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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

March 21, 2007
Jefferson City, Missouri
Volume 27

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

MORRIS L. WOODRUFF, Presiding,
SENIOR REGULATORY LAW JUDGE.

JEFF DAVIS, Chairman,
CONNIE MURRAY,
STEVE GAW,
ROBERT M. CLAYTON,
LINWARD "LIN" APPLING,
COMMISSIONERS.

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR, CCR
MIDWEST LITIGATION SERVICES

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

2 (EXHIBIT NOS. 112 THROUGH 115 WERE MARKED
3 FOR IDENTIFICATION BY THE REPORTER.)

4 JUDGE WOODRUFF: Welcome back to the
5 hearing in the Ameren rate case. Let's begin this morning
6 with some exhibits that were just passed out. Mr. Byrne,
7 did you want to explain what has happened?

8 MR. BYRNE: Yes, your Honor. We provided
9 some exhibits in response to questions from the Bench to
10 Mr. Baxter, and specifically Exhibit 112 is earned ROEs
11 for AmerenUE over a historic period. I don't have it in
12 front of me, but it's over a historic period for both the
13 unregulated and regulated total company and just the
14 regulated portion. So that's Exhibit 112.

15 Exhibit 113 is the history of rating
16 agencies' ratings again over a period of years for
17 AmerenUE. 114 is some definitions that apply to
18 Exhibit 113, and then 115 is -- let's see, what is that?
19 That's the Energy Delivery Scorecard for 2006.

20 JUDGE WOODRUFF: I assume you want to offer
21 those at this time?

22 MR. BYRNE: Yes, your Honor, I would.

23 JUDGE WOODRUFF: All right. 112, 113, 114
24 and 115 have been offered into evidence. Are there any
25 objections to their receipt?

1 (No response.)

2 JUDGE WOODRUFF: Hearing none, they will be
3 received into evidence.

4 (EXHIBIT NOS. 112, 113, 114 AND 115 WERE
5 RECEIVED INTO EVIDENCE.)

6 JUDGE WOODRUFF: And when we left off last
7 night, Mr. Naslund was on the stand. Yes, Mr. Dottheim?

8 MR. DOTTHEIM: Judge Woodruff, yesterday
9 Commissioner Gaw had marked as exhibits the EEI
10 application and Commission's Report and Order in the
11 original EEI case, 12,000 -- I think it may be 064 --

12 JUDGE WOODRUFF: That sounds right.

13 MR. DOTTHEIM: -- if my memory serves me,
14 which is an unreported case.

15 There was a second case in the early '50s
16 which is unreported, where EEInc came in for -- or I
17 should say Union Electric Company came in for authority
18 from the Commission to acquire EEInc stock. And for
19 completeness of the record, since that is also an
20 unreported case, I've had copies made of the application
21 in Case No. 12,463 and the Commission's Report and Order
22 in 12,463, and would like to request that they be marked
23 as exhibits. They are both from the Commission's
24 microfilm.

25 For the most part, they're pretty good

1 copies. The first page of the Report and Order leaves
2 something to be desired. If I may be able to get a better
3 copy, I will try to provide a better copy of the first
4 page because there are a couple of words that are almost
5 obliterated. But for completeness of the record, I
6 thought again because both -- because that case is
7 unreported, that I would make copies and suggest that they
8 be marked as exhibits.

9 JUDGE WOODRUFF: That's fine. Do you want
10 to make them as separate exhibits, the two orders?

11 MR. DOTTHEIM: It's the application.

12 JUDGE WOODRUFF: And the Report and Order?

13 MR. DOTTHEIM: And the Report and Order.

14 JUDGE WOODRUFF: Let's go ahead and make
15 them as separate exhibits. I'll mark them so it can be
16 used in sequence with the other ones, so it will be 973
17 and 974.

18 MR. DOTTHEIM: So 973 would be the Union
19 Electric Company application in Case No. 12,463 for
20 authorization to acquire additional shares of capital
21 stock of Electric Energy, Inc. And 974 would be the
22 Commission's Report and Order in Case No. 12,463.

23 (EXHIBIT NOS. 973 AND 974 WERE MARKED FOR
24 IDENTIFICATION BY THE REPORTER.)

25 JUDGE WOODRUFF: And I assume you wish to

1 offer these exhibits?

2 MR. DOTTHEIM: Yes. I'd like to offer
3 Exhibits 973 and 974.

4 JUDGE WOODRUFF: All right. Exhibits 973
5 and 974 have been offered. Are there any objections to
6 their receipt?

7 MR. CYNKAR: No objection.

8 JUDGE WOODRUFF: Hearing none, they will be
9 received into evidence.

10 (EXHIBIT NOS. 973 AND 974 WERE RECEIVED
11 INTO EVIDENCE.)

12 JUDGE WOODRUFF: When we left off last
13 night, Mr. Naslund was on the stand. My intention is
14 to complete him as soon as possible, and then we'll move
15 to -- I believe Mr. Higgins will be the next witness.
16 After that, I wanted to ask if -- we've still got several
17 other witnesses on for Electric Energy, Inc. I know two
18 of those witnesses are for Staff and one is from OPC, so I
19 assume they'll still be here. What's the situation with
20 Mr. Brosch?

21 MR. MICHEEL: If we could get him on, that
22 would be good.

23 JUDGE WOODRUFF: We need to get him out
24 today?

25 MR. MICHEEL: If we can.

1 JUDGE WOODRUFF: I'm thinking we may want
2 to try and skip some of the other -- or skip over the
3 other EEInc witnesses and get into the ROE because we've
4 got outside experts who are here for limited times on
5 those.

6 MR. CYNKAR: My only thought, your Honor,
7 is that actually I think the EEInc witnesses will go
8 relatively quickly. We certainly don't have hours and
9 hours of cross-examination. I think this will move fairly
10 well today.

11 JUDGE WOODRUFF: We'll see how it goes.

12 MR. CYNKAR: Just wanted to let you know.

13 MR. MILLS: And we did -- I had discussions
14 last night with all or I think most of the attorneys who
15 have been doing most of the cross, and I think it's the
16 general consensus -- and, of course, I'm not speaking for
17 them, I don't want to put words in their mouth, but it was
18 the general consensus that all of the cost of capital
19 witnesses are smarter than we are, they've been doing it
20 so many years, and we're not likely to come up with any
21 questions that are going to make them cry. So we're
22 probably not going to spend hours and hours with any of
23 the ROE witnesses either.

24 JUDGE WOODRUFF: Okay. Good.

25 MR. CYNKAR: On behalf of Mr. Micheel,

1 however, I would say that he might make them cry.

2 JUDGE WOODRUFF: We will be watching for
3 that. Okay. Let's go ahead then with continuing cross of
4 Mr. Naslund.

5 CHARLES NASLUND testified as follows:

6 CROSS-EXAMINATION (CONT.) BY MR. MILLS:

7 Q. Mr. Naslund, do you remember where we were
8 last night?

9 A. No.

10 Q. Okay. If I recall correctly, we were
11 having some discussion about the team that was initially
12 recommended in the meeting held January 23rd -- 28th,
13 2005. Do you have the copies of the meeting minutes from
14 the EEInc board with you?

15 A. No, I do not.

16 Q. Can your counsel provide you a copy of
17 that?

18 A. Which meeting minutes are they?

19 Q. The ones I'm talking about specifically now
20 are the January 28th, and I'm going to refer to several of
21 them.

22 MR. CYNKAR: I don't know if we have them
23 here. I'll see if we do.

24 BY MR. MILLS:

25 Q. Mr. Naslund, what I've just handed you is

1 Exhibit 431, which has been admitted into the record in
2 the case, and it consists of a series of board of director
3 meeting minutes beginning with 2003 and continuing through
4 2006. Each of the sets of minutes are numbered as they
5 were originally, but the entire exhibit has been numbered
6 sequentially, just so it's easier to find our way through.
7 I'll refer to the numbers that have been added.

8 So I'm looking now at page 39. Does that
9 appear to be the beginning of the minutes from the
10 January 28th meeting?

11 A. Yes, it is.

12 Q. And then on the third page of that, those
13 minutes, which is page 41 of the exhibit, the fourth full
14 paragraph on the page that talks about Mr. Powers brought
15 up for discussion the matter of a power supply agreement
16 beginning in 2006, do you see that paragraph?

17 A. Yes, I do.

18 Q. Is that where Mr. Powers recommends that a
19 team be formed?

20 A. Yes, it is.

21 Q. And did he recommend that a member of each
22 sponsor appoint a representative from their company to the
23 team?

24 A. Yes, he did.

25 Q. And I'm not sure if we got quite this far

1 last night. Do you recall whether a member from UE, a
2 representative from UE had been appointed to that team?

3 A. Not a member from AmerenUE, no.

4 Q. Okay. Now, do you understand in this
5 paragraph the way that the word sponsor is used?

6 A. Sponsor would be one of the shareholders.

7 Q. Is UE a shareholder?

8 A. Yes, they are.

9 Q. So why was not a representative from UE, as
10 a sponsor and a shareholder, appointed to that team?

11 A. In our company, we have service companies
12 that provide services for us, and at that particular point
13 in time, Ameren Energy and Ameren Energy Marketing were
14 companies basically representing AmerenUE in the marketing
15 and sales area of the business and they were the experts
16 in the market, and as I look at the -- at the Data
17 Requests that you provided me a copy of last night, there
18 are members on that team from Ameren Energy and Ameren
19 Energy Marketing, which were our experts and were the
20 representatives of AmerenUE on this team.

21 Q. Who on that team is from Ameren Energy?

22 A. We have Andy Serri and Don Gully.

23 Q. Aren't those two people from Ameren Energy
24 Marketing?

25 A. They're from Ameren Energy Marketing, which

1 basically Andy Serri was over all of Ameren Energy, which
2 included Ameren Energy and Ameren Energy Marketing, both
3 organizations.

4 Q. So it's your understanding that Ameren
5 Energy is a subsidiary of Ameren Energy Marketing and they
6 all report to Andy Serri?

7 A. At the time this occurred, Andy Serri was
8 president of Ameren Energy and Ameren Energy Marketing,
9 both companies.

10 Q. Do those companies have the same role?

11 A. The Ameren Energy portion of that company
12 basically represented AmerenUE in the marketing sales
13 area. The Ameren Energy Marketing arm of that group
14 basically was the Aries marketer in the state of Illinois.

15 Q. Now, we're talking about January, the end
16 of January 2005?

17 A. That's correct.

18 Q. Okay. And at that point Mr. Serri was the
19 president of both Ameren Energy and Ameren Energy
20 Marketing?

21 A. That's correct.

22 Q. And as a result, you believe that he
23 adequately represented UE's interest as a shareholder in
24 EEInc on this team that was formed to investigate a power
25 supply agreement?

1 A. Yes.

2 Q. Okay. And as a result of the work of that
3 team, was Ameren Energy Marketing ultimately contracted
4 with as the marketer for EEInc?

5 A. Our staff, our officer staff at EEI brought
6 to the board meeting later that year a draft power supply
7 agreement basically for review and approval by the board
8 of directors, and ultimately their recommendation was to
9 go with Ameren Energy Marketing for that service.

10 Q. Okay. Let's flip ahead to another meeting
11 held subsequent to the January 28th meeting, and the
12 meeting minutes for this one begin on page 45 of the
13 exhibit. Does this appear to be the minutes of the
14 meeting of the board of directors held May 13th, 2005?

15 A. Yes, it is.

16 Q. And on the third page of that set of
17 minutes, which is page 47 of the exhibit, the -- not the
18 last paragraph but the last big paragraph in there, is it
19 the final sentence in that paragraph that it was the sense
20 of the board that the PSA negotiating team be directed to
21 develop a new PSA for the company, considering
22 market-based pricing as the market is now defined using
23 indices that power prices could be tied to for board
24 consideration in its next meeting? Do you see that
25 section?

1 A. Yes, I do.

2 Q. Is that negoti-- PSA negotiating team the
3 one that we referred to earlier that Mr. Powers
4 recommended back in January?

5 A. This team at this point I believe is just
6 the Joppa members on that team. Basically, they had
7 drafted a PSA. They brought it to the board, and that
8 PSA, this was guidance to them on, you know, how to treat
9 market price in that PSA.

10 Q. And I think we talked about this a little
11 bit last night. As far as you can recall, that first team
12 that we talked about that was to have had sponsors from --
13 have representatives from each sponsor, you never heard
14 anything back from them that you can recall?

15 A. Not directly to the board. Again, that
16 team was working with the Joppa staff down at the working
17 level, not at a board level. All the board saw was the
18 product that was brought forth by the officer of EEI.

19 Q. But you think that the first team that we
20 talked about, the members of whom are identified in this
21 DR, was working with the Joppa staff --

22 A. That's correct.

23 Q. -- to come up with a power supply
24 agreement?

25 A. Yes.

1 Q. And are there any representatives from UE
2 on the people that you call the Joppa staff?

3 A. No. The people I refer to on the Joppa
4 staff are all EEI employees.

5 Q. So other than Mr. Serri, who was president
6 at the time of Ameren Energy, there was no other Union
7 Electric representative involved in coming up with a power
8 supply agreement; is that correct?

9 A. That is correct.

10 Q. Okay. And now who does Andy Serri work for
11 currently?

12 A. Andy Serri, let's see, as of January, he
13 now reports up to Mr. Allen Kelly.

14 Q. And who does Mr. Allen Kelly work for?

15 A. Mr. Allen Kelly reports to Mr. Gary
16 Rainwater, president and CEO of Ameren.

17 Q. And what entity is Mr. Allen Kelly in
18 charge of?

19 A. Mr. Kelly is president and CEO of Ameren
20 Energy Marketing company.

21 Q. Okay. And Ameren Energy Resource Company
22 has as a subsidy both AMS and AEM; is that correct?

23 A. That company has AEG, Ameren Energy
24 Generating and Ameren Energy Marketing, AEM.

25 Q. Now, with respect to the power supply

1 agreement that was ultimately voted on by the board, do
2 you know what EEInc will make in terms of profits from
3 that power supply agreement over the next 15 years?

4 A. I haven't multiplied it out over 15 years.
5 I can tell you the forecast for 2007 will be revenues
6 around \$400 million.

7 Q. I'm not asking about forecasts. I'm
8 asking if you know what the revenues will be for the next
9 15 years?

10 A. Well, again, we're talking about
11 \$400 million.

12 Q. No, I'm not talking about \$400 million.
13 You're talking about forecasts. I'm talking about, do you
14 know what the revenues from that agreement will be for the
15 next 15 years?

16 A. Let me try again. The actual revenues
17 using that service during 2006 --

18 Q. Okay. Mr. Naslund, I have to interrupt
19 you. Do you understand my question? My question is a yes
20 or no question. Do you know what the revenues from that
21 agreement will be for the next 15 years?

22 A. Not without sitting down and doing a bunch
23 of math, no.

24 Q. How would you do that math? Do you know
25 what the market prices will be 12 years from now?

1 A. No, I do not.

2 Q. Would you need to know that to know what
3 the revenues from this agreement will be for 15 years?

4 A. If you were going to calculate it out
5 15 years, that's correct.

6 Q. Okay. And does anyone know what the market
7 prices will be for the next 15 years?

8 A. No, they do not.

9 Q. Okay. So the exact value of this agreement
10 is at this time unknown; is that correct?

11 A. That's correct.

12 Q. Okay. If EEI had instead chosen to enter
13 into an agreement somewhat similar to the power supply
14 agreements that it had in the past in which they were
15 essentially set forth as cost-plus agreements -- are you
16 familiar with the term cost plus?

17 A. Yes, sir.

18 Q. -- for a 15-year term, if you had entered
19 into a 15-year term cost-plus agreement, would you have
20 been able to know with certainty what the revenues would
21 be over the next 15 years?

22 A. Yes, we would.

23 Q. Now, when you were evaluating the power
24 supply agreement that you eventually entered into, what
25 likelihood did you assign to the possibility of a carbon

1 tax being imposed in the next five years?

2 A. There was no assignment of carbon tax.

3 Q. Okay. So the agreement you entered into is
4 essentially based on the assumption that there will be no
5 carbon taxes within the term of that agreement?

6 A. Carbon tax was not a consideration in that
7 agreement.

8 Q. Was it a consideration in your
9 consideration of the agreement?

10 A. No, it was not.

11 Q. Did the board discuss that possibility?

12 A. No, it was not discussed.

13 Q. If, in fact, during the term of that
14 agreement there is some tax on carbon emissions from power
15 plants, will that -- would you expect that to reduce the
16 profitability of the Joppa plant?

17 A. No, I would not.

18 Q. Why is that?

19 A. Because I believe that, based on the
20 majority of the power in the United States being generated
21 by fossil fuel, that any carbon tax will uplift the entire
22 market price of any generation in the market across the
23 board, across the United States, and basically will raise
24 the market price in the U.S. to offset any carbon tax that
25 will exist.

1 Q. What is the percentage in the midwest,
2 first, if you know it, of coal generation?

3 A. The percentage of coal generation is
4 approximately 80 percent.

5 Q. Okay. Does that mean that there's roughly
6 20 percent that will be less impacted by a carbon tax?

7 A. Yes, it will.

8 Q. But, nonetheless, it's your testimony that
9 you believe that a carbon tax will simply be passed
10 through in market prices?

11 A. Yes, it is.

12 Q. 100 percent, not the 80 percent?

13 A. I believe it will all be passed through,
14 yes.

15 Q. Did you assign any likelihood to the
16 possibility that you may be wrong about that assessment?

17 A. No, I did not.

18 Q. Now, in response to one of Mr. Dottheim's
19 questions, and I believe it was one of his very first ones
20 yesterday, I believe you -- I won't say quibbled with, but
21 you had some concerns over the designation of you as a UE
22 representative to the EEInc board; is that correct?

23 A. That is correct.

24 Q. And when and how did you develop that
25 sensitivity to the term representative?

1 A. That term I think in a legal sense may be
2 different than in an ordinary conversational sense. Let
3 me explain what I mean by that.

4 Q. Let me get you to answer my question. If
5 Mr. Cynkar wants you to explain, he can. When and how did
6 you develop that sensitivity to that term?

7 A. I have to go back to originally coming on
8 the board, and yesterday I mentioned that Mr. Kelly, our
9 chairman of the board, basically covered our fiduciary
10 duties as being board members. And then also during the
11 last seven years of being on the board at various
12 occasions, especially when voting on the issues, Mr. Kelly
13 was very good at always reminding the board members of
14 those duties.

15 Most notably would be in the special
16 meeting that occurred in September 8th, 2005. If you look
17 at those meeting minutes, there's actually a very lengthy
18 documentation of Mr. Kelly's guidance to the board members
19 on our fiduciary duties. And I think this is a good
20 example of how during the course of my tenure on the
21 board, that Mr. Kelly has reinforced those
22 responsibilities.

23 Q. Okay. So it's your testimony that because
24 of discussions you had, going as far back as when you
25 first got on the board and reinforced by Mr. Kelly's

1 discussions in 2005, you've become sensitive to the word
2 representative?

3 A. Yes, sir.

4 Q. Okay. I want to come back to that, but you
5 said something that intrigued me. Mr. Kelly in that
6 lengthy discussion of fiduciary duties, did he do -- was
7 that discussion effective in reinforcing in your mind what
8 your fiduciary duties were?

9 A. I believe it was very effective. I was
10 actually somewhat disappointed that it wasn't effective
11 with the KU directors on the board.

12 Q. And as a result of that discussion, you
13 voted ultimately to allow the cost-plus contract that
14 benefited UE for many years to expire and instead to go
15 into a marketing arrangement with Mr. Kelly's firm, AEM;
16 is that correct?

17 A. No, that's not correct. The cost-based
18 contracts for -- that was in place expired by contract on
19 December 31st, 2005. What I voted for was to move forward
20 with Joppa plant in the best interests of the plant with
21 market-based rates in the future.

22 Q. Marketed by AEM?

23 A. At that point, during that initial vote,
24 AEM was not in the picture.

25 Q. Okay. Who was in the picture?

1 A. At that point, our direction was to pursue
2 market rate based contracts, and AEM came along later
3 during that.

4 Q. Was there a different marketer in the
5 picture at that time?

6 A. No, there was not.

7 Q. Has there ever been a marketer other than
8 AEM in the picture?

9 A. No, there has not been.

10 Q. Now, let's go back to the term
11 representative. It's your testimony, I believe, that
12 you've been sensitive to that term since you began on the
13 board?

14 A. That's correct.

15 Q. Why were you not sensitive to it during
16 your deposition?

17 A. During my deposition, in the questioning,
18 and I've looked at my deposition, when I was asked about
19 that, I was thinking in terms of basically I come to a
20 meeting, I'm from AmerenUE company, and socially in that
21 meeting the members say, oh, you're from AmerenUE. And
22 that has a representative connotation with it, not a legal
23 connotation.

24 When I go to the board meeting, I take off
25 my AmerenUE hat and I put my board director hat on. And

1 so I think it's a use of the term and a legal
2 interpretation versus what is socially used in
3 discussions.

4 Q. Was your deposition a social occasion?

5 A. No, it was not.

6 Q. Well, my question is, we referred to you as
7 a representative and you referred to yourself as a
8 representative on 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,
9 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26,
10 27, approximately 28 times in your deposition without
11 objection. Mr. Dottheim referred to it once yesterday and
12 you jumped all over him. How did that change?

13 A. Again, reading my deposition and looking
14 back at how it was trying to be used legally, I concluded
15 that basically I was not answering the questions in the
16 sense that they were being asked.

17 Q. Okay. And when you yourself used the term
18 AmerenUE representative, what was going on there?

19 A. Again, I work for AmerenUE. I come to the
20 board meetings, but that has nothing to do with when I'm
21 acting as a director, I take the one hat off and I put the
22 other hat on.

23 Q. Well, I -- Mr. Naslund, I made an effort
24 not to ask Mr. Moehn about turbines the other day, and I
25 will do my best not to ask you about hats today. If we

1 can keep that out of here, I think we'll all be in better
2 shape.

3 Now, as a board member, if you knew that a
4 majority of the shareholders wanted the company to take a
5 certain action, would you have a duty to vote on, to vote
6 in favor of that action?

7 A. As a director, my responsibility is to
8 ultimately look after the health and financial well-being
9 of EEI.

10 Q. And so my question was, if you knew that
11 the majority of the shareholders thought that a certain
12 action would be in the best interests of EEI, would it be
13 your duty to vote in favor of that action?

14 A. I think my answer to that's no, because as
15 a director I have to look at specifically the needs of EEI
16 in this case and make my own judgment as a director as to
17 how I'm going to vote.

18 Q. Even if, in my hypothetical, that would run
19 counter to the majority of the owners of the company?

20 A. That's correct.

21 Q. Now, in the board of directors meeting, the
22 minutes of the board of directors meeting held
23 September 8th, 2005, which begins on page 54 of
24 Exhibit 431, I'm going to ask you about question about the
25 second page of those minutes, and the last sentence in the

1 first partial paragraph at the top of that page refers to
2 Mr. Thompson. Do you remember who Mr. Thompson is or was?

3 A. Yes, I do.

4 Q. And who is he?

5 A. He is a director on our board.

6 Q. And for what company does he work when he
7 is not at the board?

8 A. His other hat is with Kentucky Utilities
9 LGE.

10 Q. Okay. Now, there he -- Mr. Thompson, the
11 minutes reflect, made a comment that he believes there are
12 several other factors including risk that the directors
13 should bear in mind when making decisions. Do you recall
14 that discussion?

15 A. Yes, I do.

16 Q. Okay. What sort of risk was Mr. Thompson
17 talking about?

18 A. The risk he was talking about there was
19 market depth and market price and where those would go in
20 the future.

21 Q. Now, Mr. Thompson shows up again on the
22 next page, again in the final sentence of the first
23 partial paragraph, and there the minutes reflect that
24 Mr. Thompson expressed his belief that tradeoffs between
25 value to shareholders and value to ratepayers were

1 inherent in determining maximum value to shareholders; is
2 that correct?

3 A. That's what that sentence says, yes.

4 Q. Do you disagree with that?

5 A. Yes, I do. I think my duty as a director
6 of EEI is to look after the fiscal health of that
7 organization. That's my primary function in life. And
8 as I stated in my deposition, that comes in looking at
9 three -- three specific things: One and firstmost is the
10 benefit and the health of the employees that work at the
11 facility, that they receive fair wage and fair benefits;
12 two, that the asset is looked after and is basically
13 protected and kept as a healthy asset; and then finally,
14 that the financials of the company are healthy and that we
15 try to maximize the profitability of that facility.

16 Q. And ratepayers just don't even enter into
17 the picture?

18 A. No, they do not, not from that perspective.

19 MR. MILLS: No further questions.

20 JUDGE WOODRUFF: Does anyone else wish to
21 cross this witness?

22 MR. CYNKAR: One question, your Honor.

23 CROSS-EXAMINATION BY MR. CYNKAR:

24 Q. Mr. Naslund, you've already been asked
25 about your deposition, so you obviously recall your

1 deposition, correct?

2 A. Yes, I do.

3 Q. Okay. Now, do you recall that you were
4 asked a question about whether UE has received regular
5 dividends from EEInc?

6 A. Yes, I do.

7 Q. And you said since you've been on the board
8 they have. Do you remember that?

9 A. Yes, that's what I said.

10 Q. Was that correct?

11 A. No, it was not.

12 Q. What is the correct answer?

13 A. After I actually went back and looked back
14 at the records -- and it just shows that memory recall is
15 not always terrific. In my case obviously it wasn't --
16 what I found was that basically in 2003, 2004 and 2005,
17 EEI did not pay any dividends to any of the shareholders,
18 and the reason for that was that those particular years
19 the net income was very low and was needed basically to
20 improve cash flows for the company to strengthen the
21 balance sheet.

22 So that money was funneled back into paying
23 down some debt and put into retained earnings for the
24 company instead of paying dividends. So what I said in
25 the deposition, I answered automatically yes, was not

1 correct.

2 MR. CYNKAR: Thank you. No further
3 questions.

4 JUDGE WOODRUFF: Then we'll come up for
5 questions from the Bench, beginning with Commissioner Gaw.

6 COMMISSIONER GAW: I want to pass right
7 now. I'll be back, though.

8 JUDGE WOODRUFF: Commissioner Appling?

9 QUESTIONS BY COMMISSIONER APPLING:

10 Q. Good morning. How you doing?

11 A. Good morning.

12 Q. Good. I came in early this morning because
13 I wanted to read your testimony and then I wanted to look
14 over the articles and the bylaws for the program. Would
15 you agree -- I have two or three questions. Would you
16 agree that the directors of EEI are governed by the
17 corporate articles of incorporation in the bylaws?

18 A. Yes, sir.

19 Q. Second question to that is, you and the
20 rest of the directors operate, to the best of your
21 knowledge, within those two documents?

22 A. Yes, we are.

23 Q. Is there anything else out there that I'm
24 missing in the way you operate EEInc?

25 A. Not to my knowledge, sir.

1 Q. Okay. If the articles stated that a
2 purpose of the corporation is to provide power to the
3 shareholders in proportion to their ownership, would that
4 be binding on the directors and the officers?

5 A. You're referring now to the articles?

6 Q. Yes.

7 A. Yes, sir.

8 Q. Okay. I think those are the three
9 questions I was trying to get cleared up on the articles
10 and the bylaws, and that's what govern your operation
11 within that organization?

12 A. Yes, sir.

13 COMMISSIONER APPLING: Thank you very much
14 for your answers and your time.

15 JUDGE WOODRUFF: Chairman Davis?

16 CHAIRMAN DAVIS: No questions.

17 JUDGE WOODRUFF: Back to you, Commissioner
18 Gaw.

19 COMMISSIONER GAW: Let's go in-camera first
20 would you, please, Judge.

21 JUDGE WOODRUFF: All right. We are going
22 in-camera.

23 (REPORTER'S NOTE: At this point, an
24 in-camera session was held, which is contained in
25 Volume 28, pages 2591 through 2608 of the transcript.)

1 JUDGE WOODRUFF: We're back in regular
2 session.

3 COMMISSIONER GAW: Judge, some of the
4 information that I think we've derived in that closed
5 session should be public, and I would hope that we can get
6 that declassified.

7 JUDGE WOODRUFF: We'll probably need to
8 wait until we see the transcript.

9 COMMISSIONER GAW: That's what I would
10 assume, too. Thank you.

11 QUESTIONS BY COMMISSIONER GAW:

12 Q. What is your current position, Mr. Naslund?

13 A. I am chief nuclear officer for AmerenUE,
14 sir.

15 Q. And how long have you held that position?

16 A. I have been in this role about two and a
17 half years.

18 Q. What did you do before that?

19 A. I was vice-president of power operations
20 for AmerenUE over Ameren's fossil and hydro fleet.

21 Q. Okay. Is your current position an officer
22 level position?

23 A. Yes, it is.

24 Q. Okay. Is it the -- is it in the hierarchy,
25 how does it relate to the position that you had before?

1 A. When I was vice-president?

2 Q. Yes.

3 A. Basically, I'm at the next level above

4 where I used to be.

5 Q. Okay. All right. And then who do you

6 report directly to?

7 A. I report to Mr. Tom Voss, who's the

8 president and CEO of AmerenUE.

9 Q. Okay. That's helpful to me. Now, but you

10 view yourself as an officer of UE, correct?

11 A. Yes, I do.

12 Q. Do you view yourself as having fiduciary

13 responsibilities as an officer of UE?

14 A. Yes, I do.

15 Q. Do you get paid by the hour?

16 A. No, I do not.

17 Q. Are you on duty basically any time 24 hours

18 a day, seven days a week?

19 A. Yes, sir, .in running a nuclear plant, it's

20 seven days a week.

21 Q. It's constant duty, isn't it?

22 A. Yes, it is.

23 Q. Is it possible, Mr. Serri -- excuse me --

24 Mr. Naslund, that at times your position as an officer of

25 UE might come into conflict with your position as a board

1 member of EEI? Is it possible?

2 A. I don't believe so.

3 Q. Okay. Let me give you an example. Let me
4 ask you if you had a vote to make as a board member of EEI
5 that you felt like was incrementally -- incrementally a
6 better deal for EEI but an absolute disaster for UE, what
7 would you do? Would you cast that vote?

8 A. In that particular case, I think the first
9 thing I would do is discuss with EEI's general counsel the
10 situation and gain some legal counsel on it.

11 Q. Okay. So you view that as something
12 warranting some discussion, correct?

13 A. For that hypothetical situation, yes.

14 Q. And that's because you think that your
15 interests are conflicted?

16 A. No. I just -- I think I'm only an engineer
17 by trade.

18 Q. Now now, Mr. Naslund, your CEO from
19 upstream there was in here the other day. He was -- he
20 was here, Mr. Rainwater, and I took from him that once you
21 achieve engineer status, everything else is down below
22 somewhere. I want to make sure that I get this right now.
23 You're telling me that may not be quite the same as what I
24 heard from your CEO?

25 A. I would never claim that in a room full of

1 lawyers.

2 Q. Well, some --

3 A. But so --

4 Q. Maybe you should have a discussion with him
5 about that.

6 A. When it comes to legal matters, I always
7 would have to defer and go to legal counsel to get
8 guidance, if there was a conflict.

9 Q. Did you see -- and at what point in time --
10 I'm not asking you what advice you got. You may have
11 already answered this, but at what point in time did you
12 seek legal advice about your role as an officer of
13 AmerenUE and your role as a board member of EEI?

14 A. As I mentioned, I think, last night, I
15 never had legal advice. What I had was guidance from the
16 chairman of the EEI board.

17 Q. And he's a lawyer?

18 A. No, he's not.

19 Q. Okay. I just wanted to make sure I
20 understood that. Okay. So in looking at this at the
21 present time, let me see if I can get this straight.
22 First of all, tell me who -- and I know this is in the
23 record, but from your perspective, who is currently on the
24 EEI board?

25 A. Who's currently on the board?

1 Q. Yes.

2 A. Mr. Allen Kelly is chairman.

3 Q. Again, every time you name a name, I want
4 you to tell me their position.

5 A. He is also, other than being on the board,
6 he is president and CEO of Ameren Energy Marketing
7 Company.

8 Q. That is a subsidiary of what company?
9 Since no one has provided us with a flowchart that sits up
10 here that I can look at every time somebody names a
11 company, this is a necessary thing for me.

12 A. He reports directly to Mr. Rainwater. He
13 is over the non-regulated generation and marketing
14 business in Illinois.

15 Q. And AEM is under AER, correct?

16 A. That is correct.

17 Q. Who else?

18 JUDGE WOODRUFF: Mr. Mills, do you wish to
19 approach?

20 THE WITNESS: Mr. Dan Cole. He is senior
21 vice-president of Ameren Services.

22 BY COMMISSIONER GAW:

23 Q. Ameren Services who again, that -- I'm not
24 sure that helps us much. Sorry. For the record, there
25 was an attempt to put the flowchart organizational chart

1 up on the display, and it just isn't giving us good enough
2 visual.

3 THE WITNESS: Mr. Cole reports to
4 Mr. Warner Baxter, who is president and CEO of Ameren
5 Corporate Business Service Group.

6 BY COMMISSIONER GAW:

7 Q. Ameren Services is a subsidiary of, again,
8 which entity?

9 A. Ameren Services is a -- is a segment
10 reporting up -- with the present CEO reporting up to
11 Mr. Rainwater.

12 Q. All right. And who else after Cole?

13 A. Mr. Tom Voss.

14 Q. And he is?

15 A. President and CEO of AmerenUE.

16 Q. Does he hold any other positions currently?

17 A. Not to my knowledge.

18 Q. Who else?

19 A. Mr. John Voiles.

20 Q. All right.

21 A. He is from LG&E.

22 Q. Do you know what his position is?

23 A. No, I do not.

24 Q. Who else?

25 A. Mr. Paul Thompson.

1 Q. Okay.

2 A. From LG&E.

3 Q. All right. And who else?

4 A. And that is it right now.

5 Q. Where's your name?

6 A. Then myself. Sorry about that.

7 Q. Well, it's all right. Just want to make
8 sure I'm following.

9 A. AmerenUE's chief nuclear officer. I report
10 to Mr. Tom Voss.

11 MR. MILLS: Judge, at the risk of further
12 disruption, what I attempted to put on the overhead and
13 what I handed a portion of to Commissioner Gaw is all
14 contained in Exhibit 510, which has been admitted into the
15 record.

16 COMMISSIONER GAW: Thank you, Mr. Mills.
17 For the record, I'm still having difficulty reading even
18 this chart because of the size of the print, but okay.

19 BY COMMISSIONER GAW:

20 Q. Now, when the contract with AEM was entered
21 into and when the contract expired with UE, were those
22 officers during those two periods the same? Not as they
23 are now, but were they the same in both of those instances
24 when that contract expired and when the AEM contract was
25 entered into?

1 A. No, they were not.

2 Q. So we've had -- okay. Well, let's -- I
3 guess I'll need all of those, then. Let's start with when
4 the contract with AEM was entered into.

5 A. Okay. When the contract with AEM was
6 entered into, Mr. Cole, who was senior vice-president of
7 Ameren Services, reporting directly to Mr. Gary Rainwater,
8 president and CEO of Ameren Corporation.

9 Q. Okay.

10 A. Mr. Voss was chief operating officer for
11 Ameren Corporation reporting to Mr. Rainwater, president
12 and CEO. At that point Mr. Voss had both AmerenUE
13 operating lines, both energy delivery and generation, and
14 also had all the Illinois energy delivery and generation
15 businesses reporting up to him.

16 Q. Okay.

17 A. I was still chief nuclear officer,
18 AmerenUE, but at that time I actually reported to Mr. Gary
19 Rainwater.

20 Q. All right.

21 A. And Mr. Dave Whitely, who has since left
22 our company. Mr. Whitely was the senior vice-president of
23 energy delivery/technical services, and he reported to
24 Mr. Voss.

25 Q. Okay. And he was vice-president of what

1 again? Sorry.

