14 associated with that, depends upon what you ultimately  
15 issue that equity at, and there are, you know, obviously  
16 costs associated with financing of an equity issuance.  
17 Those are other costs that go with an equity issuance.

18 Q. Isn't the whole point of an equity issuance  
19 that you get money back rather than pay money out? You're  
20 saying that it's a net cost to you to issue equity?

21 A. Absolutely. In terms of there's -- is  
22 there a cost to issue an equity? That is absolutely  
23 correct.

24 Q. There's a net cost to issuing equity?

25 A. What do you mean by net cost, Mr. Mills?

1           Q.       Do you not get money back from the equity  
2   that you issue in excess of the cost of flotation?

3           A.       Yes.

4           Q.       So there's not a net cost, there's a net  
5   benefit in issuing equity?

6           A.       There is not a net cost to issuing equity  
7   in the way you defined it, that is true.

8           Q.       Now, correct me if I'm wrong, but at some  
9   point in your career were you not comptroller at UE?

10          A.       Yes.

11          Q.       Okay. And as part of that job, it was your  
12   job to oversee the processing of checks and payments; is  
13   that correct?

14          A.       Yes.

15          Q.       And other than dividends, what checks were  
16   paid out that would be categorized as payments as -- as  
17   the cost of equity?

18          A.       In terms of -- in terms of if you analogize  
19   the payroll, I can't think of any.

20          Q.       Are you familiar with the regulatory  
21   compact?

22          A.       Could you elaborate a little bit what you  
23   mean by the regulatory compact?

24          Q.       It's a fairly standard sort of sets of give  
25   and take that's assumed in the regulation of public

1 utilities and has been for close to a century now. Do  
2 you --

3 A. I'm familiar with the term. It's a fairly  
4 broad term, and that's why I was asking if there --

5 Q. It's a fairly broad term. Would you like  
6 me to define it or would you like to define it?

7 A. I understand, am familiar with the term  
8 regulatory compact.

9 Q. At page -- still at page 4, lines 19 to 20,  
10 isn't part of the regulatory compact that UE pays out for  
11 the earnings and then later recovers money from its  
12 investments?

13 A. If -- what I'm referring to here is some of  
14 the implications of regulatory lag, and so yes, there are  
15 some part -- there's an aspect of the regulatory compact  
16 which includes regulatory lag.

17 Q. And part of the regulatory compact is that  
18 you make the investments first and then recover for them  
19 later; is that correct?

20 A. Yes.

21 Q. You're not paid up front before you make  
22 investments, generally speaking?

23 A. In the state of Missouri, that is true.  
24 That is correct. There are certain other jurisdictions  
25 you use forecasted test years and those types of things,



1 but that's not how we're doing it here in the state of  
2 Missouri.

3 Q. Now, in continuing on that argument, onto  
4 the top of page 5, you talk about earning 1/10 of  
5 1 percent return. Where does that figure come from?

6 A. I'm looking for the reference again, the  
7 line item.

8 Q. Page 5, line 1 and 2.

9 A. Oh, yes. Thank you. That was in response  
10 to a position that was taken that if we earned any profit  
11 during any particular period associated with investment  
12 that we made in plant, including depreciation related  
13 taxes, that if we earn one penny, that we are truly  
14 recovering our cost of service.

15 What I was suggesting there is that that  
16 is -- I certainly disagree with that, and that was  
17 suggesting if we are 1/10 of 1 percent of return, that we  
18 are recovering our cost, that I disagreed with that. That  
19 was as an example.

20 Q. How about if you earn 1 percent of return,  
21 are you recovering your costs?

22 A. Not likely.

23 Q. Okay. Is there any point between 1/10 of  
24 1 percent and your authorized rate of return at which you  
25 would concede that you are covering your costs?

1           A.       No, Mr. Mills, I think it's difficult to  
2 say just exactly what that specific level would be.

3           Q.       I'm not asking for a specific level. I'm  
4 asking is there one between 1/10 and your authorized?

5           A.       I can't give you one as I sit here, no.

6           Q.       So your answer is no, there is not one or  
7 there may be one and you just can't accurately identify  
8 it?

9           A.       I think the -- that is true. There may be  
10 one and I just can't accurately identify it here in terms  
11 of the specific facts and circumstances that you have to  
12 consider and where your earned return would be and your  
13 authorized return would be, whether you're recovering  
14 100 percent of your costs. There are several factors that  
15 have to go into that.

16          Q.       So you're willing to concede that you don't  
17 have to earn all the way up to your authorized return to  
18 recover all of your costs?

19          A.       That is certainly -- well, let me make sure  
20 we're speaking about the same thing. If you're asking the  
21 question are we under-earning, if our earned return on  
22 equity is less than our authorized return on equity, we  
23 are under-earning. Is that what you're asking me?

24          Q.       No, I'm not talking about earning. Here  
25 you're talking about covering costs, and I'm trying to

1   confine my questions to covering costs. Your point is  
2   that if you only earn 1/10 of 1 percent, you're not  
3   covering your costs. And I -- I could go through by  
4   tenths from 1/10 up to 10.76, but I don't really want to  
5   do that.

6                   So my question was, is there anywhere  
7   between that 1/10 where you say you were not covering your  
8   costs and the full authorized rate of return where you  
9   believe that you are covering your costs?

10           A.     I believe if we are earning less than our  
11   authorized return on equity, we are not fully recovering  
12   all of our costs.

13           Q.     Now, on page 6, specifically at line 12,  
14   you use the phrase, A meaningful enhancement with respect  
15   to UE's overall credit quality. How do you define a  
16   meaningful enhancement?

17           A.     You know, I would define a meaningful  
18   enhancement to -- to investors, and this is what I'm  
19   talking about more credit support environment, is that  
20   this Commission is taking actions to try and address the  
21   excessive regulatory lag that we're experiencing, and  
22   they're taking actions in determining this case in -- of  
23   providing interim rates to give us more timely recovery of  
24   our costs, and so that is -- is a meaningful enhancement.

25           Q.     And will a meaningful enhancement translate

1     into lower costs for ratepayers?

2             A.       In this particular situation, I do believe  
3     so, yes.

4             Q.       How will the granting of -- in this  
5     particular situation, talking about the granting of  
6     interim rates --

7             A.       Yes.

8             Q.       -- how will that translate to the lower  
9     cost for ratepayers?

10            A.       I believe, as you know, we generate  
11    negative free cash flow. So for all practical purposes,  
12    to fund our operations we have to borrow monies from the  
13    capital markets, whether it be short-term or perhaps  
14    long-term. So by providing cash flows on a more timely  
15    basis means that we do not have to borrow monies under our  
16    short-term credit facilities which carry an interest rate  
17    and an interest cost, and so by avoiding that, rates for  
18    customers in the long term will be lower.

19            Q.       In the long term?

20            A.       Well, rates will be lower, and then  
21    ultimately whenever we have the next set of rate cases  
22    they would be reflected, that is true

23            Q.       So that the point is if you increase costs  
24    now, the hope is that rates will be lower in the next rate  
25    case; is that your testimony?

1           A.       No. What I'm suggesting is we're not  
2     increasing cost. We're recovering on a more timely  
3     fashion costs that we've already incurred.

4           Q.       I misspoke. But what I meant to say is, by  
5     increasing rates now, it's your testimony that rates will  
6     be lower in the future rate case?

7           A.       Yes.

8           Q.       Have you quantified that rates will be  
9     lower by an amount equal to the interim rate increase that  
10    you've requested here?

11          A.       I have not.

12          Q.       Now, at page -- still at page 6, line 18,  
13    you're talking -- and you had to have expected questions  
14    on this. You're talking about the being chronically  
15    unable to earn anywhere close to its Commission-authorized  
16    return on equity. And you use the time frame of past  
17    several years on lines 19 to 20.

18                    Would that statement be true if you were to  
19    use the past several decades as opposed to the past  
20    several years? If, for example, we talked about over the  
21    last 20 years, would you say that you've been chronically  
22    unable to earn your return?

23          A.       No.

24          Q.       Now, at page 7 -- and this is sort of  
25    looping back to the regulatory compact question. At page

1 7, lines 14 to 15, you talk about the regulatory  
2 framework. Is that essentially the same thing as a  
3 regulatory compact that we've been talking about?

4 A. The regulatory framework is certainly the  
5 broader principle. Regulatory compact may be a subset,  
6 but I don't want to mix words. I think we're probably  
7 both communicating.

8 Q. Good. Now, you say on page 7 still, line  
9 20, that regulatory lag is driven by several factors,  
10 including the economy. How does the economy drive  
11 regulatory lag?

12 A. Certainly the economy drives regulatory lag  
13 in certain instances, and one would be higher financing  
14 costs, and so the issues and the challenges that we saw at  
15 the end of last year when financial markets had all their  
16 issues, financing costs went up rather significantly, and  
17 so if our rates, which are based on historical costs, had  
18 financing costs embedded in those that were X, and then  
19 between rate cases you have to still finance the amount of  
20 infrastructure which we do Y, then that delta is how  
21 regulatory lag in that instance affects -- the economy is  
22 affecting regulatory lag.

23 Q. So you're saying that the economy has  
24 exacerbated the effects of regulatory lag on you, not that  
25 the economy causes regulatory lag?

1           A.       That's correct.

2           Q.       Okay. Now, you've said -- and let me ask  
3 you if this is a correct characterization of your  
4 testimony. You've said that granting an interim rate  
5 increase in this case would be a small step towards  
6 eliminating or mitigating such a regulatory lag. Is that  
7 a fair paraphrase, a small step?

8           A.       If I could correct it, what I said is a  
9 small step toward reducing excessive regulatory lag, not  
10 eliminating.

11          Q.       Okay. And from your point of view, would  
12 that be a sufficient step towards reducing regulatory lag  
13 in Missouri, or would you be looking for other mechanisms  
14 in the future in addition to interim rate increases?

15          A.       I think as my testimony points out, this is  
16 one small step. And I also say there will be --  
17 regulatory lag will persist, and the fact that excessive  
18 regulatory lag could indeed persist and that this will not  
19 solve the problem, so there will be other mechanisms  
20 including mechanisms that we're seeking in our current  
21 rate case to try and address the excessive regulatory lag,  
22 things like the fuel adjustment clause, the environmental  
23 cost recovery mechanism, and the tracking mechanisms and  
24 all those things. Those are all key, key factors to try  
25 and address excessive regulatory lag.

1           Q.       How about things like changing the  
2     statutory time frame for rate cases, is that something  
3     that you'd be interested in doing?

4           A.       In the context of this rate case, I don't  
5     think we can change the -- I'm no lawyer. I don't think  
6     we can change the statutory provisions, if that's what you  
7     mean.

8           Q.       No. I'm talking about, you said that an  
9     interim increase is only a small step towards reducing.  
10    I'm trying to figure out what other steps you think are  
11    necessary in addition --

12          A.       Oh, sure.

13          Q.       -- if the Commission does this, what else  
14    are we all going to be looking at later?

15          A.       I would say just to be clear, I mean, what  
16    we're asking for in this case and in this proceeding is  
17    nothing which is beyond the Commission's jurisdiction.  
18    So -- so in any future -- and we'll stay within that. If  
19    you're -- if the opportunities are, are there things that  
20    can be changed legislatively, I think there are other  
21    things that can be looked at.

22                   I think certainly looking at reducing the  
23    amount of time that we had to go through a -- a rate case  
24    is one thing, but I'm not sure that we have to change the  
25    statute. I think there are things that we could do even



1 today, even go up to 11 months, but there's certain ways  
2 that we can reduce that time.

3                   As I think others have pointed out, in this  
4 electronic age, we probably have the greater ability to  
5 accelerate certain things that we do in the context of a  
6 rate case, so that would be one thing. Whether it has to  
7 be done statutorily or not, I don't know.

8                   And there are other things that certainly  
9 define more timely recovery of costs, earlier things like  
10 the ISRS, and these things were discussed, and is that a  
11 possibility, and from a legislative perspective, yes.

12           Q.       So you'd be looking at all of those things  
13 even if you get interim rate relief in this case?

14           A.       Yes.

15           Q.       Now, on page 8, you say that existing  
16 regulatory lag, the existing regulatory framework creates  
17 a strong disincentive to strongly support state and  
18 federal policy initiatives; is that correct?

19           A.       Yes, I do.

20           Q.       What state and federal policy initiatives  
21 would you have supported more strongly but for regulatory  
22 lag?

23           A.       What I was referring to there, Mr. Mills,  
24 was really, one, I think both state and federal policies  
25 to try and create jobs, and -- and -- and as one policy

1 initiative. And one way to create jobs is just to  
2 increase investment that is going to ultimately be in the  
3 long-term benefits of the state and I believe would be our  
4 stakeholders. So that's one policy initiative.

5 Other policy initiatives would include  
6 things like renewables. I mean, there's certainly --  
7 appears to me from the national perspective, even from the  
8 state perspective that there's an interest in investing in  
9 renewables, and removing some of that disincentive may  
10 accelerate some of that investment, things like  
11 transmission. As we know, that -- that renewables are  
12 somewhat tough to work here in Missouri because of the  
13 transmission issues that we have.

14 If we can remove some of those  
15 disincentives from investment, perhaps more meaningful  
16 investments in transmission can be done, which will then  
17 help renewable investments. So when I was referring to  
18 state and federal policy initiatives, it's those types of  
19 things I was referring to.

20 Q. Now, along those lines, you say at line  
21 8 -- I mean, page 8, line 14, and this is still continuing  
22 what good would come from reducing regulatory lag, you say  
23 that it would make the state a more attractive location  
24 for businesses; is that correct?

25 A. Yes.

1           Q.       Is it your testimony that routinely  
2     granting interim increases will make the state more  
3     attractive to businesses?

4           A.       I don't know to what extent granting  
5     interim rates would make it more attractive or less  
6     attractive. The point I was making there, more timely  
7     cash flows will promote more timely investment, which  
8     makes the state potentially more attractive because you  
9     have a more robust energy infrastructure.

10          Q.       Is the energy infrastructure inadequate in  
11     Ameren's territory now?

12          A.       No.

13          Q.       I meant to say AmerenUE's territory.

14          A.       I understood. The simple answer is no.

15                   MR. MILLS: Those are all the questions I  
16     have. Thank you.

17                   JUDGE WOODRUFF: Cross from Staff?

18     CROSS-EXAMINATION BY MR. DOTTHEIM:

19          Q.       Good morning, Mr. Baxter.

20          A.       Mr. Dottheim, it's now turned into the  
21     afternoon on us. Good afternoon.

22          Q.       I'm sorry.

23          A.       Time flies when you're having fun.

24          Q.       Yes. Mr. Baxter, if the Commission grants  
25     AmerenUE's requested interim rate increase, do you expect

1 that AmerenUE will file an interim rate increase in the  
2 future using the same methodology when it files a  
3 permanent rate increase case?

4 A. I don't know.

5 Q. Mr. Baxter, in AmerenUE's last two rate  
6 increase cases, the ones filed in 2006 and 2008, AmerenUE  
7 would have qualified for interim rate relief in those two  
8 prior rate increase cases under the methodology it's  
9 presently proposing, would it have not?

10 A. I don't know. I have not done that  
11 calculation.

12 Q. The amount of plant that's represented by  
13 the \$37.3 million rate increase is in the order of about  
14 \$215 million; am I correct?

15 A. Mr. Dottheim, it would be subject to check.  
16 For some reason 350 million is sticking in my mind, but I  
17 could be -- I could be wrong.

18 Q. Okay. And would -- you may be thinking of  
19 gross plant, and I was speaking of increase in net plant.

20 Q. That could be true. Of course, Mr. Weiss  
21 is probably the -- in terms of the details, he would  
22 certainly be the better person to talk about those  
23 details, as evidenced by -- I had numbers that were close  
24 but not exact.

25 Q. Mr. Baxter, is there some level of increase

1 in plant that's de minimis for which AmerenUE would not  
2 seek an interim rate relief?

3 A. I don't know, because -- I don't know. I  
4 don't know, because interim rate relief in this case we're  
5 talking about for plant, but interim rate relief may be  
6 appropriate sometime down the road for other unusual  
7 circumstances that aren't plant related that could be O&M  
8 related or other things that were brought up a little bit  
9 earlier. So it's impossible to say.

10 Q. Mr. Baxter, do you have a copy of your  
11 overall direct testimony in this proceeding?

12 A. I do.

13 Q. Could I direct you to it?

14 A. Sure.

15 Q. And if I could direct you in particular to  
16 page 10, lines 1 to 3. Do you have that?

17 A. Yes, I do.

18 Q. You state there, do you not, that one of  
19 the key drivers associated with the approximately  
20 \$175 million increase in non-fuel costs relates to capital  
21 investment and associated expenses respecting distribution  
22 and power plant facilities, do you not?

23 A. Yes.

24 Q. I'd like to direct you to lines 9 and 10 on  
25 page 10. And you go on to state on lines 9 to 10, since

1 2006, AmerenUE has made capital investments in its system  
2 that total approximately 2 billion, do you not?

3 A. I do.

4 Q. And then you go on to indicate that the  
5 Power On program is part of that \$2 billion?

6 A. Yes.

7 Q. Is Power On that \$350 million increase in  
8 gross plant from October 2008 to May 2009 net plant about  
9 \$215,000 from October 2008 to May 2009?

10 A. Mr. Dottheim, are you asking me whether  
11 that entire amount is driven by our Power On program? Is  
12 that your question?

13 Q. Yes, or if you could identify what  
14 percentage of that amount is driven by Power On.

15 A. I can answer the first question, but I  
16 can't answer the second one. The first question is Power  
17 On is a component of that. Of course, the Power On  
18 program that we talk about relates to both the  
19 undergrounding but it also related to the Sioux scrubber  
20 work that we've done, among other things, the pole  
21 inspections and those other things. Those were included  
22 in the overall Power On program. So certainly a piece of  
23 that is included, but I can't tell you specifically how  
24 much of that is that net investments.

25 MR. DOTTHEIM: Could I have -- I'd like to

1 have three exhibits marked.

2 JUDGE WOODRUFF: All right. Next one would  
3 be T.

4 MR. DOTTHEIM: Be T, R and S. And --

5 JUDGE WOODRUFF: You went backwards. T, U,  
6 V.

7 MR. DOTTHEIM: I'm sorry. T, U, V.

8 MR. DOTTHEIM: Okay. T is a copy of a  
9 billing insert, Amerenlines of September 2007. U is an  
10 Amerenlines, it's a billing insert from January of 2008.  
11 And V is a copy of several pages from the Ameren website  
12 on Power On, Power On Program Frequently Asked Questions.

13 (EXHIBIT T, U AND V WERE MARKED FOR  
14 IDENTIFICATION BY THE REPORTER.)

15 BY MR. DOTTHEIM:

16 Q. Mr. Baxter, have you had an opportunity to  
17 look at what's been marked as Exhibits T, U, V?

18 A. I've had a chance to briefly go over them,  
19 yes.

20 Q. Do you recognize those documents?

21 A. Yes.

22 Q. And each of those documents in part at  
23 least deal with Power On, do they not?

24 A. Yes.

25 Q. Okay. And they each have some

1 quantification of the Power On program, do they not?

2 There may be certain components that are identified with  
3 dollars associated. Maybe not all components have dollars  
4 associated with them?

5 A. To answer your question, yes, there's some  
6 level of magnitude or dollars on all the documents, some  
7 certainly more than others.

8 Q. Yes. And actually the reason why I've had  
9 three exhibits marked is -- is the -- the dollars are  
10 shown a little bit differently amongst them, but arguably  
11 they're close. In -- if I recall correctly, you've  
12 identified at least part of the \$37.3 million that  
13 AmerenUE is seeking in interim rates as being the Power On  
14 program; is that correct?

15 A. Yes.

16 Q. Okay. But you're not able to identify what  
17 percentage of that \$37.3 million is Power On?

18 A. No.

19 Q. Is the Power On program scheduled to  
20 continue indefinitely into the future?

21 A. No.

22 Q. Can you identify when the Power On program  
23 is scheduled to conclude?

24 A. In terms -- no, not specifically, because  
25 as we -- as this Power On addresses undergrounding



1 cabling, it addresses the tree trimming. It addresses  
2 certain device inspections, and it addresses the Sioux  
3 scrubber. So some of those things may still be called  
4 Power On and may go on indefinitely. Things like tree  
5 trimming we'll continue to move forward with forever. So  
6 I want to make sure I'm being responsive. I think that --

7 Q. Certainly.

8 A. -- we talked about a three-year program,  
9 but I think some of those components I think will go on  
10 indefinitely. The scrubber will have a finite life, but  
11 others could very well go on for some time.

12 Q. Do you anticipate if -- assume for me  
13 AmerenUE would file a rate increase case next year after  
14 the conclusion of this case, similarly to after it filed a  
15 rate increase case after the most recent one,  
16 ER-2008-0318. Do you anticipate that there would be net  
17 plant in the amount of \$37.3 million if AmerenUE were to  
18 file a rate increase case on the same schedule?

19 A. I don't know.

20 Q. Has AmerenUE deferred any of the Power On  
21 program?

22 A. Yes.

23 Q. Can you identify what portions of the Power  
24 On program AmerenUE has deferred?

25 A. The principal portion which has been

1 deferred relates to the undergrounding effort. We  
2 continue to move forward with the Sioux scrubber. Of  
3 course we do the tree trimming, and I -- in part I can't  
4 speak directly to the circuit and the device inspection.  
5 I think they continue to go on as is, but the  
6 undergrounding piece of it, while we have done some level  
7 of work, we have deferred that piece of the project at  
8 this stage.

9 Q. When AmerenUE announced the Power On  
10 program in 2007, you didn't indicate at that time or  
11 subsequently until the filing of its most recent rate  
12 increase case that the company would need interim rate  
13 relief as it is proposed, has it?

14 A. That's correct. We did not indicate that  
15 we had filed for interim rates back in 2007.

16 Q. Has AmerenUE engaged in an austerity  
17 program?

18 A. Mr. Dottheim, could you maybe describe what  
19 you mean by austerity program?

20 Q. Has there been a hiring freeze on  
21 employees?

22 A. Hiring freeze, make sure I define what a  
23 hiring freeze is. It says -- suggests that if someone  
24 leaves, you can't fill that position. No. Have we  
25 proactively and very actively managed any new additions

1 that are outside of our company? The answer is yes.

2 Q. Is there a program to reduce the amount of  
3 overtime work?

4 A. Yes.

5 Q. Is there a program to reduce the amount of  
6 travel of AmerenUE employees?

7 A. Yes.

8 Q. Is there a reduction in the number of  
9 conferences attended?

10 A. Yes.

11 Q. Is there a reduction in the use of  
12 consultants?

13 A. Yes.

14 Q. Are these various reductions, is that  
15 identified as a stated policy, an internal policy? Is  
16 there an actual program?

17 A. Sir, let me make sure we define program. I  
18 can see what you're saying. The fact of the matter is, is  
19 we look at the budget situation that we had and the  
20 challenges that we've laid out here. There's been no  
21 doubt there's been a proactive decision across our company  
22 to reduce levels of all the things that you've stated, and  
23 as I meet with my leadership team, the other officers, we  
24 talk very explicitly about certain of those things that  
25 we've had to do.

1                   Whether there's been a handwritten policy,  
2 I'm not aware of a handwritten policy, but clearly the  
3 message has been communicated and the -- and the dollars  
4 that we had not just for -- and especially for '09, but  
5 also for '10 and beyond, those dollars have been certainly  
6 under review and changes have been made.

7           Q.       Has there been any reduction in advertising  
8 since the company's last rate case?

9           A.       I don't know.

10          Q.       Mr. Baxter, I'd like to refer you to your  
11 direct testimony on interim rates, and in particular I'd  
12 like to direct you to page 10, and I'd like to refer you  
13 to lines 1 to 2 where you state that, while it is true  
14 that the current framework and policies have been utilized  
15 in Missouri for decades, it is also true that much is  
16 changed over the last several years. Do you not state  
17 that?

18          A.       I do.

19          Q.       And I'd like to refer you to, on page 10,  
20 starting at line 5, where you list level of investment as  
21 one of the items that has changed, do you not?

22          A.       Yes.

23          Q.       UE in -- in prior decades such as the  
24 latter part of the 1970s and the first part, mid part of  
25 the 1980s experienced a time of great construction

1 investment, did it not?

2 A. Yes, we did.

3 Q. There was construction investment in

4 Callaway 1, was there not?

5 A. Yes.

6 Q. There was even construction investment in

7 Callaway 2, was there not?

8 A. That's correct.

9 Q. AmerenUE was constructing other generating  
10 facilities at that time, was it not?

11 A. At what time are you referring to? The  
12 '60s and '70s, or the '70s, '80s?

13 Q. '70s, '80s.

14 A. Mr. Dottheim, I'm not sure about the  
15 generating facilities honestly.

16 Q. At page 10, line 15, you list costs as  
17 another item that is changed saying we are not in a  
18 declining cost environment, do you not?

19 A. I do.

20 Q. UE was not in a declining cost environment  
21 in the latter part of the 1970s and into the mid 18 --  
22 the mid 1980s, was it not?

23 A. Not knowing all the details, my expectation  
24 is that that wasn't the case.

25 Q. Mr. Baxter, are you familiar with the term

1 attrition --

2 A. Yes.

3 Q. -- in the regulatory sense?

4 A. Could you explain, please?

5 Q. I think it is generally referred to as  
6 inflation, the inflationary effect on public utilities.

7 A. Okay. I'll accept that, now that I -- so  
8 attrition is equal to inflation?

9 Q. Yes. But you're not -- you're not familiar  
10 with that term in the context of public utility regulation  
11 in the late 1970s, 1980s?

12 A. No.

13 Q. Mid to -- early to mid 1980s?

14 A. No.

15 Q. If I can have a moment, please.

16 Mr. Baxter, do you know how much of  
17 AmerenUE's proposed interim rate adjustment might be  
18 covered by an ISRS as it presently is structured for the  
19 gas utility industry?

20 A. Well, since our request is for electric  
21 infrastructure, it would be zero.

22 Q. Okay. Do you have an understanding of what  
23 is -- what plant is covered by an ISRS for the gas utility  
24 industry?

25 A. In general terms, yes, but not

1 specifically.

2 Q. And AmerenUE has gas operations, does it  
3 not?

4 A. Yes, we do.

5 Q. Do you know how much of the ISRS for  
6 AmerenUE's gas operations are not covered by AmerenUE's  
7 interim rate proposal if that interim rate proposal were  
8 applied to AmerenUE's natural gas retail operations in a  
9 filing before the Commission? Do you have a percentage,  
10 any idea?

11 A. Can I clarify your question?

12 Q. Yes.

13 A. I think it's probably the same answer. So  
14 you're asking me if -- if we applied the same criteria to  
15 our gas business and had the ISRS there, you know, what  
16 impact that would have, what -- what an interim rate  
17 filing perhaps be for our gas business; is that your  
18 question?

19 Q. Yes. Would you pick up additional dollars  
20 with your interim rate proposal, your electric interim  
21 rate proposal if you made a comparable proposal on the gas  
22 side?

23 A. I don't know. I don't know. I'm sorry. I  
24 wanted to make sure I understood your question, but no, I  
25 don't know that answer.

1           Q.       I'm sorry. I may not have done a very good  
2 job explaining.

3           A.       That's okay. I better understood. Thank  
4 you.

5           Q.       Mr. Baxter, are you aware that -- of  
6 Proposition C, the renewable energy standard?

7           A.       I am.

8           Q.       Okay. I'd assume you're aware that under  
9 its provisions, a utility such as AmerenUE can file to  
10 recover its costs outside the context of a rate increase  
11 case, an overall rate increase case; is that your  
12 understanding?

13          A.       I believe that's true. To know the  
14 specifics, I don't know. I know there's a rulemaking  
15 going on associated with that, and I know there may be  
16 questions and issues surrounding that, but I don't know  
17 the details beyond that.

18          Q.       So AmerenUE has filed for an ECRM in its  
19 presently filed permanent rate increase case, has it not?

20          A.       Yes, we have.

21          Q.       And under the ECRM, rate increase cases or  
22 rate increases can occur outside the context of an overall  
23 general rate increase case, can they not?

24          A.       It can.

25          Q.       So there with the AmerenUE interim rate



1 proposal, which would occur outside the context or within,  
2 it would be a separate increase within a permanent rate  
3 increase filing, would it not?

4 A. Mr. Dottheim, are you asking me whether an  
5 interim rate increase would be a -- a component or at  
6 least a -- I don't know if subset's the right word, of a  
7 potential permanent rate increase because it's subject to  
8 refund; is that your question?

9 Q. Yes. Yes, if you would answer that.

10 A. My understanding is, yes, putting aside the  
11 legal arguments that were made earlier, I'll -- that's my  
12 view of it.

13 Q. And the rate increase would occur -- what  
14 AmerenUE is asking is the rate increase would occur prior  
15 to the permanent rate increase, would it not?

16 A. Yes, it would.

17 Q. So if AmerenUE obtains authorization from  
18 the Commission for its interim rate increase proposal,  
19 there would be a rate increase prior to the permanent rate  
20 increase, correct?

21 A. Yes.

22 Q. And if the Commission set that criteria,  
23 which I think the company is arguing is really not  
24 criteria, it's the Commission's discretion, the company in  
25 future permanent rate increases would have the potential

1 for obtaining an interim rate increase prior to the  
2 permanent rate increase, would it not?

3 A. Yes.

4 Q. And the company would also have the  
5 opportunity to obtain fuel adjustment clause increases  
6 outside of the permanent rate increase case, would it not?

7 A. Yes. Assuming the Commission grants that  
8 fuel adjustment clause, that's exactly right.

9 Q. And assuming the Commission grants the  
10 environmental cost recovery mechanism that the company is  
11 requesting in its present filing, the company would have  
12 the opportunity to obtain environmental cost recovery  
13 increases outside the context of a permanent rate increase  
14 case, would it not?

15 A. That's correct.

16 Q. And with the Proposition C, the renewable  
17 energy standard, the company would be able to obtain  
18 recovery of costs associated with the renewable energy  
19 standard outside the context of a permanent rate increase  
20 case, would it not?

21 A. Subject to our discussion earlier, if that  
22 is indeed a provision in those rules, make it work that  
23 way, that would be a possibility, yes.

24 Q. When AmerenUE filed its direct testimony  
25 and tariff sheets on July 24, AmerenUE did not request

1     that the Commission take less than the full 11 months  
2     possible to process its permanent rate increase case, did  
3     it?

4             A.     I don't believe that's the case.

5             Q.     There was nothing preventing AmerenUE from  
6     making such a request, was there?

7             A.     I guess, Mr. Dottheim, that's probably a  
8     legal question that I don't know if we had to file it the  
9     way we did. I don't know if there were requirements in  
10    terms of how you file it or in the context of a filing you  
11    can ask for expedited treatment, I don't know.

12            MR. DOTTHEIM: May I have a moment, please?  
13    Mr. Baxter, thank you. You've been very patient.

14            JUDGE WOODRUFF: Mr. Dottheim, did you wish  
15    to offer T, U and V?

16            MR. DOTTHEIM: Yes.

17            JUDGE WOODRUFF: T, U and V have been  
18    offered. Any objection to their receipt?

19            (No response.)

20            JUDGE WOODRUFF: Hearing none, they will be  
21    received.

22            (EXHIBITS T, U AND V WERE RECEIVED INTO  
23    EVIDENCE.)

24            JUDGE WOODRUFF: And it's time for  
25    questions from the Bench, but before that we're going to

1 take a break for lunch. We'll come back at two o'clock.

2 (A BREAK WAS TAKEN.)

3 JUDGE WOODRUFF: Let's come back to order,  
4 please. Welcome back from lunch. Mr. Baxter's still on  
5 the stand, and we're ready for Commissioner questions.  
6 Commissioner Gunn.

7 COMMISSIONER GUNN: By default, it's my  
8 turn.

9 QUESTIONS BY COMMISSIONER GUNN:

10 Q. I don't have a whole lot of questions, but  
11 I do have a few. I'd like you to take a look at that  
12 chart behind you that's been presented by your counsel.  
13 It's the AmerenUE earned and allowed ROE chart.

14 Now, I believe in your testimony you talked  
15 about Taum Sauk and you said how Taum Sauk did affect the  
16 earnings, but it was about a 50 basis point, it was a  
17 limited effect, to about 50 basis points?

18 A. That's correct.

19 Q. That's correct. So is that reflected on  
20 this chart, or are these the actual -- actual earnings not  
21 adjusted for Taum Sauk?

22 A. These are the actual earnings not adjusted  
23 for Taum Sauk.

24 Q. Okay. So if we adjusted those for Taum  
25 Sauk, let's take that out as kind of an extraordinary

1 event that is not going to happen again. Would those  
2 earnings then be adjusted upwards 50 basis points?

3 A. I think the better way -- yes, you would  
4 take these bars and move them up 50 basis points.

5 Q. Which still leaves you significantly under  
6 the line that the allowed ROE, but there's a smaller gap  
7 between the two?

8 A. That's correct, Commissioner.

9 Q. In the -- have you noticed, maybe it hasn't  
10 taken affect yet, but are we still factoring in Taum Sauk  
11 into these reduction in earnings today as we speak?

12 A. Commissioner, make sure I answer your  
13 question. I know that we have updated our -- this  
14 schedule through September, and we prepared it in the  
15 exact same way, if that's answering your question. So  
16 Taum Sauk is still not -- is still not reflected in these  
17 bars. You would still raise them up as we go forward.

18 Q. At what point do we think that -- let me  
19 rephrase that.

20 Will we ever get to a point where that 50  
21 basis points basically for the extraordinary event goes  
22 away?

23 A. Yes. And we would expect that to go away  
24 when Taum Sauk goes into service in the spring of next  
25 year.

1           Q.     Okay. So there's still time, there's still  
2 more time that those will cause the earnings to be -- to  
3 be lesser?

4           A.     That's correct.

5           Q.     I want you to take a look at the bars that  
6 are above or close to the allowed ROE. There's at least  
7 one month when it's -- when it's above -- there are two  
8 months actually it appears that it's above the allowed  
9 ROE, and there are a couple more months that it's much  
10 closer than it has been in the past. See where I'm  
11 referring to?

12          A.     Yes.

13          Q.     What was different in those months than --  
14 and let's exclude Taum Sauk. What was different in those  
15 months than in the months where the spread is significant  
16 or nowhere near the line?

17          A.     Sure. I don't know specifically, but I can  
18 give you some observations that are probably broad. I  
19 haven't gone back to those specific months and be able to  
20 give details. My sense is certainly when you come to --  
21 to this latter part, obviously as I said as part of my  
22 testimony, some of the economic circumstances certainly  
23 have changed, which has caused a lot of the issues.

24                         Certainly secondly, since then our level of  
25 investments continue to be meaningful and, in fact,

1   probably increase.  Certainly we have continued rising  
2   investment costs.

3                   The third thing which may be affecting in  
4   part that would be, what I don't know is where off-system  
5   sales and those types of things and margins associated  
6   with that back at that time, because those were pre fuel  
7   adjustment clause.  So they could be a factor.  I don't  
8   know that for sure.

9           Q.       I'm glad you brought up fuel adjustment  
10   clause.  The fuel adjustment clause isn't factored in to  
11   these either?

12          A.       No, Commissioner.  It is factored in to  
13   this.  This is our reported earned return on equity, which  
14   includes the fuel adjustment clause subsequent to this  
15   rate case.

16          Q.       Okay.

17          A.       So fuel adjustment clause is reflected.

18          Q.       And there is enough time on there to -- to  
19   reflect adjustments made in the fuel adjust -- in the fuel  
20   adjustment clause in those four or five months?

21          A.       I think it's important to understand,  
22   Commissioner, that with the fuel adjustment clause, we're  
23   just simply -- we don't earn --

24          Q.       It doesn't increase earnings?

25          A.       We just pass our costs through.

1           Q.       Let's talk about the -- when I was in  
2 Australia they actually named it. They called it the GFC  
3 or the global financial crisis. It became an entity unto  
4 itself. So let's -- we'll refer to the GFC.

5                   When you look at this reduction in  
6 earnings, have you done an analysis to say how much of  
7 that reduced earnings is a direct result of the economic  
8 factors and what has -- is a direct result of what you  
9 characterize as systemic issues which cause excessive  
10 regulatory lag?

11           A.       Well, I would say in part, Commissioner,  
12 they're one and the same. But to answer your question,  
13 no, we have not done a specific analysis as this is the  
14 economy, this is infrastructure, this is systemic, in part  
15 because some of the issues which happen in the economy  
16 actually cause some of the issues we have with regulatory  
17 lag. I mentioned a little bit earlier financing costs  
18 have gone up. I mean, that is a reality that's happened  
19 as a result of the economy, and so we have to deal with  
20 that. But to say we've compartmentalized each and every  
21 one of those, no.

22                   We have certainly identified the piece  
23 associated with the lost revenues that we have because of  
24 infrastructure investment, and that's the \$75 million  
25 number that -- that I discuss in my testimony and



1 Mr. Weiss discusses in his testimony. That I can put a  
2 better finger on for that piece, but not for all the other  
3 pieces.

4 Q. The issues that are associated with the  
5 financial crisis, when and if the economy recovers, those  
6 will go away?

7 A. Not necessarily.

8 Q. I'm not saying your earnings are going  
9 to -- I'm not saying it's going to cause you to go back  
10 to -- to hit your authorized ROE, but if the economy,  
11 which is less usage or cost of financing, if that recovers  
12 and those factors revert to pre global financial crisis,  
13 if you will, that won't have any effect on earnings?

14 A. No, I didn't mean to say that. What I  
15 meant to -- I will say it will be less pronounced. I  
16 would agree with that. If the economy does recover, I do  
17 believe that certain of the issues are mitigated. But I  
18 thought you were asking -- I thought you'd asked me would  
19 they go away entirely, and I would say that not  
20 necessarily.

21 Q. If they return -- if they return to exactly  
22 the point in which they were, why wouldn't those  
23 particular factors that were in the economy revert? Where  
24 is the disconnect? Where's the loss of factor, if you  
25 will? What's the loss factor that says that you won't

1 return -- they won't go away?

2 A. Well, I guess we're -- what I want to get  
3 to is that we will still have regulatory lag, and so I  
4 think you had said that a little bit earlier.

5 Q. Right.

6 A. So perhaps what I'm -- maybe we're just  
7 saying semantics, things will improve. Whether it will be  
8 one for one, I can't predict for sure, but they will get  
9 less pronounced.

10 Q. Let me try to make this simple. You will  
11 have regulatory lag, but you won't have the economic  
12 factors which, under your theory, exacerbate the  
13 regulatory lag that already exists?

14 A. I want to make sure I'm answering your  
15 question. Yes, it will be mitigated, Commissioner. I  
16 think that the economic factors, you know, while they go  
17 back to the pre stage, we will still have other economic  
18 factors. We'll still have inflation which is part of  
19 what's driving that.

20 Q. Those are all present naturally. I'm  
21 talking about those that are specific to a financial  
22 crisis, which has basically been unprecedented. If and  
23 when the economy were to return to the point and recover  
24 fully to where we are, the issues that were caused  
25 directly as a result of that are no longer present?

1           A.       Yes.

2           Q.       Okay. All right. I want to take a little  
3 bit of a turn. In your direct testimony on page 5 --

4           A.       Commissioner, you're referring to the  
5 direct testimony in the interim rate --

6           Q.       Yes, the interim rate. And I had this  
7 discussion with Mr. Byrne during the -- during the  
8 on-the-record presentation/oral argument earlier, and I  
9 want to be clear. There are basically four issues that  
10 are pointed out by the company that says that that is the  
11 driving of this regulatory lag, issues which you believe  
12 are the four primary issues that cause regulatory lag in  
13 this state. And correct me if I'm wrong, but it's the  
14 length of the regulatory process, the use of historic test  
15 year, the prohibition on CWIP, and the lack of mechanisms  
16 to reflect property taxes and depreciation, things like  
17 that. Those are the four issues that you stated?

18          A.       Yes.

19          Q.       Are those the primary four issues?

20          A.       Commissioner, I think so. There are other  
21 issues, but I think we cited those. Those are probably  
22 the four primary.

23          Q.       So if those issues were solved, magically,  
24 then we wouldn't be -- you believe that we wouldn't --  
25 that the amount of regulatory lag that exists would be an

1 acceptable amount of regulatory lag?

2                   That's a broad question. I'm not asking --  
3 I'm not trying to pen you in. I'm trying -- I'm trying to  
4 determine whether there are any other major issues out  
5 there that, other than these four, that will somehow come  
6 in if we wave a magic wand and say of these four that  
7 nothing else is going to come up?

8           A.       Commissioner, to answer your question, in  
9 sort of in the spirit that it's being asked, I think this  
10 would make significant progress in addressing regulatory  
11 lag.

12          Q.       And there's nothing we can do about the  
13 prohibition on CWIP, correct? I mean, that's -- there's a  
14 statutory prohibition, that's a legislative function?

15          A.       That's correct.

16          Q.       So there's really three now that we might  
17 have an issue, be able to do something, correct?

18          A.       Certainly, Commissioner, you can deal with  
19 the length of the regulatory process in Missouri. I don't  
20 know whether you can specifically address the use of  
21 historical cost versus forecasted cost to establish rates.  
22 It's a bit of a legal question. I'll leave it at that.  
23 That one may be a lot more difficult. And a mechanism to  
24 adjust rates between rate cases, again, that -- that too  
25 potentially could require legislation.

1           Q.       And that's kind of where -- where -- where  
2 I want to go, and I'll ask you about each one of these.  
3 When I asked Mr. Byrne about historical test year versus  
4 future test year, he stated that future test years bring  
5 their own kind of special set of challenges and that --  
6 that switch may or may not be a desired switch on behalf  
7 of -- of the company. Is that accurate, or do you believe  
8 that a future test year would be the most appropriate way  
9 in order -- in order for this Commission to consider it in  
10 order to proceed in regular rate cases?