2 A. He was senior vice-president of energy
3 delivery/technical services.

4 Q. What is that?

5 A. Transmission.

6 Q. With which companies?

7 A. He basically was handling all transmission
8 for both Missouri and the Illinois side.

9 Q. But which -- which subsidiary was he
10 working for? Was that what you were telling me, that
11 name?

12 A. He was -- let's see. That particular
13 company, he was part of Ameren Services.

14 Q. Okay. Was he a vice-president of Ameren
15 Services?

16 A. Senior vice-president in Ameren Services.

17 Q. Now I'm tracking with you. And next you
18 say Cole, Voss, Naslund, Whitely?

19 A. And that's it. Mr. Kelly was still
20 chairman of the board, and at that time Mr. Kelly was
21 senior vice-president of Ameren Energy Marketing Company.

22 Q. Yes.

23 A. And Mr. Thompson and Mr. Voiles from LGE
24 Kentucky Utilities were still members of the board.

25 Q. All right. How long -- have they been on

1 as long as you've been around EEI, those two?

2 A. Mr. Thompson has. Mr. Voiles is fairly new
3 on the board.

4 Q. Okay. All right. One more time. When the
5 contract expired, what was the status of the EEI board,
6 the contract that expired with UE? Was it different than
7 that that you just gave me?

8 A. I think that's what I just gave you, is
9 when the contract expired.

10 Q. That's why I was confused earlier, because
11 I was asking you a question about whether the board
12 members were the same when the contract expired and when
13 the AEM contract was entered into. I thought you said no,
14 that it was different in those two time periods. What you
15 meant was it was different from what it is today?

16 A. That's correct. I'm sorry.

17 Q. That's okay. I just wanted to make sure
18 I'm following you. There was some discussion earlier
19 about your references in your deposition to
20 representatives from UE on the EEI board. Knowing that
21 you now have distaste for using that phrase, I'm going to
22 ask you to use it in the context -- in the same fashion
23 that you were using it in your deposition and tell me who
24 the UE representatives were on the board in this time
25 frame when the contract expired and the AEM contract was

1 entered into.

2 A. The directors on the board, Mr. Cole,
3 Mr. Voss and Mr. Whitely. I'm not sure that answers your
4 question.

5 Q. Those were the ones that you would have
6 considered to be representatives of UE at the time?

7 A. Of Ameren, yes.

8 Q. Of AmerenUE?

9 A. Of Ameren.

10 Q. I don't know if you're making a distinction
11 or not. You're going to have to answer my question. Are
12 they -- were they representatives of UE at the time?

13 A. No.

14 Q. They were representatives of the holding
15 company, Ameren?

16 A. They were directors elected to the board of
17 Joppa. They came from those companies. The companies we
18 just rattled off, they were not representing those
19 companies.

20 Q. You used the term representing in your
21 deposition, didn't you?

22 A. I was asked questions that had that word in
23 it, yes.

24 Q. At the time when you were giving your
25 deposition, who did you say were representing UE on the

1 EEI board during this time, critical time when the
2 contract expired and the AEM was entered into?

3 A. I believe in the deposition it says
4 Mr. Dave Whitely.

5 Q. He was the only one?

6 A. I think that was my response in my
7 deposition, yes.

8 Q. He wasn't an employee of UE, was he?

9 A. No, he was not.

10 Q. But he was the representative of UE?

11 A. He was the elected director for EEI Joppa
12 plant.

13 Q. As opposed to the other directors who were
14 not elected, or what do you mean by that?

15 A. We were all elected.

16 Q. I'm trying to understand your distinction.

17 A. My distinction I'm trying to make clear is
18 that to be a director on the EEI board, names are put
19 forth from companies and then the board actually elects
20 those individuals.

21 Q. Okay. So you're saying that the only name
22 that was put forward by UE was Whitely's?

23 A. And myself.

24 Q. And you?

25 A. Back in 1999.

1 Q. Do you know why there were only two names
2 that are put forward by UE for the board of EEI?

3 A. No, I do not.

4 Q. You never questioned that?

5 A. No, sir.

6 Q. Who has authority to change the makeup of
7 the board, do you know, of EEI?

8 A. That is up to the board. In the bylaws,
9 basically the board elect members on an annual basis.

10 Q. But you never inquired about what it would
11 take or why that makeup was as it was on the board of EEI,
12 correct?

13 A. No, I did not.

14 Q. What do you perceive the duties of a board
15 member to be in regard to inquiring as to information in
16 order to make decisions that come before the board?

17 A. Basically, in my responsibilities as a
18 board member, I rely very heavily on our officers of EEI
19 to bring information forward and provide presentations in
20 meetings so that we have a good picture of their -- of the
21 operation, and it's an opportunity for us to ask them
22 questions.

23 Q. You don't -- you don't believe you have any
24 responsibilities other than to get information from the
25 officers of EEI?

1 A. And then the board members themselves, we
2 have discussions amongst the board members during board
3 meetings, questioning each other.

4 Q. Do you ever ask the officers to obtain
5 information for you as board members?

6 A. Yes.

7 Q. And once again, did you ever inquire as
8 to information regarding the selection of AEM as opposed
9 to -- let me rephrase that.

10 Did you ever inquire when you were entering
11 into the contract with AEM or prior to it as to the
12 availability of other entities who could perform the
13 service that AEM was to perform in the proposed contract?

14 A. No, I did not.

15 Q. Prior to entering into the contract with
16 AEM, did you ever have any discussion with Mr. Rainwater
17 in regard to that contract?

18 A. No, I did not.

19 Q. How about Mr. Voss?

20 A. In the board meetings, Mr. Voss,
21 Mr. Whitely and Mr. Cole, along with the other two board
22 members, Mr. Voiles and Mr. Thompson and the chairman, we
23 had discussions amongst the entire board on the contract.

24 Q. And were those meetings in private?

25 A. Yes, they were.

1 Q. Were there minutes kept?

2 A. Yes, there were.

3 Q. Did you ever have any discussions with any
4 of those board members outside of the context of a board
5 meeting?

6 A. Not that I recall, no.

7 Q. Is that normal for you to not discuss any
8 EEI business with other board members outside of a board
9 meeting?

10 A. As I look back over the last seven-plus
11 years I've been on the board, I really can't recall there
12 being a whole lot of topics that merited any discussion
13 outside the board.

14 Q. Things are just not that important to have
15 discussions about in regard to your board position?

16 A. No. Business was taken care of at board
17 meetings.

18 Q. Where are those board meetings held?

19 A. The board meetings are held in various
20 locations. There are four board meetings a year. Two are
21 by telecom and two are face-to-face meetings. Normally
22 the face-to-face meetings are at the Hilton Airport at
23 Lambert in St. Louis. However, those face-to-face
24 meetings have been moved -- on occasion we have actually
25 met at the plant. I can recall one occasion maybe it was

1 held at Ameren's general office building.

2 Q. And the discussions that you had with
3 Mr. Voiles and Mr. Thompson at the board meeting regarding
4 the AEM contract, what was their position?

5 A. Actually, on the use of AEM, I don't recall
6 any objections from them on using AEM, but as you're aware
7 and as indicated in the minutes, they were opposed to
8 going to a market priced contract.

9 Q. Did they state why?

10 A. No, they didn't.

11 Q. You didn't inquire as to why they had that
12 position?

13 A. Mr. Thompson brought up his risk question,
14 which is documented in the minutes, but beyond that, it
15 was really not clear why -- what their motives were at the
16 end of the day in voting against that contract.

17 Q. Are you going from your memory or from the
18 minutes that you've reviewed?

19 A. From my memory.

20 Q. Do you believe that it was unimportant for
21 you to have inquired as to the rationale for their
22 position?

23 A. What I stated is they -- they did not share
24 their position.

25 Q. You didn't ask them?

1 A. The discussion in the meetings was on their
2 position, and they didn't -- they didn't share anything
3 other than what Mr. Thompson shared on the risk aspects.

4 Q. The risk aspects. Explain that more,
5 please.

6 A. Again, a concern about risk associated with
7 market-based contracts.

8 Q. Okay. So is -- his position was that it
9 was better to have some certainty in regard to future
10 revenue streams?

11 A. I think that was his position, yes.

12 Q. And having the contract that had been in
13 existence with LG&E in the past and UE was -- had more
14 certainty to it, correct?

15 A. Yes. He was supporting a cost-based
16 contract.

17 Q. You don't disagree with that as far as it
18 being more certain, do you?

19 A. I think that any time you look at risk
20 versus return, if you want higher return, most likely
21 there's going to be more risk with it. If you want a
22 lower return and low risk --

23 Q. Is your answer to that yes or no?

24 A. I'd have to say no.

25 Q. You don't agree with it, that there -- you

1 don't agree that the fixed-price contracts had less risk
2 than the market -- going to the market?

3 A. For that specifically, I'd say that, no,
4 that that is lower risk, if I understand your question.

5 Q. Well, I think you are at this point, but I
6 don't know that your answer answers the question the way
7 you intend for it to. Do you believe that the fixed-price
8 contract that had been in existence up until in 2005, that
9 that kind of a fixed-price contract has lower risk than
10 going to a market?

11 A. Yes, I do.

12 Q. That's what I thought you meant. Okay. So
13 do you have any training or any understanding of the
14 nature of the obligation of a regulated utility to procure
15 energy for the customers in regard to the prudence of that
16 procurement?

17 A. No, I do not. My background has always
18 been on the generation side of the house. I never have
19 really dealt with marketing and sales and contracts. So I
20 have to say no, I'm not a trained professional in that
21 area.

22 Q. Do you have any opinions in regard to the
23 duty of a regulated utility to prudently acquire energy
24 for its customers?

25 A. Absolutely. My entire career with AmerenUE

1 has been to try to provide the most economical power that
2 we can to our ratepayers. I've expended 33 years of my
3 career trying to accomplish that end from the state of
4 Missouri.

5 Q. All right. And you don't have any -- you
6 don't have any question, then, that if there are -- if
7 there are available resources to serve load, energy
8 resources, all things being equal in reliability, that if
9 you can procure energy at a lower price, that you are
10 obligated as part of your responsibility to do that? You
11 would agree with that, wouldn't you?

12 A. Are you talking if it's necessary to
13 procure above what existing generation --

14 Q. No.

15 A. -- is in place?

16 Q. I'm just asking you if you have to procure
17 additional generation to meet load --

18 A. Okay.

19 Q. -- and you have varying resources
20 available, all things in reliability being fairly equal,
21 but there are differences in price, is there some
22 obligation from the regulated utility's part to go to the
23 lower cost generation?

24 A. Yes, sir.

25 Q. And that's a pretty standard rule, isn't

1 it?

2 A. Yes, it is.

3 Q. You utilize it when you're dispatching your
4 units that you own currently, correct?

5 A. Yes, we do.

6 Q. Order of dispatch is done from low cost to
7 high cost?

8 A. Yes, it is.

9 Q. And in looking at available resources that
10 are off-system, that's part of your analysis, too, isn't
11 it, that if there are lower cost energy resources out
12 there on the market than you can run one of your own
13 units, you go to that lower cost unit first, correct, or
14 earlier than some of yours?

15 A. That's correct.

16 Q. I want to ask you just a little bit -- and
17 I don't know if this is HC or not, and if it is -- if it
18 gets into that, you just tell me. It's a different topic.
19 There were -- there were some reports in the paper, and I
20 don't know the time frame, regarding the nuclear reactor
21 and some water issues and contamination issues. Can you
22 give any detail on what that was about in public session,
23 if possible?

24 A. Yes, I can, because it was publicly
25 disclosed.

1 Q. I didn't know how much of it was publicly
2 disclosed and how much of it wasn't. Take care for
3 whatever you need to. Go ahead, Mr. Naslund.

4 A. Basically, the Callaway nuclear plant has a
5 six and a half mile plastic discharge line that runs from
6 the plant back to the Missouri River.

7 Q. Yes.

8 A. During the course of the year, we are
9 allowed to discharge processed water out of the plant,
10 which includes tritium, which is a radioactive isotope of
11 hydrogen, and also cobalt 68, cobalt 60 and other
12 radioactive isotopes. Those are diluted down by our MPDS
13 permits and federal permits and those are sent down the
14 discharge line to the river.

15 That particular discharge line is now 20 --
16 about 23 years in service, and it is a bell and spigot
17 pipe and it has developed leaks in some of the bell and
18 spigot connections, which has allowed over time some of
19 the water to leach out in the areas of manholes.

20 So back in I think about August of last
21 year, we discovered that we had leakage outside the pipe.
22 To give you an idea, the measurements were about 300 to
23 1,000 picocuries. Picocuries is ten to minus ninth
24 curies. Even though the federal limit is 20,000
25 picocuries in drinking water, we decided that we needed to

1 publicly disclose that, to be good neighbors, and let
2 everyone know what was going on, because it was not the
3 way it was intended to be operated.

4 So back in the August time frame, we did
5 disclose that. We have met with the Department of Natural
6 Resources and are going through a very extensive drilling
7 process to make sure we understand exactly where the
8 contamination is and putting down monitoring wells so that
9 we can keep track of that contamination.

10 This particular type contamination, we're
11 talking about molecules of water. Tritium being an H-3
12 molecule always combines with oxygen to make water, so
13 it's tritiated water and is not recoverable as individual
14 molecules, so it's not something that can be remediated.
15 It does have to be monitored. All of it is on -- we own
16 about 7,000 acres at Callaway.

17 Q. Right.

18 A. It's all on Ameren property and is being
19 monitored and will have to be addressed as part of the
20 decommissioning of the plant. As a result of this, we are
21 looking at replacing that pipeline to reestablish -- to
22 reestablish integrity because, again, it's not acceptable
23 to not put it in the river where it's permitted to go.

24 Q. How old is that pipe?

25 A. That pipe was put in the ground actually in

1 about 1978, so it's -- '77, '78, so it's approaching
2 30 years.

3 Q. What's the material?

4 A. It's actually called Techite. It is a
5 product manufactured by Shell Oil Company, and again, it's
6 20-foot sections of pipe, bell and spigot connections.
7 It's 24 inches in diameter. Actually slides together with
8 two rubber O-rings in the connection, and as you can
9 imagine, 20 foot sections, six and a half miles, there are
10 a lot of joints in that pipe. What we are looking at is
11 replacing it with high-density polyethylene pipe. We'll
12 have about a three-inch wall on it and continuous weld, no
13 joints.

14 Q. Is the leakage occurring because of
15 deterioration of the pipe or just of the joint problem?

16 A. Because of -- specifically in the manholes
17 there are what are called air release valves that have
18 leaked over time, and then also the joints in the pipe
19 have leaked.

20 Q. So it's a combination?

21 A. It's a combination.

22 Q. Was it expected that that line would last
23 longer?

24 A. That line was originally specified for
25 40-year life, as was all of Callaway components.

1 Q. And the fact that it hasn't lasted that
2 long, is that an issue with the manufacturer of the pipe?

3 A. It will be. Whether there's, you know, any
4 recourse with them here 30 years in, I can't answer you at
5 this point.

6 Q. Okay.

7 A. My understanding, there are many, many
8 lawsuits with Shell Oil on this pipe in other application.

9 Q. And is Ameren pursuing seeing whether there
10 can be some recovery in regard to the loss of the use of
11 the pipe and also the contamination and the cleanup that
12 might be necessary?

13 A. We will be looking at that. We have not
14 done anything yet at this point.

15 Q. All right. And how -- how freely were
16 those things monitored before the contamination was found?

17 A. Along this line there is no monitoring.
18 The finding of this was a result of an overall nuclear
19 industry initiative to go out and make sure that all of
20 our sites had proper monitoring wells. So it was kind of
21 beyond -- beyond what regulation was, and we as an
22 industry through the Nuclear Energy Institute decided that
23 we needed to be proactive and go do this. And as a result
24 of that, we went out and started drilling wells, and
25 that's when we found the contamination.

1 Q. If you hadn't have looked at it, it
2 wouldn't have been discovered up to this point in all
3 likelihood, right?

4 A. That's correct.

5 Q. And now are you monitoring it going
6 forward?

7 A. Yes, we are.

8 Q. Have other nuclear reactors started
9 monitoring this issue now?

10 A. Yes, they have.

11 Q. Were they doing it before?

12 A. No, they weren't.

13 Q. Okay. Now, in regard to the replacement of
14 the -- you replaced was it generating units at Callaway?

15 A. We replaced steam generators in August of
16 2005, and we also replaced the high pressure and low
17 pressure turbines on the unit.

18 Q. Were all of them -- were all of them
19 scheduled to be replaced prior, prior to them being
20 replaced?

21 A. Were they scheduled to be?

22 Q. Yes.

23 A. All of those items basically had 40-year
24 lives that were specified. The steam generators, as filed
25 in other testimony that I have, failed prematurely. There

1 were lawsuits with Westinghouse on that and settlements --

2 Q. Yes.

3 A. -- associated with that premature failure.

4 On the turbine side, the turbine side was
5 to take advantage of technology improvements and actually
6 be able to increase the output of the plant about
7 50 megawatts electric, was the justification for actually
8 changing out turbine rotors.

9 Q. Did you find damage to some of the
10 components when you were getting into the -- to the
11 replacement of them?

12 A. The turbines or --

13 Q. Either.

14 A. The turbines are fine. The steam
15 generators, the tubing material in the steam generators
16 actually started failing about eight years in the life,
17 both with primary stress corrosion cracking and secondary
18 ODCC outside cracking, and --

19 Q. But you didn't find any other damage there?

20 A. No, sir.

21 Q. Nothing to do with bolts?

22 A. Bolts? Are you referring to -- again, are
23 you talking about the outage when the turbines were
24 replaced?

25 A. Yes, or after that.

1 Q. Because back in May of last year one of the
2 brand-new high pressure turbines did have a design issue.

3 Q. Okay.

4 A. That resulted in some what's called nozzle
5 block failures in the high pressure turbine and caused a
6 forced shutdown.

7 Q. That was a subsequent event, then?

8 A. Right. That was May.

9 Q. With the new turbines?

10 A. With the brand-new high pressure turbine.

11 Q. Was this a product malfunction?

12 A. Yes, it was.

13 Q. And was that -- was that turbine replaced
14 or was it just repaired?

15 A. That turbine was repaired temporarily under
16 warranty back in May, and Alsum, who's the supplier of
17 that, will be coming back again during my outage, which
18 starts here April 2nd, to take it back apart and put new
19 parts in, all under warranty.

20 Q. Okay. That's not an issue that you would
21 foresee with -- there are other turbines, correct?

22 A. That's right. But this particular part
23 that failed was unique to that, that high pressure
24 cylinder.

25 Q. You don't believe it was systemic, then?

1 A. No, it was not.

2 Q. And will you have recovery from the company
3 for the time that you're down and having to repair this?

4 A. The contract had no replacement power cost
5 in it, but all the costs associated with the repairs,
6 which is several million dollars, the vendor is picking
7 that up.

8 Q. Okay. But Ameren will suffer the loss of
9 not having that power on?

10 A. For the -- for the 18-day forced outage --

11 Q. Yes.

12 A. -- that started May 15th and ended
13 June 2nd?

14 Q. Yes.

15 A. That lost revenue, which is about a million
16 dollars a day --

17 Q. Yes.

18 A. -- was to Ameren.

19 Q. Okay. Mr. Naslund, when you were asked
20 questions regarding carbon, if I recall, your statement
21 was that you really didn't think that carbon legislation
22 was going to have any impact on the value of the EEI
23 contract; is that correct?

24 A. That's correct.

25 Q. It would be true that not non-- that

1 generators not using carbon-based fuel would have more
2 profitability in that market situation, correct?

3 A. Yes, they will. They will be -- especially
4 the nuclear plants will be sitting very nice in that
5 market.

6 Q. Yes. Also, the nuclear plants would be the
7 easy one to see, but I suppose other types of energy that
8 might be out there could become more of the mix of total
9 generation used; is that correct?

10 A. Absolutely. Wind, especially I understand,
11 and other replaceables.

12 Q. Okay. And in that regard, is it possible
13 that it could have some incremental effect in regard to
14 the use of coal in the generation mix?

15 A. I think there's no doubt it will have some,
16 but overall, I do believe the entire market is going to
17 uplift, just due to the magnitude of the amount of
18 generation there is in this country from coal.

19 Q. Is the generation, the issue on carbon the
20 same with coal as it is with natural gas?

21 A. Basically, you still have CO2 emissions and
22 a ton's a ton.

23 Q. So is it basically per Btu about the same?

24 A. No. Natural gas is going to be less.

25 Q. Okay. So it's possible you could shift

1 some more preference into the natural gas generation side?

2 A. You know, maybe the problem with gas, as
3 you know, that market's pretty volatile and depending on
4 where gas is, sometimes you can't afford to turn a gas
5 turbine on, the fuel's so expensive relative to coal.

6 Q. It really depends, doesn't it?

7 A. It really does. Even with coal, having a
8 tax on a per ton basis, the cost differential between gas
9 and coal during months of the year is so significantly
10 different.

11 Q. Are you familiar with the different kind of
12 legislation that are being proposed regarding carbon?

13 A. I do not know the details. Very general
14 knowledge is all. I do not have details.

15 Q. So your theories in regard to how this may
16 impact EEI are really based upon some pretty big picture
17 assumptions, are they not?

18 A. Yes, they are.

19 COMMISSIONER GAW: Mr. Naslund, I have a
20 feeling that there were some things that I have that I was
21 referred to you on that I haven't asked you, but I'm going
22 to let you off the hook for the time being. I appreciate
23 your patience. Thank you.

24 THE WITNESS: Thank you, sir.

25 JUDGE WOODRUFF: And Mr. Naslund will be

1 back, I believe, next week on depreciation issues.

2 THE WITNESS: Yes, I will.

3 JUDGE WOODRUFF: At this time then we'll go
4 ahead and take a break. We'll come back at 10:30.

5 (A BREAK WAS TAKEN.)

6 JUDGE WOODRUFF: We're back from break and
7 Chairman Davis has a few more questions.

8 QUESTIONS BY CHAIRMAN DAVIS:

9 Q. Good morning, Mr. Naslund.

10 A. Good morning, sir.

11 Q. Okay. Did the EEI board send out an RFP to
12 get bids for marketing its electricity?

13 A. I don't believe so.

14 Q. Why not?

15 A. I do not know.

16 Q. But you're on the board?

17 A. I'm on the board, but normally an RFP, that
18 would be done down in the business below the board level.

19 Q. Okay. So it's done down in the business
20 down below the board level. So how do you know that you
21 got the best deal on marketing your electricity from AEM?

22 A. How do I know I got the best deal?

23 Q. Yeah. How do you know you got the best
24 deal, or do you know you got the best deal?

25 A. I don't know I got the best deal, sir.

1 Q. You don't?

2 A. No, I don't.

3 Q. Did somebody from Ameren just tell you it
4 was a good deal, we should take it?

5 A. No, sir. As a director of --

6 Q. The management just did it?

7 A. The management and officers of EEI report
8 to the board and make recommendations and give
9 presentations, and based on that, we make our judgments.
10 There was no Ameren Corporation involvement in that
11 process.

12 Q. Okay. So did the -- did the employees at
13 EEI, did they just -- did they ever come to you and say,
14 hey, we get our best deal with AEM, or did they say, this
15 is the way we're going, and the board nods their head
16 okay, or did they just do it and you guys just sort of
17 look on?

18 A. No. They actually came -- in this
19 particular case, came to the meeting. There was a board
20 resolution to endorse their recommendation. That was then
21 voted on by the board members, but it was a recommendation
22 of the officers of EEI up to the board.

23 Q. Okay. So you did pass a resolution
24 supporting their actions?

25 A. Yes, we did.

1 Q. Okay. And did they say what other
2 alternatives they considered?

3 A. Relative to marketers, no.

4 Q. Relative to marketers, no. They just came
5 in and said, this is the one?

6 A. That's correct.

7 CHAIRMAN DAVIS: No further questions,
8 Judge.

9 JUDGE WOODRUFF: All right. Thank you.
10 Does anyone wish to recross based on the questions from
11 the Bench?

12 MR. CYNKAR: I just have one, your Honor.

13 JUDGE WOODRUFF: Go ahead.

14 RE-CROSS-EXAMINATION BY MR. CYNKAR:

15 Q. Mr. Naslund, following up on the Chairman's
16 question, why wouldn't you have been concerned, if you
17 weren't, why there wasn't any recommendation or
18 consideration of a marketer other than AEM?

19 A. I guess I'd answer that in two ways. One,
20 I think having worked with the officers of EEI, I've
21 always had a comfort level that their recommendations to
22 us are sound, and so to a certain extent we have to rely
23 on what they're bringing to us, since they've done all the
24 leg work and know all the details, which really at the
25 board level I wouldn't ever claim that we know all the

1 details.

2 The second part of that is that in putting
3 that power supply agreement together, it did have the
4 involvement of all the sponsor companies, including LGE
5 and the Ameren companies, and there seemed to be agreement
6 between those parties that this was the most appropriate
7 route to go.

8 And at the end of the day, then the
9 recommendation came to us. With those inputs, I ended up
10 voting in favor of putting that PSA in place.

11 MR. CYNKAR: Thank you. No further
12 questions, your Honor.

13 JUDGE WOODRUFF: Any other recross based on
14 questions from the Bench?

15 MR. MILLS: I have some.

16 RE-CROSS-EXAMINATION BY MR. MILLS:

17 Q. Mr. Naslund, did you confirm in response to
18 Commissioner Gaw's question whether the new contract
19 allows EEI to essentially veto a contract that AEM
20 negotiated?

21 A. I believe I said that.

22 Q. Okay.

23 A. It may not have been correct.

24 Q. Well, that was my question. Did you
25 confirm whether that was correct or not?

1 A. I have not yet been able to find that in
2 the contract.

3 Q. Assuming that you were correct, let me ask
4 you a couple of questions about that. Is negotiating a
5 power supply contract an easy thing to do?

6 A. I really can't answer that because I'm not
7 a marketing and sales person. Never dealt with that.
8 Again, my background's engineer, operating plants. I
9 can't answer that question.

10 Q. You have no idea whether it's a two-minute
11 meeting or a several-day negotiating, negotiation?

12 A. I sure don't.

13 Q. No idea. Okay. Now, and I think you -- I
14 think you said this, but there were so many names floating
15 around, let me just confirm this. Does Andy Serri work
16 for Allen Kelly?

17 A. Today he does. Back during the time when
18 this power supply agreement was put into place, I believe
19 Mr. Serri at that point reported up to Mr. Gary Rainwater
20 in the organization.

21 Q. Now, Commissioner Gaw gave you a
22 hypothetical in which you were on the board of EEI and
23 there was a decision to be made that would have an
24 incremental value to EEI but would be an absolute disaster
25 for Union Electric. Do you recall that hypothetical?

1 A. Yes, I do.

2 Q. In response you said you'd check with EEI
3 counsel to see what to do; is that correct?

4 A. Yes.

5 Q. Why in the world would you not talk to UE's
6 general counsel?

7 A. Because as a director of EEI, I'm
8 representing them, and basically that's where my fiduciary
9 duty lies and, therefore, I'd use their counsel.

10 Q. So you would vote for something that would
11 be an absolute disaster for UE without checking with UE's
12 general counsel?

13 A. What I said is I would check with EEI's
14 general counsel.

15 Q. Okay. Now, I think in response to a
16 question by Commissioner Gaw, you said that in your
17 deposition others used the term UE representative and you
18 didn't object. Did you yourself use that term in your
19 deposition?

20 A. I don't recall.

21 Q. Do you think it's possible you might have?

22 A. I'm sure it was. It was a very long
23 deposition.

24 Q. Now, when Dave Whitely was on the EEI
25 board, did he work for Union Electric?

1 A. He worked for Ameren Service Company.

2 Q. Is that a no?

3 A. That's a no.

4 Q. Okay. But he was nominated by Union

5 Electric to serve on the board?

6 A. That I don't really truly know how he was

7 nominated.

8 Q. According to the articles of incorporation

9 or the bylaws, how many -- how many nominations -- I'm

10 trying not to say representatives -- how many nominations

11 of people on the board should UE be entitled to make?

12 A. Two.

13 Q. And when Mr. Whitely was on the board, were

14 there two people who worked for UE on the board?

15 A. No, there were not.

16 Q. You were on the board?

17 A. That's correct.

18 Q. And you work for UE?

19 A. That's correct.

20 Q. Who was the other person that you

21 understood was nominated by UE to be on the board?

22 A. Dave Whitely.

23 Q. Thank you. Now, when the board allowed the

24 power supply agreement to expire, Kentucky Utilities

25 wanted the board to take action to continue an arrangement

1 similar to the expiring power supply agreement; is that
2 correct?

3 A. Yes, it is.

4 Q. Okay. Were you, as a board member,
5 concerned about the long-term impact of refusing to
6 consider what a shareholder wanted?

7 A. No.

8 Q. Okay. Do you understand now that the
9 Missouri Commission is concerned about the expiration of
10 that power supply agreement?

11 A. Yes, sir.

12 Q. Were you, as a board member, concerned
13 about the long-term impact those concerns would have on
14 EEInc?

15 A. No, sir.

16 MR. MILLS: That's all the questions I
17 have. Thank you.

18 JUDGE WOODRUFF: Yes, for the State?

19 RECROSS-EXAMINATION BY MR. MICHEEL:

20 Q. Mr. Naslund, Commissioner Gaw asked you if
21 you ever discussed the power supply agreement with
22 Mr. Rainwater. Do you recall those questions?

23 A. Yes, sir.

24 Q. And I believe your answer was you had no
25 discussions with Mr. Rainwater; is that correct?

1 A. That's correct.

2 Q. Now, you had your deposition taken in this
3 case, did you not?

4 A. Yes, I did.

5 Q. And do you have a copy of that deposition
6 with you?

7 A. Yes, I do.

8 Q. And could you turn to page 133 of that
9 deposition, and I'm focusing on the question and answer
10 that -- the question that starts on line 14 there. If you
11 could read the question and answer on line 14 through line
12 25 and go to page 134, lines 1 through 16, read that to
13 yourself and tell me when you're finished.

14 A. Okay.

15 Q. Now, is it correct indeed that you did have
16 discussions with Mr. Rainwater about the expiration of the
17 power supply agreement?

18 A. If you're saying in reference to meeting
19 discussions with a group of people, then I'd say yes. Did
20 I have individual one-on-one discussions with
21 Mr. Rainwater? No.

22 Q. Let me ask you this: You gave a
23 presentation to the senior team, did you not, regarding
24 the expiration of the power supply agreement?

25 A. I gave a presentation?

1 Q. Yes, sir.

2 A. No, sir.

3 Q. Well, did you discuss the expiration of the
4 power supply agreement with the senior team?

5 A. Yes, I did.

6 Q. And is Mr. Rainwater a member of the senior
7 team?

8 A. Yes. Yes, sir.

9 Q. So, therefore, did you discuss that with
10 Mr. Rainwater and other members of the senior team?

11 A. Yes.

12 MR. CYNKAR: This has been asked and
13 answered.

14 JUDGE WOODRUFF: It's been answered. The
15 objection's overruled. Did the court reporter get the
16 answer?

17 THE REPORTER: Yes.

18 BY MR. MICHEEL:

19 Q. Do you know what the question is, sir?

20 JUDGE WOODRUFF: He actually gave the
21 answer, yes.

22 MR. MICHEEL: I didn't know the court
23 reporter got that.

24 JUDGE WOODRUFF: It was all going on at the
25 same time.

1 MR. MICHEEL: I'm sorry. So that's the
2 only question that I have for you, sir.

3 JUDGE WOODRUFF: Any further recross?
4 Redirect?

5 REDIRECT EXAMINATION BY MR. DOTTHEIM:

6 Q. Mr. Naslund, you have a copy of your
7 deposition, do you not?

8 A. Yes, I do.

9 Q. Do you have a copy of the errata sheets?

10 A. Yes, sir.

11 Q. Okay. And my questions go to the questions
12 from the Bench regarding the matter of the AmerenUE
13 representatives on the EEInc board of directors, and I
14 think you identified Dave Whitely as one of those
15 individuals, have you not?

16 A. That's correct.

17 Q. Have you also identified Mr. Dan Cole as
18 one of those individuals?

19 A. What I identified is Mr. Cole actually
20 votes the proxies that are sent out from EEI during
21 elections on behalf of AmerenUE.

22 Q. I'd like to direct you to page 19 of the
23 deposition and I'd like to direct you to, starting at line
24 13, the question there.

25 Question: Are there other individuals who

1 represent AmerenUE --

2 Answer: Yes.

3 Question: -- on the EEInc board of
4 directors?

5 Answer: Yes.

6 And who would those be?

7 Answer: Dave Whitely is the other AmerenUE
8 member to the board.

9 And if I -- if I look again on that page
10 where you identify Mr. Whitely as the other AmerenUE
11 member on the board, Mr. Whitely's name is on line 19,
12 and when I go to your errata sheet, you've got page 19,
13 line 19, identified you've got, should read Dan Cole is
14 the other AmerenUE member. Reason assigned for change,
15 incorrect name.

16 A. That's correct. The reason for that, over
17 time and reorganization of the company, people have moved
18 around in their roles on the board, and when I went back
19 after the deposition to find out who actually was voting
20 AmerenUE's shares during the proxy process, I discovered
21 that through a hat change that Mr. Cole was now doing
22 that, and I wanted to make sure that the deposition
23 reflected that. That's why I put that in.

24 At the time of the deposition, I thought
25 Dave Whitely was voting the shares, and he had been, but

1 then now Dan Cole was. So that's why I made the change.

2 I was trying to make it as correct as I could.

3 Q. Well, at the time the -- well, and
4 throughout the deposition, there are other pages on the
5 deposition where you identified Dave Whitely as the other
6 AmerenUE representative on the EEInc board of directors.
7 That is correct, is it not?

8 A. Yes, it is. And again, I was trying to
9 correct an error that I made.

10 Q. And on --

11 A. Working from memory.

12 Q. And on the errata sheets for each of those
13 places where you identified Dave Whitely as the AmerenUE
14 representative, you've indicated a change, you've changed
15 the name or you've indicated you want to change the
16 deposition from Dave Whitely, the name, to Dan Cole; is
17 that correct?

18 A. That's what I tried to do, yes. Again, I
19 was trying to make sure it was correct.

20 Q. Were you correcting for a matter that you
21 were in error prospectively or for a matter you were in
22 error at the time that you were -- for which you were
23 answering the question?

24 A. I was in error when I answered the
25 question.

1 MR. DOTTHEIM: Thank you, Mr. Naslund.

2 THE WITNESS: Thank you.

3 MR. MILLS: Judge, I realize we've
4 basically completed the rounds, but I have not yet seen
5 this errata sheet. It sounds as though there might be
6 some significant changes. I'd like to reserve the right
7 to perhaps ask more questions, depending on what changes
8 he's made in his errata sheet.

9 JUDGE WOODRUFF: Do you want to mark that?

10 MR. DOTTHEIM: Yes. I'm sorry, Judge.
11 That's my fault, not Mr. Naslund's. Yes, let's mark that.
12 That's the last --

13 JUDGE WOODRUFF: Be 268.

14 MR. DOTTHEIM: -- the last errata sheet.

15 (EXHIBIT NO. 268 WAS MARKED FOR
16 IDENTIFICATION BY THE REPORTER.)

17 JUDGE WOODRUFF: All right. Exhibit 268
18 has been offered by Staff. Are there any objections to
19 its receipt? Hearing none, it will be received into
20 evidence.

21 (EXHIBIT NO. 268 WAS RECEIVED INTO
22 EVIDENCE.)

23 JUDGE WOODRUFF: And, Mr. Mills, if you do
24 believe that you need to ask further questions of
25 Mr. Naslund based on this document, we'll consider

1 recalling him at that point.

2 MR. MILLS: Judge, I think I can -- I just
3 have one or two quick questions I can do right now.

4 JUDGE WOODRUFF: Go ahead and do it.

5 FURTHER RE-CROSS-EXAMINATION BY MR. MILLS:

6 Q. Mr. Naslund, let me get you to look at
7 page 19 of your deposition and the corrections that your
8 errata sheet makes to that page. Is the change that you
9 made that on line 19 you replace Dave Whitely with Dan
10 Cole and then on line 23 you replace Dan Cole with Dave
11 Whitely?

12 A. What page are you on again?

13 Q. Page 19.

14 A. Okay.

15 Q. Your errata sheet lists page 19, line 19
16 twice and I have a little trouble following that, but
17 is it correct that on page 19, at line 19, you replace
18 Dave -- you replace Dave Whitely with Dan Cole, and then a
19 few lines down at line 23, you replace Dan Cole with Dave
20 Whitely?

21 A. That's correct. I had the two reversed.

22 Q. Okay. Do either Dan Cole or Dave Whitely
23 now work for UE?

24 A. No, they do not.

25 Q. Okay. But at line 19, you identify Dan

1 Cole as the other AmerenUE member to the board?

2 A. That's correct.

3 Q. In what sense is he the AmerenUE member to
4 the board?

5 A. He basically is one of two of the sponsor
6 individuals submitted that were elected to the board, and
7 he is basically the individual that's voting the shares
8 any time there's a proxy. So for example --

9 Q. So --

10 A. -- during annual election, those are done
11 by proxy vote of the shareholders, and Mr. Cole has been
12 assigned by AmerenUE on behalf of AmerenUE to vote those
13 shares.

14 Q. Okay. You don't vote the proxy votes?

15 A. No, I do not.

16 Q. So let me see if I have this. UE gets to
17 put two members on the board, right?

18 A. That's right.

19 Q. They put one UE employee, one non-UE
20 employee on the board; is that correct?

21 A. The board elect -- then elected those
22 nominated individuals to be on the board.

23 Q. When I say put on, that means nominate. I
24 meant nominated. Has the board ever refused to vote in a
25 nominee that you're aware of?

1 A. I don't know if they have or not.

2 Q. Do you recall them ever refusing to vote in
3 a nominee?

4 A. Not during my time on the board, no.

5 Q. So UE puts a UE employee and a non-UE
6 employee on the board; is that correct?

7 A. That's correct.

8 Q. But it's the non-UE employee who votes the
9 UE shares; is that correct?

10 A. As a representative for AmerenUE, yes.

11 MR. MILLS: No further questions.

12 JUDGE WOODRUFF: All right. Mr. Naslund,
13 you can step down.

14 THE WITNESS: Thank you.

15 JUDGE WOODRUFF: And I believe the plan was
16 to call Mr. Higgins at this point.

17 (Witness sworn.)

18 KEVIN C. HIGGINS testified as follows:

19 DIRECT EXAMINATION BY MR. CHAMBERLAIN:

20 Q. Thank you. Would you please state your
21 name for the record.

22 A. My name is Kevin C. Higgins.

23 Q. And, Mr. Higgins, you filed several pieces
24 of prefiled testimony in this case, have you not?

25 A. Yes, I have.

1 Q. Do you have any changes or corrections to
2 that prefiled testimony?

3 A. No, I do not.

4 Q. Now, since you filed your prefiled
5 testimony, has AmerenUE made a new proposal in its
6 surrebuttal testimony regarding off-system sales margins?

7 A. Yes. Mr. Lyons has made such a proposal.

8 Q. And have you reviewed that proposal?

9 A. Yes, I have.

10 Q. But you have not yet had an opportunity to
11 respond to that; is that correct?

12 A. That's correct.

13 Q. Just for purposes of context, could you
14 just briefly summarize that proposal so we'll know what
15 we're talking about?

16 A. Briefly, Mr. Lyons has made a new proposal
17 with respect to the calculation of off-system sales
18 margins and how that would be integrated into a proposed
19 fuel adjustment clause, and in addition to that has made
20 some proposals with -- a proposal with respect to sharing
21 of certain deviations.

22 Q. And do you find that proposal to be
23 acceptable?

24 A. I believe a portion of that proposal is an
25 improvement over the initial proposal of the company,

1 and -- but I believe that other components of the proposal
2 should not be accepted.

3 Specifically, the improvement to the
4 proposal is I believe that the company's new approach, new
5 recommended approach for calculating the amount of
6 off-system sales margins is an improvement. It was
7 responsive to a number of criticisms that were raised in
8 other parties' direct and rebuttal testimony, and I
9 believe it will yield a better measure of off-system sales
10 margins. So I believe that aspect of Mr. Lyons' proposal
11 in his surrebuttal should be retained.

12 At the same time, the company has proposed
13 a new sharing mechanism that would be applicable both to
14 off-system sales margins and to the FAC. And my
15 understanding of the company's new proposal is that if
16 there are reductions in net fuel cost, and net fuel cost
17 includes off-system sales margins, so in essence, if
18 off-system sales margins were to increase, all other
19 things being equal, there would be a sharing mechanism
20 through which AmerenUE would receive some of the benefit
21 of that reduction in net fuel cost.

22 At the same time, however, if there is an
23 increase in net fuel cost, which could either be from fuel
24 costs themselves going up or off-system sales going down,
25 there appears to be no sharing mechanism if the change

1 should move in that direction, that is, that the full
2 impact of any change in net fuel cost upward would be
3 borne by customers.

4 And so while I feel that the measurements
5 of off-system sales is improved by the company's new
6 proposal, I believe the sharing mechanism that the company
7 has proposed is one-sided and inequitable.

8 Q. Now, Mr. Higgins, does the company's new
9 proposal, does it affect any of your previous
10 recommendations in any way?

11 A. My previous recommendations were responses
12 to the company's original proposal, and I -- I offer no
13 changes or have no changes to my testimony that spoke to
14 the company's original proposal. To the extent that the
15 company's original proposal has now been supplanted by Mr.
16 Lyons' surrebuttal, then the modifications or the
17 supplement to my testimony is the comments that I just
18 offered.

19 Q. Mr. Higgins, what then is your
20 recommendation to the Commission regarding AmerenUE's new
21 off-system sharing proposal?

22 A. I believe that the mechanism for measuring
23 off-system sales margins that has been proposed by the
24 company should be retained. I believe the sharing
25 proposal that has been made by the company should be

1 rejected. I believe it would be preferable to have no
2 sharing mechanism on either side of the baseline or on
3 either side of the changes in net fuel costs on that have
4 a one-sided sharing mechanism.

5 In the alternative, a sharing mechanism
6 could be implemented that allowed for sharing on either
7 side of the net fuel costs. So the simplest response is
8 to reject the sharing mechanism that's been proposed by
9 the company.

10 Q. Is there anything else you wish to add at
11 this point?

12 A. No, I do not.

13 MR. CHAMBERLAIN: Your Honor, with that, I
14 would tender this witness for cross-examination.

15 JUDGE WOODRUFF: Thank you. Let me just
16 ask does any party wish to examine this witness? No
17 questions? All right. Hearing no requests for
18 cross-examination, we'll come up to for questions from the
19 Bench. Commissioner Gaw?

20 COMMISSIONER GAW: Yeah, I believe very
21 quickly, Judge.

22 QUESTIONS BY COMMISSIONER GAW:

23 Q. Thank you for coming today, sir.

24 A. Thank you.

25 Q. In regard to a sharing mechanism, can you

1 give me some idea about what you would support in regard
2 to a sharing mechanism that was on both sides of the
3 baseline?

4 A. Sure. While, of course, there's not a
5 specific proposal put forward by the company in that
6 regard on this point, but I'll give you an example of one
7 that I did support, and that was in the Arizona Public
8 Service Company territory, there is a similar calculation
9 of net fuel cost which incorporates the effects of a fuel
10 adjustment clause type of mechanism and off-system sales.

11 Q. Okay.

12 A. And that is shared on a 90/10 basis.

13 Q. 90 to whom and 10 to whom?

14 A. 90 percent customers, 10 percent to the
15 utility.

16 Q. Okay.

17 A. So if costs were to go down, 90 percent of
18 the benefit of the costs going down flow through to
19 customers. There's an incentive for the utility, however,
20 to claim 10 percent of that. Similarly if the costs were
21 to deviate above the baseline, the utility absorbs
22 10 percent of that requirement.

23 Now, that was a negotiated settlement. I
24 certainly believe that you could have sharing mechanisms
25 that were similar but not necessarily limited to 90/10.

1 That is an example of one that I'm personally familiar
2 with.

3 Q. Okay. You don't have a specific proposal
4 in this case in regard to a sharing mechanism?

5 A. I did offer a specific proposal that was in
6 response to the company's original filing.

7 Q. Okay.

8 A. And that was with respect to the off-system
9 sales margins, and I recommended that they could be split,
10 for example, 50/50 would be a way that they could also be
11 split. I'm also aware that other parties have made
12 proposals with certain dead bands. I believe Mr. Brubaker
13 has made a proposal in that regard. I think that is also
14 an acceptable approach and could be directly applied to
15 the new calculation that Mr. Lyons is offering.

16 Q. Is your principal position in this case to
17 not have a fuel adjustment mechanism?

18 A. I did not offer testimony for or against
19 the fuel adjustment mechanism. I -- I made some proposals
20 with respect to how such a mechanism should be calculated,
21 if there was a disallowance in the general rate case.

22 COMMISSIONER GAW: I think that's all I
23 have. Thank you, sir.

24 JUDGE WOODRUFF: Commissioner Appling?

25 COMMISSIONER APPLING: No questions.

1 JUDGE WOODRUFF: Chairman Davis?

2 CHAIRMAN DAVIS: No questions.

3 JUDGE WOODRUFF: Anyone wish to recross
4 based on the questions from the Bench? Hearing none, any
5 redirect?

6 MR. CHAMBERLAIN: Judge, I have no redirect
7 for this witness. I do have a question for the Bench in
8 regard to how to handle the exhibits, his testimony. As I
9 understand it, our practice is to wait until the witness
10 appears for the last time and then introduce all of the
11 testimony.

12 JUDGE WOODRUFF: That's correct.

13 MR. CHAMBERLAIN: Mr. Higgins has filed
14 testimony that he's testified to here today on several
15 revenue requirements issues. He also filed testimony
16 regarding cost of service and rate design issues, and I
17 think he's going to be back next week. I'm not absolutely
18 certain at this point because of the proposed stipulation
19 that we have. So I guess I'm asking the Bench how would
20 you like to handle that?

21 JUDGE WOODRUFF: If you wish to offer it
22 now, unless one of the parties objects, I wouldn't have
23 any problem with that.

24 MR. CHAMBERLAIN: Should I introduce all of
25 his testimony or just the revenue requirement pieces?

1 WERE MARKED AND RECEIVED INTO EVIDENCE.)

2 JUDGE WOODRUFF: Mr. Higgins, you can step
3 down.

4 THE WITNESS: Thank you very much.

5 MR. CHAMBERLAIN: Your Honor, thank you and
6 the Commission for the accommodation for this witness.

7 JUDGE WOODRUFF: All right. Then it's my
8 understanding we want to go on with the EEInc issue. For
9 some reason that's very hard for me to say.

10 MR. CYNKAR: I think for everyone, your
11 Honor.

12 JUDGE WOODRUFF: I believe the next witness
13 then would be Greg Meyer for the Staff.

14 MR. MICHEEL: Your Honor, I was wanting to
15 take Mr. Brosch out of order because he needs to get done
16 today. I thought Mr. Byrne had told me that would be
17 okay.

18 JUDGE WOODRUFF: Is that okay with
19 everyone?

20 MR. MILLS: I have no objection.

21 JUDGE WOODRUFF: We'll call Mr. Brosch.

22 MR. MICHEEL: And, your Honor, as you'll
23 recall, Mr. Brosch is also up for off-system sales, and so
24 I think Mr. Byrne is going to do the off-system sales
25 portion and then the EEInc is going to Mr. Cynkar.

1 JUDGE WOODRUFF: That's fine. And,
2 Mr. Brosch, I believe you testified earlier in this case,
3 so you're still under oath.

4 THE WITNESS: I understand, yes.

5 JUDGE WOODRUFF: And anything before you
6 tender him for cross, Mr. Micheel? Is he ready for cross?

7 MR. MICHEEL: He is ready for cross, with
8 one exception, sir. I think he's got some corrections, if
9 I can get them. How would you like to do that? He's got
10 corrections to his schedule. Do you want me to just
11 replace them or do you want me to make them new exhibits?
12 It's up to you. I've already passed these out to the
13 parties.

14 JUDGE WOODRUFF: Let's go ahead and make it
15 a new exhibit. I mean, that's clearer as to what we're
16 doing. So it will be 518.

17 MR. MICHEEL: Yeah. And one of them is NP
18 and one of them is HC, your Honor. They are the same
19 schedule, but there's an NP and HC schedule.

20 JUDGE WOODRUFF: All right. We'll mark it
21 as 518HC and 518NP, and the Bench just needs the HC. We
22 don't need the NP, as long as you give both copies to the
23 reporter.

24 MR. MICHEEL: Are there any parties that
25 didn't get this (indicating)? I passed it out Monday.

1 (EXHIBIT NO 518NP AND HC WAS MARKED FOR
2 IDENTIFICATION BY THE REPORTER.)

3 MICHAEL BROSCH testified as follows:

4 DIRECT EXAMINATION BY MR. MICHEEL:

5 Q. Mr. Brosch, did you have some corrections
6 that you needed to make to a schedule contained in, I
7 believe, your surrebuttal testimony?

8 A. Yes, I did. Attached to my surrebuttal
9 is a document captioned in the lower right corner
10 Schedule MLB-11. I believe you have circulated a
11 corrected version of that schedule. Basically there was a
12 change in the dollar input amount. I picked up the wrong
13 dollar amount from the source document on line 2. So
14 substituting the revised amount on line 2 in column D, the
15 mechanics are the same. It just chases through to a
16 slightly different bottom line result.

17 MR. MICHEEL: With that, your Honor, I
18 would tender Mr. Brosch for cross-examination on the issue
19 of off-system sales and EEInc.

20 JUDGE WOODRUFF: Did you wish to offer 518
21 as well?

22 MR. MICHEEL: Yes, I wish to offer 518NP
23 and HC.

24 JUDGE WOODRUFF: 518 has been offered. Any
25 objections to its receipt? Hearing none, it will be

1 received into evidence.

2 (EXHIBIT NO. 518NP AND HC WAS RECEIVED INTO
3 EVIDENCE.)

4 JUDGE WOODRUFF: And do any parties wish to
5 cross-examine this witness?

6 MR. CYNKAR: Yes, your Honor.

7 JUDGE WOODRUFF: Go ahead for Ameren.

8 CROSS-EXAMINATION BY MR. CYNKAR:

9 Q. Good morning, Mr. Brosch. It's a pleasure
10 to cross swords with you again.

11 A. Good morning, sir.

12 Q. Mr. Brosch, I know in your testimony you
13 have made clear that you're not a lawyer, and if I ask you
14 a question that you think calls for a legal opinion and
15 you don't have an opinion, please just let me know. It's
16 not my intention to trick you or whatever. I'm just going
17 to keep this simple and hopefully won't be here all that
18 long.

19 It is true, isn't it, that the high cost
20 years of the Joppa plant were in its initial years of
21 operation?

22 A. I'm not sure what you mean by the high cost
23 years. I expect that the cost of the output of the plant
24 has changed considerably given the number of years that
25 have passed.

1 Q. So your answer is you don't know?

2 A. Well, I know that in recent years, costs --

3 Q. Excuse me. Let me interrupt you for a
4 second. You said you didn't know what I meant by high
5 cost. Could you explain to me what about high cost you
6 don't understand? Not that they changed. I asked you the
7 question that it is correct, is it not, that the high cost
8 years of the Joppa plant were in its initial years of
9 operation. You responded, I wasn't clear. What was
10 unclear about that question?

11 A. I'm not clear whether you're asking me
12 about the nominal costs of the plant or the real costs of
13 the plant, the costs as reflected in the delivered energy
14 prices or the costs relative to alternative plants at a
15 given point in time. I didn't understand what you were
16 asking me about.

17 Q. All right. I appreciate being educated.
18 Why don't we take all of those and just go down them, all
19 those costs that you said.

20 A. My understanding is that the original cost
21 of the plant, shortly after it was constructed, would be
22 reflective of the relatively high real price of power at
23 that time because there had been no depreciation on the
24 original investment in the plant. It's also my
25 understanding that with the passage of time --

1 Q. Excuse me, sir. I just want to make sure
2 that we efficiently get to this, because I wasn't really
3 trying to make a big deal out of this.

4 With respect to that cost, is the answer --
5 what is the answer to my question then, that with respect
6 to that cost, that the early years of the operation of
7 Joppa were a high cost period for Joppa; is that yes or
8 no?

9 A. Well, I'm sorry, I can't answer your
10 question yes or no. The fixed costs of the plant would
11 have been relatively high in the early years before the
12 plant costs had gradually begun to be recovered --

13 Q. I understand.

14 A. -- through depreciation.

15 Q. I wasn't asking you for over the whole life
16 of the plant. I was asking you for the initial period of
17 the plant. And so with respect to fixed costs, then, is
18 the answer to my question yes, that was a high cost period
19 with respect to fixed costs, irrespective of what happened
20 in the future?

21 A. If you want to restrict your question --

22 Q. I did. Yes, I did.

23 A. -- to the capacity costs, I expect those
24 would have been higher initially. However, I'm certain
25 that there were interim additions made along the way, so

1 that the cost was continuing.

2 Q. Is -- you listed several other costs, and I
3 don't want to -- in spite of the fact I do want to focus
4 on that early period and get a yes or no question for you,
5 it's not my intent to constrain the substance with respect
6 to cost. You list several other types of costs that
7 apparently you felt were important in response to my
8 question. We just talked about fixed cost.

9 Was there another type of cost that you
10 wanted to respond to me in my question about?

11 A. I was trying to -- I was trying to be fully
12 responsive, and beyond the fixed costs of the plant, you
13 have the very significant fuel expenses to actually
14 generate energy.

15 Q. Okay. So now with respect to that cost,
16 was the early years of the operation of Joppa a high cost
17 period, with respect to that cost?

18 A. Fuel costs have grown since then and are
19 relatively high now.

20 Q. Excuse me, sir. I think I'm being clear.
21 I don't want to know since then. I want to know the early
22 period of the plant.

23 A. I don't know how you want me to answer. If
24 I can't compare a cost in one period to another, how do
25 you expect me to get high versus low?

1 Q. Well, if you say, based on my question you
2 don't know, that's a fair answer.

3 A. I know that they're higher now than they
4 were then.

5 Q. Okay. So your answer is no, that's not a
6 high cost period?

7 A. Not relative to today, no.

8 Q. That's all I asked. Thank you.

9 As of May 2005, do you know what the cost
10 based price of the Joppa power was?

11 A. I have seen the invoices. I don't know
12 that I have them with me.

13 Q. Did you once know?

14 A. Yes.

15 Q. If I told you that a number around 23 or
16 \$24, would that seem right to you?

17 A. Let me see if I can find it. What date
18 were you after?

19 Q. May 2005 or around that period.

20 A. I am looking at an invoice pursuant to the
21 power supply agreement for energy supplied during the
22 month of May 2005. It shows demand charges of 2.4 million
23 rounded, energy charges of 3.9 million rounded, total cost
24 6.3 million over 337,000 megawatt hours, approximately.

25 Q. So megawatt hour basis, what would that

1 come out to, roughly?

2 A. Perhaps 18, \$19.

3 Q. Thank you.

4 A. Without running the math.

5 Q. Subject to check or whatever, I'm not
6 really trying to focus on the specific cents. Now, have
7 you reviewed the bylaws of EEInc?

8 A. I'm sure I have at one time or another,
9 yes, sir.

10 Q. Do you recall that there's an allocation
11 mechanism allocating the power of the Joppa plant among
12 the sponsoring companies in the bylaws?

13 A. I recall that in the PSA. I'm not sure I
14 recall that in the bylaws.

15 Q. Okay. Do you recall if there was -- let me
16 put it this way: There was no pricing mechanism for the
17 power of the Joppa plant in the bylaws, correct?

18 A. I believe that's correct.

19 Q. There was no guarantee of a particular
20 price for the Joppa power in the bylaws, correct?

21 A. I believe that's true, yes.

22 Q. AmerenUE's ratepayers are not owners of
23 EEInc, are they?

24 A. No, the ratepayers are not owners of EEInc,
25 except to the extent individual ratepayers may be owners

1 of Ameren Corporation stock and indirectly owners of
2 EEInc.

3 Q. There was no evergreen position in the PSA.
4 By PSA I'm referring to the 1987 to 2005 purchased power
5 agreement that we've been discussing here. So if
6 PSA means that, there was no evergreen provision in the
7 PSA, correct?

8 A. That's correct.

9 Q. Okay. And you have, I'm sure, heard
10 Mr. Micheel asking questions about whether the purchased
11 power agreement could have an evergreen provision. I'm
12 sure you would agree that a purchased power agreement
13 could have an evergreen provision, correct?

14 A. Yes.

15 Q. And there was none in the PSA?

16 A. That's correct. The agreement between
17 these affiliates --

18 Q. Yes or no will be fine, sir. It would be
19 fair to say, then, that the contracting parties did not
20 want to put an evergreen provision in the PSA, correct?

21 A. There's not one there. I can't get into
22 their minds to know what they wanted to put there. If
23 someone wanted to, it didn't survive.

24 Q. Well, whatever, they didn't agree to it,
25 right?

1 A. Correct.

2 Q. The expense of -- AmerenUE's expense of
3 purchasing power from EEInc was part of AmerenUE's cost of
4 service, wasn't it?

5 A. Yes, it has been historically.

6 Q. And AmerenUE, through those purchased power
7 contracts for that power, covered an average 16 percent of
8 Joppa's costs over the 50-year life span of that
9 relationship, correct?

10 A. I've not done a calculation to that end.

11 Q. And you know for a fact that Mr. Moehn has
12 submitted testimony along those lines, correct?

13 A. I believe in his surrebuttal he has an
14 exhibit that purports to do that, yes.

15 Q. Great. So you haven't done your own
16 analysis of that point, have you?

17 A. No, I have not. The --

18 Q. That's fine. That's fine. And so at the
19 end of the day, you're not in a position to say he's wrong
20 in that calculation, correct?

21 A. I don't take the position that the
22 calculation is wrong, nor relevant.

23 Q. The corporate bylaws can't change fiduciary
24 duties, can they?

25 A. You may be asking me to do what you told me

1 you weren't going to ask me to do.

2 Q. I suspect I am. I suspect I am.

3 A. I have no opinion on that.

4 Q. Thank you. It is not imprudent to not do
5 something you don't have the legal right or power to do,
6 correct?

7 A. I would assume that's correct, yes.

8 Q. Now, do you know -- focusing again on that
9 period of May 2005, do you know what the average market
10 clearing price for energy at that time was?

11 A. I'm sure I have seen energy price data for
12 that period of time. I don't think I have it with me.

13 Q. That's fine. You once knew?

14 A. Yes.

15 Q. Okay. Now, with respect to, let's say, the
16 next year, 2006, would you know for 2006 what the average
17 market clearing price for energy was? If you have a sense
18 of a ballpark, that's fine. I don't need particular
19 cents, though I understand if you prefer to be accurate.
20 I'm happy to take a ballpark.

21 A. On an average hourly basis throughout the
22 year, perhaps \$38, give or take a few dollars.

23 Q. Would it surprise you if it was \$46.21, in
24 that neighborhood?

25 A. Depending on how we're defining the market

1 we're looking at and what prices, possibly.

2 Q. Thank you. Would you agree that customers
3 pay for service, not for the property used to render it?

4 A. What kind of customers are we talking
5 about, utility customers?

6 A. Yes, sir.

7 A. Utility customers pay for utility service
8 at prices determined by a regulator based upon --

9 Q. Sir, I really don't need to know how the
10 price is calculated. But in response to my question,
11 which I believe was a yes or no question, do you agree
12 that customers of a utility pay for service, not for the
13 property used to render it?

14 A. They pay for service. They're not buying
15 the property, that's correct.

16 Q. Okay. Now, would you agree that the fact
17 that a customer pays rates based on the cost of a
18 particular asset does not entitle that customer to share
19 in the gain of the subsequent sale of that asset?

20 A. Not necessarily, no.

21 Q. So you disagree with that proposition?

22 A. If customers pay prices that are reflective
23 of cost responsibility for an asset over its life, many
24 regulators have found it reasonable to attribute the gain
25 on the sale of that property to customers in setting rates

1 as a matter of equity.

2 Q. So I just read an articulation of FERC. So
3 you disagree with their approach to that subject, then?

4 A. Well, my experience has been that
5 regulators can and often do attribute gains on sales of
6 utility property to customers, and I don't know what
7 FERC's position is, but I'm telling you what mine is.

8 Q. But you obviously disagree. You can. It's
9 a free country.

10 A. Many disagree, yes.

11 Q. If the power from EEInc in that contractual
12 relationship that we've talked about so much in these
13 hearings became uneconomic, would you agree that it would
14 be imprudent for AmerenUE not to go somewhere else to buy
15 more economic power?

16 A. Are we assuming they can escape their
17 responsibilities under the contract?

18 Q. Yes.

19 A. If Ameren has choices and other choices are
20 more economical, I would expect the company to avail
21 itself of those options.

22 MR. CYNKAR: Thank you. I have no further
23 questions.

24 MR. BYRNE: Your Honor, I've got questions
25 on off-system sales, if that's okay.

1 JUDGE WOODRUFF: Yes.

2 CROSS-EXAMINATION BY MR. BYRNE:

3 Q. Good morning, Mr. Brosch.

4 A. Good morning.

5 Q. I've got a few questions on off-system
6 sales, which I think I started before, and that was --
7 your off-system sales position, I think, is in your
8 surrebuttal testimony, beginning on page 7?

9 A. Yes, sir.

10 Q. Mr. Brosch, are you proposing to use
11 AmerenUE's budgeted amount for off-system sales in this
12 case?

13 A. Yes, sir, the recently issued 2007 budget.

14 Q. Okay. And is it true, Mr. Brosch, that
15 AmerenUE's budgeted off-system sales number does not
16 reflect a normalized level of generating unit
17 availability?

18 A. I believe that it reflects the actual
19 planned outage schedule for '07 rather than a normalized
20 schedule, yes.

21 Q. Okay. And would you agree that it reflects
22 no scheduled outage for the Labadie -- the four units at
23 the Labadie plant?

24 A. That's correct. I see a Callaway outage
25 and a Rush Island outage.

1 Q. So would you also agree it reflects no
2 scheduled outage for any of the Meramec four units?

3 A. Correct.

4 Q. And it reflects no scheduled outage for the
5 two units at Sioux?

6 A. Correct.

7 Q. And it reflects no outage for two of the
8 four units at Rush Island?

9 A. That appears to be the case. It's
10 comparable to OA, but doesn't --

11 Q. That's just a yes or no on that question,
12 is all I was asking for, Mr. Brosch.

13 Are you aware that off-system sales -- the
14 electric prices used in calculating the off-system sales
15 figure in the budget was based on a single snapshot of
16 forward prices that were in existence on a specific date,
17 and specifically January 2nd, 2007?

18 A. I don't think that's correct. Certainly
19 there are categories of sales that are projected.

20 Q. Okay. You don't -- you don't agree with me
21 that it's based on a snapshot of prices on January 2nd,
22 2007?

23 A. The unidentified off-system sales -- and
24 this response is designated highly confidential. I'll
25 refer to it generally, but there are categories of sales,

1 some of which are unidentified off-system sales in blocks
2 and others of which are captioned as fixed price sales.

3 Q. So is that a yes, no or I don't know?

4 A. Some are based upon the January 2 forward
5 price curve. Others appear not to be.

6 Q. Are most of them based on the January 2,
7 2007 forward price curve?

8 A. More than half.

9 Q. Okay. Have you done any analysis as to how
10 accurate the use of prices on January 2nd, 2007 would be
11 to project AmerenUE's off-system sales?

12 A. No. I assumed if it was good enough for
13 the board to consider, it was good enough for the
14 Commission to consider.

15 Q. Have you done any analysis as to how
16 accurate AmerenUE's budgeted off-system sales have been in
17 past years?

18 A. I've seen some comparisons. I don't
19 recall.

20 Q. So you haven't done any analysis?

21 A. I wouldn't call it analysis. I have seen
22 some comparisons. They've been high in some years and low
23 in others.

24 Q. Are you aware of how AmerenUE's budgeted
25 off-system sales in 2006 compared to actual off-system

1 sales realized during that year?

2 A. I don't recall.

3 Q. Okay. Mr. Brosch, is it your position that
4 we should use budgets with regard to other items in
5 setting rates? Should we use budgeted amounts, for
6 example, to reflect the amount of rate base that's
7 included in rates?

8 A. No. The convention here is to use
9 historical actual data adjusted for known and measurable
10 changes wherever possible.

11 Q. So that's a no. So it's a no to my
12 question?

13 A. It's generally it's a no. However --

14 Q. It is just a yes or no question. Should we
15 use budgeted?

16 A. Generally, no.

17 Q. Okay. Thank you. Should we use budgeted
18 medical expenses in setting rates?

19 A. Probably not.

20 Q. Should we use budgeted wages in setting
21 rates?

22 A. Sometimes it's necessary to do so.

23 Q. Would you support the use of a budgeted
24 test year in the state of Missouri?

25 A. Not under the present framework of

1 regulation, no.

2 MR. BYRNE: Okay. Thank you.

3 JUDGE WOODRUFF: All right. We'll come up
4 for questions from the Bench, then. Commissioner Gaw, do
5 you have any questions?

6 COMMISSIONER APPLING: I have no questions.

7 QUESTIONS BY COMMISSIONER GAW:

8 Q. Okay. Let's briefly give me a rundown on
9 off-system sales. Your view on off-system sales at the
10 present time is generally what, as far as looking forward,
11 first of all, if there's no fuel adjustment clause?

12 A. If there is no fuel adjustment clause, my
13 recommendation is that the Commission use the best
14 available information to set a rate, a level of off-system
15 sales margins in base rates, and then track through
16 deferral accounting variations in that amount because it's
17 so difficult to determine that amount accurately for
18 future reconciliation and adjustment in a next proceeding,
19 for example.

20 Q. Okay. And the reason why you find it
21 difficult at this point is because of what, or what set of
22 factors?

23 A. It's difficult to predict prices, and
24 there's significant amount of variation around the market
25 price issue, and there also is a lot of variability in the

1 performance of the company's generating units that makes
2 it difficult to accurately predict volumes.

3 Q. Okay. Does the expiration of the JDA have
4 an impact on understanding what historically -- how the
5 history of off-system sales can be used as a predictor of
6 future volumes of off-system sales?

7 A. That is one change among many changes that
8 frustrates one's ability to use historical data to any
9 meaningful predicted value of the future, the expiration
10 of the EEI contract being another, the Taum Sauk outage
11 being another, changes in the energy markets. There are a
12 multitude of changes that are concentrated in the past
13 couple of years that make that exercise difficult.

14 Q. Okay. In looking at what would occur if
15 you went to a fuel adjustment clause, again with
16 off-system sales, your position is generally what again?

17 A. If you have a fuel adjustment clause, it is
18 important to net off-system sales and SO2 allowance sales
19 into that calculation so that -- to kind of go back to a
20 point we touched on the other day with my criteria
21 regarding off-system sales, so that you capture some of
22 the mitigating and offsetting effects and look at all of
23 the dynamics that move with the production and sale of
24 energy.

25 Q. Let's move to the EEI issue. First of all,

1 what do you believe that AmerenUE itself should have done
2 in regard to that EEI contract? What's your position on
3 that?

4 A. My position is that these are affiliated
5 companies and that where there is a will, there is a way
6 to act in the ratepayers' best interests. That action was
7 not taken and this valuable resource has been proposed at
8 least to be transferred out of the Commission's
9 jurisdiction and that that needs to be remedied.

10 The Staff has a proposed remedy that
11 simulates the effect of the resource still being available
12 to AmerenUE. My proposed remedy is different in form, but
13 similar in impact, in that it looks at the value actually
14 being realized by EEInc through that change in pricing
15 regime, and imputing for ratemaking purposes some of that
16 value back to reduce the revenue requirement in a way
17 comparable to what commissions do all over the country in
18 responding to the improper affiliate disposal of directory
19 publishing assets that are derived value from the
20 regulated telephone business. And there's a history for
21 that here as well.

22 Q. Let me ask you this: Do you know of
23 anything that you have seen or looked at that indicates
24 that AmerenUE attempted to extend or renegotiate contract
25 for power or capacity or both -- rephrase it, -- energy,

1 capacity or both from EEI?

2 A. I've seen no evidence that the company has
3 attempted to perpetuate the Joppa arrangement for the
4 benefit of Missouri ratepayers, no, sir.

5 Q. And I'm not talking with anything about
6 what EEI might have done at this point. Is there any --
7 your testimony is, you have seen no testimony from other
8 individuals or any documents of any kind that indicate
9 that UE made an attempt to extend that contract with EEI?

10 A. That's correct.

11 Q. Is it your belief that, based upon what you
12 know in regard to power prices that are out there, that
13 the decision that, if that indeed was not done, that that
14 has harmed ratepayers if this Commission were to not take
15 any action in regard to that EEI contract?

16 A. Yes. I believe that approval of the
17 company's position in this case would be harmful to
18 ratepayers.

19 Q. While I think it's probably clear, would
20 you explain to me why you believe that to be true?

21 A. Certainly. The clear evidence is that --
22 well, let me make reference to one of my schedules. That
23 will be helpful. If you would look with me at, attached
24 to my surrebuttal, Schedule MLB-12 at page 28.

25 Q. Just go ahead. I'll pick up with you.

1 A. All right. That schedule sets forth the
2 Electric Energy, Inc consolidated income statement for the
3 years 2005 through 2015, and 2005 is obviously the last
4 full year when we had this cost-based pricing and
5 contracting that defined how revenues were earned and
6 reported by EEI. And in that year EEI had \$174 million
7 worth of revenues, charging essentially cost-based prices.

8 In the next subsequent year, projected
9 2006, that number increased from 174 to -- call it 370
10 million. So that to me is a direct reflection of the
11 difference between market value versus cost-based price
12 for the output of the plant. And if you look at the years
13 after 2006 that are projected, you can see at the stated
14 assumptions in the footnotes the expectation that prices
15 will continue to grow and EEI revenues will continue to
16 grow.

17 And even more dramatic is the effect on net
18 income because the energy volumes are relatively constant
19 and expenses grow only gradually while revenues grow
20 tremendously.

21 Q. And as a result of not having access to the
22 EEI power, based on what you have observed and learned in
23 this case, do you think that there was -- that there
24 was -- that the power had to be replaced by other power to
25 serve load of AmerenUE?

1 A. Yes, that's exactly what will happen or has
2 happened effective at the end of 2005 with the loss of
3 that approximately 400 megawatt base load coal-fired
4 resource. Replacement energy was required, and the
5 opportunity to make off-system sales in UE's name was
6 diminished.

7 Q. All right. Did you look at the dividend
8 history of EEI?

9 A. I've seen information to that end. In
10 fact, that same document I was directing you to reflects
11 the initiation of dividends from EEI, I think starting in
12 2006 and continuing thereafter.

13 Q. All right.

14 A. Before that time, I recall looking at the
15 financials and concluding that internal cash flows had
16 been used by EEI to reduce debt.

17 Q. Okay. And subsequent to then, what
18 would -- what would have changed?

19 A. Well, the biggest thing that happens is
20 with market-based pricing, top line grows tremendously,
21 income grows tremendously, and there are cash flows in
22 excess of internal requirements that enable EEI to
23 commence making dividends.

24 Q. And previous to that, those benefits were
25 flowing through to AmerenUE and to AmerenUE's ratepayers,

1 among others?

2 A. I think that historically what has happened
3 beyond the repayment of debt is that the equity returns
4 realized by EEI based upon that 15 percent contractual
5 return on equity were reinvested in the business and were
6 reflective of a gradually growing equity investment level
7 in the business on the balance sheet.

8 Q. All right. Do you know what the debt
9 equity ratio is in EEI currently?

10 A. As of the end of 2005, stockholders equity
11 was 82 million, call it, and there was an Ameren loan of
12 20 million.