11           A.       I would suggest -- not knowing the details,  
12 because a future and a forecasted test year depend upon  
13 how that's designed, would affect -- would matter. But in  
14 a very basic principle, is a forecasted test year better  
15 than a historical test year in setting rates? The answer  
16 is, generally, yes.

17                   The devil in some respects is in the  
18 details, which maybe Mr. Byrne was referring to in terms  
19 of what it takes to execute a rate case with a forecasted  
20 test year versus historical test year. But setting rates  
21 based on future costs, I think that is -- that is  
22 certainly a step in the right direction.

23           Q.       And then the mechanism issue, that would be  
24 something that potentially you'd also need to go to the --  
25 like the CWIP prohibition, you'd need to go to the

1     Legislature to try to authorize --

2             A.       That would certainly be an opportunity or a  
3     consideration to take up.

4             Q.       And you feel the same way about the length  
5     of the process, even though -- even though there are ways  
6     to shorten the process that we have, and remind the  
7     parties that settlement is always one of those, issues in  
8     the process, that you settle large issues before you come  
9     to the Commission, there are time limits set statutorily?

10            A.       There is a -- there is a maximum time  
11    limit, as you know. I think that, frankly, there are ways  
12    even with that statutory limit that just says it shall not  
13    go further that we can clearly make it shorter.

14            Q.       Okay. Specifically on each one of these,  
15    what does your request for interim rates do to mitigate --  
16    obviously we know what it does to mitigate the length of  
17    the time because you're getting a portion of your rates  
18    immediately if we were to agree to an interim rate; is  
19    that correct?

20            A.       That's correct.

21            Q.       Does it really mitigate the historic versus  
22    future test year?

23            A.       Well, Commissioner, if I may, if you're  
24    asking me what the objective is for interim rates, and  
25    very broadly the objective is to use one tool that's

1 available to this Commission to begin addressing the  
2 excessive regulatory lag that we're -- that we're  
3 addressing, that we're facing. It won't stop it. It will  
4 take a step, but a meaningful step in terms of not just  
5 cash flows but certainly how investors and others look at  
6 our company and the regulatory framework here in Missouri.

7                   How that relates to each one of these, I  
8 guess I would suggest that these are other potentially  
9 legislative tools in some respects. Some would be within  
10 the authority of the Commission that could be taken to  
11 address regulatory lag.

12           Q.       That's part of -- I mean, that's part of  
13 what I'm asking is whether the contention that there are  
14 systemic regulatory issues which cause you not to be able  
15 to earn your ROE, whether an interim rate increase or an  
16 interim rate process is the most effective or best way to  
17 solve the systemic issues, because many of the four -- at  
18 least of -- the four primary issues, arguably 50 percent  
19 of them we don't really have the ability to deal with.

20                   And are you not putting a Band-Aid on what  
21 the issue is? I mean, if we -- let's -- for argument's  
22 sake, we were to grant interim rates, and then as was  
23 stated earlier, the rate schedule doesn't -- may not  
24 necessarily get you to where you need to be and it  
25 requires another filing of a rate case. Have we done

1 anything to help with the perceived problem of regulatory  
2 lag in this state?

3 A. The answer is, in my opinion, is absolutely  
4 yes. The granting of interim rates will clearly make  
5 progress in terms of addressing the regulatory lag issue.  
6 It will not solve the problem. It will not solve the  
7 problem. And I -- and I guess, Commissioner, what we're  
8 seeking to do is come to this Commission with the tools  
9 which are available to it and asking to take action.

10 It's not to say that these other things  
11 shouldn't and may need to be done at the Legislature or  
12 otherwise in the future, but what we have before us now is  
13 an opportunity. And the Commission -- I think Mr. Byrne  
14 even said in his opening statement, the Commission does  
15 have tools available to it to address regulatory lag and  
16 excessive regulatory lag, and we're seeking, we're asking  
17 the Commission to take the discretion it has within its  
18 power to make that -- make those steps today.

19 So in -- to answer your question again, I  
20 do believe it is making -- it's a small but an important  
21 step.

22 Q. It doesn't change the system that we have.  
23 It helps. So then what you're saying, it helps mitigate  
24 the system that we have, doesn't do anything to really  
25 address the systemic issues that we have?



1           A.       It -- it will certainly -- I think you said  
2     it properly. It will help mitigate the issue that -- of  
3     excessive regulatory lag, but there has to be more.

4           Q.       Let me go back to this chart. If what  
5     Ameren is arguing is, is that the system of regulation  
6     that we have prohibits the company from earning their  
7     authorized rate of return, how is it possible that under  
8     certain circumstances under that same regulatory scheme  
9     you were able to in some months earn that rate of return  
10    or in some cases in excess of the authorized rate of  
11    return?

12          A.       Well, Commissioner, again, not knowing the  
13    specifics of those months, I think that a lot -- as I  
14    pointed out in my testimony, quite a bit has changed here  
15    over the last couple of years that, frankly the last  
16    several years, which in part was driven -- that was during  
17    that same time period, but some of the stuff really  
18    started coming a little bit later.

19                 Certainly our investment requirements,  
20    whether it be for reliability purposes and others, they  
21    have now more recently been put in place. Of course the  
22    economy, which we already spoke about, the environmental  
23    requirements, and those are -- those continue to be  
24    meaningful, not just the ones that we think are going to  
25    come with greenhouse gases, but the ones that we're

1 complying with today. All of those have really help --  
2 have taken place here in the relative recent future.

3                   And of course, as I said back then, not  
4 knowing all the other -- the specifics, part of the issue  
5 that happened with the economy had to do with power  
6 prices, and those potentially at that point were more  
7 robust compared to where they are today. But as we all  
8 know, we have the fuel adjustment clause whereby the  
9 off-system sales in those margins go back to customers.  
10 That's the framework, and that's fine. That's a good  
11 thing. So that has changed, too.

12                   And so that all those factors I think are  
13 contributors as to where things were back then and really  
14 where they are today.

15           Q.       And I may not -- I may not disagree with  
16 that. However, those are conditions -- you're -- what's  
17 essentially asking is -- and I asked this policy question  
18 at the beginning. What essentially we're being asked for  
19 is to decide, and let's -- we will put aside the legal  
20 arguments for a second, whether we're authorized to do  
21 this or not because I think it's a legitimate question,  
22 but I'm going to put those aside for a second.

23                   What you're asking us to make a choice is  
24 whether we continue doing the way things we've done before  
25 or we expand our, from a policy standpoint, our use of

1 interim rates, which I think is an important question to  
2 ask, .but when you are asking us to change the system,  
3 this is one of the things I'm grappling with is you're  
4 asking us to change a system based on changing conditions,  
5 and -- and -- and maybe it's a distinction without a  
6 difference, but maybe it's not, is do we design a system  
7 that responds short -- to short-term conditions or  
8 potential short-term conditions, or do we design a system  
9 that best deals with any condition that comes in?

10                   And I don't know the answer to that  
11 question, and -- and -- and what you've given me is  
12 conditional changes, yet a system that we may not be in  
13 the best position in order -- in order to change it. So  
14 do I make a -- do I vote for a short-term conditional  
15 change, you know, a short-term solution that -- that deals  
16 with some potentially -- some conditional changes but has,  
17 in effect, changed the overall system?

18                   A.       Well, Commissioner, I guess what we're  
19 asking you to do is, I don't know if we're asking you to  
20 change the system. We're asking you to use a tool, a tool  
21 which you have available to you, to address an issue which  
22 is in part systemic, in part due to perhaps current  
23 events, which, you know, frankly, you know, I see the  
24 issues associated with the need for investments and the  
25 need -- and the challenge with the economy, not a one or

1 two-year thing. I believe the need for investment is out  
2 there for the foreseeable future.

3                   And so what happened with the problem is  
4 that we have these conditions, we have this regulatory  
5 framework which is having, as you rightfully point out,  
6 policy implications. And so that -- and I agree with you,  
7 this is in many respects a key policy question for us to  
8 address. Of course, there's the one that we want the  
9 reasonable opportunity to earn our authorized ROE, but the  
10 other policy implications are that we are in -- put in a  
11 position where we are having to reduce good projects that  
12 -- that -- that we think are -- would be better served and  
13 consistent with our customers' and maybe policymakers'  
14 expectations to make that investment. And then you talk  
15 about the broader public policy issue, that investment  
16 will drive jobs and I think will be in the long-term best  
17 interests of the state of Missouri.

18                   So -- so yes, we're asking you to use a  
19 tool, yes. Is it a tool that you have to use every time  
20 in the future? You know, I think that any time if someone  
21 wants to come and ask for interim rates in the future, the  
22 facts and circumstances will dictate that in the future.

23                   Will there be legislative changes?  
24 Perhaps, but there are no guarantees. So that's why we  
25 would rather come first to the Commission and address and

1 see if there are tools that you can use to try and address  
2 this issue that we have before us today.

3 COMMISSIONER GUNN: Thank you. I'll let  
4 some of the other guys go. Thank you.

5 JUDGE WOODRUFF: Chairman, do you have any  
6 questions? Commissioner Davis?

7 QUESTIONS BY COMMISSIONER DAVIS:

8 Q. Good afternoon, Mr. Baxter.

9 A. Good afternoon, Commissioner Davis.

10 Q. Having read your direct testimony and then  
11 going through yours as well as Mr. Weiss' testimony, is it  
12 fair to say that since the -- was it the March 2009 rate  
13 case decision, that AmerenUE hasn't earned more than  
14 6 percent of its Commission allowed ROE?

15 A. Yes.

16 Q. Do you -- I mean, do you have numbers now  
17 for September, October?

18 A. The answer is we do have them for  
19 September. I believe Mr. Weiss put that in his testimony,  
20 and I believe that return on equity was a little bit above  
21 6 percent, and I do not have any numbers beyond that.

22 Q. Okay. Now, would it also be fair to say  
23 that if the Commission's awarded ROE had -- would have  
24 been something less than the 10.76 we awarded in the  
25 previous case, that your actual returns would have been --

1 would have been even less?

2 A. Yes.

3 Q. Is it fair to say that if we had given you  
4 an 80 percent fuel adjustment clause or maybe even less  
5 than that, then Ameren would be -- AmerenUE would be in a  
6 much worse financial situation than it is right now?

7 A. Yes.

8 Q. Now, on page 3 of your direct testimony,  
9 you make reference to negative free cash flow of  
10 approximately \$1.6 billion. How did you arrive at that  
11 number?

12 A. Commissioner, the formula for free cash  
13 flow is -- it's defined as cash flow from operations less  
14 capital expenditures less dividends. And so what this is  
15 is an accumulation of that formula from January 1st, 2007  
16 through June 30th, 2009. And for those periods of time,  
17 we have generated negative free cash flow of \$1.6 billion.  
18 So bottom line is, is that cash flow from operations fell  
19 short by \$1.6 billion by capital expenditures and  
20 dividends.

21 Q. Now, that includes your -- your foray into  
22 Callaway 2, does it not?

23 A. In part it does, yes, sir.

24 Q. Do you know roughly how much of that is  
25 Callaway?

1           A.       Commissioner, I believe our investment in  
2   Callaway 2, for lack of a better term, is approximately  
3   \$75 million.

4           Q.       Okay. On page 4, you reference the impact  
5   of Taum Sauk on AmerenUE's return on equity. Do you  
6   recall, what was the -- what was the effect of the Noranda  
7   outage after the February ice storm?

8           A.       Commissioner, I don't know that. I know  
9   that Mr. Weiss reflected the impact of Noranda in his  
10   calculations, and I don't know that, but he certainly  
11   would have a better opportunity to answer that question.

12          Q.       AmerenUE's back up and running full steam  
13   now?

14          A.       AmerenUE is back up and running?

15          Q.       I'm sorry. Noranda.

16          A.       Commissioner Davis, I don't believe they're  
17   100 percent back. It was my understanding that they will  
18   not be back to full operations until sometime early next  
19   year.

20          Q.       Okay. So do you -- in terms of you selling  
21   them electricity, where -- I mean, what's your impression  
22   of where you're at?

23          A.       I think, Commissioner, that it's my  
24   understanding we're probably somewhere between  
25   three-quarters -- I believe Noranda's somewhere between

1 three-quarters of full capacity and full capacity.

2 Q. Okay. Now, on page 6 of your direct, you  
3 reference the approximate \$350 million in net plant  
4 additions. You know, I've looked at some of these  
5 spreadsheets. Can you briefly describe, you know, what  
6 those additions are, or at least the big ones?

7 A. Well, Commissioner, I will say that it's a  
8 number of things, frankly, I mean, across our plant  
9 operations. For instance, essential service water piping  
10 at Callaway. That was probably about a, oh, \$70 million  
11 project, I believe. That was done this year, which is a  
12 pretty meaningful chunk. Of course, we have made some  
13 investments, some sizable investments in undergrounding.  
14 Those are in there.

15 Of course, then there's just the stuff that  
16 we do all the time in terms of power plant maintenance.  
17 We do some of those upgrades to whether it be potentially  
18 boilers and others. During this period of time, some of  
19 those things took place. Certainly when you look in the  
20 distribution system, obviously we put up more poles during  
21 this particular time, in part due to just that normal pole  
22 inspection program that we're doing and we identified some  
23 of those issues. We do replace those.

24 So it's, you know, hundreds and hundreds,  
25 if not thousands of projects in many respects. And I will



1 say that, you know, the number that we have here does not  
2 reflect any -- any meaningful, but maybe any environmental  
3 related projects that would be really part of the ECRM.  
4 For instance, the -- when you look at this, this doesn't  
5 include additions for the Sioux scrubber per se, you know,  
6 the directly related environmental project, that is not  
7 included in this number is my understanding.

8 Q. Okay. If you had to estimate, could you  
9 estimate how much of that was spent, how much of that  
10 money was spent, that 350 million that you're seeking to  
11 put into rate base, how much of that was going to projects  
12 that enhance reliability either through undergrounding  
13 or --

14 A. Commissioner, I can't give a specific  
15 number, but certainly, you know, a sizeable amount  
16 continues to be for reliability. I couldn't give you a  
17 particular percentage, though. It's obviously -- the  
18 infrastructure that we do day in and day out certainly in  
19 terms of reliability is still a meaningful number.

20 Q. So when you say sizeable amount, is that  
21 50 million, 75 million, 100 million, higher, lower?

22 A. I guess what I meant size -- I meant to  
23 imply that we're not talking about 10 or 15 million. It  
24 certainly could be north of 100 million, but to know the  
25 specifics, I do not know that.

1 Q. Okay.

2 A. By the way, I'm sure Mr. Weiss would be  
3 able to give you some, if you're interested in some more  
4 of the detail, we could find that for you, Commissioner,  
5 and get that to you.

6 Q. Maybe Mr. Weiss is listening. When you  
7 were -- when AmerenUE was proceeding with some of the  
8 undergrounding and some of the other Power On projects,  
9 did anyone from the Commission or anyone in this room come  
10 to AmerenUE and say, stop, don't do that, don't spend  
11 money, you're wasting money?

12 A. Not that I'm aware of.

13 Q. Looking at your rebuttal testimony, you  
14 note that, page 4, that you've been advised by your  
15 counsel that AmerenUE has a constitutional right to be  
16 awarded rates that provide it with a reasonable  
17 opportunity to earn a fair return on equity. Now, I know  
18 you're not an attorney, Mr. Baxter, but have you ever  
19 heard references to Hope and Bluefield?

20 A. Commissioner, I've heard references to Hope  
21 and Bluefield. I couldn't cite the specifics from that  
22 case, but I've heard references to that over my period of  
23 time in dealing with regulations.

24 Q. In making that statement, is it your  
25 impression that that standard is consistent with Hope and

1 Bluefield?

2 A. I do not know.

3 Q. Now, looking at your surrebuttal testimony,  
4 is it your contention that -- that Mr. Rackers'  
5 adjustments are appropriate or inappropriate?

6 A. I believe Mr. Rackers' adjustments in this  
7 case are not necessary. I believe that in the context of  
8 a -- the entire rate case, that those adjustments are  
9 appropriate when the final permanent rates are  
10 established, but I don't think they are necessary in the  
11 context of establishing interim rates.

12 Q. Okay. Mr. Baxter, earlier Ms. Vuylsteke  
13 asked you some questions about incentive compensation. Do  
14 you recall those?

15 A. I do.

16 Q. Is it fair to say that any incentive  
17 compensation that's paid by -- by the company, that that  
18 just all comes out of the same -- the same pie that --  
19 well, no, I guess it wouldn't necessarily, would it? It  
20 doesn't necessarily come out of AmerenUE, then, does it,  
21 or does it? Does your compensation come from AmerenUE or  
22 is it split between AmerenUE and Ameren? How does that  
23 work?

24 A. It would come from AmerenUE.

25 Q. Okay. Now, are you familiar with attempts

1 by the Commission Staff in previous cases to disallow any  
2 incentive compensation based on profitability or earnings?

3 A. Commissioner, I'm familiar with Staff and  
4 other parties contending incentive compensation is not  
5 appropriate to be reflected in rates. In fact, the data  
6 that Mrs. Vuylsteke showed me related to officers'  
7 incentive compensation are not reflected in the rates of  
8 our customers. In this particular rate case, we have not  
9 sought recovery of those -- that incentive compensation  
10 from customers in rates.

11 Q. So it comes out of shareholder money?

12 A. That's correct.

13 Q. And any shareholder money would come out of  
14 that approximate 6 percent return on equity that the  
15 company is currently earning?

16 A. Yes.

17 Q. You now have a fuel adjustment, correct?

18 A. That's correct.

19 Q. And is it fair to say that as part of that  
20 fuel adjustment mechanism, that AmerenUE is now subject to  
21 increased surveillance --

22 A. That's correct.

23 Q. -- from the Commission Staff?

24 Is it your impression that with all that  
25 data, that they -- they ought to know, ought to be able to

1 approximate what AmerenUE is earning?

2 A. I believe the Staff has more data available  
3 to it to have a better understanding just exactly what our  
4 earnings are compared to what they had in the past.

5 Q. Now, with the -- with the fuel adjustment  
6 clause, off-system sales aren't nearly as big an issue,  
7 are they, as they have been in the past?

8 A. Commissioner, if you're asking in terms  
9 of -- in terms of the impacts on AmerenUE's financial  
10 statements and volatility and if that would -- that would  
11 be true. That's what your question was, they are not as  
12 important as they were in the past. It's still important  
13 for customers and how we manage it, we don't take that  
14 lightly at all.

15 Q. I'm not going to ask you the number because  
16 I think the number may be highly confidential, but we  
17 still -- do we still set a base, a number in base rates  
18 that AmerenUE has to meet?

19 A. Yes.

20 Q. Okay. And is AmerenUE going to meet  
21 that -- first of all, let's just pick a period. Let's say  
22 calendar year 2008. Was AmerenUE able to meet that  
23 number?

24 A. Commissioner, I don't know. I don't know  
25 specifically what the number was that was established in

1 base rates versus what our results were for 2008.

2 Q. Okay. Do you have any idea at all?

3 A. I -- I -- I would be guessing,  
4 Commissioner.

5 Q. Okay. Are there any other relevant factors  
6 that are -- that are impacting AmerenUE's earnings?

7 A. Certainly. I think there are a lot of  
8 relevant factors that are impacting UE's earnings today.  
9 The most important factor is the excessive regulatory lag  
10 that we're experiencing, which we've talked quite a bit  
11 about, and associated with all the issues that I've  
12 addressed, including the investment and those types of  
13 things.

14 The other thing which are affecting our  
15 earnings today also is -- relates to customer usage  
16 obviously has gone down in a meaningful way, post last  
17 fall, and some of the issues that are facing the company.

18 Financing costs obviously are going up  
19 fairly significantly. And frankly, the other piece which  
20 affects our earnings when you're under historical cost  
21 basis is inflation still exists. It isn't running  
22 rampant, but we still continue to see increases in prices  
23 for goods and materials, those types of things.

24 So all those factors among, I am certain,  
25 many others are affecting our financial results.

1 COMMISSIONER DAVIS: Thank you, Mr. Baxter.

2 No further questions.

3 THE WITNESS: Thank you, Commissioner.

4 JUDGE WOODRUFF: Commissioner Jarrett?

5 QUESTIONS BY COMMISSIONER JARRETT:

6 Q. Good afternoon.

7 A. I'm well. How are you?

8 Q. I'm doing great. I've read and I've  
9 listened to your testimony about the regulatory lag issue,  
10 and I think I understand your position on that, but I  
11 wanted to explore a couple of other areas with you a  
12 little more thoroughly.

13 You talked a little bit about the economic  
14 situation. How would you characterize the economic  
15 situation of the past year, 14 months?

16 A. Very, very, very challenging. Very  
17 difficult.

18 Q. In your professional career, have you ever  
19 seen an economy or economic conditions that we have or  
20 have experienced in the last year or so?

21 A. No, sir.

22 Q. Are the -- are they worse than you've ever  
23 expected? I would say -- I say that they're to the bad  
24 side is what I'm saying?

25 A. Yes, yes, yes. When I say very

1 challenging, they're meaningfully, significantly, whatever  
2 word you want to put in front of that, worse than what  
3 I've ever experienced in my professional career.

4 Q. And the credit situation, how would you  
5 characterize the credit situation over the past year, 14  
6 months?

7 A. If you go back to September of last year  
8 and you take that period from there through December, the  
9 credit situation I would say was dire, and perhaps even  
10 more dire than many of us even realized or even knew. The  
11 bottom line is that there was simply for a time absolutely  
12 no access to the capital markets, to either do debt or  
13 even equity. It was simply locked down. And that was at  
14 least through the end of the year, and you started seeing  
15 remnants of that through the first part of the year.

16 Of course, the government stepped in and  
17 made sizeable changes to -- or I shouldn't say changes,  
18 investments, whatever you want to call it to try and  
19 correct the situation through the TARP, among other  
20 things.

21 But, you know, frankly, in the last year we  
22 were living in a time when it wasn't just so much that we  
23 were concerned about whether we could go finance long-term  
24 or have equity. We were concerned about companies who are  
25 in a short-term credit facility, banks, that simply could



1 have gone away, and, in fact, many of them likely would  
2 have if it weren't for the government stepping in.

3                   We indeed had one of our main participants  
4 in our short-term bank facility, Lehman Brothers,  
5 liquidate, as you know, went bankrupt. So we lost several  
6 hundred million of capacity. And so that was -- that was,  
7 I would say characterizing the fourth quarter of last  
8 year, and even going into the first part of this year,  
9 there were not -- there were days where you could just  
10 simply say you couldn't have access to the markets.

11                   Now, step forward a little bit more.  
12 Things have improved from my perspective. Are they good?  
13 No. Have they improved? Yes. They have done that. Are  
14 the capital markets more open than they were? Yes. Have  
15 we accessed the capital markets since that time? Yes. Is  
16 it more expensive? Yes. All those things.

17                   Of course you know Mr. Nickloy is our  
18 resident expert, so I'd encourage you to ask him some of  
19 these same questions because he can probably perhaps  
20 provide you even some more detail. But that gives you  
21 sort of a characterization. Things have improved, but I  
22 would not characterize them as still good.

23                   Q.       And I guess some have said that these are  
24 the worst economic times since the Great Depression.

25       Would you agree with that?

1           A.       Two things. One, I agree that I've heard  
2 people say that. Two, I can certainly agree that it's  
3 further -- it's much further than -- it's much worse than  
4 I've ever seen. Three, I didn't live through the economic  
5 depression, so -- but it would not surprise me. There are  
6 a lot of people who obviously study the markets very  
7 carefully and whom I respect and have said the same thing,  
8 so I have no reason to doubt them.

9           Q.       Right. So I understand your testimony on  
10 the fact that the credit markets were bad and are still  
11 not good, but -- and that, of course, causes increased  
12 costs for you to access to capital. We also have  
13 unemployment over 10 percent, and I think that goes to  
14 another -- at least part of another point that you made  
15 about revenues being down. Can you address how the  
16 economic situation that we've just been discussing affects  
17 your revenues?

18          A.       Sure. Well, certainly the most pronounced  
19 thing that we have seen relates to just customer loads are  
20 down. I mean, as we know, I assume we all know, obviously  
21 Chrysler and companies like that have shut down  
22 production. Certainly they were a large user of energy.  
23 So that's for all practical purposes even happened since  
24 our last rate case, and so those declining customer loads,  
25 not just in industrial, we're seeing some in commercial

1 and even in part a little bit on the residential, these  
2 are having an effect.

3 And so consequently, while our rates were  
4 established in the last rate case based upon more normal  
5 times, things have certainly changed since then in terms  
6 of customer loads. And so consequently our revenues are  
7 down and are affecting ultimately our margins and how we  
8 can really cover our fixed costs.

9 Q. So if I understand correctly, it's you have  
10 a regulatory lag issue, almost an unprecedented --  
11 unprecedented bad economic situation and credit crisis,  
12 and because of that also a pretty precipitous drop in  
13 revenues and earnings, and all three of those factors are  
14 what is causing AmerenUE to have an issue with earning its  
15 allowed return on equity; would that be a fair statement?

16 A. That would be a fair statement. Those are  
17 three of some of the -- of the main factors that are  
18 driving that. And when you speak of excessive regulatory  
19 lag, I assume when you're talking about that, it's the  
20 investment that is still -- having said all these things,  
21 I think we have to keep in mind is that our investment  
22 requirements for those that are truly required haven't  
23 changed. Nor have our customers' expectations. They are  
24 still expecting high levels of reliability and customer  
25 service, and in -- frankly, arguably policymakers as well.

1 So those investment requirements still remain. So maybe  
2 you were implying that that is -- regulatory lag is being  
3 driven by that investment issue.

4 Q. And that investment is, do you expect that  
5 to continue to grow?

6 A. Absolutely.

7 Q. I believe the EPA just today announced that  
8 greenhouse gases are harmful to humans and they are taking  
9 steps to regulate that even after the cap and trade issue.  
10 Would you expect expanded EPA regulation on greenhouse  
11 gases to impact your investment in the future?

12 A. Commissioner, I expect EPA regulation to  
13 impact our company not just with greenhouse gases but just  
14 in general. I think it's been pretty clear that the  
15 administration has is given them the -- I don't know if  
16 the right is the right word, has given them the edict --  
17 that may be too strong of a term -- but to really go out  
18 and begin employing policy through regulation potentially,  
19 and that's certainly a risk.

20 So absent greenhouse gases, absent other  
21 things, we do expect the requirements to continue to  
22 increase, and those are just for the requirements as  
23 opposed to other things. Because as you -- as you I'm  
24 sure know, all those environmental requirements really  
25 aren't doing much in terms of efficiency or increasing our

1 output or really increasing customer satisfaction from a  
2 reliability perspective. Now, it may increase customer  
3 satisfaction from an environmental perspective, so I agree  
4 with that. But those are all very real.

5 COMMISSIONER JARRETT: Thank you. No  
6 further questions.

7 THE WITNESS: Thank you, Commissioner.

8 JUDGE WOODRUFF: Commissioner Kenney?

9 QUESTIONS BY COMMISSIONER KENNEY:

10 Q. Mr. Baxter, thank you for being here with  
11 us today. Just a few questions for you.

12 A. Pleasure.

13 Q. Some of these will just be adjuncts to some  
14 of the questions other Commissioners have asked.

15 When we talk about granting interim rate  
16 relief and the ostensible effect it will have in  
17 mitigating regulatory lag, will you agree with me that it  
18 will, to the extent that there is a problem with  
19 regulatory lag, granting of interim rate relief will  
20 mitigate it in this case only?

21 A. Yes.

22 Q. But you'd also agree with me that it's a  
23 generally applicable problem that faces other electric  
24 utilities?

25 A. In general, I would agree with that, yes.

1 I believe that the regulatory lag issue isn't just  
2 isolated to Ameren.

3 Q. And this is the same question I proposed  
4 earlier to Mr. Byrne. Shouldn't we then be -- wouldn't it  
5 be a preferable method to fashion a generally applicable  
6 solution to what is a generally applicable problem, that  
7 therefore adding some consistencies to the process?

8 A. Commissioner, perhaps. And the reason I  
9 say that is that, you know, as I believe I was saying to  
10 Commissioner Gunn, you know, you have certain tools which  
11 are available to you. Clearly, certain tools have to be  
12 potentially crafted at the Capitol, and so for the tools  
13 that you have available to you to -- to address the  
14 existing circumstances, I think granting interim rate  
15 relief is a good step.

16 And I think the Commission prospectively,  
17 you know, can choose to address interim rate relief for  
18 other utilities or AmerenUE based upon facts and  
19 circumstances should they present themselves in the  
20 future.

21 Q. And I guess one of the things I'm told is  
22 that credit markets will look to the regulatory  
23 environment in terms of assessing the cost of credit to  
24 various utilities, right?

25 A. That's correct.

1           Q.       If we start setting interim rates on a  
2     piecemeal, ad hoc basis, doesn't that operate to upset the  
3     regulatory environment and cause it to be a bit  
4     unpredictable? Couldn't it potentially have a negative  
5     effect on the ability to access credit markets at a  
6     reasonable cost?

7           A.       Commissioner, I think that -- that the  
8     granting of interim rates to -- to UE will signal to  
9     investors in the credit markets that this Commission is  
10    concerned about addressing the issues of excessive  
11    regulatory lag and they're using the tools that they have  
12    available to it.

13                   See, the capital markets and the credit  
14    markets, frankly investors are watching us as we have this  
15    dialog, I'm certain, and -- and they understand that there  
16    are certain things that you have available to you, and  
17    they understand that -- that if -- if there are other  
18    things that have to be done at the Legislature, they  
19    clearly understand there may be a broader role that can be  
20    played over there, .but I am -- I am personally convinced  
21    that it will make -- the negative would be very, very  
22    minor. The positive would be meaningfully greater than  
23    that.

24           Q.       Based upon the dialog that you and  
25    Commissioner Jarrett were having, would it be fair to say

1 that it's a convergence of a multiplicity of issues that  
2 have led to decreased revenues in earnings for Ameren?

3 A. It is not one single issue, I agree,  
4 Commissioner. It's several issues.

5 Q. And to the extent that Ameren's access to  
6 the credit markets was restricted, would you agree with me  
7 that the overwhelming reason was more based upon the GFC,  
8 the global financial crisis, as opposed to excessive  
9 regulatory lag?

10 A. Yes. Yes.

11 COMMISSIONER KENNEY: I don't have any  
12 other questions, thank you for your time.

13 JUDGE WOODRUFF: Mr. Chairman?

14 CHAIRMAN CLAYTON: Thank you, Judge.

15 QUESTIONS BY CHAIRMAN CLAYTON:

16 Q. Good afternoon, Mr. Baxter.

17 A. Good afternoon.

18 Q. You've been on the stand for a while. I  
19 just have two sets of questions. I'll try to be brief.

20 First of all, let me just say that as one  
21 of the leaders of the company, we're glad that you're down  
22 here facing the music here today. We don't see all the  
23 utility CEOs for all of our regulated entities, so I  
24 appreciate you being here and stepping up to make the case  
25 yourself.



1           A.       Thank you, Chairman. I appreciate the  
2 opportunity to be here.

3           Q.       The first set of questions I want to ask  
4 about is trying to get a handle on the type of policy that  
5 AmerenUE is suggesting that this Commission adopt in -- in  
6 defining when an interim rate increase would be  
7 appropriate.

8                   And the language that we've heard today  
9 during the discussion but also in the testimony that was  
10 filed is the concept of excessive regulatory lag, I think  
11 is a term that perhaps you used, maybe others have used,  
12 suggesting a difference between your standard run of the  
13 mill regulatory lag, but excessive regulatory lag  
14 suggesting a need for different action on the part of the  
15 Commission.

16                   And the way I wanted to set this question  
17 up is to ask you in terms of the Commission not just  
18 making a decision based on perhaps the chart that is  
19 behind you or just based on these specific set of facts,  
20 but how should the Commission from your perspective define  
21 when excessive regulatory lag exists that would suggest to  
22 future parties that come before us that an interim rate  
23 increase would be appropriate?

24           A.       Chairman Clayton, let me see if I can  
25 address this, because defining excessive regulatory lag in

1 a pinpoint fashion, I wish I could do that for you, but I  
2 can't. But I can tell you what I think are important  
3 factors for the Commission to consider and why I think  
4 that we have excessive regulatory lag.

5                   To be clear, this is one example, so that  
6 when you look at the difference between the authorized and  
7 earned ROE. And I think what's so meaningful about it, it  
8 isn't that it's, you know, 50 basis points, whatever. It  
9 is -- it is 3 to 400 basis points, and what's important is  
10 that it comes on the heels of two rate cases. So I think  
11 that's -- that's a factor. It isn't the sole factor from  
12 my perspective.

13                   The other thing that I see which is causing  
14 an excessive regulatory lag is, I believe, you know,  
15 Commissioner Davis was asking me about negative free cash  
16 flow. When you see negative free cash flow over two and a  
17 half years with two rate cases that's \$1.6 billion, that  
18 too is a key factor to consider.

19                   And I think the third key factor, which is  
20 important to note, is that these types of circumstances,  
21 that negative free cash flow among things, is causing  
22 project deferrals, actions having to be taken that -- that  
23 as we point out in my testimony and others, that we  
24 believe is not consistent with what our customers' high  
25 expectations are, and perhaps policymakers as well as what

1 might be good public policy.

2                   And so, you know, we try to -- we're like  
3 all the other utilities and many others. We're trying to  
4 deliver top quartile customer service, top quartile  
5 operations and all these other things, yet we're --  
6 we're -- we're operating in an environment and cash flows  
7 which is far below top quartile, which arguably in --  
8 in -- when you look at Brattle analysis may be fourth  
9 quartile, and that's the challenge.

10                   So -- so as I step back and I look at the  
11 issue and you look at some of the key factors, those are  
12 factors. Now, Commissioner, to be fair, those are sort of  
13 Ameren's factors. There's no doubt that -- that this  
14 Commission has to look at other factors, you know, factors  
15 which have been raised by many other parties and the  
16 impact on customer rates and volatility. I appreciate  
17 that. Those are all relevant factors that the Commission  
18 can and should look at, as well as, you know, frankly,  
19 customers' existing rates and all these other things.

20                   There are a lot of stakeholders that you  
21 have to balance. It isn't just Ameren's, UE, AmerenUE's  
22 that is. And so I give you my list of three things which  
23 I believe are driving excessive regulatory lag and the key  
24 indicators from my perspective.

25                   Q.       And I appreciate that. You're working with

1 your set of facts, and you have an audience that you must  
2 play to. You have a board that you have to report to.  
3 You have other executives that you have to report to. But  
4 as we render a decision in this case, there will be impact  
5 on future cases, and I'm trying to figure out the best way  
6 of identifying, if at all, some standard that would be  
7 appropriate.

8                   You pointed out three things. I think that  
9 is helpful. When you mentioned the 3 to 400 basis points  
10 in your first point, obviously that is more significant  
11 than the 20 basis points that were used, I think, in the  
12 Laclede case that were mentioned earlier. Obviously  
13 there's a significant difference in that.

14                   Should there be a comparison, do you think,  
15 on that performance or that problem in performance with  
16 similar performance levels of other utilities? Should it  
17 be -- should there be a comparison of what is going on in  
18 the entire universe of utility service? Should the review  
19 occur just within Missouri or should we just look fact  
20 specific at a given utility in your own individual  
21 circumstances?

22           A.       Well, I think, Commissioner, I think it's  
23 fair for this Commission to consider all relevant factors,  
24 and I think if -- if -- if the Commission looked and said,  
25 well, you know, it isn't -- maybe we shouldn't just have

1 blinders, maybe we should look at what's going on with  
2 other utilities in the state but perhaps others in the  
3 region.

4 I mean, of course certain utilities have  
5 different -- well, they may be regulated different  
6 operations. As we know, there's regulated and deregulated  
7 states. And so that data or that could be a -- a factor,  
8 not the factor, but that could -- that the Commission felt  
9 would be helpful may be relevant. Whether -- whether that  
10 is the sole bright line, I think that I would just say it  
11 would be a factor that you could consider.

12 Q. Last set of questions. Since you did  
13 mention the fact that we've had two rate cases come to a  
14 conclusion within the last several years, one concluding  
15 in what, March or April of this year, with the decision  
16 that was made in March of this year and with a reflection  
17 in earnings being lower than your authorized rate of  
18 return, can you give me an idea how -- first of all, did  
19 the Commission get it wrong in the case? And if so, why  
20 did that decision in the last rate case lead to the  
21 circumstances, I guess if and how?

22 A. Okay. Chairman, let me -- let me be clear  
23 in terms of the last rate case. We've characterized this  
24 to the public and I'll say it here. We felt that the  
25 Commission's decision in the last case was a constructive

1 decision. The granting of that fuel adjustment clause was  
2 not just important, it was critical, okay, in terms of,  
3 you know, Commissioner Kenney was asking how the credit  
4 markets were. If we didn't have that fuel adjustment  
5 clause, that would have had meaningful ramifications.

6 I think that last case gave us the ability,  
7 too, to have some key cost tracking mechanisms for  
8 reliability and for pension and OPEBs. Those are  
9 obviously things we are asking for. Those two are  
10 critical. We received a solid return on equity. Those  
11 things are -- are all good, and so -- so I -- I'm not here  
12 saying, you know, you missed the boat. That's not my  
13 message.

14 What I'm saying is that -- is that while we  
15 had a constructive case in that last one, that we don't  
16 live in a static environment, and we want to continue to  
17 make good, constructive and meaningful investment in the  
18 state. We want to address what are very difficult  
19 economic challenges that unfortunately, as Commissioner  
20 Jarrett and I were talking, I don't think it's going to  
21 go away in six months. And so, no, that's not -- our  
22 message here isn't, well, you blew it, no.

23 Q. No. And I didn't intend to ask the  
24 question that way. But still because I'm assuming that  
25 however that decision was crafted, the decision was made.

1 You were granted an authorized rate of return or return on  
2 equity. You haven't been able to earn that, and that is  
3 I'm assuming you're arguing in part based on that  
4 decision. And I'm wondering how the decision could have  
5 been made or could it have been made at all in a different  
6 way that it would have led to a more productive result  
7 aside from adding 50 basis points on your ROE.

8 For example, let me ask you, throw this  
9 suggestion out. This was the first case where you had  
10 off-system sales that would flow through the fuel  
11 adjustment clause; is that correct?

12 A. Yes.

13 Q. And so if off-system sales would have been  
14 a separate component -- component set at a baseline, how  
15 would that have affected your actual return?

16 A. My sense is that, depending upon the  
17 baseline you put it in, our return would be far worse,  
18 because power prices have fallen precipitously since that  
19 time. I think you would -- you would see -- I think that  
20 emergency standard people were talking about, we might be  
21 there, as an example, and I haven't -- I'll -- Chairman, I  
22 haven't done a study. I just know what's happened with  
23 power prices and all these other things. I don't know  
24 what was set up in the base rates, but that's -- I'm  
25 giving you my best impression of that.

1                   So I think, Mr. -- Chairman, I apologize  
2   Mr. Chairman, what's happened is that there are a lot of  
3   facts and circumstances which have changed. You know,  
4   investment continues to come through, but, you know, what  
5   we need to do is, is -- our point here is we just want to  
6   make progress to try and address these things.

7                   CHAIRMAN CLAYTON: I don't have any other  
8   questions. Thanks for being here.

9                   JUDGE WOODRUFF: Thank you. We're ready  
10   for recross, then. Anyone besides MIEC on the list want  
11   to recross? MIEC.

12   RE CROSS-EXAMINATION BY MS. VUYLSTEKE:

13                  Q.     Mr. Baxter, I just have a few questions.  
14   Are you aware that AmerenUE's bond rating was recently  
15   upgraded since the last rate case?

16                  A.     Ms. Vuylsteke, you're referring to the  
17   Moody's bond rating, or which bond rating are you  
18   referring to?

19                  Q.     Either Standard & Poor's, Moody's or S&P.  
20   I'm specifically referring to Moody's, but I'm asking if  
21   you're aware of any of the others being upgraded?

22                  A.     I'm aware of the Moody's upgrade.

23                  Q.     And are you aware that AmerenUE's cost of  
24   capital and that of other utilities is lower today --  
25   excuse me -- their cost of capital is lower today than it



1 was during the hearing in AmerenUE's last rate case?

2 A. I'm sorry. I'm sorry. Could you repeat  
3 the question, please?

4 Q. Are you aware that AmerenUE's cost of  
5 capital and that of other utilities is lower today than in  
6 a hearing during AmerenUE's last rate case?

7 A. I'm not aware, but Mr. Nickloy might be  
8 able to address that question better for you.

9 Q. If your cost of borrowing is cheaper today  
10 than it was during your last rate case, would you agree  
11 that this suggests a lower cost of capital for AmerenUE?

12 A. I don't -- I don't agree that our cost of  
13 borrowing is cheaper. It's higher.

14 Q. Do you agree that your bond rating is  
15 higher, it allows you a lower cost of capital today?

16 A. I believe -- I agree that our bond rating  
17 went up, and I think -- I'll let Mr. Nickloy address why  
18 Moody's bond rating went up, but it really went up because  
19 of a change in their methodology, in terms of how they're  
20 rating utilities. It wasn't a change due to a credit  
21 enhancement directly related to UE. It was the change in  
22 methodology that, frankly, if I understand it correctly,  
23 they changed virtually all utilities across the industry  
24 in the same way.

25 Q. Does this change your answer that

1 AmerenUE's cost of capital is lower?

2 A. I do not know. If -- again, Mr. Nickloy  
3 would be able to address that better.

4 Q. Moving on to a different subject. Would  
5 you agree with me that constructive negotiation regarding  
6 rate case issues would lessen regulatory lag?