13 Q. Is that the only outstanding debt that was
14 noted?

15 A. Other than accounts payable and other
16 liabilities. That's the only apparent permanent financing
17 that would be debt financing.

18 Q. This is to Ameren the holding company, can
19 you tell?

20 A. I might be able to tell. I'm looking at my
21 Schedule MLB-10, page 18 if you want to make reference to
22 it later.

23 Q. Okay.

24 A. This is 2005 annual report for EEI, and the
25 reference there is to notes payable that I just spoke of,

1 and it says, the company had two revolving credit
2 agreements which allowed borrowings of up to \$45 million.
3 A 25 million revolving credit agreement expired on
4 June 10, 2005. It goes on to describe the expired
5 agreements and then says, in June 2004 the company secured
6 an additional credit agreement with Ameren Corporation
7 which allows borrowings up to 50 million. I assume that's
8 the one that's reflected in the balance sheet.

9 Q. Okay. Mr. Brosch, first of all, you've
10 already testified that you don't know of anything that
11 AmerenUE did to try to extend or renew the power services
12 agreement or the contract that it had with EEI. I want to
13 turn over to the other side for a minute. Why would it
14 have been -- help me to understand why it would have --
15 from your perspective, it would have been appropriate for
16 EEI to extend that contract.

17 A. Well, I think it would be appropriate for
18 Ameren to ensure that EEI extended the contract to provide
19 the ongoing availability of the resource to Missouri
20 ratepayers, for example.

21 Q. But don't the interests of EEI supersede
22 the interests of Ameren for those who are in charge of
23 EEI?

24 A. I hope not.

25 Q. And why is that?

1 A. Ultimately you'll have to answer that
2 question, I think.

3 Q. Why would you say that?

4 A. I look beyond the structure of affiliate
5 transactions because of the presumption that with majority
6 control of the corporation one can have its way with that
7 corporation. That's been my experience.

8 Q. In fact, is there a prohibition about that
9 in corporate governance rules for those who have majority
10 interest in corporations to seek to control some of its
11 outcome, other than if it overruns some sort of
12 shareholder interest?

13 A. I'm not sure if I understand your question.

14 Q. Let me back up. If stock of a corporation
15 is publicly traded, are there requirements for there to be
16 a certain number or percentage of independent directors on
17 the board?

18 A. I'm not sure.

19 Q. Maybe I'll get that out of somebody else.
20 Do you know whether there are additional protections in
21 regard to publicly traded utilities that don't exist for
22 those utilities that are privately held?

23 A. I'm afraid I don't follow you.

24 Q. All right. Are you aware of anything that
25 would have prohibited AmerenUE from attempting to protect

1 its interests and the interests of its ratepayers in
2 regard to the EEI contract?

3 A. Well, I've certainly read with interest the
4 company's position on that matter, but my experience has
5 been that where you're in a position of majority ownership
6 and control, utilities are able to affect reasonable
7 transactions with affiliates. And in instances where they
8 haven't been or seem disinterested in doing that,
9 regulators can make appropriate ratemaking adjustments to
10 remedy any inequitable outcomes. And that's what my
11 reference to the directory imputation cases in my
12 testimony is about.

13 I can't help you with the legal fine points
14 of what can be done or not done.

15 COMMISSIONER GAW: That's all right.
16 That's all I have, Judge. Thank you.

17 JUDGE WOODRUFF: Thank you, Commissioner.
18 Anyone wish to recross based on questions from the Bench?

19 MR. CYNKAR: Yes, your Honor.

20 JUDGE WOODRUFF: Mr. Mills, did you --

21 MR. MILLS: I do.

22 MR. CYNKAR: If he'd like to go first,
23 that's fine.

24 JUDGE WOODRUFF: You're first on the list.

25 RE-CROSS-EXAMINATION BY MR. MILLS:

1 Q. Good morning, Mr. Brosch.

2 A. Good morning.

3 Q. Is it your understanding that EEI or a team
4 reporting to the EEI board recommended a particular
5 arrangement and that arrangement is what we have today?

6 A. I believe that's true.

7 Q. Have you seen any evidence that showed UE
8 making any attempt to find an alternate arrangement that
9 would benefit UE and EEI?

10 A. No, sir.

11 Q. Okay. Now, you just had some questions
12 from Commissioner Gaw about majority ownership. Is it --
13 are you essentially arguing in this case that the majority
14 ownership of EEI should have gone along with what the
15 minority ownership wanted to do anyway?

16 A. It's certainly my understanding that the KU
17 interest in EEI were interested in perpetuating a
18 cost-based purchased power arrangement, and it would have
19 eliminated this issue had Ameren supported that and
20 ultimately affected that, the continuation of a cost-based
21 power supply agreement.

22 Q. And if they had done so, there would have
23 been no risk of suits by the minority ownership because
24 that's what the minority ownership wanted to do; is that
25 correct?

1 A. I assume so. I'm -- I don't really know.

2 MR. MILLS: That's all I have. Thank you.

3 JUDGE WOODRUFF: For Ameren?

4 RE-CROSS-EXAMINATION BY MR. CYNKAR:

5 Q. Mr. Brosch, in response to the questions
6 from Commissioner Gaw and to Mr. Mills, you just were
7 engaged in a long discussion of your experience of what
8 majority shareholders can and can't do in a corporation.
9 And in any of that, were you trying to offer a legal
10 opinion?

11 A. No, sir.

12 Q. When you say in your experience, majority
13 owners do certain things, were you implying that they do
14 it lawfully?

15 A. I assume they do what they do lawfully,
16 yes, sir.

17 Q. But you don't know?

18 A. I'm -- I don't know of any instance where
19 they haven't or have. I've not attempted any legal
20 investigation of the matter.

21 Q. But I mean, in fairness, you're saying that
22 they do it, and presumably -- I haven't seen a rash of
23 lawsuits surrounding corporations where you have
24 experience in, and so you're implying that it's legally
25 okay for them to do it based on your experience, aren't

1 you?

2 A. Whatever they're accomplishing, yes,
3 appears to be legal.

4 Q. Okay. Now, as a matter of law, EEInc makes
5 the decision as to the price of its power, doesn't it?

6 MR. MICHEEL: I would object to the extent
7 that that's calling for a legal conclusion.

8 MR. CYNKAR: Yes, I think he's opened the
9 door. He just admitted his testimony about the experience
10 of majority shareholders as a simplistic view that that's
11 legally okay, and so I think I'm entitled. Frankly, if he
12 doesn't know the answers to my question, my earlier
13 invitation stands. He can say, I don't know, I'm not a
14 lawyer. That's a perfectly fair answer.

15 JUDGE WOODRUFF: I'll overrule the
16 objection. I will instruct the witness if you don't know
17 the answer, you certainly are entitled to say, I don't
18 know

19 BY MR. CYNKAR:

20 Q. Would you like me to state the question
21 again?

22 A. Yes.

23 Q. As a matter of law EEInc -- I also have
24 that problem -- makes the decision as to the price of its
25 power, correct?

1 A. I would assume so, yes, sir.

2 Q. As a matter of law, shareholders are not
3 entitled to manage a company in which they own stock,
4 correct?

5 A. I don't know.

6 Q. As a matter of law, directors manage the
7 company, correct?

8 A. I assume so, but don't know as a matter of
9 law.

10 Q. Directors have legal duties and obligations
11 that arise from sources of law outside the corporation or
12 the documents creating the corporation, correct?

13 A. As far as I know, yes.

14 Q. As a matter of law, directors are not
15 entitled to defer to the wishes of control shareholders or
16 transfer corporate assets to those shareholders at below
17 fair market value, correct?

18 A. I don't know.

19 Q. As a matter of law, selling its power at
20 fair market value is a corporate opportunity of EEInc,
21 correct?

22 MR. MILLS: Your Honor, I'm going to object
23 here. I think there may have been some little bit at the
24 beginning of this, but he's asked an entire series of
25 questions that say, as a matter of law isn't this the

1 case. He is deliberately soliciting a legal opinion from
2 this witness, and I don't think this witness can open the
3 door, as Mr. Cynkar said, to that kind of testimony. I
4 don't think he can open that door unless he goes to law
5 school. So I think this whole line of questions is
6 improper.

7 MR. CYNKAR: Your Honor, two points. First
8 of all, I believe that it is clear that Mr. Brosch has put
9 his implicit legal judgment about it is okay to do the
10 very thing that is at the core of the EEInc issue here,
11 and he has implicitly endorsed as legally okay the notion
12 that Ameren can take action, it can ensure this, that and
13 the other thing. We all know from the testimony we've had
14 here that's the core of the issue here. I think I have a
15 right to ask this, and he can say no, I don't know.

16 JUDGE WOODRUFF: I agree. The objection's
17 overruled.

18 THE WITNESS: I have no legal opinion for
19 you regarding the extent of EEInc to seek market pricing
20 for its power.

21 BY MR. CYNKAR:

22 Q. Thank you. As a matter of law -- and these
23 are close questions, so I realize you may have the same
24 answer, and that's fine, but I do want to get on the
25 record your answer to these questions.

1 As a matter of law, the corporate
2 opportunity to sell the Joppa plant power at fair market
3 value does not belong to EEInc's shareholders in their
4 capacity as shareholders of EEInc, correct?

5 A. I don't know.

6 Q. Directors have fiduciary duties toward the
7 corporation on whose board they sit, correct?

8 A. I believe so.

9 Q. What are those fiduciary duties?

10 A. Exercise care, sound judgment, loyalty to
11 the corporation.

12 Q. A fiduciary's use of corporate assets to
13 further his own goals is a violation of his fiduciary
14 duties, correct?

15 A. I don't know. I suspect so, but I don't
16 know.

17 Q. The director may not take the corporation's
18 assets to help another corporation in which he has an
19 interest, correct?

20 A. Same answer.

21 Q. A corporation -- a corporation's fiduciary
22 cannot take advantage of business opportunities which are
23 considered as belonging to the corporation, correct?

24 A. Same answer.

25 Q. I want to -- I'm out of that line of

1 questions, so we can relax a little bit on that.

2 I'm going to give you a hypothetical, and I
3 realize you may quibble with the premise, but just accept
4 the premise. I'm giving them to you for a reason. I
5 haven't renewed my mortgage a long time, but --

6 MR. MICHEEL: Your Honor, this needs to
7 relate to a question from the Bench, and there's been no
8 indication that it relates to any sort of questions from
9 the Bench, so if we could lay that foundation. If not,
10 I'll object.

11 MR. CYNKAR: I'll be happy to, Mr. Micheel.
12 That's a fair objection.

13 BY MR. CYNKAR:

14 Q. Do you recall the line of questions both
15 from Mr. Mills and Commissioner Gaw about whether or not
16 AmerenUE attempted to get EEInc to sell it power at below
17 fair market?

18 A. Yes, I recall those questions.

19 Q. With respect to that exchange, I've got a
20 hypothetical for you. Let's assume --

21 MR. MILLS: And your Honor, to the extent
22 that this is based on my further examination rather than
23 the Bench's examination, I object that it's beyond the
24 scope of questions from the bench. I don't know what the
25 question's going to be yet, but it appeared in his

1 foundation he tied it to my examination, and properly this
2 series of questions should be tied directly to the
3 questions from the Bench.

4 JUDGE WOODRUFF: Of course, your recross
5 was based on questions from the Bench. Ultimately, it
6 goes backward.

7 MR. CYNKAR: Exactly, your Honor. And if I
8 misspoke, I apologize to my colleague.

9 BY MR. CYNKAR:

10 Q. In any event, back to the hypothetical so
11 we can get to lunch, assume that mortgage interest rates
12 are 20 percent. Okay?

13 A. All right.

14 Q. You want to buy a house. You want to
15 get a mortgage for the house. You want a mortgage at
16 10 percent. Would it be your testimony that you should go
17 to the banker and see if they'll give you 10 percent even
18 though you know mortgage rates are at 20 percent?

19 A. Am I affiliated with the banker?

20 Q. No. I gave you all the terms of the
21 hypothetical, Mr. Brosch.

22 A. Probably wouldn't do me a lot of good.

23 MR. CYNKAR: Thank you. I don't have any
24 more questions.

25 JUDGE WOODRUFF: Any redirect?

1 MR. MICHEEL: Just a little bit.

2 REDIRECT EXAMINATION BY MR. MICHEEL:

3 Q. Mr. Cynkar asked you about the 16 percent
4 of the Joppa costs.

5 A. Yes.

6 Q. Do you recall those questions? Is that
7 calculation relevant?

8 A. No, it's not, because the power supply
9 agreements that have been in effect and other documents
10 referenced in my testimony explain that the sponsoring
11 companies have an unconditional obligation to pay for the
12 costs of the Joppa plant whether it has any output or not,
13 and to take and pay for whatever output is not taken by
14 the Department of Energy and predecessor agencies. So the
15 sales to DOE over the years were treated as a cost-based
16 revenue credit, but in the end the sponsoring companies
17 bore ultimate cost responsibility for the plant.

18 Q. Mr. Byrne asked you some questions about
19 budgeted items. Do you recall those questions?

20 A. Yes, I do.

21 Q. And you noted that there were exceptions.
22 Do you recall those answers?

23 A. I do.

24 Q. Could you expound on those exceptions?

25 A. Well, essentially the simulation of energy

1 costs and off-system sales is a modeling exercise that's
2 based upon a number of input values, one of which is the
3 anticipated representative ongoing price for off-system
4 sales, and that's not a known historical point in time
5 fact, but instead is reasoned estimate of what that
6 representative value is going forward. And for that
7 reason, in this area of off-system sales I was looking for
8 an updated representative value to recommend to the
9 Commission, and that's why I used a budget value here.

10 Q. And did you have any problems with the
11 earlier numbers that the company had provided you?

12 A. Everyone had problems with the company's
13 original numbers. In fact, the company has since revised
14 those numbers considerably.

15 Q. Mr. Cynkar asked you some initial questions
16 about whether or not the Joppa plant was high cost or low
17 cost. Do you recall those questions?

18 A. I recall being confused by the questions,
19 yes.

20 Q. And so you were trying to explain the
21 difference between the nominal costs and other costs.
22 Could you do that for me?

23 A. Yes. What I meant was, you have a
24 long-term arrangement over more than 50 years. So when
25 you talk about what is high cost, it has to be in the

1 context of first inflation adjusted dollars over that
2 extended period of time. And then, secondly, you have to
3 recognize that certain of the costs are fixed
4 capacity-type costs that under a traditional regulatory
5 framework tend to be front loaded because the plant is
6 only gradually recovered through depreciation expense
7 accruals over time.

8 There's another category of costs, the fuel
9 and variable costs that have increased throughout time in
10 part due to inflationary pressures and in part due to just
11 changes in fuel market conditions. So when you say what
12 is high cost, it depends on what kind of costs you choose
13 to be talking about.

14 Q. And did Mr. Cynkar enumerate the costs
15 enough where you could give a reasoned answer?

16 A. Well, I hope so. I'm not sure whether it's
17 clear or not.

18 MR. MICHEEL: That's all I have. Thank you
19 very much.

20 JUDGE WOODRUFF: And, Mr. Brosch, you can
21 step down.

22 THE WITNESS: Thank you, sir.

23 JUDGE WOODRUFF: And with that, we'll break
24 for lunch. We'll come back at 1:15.

25 (A BREAK WAS TAKEN.)

1 JUDGE WOODRUFF: All right. Welcome back
2 from dinner, and before lunch we had completed the
3 cross-examination of the prior witness, and Mr. Meyer has
4 taken the stand, so if you'd raise your right hand, I'll
5 swear you in.

6 (Witness sworn.)

7 JUDGE WOODRUFF: Thank you very much.
8 Mr. Dottheim, you can proceed.

9 MR. DOTTHEIM: Mr. Meyer's testimony on the
10 EEInc issue is in Exhibit 225. It's his direct testimony.
11 He'll be taking the stand later in the proceeding. So at
12 this point I think we only need to deal with Exhibit 225
13 and that portion of his -- of Exhibit 225 that deals with
14 the EEInc issue as opposed to storm costs.

15 JUDGE WOODRUFF: Do you wish to offer all
16 of 225 at this time or do you just want to wait?

17 MR. DOTTHEIM: Why don't I just offer the
18 EEInc generation plant, which covers -- well, why don't I
19 offer all of it since it --

20 JUDGE WOODRUFF: That would be easier.

21 MR. DOTTHEIM: Yes. But since portions of
22 it cover the issue that he'll be appearing later on for
23 which he has some corrections on, I thought, unless you
24 think otherwise, he can make the corrections on those
25 other sections when he takes the stand on the other issue.

1 JUDGE WOODRUFF: That's fine. Let's just
2 wait and consider the whole thing when he comes back for
3 the next time.

4 MR. DOTTHEIM: Okay.

5 JUDGE WOODRUFF: At this point, then, he's
6 tendered for cross?

7 MR. DOTTHEIM: Yes, because he has no
8 corrections to make to the two pages on which he has his
9 EEInc testimony on, pages 6 and 7.

10 JUDGE WOODRUFF: Okay. All right. The
11 witness has been tendered for cross. Does any party wish
12 to cross-examine this issue on the EEInc issues.

13 MR. CYNKAR: Yes, your Honor.

14 (EXHIBIT NO. 225 WAS MARKED FOR
15 IDENTIFICATION BY THE REPORTER.)

16 JUDGE WOODRUFF: Go ahead, Ameren.

17 GREG MEYER testified as follows:

18 CROSS-EXAMINATION BY MR. CYNKAR:

19 Q. Good afternoon, Mr. Meyer. We're here at
20 last.

21 A. Good afternoon.

22 Q. You were here in the hearing room when I
23 did my cross-examination of Mr. Brosch?

24 A. In and out.

25 Q. Okay. Well, then I just want to be sure.

1 I'm going to be asking you a number of different
2 questions, and as you know, at least from the company's
3 perspective, there are legal issues that are tied up in
4 the EEInc issue. And if those questions to your mind ask
5 you to call -- ask you to give a legal opinion, and I know
6 you're not a lawyer, and you don't know the answer to
7 that, please just say it's your view it's a legal opinion
8 and so forth, or answer it if you think you can or have
9 the authority to do so. It's not my intent to trick you.
10 I just frankly want to move through this material and
11 we'll get it done relatively expeditiously.

12 And if you were here, a number of the
13 questions that I'm going to ask you are the same questions
14 I asked Mr. Brosch, so you had a little early primer on
15 where I'm coming on some of these questions.

16 First of all, it is true, is it not, that
17 corporate bylaws can't change fiduciary duties?

18 A. I don't know.

19 Q. It is correct, is it not, that it is not
20 imprudent not to do something you do not have the right or
21 power to do?

22 A. I believe I'd agree with that.

23 Q. Now, it's also correct that the high-cost
24 years of the Joppa plant were its years of operation?

25 A. Are we -- I mean, I was here for that

1 portion. Are we talking about the fixed costs or how do
2 you want to divide that out?

3 Q. Well, do you happen to have your deposition
4 there?

5 A. Yes, sir, I do.

6 Q. Okay. Well, you testified to that effect.
7 So when I use those words, I actually was using
8 specifically your words. If you turn to page 33 of your
9 deposition, line 5, I believe, line 5 through 15. If
10 you'd like to refresh your recollection by reading that
11 question and answer, please do so.

12 A. That response relates to the fixed cost
13 portion.

14 Q. Fine, if that's what you intended.

15 A. Correct.

16 Q. Then to my question, the answer is what?
17 Would you like me to restate my question?

18 A. I think I understood your question.

19 Q. Okay.

20 A. To the extent that the plant doesn't go
21 through major modifications, the high cost of the plant
22 would be in its initial years.

23 Q. Wonderful. Thank you.

24 A. On a fixed cost basis.

25 Q. I understand. I understand. Thank you for

1 making that clear.

2 It's also correct, is it not, that the
3 initial years of the Joppa plant was the period in which
4 the government -- I know it was the Atomic Energy
5 Commission back then, but for shorthand I'll refer to the
6 government -- took the largest share of the Joppa power?

7 A. That was my understanding.

8 Q. Okay. Now, do you know as of May 2005 what
9 the cost-based price of the Joppa power was?

10 A. Yes, I do.

11 Q. And what was that?

12 A. In May of 2005, AmerenU-- or Ameren was
13 charged \$6.5 million total expense, of which 2.4 was
14 demand and 4.09 was energy. These might be somewhat
15 different because I'm reading from an invoice date.
16 Mr. Brosch might have, I think, actually referred to the
17 service period. So the service period would have been
18 6.3 of total invoice, 2.4 of demand and 3.9 of energy.

19 Q. Were you here when he answered that
20 question for me?

21 A. Yes.

22 Q. Okay. Did you agree with his answer? You
23 can do the math yourself, but in terms of on a megawatt
24 hour basis, do you recall?

25 A. I just can't calculate that at this time.

1 Q. Okay. As of May 2005, do you know what the
2 average market clearing price for energy was?

3 A. I've seen those -- we've seen those numbers
4 because I worked with Dr. Proctor on his analysis, but I
5 can't recall off the top of my head.

6 Q. The bylaws of EEInc do not contain any
7 provision regarding the price at which its power is sold,
8 correct?

9 A. I don't know. You'd have to refer to
10 Mr. Schallenberg for that.

11 Q. So you've never reviewed the bylaws of
12 EEInc?

13 A. I either requested the bylaws or I got the
14 certificate of incorporation from Illinois, but it's been
15 so long, I can't recall the specifics.

16 Q. Then is it fair to say that the bylaws have
17 not featured in the conclusions you offer in your
18 testimony here?

19 A. That's correct.

20 Q. Okay. Thank you. Now, it's true, isn't
21 it, that the only money AmerenUE's ratepayers have
22 expended regarding EEInc are expenses for power purchased
23 from EEInc under the PSA?

24 A. They paid the total cost of the plant and
25 in exchange received power.

1 Q. And in your view, they paid the total cost
2 of the plant through the power supply agreement, correct?

3 A. Correct.

4 Q. And in the power supply agreement, AmerenUE
5 was buying power from EEInc, right?

6 A. It was a purchased power agreement.

7 Q. So the answer is yes?

8 A. Yes.

9 Q. And that was the only way in which AmerenUE
10 ratepayer money got to EEInc, correct?

11 A. Since 1950?

12 Q. Yes.

13 A. I don't know.

14 Q. Okay. AmerenUE shareholders' money bought
15 the stock that Ameren owns in EEInc, correct?

16 A. Shareholder money bought the initial stock
17 of EEInc, correct.

18 Q. Okay. And we heard this morning,
19 Mr. Dottheim brought in the application for a second
20 purchase of stock, and that was also a matter of
21 shareholder money purchasing that second round of stock,
22 correct?

23 A. I'm not familiar with that.

24 Q. Okay. Now, under the bylaws, the
25 sponsoring companies were entitled to a share of the power

1 produced by the Joppa plant based on the percentage of
2 EEInc stock they own? But I guess actually I'm sorry to
3 ask you that. You said you weren't familiar with the
4 bylaws. I apologize. That's a problem when you write
5 notes in advance. I apologize.

6 Now, AmerenUE's ratepayers are not owners
7 of EEInc, are they?

8 A. No.

9 Q. Okay. The price of power in a firm
10 permanent power contract includes an energy and a demand
11 or capacity charge, right?

12 A. That's correct.

13 Q. Okay. And a capacity or demand -- I'll
14 just use the phrase capacity. I don't know which you
15 commonly use, but I'll use capacity. Capacity charges
16 cover fixed costs, correct?

17 A. Return on the investment and of.

18 Q. Okay. That's fine. Thank you. Now, to
19 your knowledge, no one has ever claimed that the
20 PSA between AmerenUE and EEInc was imprudent, correct?

21 A. I don't know. I don't know that we've made
22 that claim in the last three cases.

23 Q. Given your position on the Staff, if
24 someone had claimed something Ameren was doing was
25 imprudent, would it be a good chance that in your career

1 here you would have heard about it?

2 A. Well, since -- since the Callaway case, I
3 am not aware that we've challenged imprudency on EEInc.

4 Q. And you don't know whether anyone else has?

5 A. I think I can speak for the Staff on that
6 one.

7 Q. But I mean you haven't heard of anyone else
8 making that claim?

9 A. No.

10 Q. Okay. Now, EEInc is not within the
11 jurisdiction of this Commission for setting retail rates,
12 correct?

13 A. It's a component of our cost of service, if
14 that's your question.

15 Q. No. I -- is EEInc within the retail rate
16 setting jurisdiction of the Missouri Public Service
17 Commission?

18 A. No. I believe it's FERC.

19 Q. Thank you. And AmerenUE does not own the
20 Joppa plant, correct?

21 A. AmerenUE owns 40 percent of the stock that
22 owns the Joppa plant.

23 Q. Right. It doesn't own the plant, correct?

24 A. I don't know what the -- I mean, I don't
25 know the difference between what I just told you.

1 Q. You don't --

2 A. It owns 40 percent of the stock that owns
3 the Joppa plant.

4 Q. So are you -- do you invest in stocks?

5 A. I have a very small amount.

6 Q. So if you have, let's say, a 1/10 of 1/100
7 percent of the stock of GE, are you saying that you think
8 you own that percentage of the GE plant in Detroit?

9 A. No.

10 Q. Okay. So then it can't be, can it, that
11 AmerenUE owns 40 percent of the stock of EEInc, but that
12 doesn't mean they own the Joppa plant, correct?

13 A. I'll agree with that.

14 Q. Thank you. The Joppa plant is not in
15 AmerenUE's rate base, is it?

16 A. Can you define rate base?

17 Q. Well, I'd rather -- to tell you truth,
18 you've lived in this world more than I have, so I think
19 you'd know what rate base. What would you define --

20 A. The reason I ask you that is Mr. Moehn has
21 a term for rate base in his deposition. It's not the same
22 term I use.

23 Q. I'm curious finding out your thinking.

24 A. My rate base is the investment in the
25 utility, investments that the assets that serve -- that

1 serve the customers.

2 Q. So my question again is, is the Joppa plant
3 in AmerenUE's rate base?

4 A. No.

5 Q. Thank you. This Commission could not order
6 EEInc to sell power on a cost basis, could it?

7 A. I don't know.

8 Q. You have earlier testified that EEInc is
9 not within the juris-- I'm not trying to trick you. I
10 just want to be sure we're clear. You have earlier
11 testified that the EEInc is not within the jurisdiction of
12 this Commission, correct?

13 A. Correct.

14 Q. Okay. That the Joppa plant is not within
15 the rate base of AmerenUE, correct?

16 A. You just asked me about rate base. I'll
17 agree with that.

18 Q. And then is there a possibility that this
19 Commission could order EEInc to sell power on a cost
20 basis?

21 A. I guess where I'm confused is I believe
22 that the Commission has the power to set rates with EEInc
23 based on re-- with UE receiving power from UE on a
24 cost-based basis. I believe they have that power.

25 Q. All right. Well, answer my question, and

1 if I'm confusing you, I don't mean to. I thought it was
2 actually fairly simple. I'm just articulate it again.
3 Can this Commission order EEInc to sell power on a cost
4 basis?

5 A. Beyond the answer that I just gave you, I'm
6 not sure.

7 Q. Do you know what an evergreen provision is?

8 A. I think it's a -- I view it as a renewable
9 provision, that you can renew a contract.

10 Q. Thank you. Was there an evergreen
11 provision in the PSA?

12 A. No.

13 Q. And as I asked Mr. Brosch this morning --
14 again, I don't know if you were in for that part of the
15 testimony. Mr. Micheel had posited whether an evergreen
16 provision could be in a PSA. I would just reiterate that
17 question. Could a PSA have an evergreen provision?

18 A. Yes.

19 Q. And this PSA that we're talking about,
20 again the 1987 to 2005 contract between EEInc and
21 AmerenUE, that doesn't have an evergreen provision,
22 correct?

23 A. Not to the best of my knowledge.

24 Q. Okay. Would that suggest to you that the
25 parties did not want to put an evergreen provision in the

1 contract?

2 A. I have no idea what the parties negotiated.

3 Q. Let me ask you this: If they wanted to put
4 a provision in, would you expect to see it in?

5 A. Again, you're asking me to speculate what
6 the parties negotiated. I have no idea.

7 Q. If the power from EEInc became uneconomic,
8 it would be imprudent for AmerenUE not to buy more
9 economic power from some other source, correct?

10 A. UE should continually evaluate its power
11 supplies and make the most economical purchases.

12 Q. So was that a yes to my question?

13 A. Yes.

14 Q. Thank you.

15 Now, you believe that AmerenUE should have
16 continued to include the Joppa unit in its cost of service
17 for retail rates, correct?

18 A. Could you repeat that.

19 Q. Sure. And actually, I'll tell you what,
20 I'm make it simpler. I'm just actually using your words,
21 and I don't want to trick you, but if you turn to your
22 deposition, page 24, and if you read lines 13 to 15
23 yourself. In fact, just so we're all on the same page --
24 it's a short sentence -- I'll read it for the record.

25 I believe -- this is you answering the

1 question from Mr. Byrne. I believe that AmerenUE should
2 have continued to include the Joppa unit in its cost of
3 service for retail rates, the results of those.

4 A. I agree with that statement.

5 Q. Okay. And that belief on your part is
6 based on the fact that AmerenUE owns 40 percent of EEInc,
7 correct?

8 A. And the premise that it supported the plant
9 for over 50 years.

10 Q. Okay. In your deposition, in answering
11 Mr. Byrne's question, he asked you about the basis of
12 that, and if you go down a few lines, again we're still on
13 page 24, the question and answer was line 21 to 25. And
14 in answer to Mr. Byrne's question, question, okay, and you
15 have -- your opinion holds notwithstanding the fact that
16 that contract expired; is that correct?

17 Answer: That's correct, because AmerenUE
18 owns 40 percent of EEInc.

19 So you still agree with that answer?

20 A. That and what I just told you.

21 Q. Okay. Now, do you believe that AmerenUE
22 ratepayers were supporting 40 percent of the costs of
23 EEInc?

24 A. I never -- I never testified to that.

25 Q. So you don't agree with that?

1 A. I've seen the charts. I have not done the
2 and analysis, the historical analysis to know what
3 AmerenUE ratepayers supported.

4 Q. Okay. So that means you haven't done an
5 analysis of Mr. Moehn's exhibits concerning that subject
6 either, correct?

7 A. No.

8 Q. So you don't know whether he's right or
9 wrong, correct?

10 A. I have no opinion about Mr. Moehn's
11 statement.

12 Q. Okay. Now, if I understand the Staff's
13 position, you believe that \$78 million roughly should be
14 imputed into Ameren's cost of service, correct?

15 A. \$78 million is the revenue requirement of
16 including the Joppa output in the Staff's cost of service.

17 Q. I'm right, it's roughly \$78 million, and
18 you're saying we're going to act as if Ameren's getting
19 that money from somewhere in calculating what their cost
20 of service and revenue requirement are, correct?

21 A. No, because we put in the demand and the
22 energy charges associated with that power. I'm not
23 imputing anything. I'm making a -- I'm bringing the plant
24 back into -- or the purchased power agreement back into
25 the cost of service, putting it in the demand charges, the

1 energy charges, and then running the production cost
2 model, and it generated a \$78 million -- that's the value
3 of the issue.

4 Q. Now I'm confused. The contract is over,
5 correct?

6 A. I agree that the contract's over.

7 Q. Okay. And so Ameren is not -- AmerenUE is
8 not buying any power from EEInc, correct?

9 A. I don't know that.

10 Q. Okay. So could you unpack your answer
11 about what this \$78 million stands for?

12 A. \$78 million is the revenue requirement of
13 the issue, and that is the value that is the, if you want
14 to call it profit, that's fine, that the issues's worth,
15 and imputing -- or not imputing, I'm sorry, substituting,
16 bringing in or recognizing the power contract between
17 EEInc and UE in our production cost model. It's worth
18 \$78 million.

19 Q. Okay. So there's nothing of value coming
20 from EEInc into Ameren, correct, AmerenUE?

21 A. I didn't say that.

22 Q. No. I'm asking you. I wasn't saying you
23 were saying that. I'm asking you. I'm just trying to
24 understand.

25 A. We're getting generation from the unit.

1 Q. You're not getting generation from the
2 Joppa plant unit right now?

3 A. In our cost of service, we are.

4 Q. How are you getting that?

5 A. We modeled it in our production cost model.

6 Q. In the real world, are you getting energy
7 from the Joppa plant into AmerenUE?

8 A. I would say today, no. As we sit here and
9 speak, probably not.

10 Q. And so is it your position that the end
11 results of this rate proceeding is that power will be
12 going from the Joppa plant to AmerenUE?

13 A. I don't know how it will be resolved
14 electronically, but I know that our position is that we
15 brought the unit pack into the cost of service, or
16 continued the unit in cost of service. I don't know that
17 we actually brought it back since it was in during the
18 test year.

19 Q. So if I'm understanding your modeling
20 point -- and please forgive me because I'm not a numbers
21 guy. I'm worse than an engineer, as we saw earlier, I'm a
22 lawyer, and I'm not quite understanding you -- you're
23 modeling \$78 million. And is it your testimony that if
24 your position prevails here and the Commission endorses
25 it, that there will be \$78 million worth of electricity

1 coming from the Joppa plant into AmerenUE?

2 A. No. Bringing the energy in from the Joppa
3 unit cost -- had an expense of approximately \$65 million.
4 Bringing that unit in and modeling it at 3.1 million
5 megawatt hours on an annual basis generated \$78 million of
6 additional profit or additional revenues for the --
7 against the cost of service, being imputed against the
8 cost of service in the Staff's case.

9 Q. Okay. So you are imputing a number?

10 A. No, I'm not. I refuse to accept that I'm
11 imputing a number. I brought a unit back in and modeled
12 it as if it was still in the available resources of
13 AmerenUE. I did not impute anything. It was --
14 \$78 million is a figure that is derived after the
15 production cost model is run.

16 Q. Okay. Let me ask you this: You're
17 speaking in the modeling world. If I understand you, your
18 model assumes that the Joppa facility is back with Ameren,
19 correct?

20 A. Correct.

21 Q. That's not the real world, correct? That's
22 the model?

23 A. It's not as it exists today.

24 Q. Do you think that's going to exist in the
25 future?

1 A. It would depend on the -- I think that's
2 why we're here.

3 Q. Could you explain what you just said?

4 A. Well, obviously if the Staff prevails, we
5 believe that that power can be brought back or imputed
6 back -- or some arrangement brought back, excuse me, where
7 the --

8 Q. I don't want to trick you on that word.
9 I'm going to stay away from it.

10 A. -- the retail rates will recognize the
11 inclusion of the Joppa unit.

12 Q. Okay. And that recognition, then, if I
13 understand what you're saying, if your position prevails,
14 is that the Joppa unit will be back in AmerenUE, correct?

15 A. It will be considered -- it will be
16 considered a component of the cost of service.

17 Q. And is that because AmerenUE ratepayers
18 will be getting service from the Joppa plant?

19 A. For ratemaking purposes.

20 Q. What does that qualification mean, for
21 ratemaking purposes?

22 A. Rates will be -- rates will be set as if
23 the Joppa unit is still a UE source of generation.

24 Q. And the Joppa unit, will it, in fact,
25 irrespective of ratemaking purposes, will it be producing

1 power that's going to AmerenUE ratepayers if you prevail
2 in your position?

3 A. I don't know how the power will go. I
4 can't tell you how the power goes today from a unit.

5 Q. But is the premise of your ratemaking
6 adjustment that that power is coming to AmerenUE
7 ratepayers?

8 A. Yes.

9 Q. I'm going to ask you a couple conclusions
10 statements that I asked Mr. Brosch. Again, I don't know
11 if you were here. I'd be curious about your point of view
12 on them.

13 Do you think it's true that customers pay
14 for service, not for the property used to render it?

15 A. In a regulated world, they pay rates that
16 cover those types of expenses.

17 Q. So is your answer yes?

18 A. Yes.

19 Q. Would you agree that the fact that a
20 customer pays rates based on the cost of a particular
21 asset does not entitle that customer to share in the gain
22 on the subsequent sale of the asset?