7 MR. LOWERY: I'm going to object to this  
8 being beyond the scope of any questions that the  
9 Commissioners asked Mr. Baxter.

10 MS. VUYLSTEKE: And I would respond to  
11 Mr. Lowery's objection that the Commission asked  
12 Mr. Baxter what steps could be taken to reduce regulatory  
13 lag.

14 JUDGE WOODRUFF: I'll overrule the  
15 objection. You can answer the question.

16 THE WITNESS: I'm sorry. Could you ask the  
17 question again, please?

18 BY MS. VUYLSTEKE:

19 Q. Would constructive negotiation of AmerenUE  
20 with the parties regarding rate case issues reduce  
21 regulatory lag?

22 A. If you refer to constructive negotiation  
23 which ultimately results in a settlement prior to the  
24 11-month time period happening, that could -- that could  
25 reduce regulatory lag.

1           Q.       And then my last question.  You testified  
2   earlier that shortcomings in the rate case process could  
3   be avoided with -- if certain legislation is approved,  
4   correct?

5           A.       Yes.

6           Q.       Would you be willing to investigate  
7   alternatives with the Staff and the Office of Public  
8   Counsel and other interested parties before proceeding to  
9   legislation?  Would you be willing to sit down with the  
10  parties, your customers and the regulators before  
11  requesting legislation?

12          A.       I think -- two things.  No. 1, we're open  
13  to dialog on -- on energy related issues, and that's -- I  
14  think that's part of what we all collectively do.

15                   Secondly, I don't want to presuppose that  
16  anyone presupposes that legislation which is going to be  
17  proposed is AmerenUE legislation.  It could be an industry  
18  piece of legislation that -- that could be presented, and  
19  I think that at the appropriate time should discussions be  
20  had for legislative actions, that certainly could be had,  
21  sure.

22                   MS. VUYLSTEKE:  Thank you.

23                   JUDGE WOODRUFF:  Public Counsel?

24                   MR. MILLS:  Just a few.

25  RE-CROSS-EXAMINATION BY MR. MILLS:

1           Q.       Mr. Baxter, turning to the chart that's  
2   been on the screen most of the day today, would you agree  
3   with me that it's basically that the right side of the  
4   chart that makes your case for interim rate relief rather  
5   than the left side?

6           A.       You know, I would say in response to your  
7   question that -- two things. If you look to the left  
8   side, that even post the rate word that came out in June,  
9   we were under-earning even during that period of time, and  
10   then for two months in the middle there, we came close for  
11   several months, and then it fell down in the last half.

12                    So I would say that it isn't just the right  
13   side, although the right side is certainly more  
14   pronounced. I would say that it's -- you see evidence of  
15   the challenges on the left side as well.

16           Q.       So you think earning 8, 9, 10 percent when  
17   you're authorized is 10.2 makes a good case for interim  
18   rate increase?

19           A.       We didn't ask for an interim rate increase  
20   at that point in time, and as I -- and as I spoke to  
21   Chairman Clayton, there are a lot of facts and  
22   circumstances that would go into any decision that  
23   AmerenUE would make before we would determine to file an  
24   interim rate increase, and I think I've highlighted some  
25   of those issues.

1           Q.       And if, for example, you're earning an  
2   average of nine and a half and your ROE is 10.2, does that  
3   make a good case for interim rate relief, under your  
4   factors?

5           A.       You know, I think -- remember I mentioned  
6   three factors, and there could be many more. I mentioned  
7   three. It was -- this is one factor. Negative free cash  
8   flow is another factor. The need to cut, you know,  
9   significant projects which were good projects is another  
10   factor. And there could be others that aren't existing  
11   today that could happen in the future.

12                    So shouldn't just say that, you know,  
13   there -- it isn't formulaic to sit there and say it is  
14   this and then you have this ROE and therefore thou shalt  
15   get an interim rate increase. I think there will be  
16   several things that should be considered.

17           Q.       When was the last year in which you didn't  
18   have a negative cash flow?

19           A.       I don't know.

20           Q.       Can you think of a year?

21           A.       No, I cannot.

22           Q.       What's your annual construction budget?

23           A.       The annual construction budget, in 2008 we  
24   spent somewhere close to 900 to a billion dollars. This  
25   year we'll spend somewhere close to that amount again, and

1 then next year it will be meaningfully lower, is the  
2 expectation, subject to board approval, of course.

3 Q. And then going back a few years to say 2005  
4 or so, has it been roughly close to a billion dollar  
5 level?

6 A. Mr. Mills, I don't know for sure.  
7 Honestly, I don't know. Mr. Weiss may have some of  
8 that -- that data, but I don't know off the top of my head  
9 exactly what those numbers were back then.

10 Q. Do you recall any years in which your  
11 budget was significantly lower than it is currently in the  
12 last five years?

13 A. I don't believe we were spending at a  
14 billion dollar level all during that time, but I don't  
15 know how much lower it would be. I think that it's been  
16 certainly within the last two or three years it's been  
17 closer to a billion dollar level.

18 Q. And what is your dividend payout ratio?

19 A. For Ameren Corporation?

20 Q. For AmerenUE?

21 A. And how do you define dividend payout  
22 ratio?

23 Q. For Ameren Corporation then?

24 A. That dividend payout ratio is  
25 approximately -- well, I have to do the math, and so there

1 becomes the challenge. I believe it is approximately 60  
2 to 70 percent, I believe, but it's \$1.54 divided by  
3 ultimately what the earnings will be for this year. And  
4 so obviously, as you know, we've changed our dividend  
5 policy. You're going to see significant reduction earlier  
6 in the year. And so depending upon Ameren's ultimate  
7 results will give you the best view of what the payout  
8 ratio is really this year because it'll be the first time  
9 we've had a full 12 months with the new dividend.

10 Q. And returning to the chart again, the real  
11 dropoff starts in approximately August, September of 2008;  
12 is that correct?

13 A. Yes.

14 Q. And that's where the most serious earnings  
15 shortfall you depict, is it not?

16 A. I think the most serious is, actually you  
17 see it out here in April 2009, and -- and it gets lower  
18 out here.

19 Q. It does, but it begins in August, September  
20 of 2008 and stays down after it drops for a few months,  
21 more or less?

22 A. Yes. You're talking about the trend, sure.

23 Q. And which period of time on that graph is  
24 reflective of what we've been calling the global financial  
25 crisis?

1           A.       I would say in general you really start  
2   seeing the global financial crisis that Commissioner Gunn  
3   referred to prior in that September time frame, although  
4   there's certainly -- some would say there're indications  
5   of it earlier throughout 2008. But probably from my  
6   perspective you started seeing it in September when you  
7   started having the Lehman bankruptcy, and that's when you  
8   really started seeing the most significant actions, but  
9   arguably it was taking place even before that.

10          Q.       And did you have him pass on your borrowing  
11   rates and your borrowing ability prior to September of  
12   2008?

13          A.       Compare -- borrowing rates and borrowing  
14   ability, can you expand on what you mean by that?

15          Q.       Well, isn't it your testimony that because  
16   of the global financial crisis that your access to capital  
17   has been somewhat constrained and your costs have been  
18   higher?

19          A.       That's correct.

20          Q.       And when did that begin?

21          A.       Well, certainly post the global financial  
22   crisis we started seeing meaningful increases in borrowing  
23   costs, coupled with the access issues. But we did see --  
24   we still during this other time period, we still saw, you  
25   know, again, fluctuating and rising interest costs even



1 before then, because as I said, throughout 2008 you  
2 started seeing challenges in the capital markets already.  
3 And so it was I would say more pronounced subsequent to  
4 September, but you started seeing indications of some of  
5 those issues before then.

6 MR. MILLS: That's all the questions I  
7 have. Thank you.

8 JUDGE WOODRUFF: Recross for Staff?

9 MR. DOTTHEIM: Yes, just one or two.

10 RECROSS-EXAMINATION BY MR. DOTTHEIM:

11 Q. Mr. Baxter, in response to a question or  
12 questions from Commissioner Jarrett, I think you indicated  
13 that the economic conditions in the last year have been  
14 the worst in your professional career; am I correct?

15 A. That's correct.

16 Q. When would you set as an approximate year  
17 as the start of your professional career?

18 A. Gee, my -- I have been with AmerenUE for  
19 approximately 15 years, and then prior to that time I was  
20 employed with PriceWaterhouse, PriceWatershouseCoopers.  
21 So I graduated from college in 1983, and so I would  
22 probably say that my career started sometime in the mid to  
23 late '80s, broadly speaking, and then here I am.

24 Q. You identified PriceWaterhouse that you  
25 were with prior to being with AmerenUE?

1           A.       That's correct.

2           Q.       Was PriceWaterhouse at the time the  
3 external auditor of AmerenUE?

4           A.       Yes.

5           Q.       Were you assigned to the external audits of  
6 AmerenUE?

7           A.       Yes, for a few years I was a part of the  
8 AmerenUE audit team.

9                   MR. DOTTHEIM: Thank you, Mr. Baxter.

10                  JUDGE WOODRUFF: Thank you. Redirect?

11                  MR. COFFMAN: Your Honor, may I have an  
12 opportunity?

13                  JUDGE WOODRUFF: Go ahead.

14 RECROSS-EXAMINATION BY MR. COFFMAN:

15           Q.       Mr. Baxter, just a couple more. In  
16 response to, I believe, three Commissioners' questions,  
17 you did describe the global financial crisis as very, very  
18 challenging and dire. Is it fair to characterize your  
19 testimony that the global financial crisis is a  
20 significant factor behind your company's request for an  
21 interim rate increase?

22           A.       I would say it's certainly one of the key  
23 factors.

24           Q.       And in taking that position, do you mean to  
25 suggest that the global financial crisis is in any way

1 less challenging or dire for residential consumers than it  
2 is for AmerenUE?

3 A. No. I'm certain that our residential  
4 consumers are being challenged as a result of this global  
5 financial crisis.

6 Q. Would you agree with me that they're being  
7 challenged as much or more in general than your company  
8 is?

9 A. Mr. Coffman, gosh, I don't know. I know  
10 that our customers are challenged, there's no doubt. I  
11 don't know if I can put a relatively speaking on it or  
12 not.

13 Q. Are ordinary consumers facing difficulty  
14 accessing credit in general?

15 A. My understanding, yes.

16 Q. And are ordinary consumers affected by  
17 inflation?

18 A. Yes.

19 Q. And is it possible that if you are granted  
20 the interim request at the level that you requested on a  
21 level of 36 million or so, that consumers in the  
22 Missouri -- in your Missouri service territory will have  
23 less money that could -- may otherwise be used to  
24 stimulate the economy over the next few months?

25 A. Well, I guess I want to make sure I do the

1 math. The impact on the average residential customer bill  
2 I believe per month is probably a dollar to \$1.50. And  
3 so -- so will they have \$1.50 less per month to spend on  
4 other things? The answer would be yes.

5 Q. Do you believe that the impact of the  
6 proposed interim rate relief on or near consumers, is that  
7 a relevant factor that the Commission should consider in  
8 this case?

9 A. Yes.

10 Q. And if you were granted your requested  
11 interim rate relief, will AmerenUE continue to be able to  
12 provide safe and adequate service up and through the end  
13 of the permanent case?

14 A. Sorry, Mr. Coffman. Did you ask me if we  
15 were granted the interim rate increase, we would be able  
16 to provide safe and adequate service, the answer is yes.

17 Q. And I want to ask, if you were not -- if  
18 you were not granted relief in your interim request, will  
19 you still be able to provide safe and adequate service  
20 through the rest of this case?

21 A. Yes.

22 MR. COFFMAN: Thank you.

23 JUDGE WOODRUFF: Now redirect?

24 MR. LOWERY: Is it all right if I do it

25 from here, your Honor?

1 JUDGE WOODRUFF: You can do it from there,  
2 that's fine.

3 REDIRECT EXAMINATION BY MR. LOWERY:

4 Q. Mr. Baxter, Mr. Coffman -- I'll just start  
5 there since that was the last question you got.  
6 Mr. Coffman asked you some questions about whether the  
7 impact on consumers should be considered. Can you explain  
8 for the Commission why or what your view is about the  
9 impact of granting interim rates, whether there are  
10 benefits for consumers for doing that or whether there are  
11 not benefits to consumers for doing that?

12 A. Well, certainly the answer is yes, and I  
13 think certainly one of the key factors that we just spoke  
14 about with Mr. Coffman is a factor. But I think as we  
15 talked about before, you know, there are other policy  
16 implications which I think are beneficial to customers. I  
17 mean, the fact that we have the ability to make new  
18 investment for reliability and improvements certainly is  
19 consistent with what our customers tell us their  
20 expectations are and what they want, and so that is  
21 clearly a benefit.

22 But I think the other thing which is  
23 important is that, which is the other policy issue, is  
24 that if we have the opportunity to make some incremental  
25 new investment for all of the good long-term energy

1 infrastructure for reliability purposes, that's going to  
2 create jobs. And I believe that will not only create jobs  
3 and make for a healthier economy in the state, and I think  
4 customers and consumers will clearly benefit by that.

5 Q. Now, Mr. Mills asked you some questions,  
6 and I'm going to try to go right back to the reference  
7 that he used. It was in your surrebuttal testimony, I  
8 believe, page 3, lines 11 to 13.

9 A. Surrebuttal testimony, Mr. Lowery?

10 Q. Yes, page 3, lines 11 to 13. And he asked  
11 you, I think, about this 100 percent certainty comment  
12 that you had made, something along the lines of who is  
13 advocating for 100 percent certainty, and you said no one.

14 Why did you talk about this 100 percent  
15 certainty issue? What was the point that you were making  
16 in your testimony when you said there was no way to know  
17 with 100 percent certainty whether the utility is over- or  
18 under-earning?

19 A. It was addressing an argument that  
20 Mr. Rackers was presenting that said that -- that  
21 basically said that, for all practical purposes, that we  
22 could be overearning at the end of the day in the context  
23 of a rate case that may ultimately be decided and that  
24 we'll still be entitled to interim rate relief and that it  
25 was just simply inappropriate, therefore, to grant interim

1 rate relief.

2 My response was, well, of course that's  
3 true, that -- that we could be overearning, but then that  
4 suggests that you can never grant interim rates unless --  
5 unless you have gone through the entire rate case and have  
6 with 100 percent certainty what the appropriate rate  
7 increase or I guess in this case decrease should be. And  
8 so, therefore, interim rates could never be granted. You  
9 could never get to that point if you needed that  
10 100 percent certainty. So that was the context that I  
11 made that statement.

12 Q. Mr. Mills also asked you quite a number of  
13 questions, and I think he was pointing to page 4 of your  
14 surrebuttal testimony. He was asking you about the costs  
15 of equity, and you were having a debate about whether or  
16 not the cost of equity is a cost or isn't a cost and how  
17 much you pay out, those kinds of things. Does equity have  
18 a cost? Is it free or does it have a cost? And if so,  
19 what is that cost?

20 A. Well, there's -- as I explained to  
21 Mr. Mills, there's no doubt that equity is clearly a cost,  
22 and we -- we talked about a number of things that were  
23 potential costs. Certainly one related to dividends. The  
24 second one was sort of the floating cost. But clearly the  
25 cost of equity, our dividend -- our dividend yield is

1 6 percent roughly, but -- but the cost of equity, the  
2 return that was authorized by the Commission in our last  
3 rate case was 10.76.

4                   The point being is that, you know, of  
5 course I'm not -- I don't pretend to be the expert, but  
6 that suggests that there are incremental costs associated  
7 with equity that are far beyond just floating costs and  
8 the dividend, and that's set in the context of the general  
9 rate proceeding, .so is there a cost of equity?  
10 Absolutely. Investors expect a return on their  
11 investment. They expect a fair and reasonable return, and  
12 they expect our utilities to have a reasonable opportunity  
13 to earn that return on their investment.

14               Q.       I think in connection with that same line  
15 of questions Mr. Mills asked you a number of questions  
16 about, I think he said you were the controller, right?  
17 You said, yes, you were the controller. He said, did you  
18 supervise checks that were cut and payments that were  
19 made? Are there other utility costs that are legitimate  
20 costs that you don't write a check for?

21               A.       Yes. When you get to it, the answer is  
22 yes. Depreciation's a great example. That's a noncash  
23 cost. Amortization of regulatory assets, those are part  
24 of cost of service. Those are -- you don't write checks  
25 for those, so legitimate costs but noncash.



1           Q.       Mr. Mills asked you a number of questions  
2     about the regulatory compact, and you and he had a  
3     discussion about what that means and so on and so forth.  
4     How does the opportunity to earn a fair return -- or does  
5     the opportunity to earn a fair return, how does that  
6     relate to the regulatory compact?

7           A.       Well, you know, as I understand the  
8     regulatory compact, and we're talking about this with  
9     Mr. Mills, you know, the regulatory compact is one that,  
10    you know, we are provided a reasonable opportunity to earn  
11    a fair return on our investments in exchange for obviously  
12    having a monopoly as part of our business, but also part  
13    of that compact means that there -- there's oversight by  
14    the Commission and others. That's all -- that's what -- a  
15    part of the regulatory compact.

16                   And so -- so a key component of the  
17    regulatory compact, which is what we're talking about  
18    here, is that our investors are not -- we don't believe  
19    that under the existing regulatory framework we have that  
20    reasonable opportunity to earn a fair return on our  
21    investment.

22                   And I think this graph is just one example  
23    that points to that, and it gets to the other issues  
24    associated with negative free cash flows which in many  
25    respects go hand in hand. So the regulatory compact is

1 not in balance, in my opinion, and that's why we're  
2 talking about interim rates. We're trying to find a  
3 better balance for this issue as one -- one tool that this  
4 Commission could utilize to balance things.

5 Q. Mr. Mills I think -- I believe this was in  
6 your surrebuttal testimony on page 8, line 14, and he  
7 asked you -- I guess it was actually lines 13 through 15.  
8 He asked you about the sentence that starts out, these  
9 investments not only benefit utilities. Have you caught  
10 up with me?

11 A. I'm sorry. Could you start over, giving  
12 the page?

13 Q. Sure.

14 A. I think I'm on page 8.

15 Q. Surrebuttal testimony, page 8, line 13,  
16 there's a sentence that starts, these investments.

17 A. Yes.

18 Q. Do you remember he asked you a question  
19 about the more attractive location for businesses to  
20 locate portion of that sentence? Do you recall that  
21 question?

22 A. Yes.

23 Q. And I think the question that he asked you  
24 was, if interim rates are granted in this case or  
25 generally speaking, how is that going to make it more

1 attractive, a more attractive location for businesses?

2 Was that the point of your statement or were you talking  
3 about something other than interim rates being -- making  
4 the state a more attractive place for businesses to  
5 locate?

6 A. No, that wasn't the point of my sentence,  
7 and actually the full sentence reads, that these  
8 investments not only benefit utilities and their  
9 customers, but they create jobs in the state and make the  
10 state a more attractive location for businesses to locate.  
11 So what I was really referring to was investment in the  
12 energy infrastructure because it's an important aspect for  
13 any business to have good solid energy reliability in the  
14 state for their business.

15 Q. And there's some tie between interim rates  
16 and investment in your mind?

17 A. Absolutely.

18 Q. Mr. Dottheim asked you a number of  
19 questions about the Power On program that was announced in  
20 2007. Do you recall those? And there were three exhibits  
21 that he put into evidence. Do you recall those questions  
22 generally?

23 A. I do recall those.

24 Q. And he asked you, Mr. Baxter, something  
25 along the lines of, Mr. Baxter, did you announce in 2007

1 that you were going to ask for interim rates later when  
2 you announced the Power On program? Do you remember that  
3 question or something like it?

4 A. I do.

5 Q. What did you know about or did you know  
6 anything about your intention to ask for interim rates in  
7 this case or any other case when the Power On program was  
8 announced?

9 A. Me personally, in my understanding that the  
10 rest of the UE team that was part of that announcement had  
11 no thought or idea of interim rates at that point in time.

12 Q. Mr. Dottheim also asked you about -- some  
13 questions about an austerity program, or questions about  
14 hiring freezes and those types of things. Do you recall  
15 those questions?

16 A. I do.

17 Q. And then he asked you some questions about  
18 the level of investment, because you have testimony, I  
19 believe, that he talked to you about that level of  
20 investment's high and increasing and you think that's  
21 going to continue for some time. He asked you about the  
22 level of investment in the late 1970s and 1980s. Do you  
23 recall that?

24 A. I do.

25 Q. How did the company fare at that time

1 vis-a-vis how the company's faring now even, given high  
2 levels of investment?

3 A. Well, as I think everyone knows, I was not  
4 at UE at that time, but I know what I've been told by  
5 those who were around, and it was actually a fairly dire  
6 circumstance for AmerenUE. I understand that the credit  
7 ratings were plummeting. The -- the issue of bankruptcy  
8 was real.

9 And, in fact, if I recall the conversation  
10 that I had was that common stock had to be issued because  
11 there was no other choice. The access to the markets were  
12 so difficult. The common stock was issued at 7, \$8 per  
13 share at that point in time because that was really the  
14 only choice, that they had to. So it was a very difficult  
15 time period back in that period of time, period.

16 Q. Do you have a perspective on whether the  
17 Commission should or whether we want to go there again?

18 A. Well, yes, I do, and I'm -- and I can speak  
19 for myself, and I shouldn't speak for the Commission, but  
20 I'm fairly certain that I don't think the Commission  
21 wants, you know, Ameren to get in those types of dire  
22 financial situations.

23 And I'm not here to tell the Commission  
24 that we're right on the cusp of that. That's not the  
25 message. That is not the message. We've said that very

1 clearly, that, you know, we're not in dire emergency  
2 circumstances. But nonetheless, that's not a place that  
3 any of us wants to be, I'm sure, not just us, the  
4 Commission, but frankly all of our stakeholders.

5 Q. Mr. Dottheim asked you some questions about  
6 the ECRM and what impact that might have and those kinds  
7 of things. Do you recall those questions?

8 A. Yes.

9 Q. Do you know whether there were any  
10 significant environmental items that might be covered by  
11 an ECRM that were added to the plant in service from  
12 September '08 to May of '09, the plant in service upon  
13 which you calculated this \$37 million didn't -- were there  
14 any?

15 A. To the best of my knowledge, I don't  
16 believe so. Again, of course, Mr. Weiss is most familiar  
17 with that calculation, but to the best of my knowledge is  
18 no.

19 Q. Commissioner Gunn asked you, you had a --  
20 quite a series of questions that Commissioner Gunn talked  
21 to you about in terms of these four key drivers, the  
22 historic test year, the 11-month rate case process, those  
23 kinds of things. Do you recall those questions?

24 A. I do.

25 Q. I'm not sure it was completely clear for

1 the record in terms of what relationship does the  
2 existence of those factors have to your interim rate  
3 request?

4 A. Well, to be clear, we are not asking this  
5 Commission to go beyond their, what I understand their  
6 statutory authority to be. And we're asking the  
7 Commission to utilize the tools which they have available  
8 to them, interim rates being one of them, to address the  
9 excessive regulatory lag issue that we're dealing with.

10 Those other items that we list are other  
11 ways that excessive regulatory lag can be addressed absent  
12 the ability to try and shorten up the time period of the  
13 11-month process. Some of those could indeed be  
14 legislative fixes, but we're not asking the Commission to  
15 do anything beyond that.

16 Q. Do the existence of those four key drivers  
17 that you talk about, do those make interim rates more  
18 important, less important? Is it neutral?

19 A. I think interim rates are still important,  
20 period. I mean, they're there. It's an important thing  
21 to -- just because we don't have those -- just because  
22 those are legislative fixes doesn't belittle the need and  
23 the benefits associated with interim rates.

24 Q. Is interim rates that -- could it -- do you  
25 think it's fair to characterize interim rates or the

1 granting of interim rates as at least one mechanism to  
2 partially shorten the 11-month rate case process?

3 A. Yes.

4 Q. Commissioner Clayton asked you some  
5 questions, and you were very clear, I think, that you were  
6 not saying that the Commission got it wrong in the last  
7 rate case and, in fact, that you felt it was a  
8 constructive rate case outcome. Why do you think the  
9 company can't, in effect, keep up, its earnings are still  
10 not keeping up with authorized return despite that  
11 constructive outcome?

12 A. Well, I think there's several reasons, and  
13 part of which I think I've articulated before, but  
14 certainly we see the need for investments to be  
15 meaningful, not just today but in the foreseeable future.  
16 I think in part it's because we have requirements, and we  
17 talked a little bit before, I think it was Commissioner  
18 Gunn, and -- I can't keep track of it all, but we talked  
19 about the greenhouse gas issue. That hasn't been decided,  
20 but I think it's a real issue, but that's even down the  
21 road.

22 We have real investment needs today, and  
23 it's being driven by requirements, whether it be for  
24 reliability or the like, but also by expectations. We  
25 don't see that declining any time in the near future. We



1 don't see the economy -- I would love to be able to tell  
2 everyone that in my view, whatever it's worth, that the  
3 economy's going to bounce back. My view is that it isn't  
4 going to bounce back immediately, and I think that's  
5 generally a collective view by many.

6                   And so those issues are still going to be  
7 around for some period of time, and therefore, financing  
8 costs and those other things will continue. And the  
9 reason why all that's so important to address these issues  
10 is that we are such a capital intensive business that we  
11 have to find issues to address this capital investment  
12 challenge that we have or the regulatory framework  
13 associated with that.

14                   Because I think it's an opportunity for us  
15 to make good progress on behalf of our customers and good  
16 progress on behalf of the state, recognizing the fact that  
17 we really stand in the position where already our rates  
18 are still among the lowest in the country and, frankly,  
19 the lowest among all the investor-owned utilities in the  
20 state.

21                   MR. BYRNE: Thank you, Mr. Baxter. Judge,  
22 that's all I have. Thank you.

23                   JUDGE WOODRUFF: Thank you. Mr. Baxter,  
24 you can step down.

25                   THE WITNESS: Thank you.

1 JUDGE WOODRUFF: And we're about due for a  
2 break. Before we go on break, though, I do want to  
3 address a matter with the parties in that it's now 3:40  
4 and we just finished your first witness, and we've got  
5 eight more to go. I anticipated going into this evening,  
6 but it may still not be possible to finish.

7 So I want to make sure that we get anybody  
8 who has to be out of here tonight finished. I understand  
9 Mr. Pfeifenberger, I believe, is from out of state, so I  
10 would want to get him on. Is there any other witness that  
11 we need to get on out of order?

12 (No response.)

13 JUDGE WOODRUFF: All right. What I  
14 anticipate doing is we'll come back after our 15-minute  
15 break, we'll go until 5, take a break for a dinner break,  
16 and come back around 6 and go 'til 8 or 8:30, and then  
17 we'll decide what we want to do after that, if there are  
18 any other days this week that we can continue this on if  
19 we need to. So you can discuss that among yourselves  
20 during the break and we'll address it again when we get  
21 back on. Let's come back at 3:55, five minutes 'til four.

22 (A BREAK WAS TAKEN.)

23 JUDGE WOODRUFF: We're back from our break,  
24 and I see we have another witness that's taken the stand.  
25 I believe this is Mr. Weiss.

1 (Witness sworn.)

2 JUDGE WOODRUFF: Thank you very much. You  
3 may inquire.

4 MR. BYRNE: Thank you, your Honor.

5 GARY WEISS testified as follows:

6 DIRECT EXAMINATION BY MR. BYRNE:

7 Q. Mr. Weiss, could you please state your name  
8 for the record.

9 A. My name is Gary S. Weiss, W-e-i-s-s.

10 Q. And Mr. Weiss, are you the same Gary S.  
11 Weiss that has caused to be filed in this case prefiled  
12 testimony, direct, rebuttal and surrebuttal testimony on  
13 interim rates that has been marked Exhibit D, E and F?

14 A. That is correct.

15 Q. And Mr. Weiss, if I was to ask you the  
16 questions contained in that prefiled testimony here today  
17 when you're under oath, would your answers be the same?

18 A. Yes, they would.

19 Q. You don't have any corrections to your  
20 testimony?

21 A. No.

22 Q. Okay. And is the information presented in  
23 that testimony true and correct to the best of your  
24 knowledge and belief?

25 A. Yes, it is.

1                   MR. BYRNE: Your Honor, I would offer  
2 Exhibits D, E and F and tender Mr. Weiss for  
3 cross-examination.

4                   JUDGE WOODRUFF: Exhibit D, E and F have  
5 been offered into evidence. Are there any objections to  
6 their receipt?

7                   (No response.)

8                   JUDGE WOODRUFF: Hearing none, they will be  
9 received.

10                  (EXHIBITS D, E AND F WERE RECEIVED INTO  
11 EVIDENCE.)

12                  JUDGE WOODRUFF: And for cross-examination,  
13 we begin with Laclede.

14                  MR. PENDERGAST: No questions, your Honor.

15                  JUDGE WOODRUFF: KCPL?

16                  MR. STEINER: No questions, your Honor.

17                  JUDGE WOODRUFF: Missouri Retailers? Looks  
18 like he's gone. MJMEUC?

19                  MR. HEALY: No questions.

20                  JUDGE WOODRUFF: AARP is gone. MEG? She's  
21 not here either. MIEC? Ms. Vuylsteke's not in the room  
22 either. Public Counsel?

23                  MR. MILLS: I do have questions. Thank  
24 you.

25 CROSS-EXAMINATION BY MR. MILLS:

1 Q. Good afternoon, Mr. Weiss.

2 A. Good afternoon, Mr. Mills.

3 Q. Is the interim increase something that UE  
4 needs or is it something that UE wants?

5 A. I would think based on the testimony of  
6 Mr. Baxter, it's something that we really need.

7 Q. How would you define need as opposed to  
8 want?

9 A. I think the term need comes into play here  
10 because of the large gap in the earned return versus the  
11 authorized return and the large negative cash, free cash  
12 flow, and also the fact that we're having to cut projects  
13 that we feel are good projects but we cannot afford to  
14 make those projects.

15 Q. Do you agree that the PSC should only give  
16 UE as much interim increase as you need?

17 A. My response is that the -- we asked for a  
18 very small amount, 37.3 million. So I think we need the  
19 whole amount. We probably could use more, but we only  
20 asked for 37.3 million.

21 Q. Well, you said the interim increase is  
22 something that you need; is that correct?

23 A. That is correct.

24 Q. Okay. And how much interim increase do you  
25 need?

1                   MR. BYRNE: I'm going to object on the  
2 grounds it's been asked and answered.

3                   MR. MILLS: I don't think he actually  
4 answered that question. That's why I asked it again.

5                   JUDGE WOODRUFF: I'll overrule the  
6 objection.

7 BY MR. MILLS:

8           Q.       How much do you actually need?

9           A.       That is a difficult question to answer, but  
10 since we're earning close to 400 basis points below our  
11 authorized return, if we were to be allowed to earn our  
12 authorized return, we'd need a full 400 basis points, but  
13 we did not request that.

14          Q.       So is it your testimony that you need  
15 exactly 37.3 million or that you need something more than  
16 that?

17          A.       It's my testimony that we could use more  
18 than that, but our -- we only asked for the 37.3 million  
19 in this rate case.

20          Q.       Did you ask for as much as you need?

21          A.       We asked for a reasonable amount in this  
22 interim direct case.

23          Q.       That wasn't my question. Can you answer  
24 the question, please?

25          A.       I guess my response is, I do not make the

1 decisions on how much money AmerenUE really needs. It's  
2 my opinion that 37.3 million is not the full amount that  
3 we would need, but that's the full amount we asked for.

4 Q. So you really need more than that; is that  
5 what you're saying?

6 A. If we are to be earning near our authorized  
7 return, we do need more than \$37.3 million.

8 Q. And do you need to earn your authorized  
9 rate of return?

10 A. I think the response would be we need to  
11 earn close to our authorized return. We do not have to  
12 earn exactly our authorized return, but we should be  
13 earning close to our authorized return.

14 Q. And just assume for the purposes of this  
15 question that you're earning roughly 6 percent ROE. How  
16 much additional will you be earning if you get the entire  
17 37.3 million, 70, 80 basis points?

18 A. More like, yeah, between 46 and 50 is 100  
19 basis points. So we're 37 percent of that, so it would  
20 not be -- would not be 80 basis points. It'd be more like  
21 say 60 to 65 more basis points.

22 Q. So assume that you're earning 6 percent  
23 now. The full amount that you've testified that you need  
24 would get you to 6.6 percent; is that correct?

25 A. In that neighborhood, that is correct.

1 Q. Now, would a million more be too much?

2 A. A million more dollars?

3 Q. A million -- 38.3 as opposed to 37.3, would  
4 that be too much?

5 A. Since we only requested 37.3, I'm not sure  
6 the Commission could give us 38, but 38 would not be too  
7 much.

8 Q. Would a million less be too little? 36.3,  
9 would be that too little for your need?

10 A. That's a matter of magnitude. Our need is  
11 so great that 36 versus 37 is probably not that  
12 significant.

13 Q. Okay.

14 A. But it's still a difference, and we do  
15 deserve all the 37.3 that we requested.

16 Q. How about 30 million, would that be too  
17 little?

18 A. I think my response is anything less than  
19 37.3 is too little. I'm not going to go down to this is  
20 the bright line where it stops, but anything less than  
21 37.3 is too little.

22 Q. What precisely is the need that the  
23 Commission should be trying to alleviate by granting an  
24 interim increase?

25 A. I think Mr. Baxter addressed that very



1 well. We have three major issues here. Our earned  
2 returns are significantly less than our authorized return.  
3 We have very large negative free cash flow, and we're  
4 having to cut out projects that we think are good projects  
5 for our customers and projects we would like to have done  
6 that we can't afford to do.

7 Q. We've already talked about one of those.  
8 If you get everything that you say you need, the 37.3,  
9 your earned return will be roughly 6.6 percent as opposed  
10 to 6 percent; is that correct?

11 A. That is correct.

12 Q. If you get an additional 37.3 million,  
13 how -- how -- will that turn your cash flow from negative  
14 to positive?

15 A. No, but it will, well, infuse some positive  
16 cash flows. It won't turn the whole cash flow positive,  
17 but will give us some positive cash flows that we did not  
18 have before.

19 Q. In the order of magnitude, how close to  
20 positive will it take you? How far negative are you now  
21 and how much difference will 37.3 make?

22 A. There again, I'm not sure of those numbers.  
23 That was Mr. Baxter's testimony, and I'm not aware of all  
24 those exact numbers.

25 Q. Okay. You don't even know order of

1 magnitude of your negative cash flow?

2 A. I heard Mr. Baxter testify to, what, a  
3 billion dollars.

4 Q. And what percent of a billion dollars is  
5 37.3 million?

6 A. 37 percent.

7 Q. 37 percent?

8 A. I don't know.

9 MR. BYRNE: In the interest of getting out  
10 of here today, can I stipulate it's 3.7 percent?

11 THE WITNESS: 3.7 percent. Not enough  
12 zeros in my numbers.

13 BY MR. MILLS:

14 Q. Now, in the last two cases, ER-2008-318 and  
15 ER-2007-0002, would UE have had the same need for interim  
16 increase at the beginning of those cases?

17 A. We did not make those studies. I'm not  
18 aware of all the facts at that point in time when we filed  
19 those rate cases, but -- so I really can't say for sure.

20 Q. You don't know?

21 A. No. I did not make those calculations at  
22 that time.

23 Q. Okay. Now, a minute ago you mentioned  
24 three factors. You said failure to earn your authorized  
25 rate of return, negative cash flow, and the third was

1 construction projects; is that correct?

2 A. That is correct.

3 Q. And does UE have a set of budget  
4 assumptions on the specific projects that it will  
5 undertake if the interim increase is granted?

6 A. That would have been a question you  
7 should've asked Mr. Baxter. I do not have any dealings  
8 with the construction budget and what projects are or are  
9 not approved.

10 Q. So you don't know of any specific projects  
11 that will go forward if the 37.3 million is approved; is  
12 that correct?

13 A. I personally do not know of any certain --  
14 any specific projects.

15 Q. Now, do you recall a Case No. EC-2002-1?  
16 That was the complaint case brought by the Staff which --

17 A. Yes, I do.

18 Q. -- in which there was a reduction and then  
19 an ongoing series of additional reductions. Do you recall  
20 that?

21 A. That is correct.

22 Q. Since that case ultimately ended up with a  
23 credit to customers and an ongoing series of reductions,  
24 would an interim decrease have been appropriate at the  
25 beginning of that case?

1           A.       Well, at the time that case was filed by  
2     the OPC and Staff, the company in response filed a rate  
3     case that indicated a large increase was required. So at  
4     that point in time, I think there was a large dispute as  
5     to whether there really was a rate decrease required or  
6     not.

7           Q.       And how much time elapsed before the  
8     company ultimately agreed for a cumulative decrease of  
9     roughly \$100 million or actually roughly \$150 million?

10          A.       We actually made that retroactive to April  
11     of '0 -- April. So I think it only was about nine months  
12     that elapsed in the final results.

13          Q.       But in your opinion, that would not have  
14     warranted an interim decrease at the beginning of the  
15     case; is that correct?

16          A.       Well, it would not have warranted  
17     100 percent of that estimated overearnings since the  
18     actual amount of overearnings was a big issue considering  
19     the company had filed for a rate increase in response.

20          Q.       Would any amount of interim decrease have  
21     been appropriate at that time?

22          A.       I think at some point in time, if it became  
23     obvious that there was a rate decrease required, at that  
24     point in time an interim rate decrease would have been put  
25     into effect.

1           Q.       Now, in your surrebuttal testimony at  
2     page 2, at the bottom of the page, you say that O&M  
3     expense is likely to increase; is that correct?

4           A.       That is correct.

5           Q.       Do you know for certain that the Commission  
6     will find that O&M expense will increase in this case?

7           A.       I would say it's highly likely.

8           Q.       But you don't know for certain, do you?

9           A.       I do not know for certain.

10          Q.       So with that respect, are you just  
11     speculating like you accused Mr. Rackers of speculating?

12          A.       Well, based on the fact that we filed for a  
13     402 million rate increase, I would assume based on that,  
14     and the facts I know from developing the case, that there  
15     should be an increase in O&M allowed.

16          Q.       Didn't you just tell me that back in 2002  
17     you filed for a rate increase and then almost a few months  
18     later agreed to a \$150 million decrease?

19          A.       That is correct.

20          Q.       Now, you also say at the bottom of page --  
21     still on your surrebuttal, the bottom of page 2 and  
22     continuing on to page 3, that property taxes may well  
23     increase and the rate of return will undoubtedly change.  
24     Do you believe that the rate of return in this case will  
25     be higher than the 10.76 that the Commission authorized in

1 the last case?

2 A. I'm just saying it's likely that the return  
3 from case to case never stays exactly the same. So that  
4 return could be higher. Could be lower. I'm not  
5 saying --

6 Q. So you're not -- you're saying the property  
7 taxes may increase, but you don't really have an opinion  
8 about whether rate of return will increase or decrease; is  
9 that correct?

10 A. Well, the overall return will have to  
11 increase because of the increase in the rate base.

12 Q. Say that again.

13 A. The overall -- the dollars of return will  
14 have -- will increase due to the fact that the rate base  
15 has increased since the last case, so --

16 Q. So here you're talking about dollars of  
17 return rather than rate of return?

18 A. I think here we're referring to the rate of  
19 return, and the overall rate of return will change.  
20 Long-term debts will change. The preferred stock will  
21 stay the same, but the common equity has changed, so the  
22 overall return will have changed.

23 Q. Now, sticking with your surrebuttal  
24 testimony for just a minute, you're talking at the bottom  
25 of page 3 about some surveillance data, and this is to

1     respond to Mr. Rackers, and you're saying that the rate  
2     base change that he's talking about is only a change of  
3     7/10 of a percent; is that correct?

4             A.       Mr. Rackers didn't talk about that specific  
5     change. I'm just pointing out that if you look at the  
6     period before and after the change of the surveillance  
7     report, that the rate bases are essentially the same.

8             Q.       So in your mind, for at least in respect to  
9     that comparison, the 7/10 of a percent change is not  
10    significant?

11            A.       That is correct.

12            Q.       What are -- what is UE's annual Missouri  
13    jurisdictional revenues, approximately?

14            A.       You know, 2.2 billion.

15            Q.       And what is 37.3 million as a percent of  
16    that 2.2 billion?

17            A.       Here we go again with all the zeros.

18            Q.       Mr. Byrne will correct if you put the  
19    decimal point in the wrong place.

20                   MR. BYRNE: Hint. It needs to start with a  
21    1.

22                   THE WITNESS: How about 1.7 percent?

23    BY MR. MILLS:

24            Q.       Okay. Thank you. Now, in your surrebuttal  
25    testimony at page 6, you're responding to Mr. Trippensee's

1 rebuttal testimony. In your answer at lines 6 through 8  
2 on page 6 of your surrebuttal testimony, you argue that  
3 interim rates are just that, interim subject to refund.  
4 All relevant factors will be taken into account with  
5 regard to the permanent rates to be set in this case.

6                   Following that logic, why wouldn't the PSC  
7 give all utilities a percent of their rate increase as  
8 interim increase in every case?

9           A.       I think the Commission has to look at the  
10 situation of each utility when it files its rate case and  
11 make an informed decision whether that utility would need  
12 an interim increase or not based on the facts of that  
13 company at the time of their filing.

14          Q.       Okay. And how again is the Commission to  
15 analyze that need?

16          A.       As we pointed out in our testimony, the  
17 large gap between the earned and authorized return, the  
18 amount of large negative cash flow, and the fact that  
19 we're having to eliminate projects that should be done or  
20 could be done that would be beneficial to our customers.

21          Q.       And you may know the answer to this because  
22 Mr. Baxter didn't. When was the last year in which UE did  
23 not have a negative cash flow?