23 That's a long sentence. Would you like me
24 to read it again? You have a quizzical look on your face.

25 A. Try it one more time.

1 Q. Okay. Would you agree that the fact that a
2 customer pays rates based on the cost of a particular
3 asset does not entitle that customer to share in the gain
4 on the subsequent sale of that asset?

5 A. I disagree with that.

6 Q. And again, as I said this morning, that's
7 FERC's point of view and you just disagree?

8 A. Well, the reason is that if the rate -- if
9 the ratepayer paid a return on and of the piece of
10 property and it was later sold for a gain, the gain would
11 be treated as salvage and would flow through the
12 depreciation reserve. So I think it's -- that statement's
13 incorrect.

14 Q. I see. So would you say it's true that
15 because of the power bill that I pay to Virginia Power --
16 as you know, I live in the suburbs of Washington, D.C. --
17 that I have an interest in the assets of Virginia Power
18 along those same lines?

19 A. Could you repeat that?

20 Q. Sure. I was picking up on your statement,
21 so you know whatever your statement meant, but does that
22 mean that because I pay my power bills to Virginia Power,
23 which is the utility out where -- covers my home, that I
24 have an interest in the assets of Virginia Power?

25 A. I don't know how those two statements are

1 related. I know that you pay rates that support those
2 assets, and in that you are also receiving -- if it's
3 similar to what the situation I just described, you're
4 receiving the benefits of gains on sales of property that
5 you provided a return on and of if they're sold for
6 greater than or if there's a gain on that sale.

7 Q. So just to make sure I understand your
8 answer, so is your answer yes, that I do have an interest
9 in the assets of Virginia Power?

10 A. I would think you'd have an interest in
11 making sure that they're maintained properly, yes.

12 Q. But as with this statement, if they're
13 sold, should I have some of the profit?

14 A. It's a component of your rate.

15 Q. So is the answer yes to my question?

16 A. Yes.

17 MR. CYNKAR: That's all I have.

18 JUDGE WOODRUFF: Thank you. Then we'll
19 come up for questions from the Bench. Commissioner Gaw?

20 COMMISSIONER GAW: I don't believe I have
21 any questions.

22 COMMISSIONER APPLING: I have no questions.

23 JUDGE WOODRUFF: All right. And I have no
24 questions, so there's no need for recross. Any redirect?

25 MR. DOTTHEIM: No redirect.

1 JUDGE WOODRUFF: Then, Mr. Meyer, you can
2 step down. And the next witness is Mr. Schallenberg.
3 Mr. Schallenberg, if you'll please raise your right hand.

4 (Witness sworn.)

5 JUDGE WOODRUFF: Thank you very much.

6 MR. DOTTHEIM: Mr. Schallenberg has
7 rebuttal and surrebuttal testimony. The rebuttal
8 testimony is Exhibits 236HC and 236NP. His surrebuttal
9 testimony is 237HC, 237P and 237NP, and I will give copies
10 to the court reporter.

11 JUDGE WOODRUFF: Is this the only time
12 he'll be appearing?

13 MR. DOTTHEIM: Yes. No, it's not. I'm
14 sorry. He will be appearing on depreciation also.

15 JUDGE WOODRUFF: We can wait 'til then.

16 MR. DOTTHEIM: All right. And he does have
17 corrections to his rebuttal testimony, which is 236.
18 there is a page that did not find its way into this
19 testimony. It's Schedule 4-3, which I have copies of.
20 And he does have, as I indicated, corrections that we'll
21 read into the record.

22 JUDGE WOODRUFF: Let's deal with this
23 schedule first. I think the easiest way is just to mark
24 it as a separate exhibit. It would be 269.

25 (EXHIBIT NO. 269 WAS MARKED FOR

1 IDENTIFICATION BY THE REPORTER.)

2 MR. DOTTHEIM: And again, Exhibit 269
3 should be Schedule 4-3 in Mr. Schallenberg's rebuttal
4 testimony, which is Exhibit 236.

5 JUDGE WOODRUFF: Okay. Did you wish to
6 offer 269 at this point?

7 MR. DOTTHEIM: Yes, I would like to offer
8 Exhibit 269 at this point.

9 JUDGE WOODRUFF: All right. 269 has been
10 offered into evidence. Are there any objections to its
11 receipt?

12 MR. CYNKAR: No objection.

13 JUDGE WOODRUFF: Hearing no objections, it
14 will be received into evidence.

15 (EXHIBIT NO. 269 WAS RECEIVED INTO
16 EVIDENCE.)

17 ROBERT SCHALLENBERG testified as follows:

18 DIRECT EXAMINATION BY MR. DOTTHEIM:

19 Q. Mr. Schallenberg, do you have any other
20 corrections to make to your testimony?

21 A. Yes. On Exhibit 236, on page 12, line 5,
22 the word doing should be during on that line. And on
23 page 19, line 13, the word extended should be extend. On
24 page 24, line 6, you should insert the word in between
25 included and the, so it should start, were already

1 included in the. And the line 8, that should be changed
2 to read, and profit which would constitute the return
3 component used in ratemaking proceedings. There were
4 several words missing from that line.

5 Q. Would you reread that line 8 again as it is
6 corrected?

7 A. Yes. And profit which would constitute the
8 return component used in ratemaking proceedings.

9 MR. DOTTHEIM: Now, page 26, there are some
10 changes, and Mr. Schallenberg can read them in the record,
11 but they're of a nature that it seemed it also would be of
12 assistance if we distributed a corrected page. I don't
13 know that it needs to be marked an exhibit, but we thought
14 that if people could actually look at the page, too, it
15 would be helpful.

16 JUDGE WOODRUFF: Fine, if you want to
17 distribute it.

18 BY MR. DOTTHEIM:

19 Q. Mr. Schallenberg, would you identify the
20 corrections to page 26 of your rebuttal testimony.

21 A. Yes. Beginning on line 11, on page 26, the
22 line should read, companies are governed by a power supply
23 agreement, period. The rates for capacity, and then line
24 12 should read, and energy to DOE are governed by a power
25 contract with modification No. 16, parens, mod 16, end of

1 parens. Then line 13 should read, during 2005. And then
2 accepted by FERC should be deleted. And then on what
3 would now be line 17, modification No. 17, beginning
4 parens, mod 17, end parens, became effective January 1st,
5 2006.

6 Q. Mr. Schallenberg, do you have any other
7 corrections?

8 A. I have to Exhibit 237, the surrebuttal
9 testimony, on page, 8, line -- excuse me -- line 9, the
10 words not only should be removed, and the word not should
11 be put in after did. So it should read, it is Staff's
12 position that AmerenUE was imprudent and that it did not
13 make every.

14 And then page 17 of that exhibit, on
15 line 18, the word --

16 Q. I'm sorry. What page again was that?

17 A. Page 17, line 18. It should -- the words
18 or intercompany agreements should be added after the word
19 agreement. So the line should read, company's power
20 supply agreements or intercompany agreements and the
21 EEInc.

22 And that's all the corrections I have at
23 this time.

24 MR. DOTTHEIM: I tender Mr. Schallenberg
25 for cross-examination.

1 JUDGE WOODRUFF: Does any party wish to
2 cross-examine Mr. Schallenberg? All right. Seeing no
3 cross-examination, we'll come up for questions from the
4 Bench. Commissioner Gaw?

5 COMMISSIONER GAW: I wasn't expecting that.
6 Well, Commissioner Murray's here.

7 JUDGE WOODRUFF: I'm sorry. Commissioner
8 Murray?

9 COMMISSIONER GAW: I would be glad to pass.

10 COMMISSIONER MURRAY: I probably only have
11 one or two, Mr. Schallenberg.

12 QUESTIONS BY COMMISSIONER MURRAY:

13 Q. Can you tell me, under our affiliated
14 transaction rules, what -- assuming that AmerenUE could
15 purchase power from EEI, what -- what scenarios would it
16 be limited to?

17 A. The rule as a general -- has a general
18 premise that when buying a good or service from an
19 affiliate, it should be the lower of cost or market.

20 Q. And that is the lower of its avoided cost
21 of providing it to itself, is that --

22 A. You can use it as -- the rule does not
23 specify what type of cost is used. It uses the term cost.
24 Most of the time in the application of it has probably
25 been used as fully distributed costs, but no one has

1 challenged or brought out other interpretations or
2 variations of cost in the rule.

3 Q. The rule actually says the fully
4 distributed cost to the regulated electrical corporation
5 to provide the goods or services for itself.

6 A. Right. And then there's a waiver provision
7 in the rule that you can engage in a transaction in the
8 event, and I think the standard was, I think it's in the
9 best interest of ratepayers can allow you to engage in a
10 transaction that's not directly in compliance with the
11 rule.

12 Q. Except as otherwise provided in Section 10,
13 and then Section 10 is variances. Okay. Well, the reason
14 I'm asking those questions is that, as I understand it,
15 the contract for purchased power from EEI expired as of
16 December 22nd, 2005 by its own terms. Do you disagree
17 with that?

18 A. I think it's December 31st.

19 Q. All right. December 31st.

20 A. Yeah, it terminated at that day.

21 Q. And actually it was 2006, wasn't it?

22 A. I think it's December 31st, 2005 that it
23 expired.

24 Q. But it expired by its own terms, and you
25 heard the witnesses here today indicate that there was no

1 voting to discontinue that contract, it just simply
2 expired? Did you hear that testimony?

3 A. I know that. I don't recall. That may
4 have occurred as testimony, but I do know that that's what
5 happened.

6 Q. Okay. And I know you're not a lawyer,
7 so -- but I would assume that from a layman's perspective
8 even you would understand that if a contract expires, the
9 parties are no longer -- neither party is bound by it
10 beyond the expiration date?

11 A. That would be a true statement.

12 Q. So really what apparently occurred after
13 the contract expired was that Kentucky Utilities was
14 offered a market-based purchased power agreement and they
15 rejected it. Is that your understanding as well?

16 A. I'm sorry. Did you say after it expired?

17 Q. Yes.

18 A. The offer was made before expiration.

19 Q. All right. For the term after the
20 expiration?

21 A. Right. There was some -- I can't -- I
22 never saw the actual offer, but there's reference to it in
23 a letter, and an offer was made to sell them I think
24 20 percent of the Joppa capacity at something called a
25 market-based rate.

1 Q. And is it also your understanding that
2 AmerenUE would not be able to enter into such an agreement
3 because it would be in violation of Missouri's affiliate
4 transaction rules to enter into an agreement to purchase
5 power from EEI at market-based rates if those rates
6 exceeded the fully distributed cost to Ameren to produce
7 the power for itself?

8 A. There would be a rule consideration, but
9 I -- I don't believe EEI could have made that offer to
10 AmerenUE under its FERC tariff. I don't believe the FERC
11 tariff allows EEI to charge an affiliate like Ameren who
12 has a franchise service territory a market-based rate.

13 Q. What is your understanding that the FERC
14 tariff says about EEI offering power to an affiliate?

15 A. The tariff on market-based rates is just
16 for being able to exercise that tariff, and I think under
17 the applicability of it, that tariff would not allow that
18 being used in a contract with AmerenUE unless you went
19 back to FERC and got specific approval to do so.

20 Q. So if EEI contracted to sell to AmerenUE,
21 that would require FERC approval?

22 A. If you're using market-based rates, it
23 would require FERC approval, and probably if you did a
24 cost of service contract, there's probably FERC approval
25 on that as well.

1 Q. Okay. Now, it's my understanding that
2 Staff has taken the position, although they -- although it
3 appears that you understand that the contract did expire,
4 it's no longer in effect, there is no purchased power
5 agreement between AmerenUE and EEInc, that even though
6 that is understood, Staff is still saying that the value
7 of that contract to UE is what should be considered in
8 ratemaking?

9 A. Yeah. I mean, the end result, that would
10 be the end result of what the Staff's position is in this
11 case.

12 Q. And that is that you're -- although I've
13 heard quibbling over the word imputation, I heard
14 Mr. Meyer say that he was not imputing anything to Ameren,
15 to me sounds like an exercise in semantics because if I
16 understand the definition of what it is to impute, that
17 basically the Staff's position is that regardless of the
18 fact that that contract is not there, that is the number
19 that is going to be used in determining the revenue
20 requirement for AmerenUE in this rate case. In other
21 words, it's a fiction. You're saying it's as if it were
22 there, this is what the revenue requirement is.

23 A. In the Staff's case, the number that is
24 used to create the Staff's portion of the value is by
25 putting the Joppa, the 40 percent of the Joppa unit in its

1 model runs making it available. You're right, there is no
2 contract. It is the Staff's position that the result of
3 that action or that condition was the imprudence of
4 AmerenUE.

5 Q. So when did that imprudence occur, back
6 when the contract was signed that the expiration date was
7 December 31, 2005? Was that the imprudent act?

8 A. You said when it started?

9 Q. You're saying that there was an imprudent
10 act on the part of AmerenUE. Was that imprudent at the
11 time that the contract was signed that had an expiration
12 date in it?

13 A. No. In fact, the contract, there's an
14 interrelationship between the contract, the power supply
15 agreement with UE and the other parties and DOE, which is
16 the primary customer for the Joppa unit, and the term of
17 the UE contract, because basically UE and the other
18 sponsoring companies were fallbacks, so whatever DOE
19 didn't take and whatever revenue you didn't get from DOE,
20 the sponsoring companies were responsible for.

21 So whatever the DOE contract was, you
22 needed a power supply agreement with the sponsoring
23 companies to make sure that that relationship was in sync
24 so EEI wouldn't be left with a void of having its costs
25 unrecoverable.

1 Q. But you're talking in past tense. That has
2 expired?

3 A. This is the first time in the history of
4 EEI that you had a DOE contract without the backstop of
5 the sponsoring companies.

6 Q. Okay. So you're basically using past tense
7 to determine what should be in rates today?

8 A. Yes. I mean, whenever you're doing an
9 imprudence -- a prudence disallowance, you always have to
10 do something other than what the company actually did.

11 Q. But where was the company imprudent?

12 A. That action began in about 2000.

13 Q. Okay. You still haven't told me what was
14 imprudent. There was a contract that expired by its
15 terms?

16 A. Yes.

17 Q. That's been in place for quite some time,
18 since 1987, I think?

19 A. That's correct.

20 Q. So was the act of imprudence made in 1987
21 when they entered into that contract that provided that
22 those terms would expire?

23 A. No.

24 Q. Okay. When was the imprudent act? What
25 was the imprudent act?

1 A. Probably the imprudent act probably
2 started, I think, in 2000 or 2001.

3 Q. And what was it?

4 A. When UE decided that it would not pursue a
5 modification of the contract upon expiration to make that
6 energy available to it and under what cost terms.
7 Beginning at that date, UE began -- or in essence
8 basically decided not to pursue any extension of the Joppa
9 contract for its customers.

10 Q. And yet you admit that the contract by its
11 terms expired. And as I say, I understand you're not an
12 attorney, but have you had any legal advice that tells you
13 that there was anything that would compel EEI to extend
14 the terms of that contract? Was there any renewal
15 provision in that contract that allowed that to happen or
16 required that to happen?

17 A. There is no renewal. There is no renewal
18 provision in the contract.

19 Q. There's no option for renewal in that
20 contract; is that correct?

21 A. Right. There wouldn't be in that type of
22 contract.

23 Q. Okay. So Staff's imprudence is -- Staff's
24 claim of imprudence is that in 2000 or 2001 AmerenUE
25 should have decided at that time to pursue a modification

1 of the contract?

2 A. Modification or a contract to take place
3 upon expiration of the current contract.

4 Q. And that is without any rationale that EEI
5 would have been under any obligation to modify that
6 contract or extend it on a cost base -- cost basis; is
7 that true?

8 A. On a cost basis, there was no existing
9 obligation at that time for extension on cost basis.
10 There would have been -- there was existing at that time a
11 right for UE to have its proportionate share of the power
12 from the Joppa unit.

13 Q. Okay. But then we get into our affiliate
14 transaction rules. They couldn't take it at market-based
15 rates, and if they took it at any rate, apparently they'd
16 have to go back to FERC to get approval. Is that what you
17 answered earlier to me?

18 A. I think I mentioned there would be a rule
19 item that you would need to explore, and if you wanted to
20 buy it at something more than cost and that made sense,
21 you would have to ask for a waiver in order to do so, just
22 as you'd have to ask FERC for approval to do so.

23 Q. And yet your disallowance is based on the
24 numbers as they would have existed if the contract had
25 continued exactly as it is?

1 A. Right.

2 Q. Exactly as it was written. So you want to
3 disallow anything that is beyond the favorable conditions
4 that were obtained for the period of time that the
5 purchased power agreement was in effect; is that right?

6 A. You say disallow. It's not like the
7 money -- when the contract was in place, the unit was
8 being sold at various times into the interchange market.
9 So, I mean, there was recovery. This is not a new
10 feature. It's just that none of the capacity's available
11 to serve the customer.

12 Q. But you're wanting to assume that it's all
13 available at the same rate that it was available under the
14 contract?

15 A. That's the -- that's the basis of what the
16 Staff's position is to calculate revenue requirement in
17 this case.

18 Q. Although didn't you just say that there --
19 EEI was under no obligation to continue that way?

20 A. The terms of selling 40 percent was not
21 specified at that time.

22 Q. So you're assuming that anything beyond the
23 absolute most favorable position for the ratepayers,
24 however unlikely it was that that could achieved, anything
25 other than that is imprudent?

1 A. No, I wouldn't agree with that statement.

2 In fact, I --

3 Q. Dollar-wise, how does that not -- how is
4 that not accurate?

5 A. Because if you look at in the first years,
6 it will have a positive impact by the change, but now you
7 have exposed yourself to a market risk. So while you're
8 taking on the premise that now you want to sell into the
9 market instead of taking a cost basis, you increase the
10 risk of the unit, and the unit is a relatively old unit
11 and will have modifications depending on what
12 environmental requirements will be.

13 In fact, looking at this, one of the things
14 in terms of where the Staff would use as the prudent
15 course of action, if UE really wanted to make this
16 decision, it should have looked at the position on the
17 basis that the cost of keeping the Joppa unit available as
18 part of the AmerenUE supply portfolio would be the cost to
19 rebuild, and the liability of Joppa was so great it didn't
20 justify any continuation of the contract, but they did no
21 such thing. But that's the risk that's now being taken on
22 by EEI, and ultimately 40 percent of it's UE.

23 Q. But that is 40 percent of the stock of EEI?

24 A. Right. And that's all we would talk about
25 in terms of power. We're not putting in all the power.

1 We're only taking 40 percent of the power.

2 Q. Do you think over the time of the contract
3 that there were quantifiable savings from the cost-based
4 power contract?

5 A. I do believe over certain periods there
6 were definitely savings. I mean, there were savings in
7 the last -- last several years, definitely.

8 Q. And for this case alone, I'm trying to
9 understand where your numbers fit in. Are you saying that
10 the savings would have been over market-based rates
11 \$80 million?

12 A. I didn't do the calculations, and there are
13 different calculations of this issue. When the Staff did
14 its calculation, it put it in a model that, in essence,
15 made it available to serve the Missouri, the UE native
16 load, and then versus what it will cost if you took that
17 out, which would be higher -- higher fuel and higher
18 purchased power cost, and came up with about 78, \$80
19 million.

20 My understanding that the State of Missouri
21 in essence is taking the profit that is coming from the
22 40 percent share selling the power into the market and
23 coming up with approximately the same number. They are
24 different measurements. I don't believe that the
25 relationship is such that over time they will always stay

1 in sync, that they'll be that close, but that's how the
2 two numbers are calculated.

3 Q. When a utility enters into a purchased
4 power agreement with a non-affiliate, what's covered in
5 that price of power?

6 A. Well, if it's for -- if it's firm, you will
7 you have -- it could be both, but if it's firm and you
8 have capacity that you have available to meet your peak,
9 there will be a -- usually there's a demand component or a
10 fixed component, which you pay for, and then the second
11 one is an energy or commodity component, which is based on
12 the amount of energy you take under the contract.

13 And there have been -- there's other --
14 there could be other clauses in a purchased power contract
15 as well, but those are primary, primary in a firm power
16 contract.

17 Q. Very similar to the -- what made up the
18 cost of this contract; is that right?

19 A. You're talking about the one that expired?

20 Q. Yes.

21 A. No, not really.

22 Q. Because you're not thinking that they
23 should have had any return in there in their demand
24 charge?

25 A. No, I didn't mean -- this contract, the

1 contract that expired is not a -- it's a contract that's
2 dependent on you being responsible for all the costs that
3 aren't paid for by a third party, which was the Department
4 of Energy.

5 Q. Isn't it just that you take the power that
6 was not taken by the Department of Energy?

7 A. You take all the expenses -- I mean, you
8 have access to the power that the Department of Energy
9 does not take.

10 Q. And if you can't use it all, you can resell
11 it, right?

12 A. You can resell it, but you're also
13 responsible for all the cost of EEI even if it's not
14 generated.

15 Q. The cost to produce that power that you
16 took?

17 A. No. You're responsible for the cost of the
18 plant, whether the plant's producing or not.

19 Q. Only to the extent that those costs are in
20 the power that you're purchasing?

21 A. No, that's not true. If the unit isn't
22 running, you will still be paying the cost of EEI. It's
23 under the demand component.

24 Q. Okay. Now, under the demand component of
25 another purchased power agreement, how is that different?

1 A. Well, if you had unit participation, it
2 would not necessarily be different. If you bought system,
3 then you pretty much get the capacity all the time. I
4 mean, there's probably going to be a kick-out clause about
5 a curtailment or some kind of event, but if you bought
6 firm system capacity, you would have that available to you
7 whenever you called upon it.

8 Unit participation is such that you only
9 get it when the unit's available to run, and the amount
10 you get is dependent on the amount of energy that the unit
11 can provide at a given time, because units sometimes have
12 partial deratings.

13 Q. So this is similar to a unit participation?

14 A. Unit participation or it would also be
15 similar to -- actually, this one would probably be more
16 similar to the joint ownership agreements and jointly
17 owned units.

18 Q. But there are unit participation contracts
19 between regulated utilities and non-affiliates, are there
20 not?

21 A. Which type of contract were you asking?

22 Q. Unit participation.

23 A. Yes. Yes.

24 Q. And that doesn't give that utility
25 ownership rights in the infrastructure of the power

1 supply, or does it?

2 A. No, that does not.

3 COMMISSIONER MURRAY: Thank you. I think
4 that's all I have.

5 JUDGE WOODRUFF: Commissioner Gaw?
6 Commissioner Appling?

7 QUESTIONS BY COMMISSIONER APPLING:

8 Q. Bob, how you doing?

9 A. Fine, thank you.

10 Q. You having a good day?

11 A. I always have a good day.

12 Q. I kind of gathered that. That's okay. You
13 know what I'm looking for? I'm looking for, I want you to
14 go to page 5 and 6 of your executive summary of your
15 rebuttal testimony, and while I'm talking just kind of
16 glance down there because I'm sure you have that committed
17 to memory. There's two questions I think I'm going to
18 break out. One of them starts at line 6 and run through
19 17, and the other one kind of 18 through 23 and probably
20 bleeds over on page 6.

21 I've heard a lot about the Joppa plant, the
22 contract and everything, and I think I have it, but I'm
23 looking for a little wisdom and knowledge, and old wise
24 one, I hope that you can clear this up for me. Okay?

25 A. Okay.

1 Q. If -- now, look at your 6 through 17 there.
2 If I make a decision to go with the company or if I make a
3 decision to go with the Staff, chat with me just a little
4 bit about who get hurt here, and do you have a dollar sign
5 that would -- a dollar figure, if you know it, that would
6 help me understand that? Does that make any sense to you?

7 A. Okay. Now, in terms of looking at Union
8 Electric, the moneys that have changed in terms of the new
9 arrangement to sell the energy into the grid, Union
10 Electric is receiving those profits to the company. So as
11 I mentioned when Commissioner Murray asked me, right now
12 if you look at the profits they are receiving through the
13 alternative arrangement versus the increased purchased
14 power costs they've incurred at the same time, UE is
15 pretty at a status quo as it was before the arrangement
16 took place in terms of money.

17 The way UE and ultimately Ameren benefit or
18 profit from this arrangement will be for this Commission
19 to set rates based on this higher purchased power cost.
20 And as I tried to point this out in terms of all this
21 argument about whether ratepayers own it or they don't own
22 the power plant and that, as I summed it, I summed it up
23 at least for myself and the Staff is you have to look at
24 the responsibility of UE in terms of getting into this
25 transaction, and if you believe that UE did what was

1 reasonable and prudent and resulted in the power going to
2 an alternative source, then you should side with the
3 company.

4 If you believe that Union Electric was not
5 so, and in my testimony and in statements not only did it
6 not make reasonable efforts to try to acquire this
7 property -- this power on a going forward basis, but
8 actually played a role in allowing the power to go to an
9 alternative source, then you should make the -- you should
10 side with the Staff or the other parties so the customers
11 don't pay the result of those actions by UE.

12 Q. Do this Commission has the authority to --
13 and if we do, what actions should we take in order to
14 stand by your side and support the Staff's?

15 A. Well, this is a -- this is a retail rate
16 case, so in terms of what the decision before you is, what
17 level of rates are you going to ask customers to pay? And
18 I don't think -- I know the Staff's not asking you to
19 order some contract renegotiation or anything else. All
20 you're doing is being asked --

21 Q. Going forward?

22 A. -- what are you going to ask customers to
23 pay for.

24 COMMISSIONER APPLING: Okay. Thank you
25 very much.

1 JUDGE WOODRUFF: Commissioner Gaw?

2 COMMISSIONER GAW: Thanks.

3 QUESTIONS BY COMMISSIONER GAW:

4 Q. Good afternoon, Mr. Schallenberg.

5 A. Good afternoon.

6 Q. I need you to break this down for me into
7 smaller components. Let's talk about UE for a moment.
8 You raised the day 200-2001 that AmerenUE should have been
9 doing something different a while ago in regard to the EEI
10 contract. Why is that date important to you?

11 A. Prior to that date, the Joppa energy, the
12 40 percent of the Joppa energy was -- for IRP or UE
13 planning process was considered to be available as part of
14 the regular system, and the contract termination date was
15 not even considered. It wasn't -- so the -- which I --
16 and I believe is consistent because they have ownership
17 and they have rights, that it was -- it was part, just
18 like Labadie and Sue, it was planned to be a supply asset.

19 Q. How do you know that?

20 A. Well, one is in the planning documents done
21 before the -- well, up through the merger and even I think
22 all the way through 1999, in fact, I think they're
23 attached to my surrebuttal, the UE plans, in that you'll
24 see -- in fact, you'll see that not only was Joppa
25 included, they were actually planning on building

1 additional capacity at the Joppa unit to meet their future
2 needs.

3 Q. Somewhere on page like 65 of Schedule 166?

4 A. The easier way to see it is if you look at
5 the summary pages and you had -- let's see. Union
6 Electric. I have Schedule 3-6 in the surrebuttal. And
7 it's kind of hard to see which line you have to focus on,
8 but if you look at -- if you have that page, it goes from
9 '99 to 2008.

10 Q. Sorry about that, Mr. Schallenberg.

11 A. That's fine.

12 Q. Go ahead. You say this schedule was 3 dash
13 what again?

14 A. If you go to -- for example, one of the
15 tables you can look at is in Exhibit 237.

16 Q. Yes.

17 A. It's at the very end. If you go to like
18 Schedule 3.6, 3-6.

19 Q. All right.

20 A. Okay. And then if you go -- there's a --
21 the first line, we'll say total installed generating
22 capacity gross.

23 Q. Right.

24 A. Okay. Then it starts giving you -- then it
25 has purchase, net, Electric Energy Inc, and it has a

1 footnote of 2.

2 Q. Okay.

3 A. Okay. You'll see the 405 megawatts that
4 was available to UE that they were planning on during that
5 period of time.

6 Q. Okay.

7 A. And you'll see that in 1999 we're still
8 under the 1987 purchase supply agreement, which has a 2005
9 expiration date, and you can see there the extension of
10 the plan for the energy of 405 beyond that date.

11 Q. All right.

12 A. If you follow the --

13 Q. Now, this document came from what again?

14 A. This is from AmerenUE.

15 Q. And it was filed as a part of what
16 initially?

17 A. Well, this is part of response -- if you go
18 to -- Staff receives it in terms of getting a copy of a
19 Data Request given to the Office of Public Counsel.

20 Q. Okay.

21 A. If you go to, like, Schedule 3-3, it will
22 identify that as the AmerenUE resource plans for the year
23 1998, 1999 and 2000, and it's the ten-year forecast that
24 existed at that time.

25 Q. All right.

1 A. And then if you go to -- the first time you
2 start seeing something different --

3 JUDGE WOODRUFF: If I can interrupt, I just
4 got an e-mail from one of the advisors to the
5 Commissioners indicating that what you're testifying about
6 is marked P for proprietary. Is that correct? I'll ask
7 Ameren.

8 MR. DOTTHEIM: Yes.

9 COMMISSIONER GAW: It is marked that way,
10 but I didn't know whether that was still the case. I
11 think it's an old document.

12 JUDGE WOODRUFF: Let me ask Ameren.

13 MR. DOTTHEIM: It is.

14 JUDGE WOODRUFF: Let me ask Ameren if it's
15 still proprietary.

16 MR. BYRNE: This is -- you're just talking
17 about that 1998, '99, 2000 resource plans; is that
18 correct?

19 THE WITNESS: Yes.

20 MR. BYRNE: Then that should not be
21 proprietary anymore.

22 JUDGE WOODRUFF: Okay. Thank you. Sorry
23 to interrupt.

24 THE WITNESS: So if you go to the one
25 for -- it's on Schedule 3.7.

1 BY COMMISSIONER GAW:

2 Q. Yes.

3 A. Okay. Now you start seeing on that line,
4 which is the purchase from net Electric Energy Inc, you
5 start seeing that while the numbers have changed a little
6 bit from 405 up to 437 --

7 Q. Right.

8 A. -- they end in 2005.

9 Q. Okay.

10 A. Okay. Now, there is beginning on
11 Schedule 3.8 going forward, you now have the resource
12 plans for SIPS, because we're now after the UE/SIPS
13 merger.

14 Q. All right.

15 A. Okay. And if you go to the last page,
16 3.12, because SIPS was also a sponsoring company of EEInc.

17 Q. All right.

18 A. Okay. And you go to their share of the
19 purchase net energy Electric Energy Inc.

20 Q. Yes.

21 A. And if you look at that line you'll notice
22 that while all the capacity is gone from UE, not only for
23 SIPS is the energy not planned to be not available, but
24 you see that the SIPS capacity from the purchase of EEI
25 Inc -- excuse me, I keep saying it wrong -- EEInc is grown

1 by 437 megawatts, which is the UE portion.

2 Q. And if the previous document you just
3 referred to, the same year's filing or same year's
4 information had that 437 out to the year 2006 in UE's --
5 in UE's power supply, am I following you?

6 A. If you go to that -- we're looking at 3.12.

7 Q. Yes.

8 A. And you see where you go from 219 to 656
9 for SIPS.

10 Q. Okay.

11 A. Okay. If you go to 3.17, which is the same
12 period for AmerenUE --

13 Q. Yes.

14 A. -- you'll see that that line goes from 437
15 in 2005 and goes to zero --

16 Q. All right.

17 A. -- in 2006. You see now where the plan was
18 to move it from UE to supply SIPS.

19 Q. Now, I've got to ask a question because I'm
20 curious about something. Do you know if the board of
21 directors of EEI in the year that those two schedules were
22 filed, or three I guess, let's make it the latter two,
23 these two schedules were filed, were they the same in that
24 year as they were in 2005?

25 A. I have their FERC annual reports. I can --

1 I can check and see what they reported to FERC at that
2 time.

3 Q. Okay. Well --

4 A. I know -- I know Mr. Naslund was there, but
5 I don't know that all -- I don't know that there wasn't
6 any changes in that period of time.

7 Q. Maybe you can check in a minute. I'm just
8 curious about how UE was -- and SIPS were able to predict
9 the votes that would be cast by EEI's board of directors
10 four or five years after the date of these schedules being
11 filed. I'm wondering if you could shed some light on that
12 for me.

13 A. I can tell you the president -- the
14 president of AmerenUE is the president of Ameren at this
15 point in time.

16 Q. So what does that have to do with anything?

17 A. Well, in essence, whatever the president
18 decides, he can impose from UE.

19 Q. Now, Mr. Schallenberg, that is not the
20 testimony that we've had by some of these witnesses prior
21 to this. The testimony that I've been hearing is that the
22 EEI board of directors is completely independent of that
23 individual. What causes you to make that statement?

24 A. Well, under the bylaws, you have to be on
25 the board, you come up for election every year.

1 Q. Okay.

2 A. So if I don't believe you are going to
3 vote -- say, for example, hypothetically that I am that
4 president and I want -- I want EEInc to do X. Then all I
5 need to do is nominate and vote, and assuming I have a
6 majority or can get a majority, that will be the board.
7 And if you are not going to vote what way, then I'll
8 nominate someone against you and vote my shares
9 accordingly. I mean, that's not something sinister. That
10 happens all the time.

11 Q. You mean that happens in the real world of
12 corporate business?

13 A. Yes, it does.

14 Q. That's just fascinating, Mr. Schallenberg.

15 A. I don't know how fascinating it is. I just
16 see it all the time.

17 Q. Now, if I understand Staff's position on
18 this is that the decisions that were being made in the
19 Ameren group, affiliates of Ameren, the holding company,
20 does Staff believe that those decisions were being made as
21 a part of some overall Ameren holding company plan in
22 regard to the use of EEI's energy and capacity?

23 A. I know I do. I mean, I can't say that all
24 of the Staff has gone through and specifically examined
25 that question, but I can -- I can testify today that I do.

1 Q. Is that one of the basis from your
2 standpoint of why Staff believes that it's appropriate to
3 consider whether or not an extension or a continued use of
4 EEI's energy was possible?

5 A. Yes. I mean, clearly it's possible since I
6 know 20 percent of the owners were consistent with that
7 desire as well, and there's only three --

8 Q. That 20 percent being whom?

9 A. Kentucky Utilities.

10 Q. Okay. Finish your answer, if you would.

11 A. And I know that because of the way the
12 ownership evolves at the time of the contract expiration,
13 whatever two owners want, they're going to have a
14 majority.

15 Q. Okay. And I'm -- let me back up just a
16 minute here, if I could. I want to just talk about UE for
17 a moment. And I understand what your general theory is.
18 I want to just speak to the UE question in regard to
19 accessing energy and capacity with the -- in the year
20 2000, 2001, 2003, 2004, all the way up to 2005. What is
21 your position in regard to what AmerenUE should have done
22 with the approaching deadlines that seem to be there in
23 regard to the EEI contract?

24 A. At the point in time that AmerenUE believes
25 that it is not going to be able to get the -- that there's

1 a change, that the energy is not going to be available on
2 an extension of cost-based basis that had been used since
3 the inception of this plant, and you can pretty much see
4 that from -- you can see an change in the ownership, so
5 there should be some direction. They've been operating
6 for about 50 years, over 50 years by the time that you
7 have there, with the respective utilities supporting the
8 EEInc operation and as a fallout of what's not being sold
9 to DOE, and during this period you would see that the DOE
10 operation is dwindling in terms of its use of the
11 agreement with the EEInc.

12 And there's another piece to the agreement
13 is that the sponsoring companies also provided power to
14 EEInc over and above the Joppa unit. The Joppa unit was
15 never -- at the inception was not big enough to supply all
16 the anticipated demand. It was built at the time in order
17 to supplement what the sponsoring utilities couldn't
18 supply themselves.

19 Q. To whom?

20 A. To DOE.

21 Q. Okay.

22 A. Because the DOE load was anticipated to be
23 about twice the size of the Joppa unit.

24 Q. I see.

25 A. In fact, that's why you had to get the

1 sponsoring companies together because there was no utility
2 around that was going to be able to take that big a load.
3 So they got together and agreed that they would serve the
4 load, and they would need additional generation in order
5 to serve that load, and agreed that the relative systems
6 would supply purchased power to make sure that the DOE
7 contract could be supported.