24          A.       I do not know.

25          Q.       But as far as you know, this is not



1 something new; is that correct?

2 A. From my experience, I think some amount of  
3 negative cash flow is normal, but not to the extent of  
4 \$1 billion.

5 Q. Now, let me ask you, in your next Q and  
6 A on that same page, page 6 of your surrebuttal testimony,  
7 you say that Mr. Trippensee implies that the true-up  
8 process and annualization process eliminates regulatory  
9 lag; is that correct?

10 A. That is correct.

11 Q. And what did Mr. Trippensee actually say as  
12 opposed to what you think he implied?

13 A. You want me to read his testimony?

14 Q. I'll withdraw the question. His testimony  
15 speaks for itself.

16 And speaking of eliminating regulatory lag,  
17 at line 21, is it fair to read your testimony that -- that  
18 you believe that eliminating regulatory lag is an  
19 appropriate goal?

20 A. The appropriate goal would be to eliminate  
21 excess regulatory lag.

22 Q. So you believe that some amount of  
23 regulatory lag is good, appropriate; is that correct?

24 A. I think it's the company's testimony that  
25 some level of regulatory lag is appropriate and is good.

1                   MR. MILLS: That's all the questions I  
2 have.

3                   JUDGE WOODRUFF: Thank you. Ms. Vuylsteke  
4 and Mr. Coffman and Ms. Langeneckert, I skipped over you  
5 before we went to Mr. Mills. Did you wish to cross?

6                   MS. VUYLSTEKE: I have just a few questions  
7 of Mr. Weiss.

8 CROSS-EXAMINATION BY MS. VUYLSTEKE:

9               Q.       Mr. Weiss, would you agree with me that  
10 your current rate case includes an adjustment for  
11 increased OPEB and pension expense?

12           A.       I do not believe we made an adjustment to  
13 the pension and OPEB expense. The amount that we have in  
14 the tracker from the last case, we did not adjust that.

15           Q.       Do you know the approximate value for those  
16 areas?

17           A.       What do you mean by value of those areas?

18           Q.       You said that you had a tracker in place  
19 from the last rate case. Do you currently know the total  
20 cost, the current status of the tracker and the costs  
21 included?

22           A.       At the time we filed the rate case it was  
23 the -- the actual cost in the tracker compared to our  
24 budget for '09 were very close, so that's the reason why  
25 we did not make an adjustment. I do not know the exact

1 magnitude of those numbers off the top of my head, but  
2 they were very close.

3 Q. Have you requested that your actuaries  
4 provide a preliminary analysis currently to determine what  
5 the projected 2010 pension OPEB expense might be?

6 A. I think as the normal course of business,  
7 that estimate is provided in early January of 2010.

8 MS. VUYLSTEKE: Thank you.

9 MS. LANGENECKERT: No questions for MEG?

10 MR. COFFMAN: No questions.

11 JUDGE WOODRUFF: Okay. For Staff?

12 CROSS-EXAMINATION BY MR. DOTTHEIM:

13 Q. Good afternoon, Mr. Weiss.

14 A. Good afternoon, Mr. Dottheim.

15 Q. Mr. Weiss, Mr. Mills may have asked you  
16 this question, I'm not certain, but you are familiar with  
17 the company's last two rate increase cases, are you not,  
18 filed in 2006 and 2008?

19 A. Yes, I am.

20 Q. Do you know whether AmerenUE would have  
21 qualified for its interim proposal in this case in either  
22 of those two prior rate increase cases?

23 A. You're right, Mr. Mills did ask me that  
24 question, and my response was I have not made an analysis  
25 of that, so I do not know for sure.

1           Q.       Okay. Thank you for bearing with me. I  
2       wasn't absolutely clear that -- that that was a question  
3       he asked you.

4                    I'd like to direct you to your direct  
5       testimony on interim rates, and I'd like to direct you to  
6       your schedule at the end of the testimony, GSW-E23-2.

7           A.       I have it.

8           Q.       Okay. And you show on that schedule, do  
9       you not, the amount of Missouri retail plant, both gross  
10      plant and net plant, that are the basis for the \$37.3  
11      million which AmerenUE is seeking to collect in interim  
12      rates?

13          A.       Yes, I do.

14          Q.       Okay. And the gross plant for October 2008  
15      through May 2009 for Missouri retail is approximately  
16      \$350 million; is that correct?

17          A.       That is correct.

18          Q.       And the net plant for October 2008 through  
19      May 2009 for Missouri retail is approximately  
20      \$214 million?

21          A.       That is correct.

22          Q.       Do you know what projects comprise that  
23      number? Are those distribution projects?

24          A.       I can tell you for the \$351 million there's  
25      like 444 projects, and I can tell you that of the total

1 amount, distribution accounted for approximately  
2 \$194 million.

3 Q. Do you have any other breakdown for the  
4 other 100 and approximately 50 million dollars, if it's  
5 not distribution, what it would be classified as if there  
6 was any large classifications?

7 A. I can give you a breakdown. Steam  
8 generation was 35 million. Nuclear generation was  
9 62 million, and between -- I mean, other production around  
10 9 million. We have 31 million of transmission, and 35  
11 million of general plant, and there was a reduction of  
12 16 million from hydraulic to remove some Taum Sauk  
13 investments that were on the books.

14 Q. Mr. Weiss, do you have responsibilities for  
15 regulatory matters regarding the natural gas operations of  
16 AmerenUE --

17 A. If you're --

18 Q. -- for regulatory matters?

19 A. -- referring to regulatory matters such as  
20 rate case filings, ISRS filings, I do have responsibility  
21 for those, yes.

22 Q. So you are familiar with ISRS as it applies  
23 to gas corporations?

24 A. Yes, I am.

25 Q. Can you give, if it's possible, some

1 comparative analysis as to on the gas side, what  
2 percentage that is covered in AmerenUE's proposed interim  
3 rate relief would be covered by ISRS? That is, is there a  
4 way of making a comparability analysis if one were to take  
5 a look at the type of plant that comprises the  
6 approximately \$350 million and try to look at it in a  
7 natural gas corporation ISRS world?

8 A. I think -- I think I followed your  
9 question. I think you're asking to apply the gas ISRS  
10 rules to the electric investment here?

11 Q. Yes.

12 A. I think Mr. Pendergast in this morning's  
13 opening statements covered that very well by responding  
14 that the gas operations are very simple compared to the  
15 electric operations, and the gas ISRS at UE generally only  
16 applies to replacement of mains and services for safety  
17 reasons. And so it's a very small part even of our gas  
18 investment, let alone our electric investment. So I would  
19 say a very, very small percent of this would be covered by  
20 a gas type ISRS.

21 Q. The breakdown you provided me for the  
22 \$350 million that comprises the increasing gross plant  
23 from October 2008 through May 2009, which is the basis  
24 for AmerenUE's request for \$37.3 million in interim rate  
25 relief, is there some breakdown for how much of that

1     \$350 million is covered by the Power On program?

2             A.       I do not have that breakdown. The Power On  
3     program's included various projects and numerous projects.  
4     Each one have been separate, so I do not have a listing of  
5     those.

6             Q.       And even if -- if I was to just eliminating  
7     the Sioux scrubbers from the Power On analysis, that's  
8     still that you would not have? I'm not expecting that you  
9     would, but I'm just asking.

10            A.       No, I do not have that.

11            Q.       Mr. Weiss, I'd like to refer you to your  
12     surrebuttal testimony, which is marked as Exhibit F, and  
13     I'd like to refer you to page 2, lines 8 to 9, where you  
14     state that AmerenUE's proposal is unlike an ISRS  
15     adjustment, which is a permanent rate increase that cannot  
16     later be adjusted. You state that, do you not?

17            A.       Yes, I do.

18            Q.       Okay. The ISRS, the gas ISRS, which I  
19     think you've indicated you have some familiarity with, is  
20     there any true-up of the ISRS adjustment?

21            A.       There is a true-up of what was actually  
22     collected to what was supposed to be collected. There's  
23     not a true-up of the actual makeup of the ISRS itself.  
24     It's just a true-up of the actual dollars collected to  
25     what was supposed to be collected.

1           Q.       Is there a possible prudence proceeding of  
2   ISRS charges, a subsequent proceeding in a rate increase  
3   case?

4           A.       I assume that would be possible, because  
5   when you file your next rate case, you roll in the ISRS  
6   plant into your full rates. So at that point in time I  
7   guess the Staff could do a prudency on that investment.

8           Q.       Mr. Weiss, do you consider the fuel  
9   adjustment clause charge to be a permanent rate increase  
10  that cannot later be adjusted, akin to the ISRS?

11          A.       There again, with the fuel adjustment  
12  clause you have a true-up of the actual revenues collected  
13  to what is projected to be collected. So you have a  
14  true-up there, and there is also a prudency review every  
15  18 months or so. So I'd -- I think at those points in  
16  times there could be some adjustments made to the FAC  
17  collections and that would be flown through the FAC as a  
18  correction factor in later periods.

19          Q.       Would you characterize it as a permanent  
20  rate increase as you've characterized the ISRS?

21          A.       If you have two classifications, permanent  
22  and interim, then it would be a permanent because it's  
23  definitely not an interim increase.

24          Q.       Would you classify an environmental cost  
25  recovery mechanism charge as a permanent increase?



1           A.       There are similar rules and requirements  
2     for the environmental rider as the fuel adjustment clause  
3     with the true-up of actual revenues collected through what  
4     was forecasted to be collected. There is also prudence  
5     reviews of that every so often also. So at some point in  
6     time there could be adjustment to what was collected, but  
7     there again, those rates are in my mind more permanent  
8     than they are interim.

9           Q.       So you would view it as similar to the ISRS  
10    as a consequence, the ECRM charge?

11          A.       Well, the ECRM charge follows the FAC rules  
12    almost exactly. So I think it's related to the FAC type  
13    of rules, and I don't think those are interim increases.

14          Q.       Pardon me for a moment. Mr. Weiss, do you  
15    have a copy of Mr. Rackers' surrebuttal testimony? Excuse  
16    me, his rebuttal testimony, not surrebuttal.

17          A.       Yes, I do.

18          Q.       Okay. I'd like to refer you to page 1 of  
19    your surrebuttal testimony.

20          A.       Referring me to Mr. Rackers' testimony or  
21    my own testimony?

22          Q.       I'm referring you, if I could, to page 1,  
23    line 17 to 19.

24                   JUDGE WOODRUFF: Mr. Dottheim, which  
25    testimony are you referring to?

1                   MR. DOTTHEIM: I'm sorry. I'm referring --  
2 I'm referring -- I'm asking Mr. Weiss to take a look at  
3 his surrebuttal testimony, Exhibit F, and I'm going -- I  
4 asked him if he had Mr. Rackers' testimony because I'm  
5 going to refer him to where in his testimony he refers to  
6 Mr. Rackers' rebuttal testimony.

7                   JUDGE WOODRUFF: Okay.

8                   THE WITNESS: I have them both. I'm ready  
9 to go.

10 BY MR. DOTTHEIM:

11               Q.       Okay. Great. I'd like to refer you to  
12 line 17 to 19 on page 1 of your surrebuttal testimony.  
13 You refer to pages 2 to 3 of Mr. Rackers' rebuttal  
14 testimony, do you not?

15               A.       Yes, I do.

16               Q.       Okay. And then I'd like to refer you to  
17 the bottom of page 1, line 22, to the top of page 2, line  
18 1, where you say that Mr. Rackers justifies his ADIT and  
19 new plant added to serve new customers adjustments based  
20 in part on the calculation of an ISRS, do you not?

21               A.       That is my testimony.

22               Q.       Can you find any citation to the ISRS  
23 calculation on pages 2 and 3 of Mr. Rackers' rebuttal  
24 testimony?

25               A.       No. That reference to page 2, line 14

1 through page 3, line 5 was to the calculation or  
2 discussion of the ADIT. The actual discussion of the ISRS  
3 occurs later on in Mr. Rackers' testimony. I'm just  
4 putting the two pieces together.

5 Q. Well, even when you go to page 7 and 8 of  
6 Mr. Rackers' rebuttal testimony, can you show me where he  
7 states that the ISRS justifies including the adjustments  
8 which he suggests are appropriate in Ameren's interim  
9 calculation?

10 A. Mr. Rackers did not say that specifically.  
11 I inferred that from his testimony and discussion of ISRS,  
12 and knowing what's involved with the ISRS calculation, I  
13 assume that's what he was inferring, and that's how I  
14 responded to it.

15 Q. That was your assumption, then, wasn't it?

16 A. That is correct.

17 Q. I asked Mr. Baxter earlier today a question  
18 about advertising, and he referred me to you. I asked him  
19 about advertising expense in the company's most recently  
20 completed case, ER-2008-0318, and the presently pending  
21 case, and he -- again, he directed me to you.

22 Mr. Baxter (sic), you're aware, are you  
23 not, that AmerenUE has approximately doubled its amount of  
24 advertising expense since its last case?

25 A. I'm not Mr. Baxter. I'm Mr. Weiss, but I

1 can try to respond to the question.

2 Q. Excuse me. I apologize. I apologize.

3 Mr. Weiss.

4 A. I have seen numbers in response to Staff  
5 Data Request that would indicate that the advertising  
6 expense has increased since the last rate case. I'm not  
7 sure it's double, but I know it has increased.

8 Q. Are you aware of AmerenUE plans to increase  
9 its advertising expense in the future?

10 A. Not exactly. I heard some discussions with  
11 the personnel in the advertising area, and they have  
12 indicated that they thought we were about to reach a  
13 plateau and it would not be increasing.

14 MR. DOTTHEIM: If I could have a moment,  
15 please?

16 JUDGE WOODRUFF: Sure.

17 MR. DOTTHEIM: Thank you, Mr. Weiss.

18 You've been very patient.

19 THE WITNESS: Thank you.

20 JUDGE WOODRUFF: We'll come up for  
21 questions from the Bench then. Commissioner Jarrett?

22 COMMISSIONER JARRETT: I have no questions.

23 Thank you, Mr. Weiss.

24 JUDGE WOODRUFF: Commissioner Gunn?

25 COMMISSIONER GUNN: I don't have any

1 questions.

2 JUDGE WOODRUFF: Commissioner Kenney?

3 COMMISSIONER KENNEY: No, thank you.

4 JUDGE WOODRUFF: No questions from the  
5 Bench, so there's no need for recross. Any redirect?

6 MR. BYRNE: Just a couple, your Honor.

7 REDIRECT EXAMINATION BY MR. BYRNE:

8 Q. Mr. Dottheim asked you some questions about  
9 applying the gas ISRS to the electric investment. Do you  
10 remember that line of questions?

11 A. Yes, I do.

12 Q. Do the rules for the gas ISRS have any  
13 application at all to electric facilities?

14 A. No, they do not.

15 Q. He asked you for a breakdown of -- of the  
16 \$351 million of investment that forms the basis of our  
17 request for interim rate relief. Do you remember that  
18 line of questioning?

19 A. Yes, I do.

20 Q. And I guess my question is, in the -- would  
21 you expect very much of those investment dollars to be  
22 tied to projects that either maintain or enhance the  
23 reliability of AmerenUE's system?

24 A. I would say the majority of them are  
25 probably related to maintaining reliability or improving

1 reliability of the AmerenUE system.

2 Q. Mr. Dottheim asked you about advertising  
3 budget increasing. Do you remember that question just a  
4 few seconds ago?

5 A. Yes, I do.

6 Q. Why does AmerenUE advertise?

7 A. I think Mr. Baxter may have addressed that  
8 in his testimony. But we have heard from our customers  
9 through surveys and town meetings that they like to hear  
10 from our company, what we are doing and how we are meeting  
11 their needs. So the only way to reach that many customers  
12 spread throughout the state is through advertising. So we  
13 have to advertise the services we are providing and the  
14 projects we are doing to enhance reliability.

15 MR. BYRNE: Thank you, Mr. Weiss. I have  
16 no further questions.

17 JUDGE WOODRUFF: You may step down,  
18 Mr. Weiss.

19 Do you want to take Mr. Pfeifenberger out  
20 of order at this point?

21 MR. BYRNE: We're okay with sticking with  
22 the -- sticking with the regular schedule.

23 JUDGE WOODRUFF: That's fine. We'll just  
24 take Mr. Nickloy then.

25 JUDGE WOODRUFF: Welcome, Mr. Nickloy.

1 THE WITNESS: Good afternoon.

2 JUDGE WOODRUFF: If you'd please raise your  
3 right hand, I'll swear you in.

4 (Witness sworn.)

5 JUDGE WOODRUFF: Thank you very much. You  
6 may inquire.

7 LEE R. NICKLOY testified as follows:

8 DIRECT EXAMINATION BY MR. BYRNE:

9 Q. Can you please state your name for the  
10 record, Mr. Nickloy.

11 A. My name is Lee R. Nickloy.

12 Q. And are you the same Lee R. Nickloy that  
13 caused to be filed in this case direct and surrebuttal  
14 testimony on interim rates that has been marked as Exhibit  
15 G and H?

16 A. Yes, I am.

17 Q. And if I was to ask you the -- well, do you  
18 have any corrections to any of that testimony?

19 A. No.

20 Q. If I were to ask you the questions in that  
21 prefiled testimony here today when you're under oath,  
22 would your answers be the same?

23 A. Yes.

24 Q. Is the information in that testimony true  
25 and correct to the best of your knowledge?

1           A.       Yes, it is.

2                   MR. BYRNE:   I would offer Exhibit G and H  
3   and tender Mr. Nickloy for cross-examination.

4                   JUDGE WOODRUFF:   Exhibits G and H have been  
5   offered into evidence.   Are there any objections to their  
6   receipt?

7                   (No response.)

8                   JUDGE WOODRUFF:   Hearing none, they will be  
9   received into evidence.

10                   (EXHIBITS G AND H WERE RECEIVED INTO  
11   EVIDENCE.)

12                   JUDGE WOODRUFF:   Cross-examination, we  
13   begin with Laclede.

14                   MR. PENDERGAST:   No questions, your Honor.

15                   JUDGE WOODRUFF:   KCPL?

16                   MR. STEINER:   No questions.

17                   JUDGE WOODRUFF:   Missouri Retailers is  
18   gone.   MJMEUC?

19                   MR. HEALY:   No questions.

20                   JUDGE WOODRUFF:   AARP?

21                   MR. COFFMAN:   No questions.

22                   JUDGE WOODRUFF:   MEG?

23                   MS. LANGENECKERT:   No questions, your  
24   Honor.

25                   JUDGE WOODRUFF:   MIEC?



1 MS. VUYLSTEKE: Thank you, Judge.

2 CROSS-EXAMINATION BY MS. VUYLSTEKE:

3 Q. Good afternoon, Mr. Nickloy.

4 A. Good afternoon.

5 Q. Mr. Nickloy, would you agree with me that  
6 your current rate case includes an adjustment for  
7 approximately \$10 million associated with new bank service  
8 fees?

9 A. I would agree that there is an amount in  
10 the case for bank facility fees. I'm not certain if it's  
11 10 million or not.

12 Q. Has Ameren negotiated a new credit  
13 arrangement which would address these new bank fees?

14 A. Yes.

15 MS. VUYLSTEKE: Thank you.

16 JUDGE WOODRUFF: All right. For Public  
17 Counsel?

18 MR. MILLS: Just a few. Thank you.

19 CROSS-EXAMINATION BY MR. MILLS:

20 Q. Mr. Nickloy, have you calculated the impact  
21 of the subjective improvement on credit quality that you  
22 believe will result from the approval of an interim rate  
23 increase?

24 A. No, I have not.

25 Q. Will the benefits that you perceive coming

1 from an interim rate increase hit you on the debt side or  
2 the equity side or both?

3 A. I think that they're positive benefits for  
4 both debt investors and equity investors.

5 Q. If there are positive benefits for equity  
6 investors, should return on equity be reduced in the main  
7 rate case if you get an interim rate increase?

8 A. I would defer to Dr. Morin on that. He's  
9 our ROE witness in the proceeding. And, you know, I  
10 certainly acknowledge that there could be some risk  
11 element associated with interim rates, but there's so many  
12 factors that are considered when developing an ROE  
13 recommendation for a case that I don't know how that would  
14 work in his analysis. But again, that would be a question  
15 more appropriate for Dr. Morin.

16 Q. So is that answer a maybe or I don't know?

17 A. I would say it's an I don't know.

18 Q. Okay. In assuming that some benefit does  
19 accrue because of the subjective improvement in credit  
20 quality, how will that benefit or will that benefit flow  
21 to ratepayers?

22 A. There's -- I think there are two ways that  
23 that can flow to ratepayers, and it would be through lower  
24 financing costs, a quantitative element to it if you will,  
25 where it improves the company's cash flow. It reduces

1 borrowing needs and it's helpful for credit quality, and  
2 investors respond to that. The better the credit quality  
3 of the entity is, the lower debt costs can be.

4 Also, there's a quantitative -- I'm sorry,  
5 a qualitative signal associated with that as well. The  
6 granting of interim rates represents another step and  
7 another measure that, you know, is allowed in Missouri and  
8 that the Commission has allowed which reduces regulatory  
9 lag, and that's a positive signal to rating agencies.  
10 It's a positive signal to debt investors as well, thus  
11 enhancing credit quality in a different way.

12 Q. Will either of those flow to ratepayers in  
13 this current rate case?

14 A. I think it's -- maybe I think the benefit  
15 would be more in future rate cases, once further financing  
16 is done.

17 Q. Will -- will anyone, and especially the  
18 Commission, be able to determine in the next rate case how  
19 much of an impact the interim increase, if one were  
20 granted, had on your credit quality and the quantitative  
21 difference in your debt costs in future cases?

22 A. You know, here again, I think that is  
23 difficult to quantify. You know, investors will take a  
24 look at a number of factors in their assessment of credit  
25 quality, and certainly it's helpful. No doubt it helps

1 both financial ratios. It helps quantitative,  
2 qualitatively as well. But isolating that single  
3 component from an overall credit analysis I think would be  
4 difficult to do.

5 Q. Difficult or impossible?

6 A. Probably impossible.

7 Q. Now, at the very end of your surrebuttal  
8 testimony, and this sort of foreshadows the fact that I'm  
9 near the end, you say that your ratings are from Moody's  
10 S&P and Fitch respectively A3, triple B and A; is that  
11 correct?

12 A. Correct.

13 Q. And you believe those are within the range  
14 of ratings commonly assigned to other comparable regulated  
15 utilities?

16 A. I think those are about average, in the  
17 middle of the pack.

18 Q. Do you think those ratings are reasonable?

19 A. Yeah, I do. I think the S&P rating is, you  
20 know, probably a little bit low. We know that investors  
21 actually look through that rating a bit and, you know,  
22 view UE's credit quality as being stronger than that when  
23 we look at the way that UE's bonds trade in the secondary  
24 market versus indexes.

25 Q. And you consider all these grade -- all

1 these gradings to be solid investment grade; is that  
2 correct?

3 A. Yeah. They're all certainly investment  
4 grade ratings.

5 MR. MILLS: That's all I have. Thank you.

6 JUDGE WOODRUFF: Cross for Staff?

7 CROSS-EXAMINATION BY MR. DEARMONT:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. You filed direct testimony in the general  
11 rate case on July 24th of this year; is that correct?

12 A. Correct.

13 Q. And that direct testimony, what I'll call  
14 the general direct deals with cost of capital and more  
15 specifically with the cost and availability of debt  
16 capital?

17 A. Yes.

18 Q. As you stated earlier, the direct testimony  
19 filed by Dr. Morin deals with return on equity?

20 A. Yes.

21 Q. In your July 24th testimony, you don't  
22 specifically discuss the implications of interim rates on  
23 the company's cost of debt capital, do you?

24 A. No. No. Interim rates related to cost of  
25 debt capital in my general direct?

1 Q. Interim rates related to anything?

2 A. No, I don't believe I do.

3 Q. In fact, you don't mention interim rate  
4 requests or interim rates anywhere in that direct  
5 testimony, do you?

6 A. I don't know that I say anything specific.  
7 It's been a while since I've written the testimony. I  
8 don't know if I say anything about interim rates  
9 specifically in that testimony, but I may have made some  
10 comments about regulatory lag and how that can affect cost  
11 and cost of capital and debt capital specifically.

12 Q. To the best of your knowledge, Dr. Morin's rate of  
13 return testimony does not discuss the financial  
14 implications of the interim rate request either?

15 A. I don't know.

16 Q. That's a no, to the best of your knowledge?

17 A. I don't know.

18 Q. Okay. You're currently employed as the  
19 assistant treasurer and director of corporate finance for  
20 Ameren Services Company?

21 A. Correct.

22 Q. What is Ameren Services Company?

23 A. It's a services company that is subsidiary  
24 of Ameren that employs finance people, accountants,  
25 attorneys, human resources, tax people who provide

1 services for the various Ameren subsidiaries.

2 Q. Like?

3 A. Like Union Electric Company, like the  
4 Illinois utilities.

5 Q. Such as?

6 A. Illinois -- Illinois Power Company, Central  
7 Illinois Public Service Company, Central Illinois Light  
8 Company. They provide services to other subsidiaries of  
9 Ameren, including Ameren Energy Generating Company.

10 Q. Does Ameren Services Company generate any  
11 revenue?

12 A. Yeah, I believe they -- yeah. They're  
13 compensated for the services of their employees by the --  
14 by the subsidiaries that receive those services.

15 Q. So do the different subsidiaries pay in  
16 proportion to the services they receive?

17 A. I think that's how that works.

18 Q. You generally bill the subsidiaries for  
19 which you work, is that --

20 A. Yeah. I don't -- it doesn't happen in my  
21 group, but I think that's how that works.

22 Q. What portion of your expenses -- by you I  
23 mean Ameren Services Company -- are paid by Ameren?

24 A. When you say Ameren, do you mean --

25 Q. Big Ameren.

1           A.       -- the holding company?

2           Q.       Yes.

3           A.       How much are allocated to the holding

4 company?

5           Q.       What proportion?

6           A.       I don't know.

7           Q.       10 percent?

8           A.       I'm sorry. I don't know.

9           Q.       Do you know what percentage is paid by

10 AmerenUE?

11          A.       I don't.

12          Q.       By Ameren GenCo?

13          A.       I don't.

14          Q.       By any other of the Ameren Illinois

15 subsidiaries?

16          A.       I don't know.

17          Q.       On October 20th of this year, you filed

18 direct testimony related to the company's interim rate

19 request?

20          A.       I know I filed direct testimony. I take it

21 it was on the 20th.

22          Q.       Okay. And would you agree that this

23 interim direct testimony discusses certain perspectives

24 held by the investment community?

25          A.       Yes.



1           Q.       And specific on the first page of that  
2 testimony, lines 15 to 18, you state that the purpose of  
3 the testimony is to offer some fixed income and credit  
4 perspectives on the benefits of interim rates on AmerenUE  
5 and its customers. Does that sound correct?

6           A.       Yes.

7           Q.       On the second page, lines 4 through 6, you  
8 state that the perspectives of fixed income investors,  
9 banks and credit rating agencies determine the company's  
10 cost of debt, which ultimately impacts the rates paid by  
11 its customers; is that fair?

12          A.       Yes. That's correct.

13          Q.       So if I understand your position, at least  
14 from the cost of capital point of view, better  
15 perspectives held by the investment community equal lower  
16 financing charges to UE, which eventually result in lower  
17 rates paid by customers; is that a fair characterization?

18          A.       Sure. The perspective -- they're investors  
19 and they're providing debt capital, and when they look at  
20 what price they will provide that debt capital to the  
21 company, they're assessing credit quality or  
22 creditworthiness, and the better credit quality is, the  
23 lower rate at which they would be, you know, compelled to  
24 charge for lending or providing capital.

25                   And my testimony sort of outlines that

1 interim rates along with other mechanisms that can reduce  
2 regulatory lag enhance credit quality, both qualitatively  
3 and quantitatively, as I mentioned, and as that enhances  
4 credit quality, credit quality improves, financing costs  
5 are reduced, because those investors and creditors and  
6 lenders are willing to lend at a lower rate because they  
7 perceive the company's creditworthiness, credit quality to  
8 be better.

9 Q. Now, outside of the specific investors and  
10 lenders, you also mention the perspectives of credit  
11 rating agencies, correct?

12 A. Yes. They also assess creditworthiness.

13 Q. Right. And the perspectives of those  
14 agencies are reflected in the ratings issued by those  
15 agencies; is that fair?

16 A. Yes. Those ratings are opinions of their  
17 assessment of the company's credit quality.

18 Q. And in your rebuttal -- excuse me. Your  
19 interim rates surrebuttal testimony, lines 20 through 22,  
20 you concede that implementation of interim rates taken by  
21 itself would not cause an upgrade in AmerenUE's corporate  
22 credit rating --

23 A. Correct.

24 Q. -- correct?

25 That's just like the implementation of the

1 FAC by itself did not result in an increase in AmerenUE's  
2 credit rating?

3 A. That is correct, it did not result in an  
4 increase, but the rating agencies did view that favorably.  
5 In fact, they've indicated that in reports that they've  
6 written, and there again, the fuel adjustment clause was  
7 another mechanism that reduces regulatory lag and enhances  
8 credibility.

9 Q. Sure. But not enough to knock it up a  
10 notch or two or three?

11 A. No. There was not a direct ratings  
12 increase that resulted from it, but again, they point out  
13 in their reports that they view it as helpful.

14 Q. In response to Staff Data Request 200,  
15 AmerenUE provided copies of rating agency reports  
16 published by S&P, Moody's and Fitch. Did UE come into  
17 possession of these reports under the terms of contracts  
18 with these rating agencies to provide ratings on UE's  
19 debt?

20 A. We pull those -- we have subscription  
21 access to the rating agency websites like investors have,  
22 and we pull the reports from those websites. We pay a  
23 subscription service.

24 Q. And there wasn't another set of contracts  
25 governing the rating of the debt that deals with the

1 issuance of those reports at all?

2 A. As an issuer who needs ratings on the debt  
3 in order to sell the debt, issue the debt to investors, we  
4 pay the rating agencies for them providing, you know, for  
5 them rating us.

6 Q. But that's not the only way you receive  
7 access to those reports?

8 A. No.

9 Q. You can get those same reports as a  
10 subscriber?

11 A. Yeah. We also subscribe to the rating  
12 agencies rating services like an investor would.

13 Q. Is it a fair characterization that you  
14 believe that, should the Commission grant AmerenUE's  
15 request for interim rate relief, that this decision would  
16 result in a positive effect on the company's credit  
17 quality?

18 A. Could you repeat that question, please?

19 Q. Yes. Is it a fair characterization of your  
20 position that, should the Commission grant AmerenUE's  
21 request for interim rate relief, that this decision would  
22 result in a positive effect on the company's credit  
23 quality?

24 A. Yes.

25 Q. And there is a difference between credit

1 rating versus credit quality?

2 A. Yes. A credit rating represents an  
3 alphanumeric sort of moniker representing the rating  
4 agency's assessment of the rated entity's credit quality.

5 Q. It's the perspective of the rating agency?

6 A. Yes. It's a rating that they assign based  
7 on their opinion of the company's creditworthiness.

8 Q. What's quality then?

9 A. Credit quality?

10 Q. Yes.

11 A. It's the financial wherewithal of a  
12 company, and it's sort of a level of cushion or the  
13 ability of a company to satisfy its fixed -- well, it's  
14 obligations and specifically its obligations like  
15 interest, payment to trade creditors, that sort of thing.  
16 It's a measure of, you know, using financial ratios and  
17 qualitative factors around the company's operating  
18 environment and operations, regulatory jurisdiction in the  
19 case of a utility. It reflects the, you know, the  
20 assessment of what -- how much cushion and how strong is  
21 the company's ability to meet its fixed income  
22 obligations.

23 Q, And whose assessment is that?

24 A. Well, it depends.

25 Q. Is it bond investors?

1           A.       Bond investors, certainly.

2           Q.       Bank lenders?

3           A.       Bank lenders.

4           Q.       Trade creditors?

5           A.       Trade creditors, rating agencies.

6           Q.       To a certain extent?

7           A.       Rating agencies are performing a credit  
8 analysis of the company and assessing its credit quality  
9 and their derivation and development of an assignment of  
10 the ratings.

11          Q.       Right. But those are credit rating  
12 agencies, not credit quality agencies, right? I mean,  
13 their end product is a rating?

14          A.       Correct, based on their assessment of  
15 credit quality.

16          Q.       If investors such as bond investors, bank  
17 lenders, trade creditors, if they place so much value on  
18 their perspective, independent of credit rating agencies,  
19 then why does AmerenUE need to have its debt rated by  
20 these rating agencies?

21          A.       I hope that none of my comments would have  
22 led you to conclude that the ratings and rating agencies  
23 aren't important. They are. No question, they are.

24                   My earlier point, though, was to point out  
25 that investors will look through a rating. There, for

1 example, are companies, bond investors. These are large  
2 financial institutions. They're insurance companies,  
3 pension funds, asset management firms. These have  
4 sophisticated fixed income research groups, highly trained  
5 credit analysts, and they're going to look at what the  
6 rating agencies say and where those ratings are, but  
7 they're also going to conduct their own credit analysis  
8 and their own assessment of the company's  
9 creditworthiness.

10 Q. These are quantitative and qualitative  
11 assessments?

12 A. Sure. Any assessment of credit quality  
13 will include a quantitative analysis which includes things  
14 like ratio analysis and looking at other financial  
15 measures, but there's also a qualitative analysis that  
16 takes place, too. They're looking at what's the -- in the  
17 case of a utility is what we're talking about is they're  
18 looking at what happens in the regulatory jurisdiction,  
19 what type of assets does the company have. They're  
20 looking at management, a number of sort of, you know,  
21 again, I call them qualitative factors because that's what  
22 they are.

23 Q. I see. And where in your testimony can I  
24 find any of these qualitative or quantitative analyses?

25 A. It's in -- I don't recall off the top of my

1 head, but I make points about qualitative and quantitative  
2 and some of the elements of those types of analysis.

3 Q. Generically, right?

4 A. Generically.

5 Q. You don't include any specific examples in  
6 your testimony, do you?

7 A. Examples of?

8 Q. Of quantitative or qualitative assessments  
9 by bond investors, by bank lenders, by trade creditors  
10 which may or do result from interim rates from an interim  
11 rate request?

12 A. No, not specifically. I talk generically.  
13 I do provide some examples of the financial ratios that  
14 are used in a quantitative analysis.

15 Q. Even if interim rate increase is granted by  
16 the Commission, you can't be certain that these investors  
17 will yield analyses which reflect increases in AmerenUE's  
18 credit quality?

19 A. Well, it's -- can you say that again?

20 Q. Sure. If an interim rate increase is  
21 granted by the Commission, you can't be certain that bond  
22 investors, bank lenders and trade creditors will yield  
23 analyses which reflect increases in AmerenUE's credit  
24 quality?

25 A. Certainly I can't speak for them, no. But



1 clearly interim rates and reducing regulatory lag is  
2 clearly credit enhancing, both qualitatively and  
3 quantitatively. So one could reasonably expect that as  
4 credit analysts, no matter where they are, whether they  
5 work for an insurance company or a bank, they're going to  
6 notice that, and they're going to pick up on that --

7 Q. They should.

8 A. -- they're going to factor that in to their  
9 analyses.

10 Q. And it should result in a theoretical  
11 quantitative increase?

12 A. Well, sure, but I would even point out that  
13 the regulator -- the rating agencies mention regulatory  
14 lag. You know, if you look at some of the statements in  
15 their reports, they point out regulatory lag as being an  
16 issue that they're watching and focused on.

17 Q. Are you familiar with the primary credit  
18 metrics S&P publishes in its research reports on AmerenUE?

19 A. Yeah, the -- what the measures are, or the  
20 specific levels?

21 Q. Both.

22 A. I would be familiar with what the ratios  
23 are, but not exactly where those numbers are.

24 Q. Okay. Are you familiar with the ratios of  
25 Ameren?

1           A.       Yes.

2           Q.       Of Ameren Genco?

3           A.       Yes, in the same way.

4           Q.       Are you familiar with S&P's latest research

5 reports issued August 27th, 2009?

6           A.       Yes.

7           Q.       In these reports, S&P assigned AmerenUE a

8 business risk profile of excellent, did it not?

9           A.       Yes.

10          Q.       And this is S&P's highest business risk

11 profile?

12          A.       That's correct.

13          Q.       In a report issued that same day S&P

14 assigned Ameren Genco a business risk profile of fair?

15          A.       Right.

16          Q.       Correct?

17          A.       Yeah.

18          Q.       And fair is not as good as excellent?

19          A.       Right. That's correct.

20          Q.       What business risk profile does S&P assign

21 Ameren?

22          A.       Ameren Corp as a consolidated entity?

23          Q.       Yes.

24          A.       I think -- I believe that's satisfactory.

25          Q.       Where does that fall between excellent and

1 fair?

2 A. In between.

3 Q. In between? It's better than fair, less  
4 than excellent?

5 A. Correct.

6 Q. So what is more likely to improve  
7 AmerenUE's S&P credit rating, an improvement in the  
8 business risk profile of AmerenUE or of Ameren?

9 A. Well, S&P takes a consolidated approach.  
10 So it's more likely that -- and because of that, it's more  
11 likely that a change in the Ameren business risk profile  
12 would drive a rating because of the way they choose to do  
13 their analysis.

14 Q. And because UE's already up here, right?

15 A. Right. But again, I would point out that  
16 investors are aware of that approach by S&P, and again, as  
17 I mentioned, they're looking through that. They're  
18 conducting their own analysis. And, you know, we know  
19 that the way they sort of cost capital for UE, we can  
20 observe this in sort of the yields at which UE's bonds  
21 trade in the secondary market, that those trade better  
22 than what would be suggested by triple B rated utilities  
23 where those bonds trade.

24 JUDGE WOODRUFF: Mr. Dearmont, if I could  
25 interrupt for a moment. I told the parties we'd break at

1 five to go to dinner. Are you nearly finished?

2 MR. DEARMONT: Three more questions.

3 JUDGE WOODRUFF: I want to make sure that  
4 nobody's having heartburn from going a little longer. I'd  
5 like to be able to finish Mr. Nickloy, but if somebody has  
6 to pick up their kids or something, let me know and I'll  
7 say that includes the court reporter.

8 MR. BYRNE: You don't want to break before  
9 my redirect?

10 JUDGE WOODRUFF: I don't think so. We'll  
11 proceed then.

12 BY MR. DEARMONT:

13 Q. Similarly, what is likely to improve --  
14 what is more likely to improve AmerenUE's S&P credit  
15 rating, an improvement in the business risk profile of  
16 Ameren or of Ameren Genco?

17 A. Of Ameren, but again, I would point out  
18 that we're not arguing that interim rates is going to lead  
19 to an S&P ratings increase.

20 Q. Just the opposite really, you concede that  
21 it won't?

22 A. No, I don't think it will.

23 Q. Finally, Mr. Nickloy, does AmerenUE target  
24 a specific credit rating?

25 A. Yes, it does.

1           Q.       If granted interim rate relief, would  
2 AmerenUE increase this target?

3           A.       No, no.

4                   MR. DEARMONT: I have no further questions.

5                   JUDGE WOODRUFF: Come up for questions from  
6 the Bench then. Commissioner Jarrett?

7                   COMMISSIONER JARRETT: No questions.

8                   JUDGE WOODRUFF: Commissioner Gunn?

9                   COMMISSIONER GUNN: I just have one quick  
10 question.

11 QUESTIONS BY COMMISSIONER GUNN:

12           Q.       Do the rating -- in your opinion, do the  
13 rating agencies treat interim rate increases the same way  
14 that they would treat fuel adjustment clauses and  
15 environmental cost recovery mechanisms? Do they like them  
16 both the same or do they like some things better than the  
17 other?

18           A.       Well, I would maybe taking it either they  
19 like it or would like it -- in my view of their opinions,  
20 they would like it because it's another tool that reduces  
21 regulatory lag, and reducing regulatory lag is helpful for  
22 credit quality. The relative difference between interim  
23 rates versus a fuel adjustment clause versus environmental  
24 cost recovery mechanism I don't know how one would rank  
25 vis-a-vis the other, but clearly it's another helpful

1 measure that can be used to reduce regulatory lag, which  
2 is the thing that they focus on.

3 COMMISSIONER GUNN: Thanks. I don't have  
4 any further questions.

5 JUDGE WOODRUFF: Commissioner Kenney?

6 COMMISSIONER KENNEY: I just have one.

7 QUESTIONS BY COMMISSIONER KENNEY:

8 Q. Are you able to assign a relative weight or  
9 percentage given the role of regulatory environment in the  
10 overall qualitative analysis that credit rating agencies  
11 go through? Does my question make sense to you?

12 A. It does. I'm trying to figure out how to  
13 best answer it. The rating agencies do look -- they're  
14 rating utility issuers throughout the U.S., and globally  
15 for that matter, and I know that they look at the  
16 regulatory jurisdiction as part of their analysis of  
17 creditworthiness. And I'm sure they have views about  
18 where they see regulatory jurisdictions being more  
19 constructive or less constructive.

20 There may -- I think there are some  
21 methodology pieces where they may talk a little bit more  
22 in detail with it. I just off the top of my head, you  
23 know, can't give you a lot of the detail from that, but  
24 certainly they are -- they are viewing decisions made in  
25 the regulatory jurisdictions and how, you know, how those

1     compare state to state.

2                   COMMISSIONER KENNEY:   Thank you.

3                   THE WITNESS:    Sure.

4                   JUDGE WOODRUFF:   Anyone wish to recross  
5     based on those questions from the Bench?   Redirect?