8 But over time, over the 50 years, DOE
9 continued -- I mean, there was a -- I don't know exactly
10 when the decline started, but there was a continual
11 decline in the DOE demand, and as their demand reduces, so
12 does the amount they're going to pay EEInc for its
13 expenses. So as --

14 Q. When you say they, who do you mean?

15 A. DOE.

16 Q. Okay.

17 A. And it goes through -- it's Atomic Energy
18 Commission for a while. There's an acronym ERDA, and I
19 can't remember what that is. Then it becomes the
20 Department of Energy. But they continually decline in
21 terms of the amount of capacity and energy that they're
22 willing to take.

23 Now, I'm not sure how much of that is a
24 decline in the use of the facility or whether they found
25 alternative sources. I know TVA is around in that area.

1 Whether they were getting cheaper power from -- I know
2 their use of EEInc declines.

3 So then what you see now is in the early
4 2000, late 1900s, you start seeing that now the basis for
5 EEInc is the Joppa unit now is becoming available to the
6 sponsoring parties instead of being part of the supplement
7 to the sponsoring parties. So now they have these assets.
8 What are they going to do about them?

9 And this is an asset that was -- had very
10 -- because of the DOE contract or the federal government's
11 contract, it had very aggressive early recovery mechanism.
12 So a lot of the plant investment has been recovered way in
13 the early parts of the year. So now you have to discuss
14 what are you going to do going forward.

15 UE before the merger with SIPS had always
16 represented that we're just going to use it as whatever's
17 available will be part of the UE system to meet our load,
18 which was represented at the time when the Commission
19 first arrived the stock purchase of EEInc. But then this
20 knew theory came on.

21 What the Staff is arguing is that at the
22 time that this alternative use to go through the market
23 for Joppa was out --

24 Q. Yes.

25 A. -- UE needed to assert within its rights a

1 proposal that would still be consistent with what UE's
2 were given its ownership and its rights at the Joppa unit.

3 Q. Now, in regard to the power that UE might
4 have access to from the Joppa unit and the price of that
5 under the contract that existed in 2005 and before, was
6 that in the last few years of that contract a lower cost
7 power for UE in comparison to, let's say, first of all its
8 own generation fleet?

9 A. In the late '90s Joppa was what was
10 referred to as an intermediate unit --

11 Q. All right.

12 A. -- which means that it is not a base load
13 unit called upon 100 percent of the time. But you have to
14 understand UE has a great deal, amount of base load
15 generation. So on given points of the year, they
16 sometimes struggle just to be able to use all their base
17 load units. Joppa is somewhere in the intermediate class
18 that you have to have a higher load.

19 Now, with the advent of high gas prices and
20 the advent of utilities being able to sell at market-based
21 prices, so it made off-system sales much more attractive,
22 then the Joppa unit would have become very valuable
23 because its unused time now can be sold into the market.

24 So it was either its utilization would
25 increase because, one, it's an intermediate coal unit, so

1 as gas prices go up, it offers savings to the UE system.
2 But more importantly, it's a coal unit that now, with gas
3 prices being on the margin, will probably be whatever's
4 not being used for the UE system can be sold for
5 off-system sales which would reduce UE's cost of service.

6 Q. Were off-system sales of EEI under that
7 contract, 2005 and before, were they credited over into
8 rates when the rate case was held? How was that treated?

9 A. We would treat it -- I mean, it would be
10 part of the -- for our share of Joppa.

11 Q. For the 40 percent?

12 A. Right. For our share of Joppa that would
13 contribute to the amount of off-system sales that UE would
14 be experiencing in a given year.

15 Q. Is that how Staff handled it whenever the
16 matter was looked at by Staff?

17 A. Yes. I mean, the reason I somewhat
18 hesitate, when you do that, as you can tell even in this
19 case, you argue about what the overall level is of what
20 off-system sales will be. And as you know, sometimes
21 units are on, some units are off.

22 So in a given year it's hard to make a
23 match as to that number came from that unit and that
24 number comes from that unit, but there was never any
25 disallowance or non-recognition of off-system sales

1 generated from the Joppa unit as some separate category
2 than off-system sales generated by the rest of Ameren's
3 fleet -- excuse me -- AmerenUE's fleet.

4 Q. How far back does that treatment go that
5 you know of?

6 A. That treatment would be consistent
7 throughout the regulatory cases that involve Union
8 Electric during the Joppa unit.

9 Q. Is it -- so are you saying that, going
10 forward, AmerenUE had an obligation to attempt to get the
11 contract continued or some -- or what are you saying in
12 regard to the access to the EEI energy?

13 A. I would -- I mean, in terms of obligation
14 to be prudent?

15 Q. Yes, to be prudent.

16 A. I believe that the prudent utility once it
17 realized that there is thought that the Joppa energy and
18 capacity is not going to be available to you on the cost
19 basis terms that it had been from the previous five
20 decades, you would then go back and look at what is going
21 to be your strategy of how you're going to deal with that.

22 I view that as being something more in in
23 essence not doing anything and allowing it to happen, and
24 then in some cases actually facilitating that happening to
25 you. I would argue that the first thing you do is you

1 come up and say, well, I'm not -- like Kentucky Utilities,
2 as I pointed out in my testimony, most of the time when
3 you have an imprudence issue, you never have a real base
4 line scenario of somebody else doing it, you should have
5 acted, you should have been like this scenario, what this
6 entity did.

7 Q. Right.

8 A. But in Kentucky Utilities you would come
9 forward and say, okay, what kind of a deal can we get? We
10 want our 40 percent. What kind of terms are going to be
11 available to us? And at the same time you're looking at
12 saying, okay, what's the lay of the land? Who's pushing
13 for these other terms? Who's pushing for terms similar to
14 us? And what are going to be our options and what can
15 we -- what are the approaches and options available to us?

16 Q. And is it your understanding that AmerenUE
17 did not do that? Is that what Staff is maintaining?

18 A. My understanding is AmerenUE did nothing in
19 order to try to get -- to try to see what terms would be
20 available or what could be worked out. In fact, AmerenUE
21 began to replace the capacity from Joppa way before the
22 term terminated.

23 Q. Why do you say that?

24 A. Because they started building and acquiring
25 CTs.

1 Q. CTs aren't the same kind of power that a
2 coal unit is, correct?

3 A. That's correct. I mean, but as I mentioned
4 earlier, Union Electric, because of it's base load, it
5 would not have made economic sense to replace the Joppa
6 unit with trying to build a new coal plant.

7 Q. Well, maybe not build one, but let me ask
8 you this: Let's take the issue of control of EEI off the
9 table for a moment, and let's assume that there was no
10 ownership of EEI, but there was a contract, same kind of
11 contract that had existed in the past. Let's even adjust
12 it further than that. Let's say that this was just --
13 this was a regular long-term contract, and that they'd
14 been purchasing power from this third party for 50 years
15 and contracts had been renewed. And let's assume that the
16 capacity and the energy was still needed to serve load,
17 but that the contract was expiring.

18 What would you expect a utility such as UE
19 to do in that event in regard to procuring supplemental
20 power or replacement power or trying to renew that
21 contract? What would your expectations be?

22 A. If I understand the scenario, I have a firm
23 purchased power agreement that is attractive and I'd like
24 to renew it, but it's with a non-- it's with a third
25 party, and I don't know yet whether I'm going to be able

1 to renew it on attractive terms?

2 Q. Yes.

3 A. And we do see that here.

4 Q. It's not uncommon, right?

5 A. No. And so what a prudent management model
6 will be is, I now know, for example, it's going to expire
7 in X amount of years. I have to look at what are my
8 options in the event that I cannot acquire that capacity
9 and that energy on attractive terms? The way I know that
10 is, what am I going to do if it doesn't get renewed? And
11 here in Missouri, the base line is you build your own or
12 you find another purchased power contract.

13 So you will be issuing an RFP to see what's
14 out in the market, to see if there's somebody else out
15 there that will offer you a purchased power contract, or
16 you'll start seeing what your build options are. And at
17 that time you now have the data of what can I buy as an
18 alternative, and what would it cost me to build?

19 So now I'm negotiating with the existing
20 party giving me the -- for power. And now I know the
21 terms that I'm willing to accept because it's possible
22 that in their demands I'll say, okay, fine, let the
23 contract expire and I'll either buy from Party B or I'll
24 build.

25 And you can do that up until the point in

1 time you have to make a decision to build, because you
2 don't want to get caught because if they know, you wait
3 too long before the expiration, then you lose the build
4 option because power plants can't be made in a day. So
5 you have to go up to that point in time that, when you get
6 to that build option, you have to go up and ask them,
7 what's your final offer? And if that final offer isn't
8 good enough, then you say, fine, thank you, I build.

9 Now, what you may find is after you decide
10 to build, they may come back to you, but then now you're
11 looking incrementally to, okay, now there's firm capacity
12 and energy is now incremental to the power I'm going to
13 get from my plant that I own, and so now you'll actually
14 require them to reduce their price below what it was
15 before if you're going to take it in addition to your
16 build option.

17 That's the prudent model that we use for
18 evaluating capacity supply decisions.

19 Q. Now, did AmerenUE do any of those things in
20 contemplation of the expiration of the EEI contract?

21 A. No.

22 Q. Does Staff believe that the replacement
23 power that Ameren has for the EEI facility is higher cost,
24 if it's allowed to pass through without any disallowance
25 of imprudence, is generally a higher cost power that will

1 cost ratepayers more as a result of the inactions or
2 actions of UE? Is that -- I'm just trying to understand
3 if that's your case, part of it.

4 A. I mean, as of what we built in lieu of
5 that, there would be a cost of not getting the Joppa unit
6 in lieu of what we did as a substitute. Now, in capacity
7 supply, units don't match load growth, and opportunities
8 to buy units don't necessarily match exact increments that
9 you have when you need them.

10 Q. They're lumpy, right?

11 A. Exactly. In fact, if you tried to do that,
12 you'd probably never build a base load unit efficiently
13 because you build them too small. So that has to be built
14 into your equation. But if you decide that you're going
15 to do a addition, then what you do is you may accept
16 purchased power contracts just as a bridge to get me to
17 the point in time when I get that unit in.

18 Now, asking me about the -- I had the Joppa
19 unit, so with that I had to decide how was I going to
20 replace that capacity. I don't know that if I had to
21 replace the capacity from the Joppa unit with anything
22 other than CTs, I don't think that that was an imprudent
23 decision. The question is did I really need to replace
24 the Joppa capacity?

25 Now, in today's -- we've also had with UE

1 where they had the opportunity to buy some CTs, and that
2 gave them more capacity than they needed to meet their
3 load at the time. But the Staff finds that to be prudent
4 because this is long-term business, 20, 30, we're talking
5 now 50 years. There's going to be opportunities out there
6 you're going to have to take advantage of.

7 UE is long capacity, and we've never taken
8 exception with them buying those opportunities or taking
9 those power plants, other than I think there's an issue as
10 to how much you pay when you buy from an affiliate. But
11 other than that, there hasn't been an issue with them
12 acquiring those CTs to supplement the base load units that
13 are in the UE system.

14 Q. So in Staff's measurement of the dollars
15 here at stake in this case, in the production cost model,
16 was the comparison to EEI being in the alternative these
17 additional CT units? Do you know how that was modeled in
18 regard to the comparison?

19 A. You would take -- you take the Joppa
20 capacity out of the model.

21 Q. Yes.

22 A. And then you run the model again.

23 Q. Okay.

24 A. And then that will give you a different
25 fuel and purchased power number.

1 Q. So you didn't disallow in the Joppa model
2 the additional CTs --

3 A. No.

4 Q. -- that were brought in to the system?

5 A. No. I mean, we understand that we're long
6 on capacity, but --

7 Q. You didn't disallow that?

8 A. We've made no disallowance to any of the
9 capacity under the control of AmerenUE.

10 Q. Now, is it the case that Staff --
11 Staff's -- part of Staff's argument here depends upon the
12 assumption that UE somehow with Kentucky Utilities had the
13 ability to influence or control EEI's decision regarding
14 this supply of energy and/or capacity to AmerenUE?

15 A. That part I would say is -- the first
16 threshold of not even trying, you were imprudent by doing
17 that in the first place.

18 Q. Okay.

19 A. Not even making the effort. Now, the
20 second part is -- and that goes into how you view the not
21 making the effort. I would argue is it with a
22 non-affiliate. In fact, in these plans you can see when
23 they were dealing with Arkansas Power & Light, and they
24 had a contract that came up, they were trying to talk to
25 them about extending the contract, and that's a

1 non-affiliate. So not even making that effort was
2 imprudent on UE's part.

3 The second part is you've got to look at
4 what are your real options here. Now, in this case, in
5 EEInc, you have because of your ownership and your, you
6 know, and your influence on the board and the officers, in
7 fact, on the employees, you have a lot more options to get
8 your points across to this vendor than you do with the
9 normal third party, and you've been using them for 50
10 years. It's not a new -- it's not a new item.

11 Q. Why do you say that, you've been using them
12 for 50 years?

13 A. Well, Union Electric was the dominant
14 sponsoring company for EEInc. In fact, the terms of some
15 of the plans and stuff for EEI, or even the writing of the
16 contracts, a lot of that would be done by Union Electric
17 employees. EEInc is not a separate entity that gets no
18 support from the sponsoring companies. It's not a
19 separate corporation without any provision from the
20 resources of the sponsoring companies.

21 So when I say that, Union Electric has been
22 involved in the operation of EEInc since its inception. I
23 think in Mr. Rainwater's deposition, when he was in UE,
24 you'll see that he had a big role in writing the 1987
25 contract.

1 JUDGE WOODRUFF: We're due for a break.
2 We'll come back at 3:15.

3 (A BREAK WAS TAKEN.)

4 BY COMMISSIONER GAW:

5 Q. Mr. Schallenberg, I have a few more
6 questions. Can you tell me whether or not in your
7 experience the duties of an unregulated -- those who are
8 in charge of an unregulated corporation are the same as
9 the duties of those who are in control of a regulated
10 utility, public utility?

11 Let me -- I'll set it up a little bit
12 differently than that if you'd like. First of all, we've
13 heard testimony in here about the duty of boards of
14 directors, of officers is to maximize profits. Would
15 you -- would you think that that would be a duty in -- the
16 main duty in regard to unregulated corporations' board of
17 directors, officers?

18 A. I guess I answered the question, most of my
19 experience is in regulated utilities, and in terms of
20 non-regulated entities, they're almost always affiliates.

21 Q. Okay.

22 A. So I can give you that answer in that
23 perspective. I don't have experience with just pure
24 non-regulated, non-utility corporate decisions.

25 Q. Then let's just stick with the regulated

1 utilities. In regard to the duties of officers and boards
2 of directors, do you believe their sole primary
3 responsibility is simply to maximize profits, or do they
4 owe some additional duties to ratepayers, for instance?

5 A. I guess I'd answer, I don't see those, the
6 ratepayer consideration and maximizing profits, I don't
7 see those as conflicting.

8 Q. Okay.

9 A. And the reason I say that is that if you
10 truly want to maximize profit, you have to be -- you have
11 to be understanding that you can get a higher profit, but
12 you're going to take on more risk. And that doesn't
13 necessarily mean that the end result is going to be a
14 maximized profit. We've had discussion of, like, getting
15 into these markets.

16 I mean, and there's also been discussion
17 I've heard in this case about Aquila. Aquila got into a
18 lot of unregulated markets, made some very handsome
19 returns, and they made some very handsome losses. Now, I
20 don't believe that the decision at Aquila not to -- if
21 they would have made the decision not to go into that
22 arena in merchant, that that decision would have been not
23 maximizing profit.

24 I don't believe that. I believe that you
25 can -- if you take more risk, you will get more return,

1 but that doesn't necessarily mean you're maximizing
2 profits.

3 Q. Okay. Well, let's -- let me ask you this:
4 Is it your -- based on your experience dealing with
5 regulated utilities, is there a duty owed to the captured
6 consumer, the ratepayer? For instance, to be prudent in
7 regard to your purchases?

8 A. I would say if I want to maximize my profit
9 and I'm a utility --

10 Q. Yes.

11 A. -- then I need to be prudent in my actions,
12 because if I am not prudent in my actions, then I run the
13 risk that I will incur expenditures or engage in cost
14 transactions that will not be recoverable through the
15 utility's rates.

16 Q. All right. That's an interesting way of
17 looking at it. From the standpoint of whether or not
18 there is some responsibility, then, to take that into
19 consideration, you would view that as part of the duty of
20 a board of directors or officers of the corporation that's
21 regulated?

22 A. Clearly, yes.

23 Q. Okay. I want to understand just generally
24 if you could compare for me how this EEI shift away from
25 serving UE to having a contract with AEM and marketing

1 those -- that energy, how that impacted the overall
2 profits of Ameren as the holding company and in
3 consideration of its affiliates. Have you done that kind
4 of a just very basic analysis?

5 A. What I can say is there is -- there is a
6 markup that AEM realizes from the energy that they pay for
7 to EEInc. So there's one portion of a profit. And then
8 once EEI -- EEInc has that profit, then 80 percent of
9 those monies flow to the Ameren Corp, depending on the
10 outcome of this Commission's decision. And where the
11 breakdown would be 40 percent would be attributed to, I
12 think it's Ameren Energy Resource Group is the owner of
13 the 40 percent.

14 So they will receive 40 percent of the
15 profits, which will then be available to the corporation,
16 and then Union Electric receives 40 percent of the
17 profits, which will be available to the corporation. But
18 that's contingent on this Commission in essence setting
19 rates as if the increased purchased power and lost
20 off-system sales took place, because if the Commission
21 doesn't do that, the overall -- the overall profit
22 increase won't be realized for 40 percent at the Ameren
23 Corporation because AmerenUE won't have that.

24 Q. Okay. Is there a -- okay. I want you to
25 do this for me. I want you to compare the scenario just

1 very generally of having this Commission treat the --
2 treat the EEI issue as Staff has to having the company's
3 position prevail in regard to Ameren the holding company
4 and its affiliates and their bottom line. Can you do
5 that?

6 A. Okay.

7 Q. Very generally.

8 A. With a Commission decision to adopt the
9 Staff or basically reduce the rate increase in this case,
10 I think I've heard the numbers of \$80 million, under that
11 baseline Ameren Corp will receive probably somewhere
12 around -- they'll lose about \$48 million that they would
13 have received if the Commission adopts it, because the
14 monies that flow to Ameren Corp through AEM and AERG,
15 Ameren Energy Resource Group, those monies will be
16 untouched BY the Commission's decision in this case.

17 Q. Okay. And who makes -- if ratepayers pick
18 up that difference, are they in essence picking up that
19 money?

20 A. Yeah. The fact that --

21 Q. If Staff is -- from Staff's perspective.
22 Let me put it that way.

23 A. Ratepayers -- because the issue's worth \$80
24 million. If you decide the opposite -- I mean, not to --
25 it means the customers will pay \$80 million more to

1 AmerenUE.

2 Q. Okay.

3 A. So that's where that -- and that will fall
4 to the bottom line of Ameren UE, which is then available
5 to be dividend up to Ameren Corp.

6 Q. Okay. So it is -- is it as simple as
7 looking at that \$80 million figure?

8 A. That's the number as of based on right now.
9 Now, over time, I don't know what the differential will
10 be, because as I tried to point out, I'm not sure how
11 stable this market is that EEInc believes that it sold
12 into with AEM.

13 Q. Yes.

14 A. And I don't know in terms of liabilities
15 that you can get into. If we use the Aquila experience,
16 they made a lot of money up front, lost a lot of money at
17 the tail end, got a lot of penalties and fines for market
18 behavior, lawsuits and things like that.

19 So I don't know in that baseline going
20 forward for 15 years that EEInc, you know, that that won't
21 actually flipflop and end up being a drain on Ameren
22 Corp's total earnings.

23 Q. Okay. Is it Staff's viewpoint and part of
24 Staff's argument here that somehow there is an obligation
25 or some rights that AmerenUE has to access to the power at

1 EEI because of the past regulatory treatment and
2 methodology of paying for the energy and capacity, or is
3 that a relevant issue in Staff's case?

4 A. The relevant part is, we know from the
5 bylaws that Union Electric would have rights to its
6 40 percent of the output of the Joppa unit.

7 Q. Okay. I want -- I'm sure you have this
8 somewhere in your testimony. Could you -- first of all,
9 when you say bylaws, are you talking about -- whose bylaws
10 are you take talking about?

11 A. EEInc's bylaws.

12 Q. All right. And are those the bylaws that
13 are in existence even today or something sometime in the
14 past? Do you know?

15 A. The bylaws were effective during the time
16 when this decision was relevant.

17 Q. All right.

18 A. I don't know all the changes that have been
19 made since we --

20 Q. Do you want to refer me to where those are?

21 A. I haven't kept track. I don't know. I
22 have a copy, but I don't know what the exhibits are in
23 this case, if there's an exhibit that has the bylaws.

24 COMMISSIONER GAW: I'd like to know whether
25 that's in evidence or not and what exhibit number it is.

1 JUDGE WOODRUFF: It is in evidence. It was
2 handed out yesterday. It was attachment to --

3 MR. DOTTHEIM: It's an exhibit to the
4 deposition of Mr. Svanda. It's Exhibit 2, is the current
5 bylaws.

6 COMMISSIONER GAW: Are these the bylaws
7 that are in existence today?

8 MR. DOTTHEIM: Yes.

9 COMMISSIONER GAW: And at the time of the
10 expiration of the 2005 contract?

11 MR. DOTTHEIM: Yes. I have copies if --

12 COMMISSIONER GAW: If someone could provide
13 a copy to Mr. Schallenberg, perhaps he can --

14 THE WITNESS: I have the copy I use.

15 BY COMMISSIONER GAW:

16 Q. Okay. What part of the bylaws are you
17 referring to, Mr. Schallenberg?

18 A. If you look at meetings for shareholders,
19 Article 2.

20 Q. Yes.

21 A. Okay. Six for voting.

22 Q. All right.

23 A. And then it's like in that section. There
24 has -- when you start seeing that 50 percent and
25 75 percent, if you go to the first sentence that starts

1 which says, in the event that any holder of voting capital
2 stock of EEI.

3 Q. Yes. I'm following you. Go ahead.

4 A. -- included for such purposes as holder's
5 affiliates owns in excess of 50 percent of the voting
6 capital stock of EEI.

7 Q. Yes.

8 A. Then all corporate restructuring
9 transactions or major corporate actions shall be decided
10 by the vote of the holders of 75 percent or more of the
11 outstanding shares of the corporation entitled to vote.

12 Q. Okay.

13 A. Okay. Then it has the corporate
14 restructuring transactions or major shall include. A is
15 sale of all or substantially all of EEI's stock; and B,
16 issuance of new securities; C, change in the relative
17 percentage of ownership of stock and securities held, any
18 change in control. E is the one that I was referring to.

19 Q. All right. Would you read that.

20 A. Decisions to allocate the sale of the
21 generating capacity of EEI among the EEI stockholders in a
22 manner other than in accordance with their percentage of
23 the ownership of EEI stock.

24 Q. Do you want to finish reading that?

25 A. In the event that the amount of such

1 capacity available for sale to parties other than the U.S.
2 Enrichment Corporation changes materially.

3 Q. All right. So what is Staff's
4 understanding or belief as to that provision?

5 A. Is that gave the owners, unless they get 75
6 percent of the owners, that gives it a right to allocation
7 of the sale of the generating capacity of EE-- or Joppa.

8 Q. All right. And is part of Staff's argument
9 that there needed to be some sort of a vote of the
10 shareholders in regard to changing the access to that
11 power by UE?

12 A. Yes.

13 Q. Did that occur?

14 A. Not that I saw. I mean, everything I saw
15 were board of directors' actions. Now, that doesn't --
16 I'm not sure we have all the EEI documents.

17 Q. At least as you sit there,
18 Mr. Schallenberg, have you seen anything that indicated
19 there was a shareholder vote in regard to changing the
20 percentage access to power from EEI by UE?

21 A. No.

22 COMMISSIONER GAW: I think that's all I
23 have, Mr. Schallenberg. Thank you.

24 JUDGE WOODRUFF: Thank you. I don't have
25 any questions. Chairman Davis had indicated to me earlier

1 that he might have some questions, but he may not either.
2 So we'll go on at this point. If he comes down later, we
3 may need to come back to his questions.

4 All right. So at this time we'll go to
5 recross based on questions from the Bench. Any parties
6 wish to recross? We'll start with Public Counsel.

7 RECROSS-EXAMINATION BY MR. MILLS:

8 Q. Mr. Schallenberg, I believe in response to
9 questions by Commissioner Murray you pointed out that the
10 affiliate transaction rule has a waiver provision; is that
11 correct?

12 A. Yes.

13 Q. Did UE ever discuss the possibility of
14 getting a waiver with Staff, a waiver to allow it to
15 continue to buy power from EEInc?

16 A. No.

17 Q. Now, you also had some questions about
18 Commissioner Murray that had to do with the expiration of
19 the power supply agreement, the iteration that expired in
20 2005. Do you recall those?

21 A. Questions from Commissioner Murray? yes.

22 Q. Was there just one power supply agreement
23 that ran from the 1950s to the end of 2005?

24 A. No.

25 Q. So contracts ran out and new ones took

1 their place during the course of that 50 years?

2 A. That's -- that's true. And at the same
3 time, there's an agreement that runs between EEI and DOE,
4 AEC, whatever it was during that period, and then there's
5 a corresponding agreement between EEI and the sponsoring
6 companies.

7 Q. And there were a number of modifications to
8 those contracts through the years; is that correct?

9 A. Yes.

10 Q. And throughout all of those contracts and
11 all those modifications, all of them essentially allowed
12 UE to buy a certain amount of power from Joppa; is that
13 correct?

14 A. I don't know I'd use the word allowed as
15 much as it required.

16 Q. Okay. Until we get to the one that went
17 into place at the beginning of 2006, that is a change from
18 all the previous modifications and contracts; is that
19 correct?

20 A. Well, in 2006 there isn't a new contract
21 for the sponsoring companies.

22 Q. Right.

23 A. Yes.

24 Q. So it's different?

25 A. Yes. Okay.

1 Q. Because the contract doesn't cover the
2 sponsoring companies?

3 A. That's correct.

4 Q. Now, I believe Commissioner Murray asked
5 you a series of questions to try to -- to try to
6 understand when the Staff believed that an imprudent act
7 occurred. Do you recall those questions?

8 A. Yes.

9 Q. Let me give you a hypothetical here. If
10 there's a local distribution company, a gas company in
11 Missouri that gets all its gas from one supplier under a
12 contract, assume that that contract expires under its own
13 terms and the LDC does not seek renewal of that contract.
14 Are you with me so far?

15 A. I think.

16 Q. Okay. As a result, the LDC's customers
17 have no gas. Was the LDC imprudent in not seeking renewal
18 of that contract?

19 A. I would say yes.

20 Q. Okay. So imprudence can be a failure to
21 act as well as an action?

22 A. Imprudence can be negligence, yes.

23 Q. Okay. And you were just reading from the
24 EEInc bylaws, and you read some sections about voting. Do
25 you recall that?

1 A. Yes.

2 Q. Can you go on and read what Section F says
3 at the end of the sentence where you were reading?

4 A. F, material change in the business purpose
5 or objectives of EEInc.

6 Q. Do you think it would be reasonable to take
7 the position that changing from the way that EEInc has
8 operated over the last 50 years to essentially being a
9 market rate based seller is a change in business purposes?

10 A. Yes.

11 Q. So that the -- the shareholder voting
12 provisions that you talked about could be triggered under
13 Section F as well; is that correct?

14 A. Yes.

15 MR. MILLS: That's all the questions I
16 have. Thank you.

17 JUDGE WOODRUFF: For Ameren?

18 MR. CYNKAR: Yes, your Honor.

19 RE-CROSS-EXAMINATION BY MR. CYNKAR:

20 Q. Good afternoon, Mr. Schallenberg.

21 A. Good afternoon.

22 Q. In your exchange with Commissioner Gaw, you
23 were answering questions about your view of what directors
24 should do, what Ameren should have done. You remember
25 that? That was a long conversation.

1 A. Yes.

2 Q. Now, it is your view that the core of
3 Ameren's imprudence that you allege is that Ameren failed
4 to direct its directors on EEInc's board to sell power
5 from the Joppa plant at a cost-based price, correct?

6 A. That's part of it. I wouldn't say that's
7 the core.

8 Q. Well, do you have your deposition with you
9 there?

10 A. No.

11 MR. CYNKAR: May I approach the witness,
12 your Honor?

13 JUDGE WOODRUFF: You may.

14 BY MR. CYNKAR:

15 Q. I've just handed you a copy of your
16 deposition, and if you would turn to page 26.

17 A. Okay.

18 Q. And if you turn your attention to lines 13
19 to 20. Actually, it's line 17 to 20 more specifically.

20 A. There's more than -- there's like three
21 13s, line 13s on this document. If you tell me what
22 the --

23 Q. Yes. The question is -- actually, if you
24 just go down to line 17 -- then how was Ameren to decide
25 to sell power from the Joppa plant at any particular

1 price?

2 Answer: AmerenUE was to direct its
3 directors to vote that way, close quote.

4 Do you see that?

5 A. I don't see it, but I won't dispute I said
6 it.

7 Q. Okay. And --

8 MR. DOTTHEIM: Mr. Cynkar, I'm sorry. The
9 copy you're showing Mr. Schallenberg has got four pages on
10 one page.

11 MR. CYNKAR: No. Mine does. That is a
12 text -- I forget the format, but it doesn't look like
13 that, but mine does just for schlepping around fewer
14 pieces of paper.

15 BY MR. CYNKAR:

16 Q. But anyway, the bottom line is that you
17 agree you said it? You don't disagree with that?

18 A. I don't disagree with the statement.

19 Q. Okay. And would you agree with both the
20 testimony -- you've been here all day, if I recall,
21 because we've chatted?

22 A. Today, yes.

23 Q. So you heard the testimony of Mr. Brosch?

24 A. Yes, I have.

25 Q. And you heard the testimony of Mr. Meyer?

1 A. Yes, I have.

2 Q. And would you agree with them that it is --
3 a utility is not imprudent to not take a step it has
4 neither the legal right nor power to take, correct?

5 A. I agree with that statement, but I don't
6 believe it applies to this.

7 Q. No. I realize, and the -- your testimony
8 at your deposition as you recall is you believe Ameren did
9 the right to direct its directors, correct?

10 A. Yes.

11 Q. Now, you're not a lawyer, correct?

12 A. Still.

13 Q. You haven't become a lawyer since I deposed
14 you a few weeks ago?

15 A. I know that's in here, and I haven't gotten
16 a law degree since we talked last time.

17 Q. Lucky you. We already have in the record,
18 I asked you a number of questions about corporate
19 governance law and so forth, and there were a number of
20 issues you didn't know about. That's already in the
21 record. I'm not going to take you through that here since
22 I think that's more appropriate for briefing after the
23 case is heard here.

24 So the bottom line is, the key issue that
25 separates us is that Ameren's view is that it did not have

1 the legal right to command EEInc to continue the PSA and
2 you believe it does, correct?

3 A. That's true. And I don't believe Ameren
4 acted consistent with your statement.

5 Q. Now, you talked about your experience.
6 Actually, one of the -- and I hope -- if you can't see
7 this text there, I'll just give you my copy. But if you
8 turn to page 27 of your deposition, line 15 through 19.

9 A. Which one? There's three 15 through --

10 MR. CYNKAR: May I approach the witness and
11 I'll just point it out for him?

12 JUDGE WOODRUFF: Yes, you may.

13 MR. CYNKAR: Thank you.

14 THE WITNESS: You said 15 through 17?

15 BY MR. CYNKAR:

16 Q. Yes, sir.

17 A. Okay. On page 27?

18 Q. Yes.

19 A. Okay.

20 Q. I'm just going to read that for the record
21 so we're all understanding what my question's going to be.
22 Question: Okay. Now, as a matter of law, directors are
23 not entitled to defer to the wishes of control
24 shareholders to transfer corporate assets to those
25 shareholders at below fair market value, correct?

1 Answer: I don't know.

2 A. That's not -- you said 27, line 15 through

3 17?

4 Q. Yes. I'll --

5 MR. CYNKAR: May I approach again, your

6 Honor?

7 JUDGE WOODRUFF: Yes.

8 MR. CYNKAR: Thank you.

9 THE WITNESS: Okay.

10 BY MR. CYNKAR:

11 Q. Okay. That's an accurate statement

12 obviously from your deposition, correct?

13 A. Yes.

14 Q. And you haven't changed your view, you

15 haven't learned the answer to that question since then?

16 A. No.

17 Q. Good. You talked about your experience in

18 the real world of boards of directors and so forth with

19 Commissioner Gaw. Do you recall that discussion?

20 A. I talked to him about it in terms of my

21 experience.

22 Q. Yes. Okay. Now, let me give you a

23 hypothetical with respect to that point, and it's a

24 hypothetical that clearly is going to be very close to

25 what we have here. You have corporation A owns a majority

1 interest in corporation B. Okay? So it gets to elect the
2 majority of the board of corporation B. Okay. It directs
3 its directors to sell a corporate asset to corporation
4 A at less than fair market value. With me so far?

5 A. Got you.

6 Q. Okay. In your experience of corporations
7 in the real world, have you ever seen that done?

8 A. I -- I don't think I've -- because you're
9 talking about an asset sale to someone. I can't -- other
10 than dissolving the entire corporation, I don't think I've
11 seen --

12 Q. So the answer to my question was no?

13 A. I don't think so.

14 Q. Okay. Is the power from the Joppa plant an
15 asset of EEInc?

16 A. No.

17 Q. Okay.

18 A. Not in accounting terms. Maybe there's
19 some other term you'd use.

20 Q. That's fine. I want to be clear. I want
21 to make sure that we're talking at the same wavelength
22 here.

23 All right. Well, let's go back to my
24 example, corporation A, corporation B. Corporation A
25 Still owns a controlling interest in corporation B. What

1 we're going to do is corporation A tells its directors on
2 corporation B to vote to sell power to corporation A at
3 below fair market value. Have you ever seen that in your
4 experience of boards of directors operations?

5 A. Well, I will say no, but in your premise,
6 you've said below fair market value.

7 Q. That was my premise.

8 A. Right.

9 Q. You're exactly right.

10 A. What I'm saying is, different boards can --

11 Q. Mr. Schallenberg, seriously, that's fine.
12 We don't have to debate the premise. You can quarrel with
13 me about it, but I don't want you to right now.

14 A. But you've asked me if I've seen it, and
15 I'm trying to explain what I've seen is I've seen board
16 members argue what that number would be, so --

17 Q. Of course. Of course. But I'm positing
18 it, I'm assuming that for the simplicity of the
19 hypothetical. Do you understand?

20 A. And I said I've never seen that.

21 Q. Yes. I appreciate that. All right. Now,
22 are you familiar with Mr. Craig Nelson?

23 A. Yes.

24 Q. Okay. Now, do you recall that in 2004 he
25 was the vice president of corporate planning at AmerenUE,

1 Ameren I guess?

2 A. I know he was in corporate planning. I
3 don't recall what his exact title was.

4 Q. Okay. Now, we've heard lots of testimony
5 about Mr. Allen Kelly. He's the Chairman of the EEInc
6 board of directors, isn't he?

7 A. Yes.

8 Q. And are you aware that he testified that in
9 2004 -- not in this proceeding, but that he previously
10 testified that in 2004 he, Mr. Nelson, had a conversation
11 with Mr. Kelly about selling power from Joppa to Ameren
12 after the end of the PSA, and in that testimony he
13 reported that Mr. Kelly said he was not interested at
14 selling at the lower of cost or market? Were you aware
15 that that conversation had occurred?

16 A. I know Mr. Nelson has made that statement
17 either around -- I think even in my presence. I don't
18 know about the testimony.