6                   MR. BYRNE:    Just a couple, your Honor.

7     REDIRECT EXAMINATION BY MR. BYRNE:

8           Q.       Mr. Nickloy, just a couple minutes ago  
9     Mr. Dearmont was asking you some questions about how  
10    Standard & Poor's rates Ameren on a consolidated basis.  
11    do you remember those lines of questioning?

12          A.       Yes.   Yes.

13          Q.       Do you remember that?

14          A.       Yes.   Sorry.

15          Q.       Are there other agencies that don't rate  
16    AmerenUE consolidated with its other affiliates?

17          A.       Correct.   Moody's looks at UE on more of a  
18    standalone legal entity basis.   Fitch looks at UE on a  
19    standalone basis.   S&P is unique in the consolidated  
20    approach to the ratings process.

21          Q.       Mr. Dearmont also asked you if you had any  
22    examples of qualitative analyses by investors reflecting  
23    the impact of interim rates.   Do you remember that --

24          A.       Yes.

25          Q.       -- series of questions?

1                   I mean, given the fact that the Commission  
2 hasn't approved an interim rate, do you think there's any  
3 qualitative analyses like that that exist?

4           A.       No, and we wouldn't see -- a bond investor  
5 would not show us their analytical work. We wouldn't see  
6 that from them.

7           Q.       I mean, would there even be any before the  
8 Commission approves an interim rate?

9           A.       I think that they would look -- you know,  
10 they would conduct such an analysis once they knew the  
11 decision had been granted and they knew the dollar amount  
12 of the grant.

13          Q.       Mr. Dearmont asked you some questions about  
14 ratio analysis. Do you remember --

15          A.       Yes.

16          Q.       -- those questions?

17                   And let me ask you this. Two of the issues  
18 we talked about are earnings and free cash flow. Do those  
19 factors affect the ratio analysis that -- that people who  
20 are analyzing the credit quality of AmerenUE do?

21          A.       Of course they do. Key in credit  
22 assessment and credit quality analysis and the  
23 quantitative are cash flow oriented measures. One is  
24 FFO interest coverage, and that's looking at a company's  
25 cash flows versus its interest obligations. To the extent



1 cash flow improves, that measure is enhanced because FFO,  
2 which is a measure of cash flow, improves.

3                   There's another measure that's very  
4 important called FFO to debt. Again, if the company's  
5 cash flow position is improved, that helps FFO, again the  
6 measure of cash flow, and also to the extent cash flow is  
7 improved, there's less debt because the company isn't  
8 financing this (indicating), and so debt decreases. And  
9 so in terms of that ratio, you have a numerator which is  
10 increasing, a denominator which is decreasing and that  
11 ratio improves, and likewise, leverage, to the extent the  
12 company reduces the amount of indebtedness that it has,  
13 its leverage decreases as well.

14               Q.       Do earnings figure in to those ratios or  
15 not so much?

16               A.       No. Those ratios tend to be more cash flow  
17 oriented. But -- so the cash flow changes is the key  
18 driver there.

19               Q.       Okay. Now, my understanding is you  
20 testified in response to Mr. Dearmont, maybe Mr. Mills,  
21 too, that this interim rate request isn't likely or maybe  
22 isn't -- doesn't have any chance at all of moving our  
23 credit rating. Is that a fair statement of your  
24 testimony?

25               A.       Yes.

1           Q.       But my understanding is you testified it  
2 would improve credit quality?

3           A.       Quite certainly, and again both  
4 qualitatively because it's a measure that the Commission  
5 has granted that further reduces regulatory lag, and  
6 quantitatively because it's helping cash flow and that  
7 helps credit metrics.

8           Q.       What are the benefits of improving credit  
9 quality?

10          A.       Lower borrowing costs, lower financing  
11 costs.

12          Q.       Are there -- are there other benefits to  
13 the Commission approving interim rates maybe outside the  
14 finance world, I mean, in terms of improving earnings and  
15 things like that?

16          A.       Well, maybe another finance point. I mean,  
17 certainly to the extent cash flow is improved, the company  
18 is borrowing less, and so that it needs less bank facility  
19 liquidity, which we -- you know, has become much more  
20 expensive after the start of the financial crisis. So,  
21 you know, that's less expense that the company has to bear  
22 to maintain that resource.

23          Q.       Mr. Mills, I think, asked you some  
24 questions about if interim rates were impacted or  
25 approved, how would that impact the ROE, would there --

1     should there be a reduction in the ROE? And I guess I'd  
2     like to ask you, do you think that should -- that the  
3     interim rate should be -- if they're considered in the  
4     ROE, should they be considered in isolation or in the  
5     context of the overall regulatory framework in Missouri?

6                     MR. MILLS: I object. That's a leading  
7     question.

8                     MR. BYRNE: I don't think it's a leading  
9     question.

10                    MS. LANGENECKERT: Of course you don't.

11                    MR. BYRNE: I'm too tired to think of more  
12     of a response.

13                    JUDGE WOODRUFF: I think I'll sustain the  
14     objection.

15                    MR. BYRNE: Two other things, and I guess I  
16     would like the indulgence of your Honor. These are not  
17     things that are responsive to cross-examination, but  
18     Mr. Nickloy has some factual information that was asked  
19     for, I think, by Commissioners, maybe by other parties,  
20     but the two -- the two factual things that he has that if  
21     it's permissible he would put on the record are what's  
22     been our historical capital budget at Union Electric  
23     Company, and when was the last time that we had positive  
24     free cash flow.

25                    JUDGE WOODRUFF: Anybody object to hearing

1     that information?

2                     (No response.)

3                     JUDGE WOODRUFF: Proceed.

4     BY MR. BYRNE:

5             Q.     Okay. Mr. Nickloy, when was the last time  
6     AmerenUE had positive free cash flow?

7             A.     I would -- in 2004 free cash flow was  
8     basically flat.

9             Q.     Okay. And before that, did it become  
10    positive?

11            A.     Before -- say in years, my analysis and my  
12    data goes back to 1998. It was positive in '98, '99,  
13    2000. It was negative for a couple years, very negligibly  
14    negative in 2003 and then flat in 2004.

15            Q.     Why don't you keep going?

16            A.     All right. And then it became more  
17    materially negative beginning in 2005 to the tune of about  
18    320 million. 2006 was materially negative again, 268  
19    million negative, 140 million negative in '07, and then  
20    jumped up, it was 430 million negative in 2008.

21            Q.     And nothing for -- you don't have anything  
22    for 2009?

23            A.     No. It's probably around 150 million  
24    negative.

25            Q.     How about the capital -- cap X budget for

1 UE, do you have several years of cap X expenditures?

2 A. Yeah. Cap X through the same period, and I  
3 can give you every year if you want it.

4 Q. Give me every year.

5 A. 1998, 222 million. These amounts are  
6 coming out of our, you know, the SEC filings, the 10Ks.  
7 Then beginning in 1999, 246 million; 316 million in 2000;  
8 587 million in 2001; 520 million in 2002; 480 million in  
9 2003; 514 million in 2004, then you know, increased  
10 significantly, 775 million in 2005; 782 million in 2006;  
11 625 million in 2007; and 874 million in 2008, and 2009  
12 about the same -- same magnitude.

13 Q. As 2008?

14 A. Yes. Pretty close.

15 MR. BYRNE: Thank you, Mr. Nickloy. I  
16 don't have any other questions.

17 JUDGE WOODRUFF: Mr. Nickloy, you can step  
18 down.

19 THE WITNESS: Thank you.

20 JUDGE WOODRUFF: We're due for a dinner  
21 break. Before I -- we have Mr. Pfeifenberger as the last  
22 AmerenUE witness. Was there going to be any cross-  
23 examination of Mr. Pfeifenberger from the parties?

24 MR. MILLS: Little bit.

25 JUDGE WOODRUFF: Little bit.

1                   MS. VUYLSTEKE: Your Honor, I'm not sure if  
2 this is the appropriate point to bring it up, but we've  
3 actually changed our mind and wanted to see if the  
4 Commission and the parties would be willing to let Mike  
5 Gorman jump ahead, and I think Laclede and the Staff -- of  
6 course this would be after Ameren's witnesses, of course,  
7 but if it's possible to get him on ahead, we'd really  
8 appreciate that.

9                   JUDGE WOODRUFF: All right.

10                  MR. PENDERGAST: It's okay with us.

11                  MS. VUYLSTEKE: Thank you.

12                  JUDGE WOODRUFF: I hear a general  
13 acclimation.

14                  MR. BYRNE: No objection.

15                  JUDGE WOODRUFF: Let's go ahead and take  
16 our dinner break. Do we want a full hour or do you guys  
17 want less than that? Makes little difference to me.

18                  MR. BYRNE: How about 45 minutes?

19                  JUDGE WOODRUFF: All right. Let's say come  
20 back at about 6:05 then.

21                  (A BREAK WAS TAKEN.)

22                  JUDGE WOODRUFF: Let's come to order.

23 We're back from our dinner break, and Mr. Pfeifenberger  
24 has taken the stand.

25                  (Witness sworn.)

1 JUDGE WOODRUFF: Thank you. You may  
2 inquire.

3 JOHANNES P. PFEIFENBERGER testified as follows:

4 DIRECT EXAMINATION BY MR. LOWERY:

5 Q. Please state your name for the record.

6 A. Johannes P. Pfeifenberger.

7 Q. Mr. Pfeifenberger, am I correct that you  
8 caused to be prepared direct testimony on interim rates,  
9 that's been filed in this docket and has been marked for  
10 identification as Exhibit I?

11 A. Yes.

12 Q. Mr. Pfeifenberger, if I asked you the same  
13 questions that are posed in that testimony, would your  
14 answers be the same today as written in the testimony?

15 A. Yes, they would be.

16 Q. So the testimony is true and correct to the  
17 best of your knowledge, information and belief?

18 A. Yes.

19 Q. And you have no corrections; is that  
20 correct?

21 A. That's right.

22 MR. LOWERY: With that, your Honor,  
23 I'd move the admission of Exhibit I and tender  
24 Mr. Pfeifenberger for cross-examination.

25 JUDGE WOODRUFF: Okay. Exhibit I has been

1 offered into evidence. Are there any objections to its  
2 receipt?

3 (No response.)

4 JUDGE WOODRUFF: Hearing none, it will be  
5 received into evidence.

6 (EXHIBIT I WAS RECEIVED INTO EVIDENCE.)

7 JUDGE WOODRUFF: And for cross-examination,  
8 begin with Laclede.

9 MR. PENDERGAST: No questions, your Honor.

10 JUDGE WOODRUFF: KCPL?

11 MR. STEINER: No questions, your Honor.

12 JUDGE WOODRUFF: Looks like the next group  
13 that's here would be Public Counsel.

14 MR. MILLS: Just a few.

15 CROSS-EXAMINATION BY MR. MILLS:

16 Q. Mr. Pfeifenberger, does your testimony, the  
17 analysis attached to your direct testimony reflect the  
18 fact that Missouri recently authorized fuel adjustment  
19 clauses after a long gap?

20 A. Yes, it is in there, except the data that's  
21 reflected in one of the tables is still the biannual rate  
22 adjustment frequency that was based on the Empire order.

23 Q. So which column would change, if any, to  
24 reflect that on, for example, JPP-E11?

25 A. To reflect what?



1 Q. The fact that it's not biannual?

2 A. On JPP-1, nothing would change.

3 Q. Now, if Missouri did not allow fuel  
4 adjustment clauses, where would it rank on the schedule?

5 A. It would be last.

6 Q. It would be dead last without fuel  
7 adjustment clauses?

8 A. With New Hampshire. It would be a tie for  
9 last.

10 Q. So the enactment of the fuel adjustment  
11 clause legislation in Missouri, all it did was move us up  
12 two ranks from dead last to 47th; is that correct?

13 A. That's right, in terms of ranking, but I  
14 think it's not the right qualitative aspect of having a  
15 fuel adjustment clause because everybody else has a fuel  
16 adjustment clause, and that's why it doesn't rank that  
17 much. What it does, of course, it moves Missouri to the  
18 level that everybody else has at least with respect to  
19 fuel adjustment clauses.

20 Q. If Missouri were to grant -- if the  
21 Missouri Commission were to grant interim rate increases  
22 to any utility that could make the kind of showing that UE  
23 is making in this case, where would Missouri rank?

24 A. It would move up -- based on this ranking,  
25 it would move up to probably about ten slots or so.

1           Q.       Now, have you ever presented this analysis  
2 to a state commission before?

3           A.       Yes, parts of this analysis, but not the  
4 consolidated ranking.

5           Q.       Okay. Has any state commission ever  
6 accepted the subjective rankings of the various factors  
7 that you've adopted here?

8           A.       Not this specific ranking, but I've done  
9 rankings in other settings. I mean, these are indicative  
10 rankings, illustrative rankings that consolidate the  
11 information presented in the other tables, and to some  
12 extent the information in the other tables is a ranking,  
13 too. I mean, we've talked about this in the context of  
14 fuel adjustment clauses and others.

15          Q.       But you never had a state commission that  
16 agrees, for example, that, you know, that the adjustment  
17 frequency ought to be .5 for Missouri as opposed to .6  
18 or .8 or something else in that nature?

19          A.       Well, other state commissions wouldn't  
20 agree to what Missouri should do.

21          Q.       Well, I just use that as an example. Has  
22 any state commission ever said that these particular items  
23 ought to be ranked with this kind of subjective ranking?

24          A.       Not the ranking, but the adjustment  
25 frequency of course is discussed in all the states, and as

1   you see in Table 2, the adjustment frequency ranges across  
2   the states anywhere from monthly to annually for fuel  
3   adjustment clauses.

4           Q.     Have you ever seen this kind of ranking  
5   done in academic literature?

6           A.     Yes.

7           Q.     And did they use the same weights that you  
8   use here?

9           A.     Well, these rankings are frequently done  
10   where you have several variables that are qualitatively --  
11   qualitative differently. So you give a ranking for each  
12   variable that uses a numerical scale like that. It gives  
13   you a combined point value. That has been done in a  
14   variety of settings.

15          Q.     And my question is, has it ever been done  
16   with the same rankings that you use here?

17          A.     No, I haven't done that. I haven't seen  
18   that.

19                   MR. MILLS: Those are all the questions I  
20   have. Thank you.

21                   JUDGE WOODRUFF: Thank you. For Staff,  
22   then?

23                   MR. DOTTHEIM: No questions.

24                   JUDGE WOODRUFF: Ms. Langeneckert, we  
25   passed you up before. Do you have any questions?

1 MS. LANGENECKERT: I do not. Thank you.

2 JUDGE WOODRUFF: We'll come up for  
3 questions from the Bench, then. Commissioner Jarrett?

4 COMMISSIONER JARRETT: I have no questions.

5 JUDGE WOODRUFF: Commissioner Gunn?

6 COMMISSIONER GUNN: I have a few questions.

7 QUESTIONS BY COMMISSIONER GUNN:

8 Q. Would you say that this study is art,  
9 science or some mix of the two?

10 A. It's qualitative in nature. I think with  
11 art you mean applying some judgement in some form? Yes.  
12 The ranking system is something I've developed  
13 specifically to explore the question of how Missouri  
14 variables related to regulatory lag compared to what's  
15 done in other states. So that's purely judgment. That's  
16 indicative and, you know, the precise ranking, whether  
17 it's 30 or 35, I think that's not within the accuracy of a  
18 scientific study.

19 Q. Now, so when you selected these nine -- or  
20 really there's really six, or four, depending on what list  
21 you refer to, how did you come up with those criteria?

22 A. Well, for each of the variables, first I  
23 started out with data that I had related to reg-- to  
24 variables that affect regulatory lag. So I had fuel  
25 adjustment clause data from my prior studies done for

1 Ameren and other clients. I had data on CWIP, on  
2 temporary or interim rates in rate cases and so on.

3                   And I asked myself the question, well, how  
4 does Missouri fit in here, and what is the full range of  
5 -- of possible outcomes for that variable for fuel  
6 adjustment clause, adjustment frequency? It was between  
7 monthly and annually, and I tried to disaggregate them  
8 into about equal categories. So for adjustment frequency,  
9 I had the option -- and I wanted to keep it simple, so  
10 between zero and 1, 0.51. So I had three buckets, zero  
11 for monthly or quarterly -- no. Zero for annually, 1 for  
12 monthly and quarterly and .5 for everything in between  
13 that. So it splits the sample that I had in Table 2 in  
14 about equal pieces.

15               Q.       Why did you limit the recovery, cost  
16 recovery mechanisms to a fuel adjustment clause?

17               A.       These are not just fuel adjustment clauses.  
18 There is also construction work in progress.

19               Q.       I understand that. But like ECRM's not on  
20 here.

21               A.       Well, I -- for two reasons. A, most states  
22 have a whole host of small adjustment clauses. What I  
23 want to focus on is variables that account for a big part  
24 of the company's costs. And the ECRM could be on there,  
25 too, but I get to the second reason, and variables that

1 sort of affect the entire rate case like future test year  
2 versus historic test year. With respect to ECRM, I had  
3 ECRM in my mind in a category of all other rate adjustment  
4 clauses, and there are several in different states  
5 depending on the state, but I also didn't have ECRM type  
6 data for the entire country. I -- I did have some data  
7 for about 11 other states that I knew had an ECRM type  
8 mechanism, but I didn't have a full sample.

9 Q. So your chart is based on data that you had  
10 already collected, not -- you didn't go out and gather any  
11 new data?

12 A. Data that I or somebody in this group like  
13 NARUC or Regulatory Research Associates, RRA had already  
14 collected and that was under my -- in my possession.

15 Q. And then did you make the determination as  
16 to what point values were assigned based on what criteria?

17 A. Yes.

18 Q. Okay. Let's visit that for a second.  
19 Let's go to -- you included for some states a narrative,  
20 and that's on JPP-E1-4 in your testimony, Table 4.

21 A. Yeah. The Tables 2, 3 and 4 are data that  
22 sort of back up the ranking in Table 1, and Table 4 is  
23 more qualitative because the source of the data was in  
24 that format.

25 Q. Let's look at Hawaii, for example.

1           A.       Yes.

2           Q.       In column 3, you give Hawaii a half a point  
3 because their maximum length of time between filing  
4 decisions is seven to nine months, and you give it a half  
5 a point, right? Now, in your narrative, however --

6           A.       Hold on. I think on interim rate --

7           Q.       Not interim rate. Time needed for rate  
8 cases.

9           A.       Yes. Yes.

10          Q.       Column 3.

11          A.       Yes. I'm sorry.

12          Q.       You give Hawaii .5, and under the key down  
13 below, this is back to Schedule 1, you say that you get a  
14 half a point because the time taken for a rate case is  
15 seven to nine months. Okay.

16          A.       Yes.

17          Q.       So you've given Hawaii half a point, but if  
18 you go to the narrative, the narrative states that there's  
19 no statutory time limit within a rate case must be  
20 completed. You have to make every effort to issue a  
21 decision within nine months, but this is the key sentence,  
22 rate cases have typically taken well over a year to  
23 complete.

24                    So you have given Hawaii a half point for  
25 having a light state legislative encouragement to get

1 things done in nine months, but in reality it takes them  
2 longer to get the cases done than we do in Missouri, but  
3 you give Missouri no points for that. Could you explain  
4 that to me?

5 A. Yes. You know, the ranking, you know, is  
6 labeled preliminary ranking, and what I found was that  
7 once you sort of dive into the details like this and  
8 really compare everything across. And then what I  
9 particularly found was respect to fuel adjustment clause  
10 when we did the research, if you just rely on the public  
11 sources, you get to those kind of discrepancies, and you  
12 know, with -- I have not compared these sources across the  
13 different variables, and that would probably be an  
14 adjustment worth making.

15 Q. So you think that, as it stands, you would  
16 probably either take away Hawaii's .5 or maybe give  
17 Missouri probably -- or you'd take away Hawaii's .5 here?

18 A. I would probably take away Hawaii's .5  
19 because the nine months even though it's in Table 3 and  
20 the ranking comes straight out of Table 3, the additional  
21 information that you know is available as you look across  
22 all those variables, and then particularly once you look  
23 into the tariffs specifically, then you get additional  
24 wrinkles that would probably make me -- have me make those  
25 adjustments.



1           Q.       So when you go to Table 3 on JPP-3 and you  
2     have Hawaii listed as having time to issue decision once  
3     case is filed as nine months, that's also incorrect?

4           A.       Well, that's the target.

5           Q.       But that's not what this says. This says,  
6     I mean, Missouri you have 11 months. We've brought things  
7     in earlier than that, but that's our statutory maximum?

8           A.       Yes.

9           Q.       Hawaii doesn't have a statutory maximum --

10          A.       That's correct.

11          Q.       -- so both in practice and reality, that  
12     nine months is incorrect?

13          A.       You know, I think that, you know, the nine  
14     months is what is listed in the table from RRA, but  
15     looking at the other data points, that nine months would  
16     probably need to be adjusted for the average time it  
17     takes.

18          Q.       You haven't gone -- when you compiled this  
19     data, you haven't gone back and verified the accuracy of  
20     the individual data on this chart, you've taken what  
21     someone else says and taken and plugged that directly into  
22     the chart?

23          A.       That is true for Table 3. I did not go  
24     back and independently verify Table 3. The fuel  
25     adjustment clause information on Table 2, that is all

1 based on information that we collected over time that  
2 we've verified with the tariffs. Table 4 is straight from  
3 RRA. Table 5 actually is -- is a mix, that is data from  
4 NARUC supplemented by additional research from us for  
5 about half the states, I would think, and so is Table 6.

6 Q. Okay. So let's go to Table 4, let's look  
7 at Texas, because you also have a narrative for Texas?

8 A. Yes.

9 Q. You have given Texas or someone has given  
10 Texas one point for using interim rates?

11 A. Yes.

12 Q. So let's go to the narrative, and you  
13 say -- here under Texas it says, interim rate changes have  
14 rarely been sought, and then there are examples here, but  
15 one of the examples for a rate -- an interim rate use was  
16 in -- was specified in the settlement, so all the parties  
17 agreed, so it was more like information in the settlement.

18 A. Yes.

19 Q. Then you have one, at least one that says  
20 due to an extensive delay in the procedural schedule. So  
21 even though interim rates are rarely granted in Texas,  
22 they still get a full point for using interim rates?

23 A. Yes. The criteria for the interim rates in  
24 Table 1 was whether interim rates are granted only in  
25 emergencies or whether there's some exceptions, and I did

1 not have -- I did not break that down further. I guess  
2 one could graduate that and say, well, give it a one only  
3 if it's routinely used like in Iowa or Florida or give it  
4 a .5 if it's used sometimes but there are ways to use it  
5 outside of emergency rate proceedings.

6 Q. But you didn't do that, it was either all  
7 or nothing?

8 A. That's just a one or zero, yes.

9 Q. According to the company's legal theory, we  
10 have the authority to give interim rate increases in  
11 non-emergency situations, correct?

12 A. Yes.

13 Q. But that didn't factor in to getting a  
14 point for Missouri under that?

15 A. No. The thought was whether it's actually  
16 done or has been done.

17 Q. But in Texas it's not, it's very rare?

18 A. I looked at --

19 Q. In theory --

20 A. I looked at this Table 4 more closely  
21 recently, and, you know, I also had the same thought you  
22 had, and I did some additional research, and I found  
23 several cases in Texas where they have provided interim  
24 rates. So I don't know how rarely it's done, but more  
25 than just one or two exceptions.

1           Q.       Okay. And then so now again, 4 was -- was  
2 the data in 4 came from someone else?

3           A.       That was from RRA, Regulatory Research  
4 Associates, which also provided the rate of return data  
5 that this Commission has sometimes looked at.

6           Q.       But in 3 and 4, your study did not do any  
7 independent data analysis to determine the accuracy of  
8 those rankings?

9           A.       That's right.

10          Q.       And so there may -- because this is labeled  
11 preliminary, there may be inaccuracies or things that are  
12 wrong in this table? I mean, we've kind of established  
13 that.

14          A.       That is right. When I did the research on  
15 fuel adjustment clauses, I also started out with publicly  
16 available data that was available from RRA and from  
17 Moody's and other places, and what I did find is as we --  
18 that we actually did a survey of all the traditionally  
19 regulated states, and we probably made, you know, between  
20 five and ten substantive adjustments to the other surveys  
21 based on that more detailed review.

22                    So I think the way you need to look at  
23 Table 1 is really this is indicative, and you do have to  
24 look -- I personally prefer to look at the supporting  
25 tables that provide more information because that gives

1   you a better flavor of what the, you know, one or zero or  
2   .5 really might mean. But because the variables are so  
3   different, what I tried to attempt here is get something  
4   that gives us a combined score because what I found was  
5   even once Missouri had a fuel adjustment clause, it was  
6   based on historic data and didn't adjust as frequently.

7                   When you go to the other variables, what I  
8   found was that, you know, that plenty of other states have  
9   historic test years, but about half of the states, a  
10  little bit more than that have fully or partially  
11  forecasted test years.

12                   So Missouri was always -- you know, plenty  
13  of states that have that kind of treatment, but my  
14  question was, well, how many states do not have a forecast  
15  test year, do not have more frequent adjustments, the fuel  
16  adjustment clauses and so on? So I tried to get in a  
17  qualitative fashion to a combined score to see how all  
18  these variables combined to a measure of regulatory lag.

19           Q.       But you didn't weight the different  
20  variables, right? You've mentioned now a couple times  
21  fuel adjustment clauses and historic test year because  
22  that's the data you've checked, but those aren't weighted  
23  more heavily than the other variables?

24           A.       No, they're not, and one could of course  
25  with respect to your question about the ECRM, I was

1 actually some time ago talking to EEI because I've been  
2 trying to get some of the industry groups to sort of keep  
3 the data up to date. NARUC stopped doing that ten years  
4 ago unfortunately.

5                   And once one gets to the adjustment clauses  
6 that are of smaller scope, the weighting would definitely  
7 be appropriate, and probably even for these variables  
8 because, well, you know, fuel and -- and forecast test  
9 year might have about equal weighting if the base rate's  
10 about half or -- half the revenue requirements and fuel  
11 are the other half of the revenue requirements.

12                   So I think for these bigger variables it  
13 might be okay to not weight them, but I think weighting  
14 could certainly be considered, and you certainly have to  
15 consider a weighting as you look at that.

16           Q.       Just a couple more questions. Does it give  
17 you any pause that there are 29 states that are below the  
18 50 percent of the perfect score that maybe the perfect  
19 score is unrealistic or nonattainable?

20           A.       No, it really doesn't, because what I found  
21 was that people compensate for not having a forecast test  
22 year with, let's say, interim rates. Iowa is a good  
23 example. Iowa has a historic test year, but they  
24 compensate for that with, you know, routine use of interim  
25 rates with more frequent fuel adjustment clauses and so

1 on, and so you wouldn't expect a perfect score because if  
2 you have a forecast test year, the need for interim rates,  
3 for example, is much smaller and may not even be there.

4 Q. This chart does not take into account  
5 other -- other factors, so this wouldn't explain or say  
6 whether or not a state utility commission would be rated  
7 higher by bond rating agencies or anything like that?

8 A. No, this is only -- first of all, this is  
9 only indicative, and second, it's only one fairly narrow  
10 aspect of what people might consider in regulatory  
11 rankings and regulatory qualities.

12 Q. Because Florida's ranked pretty high, and I  
13 don't think any utility wants to be in Florida right now.  
14 Are you familiar with what's happening in Florida? The  
15 governor has -- they have \$1.3 billion worth of rate  
16 increases and the governor's basically replaced two  
17 commissioners because he doesn't want it to go through  
18 because he's running for --

19 A. Yeah. That's like a 30 percent rate  
20 increase. I've seen that, but Florida is -- until now  
21 Florida has been ranked a very favorable regulatory  
22 climate.

23 Q. But that may not continue?

24 A. These things do change, and rate increases  
25 or crises like in California make a difference.

1           Q.       So just one final question. On -- you said  
2       that we should go through the tables and they're more --  
3       they're more indicative or give you a little bit more  
4       information?

5           A.       Yes, as of course other information that is  
6       not captured here, like the ECRM and so on.

7           Q.       Sure. Sure. What other tables did you go  
8       back and independently verify? Because I know -- I know  
9       that Table 5, for example, came from NARUC, Table 4 came  
10      from RRA, Table 3 came from RRA, Table 2 came from your  
11      shop primarily, but -- so in 3, 4 and 5, did you go back  
12      and independently verify the information in those tables?

13          A.       In Table 5, I think I mentioned that  
14      earlier, the original data comes from NARUC, but we have  
15      supplemented that with our own research for probably about  
16      half the states or so.

17          Q.       How recently?

18          A.       Within the last 18 months.

19          Q.       Okay.

20          A.       And what we found, for example, was because  
21      of the recent challenges in the utility industry, at least  
22      about five states or so have switched from, you know,  
23      generally using historic test year to forecast test year.

24          Q.       Okay. But not 3 or 4?

25          A.       I have not independently verified either 3



1 or 4, that's right.

2 COMMISSIONER GUNN: Thank you. I don't  
3 have any --

4 THE WITNESS: 6 I don't know if you  
5 asked --

6 BY COMMISSIONER GUNN:

7 Q. Thank you. 6 is --

8 A. 6 is clear in column 2, we supplemented the  
9 NARUC information with --

10 Q. I saw think that.

11 A. -- additional information from other  
12 sources and some of our own research.

13 COMMISSIONER GUNN: Thank you. I don't  
14 have any further questions.

15 JUDGE WOODRUFF: Commissioner Kenney?

16 COMMISSIONER KENNEY: I don't have any  
17 questions. Thank you.

18 JUDGE WOODRUFF: Anyone wish to recross  
19 based on questions from the Bench? Don't see any hands  
20 going up. Redirect?

21 MR. LOWERY: No redirect, your Honor.

22 JUDGE WOODRUFF: Mr. Pfeifenberger, you can  
23 step down and you're excused.

24 I believe the next witness then we're going  
25 to take up Mr. Gorman.

1 (Witness sworn.)

2 JUDGE WOODRUFF. You may inquire.

3 MICHAEL GORMAN testified as follows:

4 DIRECT EXAMINATION BY MS. VUYLSTEKE:

5 Q. Thank you. Mr. Gorman, could you state  
6 your employer and your business address for the record.

7 A. My employer is Brubaker & Associates, and  
8 my business address is 16690 Swingley Ridge Road,  
9 Chesterfield, Missouri.

10 Q. Are you the same Michael Gorman who  
11 provided direct, rebuttal and surrebuttal testimony,  
12 prefiled testimony in this case?

13 A. Yes.

14 Q. If you were to testify live today, would  
15 your testimony be the same as that contained in your  
16 testimony or do you have any corrections to your  
17 testimony?

18 A. Well, I provided direct and surrebuttal  
19 testimony.

20 Q. Thank you. I'm sorry.

21 A. I do have some corrections to my direct  
22 testimony.

23 Q. Mr. Gorman, I actually have rebuttal and  
24 surrebuttal. I'm sorry. We had surrebuttal that was  
25 filed on the 24th but rebuttal filed on the 17th. It's

1 very brief relating to Laclede Gas Company's arguments.

2 A. I'm sorry. I didn't bring a copy of that.

3 Q. That's okay. I have all of it. It was  
4 very short, not very memorable.

5 MR. LOWERY: Could we have the court  
6 reporter read that back, please?

7 THE WITNESS: Thank you.

8 BY MS. VUYLSTEKE:

9 Q. So I was asking you, Mr. Gorman, if you had  
10 any corrections to your prefiled testimony?

11 A. Yes. In the direct testimony, on page 6,  
12 line 23, at the end at that sentence, the word end, e-n-d,  
13 should be struck and the word beginning should be  
14 inserted. On page 9 of that same testimony, line 19, the  
15 bond rating for Moody's stated as capital B small A small  
16 A 1 should be struck and the bond rating of capital  
17 A small 3 should be inserted.

18 And on schedule mpg-1, under Footnote 1,  
19 the docket number ER-2008-0318 should be inserted, and in  
20 Footnote 3, the docket number should be corrected from  
21 ER-2010-0036 should be struck and the docket number  
22 ER-2008-0318 should be inserted. That completes my  
23 corrections.

24 MS. VUYLSTEKE: At this point I would ask  
25 to have the direct, rebuttal and surrebuttal testimony of

1 Michael Gorman admitted into the record, and I believe  
2 these are Exhibits Q, R, S, if memory serves.

3 JUDGE WOODRUFF: That's correct.

4 MS. VUYLSTEKE: And at this point I would  
5 tender the witness for cross examination.

6 JUDGE WOODRUFF: Exhibit Q, R and S have  
7 been offered into evidence. Are there any objections to  
8 their receipt?

9 (No response.)

10 JUDGE WOODRUFF: Hearing none, they will be  
11 received.

12 (EXHIBITS Q, R AND S WERE RECEIVED INTO  
13 EVIDENCE.)

14 JUDGE WOODRUFF: And for cross-examination  
15 we begin with Staff?

16 MR. DEARMONT: No questions.

17 JUDGE WOODRUFF: Public Counsel?

18 MR. MILLS: No questions.

19 JUDGE WOODRUFF: For MEG?

20 MS. LANGENECKERT: No questions.

21 JUDGE WOODRUFF: KCPL?

22 MR. STEINER: No questions.

23 JUDGE WOODRUFF: Laclede?

24 MR. PENDERGAST: Just a couple.

25 CROSS-EXAMINATION BY MR. PENDERGAST:

1 Q. Good evening, Mr. Gorman.

2 A. Good evening.

3 Q. I just had a couple questions about what  
4 some of the neighboring states do. Have you filed  
5 testimony in Kansas before?

6 A. Yes.

7 Q. Okay. And can you just tell the Commission  
8 what the statutory suspension period is in Kansas?

9 A. I don't recall.

10 Q. Does eight months sound right to you?

11 A. I would have to verify that.

12 Q. Have you looked at Mr. Pfeifenberger's  
13 testimony?

14 A. I have.

15 Q. Did you see the chart in there where it  
16 talked about what the various suspension periods were for  
17 various states?

18 A. I did.

19 Q. Would you like me to refresh your memory by  
20 getting the testimony or will you accept this?

21 A. Well, I can't attest to the validity of  
22 Mr. Pfeifenberger's schedule if that's what you'd like me  
23 to do, but if you'd like me to verify what the suspension  
24 period in Kansas is, I'll do it through my own independent  
25 sources and be happy to supplement the record with it.

1           Q.       Let me give you a hypothetical. Assume  
2       that Kansas has an eight-month suspension period, would  
3       you?

4           A.       Sure.

5           Q.       And if they do have an eight-month  
6       suspension period, would that mean that, for example, if  
7       Ameren was located in Kansas and they had a \$400 million  
8       rate request, whatever the Commission determined was just  
9       and reasonable would be placed into effect three months  
10      sooner than it is in Missouri?

11          A.       Well, the suspension period, the time they  
12      file to the time a decision would have to be made would be  
13      shorter. So the maximum length, if that is correct, the  
14      rates would go into effect sooner.

15          Q.       And that wouldn't just be a fraction of  
16      what they requested, that would be the entirety of what  
17      the Commission found was reasonable; is that correct?

18          A.       The latter, yes.

19          Q.       Okay. And have you participated in any  
20      regulatory proceedings in Iowa?

21          A.       Yes.

22          Q.       Okay. And do they have interim subject to  
23      refund rates up there?

24          A.       Most jurisdictions do, yes.

25          Q.       Most jurisdictions have interim subject to

1 refund rates?

2 A. Based on the basis of financial need.

3 Q. Okay. Do you have any reason to believe  
4 that consumers aren't adequately protected either in  
5 Kansas or Iowa or other locations where they have  
6 statutory suspension periods that are less than in  
7 Missouri?

8 A. Well, all the rules and regulations for  
9 those jurisdictions I think are Governed at protecting the  
10 public interest. So specific differences in the  
11 regulatory standards there relative to Missouri is an  
12 adequate evaluation to determine whether or not customers  
13 are or not properly protected in each of those  
14 jurisdictions.

15 So a more complete review of the ratemaking  
16 standards and the resulting credit ratings and the  
17 business profile scores of the utilities and the  
18 regulatory research evaluations of the regulatory  
19 procedures in those jurisdictions, credit rating  
20 assessments and regulatory procedures, all of that  
21 information would be reasonable in concluding, helping to  
22 provide information available on whether or not the  
23 regulatory standards are producing appropriate results for  
24 both -- for all stakeholders involved.

25 Q. I appreciate that answer, but let me ask my

1 question again. Do you have any reason to believe that in  
2 those jurisdictions that have shorter suspension periods,  
3 we've just talked about Kansas for example, or permit  
4 their rates to go into effect on an interim subject to  
5 refund basis, do you have any evidence that they do not  
6 adequately protect the interest of consumers, utility  
7 consumers in those states?

8 A. With the qualifications I just went  
9 through, no, I don't.

10 MR. PENDERGAST: Thank you. No further  
11 questions.

12 JUDGE WOODRUFF: All right. Cross for  
13 Ameren?

14 CROSS-EXAMINATION BY MR. BYRNE:

15 Q. Good evening, Mr. Gorman.

16 A. Good evening.

17 Q. Sorry to have to say good evening. My  
18 questions say good afternoon.

19 Mr. Gorman, I'd like to start by discussing  
20 your understanding of the company's proposal. Would you  
21 agree with me that the company's requesting \$37.3 million  
22 in interim rate relief associated with the plant that it  
23 placed in service between October 1, 2008 and May 31,  
24 2009?

25 A. Yes.



1           Q.       And would you agree that the costs that the  
2   company is asking for consist of the return on that  
3   investment, taxes and depreciation?

4           A.       The revenue requirement they're requesting  
5   underlying that interim increase is based on those  
6   factors.

7           Q.       Okay. And is it also true that that  
8   \$37.3 million is an annual figure?

9           A.       Yes.

10          Q.       So if the Commission were to approve the  
11   interim rates in January and then permanent rates went  
12   into effect in June, we'd really only collect about half  
13   of the \$37.3 million; is that fair to say?

14          A.       Well, roughly. Depends on the sales in the  
15   first six months versus sales in the last six months.

16          Q.       Sure. You got -- it's rough, but would you  
17   agree that roughly that's true?

18          A.       Yes.

19          Q.       Now, I'd like to take a look at your direct  
20   testimony on page 11, and specifically on line 22.

21          A.       Yes.

22          Q.       And correct me if I'm wrong, but it appears  
23   that you say there that you've characterized our request  
24   as a request to eliminate, quote, all aspects of  
25   regulatory lag. Did I read that correctly?

1           A.       That's how I understood Mr. Baxter's  
2 original testimony until he qualified it or corrected it  
3 or explained it more clearly to me anyway in his rebuttal  
4 testimony.

5           Q.       But is it your understanding now that the  
6 roughly \$18 million we'd get would not eliminate all  
7 aspects of regulatory lag?

8           A.       It's an effort to what Mr. Baxter believes  
9 will help alleviate the excessive regulatory lag.

10          Q.       But would you agree that it will not  
11 eliminate all regulatory lag?

12          A.       Yes.

13          Q.       Okay. I mean, for example, there's  
14 still -- there's still regulatory lag associated with  
15 cutting off all the known and measurable changes in this  
16 rate case on January 31st, 2010 and then the rates don't  
17 get approved until June, that would still be some  
18 regulatory lag, right?

19          A.       There would be a timing mismatch between  
20 what the -- the timing the rate the cost structure  
21 underlying the rates would be evaluated and the date those  
22 rates would go into effect, yes.

23          Q.       And even with respect to this plant that  
24 we're talking about, in terms of the interim rates, we'd  
25 be cutting off the plant at May 31st, 2009, right?

1           A.       The revenue requirement would be based on  
2     the amount of capital improvements between the end of the  
3     last rate case and May of this year, yes.

4           Q.       Okay.  So to the extent additional plant  
5     was put into service after May 31st, 2009, but before the  
6     interim rates take effect, that would not be reflected in  
7     the interim rates; is that correct?

8           A.       Nor would offsets to increases to plant in  
9     service such as buildup to accumulated depreciation and  
10    deferred taxes.

11          Q.       Sure.  It would all be subject to a lag,  
12    right, the off -- costs or benefits that go either way  
13    would be subject to a lag still?

14          A.       Well, it would be subject to a full review  
15    and a full rate case proceeding.

16          Q.       Okay.  On page 17, still on your direct,  
17    page 17, line 11 -- actually, there isn't a page 17.

18                   MR. MILLS:  Trick question?

19    BY MR. BYRNE:

20          Q.       It's a trick question.  Might be your  
21    rebuttal testimony.  I'm hoping you have a page 17 in your  
22    rebuttal testimony.  Bad news, no page 17 in your rebuttal  
23    testimony.  Let's try surrebuttal.  Typo.

24                   All right.  Let's see if you remember  
25    saying this.  I have a quote from one of your pieces of

1 testimony, and it says, without the benefit of a full  
2 record and rates being implemented with only piecemeal  
3 evaluation of certain costs, customers will be harmed by  
4 paying rates that are not just and reasonable. Do you  
5 remember that sentence in your testimony?

6 A. Somewhere, yes.

7 Q. Okay. And my question is, based on the  
8 logic of that sentence, isn't it true that you'd never  
9 have interim rates under any circumstances?

10 A. No, that's not true. There can be  
11 circumstances of financial need where it benefits all  
12 stakeholders in a financial emergency to implement interim  
13 rates.

14 Q. Okay. But let me read you the sentence  
15 again. Without the benefit of a full record and rates  
16 being implemented with only piecemeal evaluation of  
17 certain costs, customers will be harmed by paying rates  
18 that are not just and reasonable.

19 I guess my question is, don't you have to  
20 implement rates based on a piecemeal consideration of  
21 costs if you're doing interim rates?

22 A. Well, no. I guess I would expand that  
23 statement if necessary. Customers would be harmed by  
24 paying rates that haven't been shown to be just and  
25 reasonable. However, if there are extenuating

1     circumstances, such as the financial harm that could be  
2     created on the utility and the limitation of the utility  
3     to offer high quality and reliable utility service,  
4     ratepayers could benefit from paying interim rates.

5             Q.     Okay. Mr. Gorman, in your testimony, one  
6     of the adjustments that you argue should be made is ,I  
7     believe is that you argue that the rate increase that we  
8     got in March of 2009 ought to be annualized for purposes  
9     of doing this comparison of our earned returns to the  
10    authorized return?

11            A.     Well, no, not completely. My argument is  
12    the earnings that you've shown in Mr. Weiss' testimony  
13    don't show the full benefit to the utility through the  
14    significant rate increase that went into effect on  
15    March 1st of 2009. We won't know the true impact on the  
16    company's earnings 'til after those rates have been in  
17    effect for a full year.

18            Q.     But you would agree, would you not, that  
19    we -- those rates didn't go in effect before March 2009,  
20    did they?

21            A.     They did not.

22            Q.     And we didn't get the benefit of that rate  
23    increase before March of 2009, right?

24            A.     Yes, sir.

25            Q.     Okay. And that was an actual -- and those

1 earnings actually were a shortfall below the authorized  
2 earnings prior to March of 2009?

3 A. That's true, but rates are not designed to  
4 achieve the authorized return on equity on a monthly  
5 basis. They're designed to achieve the authorized return  
6 on an annual basis. So by looking at monthly returns for  
7 a partial year, you do not accurately determine whether or  
8 not rates that just went into effect are fully recovering  
9 cost of service.

10 Q. Let me ask you this. If Missouri had an  
11 eight-month suspension period like Kansas, it would  
12 have -- those rates that went into effect in March of 2009  
13 would have gone into effect in January of 2009, wouldn't  
14 they have?

15 A. Well, that true-up might have been before  
16 the true-up in the last rate case so that it changes, and  
17 the cost of service at the end of the last rate case may  
18 not have happened also. There's a lot of impacts that  
19 changing the regulatory procedures in Missouri could have  
20 had on the rates that were ultimately found to be  
21 appropriate.

22 Q. I'm checking the pages before I cite them  
23 to you. In your direct testimony on interim rates, on  
24 page 11, line 7, you say -- well, I'll let you get there.  
25 Are you there?

1           A.       Yes, I am.

2           Q.       It says, for costs which are within its  
3 management's control, regulatory lag acts as a strong  
4 incentive for AmerenUE to control costs. Do you see that  
5 sentence?

6           A.       I do.

7           Q.       And isn't it true that one way that  
8 management could control capital expenditures is by not  
9 making them?

10          A.       Well, there are certain discretionary  
11 capital expenditures which that may be true, but if the  
12 management fulfills its obligation to provide high quality  
13 reliable service, capital expenditures cannot be withheld  
14 and achieve that objective.

15          Q.       Couldn't management control the cost of  
16 Smart Grid infrastructure by not making that investment?

17          A.       Again, to the extent that investment isn't  
18 necessary for providing high quality reliable service,  
19 it's discretionary --

20          Q.       Sure.

21          A.       -- the management could withhold it, yes.

22          Q.       How about discretionary energy efficiency  
23 investments, couldn't management withhold those if they  
24 were discretionary, not necessary to provide safe and  
25 adequate service?

1           A.       Management could withhold it, I suppose, if  
2     it was discretionary, and I imagine the regulatory  
3     commission might have some opinion on whether or not it is  
4     discretionary.

5           Q.       Sure. Or discretionary reliability  
6     upgrades above the level necessary to provide safe and  
7     adequate service?

8           A.       Management can limit discretionary  
9     investment, yes.

10          Q.       That's a way to control cost, right?

11          A.       That's not necessarily a way to control  
12     costs. It's a way to control cash flow.

13          Q.       Okay. On page 2 of your rebuttal  
14     testimony, line 8, are you there yet? Or let me know when  
15     you're there.

16          A.       Page 2, line 8. I'm there.

17          Q.       There is a sentence that says, indeed sales  
18     growth, decreases in other cost of service components and  
19     decrease -- and decreases in cost of capital are  
20     offsetting changes in cost of service that can cover all  
21     costs including new costs. Do you see that?

22          A.       Yeah. Could have done a better job writing  
23     that sentence.

24          Q.       Let me ask you this, Mr. Gorman. Can you  
25     give me some examples of major items of cost of service



1 that you -- for electric utility that you expect to  
2 decrease in the near future?

3 A. Well, commodity costs have come down  
4 substantially relative to last year. Fuel costs over long  
5 periods of time, if they haven't been hedged, eventually  
6 will come down. It's my understanding that steel, copper,  
7 aluminum prices have come down substantially this year  
8 relative to last year. I understand AmerenUE has  
9 undertaken a voluntary and mandatory employee reduction  
10 program that will reduce their labor and benefits  
11 expenses. Cost of capital has come down in this case  
12 relative to the last case. Single A rated utility bond  
13 yield in this case is lower than it was at the time of  
14 Ameren's last rate filing. Moody's has increased Ameren's  
15 senior secured bond rating in this case which would lower  
16 its cost of capital. Ameren's capital structure even with  
17 the equity infusion that took place at the end of  
18 September of this year has a lower percentage of common  
19 equity than the capital structure used to set rates. That  
20 will lower its cost of capital.

21 Q. Isn't AmerenUE's equity percentage back up  
22 to about where it was in the last rate case?

23 A. No, sir, .it was about 52 percent in the  
24 last rate case, and based on their third quarter SEC 10K,  
25 it's about 50.7 percent right now.

1 Q. Okay.

2 A. Should I continue with other costs that may  
3 have decreased since our last rate case?

4 Q. No, that's okay. With regard to sales  
5 growth, you cite sales growth. Isn't it true that in  
6 order to at least get some kind of sales growth, the  
7 company has to invest in facilities to serve new  
8 customers?

9 A. To a certain degree, but existing customers  
10 can increase usage, which would increase the load factor  
11 on existing investments. That's particularly the case  
12 with a company with a lot of base load generation such as  
13 AmerenUE. But additional wires investments will help  
14 create additional sales volume also.

15 Q. So some sales volume increases is required?

16 A. You can increase sales based on existing  
17 asset basis or you can increase sales making additional  
18 investments, yes.

19 Q. In your surrebuttal testimony on page 4,  
20 line 16, you're discussing -- well, around line 16, you're  
21 talking about even though Missouri does not allow recovery  
22 of costs associated with construction work in progress, it  
23 does allow utilities to accrue allowance for funds used  
24 during construction. Do you see that?

25 A. Yes.

1           Q.       But it's true, is it not, that allowance  
2     for -- accruing allowance for funds used during  
3     construction does not provide cash to the utility at the  
4     time of the accrual; is that true?

5           A.       Yes, it is.

6           Q.       Okay. And isn't it also true that the  
7     allowance for funds used during construction accrual stops  
8     when the plant goes into service?

9           A.       Yes, and at that point the plant would be  
10    available to go into a rate structure.

11          Q.       But then it's true, is it not, that it  
12    won't go into the rate structure until a rate case is  
13    completed and new rates are set after the plant goes in  
14    service?

15          A.       Precisely. That's why management would  
16    normally try to time a rate increase with the in-service  
17    date of a new major investment.

18          Q.       But then it's true, is it not, that there's  
19    often a gap between when AFUDC accrual stops and when the  
20    utility can put the plant into rate base?

21          A.       That -- it's difficult to precisely time  
22    the implementation of new rates with the in-service date  
23    of a new asset. So yeah, that is not uncommon.

24          Q.       Okay. On the next paragraph down on page  
25    4, you talk about there's opportunities for utilities to

1 enter into regulatory plans like Kansas City Power & Light  
2 and Empire District Electric Company have done?

3 A. Yes.

4 Q. But it's true, is it not, that entering  
5 into regulatory plans requires agreement amongst any  
6 number of stakeholders?

7 A. I don't know if it's required, but  
8 certainly in those two cases all the stakeholders came  
9 together and agreed on a regulatory plan which supported  
10 cash flow during construction.

11 Q. But don't other parties require concessions  
12 in order to agree to a regulatory plan?

13 A. Well, to the extent the other parties are  
14 going to pay the rates that are charged to them by the  
15 utility. Those concessions are part of a total package  
16 which brings buyer and seller together and negotiates  
17 terms and conditions for providing service. So I think  
18 it's a balanced approach.

19 Q. For example, didn't Kansas City Power &  
20 Light give up the right to use a fuel adjustment clause  
21 and an environmental cost recovery mechanism for five  
22 years as part of its regulatory plan, if you know?

23 A. Well, as I recall, the regulatory plan was  
24 approved before Senate Bill 179 was in effect. So I don't  
25 know if an environmental cost recovery mechanism or a fuel

1 clause were specifically outlined in those settlements,  
2 but it's my understanding that they couldn't request an  
3 interim energy charge during the period of the settlement.  
4 I would have to go back and check that, but --

5 MR. BYRNE: Okay. I don't have any further  
6 questions. Thank you, Mr. Gorman.

7 JUDGE WOODRUFF: Okay. Thank you. Come up  
8 for questions from the Bench. Commissioner Davis?

9 COMMISSIONER DAVIS: Hold on here. Give me  
10 just a second, Judge.

11 JUDGE WOODRUFF: All right.

12 COMMISSIONER DAVIS: Nobody else has  
13 anything?

14 JUDGE WOODRUFF: Commissioner Jarrett?

15 COMMISSIONER JARRETT: No.

16 COMMISSIONER GUNN: I can give you some  
17 time if you want.

18 COMMISSIONER DAVIS: That's okay. I'm  
19 ready now, Commissioner Gunn. Thank you.

20 QUESTIONS BY COMMISSIONER DAVIS:

21 Q. Mr. Gorman, if we -- if we made  
22 Mr. Rackers' adjustments and we made your capital  
23 structure adjustment, then we would -- then AmerenUE is  
24 still entitled to approximately 2.2, \$3 million; is that  
25 correct?

1           A.       Well, when you sum all those together,  
2     there would be a cost increase. The revenue requirement  
3     increase versus revenue requirement decrease, there would  
4     still be a positive revenue requirement number. I would  
5     not agree that that means they're entitled to it.

6           Q.       Okay. But there would still be a positive  
7     number, correct?

8           A.       Yes.

9           Q.       Are you giving testimony in the -- the  
10    larger, I guess, full Ameren rate case?

11          A.       I plan to, yes.

12          Q.       Okay. When's that testimony due?

13          A.       The 18th of this month.

14          Q.       Okay. So have you looked at all those  
15    other factors in that case yet or the ones that you're  
16    giving testimony on?

17          A.       We as a team, MIEC with Noranda have looked  
18    at just about all the factors and we are formulating final  
19    positions at this time.

20          Q.       Okay. So if you had to take a position, do  
21    you think the number in that case is going to be a  
22    positive number?

23          A.       Well, that's a complicated question,  
24    because the \$402 million claimed revenue deficiency Ameren  
25    is seeking is not all directed at just non-fuel costs.

1 The \$402 million, about 225 of it relates to fuel  
2 expenses, and fuel expenses will be reconciled at some  
3 point through the fuel adjustment clause.

4                   So from a regulatory lag, an excessive  
5 regulatory lag standpoint, to the extent that, as  
6 Mr. Baxter explains, that costs might be a loss forever,  
7 fuel expenses would not be among those type of expenses,  
8 because they will be reconciled eventually in the fuel  
9 adjustment clause. So the \$402 million revenue  
10 deficiencies when you take fuel related costs out of it is  
11 really only about 175 million, and you take that number  
12 and you pull out the change in the increase in the  
13 authorized return on equity, which the company has never  
14 been told by this Commission that I'm aware of that it's  
15 entitled to anything more than a 10.76 percent return on  
16 equity, \$175 million is decreased by roughly \$35 million.

17                   The company is asking for increased  
18 depreciation rates and that depreciation expense  
19 corresponding with those depreciation rates will not be a  
20 real expense to this utility until those depreciation  
21 rates are approved. So that brings the -- the  
22 \$175 million base rate revenue deficiency down by another  
23 \$20 million.

24                   So that's about \$55 million adjustment to  
25 it by itself. So that leaves about \$125 million of

1 non-fuel related cost increases. What we're looking at is  
2 the impact on how much of that will be -- remain after  
3 consideration of significant reductions in employee  
4 expenses, a decline in the costs of capital for AmerenUE  
5 and other utility companies based on a significant  
6 recovery in the capital market costs for utility  
7 companies.

8                   We're looking at pension, at OPEB expenses.  
9 We're looking at banking facility costs. We're looking at  
10 many other factors which lead us to believe that, at the  
11 end of the day, we're not convinced that on a non-fuel  
12 basis, and I need to underscore that, a non-fuel basis,  
13 that this company's experiencing any revenue deficiency.  
14 Again, we're finalizing that analysis, but --

15           Q.       Okay. But don't you have to include, I  
16 mean, don't -- doesn't a certain amount of fuel costs go  
17 into base rates?

18           A.       Yes, but it's reconciled through the fuel  
19 adjustment clause, so they will recover that fuel expense  
20 either now or later. The only thing that including it in  
21 base rates will do for Ameren is they'll recover the fuel  
22 expense earlier by building it into base rates. If  
23 nothing changed, they would still eventually recover those  
24 fuel expenses in the workings of the fuel adjustment  
25 clause.



1           Q.       Well, that's not entirely true. Won't they  
2 recover the 5 percent that they would otherwise be -- be  
3 forfeiting if -- by not filing a rate case?

4           A.       That is true, yes. I stand with that  
5 correction.

6           Q.       Okay. Now, Mr. Gorman, would you agree  
7 with me that we're setting rates prospectively?

8           A.       Yes.

9           Q.       So what AmerenUE was earning five or ten  
10 years ago is a relative factor to consider when setting an  
11 authorized return, but it's not really evidence that  
12 AmerenUE has an opportunity to earn a fair return on the  
13 rates we set in 2009, is it?

14          A.       Well, I think it does give you some  
15 information on whether or not the regulatory principles  
16 that are used to set rates are achieving what they're  
17 designed to do, and that is over time Ameren is able to  
18 earn its authorized return on equity, so that I do believe  
19 that is strong evidence that the regulatory principles in  
20 Missouri do work.

21          Q.       Page 8 of your surrebuttal testimony, you  
22 referenced a -- I think it's line 16, a quote, cyclical  
23 pattern. For this cyclical pattern that you reference to  
24 continue, is AmerenUE going to have to add some  
25 significant cap X over ,above and beyond what they're

1 already doing if there's -- if there's ever going to be  
2 another cycle of declining rates?

3 A. Well, they have been adding significant  
4 capital. Their rate base has grown quite a bit in the  
5 last few years, but in order to have a declining rate  
6 base, it likely would require the construction of a new  
7 nuclear station. Otherwise, rate base likely for this  
8 company would continue to increase, which is a positive  
9 aspect for investors, or may be flat after they are  
10 completed with the major environmental, significant  
11 environmental improvements they may have made to the  
12 generating stations.

13 COMMISSIONER DAVIS: Thank you, Judge.

14 JUDGE WOODRUFF: Commissioner Gunn?

15 QUESTIONS BY COMMISSIONER GUNN:

16 Q. Actually, my question was about the  
17 cyclical pattern. Could you just go into a little bit  
18 more detail? A lot's been made on this chart, and I think  
19 in your -- on page 8 of the surrebuttal, you talk about  
20 the cyclical pattern. How far do you need to go back in  
21 order to get a sense of what the real issue is with  
22 getting your authorized rate of return, in your opinion?

23 A. Well, typically, being an economist, when  
24 we talk about cyclical patterns we're looking at an entire  
25 business cycle, you know, the growth, the decline, the

1 peaks and the valleys. For a utility company, they  
2 typically make investments to meet growth and customer  
3 demand, which typically follows economic cycles.

4                   What deviates from that, of course, is the  
5 size of the investment relative to the marginal cost of  
6 replacing those investments. For example, when they made  
7 investments in Callaway during the 1980s, the installed  
8 cost of that -- that generating facility was significantly  
9 greater than the marginal cost of installing peaking  
10 facilities for many years following that. So on a  
11 marginal cost basis, their cost structure was really  
12 declining.

13                   But in order to get a sense of the overall  
14 pattern through the entire construction cycle for the  
15 utility, which goes from very robust high growth periods  
16 followed by more normal capital expenditure levels and  
17 then eventually they build back up to a growth period, you  
18 need to follow a full construction cycle, and that can  
19 generally tie to business cycle and the economy but not  
20 precisely because of that marginal cost of new generation  
21 relative to embedded generation.

22           Q.       At what point, or is there a point, can you  
23 tell that the pattern isn't following the cycle? So for  
24 example, if you looked backwards and you see a cyclical  
25 pattern, you see these kind of peaks and valleys that

1 you're talking about, is there -- is there a full -- a  
2 point in which you can determine that the valley is not  
3 a -- is not only temporarily elongated or appears to be  
4 entering on a -- upon a new cycle? Do you understand what  
5 I'm saying?

6 A. I do, but I mean, it's not quite  
7 straight -- that straightforward, unfortunately, because  
8 of the marginal cost concepts, because as we look back in  
9 history, utility management, not Ameren, but just  
10 generally speaking, utility management have looked for  
11 higher growth investment opportunities, which has caused  
12 them to deviate from the regulatory model and to  
13 diversification and to non-regulated business enterprises.

14 Often they pull cash out of the utility to  
15 make investments elsewhere. History also tells us the  
16 utility management isn't very good at non-regulated  
17 investments. So they've typically, after they don't do  
18 well in it, they come back to the regulatory model, put  
19 money back into utility plant to grow the company back to  
20 where it is providing some growth to its investors again.

21 So it's -- it's complicated. You know,  
22 from a theoretical basis it should follow business cycle  
23 recently consistently with the exception of the marginal  
24 cost issue, but the practical implication is there's a  
25 host of other factors which complicate the issue,

1 including temporary deviations from the regulatory model  
2 to look for other growth investments and subsequent return  
3 back to the regulatory model.

4 Q. So is there any way to tell at this point  
5 in time that this lack of, well, getting there, being able  
6 to earn their authorized ROE is part of a cyclical pattern  
7 or is not part of a cyclical pattern?

8 A. I think there's significant evidence in  
9 this case that says that it's expected by investors at  
10 this time and it's not an indication of deficiencies in  
11 the regulatory mechanisms in Missouri.

12 I say that because AmerenUE has one of the  
13 strongest bond ratings of any Ameren affiliate, regulated  
14 affiliates in Illinois included. Its bond rating was  
15 recently upgraded by Moody's. It's -- the regulatory  
16 decision in Ameren's last case was stated to be  
17 constructive by Ameren management, by credit rating  
18 agencies. Missouri regulation is graded by Regulatory  
19 Research Associates as average, supportive of all the  
20 stakeholders in a regulatory process. Ameren has one of  
21 the strongest bond ratings, excluding S&P's bond rating,  
22 in the integrated electric utility industry. It's a  
23 pretty strong bond rating.

24 All of that indicates that the way AmerenUE  
25 is operated and the way that regulate -- regulatory

1 principles govern its ability to charge rates which  
2 produce earnings and cash flows to meet expectations of  
3 investors is working reasonably well.

4 Q. Were you here for Mr. Baxter's testimony?

5 A. Yes.

6 Q. He testified that the increase in the bond  
7 rating was really a change in methodology rather than in a  
8 general upgrade of the entire electricity sector by  
9 Moody's. Do you agree with that or do you have any reason  
10 to disagree with that?

11 A. Well, the specific rationale put behind the  
12 increase in the bond rating is -- is the overall  
13 assessment of AmerenUE in relationship to other utilities  
14 in that industry. Again, AmerenUE's Moody's bond rating  
15 is stronger than the Ameren Illinois utility affiliates.  
16 AmerenUE's an integrated utility -- electric utility. The  
17 Ameren Illinois utilities are wires companies. It has a  
18 stronger bond rating. It's got about the same capital  
19 structure ratios, it's got about the same embedded costs  
20 of debt, so the financial risk reflective of the actual  
21 cost of capital is about the same. The stronger bond  
22 rating that goes to whether or not there's reduction in  
23 operating risk of AmerenUE relative to the Ameren Illinois  
24 affiliates.

25 Moody's bond ratings for other integrated

1 utility companies around the country are comparable or  
2 weaker than that of AmerenUE. Again, on a relative basis,  
3 AmerenUE's in pretty good position, and it does have a  
4 single A3 bond rating. That's a strong bond rating, and  
5 it's -- and it's a strong indication that this utility is  
6 not exposed to regulatory principles to not provide a  
7 reasonable opportunity to fully recover investments and  
8 earn a fair profit.

9 Q. Does it also demonstrate that Ameren has  
10 done an acceptable job of controlling costs as well?

11 A. Well, it's an indication of that it's rates  
12 are reasonably competitive. But that goes to not only  
13 current management's ability to control costs, but the  
14 benefit current management has of legacy costs for  
15 AmerenUE. That is all the investments that took place in  
16 the 1980s and early '90s which were -- produced generating  
17 capacity in excess of what was needed to serve customers  
18 at that point in time. The system eventually grew into  
19 it, and now we're benefiting from the embedded costs of  
20 generation, which is much lower than the marginal cost of  
21 generation. So from a competitive rate standpoint, those  
22 legacy costs are providing significant benefit to existing  
23 customers and making AmerenUE's rates look very, very  
24 competitive.

25 COMMISSIONER GUNN: Thank you.

1 JUDGE WOODRUFF: Commissioner Kenney?

2 COMMISSIONER KENNEY: No questions. Thank  
3 you.

4 JUDGE WOODRUFF: All right. Anyone wish to  
5 recross based on questions from the bench? Public Counsel  
6 first.

7 RECROSS-EXAMINATION BY MR. MILLS:

8 Q. Just briefly, Mr. Gorman. In response to a  
9 question from Commissioner Davis, you conceded that due to  
10 the structure of AmerenUE's FAC, that AmerenUE will fail  
11 to capture a full 100 percent of fuel cost increases; is  
12 that correct?

13 A. It's my understanding they can pass on 95  
14 percent of it.

15 Q. What happens if fuel costs decline?

16 A. AmerenUE's able to retain 5 percent of the  
17 cost reduction.

18 MR. MILLS: That's all I have. Thank you.

19 JUDGE WOODRUFF: Go to Ameren?

20 RECROSS-EXAMINATION BY MR. BYRNE:

21 Q. I just had one question, and I hope it's a  
22 yes or no question. Commissioner Gunn asked you if the  
23 recent upgrade by Moody's of Ameren was part of an  
24 industry-wide upgrade of many utilities that was due to a  
25 change in the methodology of Moody's. I think that's what



1 Mr. Baxter testified to. Do you agree with that, yes or  
2 no?

3 A. I mean, there's two parts to it.

4 Q. I knew it wouldn't be a yes or no question.

5 A. The first was, was it part of an industry-  
6 wide change in the methodology? That's true. The second  
7 part, did it result in industry-wide increase in bond  
8 ratings? And I don't believe that to be accurate.

9 MR. BYRNE: Okay. Thank you.

10 JUDGE WOODRUFF: Redirect?

11 REDIRECT EXAMINATION BY MS. VUYLSTEKE:

12 Q. Mr. Gorman, I'm going to start with  
13 questions going back to the questions from Mr. Pendergast.  
14 He referred to the suspension periods for rate cases in  
15 other states. Is Missouri's 11-month suspension period  
16 harmful to AmerenUE's credit ratings or financial health?

17 A. It is not harmful, and that is evidenced by  
18 AmerenUE's current credit ratings, which are very strong  
19 for an integrated electric utility company, both in  
20 comparison to other Ameren utility affiliates and around  
21 the country.

22 Q. Has Ameren made any assertions to the  
23 investing public regarding Missouri's regulatory  
24 environment?

25 A. I'm sorry. Can you repeat that?

1           Q.       Has Ameren made any assertions to the  
2     investing public regarding Missouri's regulatory  
3     environment or commission regulation?

4           A.       Ameren's representation of the last  
5     Commission Order was that that Order was constructive, and  
6     that was by Tom Voss, I believe, at 11 Edison Electric  
7     Institute Conference.

8           Q.       Mr. Gorman, did you participate in a recent  
9     Northern Indiana Public Service Company rate case?

10          A.       Yes.

11          Q.       And was that case decided in an 11-month  
12     time frame?

13          A.       No.   Indiana does not have a prescribed  
14     statutory suspension period.

15          Q.       Mr. Pfeifenberger had mentioned that  
16     Indiana had a ten-month target for rate increases.  Is  
17     that possible, realistic, likely, will it be decided in  
18     ten months?

19          A.       Well, it can be decided in 11 months, but  
20     there's no -- I'm not giving a legal opinion here, but  
21     based on my understanding by participating in many rate  
22     cases in Indiana, is that there's not a mandate to  
23     complete it in 11 months or the utility's filed rates go  
24     into effect, which is how I understand the suspension  
25     period to work, is the Commission can determine when rate

1 cases -- rate changes will take place, and will allow them  
2 to take place when they find it's appropriate.

3 Q. Okay. I'm moving on now to Mr. Byrne's  
4 questions. He first discussed regulatory lag, and he  
5 mentioned your testimony that regulatory lag, your view  
6 that the company's request was to eliminate all aspects of  
7 regulatory lag, and you took issue with that. Could you  
8 explain how this Commission should view regulatory lag,  
9 how does it impact utility and how does it impact the  
10 customers?

11 A. Well, regulatory lag is -- is a fact of  
12 doing business in a regulated enterprise, and the lag in  
13 changing prices to reflect -- to reflect increased or  
14 decreased costs is not unique to regulated utility  
15 enterprises. Competitive companies may have contractual  
16 lags or may have limitations on market pricing to change  
17 prices to reflect changes in their cost structure. So  
18 it's not unique to a utility company.

19 Regulatory lag from a utility's standpoint  
20 means that they have to go through the prescribed  
21 protocols in that jurisdiction in order to get permission  
22 to change their prices. May not be as fast as they like,  
23 but the protocols protect not only the utility and its  
24 investors, but they also protect the other stakeholders in  
25 the process, namely the ratepayers.

1                   From the ratepayers' standpoint, knowing  
2   how the protocols in the jurisdiction work is critical for  
3   them to plan and budget their own operating, operations  
4   and operating budgets. It's also critical for industrial  
5   companies in particular to have a sense of what the  
6   regulatory procedures are in the jurisdiction, and the  
7   likelihood that the current relative competitive position  
8   of the utility and the quality of the utility service will  
9   be preserved at that level over time or whether or not  
10  there may be changes in the process which can create more  
11  rate volatility, which may be problematic for  
12  non-regulated companies' ability to compete in their own  
13  marketplaces.

14                   So the procedures for adjusting utility  
15  prices is not only important for utility investors, it is  
16  also important for non-regulated companies to understand  
17  how their cost of production, and the cost of utility  
18  service being a component thereof, will change over time,  
19  and whether or not there will be a lot of volatility in  
20  the pricing and the cost and whether or not the  
21  competitive companies will have an ability to manage their  
22  own cost of production in order to justify making  
23  investments in infrastructure, non-regulated  
24  infrastructure in Missouri.

25                   Q.       Does the Commission have a duty to protect

1 the interests of the shareholders of AmerenUE's corporate  
2 customers as well as AmerenUE's shareholders?

3 MR. BYRNE: I'm going to object on the  
4 ground that it's leading.

5 BY MS. VUYLSTEKE:

6 Q. Does the Commission have a duty to protect  
7 customer shareholders?

8 JUDGE WOODRUFF: I'll overrule the  
9 objection.

10 THE WITNESS: Well, I understand that the  
11 Commission's objective is to balance the interests of the  
12 ratepayers and the utility and its investors, and the best  
13 interests of ratepayers is to ensure their rates are just  
14 and reasonable, and that before rate changes are allowed,  
15 that the Commission ensures that a rate increase that  
16 isn't necessary is not allowed to be implemented.

17 BY MS. VUYLSTEKE:

18 Q. Is regulatory lag part of AmerenUE's  
19 business risk?

20 A. Yes.

21 Q. And is that risk reflected in the return  
22 awarded the utility?

23 A. It's reflected in their cost of capital,  
24 their bond rating. Everything about AmerenUE that  
25 reflects how it's allowed to set prices, manage costs,

1   earn returns, produce cash flow are known by the  
2   marketplace and considered by the marketplace in pricing  
3   their security, setting their bond rating, making overall  
4   assessments of whether or not Ameren and its utility  
5   affiliates are appropriate and acceptable investments.

6           Q.     Okay. I'm going to move on to another line  
7   of Tom's questioning. He took issue with your testimony  
8   regarding the question of whether interim rates  
9   necessarily need to be piecemeal, and he asked whether if  
10  interim rates could ever be granted if -- if all --  
11  consideration of all relevant factors is required. Is  
12  this Commission required to set rates that are just and  
13  reasonable?

14          A.     It's my understanding, yes.

15          Q.     Does -- do just and reasonable rates  
16  generally require consideration of all relevant factors?

17          A.     To accurately determine whether or not a  
18  rate increase or rate decrease is necessary, it does  
19  require consideration of all relevant factors.

20          Q.     Can there be circumstances where a just and  
21  reasonable rate could require consideration of an  
22  accelerated rate increase or an interim rate increase?

23          A.     There is, and generally it's the standard  
24  in most jurisdictions where interim rate increases are  
25  quite literally a financial safety net for the utility.

1 If circumstances beyond their control get so dire that  
2 without a rate increase they are not able to provide the  
3 type of utility service that's expected of them, then the  
4 regulatory commissions typically will award them an  
5 interim increase in order to help carry them through the  
6 rate case in order to set rates which are based on a full  
7 evaluation of cost of service items.

8 Q. Would such a standard be appropriate for  
9 the Commission to clarify or enunciate or establish in  
10 this case?

11 MR. BYRNE: I'm going to object as leading  
12 again. Every question is --

13 BY MS. VUYLSTEKE:

14 Q. Is that the appropriate standard for the  
15 Commission?

16 JUDGE WOODRUFF: Do you object to rephrase  
17 the question?

18 MR. BYRNE: Yes.

19 BY MS. VUYLSTEKE:

20 Q. Is it -- what standard should the  
21 Commission adopt in this case?

22 JUDGE WOODRUFF: You can answer that  
23 question.

24 THE WITNESS: Well, the standard, I  
25 believe, that Missouri has operated under, which is a

1 successful standard. Again, AmerenUE has a very strong  
2 credit rating, it's perceived as a constructive regulatory  
3 agency, and as I understand it, that at least over the  
4 last 20 years or so the standard for Missouri has been to  
5 allow interim rate increases only under the circumstances  
6 where a financial need is identified. That is, the  
7 utility needs an increase in order to ensure that it has  
8 access to capital that is necessary in order to continue  
9 to provide utility service.

10 BY MS. VUYLSTEKE:

11 Q. Okay. Moving on to a different line of  
12 Mr. Byrne's questioning. He asked whether the utility  
13 could control its costs by ending or stopping its capital  
14 investments. By not making capital investments, it could  
15 control its costs.

16 Would AmerenUE be fulfilling its  
17 obligations if it stopped making capital investments?

18 A. Well, AmerenUE management I guess will make  
19 those decisions, but, you know, what AmerenUE management,  
20 what Ameren Corp management is telling investors is that  
21 its regulated businesses are growing. It's earning -- its  
22 earnings per share are growing. Its dividend paying  
23 capacity is growing because it's invested capital and  
24 regulatory utility is growing.

25 The suggestion that a temporary delay in



1 adjusting rates if a rate adjustment is necessary to  
2 reflect a growing rate base would discourage management  
3 from making investments which will be in service for a  
4 period of 30 years or longer, even 10 years as examples,  
5 would -- would seem irrational recognizing this  
6 management's clear objective with its investors is that  
7 this company is growing.

8                   It's growing its invested capital, which  
9 allows it to grow its earnings, which allows it to grow  
10 its dividend paying ability, which is why a lot of  
11 investors are interested in this company right now, and  
12 other utility companies. That growth in earnings, growth  
13 in dividends is why investors buy utility common stock.

14           Q.       How are utility shareholders compensated  
15 for their capital investment, for the capital investment  
16 of the utility?

17           A.       They're compensated by earning returns on  
18 that investment.

19           Q.       Do you conclude that AmerenUE is attractive  
20 to shareholders and can attract capital?

21           A.       Well, its bond rating is certainly strong  
22 right now. Its stock price, along with many other utility  
23 stocks, has been hit recently, and it's not quite at the  
24 valuations it was over the last few years, but it has been  
25 able to issue stock in the market. It did so in September

1 of this year. So it does seem to have access to capital.  
2 I'm sure the company would like to have a higher stock  
3 price. Most companies do.

4 Q. Okay. Mr. Byrne asked you about the KCPL  
5 regulatory plan, and he asked you about concessions that  
6 the utilities made in order to develop and implement that  
7 plan, that agreement?

8 A. Yes.

9 Q. Now, did ratepayers make concessions in  
10 order for that agreement to be accomplished?

11 A. They did. They agreed to pay rates which  
12 were higher than the traditional cost of service would  
13 have otherwise prescribed for the rates that would have  
14 been paid during the Iatan 2 construction project.

15 Q. Did AmerenUE ratepayers make concessions,  
16 too, or did at least some industrial ratepayers make  
17 concessions in order for AmerenUE to have legislation that  
18 permits a fuel adjustment clause or at least permits the  
19 Commission to consider a fuel adjustment clause?

20 A. Well, as I understand it, the industrials  
21 believe that there is going to be some sort of earnings  
22 test associated with any automatic rate adjustment clause  
23 and that there provides some protections if there was an  
24 earnings test. But by agreeing in any legislative deal or  
25 by the legislation having been passed, industrials were

1 subject to more price volatility than they would have been  
2 without those automatic rate adjustment mechanisms.

3 Q. Did AmerenUE customers, ratepayers, make  
4 concessions in order for AmerenUE to have an experimental  
5 alternative regulatory plan in the 1990s?

6 A. I'm sorry. Can you repeat that?

7 Q. Did AmerenUE's ratepayers make concessions  
8 to AmerenUE in order for Ameren to have an experimental  
9 alternative regulatory plan during the 1990s?

10 A. I believe they did, because we often  
11 reviewed the actual earned return for AmerenUE in the  
12 1990s and found that that earned return was substantially  
13 higher than other integrated electric utility companies'  
14 return on equity. We were precluded from requesting the  
15 Commission to reduce those rates down to what we thought  
16 was a fair return on equity because of the regulatory plan  
17 that was in effect.

18 Q. In your view, has the Commission regulatory  
19 process fostered tradeoffs between utilities and their  
20 customers --

21 A. In my --

22 Q. -- to reach such agreements?

23 A. I'm sorry. I was distracted. Can you ask  
24 that again?

25 Q. Are you -- in your view, has the Commission

1 process fostered agreements, tradeoffs between utilities  
2 and their customers?

3 MR. BYRNE: I'm going to object. It's  
4 leading.

5 JUDGE WOODRUFF: I'll overrule the  
6 objection. You can answer the question.

7 THE WITNESS: It's my understanding that in  
8 Missouri there have been many instances where the major  
9 stakeholders to a rate case have come together and reached  
10 agreement, and that's what regulation, as I understand it,  
11 should do. It's supposed to be -- it's supposed to be a  
12 surrogate for competition in a competitive marketplace. A  
13 buyer and seller come together, negotiate terms,  
14 conditions and prices, and in many instances that's  
15 exactly what happens in setting prices, terms and  
16 conditions for utility service in Missouri rate cases.

17 BY MS. VUYLSTEKE:

18 Q. This is my last area of questioning, and it  
19 concerns Commissioner Davis' questions to you. He asked  
20 you about whether you had looked at all relevant factors  
21 in preparing your testimony in this case, which I think  
22 you said is coming up on the 18th and you're still engaged  
23 in the process of work on that testimony you testified.

24 Did the Commission issue a procedural order  
25 regarding when the parties are expected to provide

1 testimony, when they're expected to conclude discovery,  
2 when they're expected to present evidence at the hearing  
3 in this case --

4 A. Yes.

5 Q. -- on the permanent rate increase?

6 A. Yes.

7 Q. And do your conclusions on the permanent  
8 rate increase depend on an extensive discovery process?

9 A. It does.

10 MR. BYRNE: Objection, leading.

11 JUDGE WOODRUFF: Overruled.

12 BY MS. VUYLSTEKE:

13 Q. Is the schedule that the Commission has  
14 established for providing such evidence progressing as the  
15 Commission ordered?

16 A. Well, we would certainly like to get  
17 responses to discovery quicker and maybe more in line with  
18 what we expected to get from the responses, but overall,  
19 I'd say yes, it's proceeding as expected.

20 Q. If you had to, what kinds of analysis could  
21 you have produced or developed regarding all relevant  
22 factors for the permanent rate increase in the two months  
23 since the Commission issued its October 7th Order  
24 scheduling this hearing?

25 A. It would not have been possible to

1 adequately review all the relevant factors to determine  
2 whether or not a rate increase of any sort is needed on an  
3 interim basis in that amount of time.

4 Q. If you had to, could the Commission have  
5 required an extraordinary accelerated discovery process to  
6 force Ameren to produce all the data necessary to conduct  
7 that evaluation in one or two months?

8 A. Well, certainly faster data responses would  
9 help, but it takes time to pull all the pieces of the  
10 puzzle together to get a sense of whether or not you're  
11 accurately understanding them and potentially follow up  
12 with additional clarifying questions. It just takes time  
13 for individuals even if this is what they do for a living.  
14 They don't do it only for AmerenUE, so they have to take  
15 time to understand what AmerenUE is doing and the factors  
16 underlying their accounting and capital and operating data  
17 in order to reach conclusions on whether or not their  
18 request for a rate increase or the level of a rate  
19 decrease if such a filing would take place was  
20 appropriate.

21 Q. Have you had an opportunity -- notice or an  
22 opportunity to evaluate all relevant factors in the rate  
23 case for purposes of this hearing today?

24 A. I'm sorry. Can you repeat that again?

25 Q. Have you had notice or an opportunity to

1 evaluate all relevant factors for purposes of this hearing  
2 today?

3 A. To determine whether or not a rate increase  
4 is needed?

5 Q. To determine whether all relevant factors  
6 justify the permanent rate increase or any rate increase?

7 A. No. That analysis is ongoing. It's not  
8 completed. We're not prepared to offer a recommendation  
9 on that at this time.

10 Q. Is 2 to \$3 million a significant amount of  
11 money for this utility?

12 A. It represents about a 10 percent increase  
13 in total revenue.

14 Q. 2 to 3 million.

15 A. Oh, 2 to 3 million. That represents much  
16 less than a 1 and a half percent increase in revenue.  
17 It's -- it's not a significant number.

18 Q. Does that number justify the level of  
19 effort that the Commission and parties have gone through  
20 in this case to have this hearing?

21 A. Sorry. For 37 million increase or 2 to 3?

22 Q. 2 to \$3 million, would that justify this  
23 level of effort?

24 A. I need to correct my math, because that's  
25 well below 1 percent increase. I don't believe it is.

1 MS. VUYLSTEKE: I have no other questions.

2 Thank you.

3 JUDGE WOODRUFF: Mr. Gorman, you can step  
4 down.

5 THE WITNESS: Thank you.

6 JUDGE WOODRUFF: The next witness, then,  
7 would be Mr. Buck, I believe. Good evening, Mr. Buck.

8 THE WITNESS: Good evening, sir. I was  
9 really hoping to say good morning on that one, too.

10 JUDGE WOODRUFF: Please raise your right  
11 hand.

12 (Witness sworn.)

13 JUDGE WOODRUFF: You may inquire.

14 MR. PENDERGAST: Yes. Thank you, your  
15 Honor.

16 GLENN W. BUCK testified as follows:

17 DIRECT EXAMINATION BY MR. PENDERGAST:

18 Q. Mr. Buck, would you please state your name  
19 and business address for the record.

20 A. My name is Glenn W. Buck, B-u-c-k. My  
21 address is 720 Olive Street, St. Louis, Missouri 63101.

22 Q. And are you the same Glenn W. Buck who has  
23 previously caused to be filed in this proceeding direct  
24 and surrebuttal testimony which has been premarked as  
25 Exhibits O and P?



1           A.       That is correct.

2           Q.       If I were to ask you the same questions  
3 today that appear in your prefiled direct and surrebuttal  
4 testimony, would your answers be the same?

5           A.       Yes, they would.

6           Q.       Are those answers true and correct to the  
7 best of your knowledge and belief?

8           A.       Yes.

9                   MR. PENDERGAST: At this point I would ask  
10 that Exhibits O and P be admitted into evidence and tender  
11 Mr. Buck for cross-examination.

12                   JUDGE WOODRUFF: Exhibits O and P have been  
13 offered. Any objection to their receipt?

14                   (No response.)

15                   JUDGE WOODRUFF: Hearing none, they will be  
16 received.

17                   (EXHIBITS O AND P WERE RECEIVED INTO  
18 EVIDENCE.)

19                   JUDGE WOODRUFF: For cross-examination, we  
20 begin with Ameren.

21                   MR. BYRNE: No questions, your Honor.

22                   JUDGE WOODRUFF: KCPL?

23                   MR. STEINER: No questions.

24                   JUDGE WOODRUFF: MEG?

25                   MS. LANGENECKERT: No questions.

1 JUDGE WOODRUFF: MIEC?

2 MS. VUYLSTEKE: No.

3 JUDGE WOODRUFF: Public Counsel?

4 MR. MILLS: Sure.

5 CROSS-EXAMINATION BY MR. MILLS:

6 Q. Good evening, Mr. Buck.

7 A. Good evening, Mr. Mills.

8 Q. My questions are all going to be about your  
9 surrebuttal testimony. Particularly starting on the very  
10 first page, you say that nearly all utilities confront  
11 today upward pressure on rates. That's lines 18 to 19.