19 Q. Have you read the direct testimony of
20 Mr. Kind in this proceeding?

21 A. The direct, yes.

22 Q. Okay. And the conversation that I was just
23 referring to is quoted in Mr. Kind's direct, which I'm
24 sure is going to come into evidence here, so we don't have
25 to belabor the point further.

1 So as of 2004 --

2 MR. DOTTHEIM: Mr. Cynkar? I'm going to
3 object, Mr. Cynkar. I think your cross-examination is
4 beyond the scope of questions from the Bench.

5 MR. CYNKAR: I would be happy to illuminate
6 that. We had several questions from the Bench concerning
7 whether Ameren -- whether AmerenUE attempted to get power
8 from EEInc at a cost basis in anticipation of the
9 termination of the contract, and I was just illustrating
10 that there is evidence in the record that shows exactly
11 the inquiry about what EEInc was going to do and EEInc's
12 chairman saying, no, we're not going to sell at the lower
13 of cost or market. That's my point.

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

16 MR. CYNKAR: And With that, that's all I
17 have. Thank you.

18 JUDGE WOODRUFF: Thank you. Any redirect?

19 MR. DOTTHEIM: No redirect.

20 JUDGE WOODRUFF: Mr. Schallenberg.

21 THE WITNESS: Commissioner Gaw asked me for
22 those directors.

23 COMMISSIONER GAW: Yes. Do you have them?

24 THE WITNESS: I have all the FERC annual
25 reports from 1999 through 2005, and that gives me the page

1 that tells me who the board is. I can either read those
2 or I can have copies made of those pages and supply those.

3 COMMISSIONER GAW: Copies would be more
4 efficient, I think, wouldn't it, Judge?

5 JUDGE WOODRUFF: Yes. And Staff can offer
6 those later.

7 COMMISSIONER GAW: Thank you.

8 JUDGE WOODRUFF: You can step down, then,
9 sir.

10 I believe the next witness then is Ryan
11 Kind. Welcome back, Mr. Kind, and you've testified
12 earlier, so you're still under oath.

13 THE WITNESS: Yes.

14 MR. MILLS: I tender the witness for
15 cross-examination.

16 JUDGE WOODRUFF: All right. Does any party
17 wish to cross-examine Mr. Kind?

18 MR. CYNKAR: No questions, your Honor.

19 JUDGE WOODRUFF: Questions from the Bench,
20 then.

21 RYAN KIND testified as follows:

22 QUESTIONS BY COMMISSIONER GAW:

23 Q. Mr. Kind, would you enlighten me in regard
24 to how much difference there is between your position and
25 Staff's position on the EEI issue?

1 A. Certainly. In my direct testimony I noted
2 that Public Counsel did not have production cost modeling
3 capabilities, the resources in order to come up with our
4 own number through running a fuel model in this case with
5 and without EEInc, and so I did not present a specific
6 number in that testimony.

7 At this point in time, after listening to
8 the hearing and going over some additional subjects like
9 the value of regulatory capacity, I would be able to come
10 up with a number that is I think a good number. However,
11 as I'll explain, there's probably a need to update that
12 number with a more current production cost model run.

13 But the number that I would propose using
14 at this point in time is -- I guess I should explain that
15 just to back up a little bit. Early in this case, Public
16 Counsel requested the company to run their production cost
17 model with and without EEInc. And while they would not do
18 so for quite a long time, they ultimately did agree to
19 give us the results of the production cost model run with
20 and without EEInc, and that was provided to us in a
21 response to Public Counsel DR 2033.

22 I looked at those results, and in order to
23 verify that I was actually interpreting a very large
24 spreadsheet with production cost model results in the same
25 way that the company would, I asked them an additional

1 Data Request, which was Public Counsel DR 2244, which
2 asked them to specify the numbers that represent the
3 change in fuel expenses and revenue requirement resulting
4 from running the model with and without EEInc.

5 I apologize for this lengthy answer. I'm
6 getting to the punch line.

7 Q. If you could shorten it, that would be
8 helpful.

9 A. Anyway, so their response came back that in
10 OPC DR 2244, that the difference in running their
11 production cost model with and without EEInc would -- the
12 difference would come up to be 67 -- actually, I think I
13 can't get into the specifics of that number without going
14 in-camera.

15 MR. MILLS: We can either go in-camera or
16 we can just basically describe it in words, which is that
17 we took the difference in their production cost model and
18 added to it, and we can make that an exhibit that's HC.

19 COMMISSIONER GAW: That will be fine. Why
20 don't we do that?

21 THE WITNESS: Anyway, yes, we took the
22 difference in the production cost model, and then what we
23 did was since those model differences wouldn't reflect the
24 value of capacity sales that would be enabled by having an
25 additional 405 megawatts from the EEInc Joppa plant, the

1 UE share of that, a calculation that represents, I think,
2 a conservative value for the value of regulatory capacity
3 that would come from sales of 405 megawatts is -- and I
4 don't believe this number is HC -- it would be \$3,645,000.

5 And that comes from using the regulatory
6 capacity value of 75 cents per KW per month. So you take
7 that figure times 12 times 405,000 KWs, and you get the
8 approximately 3.64 million. And adding those two numbers
9 together obviously then yields what we would think would
10 be a reasonable value, although would note that the new
11 production cost model run that UE witness Shawn Schukar
12 used to support his new number for off-system sales of I
13 think approximately \$202 million, that's an increase from
14 their earlier value in off-system sales.

15 And so this -- this run that they did to
16 reflect the incremental value of EEInc, it hasn't been
17 updated to reflect that new production cost model run, and
18 I think that that would actually result in a slightly
19 higher figure than the number that we got in response to
20 OPC DR 2244.

21 BY COMMISSIONER GAW:

22 Q. Okay. Is the only position difference
23 between you and Staff the number that you are attributing
24 to UE for access to EEI? Is it the bottom line number?
25 Is there a difference other than that?

1 A. I don't believe so. I mean, I think we
2 both have generally the same view that the company did not
3 act prudently to pursue its rights to getting continued
4 access to 405 megawatts of capacity and the energy
5 associated with that capacity at cost-based rates.

6 And I -- I'd be glad to explain some of the
7 specifics of the EEInc decision-making process that we
8 just became aware of when the full set of EEInc minutes
9 were compelled by this Commission last Friday and we
10 received them at five minutes to five last Friday.

11 Q. Well, in regard to what those minutes
12 reflect, if it's something that has not come in up to this
13 point in time, then I would like to hear about it. But if
14 it's in the minutes and the best source of information is
15 in the minutes, if you want to just point that out, that
16 would be fine, too.

17 A. I'd be glad to do that. I think the -- the
18 important -- important piece of information is in the
19 September 2005 minutes that we did not have prior.

20 Q. Are these in an exhibit?

21 A. Yes.

22 MR. MILLS: Yes, and it is in 431.

23 THE WITNESS: Exhibit 431, and there is a
24 motion that was taken by the EEInc board that's reflected
25 on page 58 of that exhibit, and that's the motion where

1 apparently a majority of the EEInc board adopted a motion
2 to sell their power at market-based rates. And following
3 that motion, there was an application filed at FERC to
4 seek market-based rate authority, without which the
5 company would have been unable to sell their power at
6 anything other than cost-based rates.

7 BY COMMISSIONER GAW:

8 Q. Okay. And again, that's in Exhibit 431?

9 A. Yes, it is.

10 Q. All right. Well, what's different about
11 that than what you knew before?

12 A. Well, previously I just did not know the
13 actual -- to me, that -- to me, there's a couple steps in
14 the imprudence of UE in this matter and, in fact, in -- I
15 think in the way the EEInc board evaluated its choices
16 between continuing to sell at cost-based rates versus
17 making a sale at market-based rates.

18 And if they had chosen to make a sale at
19 market-based rates, of course, it would be important for
20 them to make a decision whether selling to an AE -- an
21 AEM, which was affiliated with the non-regulated
22 activities of Ameren was the best way in order to maximize
23 the value of their assets.

24 So I see it as the steps that the EEInc
25 board should have taken in order to carry out their

1 fiduciary duties. Prior to that vote in September which I
2 just identified, there should have been an analysis done
3 to evaluate the tradeoffs between selling power under a
4 long-run contract at cost-based rates versus selling it at
5 market-based rates.

6 And I think in order for them to have made
7 that assessment, they could not make a credible assessment
8 of the tradeoff between those alternatives without doing
9 two things. One would be to issue an RFP for market-based
10 sales. Not just assume it's going to go to the affiliate
11 of the entity that owns 80 percent of the EEInc stock,
12 they would have issued an RFP for market-based sales.

13 And second, they would have -- they would
14 have done some work to see whether it was possible to work
15 out the affiliate transaction rules with the Missouri
16 Public Service Commission. Without that knowledge, it's
17 really not possible, I don't think, to assess the
18 tradeoffs.

19 Of course, part of the assessment then of
20 those tradeoffs, once you -- if you had gotten to the
21 point of evaluating how do we maximize the value of this
22 sale under market-based rates through issuing an RFP, and
23 what are our options if we were to make a cost-based sale
24 and it would be subject to the Missouri affiliate rule?
25 Then, of course, there's the additional analysis that

1 needs to be done on what are the -- what are the future
2 trends in market prices that we expect over like a 15-year
3 period if that's the period over which you want to sell
4 it, and take into account the risk tradeoffs between
5 having a cost-based sale, which would give you a certain
6 essentially close to guaranteed return over that period of
7 time, versus selling into the market where the return
8 might be great for the first year or two, but could be
9 very poor in some of the later years. And I -- I've seen
10 no evidence that any such evaluation was ever done by the
11 EEInc directors.

12 Q. Okay. I'll ask you, Mr. Kind, whether -- I
13 assume you have seen the bylaws of EEI that were referred
14 to earlier by Mr. Schallenberg?

15 A. Yes, I have. I have a copy of them here
16 with me.

17 Q. I just -- I'm wanting to know whether you
18 have seen any information that indicates that there was
19 any shareholder decision of record in any of the
20 information that would apply to Section 6E or F.

21 A. Yes. Commissioner, I believe that that
22 decision that I pointed out that occurred in September of
23 2005, the decision that is documented on page 58 --

24 Q. Yes.

25 A. -- of the exhibit with a full set of EEInc

1 minutes, I believe that that -- let me just explain that,
2 if you look at the -- it's pretty simple to figure out,
3 you know, could this vote have taken place without UE
4 voting its shares in favor.

5 And the first thing I think just sort of as
6 a piece of background material in making that assessment,
7 it's necessary to look at an exhibit to my surrebuttal
8 testimony, and that is -- that's Attachment 6, page 3 of
9 my surrebuttal testimony, which is the letter that
10 Kentucky Utility Companies wrote to --

11 MR. CYNKAR: Your Honor? Excuse me,
12 Mr. Kind. I'm going to interpose an objection here. We
13 have really had quite exhaustive testimony about that
14 letter, KU, how many shares everybody had. This is all in
15 the record, and it's not to deprive Mr. Kind of an
16 opportunity to articulate it, but I believe this is all
17 cumulative, so I object.

18 COMMISSIONER GAW: And, Judge, just for my
19 benefit, I'm really just trying to get to an answer to my
20 question. So I'm not -- I don't have a problem with the
21 objection.

22 JUDGE WOODRUFF: And the response is also
23 narrative. If we can get back to the Commissioner's
24 question, I think that would make things move along much
25 more smoothly. Mr. Kind, if you just answer the questions

1 that are asked and not go on.

2 THE WITNESS: Okay.

3 JUDGE WOODRUFF: Wait for another question.

4 BY COMMISSIONER GAW:

5 Q. I think my question had to do with whether
6 or not there is some record that you have seen about a
7 shareholder vote that would apply to subsection 6E or F, a
8 shareholder vote.

9 A. Yes, and that's the vote that you see on
10 page 58 that I referred to. As I understand it, if
11 they -- when the board of directors --

12 MR. CYNKAR: I'm going to reiterate my
13 objection. I think Mr. Kind just did answer your
14 question. So I object.

15 JUDGE WOODRUFF: I'll sustain the
16 objection.

17 MR. CYNKAR: Thank you.

18 COMMISSIONER GAW: I still don't understand
19 what he's answering, Judge. I'm looking -- if I had a
20 copy of that document, perhaps it would help me.

21 JUDGE WOODRUFF: Are you referring to
22 your -- what are you referring to, Mr. Kind?

23 THE WITNESS: It's the exhibit that's the
24 full set of Electric Energy Inc. minutes.

25 JUDGE WOODRUFF: That was 431, I believe;

1 is that right?

2 THE WITNESS: I think that's right. I'm
3 sorry. I don't have my copy labeled.

4 JUDGE WOODRUFF: Can someone get the
5 Commissioner a copy of 431?

6 COMMISSIONER GAW: Or just the portion that
7 he's talking about.

8 MR. MICHEEL: Could I get it back, though?
9 I've already lost one.

10 BY COMMISSIONER GAW:

11 Q. What's the date again, please?

12 A. This is the minutes of the September 8th,
13 2005 board meeting, which starts on page 54 of
14 Exhibit 431, and the vote itself is documented on the
15 fifth page of those minutes, which is page 58 of
16 Exhibit 431.

17 Q. Forgive me for my -- for trying to
18 understand what you're saying. I'm looking for where it
19 says in that September 8th meeting that that was a meeting
20 of the shareholders.

21 A. And that's what I was -- I was trying to
22 clarify the distinction between a meeting of directors and
23 shareholders and was asked not to finish answering that
24 question.

25 Q. Is this -- are you referring to a meeting

1 of the board of directors or a meeting of the shareholders
2 when you're asking this question that we've been --

3 A. A meeting of the board of directors.

4 Q. So is -- my question was not about a
5 meeting of the board of directors. My question was
6 whether or not you knew of any meeting of the shareholders
7 wherein there was any addressing of Section 6, sub E or F?

8 A. Okay. And it's my understanding that
9 meeting of the board of directors --

10 Q. I'm not asking you about the board of
11 directors.

12 A. That it's equivalent to a meeting of
13 shareholders.

14 Q. I'm not asking what your legal opinion is,
15 Mr. Kind. I'm asking you a question of whether or not you
16 know of a meeting of the shareholders?

17 A. I have been given no minutes of shareholder
18 meetings.

19 Q. Okay. That clears up my confusion.

20 A. Okay.

21 COMMISSIONER GAW: Thank you.

22 JUDGE WOODRUFF: All right. Did you have
23 any other questions?

24 COMMISSIONER GAW: I'm done.

25 JUDGE WOODRUFF: All right. Thank you.

1 Anyone wish to recross based on those questions? Any
2 redirect?

3 MR. MILLS: I don't believe so. Thank you.

4 JUDGE WOODRUFF: With that then, Mr. Kind,
5 you can step down. And that completes our testimony on
6 the Electric Energy Inc. issue, and I believe we're now
7 ready to go on to return on equity, and I -- do the
8 parties wish to make mini openings on this?

9 MR. CYNKAR: I do wish to make a mini
10 opening, but, your Honor, if we could have a few minutes
11 break just to clear off.

12 JUDGE WOODRUFF: All right. We'll take
13 about a five-minute break. Will that be enough?

14 MR. CYNKAR: Yes, your Honor.

15 JUDGE WOODRUFF: We'll take a five-minute
16 break. We'll come back at 4:20.

17 (A BREAK WAS TAKEN.)

18 JUDGE WOODRUFF: We're ready to go. We're
19 going to do mini openings, beginning with Ameren.

20 MR. CYNKAR: May it please the Commission,
21 at least in the theoretical sense, and Judge Woodruff?

22 JUDGE WOODRUFF: They may be listening
23 upstairs.

24 MR. CYNKAR: I suspect as much. We're at
25 ROE, and ROE is -- unlike the issue we just finished,

1 which is EEInc, of course, ROE is a familiar, highly
2 technical issue for the Commission, and I'm not going to
3 really speak very long here, but I do have a couple points
4 that I'd like to make to point the Commission in how to
5 evaluate the evidence that's before it and give some sense
6 at least of our perspective.

7 We've heard testimony in terms of Ph.D.s
8 and their qualities and so forth, and all the witnesses
9 that we're going to have are all very well qualified.
10 They all have very well thought out opinions that they've
11 embraced over the years, and that's all fine, but at the
12 end of the day, ROE is not a magic number. It's not
13 something that is popped out of a computer, and it's not
14 something that is in many respects a Ph.D. matter. It
15 involves the judgment and reasonableness that commissions
16 and commissioners are familiar with.

17 As everybody knows, we have a range from
18 the witnesses of where the ROE is, proposals in the 9s,
19 which there's a cluster of proposals down there, and of
20 course to AmerenUE's 12 percent.

21 Now, I tend to think that when we talk
22 about ROE not being a mathematical thing, it's not
23 something -- we're not going to have government by Ph.D,
24 there's really two senses in which the Commission should
25 understand that and guide your decision-making. First is

1 in terms of the actual calculation. The fact that we have
2 these witnesses, again, very bright capable people, with
3 their views all over the lot, indicates that there is no
4 silver bullet. There is no magic answer that can be
5 given, as well intentioned and thoughtful as everyone is
6 who works in this field.

7 And there are really four issues in terms
8 of the differences in the calculations, such as they are.
9 And I certainly associate myself with Mr. Mills' comment
10 yesterday that these witnesses are a lot smarter than I
11 am, and so I don't possibly hope to be able to give the
12 Commission any kind of expert testimony.

13 But I think, first of all, in terms of
14 guidance on how to evaluate this issue, the company's
15 witnesses have, as this Commission has in recent
16 decisions, relied on several tests. There's no one test
17 that gives you the right answer, and reasonable judgment
18 and decision-making about trying to figure out what's a
19 reasonable ROE requires doing many different tests.

20 Second of all, I think -- and so that issue
21 is going to be one. Several of the witnesses here have
22 focused mostly on the DCF method, and that separates us
23 from our approach. Separates them from our approach.

24 Secondly, Ameren's witnesses recognize the
25 difference between the sample company's capital structure

1 and AmerenUE's regulatory capital structure, and that is
2 an economic disconnect that has to be addressed in some
3 way. And I know that's going to be a big issue.
4 Financial risk adjustment and so forth is a big issue that
5 the witnesses are going to talk about, and this is an
6 important feature in translating the real world
7 information that you get from proxy companies and sample
8 companies, which, of course, under the law we have to do
9 in determining ROE, and the conventions of the regulatory
10 word. There's a disconnect, and there has to be some way
11 of adjusting it.

12 The third of the four sort of calculation
13 points really has to go with something that does drill
14 down a little bit into the technique, and that is the
15 discounted cash flow, DCF method is inherently a
16 forward-looking method. That point is not in dispute.

17 But the company witnesses in terms of their
18 application of that method follow financial literature and
19 use a method using forward-looking growth rates that's
20 consistent with the inherent nature of the method while
21 several of the other witnesses use historical and
22 forward-looking growth rates.

23 It is our view and our witnesses' view,
24 which they certainly can articulate, is that the
25 introduction of the historical growth rates into that not

1 only distorts the calculation but is inconsistent with the
2 whole ethic of DCF.

3 And finally, our fourth technical issue is
4 a disagreement in the CAPM method, and that relates to
5 risk premium and -- which is, of course, the amount over
6 the risk-free rate that stocks are expected to earn.
7 Again, I'm not going to get into those differences, but
8 that is really -- those four items I think for purposes of
9 the Commission's analysis of where you need to look to
10 figure out what the technical issues are, such as they
11 are.

12 But that -- all those four are really in
13 the world of calculating ROE, and we have -- Mr. Svanda
14 will be back on the stand to talk about the judgment in
15 any rate case ranges -- the parties bring in proposals for
16 ROE that gives the Commission a range, and the Commission
17 rarely picks exactly one of those but makes choices.

18 Most recently in the Empire and KCP&L
19 cases, the Commission made some choices about where ROE
20 should be, and I don't believe either of those decisions
21 were specifically what any party proposed. And certainly
22 the Commission's past practice is one way in which the
23 Commission should be informed in exercising its judgment.

24 And I thought Commissioner Davis last night
25 in asking questions of Mr. Svanda asked a very good point.

1 He asked how did the riskiness of AmerenUE compare to
2 those two companies, and I think that is not a -- there is
3 no silver bullet, as I said, but that's a reasonable thing
4 to look at.

5 And key in that, and the testimony that the
6 Commission's going to hear, is to remember that those
7 decisions, though they came out in December, those
8 judgments about what is an appropriate ROE was based on an
9 evaluation of risk about a year before that in terms of
10 when the test year was and when the evidence came in.
11 So those decisions reflect a judgment about risk in the
12 marketplace that is over a year in the past.

13 And part of the testimony you're going to
14 hear from our witnesses is that, as measured by the beta,
15 that a range of different factors have combined since that
16 time to make the marketplace more risky and, therefore,
17 affect the Commission's judgment.

18 But I would also in some respects like to
19 address what is an issue that I think is appropriate to
20 consider in this proceeding, but I caution the Commission
21 about considering it in this issue, and that is all the
22 testimony we've had about what a tough year it's been for
23 Ameren's customers and for Ameren. That should be
24 considered.

25 We've had lots of examination of

1 Mr. Rainwater and a lot of our witnesses, and as our
2 witnesses have said, reliability of AmerenUE is an
3 important question. And though we may have different
4 views on how that should be resolved, that's -- that's a
5 problem that has to be addressed.

6 But I think early on one of the
7 observations that was made in this proceeding is let's not
8 reward Ameren for poor performance with giving them any
9 ROE of whatever, linking the notion of reliability and ROE
10 in that way, and I would say that's irresponsible. I
11 would say that address ROE as ROE, which allows a company
12 to have the resources it needs to do however this
13 Commission defines what is the right thing.

14 But the reliability -- but what's
15 reliability involves reliability standards and some of the
16 conversation that the Commissioners had with Mr. Rainwater
17 and others, and that's the way to address those issues.
18 People are concerned. It's appropriately a political
19 issue in a smallP kind of sense. I think Judge Thompson
20 made the observation, which I wouldn't totally agree, that
21 the eyes of the voters are on you.

22 But concern and people being angry and
23 frustrated with Ameren is obviously a legitimate issue.
24 This Commission has to wrestle with it and do the right
25 thing. But the issue, if it's reliability, address

1 reliability. But if you come to the conclusion that
2 Ameren somehow dropped the ball, didn't behave reliably,
3 they have to have the resources then to respond to what
4 you think they should be doing, and that's what row is.
5 And evaluate ROE in its own terms, but not in terms of
6 these broader issues.

7 Thank you.

8 JUDGE WOODRUFF: Thank you, sir. The next
9 party on the list is Staff. Before we go there, I want to
10 ask a question of Mr. Micheel for the State. I understand
11 from our past experiences that you need to leave to be
12 able to pick up your children.

13 MR. MICHEEL: I do.

14 JUDGE WOODRUFF: Would it help your
15 situation to go now?

16 MR. MICHEEL: Sooner's always better than
17 later.

18 JUDGE WOODRUFF: Would any other party
19 object to the State going out of order?

20 MR. THOMPSON: No objection.

21 MR. MILLS: No objection.

22 JUDGE WOODRUFF: Mr. Micheel.

23 MR. MICHEEL: May it please the Commission,
24 Judge Woodruff?

25 The State has presented the testimony of

1 Dr. Jay Randy Woolridge in this case on the issue of
2 return on equity, and Dr. Woolridge has relied primarily
3 on the discounted cash flow method. I think the evidence
4 is going to show in this case that all of the intervenor
5 parties, the Staff, the Public Counsel, the return on
6 equity issues for those witnesses are -- the return on
7 equity proposals are clustered between the 9 and the
8 9.8 percent area.

9 On the other hand, the evidence is going to
10 demonstrate that the company's witnesses have recommended
11 an ROE of 12 percent. I think the evidence is going to
12 show the disparity between the spread, the 80 basis point
13 spread between the other witnesses and the Ameren
14 witnesses results in the incorrect application of the DCF
15 by the company witnesses, the incorrect application of the
16 capital assets pricing model by the company witnesses.

17 And I think when you look at history, the
18 evidence is going to show that for the year of 2006, the
19 average returns on equity for electric utilities was
20 10.36 percent. Simply put, the company's 12 percent
21 return on equity is unreasonably high.

22 So I think in balancing everything, the
23 Commission should come to the conclusion that it's
24 certainly the return on equity should be in the 9 to 9.8
25 percent range of all the other witnesses.

1 JUDGE WOODRUFF: Thank you, sir. Opening
2 for Staff?

3 MR. THOMPSON: Thank you, Judge. I
4 prepared a visual aid. Hope everybody can see it. I
5 tried to make it colorful.

6 May it please the Commission? I thought it
7 was interesting that Mr. Cynkar said that this is not a
8 magic number because, in fact, it is a magic number, and
9 we've come to probably the most interesting part of every
10 rate case hearing, the ROE part, the part I like to call
11 the magic show, because we're going to see a series of
12 magicians, a series of wizards of financial analysis take
13 the stand, one after the other, and in a very learned and
14 serious and persuasive way tell you diametrically opposed
15 things that they have reached using much the same data and
16 much the same methods.

17 If you look at my chart here, the two
18 company witnesses, Dr. Vander Weide and Ms. McShane, have
19 reached conclusions of 12.2 and 12.0 with their
20 recommendations for return on equity. The non-company
21 witnesses on the other hand are clustered down here,
22 Dr. Woolridge at 9.0, Steve Hill for Staff at 9.25,
23 Dr. King for OPC at 9.65, Mr. Gorman at 9.8.

24 Look at the distance in between there.
25 Look at how the company witnesses cluster high, which is

1 good for the company, and the non-company witnesses
2 cluster low, which is good for the non-company parties.
3 What a surprising thing. I wonder if statistically we
4 could show a significant correlation between what these
5 witnesses are being paid and how far their recommendation
6 deviates from the average, and the average based on Steve
7 Hill's testimony is 10.5.

8 And, in fact, this Commission -- this
9 Commission being perhaps somewhat befuddled by all these
10 expertise pointing in different directions, and maybe even
11 a little cynical, has started benchmarking. The
12 Commission has started using what it calls a zone of
13 reasonableness analysis, which it defines as 100 basis
14 points on either side of the average. That's this zone
15 here that I've colored yellow. Here's the average based
16 on Mr. Hill's testimony, 10.5. So the zone of
17 reasonableness extends up to 11.5 and down to 9.5.

18 And if you take a look at this Commission's
19 recent decision in the Kansas City Power & Light rate
20 case, in evaluating the testimony of Dr. Woolridge, who's
21 here again today, the Commission said, because the return
22 on equity recommended by DOE falls outside of the zone of
23 reasonableness, the Commission will discard it and find
24 that it merits no further consideration. That's a quote,
25 pages 21 and 22 of the Commission Order.

1 So I guess if the Commission's going to do
2 the same thing in this case, well, then Ameren doesn't
3 even have any evidence. You're outside the zone of
4 reasonableness. Gosh, that's too bad. And I know there's
5 no stare decisis in administrative proceedings, but what's
6 the Court of Appeals going to think when somebody brings
7 this passage issued by the Commission in December to its
8 attention? Does that rule still hold now, only three
9 months later?

10 This is, of course, a very difficult thing
11 that the Commission is faced with doing, and the
12 Commission has noted that repeatedly in its Report and
13 Orders.

14 What I would suggest to you in analyzing
15 this information, in listening to this testimony, in
16 processing it and fixing on an ROE, the Commission has a
17 zone of discretion, and that zone of discretion is the
18 zone of reasonableness that the Commission itself has
19 defined. So if the default is the midpoint, then the
20 Commission needs to articulate reasons based on the
21 evidence of record to go up or down.

22 And contrary to what Mr. Cynkar said, I
23 suggest to you that Ameren's performance over the past
24 year is absolutely relevant to whether you go up or down
25 in that zone of discretion. Yes, Ameren has to have a

1 fair rate of return. Absolutely. Staff is fully aware of
2 that. Indeed, we insist on it. But a fair rate of return
3 is only enough to provide a reasonable return on the
4 assets that have been dedicated to the public service. It
5 doesn't have to be a great return. It doesn't have to be
6 a pat on the back, and I suggest to you that no pat on the
7 back is deserved here.

8 Thank you very much.

9 JUDGE WOODRUFF: Thank you. For Public
10 Counsel?

11 MR. MILLS: Thank you. May it please the
12 Commission?

13 I was also going to talk about the zone of
14 reasonableness, but I didn't have the outstanding visual
15 aid that Mr. Thompson does.

16 Public Counsel's going to present the
17 testimony of witness Charles King who sponsors a run on
18 equity in this case of 9.65 percent. Mr. King also
19 sponsors what is essentially an adjustment to capital
20 structure based on the double leverage issue that neither
21 of the previous speakers, none of the previous speakers
22 have talked about.

23 I think that's a significant issue, and it
24 may be one that this Commission has not seen before, but I
25 think it's an interesting issue and a -- Mr. King puts on

1 a strong case in favor of this adjustment and there's
2 virtually no rebuttal. I think -- I think it's because
3 Mr. King's adjustment is mathematically demonstrable and
4 it's almost inescapable.

5 Now, one thing that I took note of in
6 Mr. Cynkar's opening is that he pointed out that the rate
7 of return proposals in this case, the views of the
8 witnesses, he said the views are all over the lot. Well,
9 if you look at Mr. Thompson's visual aid here, the views
10 are not all over the lot.

11 The views are very closely grouped in one
12 group with two extreme outliers, and the two extreme
13 outliers are the company witnesses. It's not that all the
14 witnesses are scattered all over. Most of the witnesses
15 are very close together, and two of them are way outside
16 of the norm.

17 Mr. Cynkar also pointed out that to
18 determine rate of return requires no one test but rather
19 many different tests, and I respectfully disagree. There
20 is no reason to do a lot of tests simply for the purpose
21 of creating volume. This Commission has generally held
22 that the DCF method is the most accurate, it's the one
23 that the Commission has traditionally relied on, and it's
24 the one that Public Counsel witness Hill -- that Staff
25 witness Hill and Public Counsel witness King rely on the

1 most heavily, and the Commission should as well.

2 Now, with respect to the zone of
3 reasonableness, although the Commission's Order didn't say
4 it quite this way, it's my understanding that the
5 Commission threw out the testimony of a witness who fell
6 outside of the zone of reasonableness essentially because
7 they found that witness not to be credible, because the
8 recommendation was not -- was not reasonable, and so there
9 was no reason to evaluate the method by which the witness
10 came to that result.

11 Now, regardless of whether that is an
12 appropriate analysis for a Commission decision, if the
13 Commission believes that that is an appropriate test of
14 credibility, the Commission should begin this case by
15 finding that, if not totally not credible, that the
16 testimony of the witnesses of the two UE witnesses has a
17 significant mark on its credibility from the get go.

18 And I think that if you look at the chart,
19 you can see exactly why that is, and I urge the Commission
20 to take that into account when it's making its decision on
21 this case, look at the unvarnished, unmanipulated DCF
22 results that are sponsored by Public Counsel witness
23 Charles King, and note that Mr. King is one of the few
24 witnesses in this case who fall into that zone of
25 reasonableness.

1 Thank you.

2 JUDGE WOODRUFF: DNR's not here. MIEC?

3 MS. VUYLSTEKE: May it please the
4 Commission, Judge Woodruff?

5 The MIEC's evidence in this case shows that
6 an appropriate return for AmerenUE is in the range of 9.2
7 to 10.3 percent, and the MIEC recommends that AmerenUE's
8 ROE be set at 9.8 percent, which is the midpoint of this
9 range. This ROE is fair compensation for AmerenUE and
10 supports credit metrics that in turn support AmerenUE's
11 current bond rating of triple B and actually would help it
12 improve its bond rating to A.

13 Ameren proposes an excessive ROE of
14 12 percent. This would result in unjust rates. And
15 AmerenUE derives this ROE by a core proxy group of about
16 11 percent plus a financial risk ROE premium of 1 percent.
17 This financial risk premium that AmerenUE uses is not
18 reasonable. It is an unconventional and relatively new
19 adjustment proposed by AmerenUE's witnesses. It is flawed
20 because it is not based on an accurate investment risk
21 analysis.

22 AmerenUE's 11 percent base ROE without the
23 financial risk premium is based on an inflated DCF growth
24 rate and inflated equity risk premiums. Proper
25 adjustments to AmerenUE's model support an ROE of

1 10 percent. An ROE in the range of 9.2 to 10.3 percent is
2 fair compensation for Ameren. Industry authorized ROE
3 support an ROE for AmerenUE within this range for the
4 following additional reasons: The 2006 industry average
5 ROE is 10.3 percent. The industry trend is decreasing
6 ROEs. Interest rates are projected to be flat. They have
7 actually decreased during this proceeding, contrary to
8 claims by AmerenUE's witnesses.

9 For all of these reasons, the high end of a
10 reasonable ROE range for AmerenUE should not exceed
11 10.3 percent. If the Commission finds that AmerenUE has
12 not performed well or if the Commission decides to adopt
13 AmerenUE's proposals for a fuel adjustment clause, then
14 the Commission should also consider -- it should establish
15 an ROE lower than 10.3 percent.

16 Thank you.

17 JUDGE WOODRUFF: MEG?

18 MS. LANGENECKERT: May it please the
19 Commission, Judge Woodruff?

20 The Missouri Energy Group recommends that
21 the Commission allow an ROE that is lower than AmerenUE's
22 proposed 12 percent return on equity by recognizing
23 AmerenUE's reduced risk and lower its proposed return on
24 equity due to several risk mitigating factors, including
25 the fuel adjustment clause proposed by AmerenUE to be used

1 in this case which passes the risk of volatility in fuel
2 costs on to customers, the pension tracker which will
3 reduce the variation in AmerenUE's income, and the
4 availability of the environmental cost recovery clause
5 which will allow the company to collect outside of normal
6 rate proceedings additional costs that incur due to
7 environment costs through an additional surcharge.

8 In addition, the MEG rejects the financial
9 risk adjustments that AmerenUE's expert witnesses
10 Ms. McShane and Dr. Vander Weide have proposed.
11 Ms. McShane and Dr. Vander Weide wide believe that the
12 difference in a proxy group's average market value common
13 equity ratio as compared to AmerenUE's book value common
14 equity ratio requires an upward adjustment to the
15 company's allowed ROE.

16 This is incorrect. AmerenUE does not face
17 higher risk because its book value common equity ratio is
18 different than the average market value common equity
19 ratio of a proxy group. Ms. LaConte has further explained
20 this argument in her testimony before us in this case and
21 will be happy to answer questions in cross tomorrow.

22 As many of the former parties have pointed
23 out in their opening statements, the average return on
24 equity allowed by regulators in 2006 was well below
25 AmerenUE's requested 12 percent. Thank you.

1 JUDGE WOODRUFF: Thank you. Commercial
2 Group I believe is not here. Noranda, AARP, MASW.
3 Missouri Retail Association?

4 MR. OVERFELT: We have no testimony.

5 JUDGE WOODRUFF: MoKan, Laclede, Aquila and
6 Joint Bargaining. I believe that's all the parties.

7 Before we go ahead and get started on
8 testimony, we'll take a break for dinner, and when we come
9 back at six o'clock, we'll start with the testimony of
10 Ms. McShane. With that, we are --

11 MR. BYRNE: Judge, will we go until
12 Nine o'clock again tonight?

13 JUDGE WOODRUFF: Probably. With that,
14 then, we are adjourned until six o'clock.

15 (A BREAK WAS TAKEN.)

16 JUDGE WOODRUFF: Welcome back from the
17 dinner break, and I believe we're ready to begin with our
18 first witness on the return on equity issue.

19 MR. CYNKAR: Ms. McShane is the next
20 witness, your Honor, I believe she does have a few
21 corrections.

22 (Witness sworn.)

23 KATHLEEN C. McSHANE testified as follows:

24 DIRECT EXAMINATION BY MR. CYNKAR:

25 Q. Ms. McShane, do you have any corrections to

1 your testimony?