12 A. Yes, I do.

13 Q. Is that true for telcos?

14 A. I'm not sure the telcos are necessarily  
15 regulated by the State.

16 Q. So when you make that statement, you're not  
17 including telephone companies?

18 A. No, sir.

19 Q. How about, would it be true for electric  
20 utilities that made big investments in plant just a few  
21 years ago?

22 A. Could you give specific examples, please?

23 Q. Well, let me just ask it more generally.

24 Doesn't the upward pressure depend on where an electric  
25 utility is in the construction cycle?

1           A.       I'm generally not as familiar with electric  
2 companies as I am with gas, but yeah, there could be some  
3 level of cyclicalities in their construction cycles.

4           Q.       Okay. And so it could be that some  
5 electric utilities would be at the bottom swing of the  
6 cycle and not facing upward pressure?

7           A.       That's a possibility, but I'm not aware at  
8 this time of any electric utilities that are in that  
9 position.

10          Q.       How long have electric utilities had this  
11 upward pressure, how many years now?

12          A.       Again, it will depend on the electric  
13 utility themselves. For example, I think Aquila has --  
14 what was the former Aquila has been in for rate cases  
15 periodically, I believe always came in with a rate  
16 increase. Empire District Electric Company has been in  
17 the same position for as long as I can remember. KCPL,  
18 starting with their comprehensive energy plan was when  
19 they first started coming in for rate increases again. I  
20 think their rates have been stable for a long time, if I  
21 recall correctly.

22          Q.       Or even declining perhaps?

23          A.       I'm not that familiar with -- like I said,  
24 I'm kind of more on the gas side, but as far as I know, I  
25 was not aware -- in my own recollection, I cannot recall

1 KCPL having a rate decrease. Ameren has been probably  
2 since about 2005 or so.

3 Q. Okay. And before that, what was AmerenUE  
4 doing -- AmerenUE doing in terms of upward cost pressure?

5 A. They were actually, I believe, during most  
6 of the '90s probably on this alternative regulatory plan,  
7 and then there was a rate decrease in approximately, I  
8 think it was EC-2002-0001, I believe it was, where they  
9 decreased rates by 150 million maybe.

10 Q. So that rate decrease would tend to  
11 indicate that there was a lack of upward pressure on rates  
12 at that point?

13 A. Sure. And I -- I'm pretty sure I've said  
14 elsewhere in my testimony, I'm not contending that rates  
15 are always going to go up.

16 The fact is with Ameren, as I think Mr.  
17 Gorman pointed out, is once the Callaway plant came  
18 online, Ameren probably had the depreciation on the plant  
19 in service probably greater than what the construction  
20 expenditures are. So they effectively did probably have a  
21 net negative cost pressure related to their rate base.  
22 That has since ended, since Ameren has been basically  
23 taken on these additional environmental expenditures and  
24 also the reliability expenditures.

25 Q. Now, on page 2 of your rebuttal -- I mean

1 your surrebuttal testimony, I'm sorry, you say utilities  
2 generally prefer to file -- do not prefer to file and  
3 litigate rate cases in order to pass along higher costs to  
4 their customers. Do utilities prefer to pass along lower  
5 costs?

6 A. First off, could I clarify one portion of  
7 that?

8 Q. Certainly.

9 A. Okay. Part of the reason why we don't like  
10 to generally prefer to file and litigate rate cases, as I  
11 look at my watch and say it's about 7:40, I know why.

12 I think it's fair if the utility's cost  
13 decreases, that we pass those lower costs on to customers.

14 Q. And do you think that utilities generally  
15 to that voluntarily?

16 A. Well, it's kind of hard for me to speak for  
17 other utilities. For Laclede, we've never been in a  
18 position where we've had negative rate cases.

19 Q. Are you aware of electric utilities in  
20 Missouri litigating earnings complaint cases rather than  
21 voluntarily decreasing rates?

22 A. Well, I think I heard Mr. Weiss discuss  
23 today that when a complaint was filed against them in  
24 their 2002 complaint case, they came back and filed for a  
25 rate increase. Beyond that, I was not involved. I am not

1     sure how far -- I thought eventually that either came to  
2     some sort of settlement, or I could be wrong about that.  
3     At least Ameren agreed to sit there and implement whatever  
4     the outcome of their rate case was as of the date that was  
5     well before when the case was decided.

6             Q.     Are you aware of any other utility cases,  
7     earnings complaint cases that have been litigated in  
8     Missouri?

9             A.     As I recall, and I'm not sure that it was  
10    fully litigated, sir, but I think there was a Missouri  
11    American Water Company case that was probably in the early  
12    2000s, maybe late 1990s, where they ended up filing, and  
13    I'm not sure it was a complaint case. They took a rate  
14    decrease of approximately \$300,000 for the St. Joe area.  
15    But that case can be distinguished to some extent because  
16    the large reason for the fact that there was a negative  
17    amount that came out of the rate case was because of a  
18    rather radical change in how they recovered pension  
19    expense and depreciation.

20            Q.     I really don't want to get into the radical  
21    change in depreciation tonight if we can possibly avoid  
22    that.

23            A.     Certainly.

24            Q.     You talked throughout your testimony about  
25    surveillance monitoring reports and the provision of data

1 in near real time; is that correct?

2 A. That's correct.

3 Q. Is it your testimony that surveillance  
4 reports are all that is -- are all the data that is  
5 necessary to set rates?

6 A. Could you ask the question again, please?

7 Q. Yes. Is it your testimony that  
8 surveillance reports are all -- contain all the data  
9 necessary to set rates in Missouri?

10 A. No. And, in fact, I think that's -- I  
11 thought that's what I was trying to weed through on this  
12 is that surveillance reports are a very good start. Now,  
13 there's always going to be some other things, be it  
14 regulatory disallowances that usually occur, how much your  
15 incentive programs are that generally aren't passed  
16 through in rates, level of customers, that sort of thing,  
17 which I don't believe are on the surveillance reports  
18 currently.

19 But that certainly doesn't mean as we move  
20 forward, and that's what we're trying to -- that's what I  
21 was trying to address here. As we move forward, there may  
22 be ways to sit there and accelerate the provision of some  
23 of that other information so that it can be done on a  
24 virtually real time basis.

25 Q. Even in instances in which the data is

1 readily available, are there not sometimes situations in  
2 which there are disagreements among the parties about what  
3 data should be provided?

4           A.       Good question. It's kind of a difficult  
5 one to answer. With the exclusion of some leading edge  
6 item, an accounting pronouncement change or something of  
7 that nature, for the most part I think the utility  
8 companies, the intervenors, the Office of Public Counsel  
9 and Staff usually have a pretty good feel for what those  
10 items would be.

11                   And again, that doesn't mean that something  
12 new couldn't happen, and under the scenario I was looking  
13 at, I think there's probably some requirement for a dialog  
14 from the utility companies when they're submitting that  
15 data that says, hey, there's something new here, and then  
16 the other parties can say, yes, I think it is appropriate  
17 to have additional data.

18           Q.       Aren't there sometimes instances in which  
19 the utility doesn't agree that a particular party should  
20 get the data that that party is seeking?

21           A.       I have to sit there and leave that to my  
22 attorneys.

23           Q.       You're not ever -- you're not aware of any  
24 discovery disputes before the Missouri Public Service  
25 Commission?



1           A.       I am aware of discovery disputes between  
2   Laclede, for example, right now and the Missouri Public  
3   Service Commission Staff, but that is not my decision to  
4   say it's a discovery dispute or how we prosecute it.

5           Q.       But in any event, those things can  
6   sometimes take a considerable amount of time?

7           A.       Mr. -- as Mr. Pendergast can attest to.

8           Q.       Now, on page 4 of your surrebuttal  
9   testimony, you talk about the reasonableness and the  
10   consumer safeguards and making an interim rate increase  
11   subject to refund with interest. Would you agree that the  
12   same process should apply in earnings complaint cases?

13          A.       I want to make sure. I want to clarify if  
14   I can.

15          Q.       Certainly.

16          A.       Your assumption is, is if there is a rate  
17   decrease that's examined, should it be appropriate for the  
18   rate decrease to go in interim subject to refund with  
19   consumers then paying the utility company interest on  
20   that?

21          Q.       If necessary, yes.

22          A.       Seems to me it would be fair.

23          Q.       Has it ever been done in Missouri, to your  
24   knowledge?

25          A.       My hesitancy is there's been an awful lot

1 of cases in 23 years that I've been at Laclede. To my  
2 knowledge, I -- I don't know.

3 MR. MILLS: No further questions.

4 JUDGE WOODRUFF: All right. Questions from  
5 Staff?

6 CROSS-EXAMINATION BY MR. DOTTHEIM:

7 Q. Good evening, Mr. Buck.

8 A. Good evening, Mr. Dottheim.

9 Q. I'd like to direct you to your direct  
10 testimony, and in particular page 4, starting at line 2.

11 A. Okay.

12 Q. Okay. And in particular if I could direct  
13 you to line 3 where you identify union wage rates, and  
14 then line 4 where you state, while these types of  
15 operating costs cause significant regulatory lag issues  
16 that also could properly be addressed by interim rates  
17 that are subject to refund, we will limit our comments  
18 here to the kind of capital costs that form the basis of  
19 AmerenUE's interim rate request in this case.

20 Did I read that accurately?

21 A. Yes, sir.

22 Q. Do I take it from your direct testimony  
23 that you think union wage rates would be a proper subject  
24 matter for interim rate relief from the Commission?

25 A. Yes.

1           Q.       As I understand it, Laclede Gas Company  
2       filed a rate case last Friday; is that correct?

3           A.       That is correct, sir.

4           Q.       And Mr. Pendergast indicated earlier in the  
5       day that Laclede did not file in that case a request for  
6       interim rate relief; is that correct?

7           A.       That is also true.

8           Q.       Do you know whether Laclede has any present  
9       intention within the duration of that case to file for  
10      interim rate relief?

11          A.       I think the answer is no, and if you'd  
12      like, I'll explain why.

13          Q.       Yes, please.

14          A.       Okay. I understand the situation Ameren's  
15      in. Laclede is in a different situation right now.  
16      Although I will also say that we're cash flow negative  
17      generally, where our construction expenditures are  
18      generally higher than our depreciation and accumulated  
19      deferred income taxes, we also have this rate mechanism  
20      called an ISRS that will generally -- and we still have to  
21      control costs, mind you, but most of Laclede's investments  
22      right now, especially with the downturn in the housing  
23      market, almost all of our investments right now are for  
24      main line replacement programs or cast iron replacement  
25      programs or that kind of thing.

1                   So a lot of our capital expenditures are  
2 already being picked up through the ISRS, which in and of  
3 itself has lag, but it has substantially mitigated that  
4 for us.

5           Q.       Okay.

6           A.       And the other thing, if I might, the other  
7 reason why is because of our weather mitigation rate  
8 designs that exist right now. I've heard again  
9 discussions this morning from people talking about, oh,  
10 the downturn in the economy, what has this done to you.  
11 We will -- we have lost some customer load. Customers  
12 have tended to conserve more. With the exception of  
13 Chrysler, which is one large customer that dropped off the  
14 system entirely, our customers are generally using less,  
15 be it because of economic pressures or whatever else it  
16 would be.

17                   However, with the way our rate design  
18 works, the weather mitigation rate design, it really  
19 encourages -- allows us to encourage customer  
20 conservation. I think we've got the best of both worlds.  
21 We're still recovering our distribution costs on a regular  
22 basis, and our customers are able to save.

23           Q.       Okay. Thank you. And I'm glad you  
24 mentioned ISRS because I was going to ask if it's possible  
25 if you can compare ISRS with the AmerenUE proposal. There

1 have been others who have indicated today that that is  
2 extremely difficult, and they chose either not to or said  
3 in essence maybe it was impossible to compare, but --

4 A. I would certainly say that they don't have  
5 statutory authority to sit there and do an ISRS for the  
6 electric industry. Can an ISRS be constructed that would  
7 be gas-like for electric?

8 Q. Mr. Buck, I was thinking more -- I wasn't  
9 going to ask you to talk about whether AmerenUE has the  
10 legal authority for an ISRS. I was thinking for the  
11 actual practical aspects from what the ISRS for Laclede  
12 covers and what was your knowledge of the AmerenUE  
13 proposal. I am under the assumption that the AmerenUE  
14 proposal in this case is broader than what a comparable  
15 ISRS would cover.

16 A. Well, I'm not really well versed in  
17 Ameren's replacement programs for things like distribution  
18 poles and things like that. I would imagine that there is  
19 a way to construct an ISRS that would be natural gas-like  
20 for similar replacements of property on the electric side.  
21 I don't have enough industry knowledge to know how you  
22 would construct that, though.

23 Q. With the ISRS, is there a subsequent  
24 true-up mechanism?

25 A. I heard Mr. Weiss answer this question

1 today, and there is a true-up mechanism, but I think as  
2 importantly, as agreements between the company and Staff  
3 have evolved over the life of the ISRS, we actually do a  
4 true-up of the ISRS within an ISRS filing. So, for  
5 example, with our last ISRS, we filed for, I don't know,  
6 it was like five months ended April, or maybe it was five  
7 months ended March, and then prior to the Staff coming in  
8 with their recommendation on our case, we actually gave  
9 them two more months of data for the months of April and  
10 May.

11 So there was a mini true-up within the  
12 ISRS, but then at the end of any calendar year, you are  
13 supposed to take a look at what sort of costs or what sort  
14 of revenues you built out versus what you were meant to  
15 bill out and that gets trued up. For example, in our last  
16 ISRS there was an adjustment within the ISRS rate that  
17 reflected the true-up of those costs.

18 Q. Have there been prudence reviews?

19 A. Again, limitation on knowing what a  
20 prudence review is from electric company --

21 Q. Okay. And I'm referring strictly to --

22 A. To gas companies?

23 Q. -- to the gas company, the ISRS as it  
24 applies to Laclede.

25 A. I guess the terminology prudence review,

1     there's not technically a prudence review, but the Staff  
2     reviews the costs before they ever go into effect.

3             Q.       Is there a subsequent review of the  
4     prudence of the construction and the costs that have  
5     occurred?

6             A.       In the next subsequent rate case, I would  
7     assume so.

8             Q.       Can you give some indication as to the  
9     size, the relative size of the dollars that are involved  
10    in the Laclede ISRS filings? Is that possible?

11            A.       Well, we've -- we've -- and I forget  
12    exactly how many we have. Right now we have an on  
13    annualized basis approximately \$8.1 million in ISRS  
14    revenues on a total least cost margin of probably around  
15    300 million or so. I could be off by 25 million either  
16    way on that. Not on the 8.1, but on the 300 million.

17            Q.       The 8.1 that you've mentioned, is there  
18    much variability from one ISRS to the next as far as -- as  
19    far as the costs?

20            A.       Yeah, there are, and the reason why is  
21    because the way the ISRS is written, the way the statute  
22    is written, and I believe the rules mimic the statute, you  
23    can only recover property taxes on plant in service if the  
24    property tax bill will be paid within the 12 months of  
25    when you file.

1                   So generally the ISRS that we file  
2     subsequent to January will usually have a larger bias  
3     towards upward pressure because property taxes for an  
4     entire year are in there, which tends to increase it by  
5     600, \$650,000, which is about one-fourth of the increase  
6     usually.

7                 Q.     Other than that, is the volume of dollars  
8     fairly consistent from ISRS to ISRS?

9                 A.     Generally, with one caveat, and that's  
10    sometimes because this all is self-constructed assets that  
11    are out in the field, sometimes because of a particularly  
12    bad winter or a lot of rain in the fall, construction  
13    expenditures may get delayed or pushed around because of  
14    that. Generally, I would say yes, but there is probably a  
15    seasonal pattern to some extent for our construction  
16    expenditures that may not make it quite that clear.

17                Q.     There's been mention of the environmental  
18    cost recovery mechanism today. Did Laclede file for the  
19    institution, the implementation of an environmental cost  
20    recovery mechanism in its case that was filed on Friday?

21                A.     My understanding is there are no rules  
22    related to the gas environmental cost recovery at this  
23    point. I think it would be problematic to have done so.

24                Q.     May I have a moment, please?

25                A.     Certainly.



1                   MR. DOTTHEIM: Mr. Buck, thank you. You've  
2   been very patient.

3                   THE WITNESS: Have a nice evening, sir.

4                   MR. DOTTHEIM: Thank you.

5                   JUDGE WOODRUFF: It's eight o'clock. We've  
6   been going for two hours. We're due for a break. Let's  
7   take a ten-minute break. Come back at 8:10. We'll  
8   continue with Mr. Buck, questions from the Bench.

9                   (A BREAK WAS TAKEN.)

10                  JUDGE WOODRUFF: All right. Let's go back  
11   on the record after our break. Mr. Buck is still on the  
12   stand for questions from the Bench. Commissioner Gunn?

13                  COMMISSIONER GUNN: I have no questions.

14                  JUDGE WOODRUFF: All right. No questions  
15   from the Bench, so no recross. Any redirect?

16                  MR. PENDERGAST: Thank you, your Honor.  
17   Very briefly.

18   REDIRECT EXAMINATION BY MR. PENDERGAST:

19                  Q.     Mr. Buck, Mr. Mills asked you a number of  
20   questions about your outline of a proposal for additional  
21   information reporting that would perhaps help accelerate  
22   rate adjustments either up or down, and he talked about  
23   some of the difficulties that can be encountered as far as  
24   the scope of information provided.

25                  Do you have any opinion on whether that

1 sort of thing can be worked out in advance?

2 A. Yes. In fact, actually, that's ideally  
3 what Laclede would like to propose is to try and have the  
4 parties try and work something like that out in advance,  
5 and I think it worked out that way in Ameren's sharing  
6 grid and even in a proposal we had in our last rate case.

7 Q. Although there may be some issues along the  
8 way, were you here earlier today when there was a  
9 discussion about other jurisdictions that, say, take eight  
10 months to prosecute a rate case?

11 A. Yes, I was.

12 Q. And are you aware of whether there are some  
13 that take even less time than that?

14 A. Hang on just one moment. Sure. You've  
15 got -- see, the smallest one --

16 Q. You don't have to find the smallest one,  
17 Mr. Buck.

18 A. I was just -- but I wanted to get some  
19 general range. I mean, there's some in here that are  
20 showing seven months, some that are six months. I was  
21 trying to compare 150 days into the number of months, but  
22 my brain is shot.

23 Q. Okay. Would it be your understanding that  
24 for those that have six months, seven months, eight  
25 months, that somehow they manage to go through the entire

1     audit process, whatever litigation process is necessary  
2     and still produce rates in seven or eight months?

3             A.       Yes, I would believe so.

4             Q.       Do you have any reason to believe that it's  
5     not possible for, you know, the good folks that  
6     participate in auditing Missouri utilities and participate  
7     in litigating rate cases in Missouri could not achieve  
8     that if they were directed to or wanted to?

9             A.       I certainly think that the process can be  
10    accelerated. I mean, it used to be -- again, this is kind  
11    of dating myself. It used to be that we'd file a rate  
12    case with an 11-month statutory period, the company  
13    wouldn't even file its direct case for a couple of months.  
14    So we've already shaved at least two months out of that by  
15    filing other direct testimony at that time.

16                    But again, with information sharing  
17    capabilities right now, I think information can be shared  
18    in a very timely fashion.

19             Q.       All right. So would it be your opinion  
20    that the same kind of standard -- that there's no reason  
21    why the same kind of standards and time frames that are  
22    followed in other jurisdictions couldn't be done here in  
23    Missouri?

24             A.       I think we've got a very qualified staff.

25                    MR. PENDERGAST: Great. On that happy

1     note, I'm done.   Thank you.

2                     JUDGE WOODRUFF:   Thank you.

3                     THE WITNESS:   Thank you.

4                     JUDGE WOODRUFF:   And Mr. Buck, you can step  
5     down and go home if you like.

6                     THE WITNESS:   Thank you.

7                     JUDGE WOODRUFF:   Next witness then is  
8     Mr. Murray for the Staff.   And if you'd please raise your  
9     right hand.

10                    (Witness sworn.)

11                    JUDGE WOODRUFF:   You may be seated.  
12    You may inquire.

13    DAVID MURRAY testified as follows:

14    DIRECT EXAMINATION BY MR. DEARMONT:

15             Q.       Would you please state your name for the  
16    record.

17             A.       My name is David Murray.

18             Q.       And are you the same David Murray that  
19    prepared and caused to be filed rebuttal testimony on  
20    interim rates dated November 17th of this year?

21             A.       Yes.

22             Q.       Do you have any corrections to that  
23    testimony?

24             A.       No.

25             Q.       If asked the same questions today, would

1     you have the same answers?

2             A.       Yes.

3             Q.       Is that testimony true and correct to the  
4     best of your knowledge and belief?

5             A.       Yes.

6             MR. DEARMONT:  At this point I would move  
7     to admit Exhibit M, the rebuttal testimony of Dave Murray,  
8     and tender the witness for cross.

9             JUDGE WOODRUFF:  All right.  Exhibit M has  
10    been offered into evidence.  Any objections to its  
11    receipt?

12            (No response.)

13            JUDGE WOODRUFF:  Hearing none, it will be  
14    received.

15            (EXHIBIT M WAS RECEIVED INTO EVIDENCE.)

16            JUDGE WOODRUFF:  For cross-examination we  
17    begin with Public Counsel.

18            MR. MILLS:  No questions.

19            JUDGE WOODRUFF:  MIEC?

20            MS. VUYLSTEKE:  No questions.

21            JUDGE WOODRUFF:  MEG?

22            MS. LANGENECKERT:  No questions.

23            JUDGE WOODRUFF:  KCPL?

24            MR. STEINER:  No questions.

25            JUDGE WOODRUFF:  Laclede?

1 MR. PENDERGAST: No questions.

2 JUDGE WOODRUFF: AmerenUE?

3 MR. BYRNE: Yes, your Honor, I have a few.

4 CROSS-EXAMINATION BY MR. BYRNE:

5 Q. Good evening, Mr. Murray.

6 A. Good evening. How are you doing?

7 Q. Pretty good. Pretty tired actually.

8 Mr. Murray, would you agree with me that a  
9 company's credit quality can improve or decline even  
10 without a change to its credit rating?

11 A. Yes.

12 Q. And would you agree with me that a  
13 company's cash flows affect its credit quality?

14 A. Can you please give some more direction as  
15 to what you mean by -- as far as improved or decreased?

16 Q. Yes. If a -- I'm sorry. If a company's  
17 cash flows improve or decline, can that affect its credit  
18 quality?

19 A. Yes.

20 Q. And would you agree with me that if  
21 AmerenUE -- interim rates are approved for AmerenUE,  
22 AmerenUE's cash flows will improve at least to the extent  
23 that it gets cash through the interim rate mechanism?

24 A. Yes.

25 Q. And that will in turn improve at least to

1 that degree AmerenUE's credit quality?

2 A. Holding everything else constant, yes.

3 Q. Okay. In your rebuttal testimony, which I  
4 think is your only testimony; is that right?

5 A. Yes.

6 Q. On page 4, line 25, you ask a -- or you're  
7 asked a question about steps that AmerenUE plans to take  
8 to protect its credit rating from being impacted by  
9 Ameren's other operations. Do you see that question?

10 A. Yes.

11 Q. And then on the next page you said you had  
12 submitted Data Request 261 to request that information but  
13 you just got it that day?

14 A. Yes.

15 MR. BYRNE: And I guess I would like to  
16 mark an exhibit, if I could, which is Data Request 261.

17 JUDGE WOODRUFF: Next letter is W.

18 (EXHIBIT W WAS MARKED FOR IDENTIFICATION BY  
19 THE REPORTER.)

20 BY MR. BYRNE:

21 Q. Could you identify the document that's been  
22 marked Exhibit W, Mr. Murray?

23 A. Yes. It's my Data Request No. 261 that  
24 requests information about steps AmerenUE and/or Ameren  
25 has taken to protect AmerenUE's credit quality from the

1 business and financial risk of Ameren's other operations.

2 Q. And that response has a list of steps  
3 AmerenUE has taken; is that fair to say?

4 A. I don't know that these are steps, when  
5 these steps may have been taken or, you know, if it was  
6 specifically taken to -- with keeping credit quality in  
7 mind, but it does say that AmerenUE is not legally or  
8 morally obligated to support the debt obligations of its  
9 affiliates and then provides a list of six items.

10 Q. Maybe we can just walk through them. I  
11 mean, is the fact that AmerenUE is not legally or morally  
12 obligated to support the debt obligations of its  
13 affiliates, is that a step that helps protect AmerenUE's  
14 credit rating from being affected by its affiliates?

15 A. Credit rating?

16 Q. Yeah, or credit quality for that matter  
17 from being impacted by its affiliates. Is that a step  
18 that makes it less effective than if that step wasn't  
19 there?

20 A. I would say all these factors -- we'll just  
21 go steps one through six and take them as a whole -- have  
22 not been considered to be effective by S&P to protect  
23 AmerenUE's credit rating from Ameren and its other  
24 affiliates.

25 Q. Well, do you believe that with these steps



1   having been taken -- and we can go through each one if  
2   you'd like, but it's late. Do you believe that these  
3   steps are more protective than if they did not exist, than  
4   if they had not been taken?

5           A.     Yes, it's helpful.

6           Q.     Okay. That's all I'll belabor that answer.  
7   And on page 7, line 5 of your testimony, starting on line  
8   5, you're talking about how Moody's has considered the  
9   operations of Ameren's other companies in rating AmerenUE.  
10 Do you see that? Is that a fair --

11          A.     Yes.

12          Q.     -- summary of what you're saying?

13                   And you're basing it on a March 13, 2007  
14 report from Moody's; is that correct?

15          A.     That's correct.

16                   MR. BYRNE: Okay. I'd like to mark another  
17 exhibit, if I could.

18                   JUDGE WOODRUFF: This would be X.

19                   THE WITNESS: These are attached to my  
20 testimony, just to let you know, on May 21st. I'm sorry.  
21 Not that one.

22                   (EXHIBIT X WAS MARKED FOR IDENTIFICATION BY  
23 THE REPORTER.)

24 BY MR. BYRNE:

25          Q.     Mr. Murray, can you identify what's been

1 marked as Exhibit X?

2 A. Yes. It's a credit rating report from  
3 Moody's Investor Service on Ameren Corporation dated  
4 May 21st, 2008.

5 Q. And is this the downgrade that people have  
6 been talking about in the hearing room, the recent  
7 downgrade by Moody's?

8 A. I'm not sure if it was talked about  
9 earlier. I've been in and out.

10 Q. Were you aware of this downgrade?

11 A. Yes.

12 Q. Okay. And I guess I'd like you to read the  
13 underlined parts on the first page, if you could. It's  
14 just a couple of sentences.

15 A. The downgrade of Union Electric Company  
16 reflects declining cash flow coverages, increased  
17 operating costs, growing capital expenditures for  
18 environmental compliance, transmission and delivery system  
19 reliability.

20 Q. And would you agree that those are all  
21 Union Electric specific --

22 A. Yes.

23 Q. -- factors?

24 Okay. And then the next underlined part in  
25 the next paragraph?

1           A.       The downgrade also reflects the challenging  
2 regulatory environment for electric utilities operating in  
3 the state of Missouri as Union Electric is one of the  
4 relatively few utilities in the country operating without  
5 a fuel -- fuel purchased power and environmental cost  
6 recovery mechanisms. The lack of such automatic cost  
7 recovery provision creates uncertainty regarding the  
8 timely recovery of the higher cost investments being  
9 incurred and leads to significant regulatory lag.

10          Q.       And since that report was issued, we've  
11 gotten the ability to use a fuel adjustment clause and a  
12 purchased power -- that reflects purchased power as well;  
13 is that fair to say?

14          A.       Yeah, as well as a, I guess a vegetation  
15 tracker.

16          Q.       Okay. And we've asked for an environmental  
17 cost recovery mechanism in this case?

18          A.       That's correct.

19          Q.       But we don't have it yet?

20          A.       That's correct.

21          Q.       Would it be fair to say all those things  
22 are Missouri specific types of considerations as opposed  
23 to other affiliates of Ameren?

24          A.       Yes.

25          Q.       And then if you'd look on the next page,

1   there's a short couple of really parts of a sentence that  
2   have been underlined.  There's a discussion in the, I  
3   guess the second full paragraph about Ameren's Illinois  
4   utilities, and if you could just read the -- I guess if  
5   you could just read that paragraph.  The underlining's  
6   kind of scattered, but it's only -- I think the  
7   paragraph's only really one sentence long.

8           A.       The maintenance of a positive outlook on  
9   Ameren's Illinois utilities reflects the potential for  
10  modest upward movement in their rating in the event there  
11  is a supportive outcome of their pending distribution rate  
12  cases resulting in improvement in some of their relatively  
13  low cash flow coverage metrics, a reduction in high  
14  short-term debt levels, Increasing financial flexibility,  
15  and a successful implementation of new power procurement  
16  policies and procedures in Illinois.

17          Q.       So would it be fair to say, at least on  
18  this report there was discussion of positives in Illinois  
19  that's still a downgrade of AmerenUE?

20          A.       Yes.

21                 MR. BYRNE:  Thank you, Mr. Murray.  I don't  
22  have any further questions.  I would offer Exhibits W and  
23  X.

24                 JUDGE WOODRUFF:  W and X have been offered.  
25  Any objections to their receipt?

1 (No response.)

2 JUDGE WOODRUFF: Hearing none, they will be  
3 received.

4 (EXHIBITS W AND X WERE RECEIVED INTO  
5 EVIDENCE.)

6 JUDGE WOODRUFF: And we'll come up for  
7 questions from the Bench. Commissioner Davis?

8 COMMISSIONER DAVIS: I might have one or  
9 two here. Hold on just a second. Pass. Have a good  
10 evening, Mr. Murray.

11 THE WITNESS: Thank you. You, too, sir.

12 JUDGE WOODRUFF: Commissioner Jarrett?

13 COMMISSIONER JARRETT: I have no questions.  
14 Thanks.

15 JUDGE WOODRUFF: Commissioner Gunn?

16 QUESTIONS BY COMMISSIONER GUNN:

17 Q. I just have a quick clarifying question.  
18 If you can take a look at this Moody's that was just read.

19 A. Yes.

20 Q. And I'm doing this because I have no idea.  
21 This is not -- don't anybody read anything into this  
22 question. Can you read the paragraph above that says, the  
23 maintenance of a positive outlook, the paragraph above  
24 that says, the review of Union Electric's prime 2 rating,  
25 the paragraph that starts that. I think it's page 2. Do

1     you see that?

2             A.       Yes.

3             Q.       That talks about -- and I'll let you read  
4     it, but it talks about a shared bank credit facility and  
5     an intercompany note payable -- now, maybe it literally is  
6     only \$122. Maybe that's why it doesn't make any sense.  
7     But does that -- I'm asking this because I don't know the  
8     answer to the question. Is that paragraph in this Moody's  
9     report in any way inconsistent with the answer to the Data  
10    Request? I just don't know enough about the phraseology  
11    in order to make that determination.

12            A.       Let me take a look at the specific response  
13    to the Data Request and compare.

14            Q.       There may not be enough information here.  
15    Again, I'm looking at specifically No. 1 that says it does  
16    not make loans to Ameren, but there is somehow an  
17    intercompany note payable, and where it says Ameren has  
18    independent access to bank facility capacity, this talks  
19    about a shared bank credit facility. So --

20            A.       Let me -- specifically in item 1 that says  
21    AmerenUE does not make loans to Ameren, that is correct.  
22    The terms of the money pool does not allow AmerenUE to  
23    loan to the money pool. It allows AmerenUE to receive  
24    loans from the money pool.

25                    As far as the capacity of the money pool,

1     you know, whether or not that is driven by the stability  
2     of AmerenUE I think is a question that is probably one of  
3     the reasons why when there's an intertwining of these  
4     facilities, it becomes questionable as to -- as to how  
5     separate are these entities when it comes to their  
6     financing operations.

7                     But let me take a look at the other four  
8     items here.

9             Q.       They may not be mutually exclusive. I  
10    apologize for giving anybody any heartburn. I'm just  
11    trying to learn this stuff.

12            A.       Yeah, I think the rest of them, it's not  
13    inconsistent.

14            Q.       It's not inconsistent. Okay. Thanks.

15                     COMMISSIONER GUNN: Then I have nothing  
16    further.

17                     JUDGE WOODRUFF: Commissioner Kenney?

18                     COMMISSIONER KENNEY: No questions.

19    Thanks, Mr. Murray.

20                     JUDGE WOODRUFF: Anybody wish to recross  
21    based on those questions from the Bench?

22                     (No response.)

23                     JUDGE WOODRUFF: All right. Any redirect?

24                     MR. DEARMONT: I have just a few questions.

25    REDIRECT EXAMINATION BY MR. DEARMONT:

1           Q.       Mr. Murray, Mr. Byrne asked you a few  
2       questions about the effects of credit quality on credit  
3       ratings. In your opinion, can credit quality increase  
4       substantially with no effect on credit rating?

5           A.       It shouldn't, but it might. It has been my  
6       experience, especially when it comes to fuel adjustment  
7       clauses, that the credit rating agencies have continuously  
8       given the Missouri Commission, the Missouri regulatory  
9       environment a hard time about not having fuel adjustment  
10      clauses, and then once they are authorized, there is no  
11      change in the credit rating.

12                   As many times as I've heard that in my time  
13      here at the Commission, that is frustrating. I just  
14      don't -- quite frankly, I don't understand. And it seems  
15      like especially when AmerenUE has a business risk profile  
16      of excellent, which is better than any of the other Ameren  
17      affiliates, that a lot of times Missouri's just not  
18      getting a fair shake.

19           Q.       I'd like to point you to Exhibit W, the  
20      Data Request and response 261. On this Data Request there  
21      are six items or steps listed; is that correct?

22           A.       Yes.

23           Q.       The response. Excuse me. Are these items  
24      or steps the types of items that are generally known to  
25      credit rating agencies?





1 JUDGE WOODRUFF: All right. Mr. Murray,  
2 you can step down.

3 Next witness is Mr. Rackers. Good evening.  
4 If you'll please raise your right hand.

5 (Witness sworn.)

6 JUDGE WOODRUFF: You may inquire.

7 STEPHEN M. RACKERS testified as follows:

8 DIRECT EXAMINATION BY MR. DOTTHEIM:

9 Q. Would you please state your name and  
10 business address.

11 A. Stephen M. Rackers. My business address is  
12 111 North 7th Street, St. Louis, Missouri 63101.

13 Q. Are you the same Stephen Rackers that's  
14 caused to be filed direct, rebuttal and surrebuttal  
15 testimony that's been marked as Exhibits J, K and L in  
16 this proceeding?

17 A. Yes.

18 Q. Mr. Rackers, at this time do you have any  
19 corrections to make to Exhibit J, K or L?

20 A. No.

21 Q. Mr. Rackers, if I were to ask you the  
22 questions that are contained in Exhibits J, K and L today,  
23 would your answers be the same as contained in these  
24 documents?

25 A. Yes, they would.

1           Q.       Do you adopt Exhibits J, K and L as your  
2 testimony on interim rates?

3           A.       Yes.

4           Q.       And the information contained therein is  
5 true and accurate to the best of your knowledge and  
6 belief?

7           A.       Yes, it is.

8                   MR. DOTTHEIM: At this time I would offer  
9 Exhibits J, K and L and tender Mr. Rackers for  
10 cross-examination.

11                   JUDGE WOODRUFF: Thank you. I believe  
12 Exhibits K and L have HC and NP versions; is that correct?

13                   MR. DOTTHEIM: Yes.

14                   JUDGE WOODRUFF: Exhibits J, K, L, both HC  
15 and NP versions, have been offered. Any objections?

16                   (No response.)

17                   JUDGE WOODRUFF: Hearing none, they will be  
18 received into evidence.

19                   (EXHIBITS J, K AND L WERE RECEIVED INTO  
20 EVIDENCE.)

21                   JUDGE WOODRUFF: And cross-examination,  
22 beginning with Public Counsel?

23                   MR. MILLS: No questions.

24                   JUDGE WOODRUFF: MIEC?

25                   MS. VUYLSTEKE: No questions.

1 JUDGE WOODRUFF: MEG?

2 MS. LANGENECKERT: No questions.

3 JUDGE WOODRUFF: KCPL?

4 MR. STEINER: I have no questions, your  
5 Honor.

6 JUDGE WOODRUFF: Laclede?

7 MR. PENDERGAST: Just a couple.

8 CROSS-EXAMINATION BY MR. PENDERGAST:

9 Q. Good evening, Mr. Rackers.

10 A. Good evening.

11 Q. Just have a couple of questions. Are you  
12 familiar with in prior electric rate cases for some  
13 utilities at least the use of forecasted fuel expense?

14 A. Yes.

15 Q. And am I correct that in that particular  
16 instance you put in a projected level of fuel expense at  
17 the end of a rate case subject to -- on an interim basis  
18 subject to refund?

19 A. Yes.

20 Q. Okay. And were those settlements, to your  
21 knowledge, reviewed by legal staff at the Commission to  
22 determine whether the use of interim rates and refunds  
23 under those circumstances was appropriate?

24 A. I really can't speak for what determination  
25 the legal staff made with regard to those.

1 Q. Okay. But as far as you know, they were  
2 implemented and approved by the Commission?

3 A. Yes.

4 Q. Okay. You're also familiar with the use of  
5 interim subject to refund rates on the gas side when it  
6 comes to purchased gas adjustment clauses and the actual  
7 cost adjustment clause?

8 A. Somewhat familiar.

9 Q. Okay. That particular mechanism's been in  
10 effect for -- since 1962, hasn't it?

11 A. I'll accept that subject to check.

12 Q. Okay. And with respect to, you have some  
13 experience with Accounting Authority Orders; is that  
14 correct?

15 A. Yes.

16 Q. And that basically allows you to take one  
17 item of expense, whether it be a safety related expense or  
18 it be a storm expense, and track that cost until you have  
19 a general rate proceeding; is that correct?

20 A. Well, that's true, but it doesn't  
21 necessarily lead to any kind of a rate increase just  
22 because I've deferred the cost.

23 Q. No. It's subject to review and  
24 determination of whether or not it ought to be approved by  
25 the Commission when it decides all relevant factors in a

1 rate case; is that correct?

2 A. Yes.

3 Q. And those have been used for quite some  
4 time in Missouri, have they not?

5 A. That's correct.

6 MR. PENDERGAST: Okay. Thank you. That's  
7 all I have.

8 JUDGE WOODRUFF: Thank you. For AmerenUE.

9 CROSS-EXAMINATION BY MR. LOWERY:

10 Q. Good evening, Mr. Rackers.

11 A. Good evening.

12 Q. Mr. Rackers, I just want to make sure I  
13 understand something correctly. Will all of the  
14 components of the revenue requirement that are affected by  
15 any increase in net plant in service that occurs from  
16 October 1, '08, which was first day after the cutoff in  
17 the last case, through the true-up cutoff date in this  
18 case, January 31, 2010, will all of those components be  
19 taken into account in setting the final revenue  
20 requirement in this case?

21 A. We haven't finished our audit yet. They  
22 will be considered in determining the revenue requirement.

23 Q. But the return, the depreciation, the  
24 taxes, the accumulated deferred income taxes, anything  
25 that -- in the revenue requirement that's affected by an

1 increase in net plant is ultimately going to be taken into  
2 account in setting the rates in this case; isn't that  
3 right?

4 A. Yes.

5 Q. So specifically, for example, the ADIT  
6 balance, and when I say ADIT you understand I meant  
7 accumulated deferred income taxes, right?

8 A. Correct.

9 Q. The ADIT balance as an offset to the change  
10 in net plant that you talk about in your rebuttal  
11 testimony, that will be accounted for when the final  
12 revenue requirement is determined, right?

13 A. Yes, it will.

14 Q. And on page 3 of your rebuttal testimony,  
15 you talk about changes in net plant that reflect plant  
16 additions that serve new customers, right?

17 A. Page 3?

18 Q. That's correct. Page 3, lines 1 to 2, I  
19 think you talk about changes in net plant that reflect  
20 additions in net plant to serve new customers; is that  
21 right?

22 A. Yes.

23 Q. And the company has supplied you with  
24 information from which you were able to determine what  
25 portion of the net plant increase that AmerenUE used to

1 calculate the 37 million related to serving new customers,  
2 right?

3 A. Yes, it did.

4 Q. And that information showed that only a  
5 small portion of that roughly 350 million was related to  
6 serving new customers, right?

7 A. Correct.

8 Q. I assume you'll ask for that same  
9 information so that you can figure that out through the --  
10 that same information so you can figure out what portion  
11 of the plant increase through January 31st, 2010 is  
12 related to serving new customers; is that right?

13 A. That will be one aspect we'll look at, yes.

14 Q. So like the ADIT offset that you're going  
15 to take into account when you set permanent rates, to the  
16 extent the increase in net plant from the last rate case  
17 through the true-up in this rate case, to extent that  
18 might be related to serving new customers, you're going to  
19 take that into account in your final revenue requirement  
20 that you recommend as part of the true-up process in  
21 setting the permanent rates; is that right?

22 A. That plant will be considered as part of  
23 that process.

24 Q. As the utility puts more and more plant  
25 into service, is it possible that O&M expenses may also



1     increase?

2             A.       Yes.

3             Q.       Is it generally true that as the plant in  
4     service balance increases, so do the property taxes owed  
5     by the utility?

6             A.       There's a lot of things that goes into  
7     calculating property taxes, and it's not necessarily a one  
8     for one basis. But if I add a dollar's worth of plant,  
9     that's going to translate into property taxes.

10            Q.       Was the answer to my question, yes, it's  
11   generally true that property taxes go up as the plant in  
12   service balance go up, no, or I don't know, or was the  
13   answer -- was the answer -- first of all, was the answer  
14   yes as a general matter, that property taxes generally go  
15   up as the plant in service balance goes up? Whether it's  
16   one to one, one to 50 cents, is it true generally that the  
17   property taxes go up?

18            A.       There's some relationship between an  
19   increase in plant and an increase in property taxes.

20            Q.       To the extent there are higher O&M expenses  
21   or to the extent there are higher property tax costs,  
22   those are two costs related to an increase in net plant in  
23   service that could have been accounted for by the company  
24   and that would have raised their \$37.3 million  
25   calculation, right?

1           A.       I don't know.

2           Q.       Well, let me ask the question again. To  
3 the extent, in fact, O&M went up related to that new  
4 plant, and to the extent property taxes went up, let's  
5 assume those two things did go up.

6           A.       Okay.

7           Q.       If that happened, the company could have  
8 accounted for that and that would have raised the  
9 \$37.3 million figure, correct?

10          A.       Yes.

11          Q.       And in any event, if there have been  
12 increases in O&M or increases in property taxes related to  
13 new plant, that is also going to be taken into account in  
14 setting the final rates in this case; isn't that right?

15          A.       Yes, it is.

16          Q.       At page 3, starting at line 22 of your  
17 rebuttal testimony, you say that the company could be  
18 found in the permanent rate case to be earning above its  
19 authorized return but could still have been granted  
20 interim rates. If that happened, customers would get  
21 refunds with interest; isn't that right?

22          A.       Under the company's proposal, yes.

23          Q.       Mr. Rackers, you look back about 9 to 14  
24 years and you note that AmerenUE paid sharing credits up  
25 the EARP. You know what I mean by EARP, right?

1           A.       Yes.

2           Q.       Experimental alternative regulation plan.

3    You look back and you note that the sharing credits were  
4    paid from 1995 to 2001; is that right?

5           A.       I believe that's correct.

6           Q.       The EARP was agreed upon by the Staff and  
7    it was approved by the Commission, correct?

8           A.       Yes.

9           Q.       The EARP contemplated that AmerenUE could  
10   keep earnings above a certain return on equity level,  
11   correct?

12          A.       Yes.

13          Q.       The Commission couldn't have lawfully  
14   approved the EARP unless it constituted a just and  
15   reasonable rate setting mechanism; isn't that true?

16          A.       Yes.

17          Q.       You also look at history by pointing to the  
18   2001 complaint case that was also resolved by a  
19   stipulation. I think you indicated the stipulation went  
20   into effect something like August or September of 2002; is  
21   that right? And I think I'm in your -- looking in your  
22   rebuttal testimony at page 6.

23          A.       Thank you.

24          Q.       You're trying to figure out where you might  
25   have said that.

1           A.       I'm on line 10. I believe I say that on  
2     September 26, 2002, is that what you're --

3           Q.       That's right. That's right. So you point  
4     to that, right, and then you say, starting on line 11, had  
5     an agreement not been reached, the 16-month proceeding  
6     would have continued much longer. Is that your testimony?

7           A.       I believe that's true.

8           Q.       And your point, I think, and you correct me  
9     if I'm wrong, is that AmerenUE had expressed concerns in  
10    our direct testimony or our testimony on interim rates in  
11    this case, expressed some concerns about the 11-month rate  
12    increase process, but the point you're making is that when  
13    Staff sought a rate decrease, new rates weren't effective  
14    for a period that was longer than 11 months. Is that the  
15    point you were trying to make?

16          A.       Yes.

17          Q.       That's not right, is it? Isn't it a fact  
18    that the company had agreed as part of that complaint case  
19    that any rate decrease that was implemented would be  
20    implemented retroactive to April 1, 2002, which is only  
21    nine months after the complaint was filed?

22          A.       I honestly don't recall that.

23          Q.       Were you involved in that case,  
24    Mr. Rackers?

25          A.       I participated in that case.

1           Q.     At the time the Stipulation & Agreement was  
2     negotiated, were you involved in that -- in that in any  
3     way?

4           A.     To a very limited degree.

5                     MR. LOWERY: May I approach, your Honor?

6                     JUDGE WOODRUFF: You may.

7     BY MR. LOWERY:

8           Q.     Mr. Rackers, I'm going to hand you a copy  
9     of the Commission's Report and Order that resolved that  
10    complaint case. Let you take a look at that, make sure  
11    you can verify that that is indeed what I'm handing you.

12          A.     Yes.

13          Q.     You've seen that document before,  
14    Mr. Rackers?

15          A.     I believe I have.

16          Q.     If you'll take a look -- and I'll try to  
17    speed this along as much as I can. If you'll take a look  
18    at the second page of the Report and Order, the second  
19    paragraph indicates that the agreement itself is attached  
20    to the Order. Do you see that?

21          A.     Yes.

22          Q.     Then if we flip back, we will find the  
23    Stipulation & Agreement itself; is that correct?

24          A.     Yes.

25          Q.     If you would, take a look at the

1 Stipulation & Agreement at the bottom of page 2 and read  
2 for me that sentence under the word stipulations.

3 A. Signatories submit to the Commission for  
4 its consideration and approval the following terms and  
5 conditions for resolution of Case No. EC-2002-1.

6 Q. And you understand that to mean that's  
7 essentially saying, here's the list of things we agreed  
8 to, right?

9 A. Yes.

10 Q. Take a look, if you will, at item 2A, and  
11 read for me the first sentence, if you would, under 2A.

12 A. AmerenUE will file tariffs that will  
13 implement an electric rate reduction to be effective as of  
14 April 1, 2002 of 50 million, exclusive of license,  
15 occupation, franchise, gross receipts or other similar  
16 fees or taxes.

17 Q. Mr. Rackers -- and we can take further look  
18 at this if you don't remember -- do you recall the  
19 Commission, or the Staff filed this complaint, I think, on  
20 July 2nd, 2001? Does that ring a bell?

21 A. Yes.

22 Q. So April 1, 2009, how many months after  
23 July 2nd, 2001 is that (sic)?

24 A. Approximately nine months.

25 Q. So it didn't take 16 months to implement

1     that rate decrease, correct?

2             A.       That's correct.

3             Q.       Mr. Rackers, and I don't mean for the  
4     questions to be too personal, but I don't think they're  
5     too intrusive. How much cash would you say you carry  
6     around in your pocket or in your wallet on a day-to-day  
7     basis?

8             A.       About \$10.

9             Q.       About ten bucks. Do you have some kind of  
10    container at home like I do that you throw your change in  
11    at night?

12            A.       No, I don't.

13            Q.       You don't. Well, I do, and in just a few  
14    months I've usually got 50 or 100 bucks in there. Does  
15    that surprise you? 50 cents a day over a month, that's  
16    15 bucks, right?

17            A.       Sure.

18            Q.       Do you have a checking account?

19            A.       Yes, I do.

20            Q.       Does it earn interest?

21            A.       I don't believe it does.

22            Q.       What do you think a six-month CD earns  
23    these days, half a percent, 1 percent?

24            A.       2 and a half.

25            Q.       2 and a half?

1           A.       Uh-huh.

2           Q.       Can you tell me where I can get a 2 and a  
3   half percent six-month CD?

4           A.       On the Internet.

5           Q.       On the Internet. Well, I hate to quibble  
6   with you too much, but I guess I'm going to have to ask  
7   you a couple questions. Are you familiar with the Bank  
8   Rate Monitor?

9           A.       No.

10          Q.       You've never been to bankrate.com?

11          A.       No.

12          Q.       Do you ever look up interest rates on the  
13   Internet?

14          A.       Not often.

15          Q.       Well, you may or may not -- you may or may  
16   not agree with this, but I'm going to show you a page that  
17   I printed off the Internet just the other day on the 3rd  
18   of December 2009. Do you recognize some of those --  
19   sorry, Steve, I don't have any copies. Here, let me show  
20   Steve what I'm showing you before I ask you questions  
21   about it.

22                    Do you recognize any of those financial  
23   institutions?

24                    MR. DOTTHEIM: I'm going to object on the  
25   basis that Mr. Rackers has said that he doesn't recognize



1 bankrate.com.

2 MR. LOWERY: My pending question, your  
3 Honor, is does he recognize any of those financial  
4 institutions.

5 JUDGE WOODRUFF: I'll overrule that  
6 objection. You can answer that question.

7 THE WITNESS: Yes, I do.

8 BY MR. LOWERY:

9 Q. Mr. Rackers, do you have any reason to  
10 believe that the information that is published about the  
11 CD rates from these institutions is inaccurate or  
12 misleading?

13 A. No.

14 Q. Do you still think that you can get a 2 and  
15 a half percent rate on a six-month CD at the present time?

16 A. Well, perhaps the response I gave you was  
17 based on dated information, but this -- this appears to  
18 say you could get 1.45 percent.

19 Q. From Allied Bank. You ever heard of Allied  
20 Bank?

21 A. No.

22 Q. They're not a St. Louis bank, as far as you  
23 know, are they?

24 A. I don't know.

25 Q. Do you agree with the company's calculation

1 that the average residential customers would pay about  
2 \$1.61 per month more if the full interim rate increase was  
3 implemented?

4 A. Do I agree with that?

5 Q. Yes.

6 A. Yes.

7 Q. So let's assume the interim rates took  
8 effect on January 1, and to simplify things, that new  
9 permanent rates took effect on July 1, so that we'd have  
10 six months exactly where the average residential customer  
11 paid about \$1.61 a month more.

12 A. Okay.

13 Q. Is that about -- I'm just going to round it  
14 up. Is that about \$10?

15 A. Sure.

16 Q. Is that \$10 that's sitting in your wallet  
17 or in your pocket that you carry around on a day-to-day  
18 basis, are you earning any interest on that at all?

19 A. No.

20 Q. If it turns out that AmerenUE shouldn't  
21 have collected that \$10 and it has to refund it, is the  
22 customer likely to get more money from you -- from being  
23 paid interest at AmerenUE's short-term borrowing rate than  
24 it is on a six-month CD that's paying at most a percent  
25 and a half?

1           A.       Would you ask me that again, please?

2           Q.       If it turns out that AmerenUE shouldn't  
3   have collected that roughly \$10 in interim rates that are  
4   subject to refund and it has to refund that money to  
5   customer at its short-term borrowing rate, a customer's  
6   going to get more in interest than the customer would be  
7   able to get, for example, on a six-month CD that at most  
8   might pay a percent and a half today, right?

9           A.       I think that's true, but that wasn't my  
10   point.

11          Q.       But that is true, isn't it?

12          A.       Yes.

13                   MR. LOWERY: I have no further questions,  
14   your Honor.

15                   JUDGE WOODRUFF: All right. We'll come up  
16   for questions from the Bench, then. Commissioner Jarrett?

17                   COMMISSIONER JARRETT: No questions. Thank  
18   you.

19                   JUDGE WOODRUFF: Commissioner Gunn?

20   QUESTIONS BY COMMISSIONER GUNN:

21          Q.       Mr. Rackers, if a consumer is \$10 behind on  
22   their rent in December, does it help them to get \$12 back  
23   the following June?

24          A.       No, it does not.

25                   COMMISSIONER GUNN: Thank you. I don't

1 have any further questions.

2 JUDGE WOODRUFF: Commissioner Kenney?

3 COMMISSIONER KENNEY: No questions. Thank  
4 you.

5 JUDGE WOODRUFF: Any recross based on  
6 questions from the Bench?

7 MR. LOWERY: No, your Honor.

8 JUDGE WOODRUFF: Redirect?

9 REDIRECT EXAMINATION BY MR. DOTTHEIM:

10 Q. Mr. Rackers, first some questions regarding  
11 cross you received from Mr. Pendergast. You indicated  
12 that you recalled the forecasted fuel mechanism that the  
13 Commission at one time utilized, did you not?

14 A. Yes.

15 Q. And do you recall whether the forecasted  
16 fuel mechanism that was utilized in cases was the result  
17 of stipulations and agreements?

18 A. Yes, I believe they were.

19 Q. Do you recall whether there were any court  
20 cases respecting the lawfulness of forecasted fuel  
21 expense?

22 A. I don't recall any.

23 Q. Do you recall why the Staff stopped  
24 utilizing the mechanism of forecasted fuel expense?

25 A. I think it had something to do with the

1 fact that the dramatic increases in the cost of fuel,  
2 mainly coal, ceased to exist.

3 Q. Mr. Pendergast asked you about Accounting  
4 Authority Orders, and I think you discussed with him the  
5 difference between Accounting Authority Orders and rate  
6 cases; is that correct?

7 A. Rate increases.

8 Q. Could you identify again or explain the  
9 difference between Accounting Authority Orders and rate  
10 increases?

11 A. Well, an Accounting Authority Order merely  
12 allows you to defer cost to a future period where it can  
13 be considered, say, in the next rate case. It doesn't  
14 allow the company to increase rates at the time of  
15 deferral or it doesn't allow for any kind of an interim  
16 rate increase just because you've deferred the expenses.

17 Q. Mr. Rackers, Mr. Lowery asked you some  
18 questions about the two experimental alternative  
19 regulatory plans that AmerenUE was involved in in the  
20 1980s into the early 1990s. Do you recall those  
21 questions?

22 A. Yes.

23 Q. Okay. Excuse me. I think I maybe am off  
24 by a decade.

25 MR. LOWERY: You're off by a decade.

1 MR. DOTTHEIM: I'm off by a decade.

2 BY MR. DOTTHEIM:

3 Q. And do you recall whether those two  
4 experimental alternative regulation plans were the results  
5 of stipulations and agreements?

6 A. Yes, they were.

7 Q. Mr. Lowery asked you some questions about  
8 the amount of the \$37.3 million in interim rate relief on  
9 an individual ratepayer basis and asked you some questions  
10 about you as the individual ratepayer and interest rates,  
11 and in answering a question, you indicated that the point  
12 you were making in your testimony was not the point he was  
13 asking you about. Would you complete your response?

14 A. Well, the point I'm trying to make is that  
15 the cost of money to an individual ratepayer may be  
16 substantially higher than AmerenUE's short-term interest  
17 rate. If I have to forego paying a credit card or go get  
18 money down at the payday loan store to make my payment on  
19 my utility bill, I am going to incur a much higher  
20 interest cost than AmerenUE is going to pay me back if  
21 they have to make a refund.

22 MR. DOTTHEIM: Thank you. No further  
23 questions.

24 JUDGE WOODRUFF: Mr. Rackers, you can step  
25 down.

1                   One more witness, Mr. Trippensee. And if  
2   you'd please raise your right hand.

3                   (Witness sworn.)

4                   JUDGE WOODRUFF: You may inquire.

5   RUSSELL TRIPPENSEE testified as follows:

6   DIRECT EXAMINATION BY MR. MILLS:

7           Q.       Can you state your name for the record,  
8   please.

9           A.       Russell W. Trippensee.

10          Q.       And by whom are you employed and in what  
11   capacity?

12          A.       I am the chief utility accountant for the  
13   Missouri Office of the Public Counsel.

14          Q.       I'll represent to you that your testimony  
15   has been marked as Exhibit N. Are the answers contained  
16   therein true and correct to the best of your knowledge,  
17   information and belief?

18          A.       Yes, they are.

19          Q.       And if I were to ask you the same questions  
20   here today, would your answers be the same?

21          A.       I believe they would be.

22                   MR. MILLS: With that, I would offer  
23   Exhibit N and tender the witness for cross-examination.

24                   JUDGE WOODRUFF: Exhibit N has been  
25   offered. Any objections to its receipt?

1 (No response.)

2 JUDGE WOODRUFF: Hearing none, it will be  
3 received.

4 (EXHIBIT N WAS RECEIVED INTO EVIDENCE.)

5 JUDGE WOODRUFF: For cross-examination,  
6 beginning with Staff.

7 MR. DOTTHEIM: No questions.

8 JUDGE WOODRUFF: MIEC?

9 MS. VUYLSTEKE: No questions.

10 JUDGE WOODRUFF: For MEG?

11 MS. LANGENECKERT: No questions.

12 JUDGE WOODRUFF: KCPL?

13 MR. STEINER: No questions.

14 JUDGE WOODRUFF: Laclede?

15 MR. PENDERGAST: I make it a habit never to  
16 cross-examine Mr. Trippensee after 9 p.m.

17 THE WITNESS: You disappoint me.

18 JUDGE WOODRUFF: For AmerenUE?

19 MR. LOWERY: Maybe I should make the same  
20 habit, but I've got a few questions.

21 CROSS-EXAMINATION BY MR. LOWERY:

22 Q. Mr. Trippensee, good evening first of all.

23 A. I prefer good night, but --

24 Q. Well, good night. I'm sorry we made you  
25 stay here so long.



1           A.       That's okay.

2           Q.       It wasn't all my doing. The specific  
3 purpose of your testimony is, I think, and I quote, to  
4 respond to the policy implications contained in AmerenUE's  
5 direct testimony; is that correct?

6           A.       Yes, it is.

7           Q.       Am I correct that, in your view, the  
8 emergency standard as used historically by the Commission,  
9 and I think that's how you described it at page 3, lines  
10 15 to 16 of your testimony, that in your view -- your view  
11 is that an emergency standard can't be met unless the  
12 utility shows either that service quality is or will be  
13 impaired or that the financial integrity of the company  
14 will be impaired if the interim rate increase is not  
15 granted. That's what you mean by the emergency standard;  
16 is that right?

17          A.       Yes, it is.

18          Q.       Then am I correct that you were  
19 disappointed when the Commission denied OPC's motion to  
20 dispose of this interim rate request and when the  
21 Commission stated in its Order that its broad discretion  
22 regarding requests for interim rate changes does not  
23 require proof of the existence of the emergency?

24          A.       I was listening to the last part, focused  
25 in on the last part. Was I --

1           Q.       Were you disappointed when the Commission  
2     made that ruling?

3           A.       Yes.

4           Q.       And disagreed with your view of what's  
5     required?

6           A.       I believe it raised the potential for a  
7     change in the regulatory practices of this state which has  
8     served the ratepayers and the utilities well over the last  
9     60 years, the last 30 years I've been involved in it.

10          Q.       Mr. Trippensee, I understand that that's  
11     your view, but my question was whether you were  
12     disappointed, and think your answer was yes.

13                   Do you agree that the following is the  
14     basic ratemaking formula: that revenue requirement equal  
15     expenses plus depreciation plus taxes plus return? Is  
16     that a fair summary of the revenue requirement formula?

17          A.       Expenses, taxes --

18          Q.       Depreciation, plus return?

19          A.       I would agree that that is the revenue  
20     requirement formula, and I'm glad you brought it up.

21          Q.       All right. Would OPC favor a capital  
22     structure for AmerenUE composed of 100 percent debt?

23          A.       Since they're a publicly traded company,  
24     the answer to that would probably be no.

25          Q.       Does OPC agree that utility capital

1 structures should include a balance of debt and equity?

2 A. That provides maximum access to the capital  
3 structure at the lowest cost to the ratepayer, yes.

4 Q. Well, literally applied, since debt's  
5 cheaper than equity, I suppose a 100 percent capital  
6 structure with debt might very well be cheaper?

7 A. It would not provide access to the capital  
8 market.

9 Q. Fair enough. So the answer to my question  
10 is, you do agree that utility capital structures need to  
11 have a balance of debt and equity, because otherwise  
12 you're not going to have access to the capital markets; is  
13 that fair?

14 A. Yes.

15 Q. So utilities do need shareholders; is that  
16 true?

17 A. Investor-owned utilities need shareholders.  
18 Municipals do not.

19 Q. Well, at this Commission, in terms of rate  
20 regulation, we're talking about investor-owned utilities,  
21 are we not?

22 A. We are, so long as you define it as  
23 investor-owned, yes, but that is not the only model  
24 providing utility service in this country or this state.

25 Q. Fair enough. But in terms of the

1 Commission's rate-setting jurisdiction, that is the model  
2 we're dealing with here this evening, is it not?

3 A. That is correct.

4 Q. And the reason you need shareholders in the  
5 investor-owned utility world that's regulated by this  
6 Commission is because without shareholders utilities  
7 wouldn't have the equity that they need, correct?

8 A. They provide the equity capital, that is  
9 correct.

10 Q. And if there's no equity and then there's  
11 only one place to go for the huge sums of capital that  
12 utilities need to operate, and that would be the debt  
13 markets, right?

14 A. For an investor-owned?

15 Q. Assume all of my questions about utilities  
16 deal with investor-owned utilities of the type regulated  
17 by this Commission.

18 A. Well, but your assumption was if there was  
19 no stockholders, the only place to go would be the debt  
20 market, and I think we already reached the agreement that  
21 there has to be both, a balance. So your hypothetical was  
22 not reasonable for an investor-owned utility.

23 Q. Fair enough. So it's not reasonable for an  
24 investor-owned utility to only obtain capital from the  
25 debt markets? It needs both, right?

1           A.       Yes.

2           Q.       Now, the return component that you had  
3   agreed was part of the ratemaking formula, there's a cost  
4   of equity included in that return component right?

5           A.       There is a cost of equity, yes.

6           Q.       So it's not your testimony that the  
7   interests of shareholders don't matter in the ratemaking  
8   process for investor-owned utilities; is that fair?

9           A.       I believe that the Commission has to  
10   consider the access to capital and the interest of  
11   shareholders are part of obtaining cost of capital, and I  
12   do not believe that's the primary interest of this  
13   Commission in setting rates according to the courts in  
14   this state.

15          Q.       Are you a judge or a lawyer,  
16   Mr. Trippensee?

17          A.       I'm sure my counsel will address the  
18   Western District's findings on the Commission's role.

19          Q.       I'm sure he will, too, but are you  
20   qualified to give legal opinions? Is that your testimony?

21          A.       I did not say I was qualified to give legal  
22   opinions. I can quote it and you can give your own  
23   opinion on it.

24          Q.       I think you've already quoted it.

25          A.       I believe I have.

1           Q.       Would you agree that your office's job --  
2 office's job is to look out for the ratepaying public?

3           A.       Yes.

4           Q.       And for you, that usually means the lower  
5 the rates, the better?

6           A.       I believe I was principal architect of the  
7 Kansas City Power & Light alternative regulatory plan  
8 which, as was testified earlier today, resulted in  
9 increased rates over a traditional model, and we believe  
10 that was in the interest of the ratepayers. So no, I do  
11 not agree that our primary focus is lower rates.

12          Q.       Mr. Trippensee, would you have been in  
13 favor of the Kansas City Power & Light alternative  
14 regulation plan if over the long-term you believed it was  
15 going to lead to a higher net present value revenue  
16 requirement for KCPL's customers than without the plan?

17          A.       You qualified it with net present value,  
18 and ratepayers because of generational inequities, we're  
19 not -- I am not convinced nor do I believe that NPV is an  
20 appropriate measure in that scenario.

21                   Do I believe that the regulatory plan for  
22 KCPL will result in lower rates for the customers over the  
23 life of the asset that the plan was designed to help  
24 implement? Yes, I believe it will result in lower rates.

25          Q.       And that's why you were in favor of it

1 because you believe over the life of that plan it's going  
2 to result in lower rates, right?

3 A. It was the most cost-effective method. And  
4 when I say lower rates, while providing the investor of  
5 KCPL a market-based rate of return for the investment they  
6 made. I was not willing to transfer ratepayer money, to  
7 have ratepayers pay money to KCPL and not receive credit  
8 in the rate process for paying those monies.

9 Q. Now, Mr. Trippensee, you point to the  
10 true-up process in your testimony as a, quote, primary  
11 tool to address regulatory lag. Do you recall that?

12 A. Okay.

13 Q. Page 11 of your testimony, lines 10 to 11.

14 A. I want to make sure and look at my  
15 testimony because some of my language has been changed in  
16 responsive testimony by the company. Would you please  
17 refer me?

18 Q. Absolutely. Page 11, lines 10 to 11. You  
19 point to the true-up process as a primary tool to address  
20 regulatory lag. Is that what you said?

21 A. Excuse me while I read the entire answer.

22 Q. Certainly.

23 A. I believe my answer there is addressing a  
24 point that I believe could be inferred from the company's  
25 testimony.

1           Q.       Mr. Trippensee, let me try to get an answer  
2     to my question first, and then maybe we can talk about  
3     what you might want to talk about.

4                   Am I correct or am I incorrect that you  
5     said that a primary tool is the true-up in terms of you  
6     say ensuring relationship is reflective of current  
7     conditions, et cetera, am I incorrect in characterizing  
8     that as your -- as the true-up process being a primary  
9     tool to address regulatory lag? Am I incorrect in how I  
10    characterized that?

11                 MR. MILLS: Judge, I'm going to have to  
12    object. That's a compound question. He's asked three  
13    separate questions during the course of that. One was did  
14    you say it's a primary tool, one will you agree with this,  
15    and one am I reading that correctly. I'm going to have to  
16    object to the form of the question as being compound.

17                 JUDGE WOODRUFF: I'll sustain the objection  
18    as a compound question, if you'd simplify your question.

19                 MR. LOWERY: Sure.

20    BY MR. LOWERY:

21           Q.       Am I correct or incorrect that the point  
22    you are making is that the true-up -- is that the true-up  
23    is a primary tool in addressing regulatory lag?

24           A.       Mr. Lowery, I'm not trying to be  
25    argumentative with you here, but I have a concern



1 throughout this hearing today that we have two different  
2 terms of regulatory lag. So when you're asking me  
3 regulatory lag, would you -- I will be happy to answer  
4 your question, but will you please tell me your definition  
5 of regulatory lag?

6 Q. In this context I'm talking about the lag  
7 between the time, for example, that a piece of plant goes  
8 in service or a cost level is established and when that  
9 plant that went into service or that cost level is  
10 actually reflected in rates. Does that make sense?

11 A. Yes, it does, and I do not agree with that  
12 definition. Therein lies the problem.

13 Q. Fair enough. So you don't agree with that  
14 definition?

15 A. That's correct. Would you like me to  
16 provide the explanation?

17 Q. I'm sure Mr. Mills might ask you that, but  
18 that wasn't my question. Let me ask you this. Do you --  
19 you're aware that the true-up cutoff date in this case is  
20 slated to be January 31st, 2010, right?

21 A. I believe the company proposed February  
22 28th, and the parties after discussion which I can't go  
23 into agreed to January 31st.

24 Q. We all agreed to January 31st, right?

25 A. That is correct.

1           Q.       Will additions to plant in service that  
2     take place in February, in March, in April, in May, in  
3     June, will those be taken into account in the rates that  
4     are set in this rate case?

5           A.       Those activities along with any other  
6     activity occurred during that time will not be included in  
7     the expense, tax, depreciation, return calculation. That  
8     does not mean the earnings, the rate of return will be out  
9     of balance.

10          Q.       But none of those will be taken into  
11     account, correct?

12          A.       In your definition, they will not be taken  
13     into account.

14          Q.       Fair enough.

15          A.       In my definition and -- you do not know.

16          Q.       Now, you point to AFUDC, which stands for  
17     allowance for funds used during construction, right?

18     That's what that stands for, right?

19          A.       Yes, it does.

20          Q.       You point to that and you say it  
21     compensates stockholders for the cost of money necessary  
22     to finance projects prior to their being placed in  
23     service, and you say that on, I believe, page 12 lines 11  
24     to 13 of your testimony?

25          A.       That is correct.

1           Q.       Am I correct that AFUDC stops when new  
2   plant goes into service?

3           A.       That is correct.

4           Q.       So if on February 1, 2010, one day after  
5   the true-up cutoff date in this case, if a \$100 million of  
6   new plant goes into service and if rates set in this rate  
7   case -- in the rate case after this one don't take effect,  
8   let's say, for example, just as a hypothetical, until  
9   February 1, 2012, there's not going to be any AFUDC on  
10   that plant that went into service on February 1, 2010 from  
11   February 1, 2010 all the way up until February 1, 2012 in  
12   my hypothetical?

13          A.       On that isolated accounting issue, you are  
14   correct.

15          Q.       And there's not going to be any return on  
16   that plant during that period, correct?

17          A.       Return on that plant?

18          Q.       On that particular plant.

19          A.       On the financial records of the company  
20   reported to the SEC and the general public?

21          Q.       Will that plant be taken into account in  
22   calculating the return to the company?

23          A.       That's not the question I just posed back.

24          Q.       Well, that's the question I asked you.

25          A.       Okay. Repeat your question.

1           Q.       The plant that went into effect on  
2 February 1, 2010 will not have been taken into account in  
3 calculating the return in the rate case, this rate case  
4 that has a true-up cutoff date of January 31st, correct?

5           A.       It will not have been in the revenue  
6 requirement calculation in the rate case.

7           Q.       And it won't be in a revenue requirement  
8 calculation for a rate case until the next rate case,  
9 correct?

10          A.       That doesn't have any bearing if it earned  
11 a return or not, sir.

12          Q.       Can you just answer my question? It won't  
13 be in calculation --

14          A.       If there's not a rate case pending, it will  
15 not -- it cannot be taken into account in a revenue  
16 requirement calculation that sets rates.

17          Q.       Just so that the record's clear so we're  
18 not speaking over each other, plant that went into service  
19 in my example, that \$100 million of plant that went into  
20 service on February 1, 2010, is not going to be taken into  
21 account in setting rates until the rate case subsequent to  
22 the present rate case that we're in, correct?

23          A.       If you're -- the answer to your question is  
24 it will not be in this formula that you asked me initially  
25 about by this -- taken by this Commission in setting

1 rates.

2 Q. From this case?

3 A. From this case? Yes. That's what I -- I  
4 believe I just said.

5 Q. And presumably if it was prudently incurred  
6 investment, it would be in the formula from rates set in  
7 the rate case subsequent to this one, right?

8 A. In the determination of the rate then are  
9 then adequate for a rate of return that's appropriate at  
10 that point in time.

11 MR. LOWERY: No further questions, your  
12 Honor.

13 JUDGE WOODRUFF: All right. Come up for  
14 questions from the Bench. Commissioner Jarrett?

15 COMMISSIONER JARRETT: I don't have any  
16 questions.

17 JUDGE WOODRUFF: Commissioner Gunn?

18 COMMISSIONER GUNN: No.

19 JUDGE WOODRUFF: Commissioner Kenney?

20 COMMISSIONER KENNEY: No, thank you.

21 JUDGE WOODRUFF: Commissioner Davis, did  
22 you want in on this?

23 COMMISSIONER DAVIS: I did want in on this.

24 QUESTIONS BY COMMISSIONER DAVIS:

25 Q. Good evening, Mr. Trippensee. Did we ever

1 establish if you're a legal scholar or not?

2 A. I play one on TV, but other than that, no.

3 Q. All right. Page 4 of your rebuttal  
4 testimony, line 6 and 7, the primary purpose of regulation  
5 is to ensure that ratepayers should receive safe and  
6 adequate service at just and reasonable rates on a  
7 nondiscriminatory basis. You stand behind that statement?

8 A. Yes, I do.

9 Q. You think rates ought to be just and  
10 reasonable?

11 A. Yes, sir, I do.

12 COMMISSIONER DAVIS: No further questions,  
13 Judge. Thank you.

14 JUDGE WOODRUFF: All right. Anyone wish to  
15 recross based on that question?

16 MR. LOWERY: No, thank you.

17 JUDGE WOODRUFF: Any redirect?

18 MR. MILLS: Just a few. Thank you.

19 REDIRECT EXAMINATION BY MR. MILLS:

20 Q. Mr. Trippensee, can you explain the revenue  
21 requirement formula and how it is to be implemented?

22 A. The revenue requirement formula in this --  
23 I'll try to keep this as short as possible, but it's --  
24 the regulatory theory that operates in this state or in  
25 any other state or in any other literature, including

1 court cases, which I would assume you will discuss, is  
2 based on rate of return regulation.

3 I think Mr. Byrne in his opening talked  
4 about the company has not recovered one cent on the  
5 investments on which they're calculating this 36 -- 37.3  
6 or \$36.8 million number. Unfortunately, I think that's --  
7 Mr. Weiss also addressed they were not collecting deprec--  
8 recovering depreciation, recovering income taxes.  
9 Mr. Baxter in his testimony, surrebuttal testimony to my  
10 testimony said that they were not recovering their costs.

11 The problem is it's called cost of service,  
12 not expense of service. Income taxes on the plant, on the  
13 earnings on plant, which is the only way a utility can  
14 have income taxes is to have earnings. The depreciation  
15 is all built into their expenses each and every year on  
16 which they report their earnings. When plant is in  
17 service, it is part of the investment on which they record  
18 their earnings and pay their taxes.

19 The depreciation, it's all in the rates.  
20 It comes back to the rate of -- to the revenue requirement  
21 calculation, which is the same -- if you take off the  
22 return is the same as their financial statement. Revenue  
23 equals expenses plus taxes plus depreciation, except in  
24 financial reporting it's minus those three items, not  
25 equals.

1                   When this Commission sets rates, they set  
2 revenues equal to the three expenses, operating expenses,  
3 income taxes and depreciation, and they add a fourth  
4 component to set rates called return. And I don't want --  
5 the Commission should not get confused between return on  
6 equity, which has that cost, and interest expense, because  
7 interest expense, it's form over substance. We put it in  
8 the capital structure, but it is truly an operating  
9 expense to the company.

10                   My understanding of rate of return  
11 regulation, I've read Hope and Bluefield off and on  
12 numerous times. It doesn't talk about cost recovery. It  
13 talks about access to capital, return on equity. That  
14 return, I can change every component in the revenue, I can  
15 change components in the expenses, I can change components  
16 in the taxes, in the depreciation, the depreciation based  
17 on the investment today, not two years ago or five years  
18 ago, and come back to the same rate of return.

19                   When this Commission sets rates, they make  
20 the determination whether the rate of return differential  
21 is such that it generates the need for more revenue. It  
22 is a very dynamic interrelated process, but you do not  
23 pull out or should not pull out one expense, one  
24 investment that generates depreciation or an income tax  
25 item and say, oh, this has changed the entire



1 relationship. You have to look at the return. By the  
2 way, that's what the investor looks at. The investor  
3 looks at the return. They don't look at the expenses.

4 I think Mr. Murray testified that we've  
5 given -- he's frustrated. Missouri's provided a fuel  
6 adjustment clause. That's 30 to 40 percent of an electric  
7 utility's bill. We haven't gotten any upgrades because of  
8 it. They look at the return. They look at the cash  
9 that's generated, and that is -- the return is the key  
10 component. Individual items don't make any difference in  
11 whether or not the return is adequate or not.

12 Q. Now, you had some discussion with  
13 Mr. Lowery about investor-owned utilities and shareholders  
14 and access to markets. Is it possible for an  
15 investor-owned utility to even exist without investor  
16 owners?

17 A. I think that would be impossible.

18 Q. Okay. Could you please explain why you  
19 disagree with Mr. Lowery's definition of regulatory lag?

20 A. Regulatory lag is from the time that  
21 balance between expenses, taxes and depreciation and  
22 revenues does not result in a rate of return that is equal  
23 to current market conditions and the time that rates are  
24 adjusted so that the return on an annual basis, as  
25 Mr. Gorman talked about earlier, will result in a --

1 revenues will result in a return that is equal, that  
2 delay.

3                   It's not the delay of a specific investment  
4 or a specific change in expense, because I haven't looked  
5 at all relevant factors. All relevant factors are the  
6 income statement that goes into producing this and the  
7 components of the balance sheet that go into producing the  
8 rate base.

9                   Q.       Now, with respect to another of  
10 Mr. Lowery's hypotheticals, would a utility time its rate  
11 cases to allow a \$100 million plant not to be captured in  
12 rate base for two years?

13                  A.       If they were earning adequate rate of  
14 return, they would have no reason to come in. I think we  
15 have examples of that with some utilities in this state.

16                   MR. MILLS: That's all the questions I  
17 have.

18                   JUDGE WOODRUFF: All right. Thank you,  
19 Mr. Trippensee. You can step down.

20                   THE WITNESS: Thank you.

21                   JUDGE WOODRUFF: I believe that's all the  
22 evidence for tonight.

23                   MS. VUYLSTEKE: I have one exhibit I  
24 neglected to introduce earlier. Should I do that now?

25                   JUDGE WOODRUFF: Come up to the microphone

1     so I can hear you better.  What exhibit do you have?

2                   MS. VUYLSTEKE:  It's just the proxy  
3     statement that I had shown Mr. Baxter earlier.  I just  
4     want to basically introduce it into the record.  It's a  
5     public document.

6                   JUDGE WOODRUFF:  It's Exhibit Y then.

7                   MS. VUYLSTEKE:  Exhibit Y.

8                   JUDGE WOODRUFF:  It's proxy statement?

9                   MS. VUYLSTEKE:  Correct.

10                  JUDGE WOODRUFF:  We'll ask if anybody has  
11     any objection to the admission of Exhibit Y?

12                  MR. LOWERY:  We have no objection, your  
13     Honor.

14                  MS. VUYLSTEKE:  Then I would move to have  
15     it admitted into record.

16                  JUDGE WOODRUFF:  Hearing no objections,  
17     Exhibit Y is admitted into the record.

18                  (EXHIBIT Y WAS MARKED AND RECEIVED INTO  
19     EVIDENCE.)

20                  JUDGE WOODRUFF:  Okay.  I believe that's  
21     all the testimony and the evidence in this case.  We've  
22     already indicated that -- can we have order in the room,  
23     please?

24                  That's all the evidence for tonight.  I  
25     believe -- Mr. Byrne?

1                   MR. BYRNE: Real quick on the Dexter  
2 situation. I just talked to Mr. Mills. Here's what we  
3 propose to do. Take out an ad in the Dexter paper with  
4 the corrected address, post something on the door of the  
5 wrong address telling them where to go, and maybe  
6 Commission issue a press release saying we got the address  
7 wrong.

8                   JUDGE WOODRUFF: That certainly sounds  
9 acceptable to me.

10                  MR. PENDERGAST: When that happened to us,  
11 we actually had somebody stand at the wrong place.

12                  MR. BYRNE: I would support somebody from  
13 the Staff standing at the wrong place. I did not make the  
14 mistake.

15                  JUDGE WOODRUFF: All right. So that we're  
16 clear on the record what's going to happen, what I'm going  
17 to do tomorrow hopefully is get an Order out correcting  
18 the mistake, and I'm going to ask the parties for any  
19 suggestions on how to deal with that. Then we'll let  
20 Ameren file that as a response to that. If anybody  
21 else -- because there are parties who aren't here tonight.  
22 Then they can give a response to that.

23                  MR. BYRNE: Anybody that doesn't stay 'til  
24 9:15 waives the right to object.

25                  JUDGE WOODRUFF: That sounds reasonable to

1 me.

2 MR. DOTTHEIM: Judge, could you put in your  
3 Order that Mr. Byrne volunteered Mr. Baxter to stand at  
4 the door to direct people to the proper location?

5 MR. LOWERY: Had he done that, he won't be  
6 employed tomorrow, I'm afraid.

7 MR. MILLS: Judge, I think you can set a  
8 fairly fast time for response. I think you can probably  
9 set just one response time. I think many of us will  
10 probably join in having a joint response to how we think  
11 the situation should be resolved.

12 JUDGE WOODRUFF: Okay. I'm making a note  
13 to myself because I may not remember in the morning  
14 otherwise. All right. I think I've got that.

15 I was going to say the Briefs are going to  
16 be due on the 21st. I'm going to ask the court reporter  
17 to expedite the transcript so we can have it on Thursday  
18 of this week. That would be the 10th. Sound reasonable  
19 to everybody, other than the court reporter? I'm sorry.

20 All right. Anything else?

21 MR. LOWERY: We appreciate the  
22 Commissioners' time. Close the record with that.

23 JUDGE WOODRUFF: And we are adjourned at  
24 9:30. Thank you.

25

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23	EXHIBIT L-NP/HC		
24	Surrebuttal Testimony on Interim Rates		
	Of Stephen M. Rackers	199	585



1	EXHIBIT M		
2	Rebuttal Testimony on Interim Rates of		
	David Murray	199	571
3	EXHIBIT N		
4	Rebuttal Testimony on Interim Rates of		
	Russell W. Trippensee	199	606
5	EXHIBIT O		
6	Direct Testimony on Interim Rates of		
	Glenn W. Buck	199	551
7	EXHIBIT P		
8	Surrebuttal Testimony on Interim Rates		
	Of Glenn W. Buck	199	551
9	EXHIBIT Q		
10	Direct Testimony on Interim Rates of		
	Michael Gorman	199	506
11	EXHIBIT R		
12	Rebuttal Testimony on Interim Rates of		
	Michael Gorman	199	506
13	EXHIBIT S		
14	Surrebuttal Testimony on Interim Rates		
	Of Michael Gorman	199	506
15	EXHIBIT T		
16	Amerenlines September 2007	341	353
17	EXHIBIT U		
	Amerenlines January 2008	341	353
18	EXHIBIT V		
19	Power On Program FAQs	341	353
20	EXHIBIT W		
	Data Request 261	573	579
21	EXHIBIT X		
22	Moody's Investor Services May 21, 2008	575	579
23	EXHIBIT Y		
	SEC Proxy Statement	625	625
24			
25			

## 1 C E R T I F I C A T E

2 STATE OF MISSOURI )  
3 COUNTY OF COLE ) ss.

4 I, Kellene K. Feddersen, Certified  
5 Shorthand Reporter with the firm of Midwest Litigation  
6 Services, do hereby certify that I was personally present  
7 at the proceedings had in the above-entitled cause at the  
8 time and place set forth in the caption sheet thereof;  
9 that I then and there took down in Stenotype the  
10 proceedings had; and that the foregoing is a full, true  
11 and correct transcript of such Stenotype notes so made at  
12 such time and place.

13 Given at my office in the City of  
14 Jefferson, County of Cole, State of Missouri.

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16 Kellene K. Feddersen, RPR, CSR, CCR

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