2 A. Yes, I have a couple.

3 Q. And which testimony?

4 A. I have some in the direct testimony and one
5 in the rebuttal testimony.

6 Q. Why don't we start with the direct?

7 A. The first correction is on page 29.

8 Q. You may want to move that microphone right
9 toward your mouth. There you go.

10 A. It's on page 29, look at lines 18 to 20,
11 and on line 19 there is a forecast of GDP deflator of
12 approximately 2.2 percent, and that should be 2.1 percent.
13 And the other three corrections are on page 47.

14 Q. Still in your direct testimony?

15 A. Yes.

16 Q. On line 10, the number 1,186 should be
17 1,184. On line 13, the number 715 should be 713, and on
18 line 14, the number 341 should be 339. Those are all the
19 corrections from the direct testimony.

20 Then I have one correction to the rebuttal
21 testimony.

22 Q. All right.

23 A. That would be on page 55, line 9, and it's
24 the T statistic which currently reads negative 5.5 and
25 should read negative 5.15. And that's all.

1 MR. CYNKAR: With that, I tender the
2 witness for cross-examination.

3 JUDGE WOODRUFF: Okay. Does any party wish
4 to cross-examine this witness?

5 MR. THOMPSON: I think I'll have some, your
6 Honor.

7 JUDGE WOODRUFF: And looks like the State
8 is the first on the list.

9 CROSS-EXAMINATION BY MR. MICHEEL:

10 Q. Hello, Ms. McShane. Nice to see you again.

11 JUDGE WOODRUFF: Mr. Mills, did you want to
12 say something?

13 MR. MILLS: No. I'd forgotten what order
14 we were in.

15 JUDGE WOODRUFF: It's State, Public
16 Counsel, Staff.

17 THE WITNESS: Nice to see you, too.

18 BY MR. MICHEEL:

19 Q. Could you turn to your Schedule KCM-E51 in
20 your direct testimony. Let me know when you're there.

21 A. Yes, I have that.

22 Q. And is that where you use your DCF inputs
23 for your group of electric utilities; is that correct?

24 A. That's one of three places.

25 Q. So we can talk about that on that schedule?

1 A. Well, I wouldn't talk about it all by
2 itself. If I were going to talk about my DCF, I would
3 talk about the three schedules, 54, 55 and 56.

4 Q. Okay. Well, let's start there on 5. In
5 the DCF, is it correct that you used ValueLine's expected
6 EPS growth rate?

7 A. That's one of them on that particular
8 schedule, yes.

9 Q. Is it correct you did not use ValueLine's
10 expected EPS growth rate?

11 A. I did not.

12 Q. Would you agree with me that in the DCF
13 calculation, cash flows that investors receive in the form
14 of dividends, in the DCF are not the cash flows that
15 investors receive in the form of dividends and not
16 earnings?

17 A. Well, all dividends have to come from
18 earnings, so if we're trying to find a number that is the
19 expectation of long-term or growth into perpetuity, then
20 earnings is the basis for growth in dividends.

21 Q. And only earnings, that's your testimony?

22 A. Only earnings is the basis for growth in
23 dividends.

24 Q. Yes.

25 A. Yeah, earnings -- earnings are, and I mean,

1 ultimately you can have dividends come out of retained
2 earnings, but earnings are the source of dividends.

3 Q. And you've seen companies that pay
4 dividends out of retained earnings; isn't that correct?

5 A. Some have, yes.

6 Q. And you've used ValueLine data in several
7 places in your testimony; is that correct?

8 A. I used ValueLine in some places in my
9 testimony, yes.

10 Q. And why did you use the ValueLine data?

11 A. I guess really depends on the source of the
12 information. I used ValueLine as a starting point for the
13 selection of the sample of comparable utilities because it
14 is a finite database that -- whose coverage is for all of
15 the major electric utilities. I used ValueLine as a sort
16 of a test against the IBES growth rates, and I used the
17 ValueLine betas because they're widely available and
18 relied upon widely by investors.

19 Q. On Schedule 5 there of that schedule I
20 asked you to turn to, on column 4 you use the ValueLine
21 EPS growth date; is that correct?

22 A. Yes.

23 Q. And do you see there one of the companies
24 that you used was TXU Corp?

25 A. Yes.

1 Q. And is it correct that the EPS growth
2 that's predicted there is 30 percent?

3 A. Yes.

4 Q. Is it correct that the DCF equity there is
5 34 percent?

6 A. Yes, it is.

7 Q. Is it your testimony looking at the rest of
8 those numbers that those two numbers -- well, let me ask
9 you this: Are those two numbers outliers?

10 A. I would say yes, that that number is the
11 highest number in the group, and there are numbers that
12 are outliers on the other end as well. So I would simply
13 kick out one number on the high end without looking at
14 what numbers on the low end might also be unreasonable in
15 and of themselves as a stand-alone statement.

16 Q. Would you say that that's an outlier by a
17 factor of ten compared to the other numbers?

18 A. It's considerably higher than the other
19 numbers.

20 Q. When you say considerably, what do you
21 mean? I said a factor of ten and you didn't accept that,
22 so what do you mean by considerably?

23 A. Well, the next highest number is in the
24 12 percent range.

25 Q. And that's for equity, right?

1 A. Yes.

2 Q. And the next highest number for growth is
3 what?

4 A. Nine and a half.

5 Q. So more than ten times?

6 A. Sorry.

7 Q. More than ten times?

8 A. No.

9 Q. Okay.

10 A. Three times.

11 Q. Three times. BA in political science.
12 Sorry about that.

13 Now, I've got a copy of a ValueLine sheet
14 here.

15 MR. MICHEEL: May I approach the witness?

16 JUDGE WOODRUFF: You certainly may.

17 BY MR. MICHEEL:

18 Q. I'm showing you a copy of the Ameren
19 Corporation ValueLine. Are you familiar with ValueLines
20 such as that?

21 A. Yes.

22 Q. And have you seen the Ameren ValueLine?

23 A. Yes.

24 Q. Okay. Now, when you look at in the middle
25 of the page at that ValueLine, there's historical data on

1 an income statement and balance sheet data; is that
2 correct?

3 A. Sorry. You're looking at which piece of
4 the left-hand side here?

5 Q. I'm looking in the middle of the page, the
6 second box, the long-term debt ratio, common equity ratio.
7 That's historic information from the income statement and
8 balance sheet, is it not?

9 A. You're looking at this box that says
10 capital structure as a --

11 Q. No. I'm looking in the middle of the page.

12 A. Yeah. Yes.

13 Q. Let me just point out --

14 A. So some of those numbers are from annual
15 reports presumably summarized over time.

16 Q. And that's all historic data; is that
17 correct?

18 A. Yes.

19 Q. And you did not use any of that historical
20 data, did you?

21 A. No.

22 Q. And is it correct that you have not used
23 any historical data in projecting growth rates for your
24 DCF analysis, correct?

25 A. I did not project growth rates. I used

1 investment analysts' forecasts.

2 Q. You didn't use any historic growth rates;
3 isn't that correct?

4 A. That's correct.

5 Q. So you were quibbling with my word project?

6 A. Well, I didn't mean to quibble. I wasn't
7 doing the projecting. That's the only thing I was taking
8 issue with.

9 Q. Is it your view that investors don't pay
10 any attention to historic figures?

11 A. I'm sure they pay attention to historic
12 figures, but when analysts forecast growth rates, they
13 incorporate history into their forecast. So to the extent
14 that history is important, it's already in the forecast,
15 and therefore, to take a forecast and a historic growth
16 rate would create a redundancy.

17 Q. Now, there's some -- on the right-hand side
18 of the page, there's some projected data, is there not,
19 for like earnings per share and relative price earnings
20 ratio and things like that on the ValueLine sheet?

21 A. Yes.

22 Q. And they're in bold there?

23 A. Yes.

24 Q. And at the top of the page you see that the
25 expected dividend yield according to ValueLine there is

1 4.7 percent; is that correct?

2 A. The dividend yield, not expected dividend
3 yield.

4 Q. Did I say expected?

5 A. Yes.

6 Q. I'm sorry. The dividend yield.

7 A. Yes.

8 Q. Sorry about that. Is 4.7 percent?

9 A. Yes.

10 Q. Now, on the left-hand of the page there are
11 historic and projected growth rates; is that correct?

12 A. Now, are we talking about the little blocks
13 on the left?

14 Q. Yes.

15 A. Yes. There are some historic and projected
16 growth rates.

17 Q. And you haven't utilized any projected
18 growth rates; is that correct?

19 A. I've used just projected growth rates.

20 Q. Is it correct that ValueLine for earnings
21 per share growth for Ameren has a number of 1.0 percent?

22 A. Yes, it does.

23 Q. So would you agree with me, if I'm doing it
24 right and I look at this sheet, that for ValueLine the DCF
25 cost of equity rate for Ameren is the dividend yield plus

1 expected growth or that 4.7 percent plus 1 percent, which
2 equals 5.7 percent; is that correct?

3 A. That would be the arithmetic, and that's
4 the reason that one doesn't use just one company but a
5 sample of companies, because not all additions of expected
6 growth rates and expected dividend yields are going to
7 result in a number that equals the cost of equity.

8 Q. And would you agree with me that ValueLine
9 has projected annual stock returns from now until the
10 2010-2011 period; is that correct?

11 A. For Ameren?

12 Q. Yes.

13 A. Yes, they do.

14 Q. And they show a high return of 9 percent a
15 year and a low return of 5 percent a year; is that
16 correct?

17 A. Yes, over that period.

18 Q. Now, you've not used any ValueLine
19 projections, have you?

20 A. For what purpose?

21 Q. For return purposes.

22 A. Do you mean have I developed a risk premium
23 number like some people did out of the --

24 Q. No. No. Perhaps -- you haven't used any
25 growth projections from ValueLine; isn't that correct?

1 A. I thought that's what we were talking about
2 on Schedule E-5. Those are ValueLine growth in EPS
3 forecasts. I have not used the forecast to which you are
4 referring now, which are these average total return
5 forecasts up in the left-hand corner of the sheet.

6 Q. Let's talk about your CAPM. In your
7 approach to your CAPM, you used a range of 5.0 to
8 5.5 percent as your risk-free rate; is that correct?

9 A. Yes.

10 Q. And the midpoint of that range is 5.25; is
11 that correct?

12 A. Yes.

13 Q. So would you agree with me that yields on
14 long-term Treasury bonds remain below that figure?

15 A. Yes.

16 Q. Do you know what the current rate on
17 long-term Treasuries are?

18 A. I believe the -- I'm using a ten-year
19 Treasury for my risk-free rate. I believe the yield on
20 ten-year treasuries today is about 4.7 percent.

21 Q. Okay. And how about 30 year, if you know?

22 A. I think it's 4.9ish, but I'm not positive.

23 Q. And you don't look at those regularly?

24 A. I do, and I did look them up the other day,
25 but I don't remember what the 30 year was.

1 Q. Okay. And then you compute an experienced
2 market risk premium using historical stock prices and bond
3 returns, do you not?

4 A. Are we still talking capital asset pricing
5 model?

6 Q. Yes.

7 A. My risk premium is based on historic bond
8 income returns and historic stock returns over a long
9 period of time.

10 Q. And do you compute an expected market risk
11 premium?

12 A. Yes, I do. They're -- excuse me. I should
13 say they're both expected risk premiums. One is developed
14 from history, and the other is developed from forecasts
15 directly.

16 Q. And you average those risk premiums, do you
17 not?

18 A. I look at the range of them. I don't
19 simply do a sample average of them.

20 Q. Well, I guess my question is, for doing the
21 CAPM you used historic data; is that correct?

22 A. I use some historic data and some forecast
23 data.

24 Q. And for doing your expected market risk
25 premium, as in your DCF approach, you use forecast of EPS

1 earnings per share; is that correct?

2 A. I did, yes.

3 Q. And whose forecasts are those?

4 A. Those are the IBES forecasts.

5 Q. And are those forecasts by analysts or --

6 A. Yes.

7 Q. And who are those analysts?

8 A. I don't know who the individual analysts
9 are. But they are typically equity investment analysts.

10 Q. So you do not use historic data in
11 estimating the expected EPS growth, is that correct, for
12 your DCF?

13 A. No. They are forecast earnings growth
14 rates.

15 Q. But for your CAPM, you used historic stock
16 and bond returns; is that correct?

17 A. As one estimate, yes.

18 Q. So you -- sometimes you use historic and
19 sometimes you use projected, correct?

20 A. Depending on the situation and whether it's
21 appropriate.

22 Q. You would agree with me that there are
23 forecasts of expected stock returns available from various
24 sources?

25 A. Yes, there are.

1 Q. In fact, colleagues at -- your fellow
2 company ROR witness Dr. Vander Weide has published
3 Forecasts of CFOs in what is known as the Duke University
4 CFO magazine. Are you familiar with that?

5 A. It's a survey of CFOs.

6 Q. Are you familiar with that?

7 A. Yes.

8 Q. You've not used those forecasts; is that
9 correct?

10 A. No, I haven't.

11 Q. And is that because you don't believe those
12 forecasts are appropriate?

13 A. Well, I addressed the survey in my rebuttal
14 testimony.

15 Q. Well, why don't you just answer? Is that
16 because you don't believe those forecasts are appropriate?

17 A. I don't believe that the surveys have any
18 particular analytical support behind them in the first
19 instance. In the second instance, it's well recognized
20 that these -- that the very CFOs who provide their
21 estimates often use something very different when they do
22 their own capital budgeting and something higher than they
23 say that their expectation for the market return is.

24 Q. Do you feel that CFOs have a good handle on
25 what market returns should be?

1 A. I don't mean to insult any particular CFOs,
2 but I've had conversations with CFOs, and I think they
3 have some sense of what market returns are, but I don't
4 think they've studied them in any depth.

5 Q. I mean, but you would expect that the chief
6 financial officers from major corporations would know
7 something about the market, would you not?

8 A. Yeah. I think they know more about their
9 own stock than they really do about the market as a whole,
10 or their own companies.

11 Q. And is that based on some study that you've
12 done?

13 A. No. Just based on my conversations with
14 CFOs and treasurers.

15 MR. MICHEEL: Thank you for your time.

16 JUDGE WOODRUFF: Public Counsel?

17 MR. MILLS: Your Honor, before I begin, I'd
18 like to go ahead and have an exhibit marked.

19 JUDGE WOODRUFF: All right. 434.

20 (EXHIBIT NO. 434 WAS MARKED FOR

21 IDENTIFICATION BY THE REPORTER.)

22 CROSS-EXAMINATION BY MR. MILLS:

23 Q. Good evening, Ms. McShane. My name's Lewis
24 Mills. I represent the Public Counsel in this proceeding.

25 A. Good evening.

1 Q. Ms. McShane, I just handed you what has
2 been marked as Exhibit 434, I believe. Do you recognize
3 that as a printout from -- well, do you recognize what
4 this is?

5 A. Yes, I do. It is a printout of a page from
6 the Federal Reserve website.

7 Q. And what does it show for the rate on
8 30-year Treasuries as of 3/16/2007?

9 A. 4.7 percent. 4.69, if you want.

10 Q. Do you believe that to be an accurate
11 number?

12 A. I have no reason to doubt it. They've
13 always been pretty accurate with what they put on their
14 website.

15 Q. Now, in your testimony you used
16 17 comparable companies; is that correct?

17 A. Yes.

18 Q. Is that the perfect number?

19 A. No. There is no perfect number. One wants
20 to get a broad enough sample to be reliable, but one wants
21 to balance that with companies that are relatively similar
22 risk.

23 Q. What is the smallest number that you would
24 say is so small as to be not broad enough?

25 A. Well, I mean, it's hard to give a specific

1 answer because every case is different. Sometimes you're
2 limited by the number of companies that are simply
3 available. But in a case of the electric utility
4 industry, where we have maybe 65 potential companies to
5 start with, I mean, I wouldn't think you'd want to have
6 less than 15, and certainly a number of 30, 35, if you
7 could, would be fine as well.

8 Q. But the fewer you have, the more risk you
9 have of one or two of those really skewing the results; is
10 that correct?

11 A. That's possible, yes.

12 Q. Is that possible or is that arithmetically
13 true?

14 A. Well, it depends what measure you focus on.
15 If you focus on the median, which means you're choosing
16 the number where half of them are above and half of them
17 below, you can have one number that's relatively high and
18 it doesn't really skew anything.

19 Q. Do you make extensive use of the median --

20 A. I do.

21 Q. -- in your analysis?

22 A. I do.

23 Q. Now, in your testimony, you exclude all
24 electric utilities that have no nuclear plants; is that
25 correct?

1 A. Yes, I did.

2 Q. Are you familiar with the list of
3 comparables that your co-witness Dr. Vander Weide used?

4 A. I don't know each of them intimately, but
5 I'm generally familiar with the companies in his sample.

6 Q. Are there any non-nuclear utilities in his
7 list?

8 A. Yes, there are.

9 Q. Are you familiar with DTE Energy?

10 A. Generally.

11 Q. Is that the company that operates the
12 Fermi 1 nuclear plant?

13 A. That's the Detroit Edison, yes, but that's
14 not the only criteria that I had. So there may be
15 companies that had nuclear assets that aren't in my sample
16 because they didn't meet the other criteria.

17 Q. Do you know why Dr. Vander Weide excluded
18 DTE Energy?

19 A. No.

20 Q. Now, in your rebuttal testimony at page 24,
21 you -- and I'll let you get there. Just let me know when
22 you're on that page.

23 A. Yes, I have that.

24 Q. There you are purporting to rebut Public
25 Counsel witness King's contention that the annual returns

1 to stocks and bonds are too variable for the average to
2 have any meaning; is that correct?

3 A. Sir, I may be in the wrong testimony.
4 Which testimony are we looking at?

5 Q. I believe it is -- well, I thought it was
6 the rebuttal testimony. Let me get that.

7 A. I'm on page 24 and it's talking about my
8 favorite topic, geometric and arithmetic averages.

9 Q. I'm sorry. It's page 24 of your
10 surrebuttal.

11 A. I have that.

12 Q. Are you essentially saying that the annual
13 returns to stocks and bonds are too variable for the
14 average to have any meaning?

15 A. No.

16 Q. Okay. What are you saying about the
17 average of the annual returns of stocks and bonds?

18 A. I'm saying that they do change from year to
19 year, and the fact that they are different from year to
20 year is what creates risk. It doesn't mean they're too
21 variable to form a basis for an expected value of future
22 risk premium, just that there will be variabilities on
23 either side of that average or that average expectation
24 and, therefore, the returns aren't a sure thing and there
25 is risk involved with them.

1 Q. Okay. And isn't that, in fact, one of the
2 reasons why you use an average when you have data that is
3 not perfectly consistent from year to year, to smooth out
4 the peaks and valleys?

5 A. I'm sorry. As opposed to what?

6 Q. As opposed to looking at a smaller sample.
7 Isn't one of the reasons you take an average of a larger
8 sample is to avoid the possible errors?

9 A. So we're back to the sample size question.

10 Q. Well --

11 A. Or number of observations, yeah. I mean,
12 as I suggested before, I mean, you want a balance. You
13 want a balance between having enough observations or
14 enough companies to have something that's reliable in
15 terms of an average return or average risk premium and
16 something that's comparable.

17 Q. Okay. If you would, please, turn to
18 page 32 of your surrebuttal testimony, and there you're
19 discussing Mr. King's reference to the EEI report. Do you
20 see that answer about the middle of the page?

21 A. Yes.

22 Q. You're not disputing that that's actually
23 what the EEI did, in fact, report?

24 A. The 9.98?

25 Q. Yes.

1 A. I think they -- not to quibble with 9.98,
2 but I think they originally reported 9.98 and then updated
3 it to 10.06. But no, I -- you know, it's the number --
4 either 9.98 or 10.06 is a number they reported. It's just
5 a question of whether it's particularly relevant when most
6 of the numbers are for distribution-only utilities.

7 Q. And that's what you refer to as wires-only
8 utilities?

9 A. Yes.

10 Q. Are the Ameren operations in Illinois what
11 you would consider to be wires-only utilities?

12 A. In terms of the decisions that were made
13 last year, yes.

14 Q. And if this Commission has heard some
15 evidence in this case about the risks facing UE's --
16 Ameren's Illinois operations that are wires only
17 utilities, you wouldn't dispute the evidence they've heard
18 about those risks, would you?

19 A. Well, okay. That is not quite what they
20 were doing when they determined the returns that we're
21 talking about. First of all --

22 Q. Wait a minute. That's not my question. My
23 question was, is -- you said that the Illinois utilities
24 are what you consider --

25 A. Yes.

1 Q. -- that Ameren's Illinois utilities are
2 wires-only utilities?

3 A. Yes, they are.

4 Q. And my question is, would the Commission be
5 re-- well, let me put it this way: If the Commission has
6 heard information in this case about the risks facing the
7 Illinois utilities, shouldn't they be able to take that --
8 those risks into account in evaluating your statement here
9 on page 32 of your testimony?

10 MR. CYNKAR: Objection, your Honor. I
11 don't think Ms. McShane has been around during this
12 hearing, and the question sort of suggests that she has to
13 endorse particular information that the Commission has
14 heard. I think you can lay a better foundation, Lewis.
15 I'm not sure what you're after there.

16 JUDGE WOODRUFF: I'll sustain the
17 objection. I think you need to reformulate your question.

18 MR. MILLS: Okay.

19 BY MR. MILLS:

20 Q. Well, let me put it this way: Do you
21 believe that Moody's evaluates the riskiness of different
22 business segments when it makes a downgrade of a company?

23 A. Yes. They would look at the different
24 segments, yes.

25 Q. And if there is, in that case, evidence

1 showing a report by Moody's of a recent downgrade of
2 Ameren, could the Commission consider Moody's analysis of
3 various risks faced by Ameren when they evaluate your
4 statement here on page 32 of your testimony?

5 A. I think --

6 Q. That's really a yes or no question.

7 A. No, I don't believe it is a yes or no
8 question.

9 Q. If you cannot answer it yes or no, then
10 just say you can't answer it.

11 A. I can't answer it yes or no.

12 MR. MILLS: Okay. I have no further
13 questions. I would like to offer Exhibit 434.

14 JUDGE WOODRUFF: All right. 434 has been
15 offered into evidence. Are there any objections to its
16 receipt?

17 MR. CYNKAR: No objection.

18 MR. THOMPSON: No objection.

19 JUDGE WOODRUFF: It will be received into
20 evidence.

21 (EXHIBIT NO. 434 WAS RECEIVED INTO
22 EVIDENCE.)

23 JUDGE WOODRUFF: Cross-examination for the
24 Staff?

25 MR. THOMPSON: Thank you, your Honor.

1 CROSS-EXAMINATION BY MR. THOMPSON:

2 Q. Good evening, Ms. McShane.

3 A. Good evening, Mr. Thompson.

4 Q. My name is Kevin Thompson. I'm General
5 Counsel with the Commission. I represent the Commission
6 Staff here. And I understand you traveled here from
7 Bethesda; is that correct?

8 A. I did.

9 Q. I am myself a native Baltimoran, so
10 welcome.

11 I have a visual aid. Now, this purports
12 to be a graphical representation of the various ROE
13 recommendations made by the experts who are going to
14 testify on that topic in this case, one of whom is you.
15 And your recommendation I believe is 12.0; is that not
16 correct?

17 A. Yes, it is.

18 Q. Okay. And I notice from your direct
19 testimony that you paid a great deal of attention to the
20 Commission's decision having to do with the Empire
21 District Electric Company case, ER-2004-0570. That's
22 correct, isn't it?

23 A. Yes, it is.

24 Q. And in that decision, which I have a
25 certain fondness for, the Commission used an analytical

1 method called the zone of reasonableness; isn't that
2 correct?

3 A. Yes, they used something called the zone of
4 reasonableness.

5 Q. And the Commission in that decision defined
6 the zone of reasonableness as a range extending 100 basis
7 points above and 100 basis points below the average of
8 awarded ROEs for regulated -- the utilities in the
9 industry under consideration; isn't that correct?

10 A. I believe they did.

11 Q. Okay. And did you read the testimony of
12 Staff's witness Steve Hill?

13 A. Yes, I did.

14 Q. And Mr. Hill indicated that the average of
15 awarded ROEs was 10.5, didn't he?

16 A. I believe that's right.

17 Q. Now, you use the figure 10.8, don't you, in
18 your direct testimony?

19 A. In my direct testimony?

20 Q. And I don't have the page, but we don't
21 have to quibble about that. Even if we say arguendo that
22 10.8 is the figure you testified to, that would give us a
23 range of 9.8 to 11.8, correct?

24 A. Yes.

25 Q. And you would agree with me, wouldn't you,

1 that 12.0 is above 11.8? I mean here's 12.0 (indicating).

2 A. It's just slightly above it, and it would
3 put --

4 Q. Slightly above it?

5 A. Put at least two of the other witnesses
6 outside of it as well, so --

7 Q. Sure. It would be a tremendous catastrophe
8 for these witnesses, but nonetheless, your recommendation
9 is still above the top of that zone of reasonableness,
10 correct?

11 A. It's quite close to the top.

12 Q. Quite close?

13 A. I think you look at a zone of
14 reasonableness, you have to be a little bit flexible with
15 it and look at the specifics of the evidence that you have
16 before you. And, you know, if you look at the
17 Commission's last two decisions in Missouri, you know,
18 they're both much closer to 12 percent than they are to
19 9 or 9 and a quarter.

20 Q. I'm glad you mentioned the Commission's
21 last two decisions. Would one of those happen to be the
22 Commission's recent decision having to do with Kansas City
23 Power & Light Company, Case No. ER-2006-0314?

24 A. Yes, it would.

25 Q. Issued just this past December, I believe?

1 A. Just this past December.

2 Q. And, in fact, in both of those decisions,
3 the Commission's -- the ROEs selected by the Commission
4 was within the zone of reasonableness, based on the record
5 the Commission had in that particular proceeding, was it
6 not?

7 A. I believe that's the case.

8 Q. Okay. Are you familiar with the
9 Commission's decision in the Kansas City Power & Light
10 case?

11 A. I did read it, yes.

12 MR. THOMPSON: Okay. May I approach, your
13 Honor?

14 JUDGE WOODRUFF: You may.

15 BY MR. THOMPSON:

16 Q. I'm going to hand you that decision and ask
17 you to read the sentence beginning with the word because
18 on page 21, and it finishes up on the following page.

19 A. Because the return on equity recommended by
20 DOE falls outside of the zone of reasonableness, the
21 Commission will discard it and find that it merits no more
22 discussion.

23 Q. Thank you.

24 A. Is that all you wanted me to read?

25 MR. THOMPSON: Yes, ma'am. Thank you. I

1 have no further questions.

2 JUDGE WOODRUFF: Thank you. And we'll come
3 up to the Bench for questions, Commissioner Murray?

4 COMMISSIONER MURRAY: I hate to disappoint
5 everybody, but I don't have any questions. Thank you.

6 JUDGE WOODRUFF: Commissioner Appling?

7 COMMISSIONER APPLING: No questions, Judge.

8 JUDGE WOODRUFF: I don't have any
9 questions, so there's no need for recross.

10 Any redirect?

11 MR. CYNKAR: No, your Honor.

12 JUDGE WOODRUFF: Then, Ms. McShane, you may
13 step down. I assume this is the only time she's going to
14 be testifying, so we need to offer evidence.

15 MR. CYNKAR: Yes, your Honor. We will be
16 offering with respect to Ms. McShane three pieces of
17 testimony, 049 -- and I have copies for the reporter. 049
18 is the direct testimony of Kathleen C. McShane, 050 is the
19 rebuttal testimony of Kathleen C. McShane, and 051 is the
20 surrebuttal testimony of Kathleen C. McShane, and I offer
21 and move their admission into evidence.

22 JUDGE WOODRUFF: 49, 50 and 51 have been
23 offered. Are there any objections? Hearing none, they
24 will be received into evidence.

25 (EXHIBIT NO. 49, 50 AND 51 WERE MARKED FOR

1 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

2 JUDGE WOODRUFF: And you can call the next
3 witness.

4 MR. CYNKAR: Dr. James Vander Weide is the
5 next witness, your Honor.

6 (Witness sworn.)

7 JUDGE WOODRUFF: You may be seated.

8 JAMES VANDER WEIDE testified as follows:

9 DIRECT EXAMINATION BY MR. CYNKAR:

10 Q. Dr. Vander Weide, do you have any
11 corrections to your testimony?

12 A. Yes. I have several.

13 In my rebuttal testimony, on page 34,
14 lines 12 and 13, the figure 9.8 percent should read
15 10.7 percent, and Table 4 should read Table 3.

16 On page --

17 Q. If you could hold up for a moment.

18 A. Sure.

19 Q. We're all tired at the end of the day, so I
20 think the fingers are moving slowly.

21 A. I understand.

22 MR. MILLS: Can we do the first one again?

23 THE WITNESS: My rebuttal testimony,
24 page 34, lines 12 and 13, the 9.8 should read 10.7, and
25 the Table 4 should read Table 3.

1 MR. MILLS: Thank you.

2 THE WITNESS: On page 73 of my rebuttal
3 testimony, line 15, the A-rated utility bond should read
4 B-double-A-rated utility bonds. In my rebuttal testimony,
5 Schedule JVW 2-1, line 6 for Duke Energy, the price should
6 read 31.717 rather than 18.466. The other numbers in that
7 line are correct.

8 MR. MICHEEL: 31 what?

9 THE WITNESS: 31.717.

10 MR. MICHEEL: Thank you.

11 THE WITNESS: And in rebuttal
12 Schedule JVW 2-2, line 5, the price should be 31.717, and
13 the cost of equity should be 10.7 percent. The average
14 remains the same because the correct number was used in
15 calculating the average in Schedule 2.2.

16 That's all I have.

17 MR. CYNKAR: Thank you. Tender the witness
18 for cross-examination.

19 JUDGE WOODRUFF: Does any party wish to
20 cross-examine this witness?

21 It looks like MEG would be the first on the
22 list.

23 CROSS-EXAMINATION BY MS. LANGENECKERT:

24 Q. Good evening, Dr. Vander Weide.

25 A. Good evening.

1 Q. I'm Lisa Langeneckert and I represent the
2 Missouri Energy Group.

3 A. Nice to meet you.

4 Q. I only have a few questions for you. You
5 reviewed the market value capital structure of your proxy
6 group of companies; is that correct?

7 A. Yes, it is.

8 Q. Was Ameren included in that proxy group?

9 A. Let me just review a minute.

10 Q. I believe it's your direct Schedule 1-3.

11 A. Yes, it is that schedule and, yes, Ameren
12 is in that group.

13 Q. Would you agree that if a company increases
14 its income, it could have a positive effect on its stock
15 price, all else being equal?

16 A. I'm not sure how to interpret the question
17 without understanding what other things would be held
18 equal.

19 Q. Well, all other things would be held equal,
20 if the company increases its income, would that increase
21 its stock price?

22 A. Not necessarily.

23 Q. Would it have a positive effect?

24 A. Not necessarily.

25 Q. Okay. Are you aware of how the EEI issue

1 affects Ameren Corporation's income?

2 A. No, I'm not.

3 Q. Do you know what the change in Ameren's
4 income is due to EEI? Have you been made aware of any of
5 those numbers?

6 A. No.

7 MS. LANGENECKERT: That's all I have.

8 Thank you.

9 JUDGE WOODRUFF: Thank you. Did the State
10 wish to cross?

11 MR. MICHEEL: Yes, I'll give it a whirl.

12 CROSS-EXAMINATION BY MR. MICHEEL:

13 Q. Good evening, Doctor.

14 A. Good evening.

15 Q. Is it correct in your DCF model you use
16 projected EPS growth rates for your growth rate?

17 A. Yes.

18 Q. And is it correct that you reject the use
19 of using historical growth rates?

20 A. Yes.

21 Q. And I assume it's your position that the
22 reason you -- if I understood your testimony right, the
23 reason you rejected using the historical is that analysts
24 know what historical growth is and it's effectively built
25 into the expected growth rate; is that correct?

1 A. No, that's not a complete answer. That
2 would be -- that would be one of the reasons, but most
3 importantly, I've done extensive studies of the growth
4 rates used by analysts and how they relate to stock
5 prices. The goal in a DCF is to use the investors'
6 expected growth rates, and those would be the ones that
7 move the stock prices.

8 So I have compared the analyst growth rates
9 and how they -- their ability to move stock prices
10 compared to the historical growth rates and internal
11 growth rates and found that the analyst growth rates are
12 much more highly correlated with stock prices, and hence
13 have a greater ability to move stock prices than
14 historical growth rates or internal growth rates.

15 Q. And that was my next question. Great
16 anticipation. You've done a study, and part of your
17 belief on why you want to use the -- you don't want to use
18 historical is based on that study; is that correct?

19 A. Yes.

20 Q. And would you agree with me that your study
21 did not test for the accuracy of analysts' earnings per
22 share growth rates?

23 A. I would agree that my study did not test
24 because it wasn't relevant.

25 Q. And your study did not separate out the

1 results of electric utilities; isn't that correct?

2 A. My study as it was published did not, but
3 there was a much broader study behind that that did
4 separate out the results for electric utilities.

5 Q. And that study, sir, if I may, is the Craig
6 and Malkiel study, is it not?

7 A. No, it is not. It's my own study.

8 Q. Okay. It was your own study. Was that
9 study published?

10 A. That was a research paper that was part of
11 the original study, and when it was published, they
12 decided to use only the broader group of companies for the
13 electric utilities. The results were the same, if not
14 stronger. In fact, I believe they were stronger, and that
15 is that the analyst growth rates continue to have a much
16 stronger influence on stock prices than historical growth
17 rates and internal growth rates.

18 Q. You also cite a study in your testimony in
19 your direct testimony by Craig and Malkiel, M-a-l-k-i-e-l,
20 do you not?

21 A. Yes.

22 Q. Could you give me a brief summary of that
23 study?

24 A. That study was prepared earlier than mine,
25 and it didn't have available the IBES growth rates, but it

1 did look at a collection of analyst growth rates and was
2 really the starting point for my study. It showed the
3 relationship between analyst growth rates and stock prices
4 compared to other growth indicators.

5 Q. And so that study tried to assess -- tried
6 to assess the accuracy, did it not?

7 A. Yes. Well, no.

8 MR. MICHEEL: May I approach the witness?

9 THE WITNESS: I spoke too early.

10 JUDGE WOODRUFF: Yes, you may approach the
11 witness.

12 BY MR. MICHEEL:

13 Q. I'm handing you the cover page of the Craig
14 and Malkiel -- is that how you say it?

15 A. Malkiel.

16 Q. -- Malkiel study, and I've got a page here,
17 page 83 of the study, and I've bracketed a paragraph
18 there. If you could read that paragraph into the record.

19 A. The electric utility industry turned out to
20 be one of the more difficult industries for which to make
21 long-term forecasts. This would come as a distinct
22 surprise to the participating security analysts who
23 claimed at the outset that they had some reservations
24 about their abilities to predict earnings for the metals
25 and other cyclical companies but had confidence that they

1 make accurate predictions for the utilities. It turned
2 out that the long-term predictions for the utility
3 industry were considerably worse than for the metals and
4 cyclicals.

5 Q. Now, sir, in preparation -- let me ask you
6 this: You're a professor of finance and economics at Duke
7 University; is that correct?

8 A. Yes.

9 Q. And in preparation for the
10 cross-examination, I went to the Duke website and I
11 downloaded the Duke finance website to get some
12 familiarity with you.

13 MR. MICHEEL: May I approach the witness?

14 JUDGE WOODRUFF: Yes, you may.

15 BY MR. MICHEEL:

16 Q. And I printed off a picture of the Duke
17 finance faculty on the website, and looking at that
18 picture, I didn't see you in the picture. Were you not in
19 attendance that day?

20 A. That picture is for the faculty members who
21 teach in the MBA program. I'm on the Duke faculty, but I
22 teach in the executive education programs at Duke.

23 Q. Well, because you weren't in the picture, I
24 printed out the finance faculty, both the finance area
25 faculty and the affiliated faculty. And let me hand that

1 to you from the Duke website. I didn't see your name
2 listed there.

3 A. I don't know why it's not listed there. I
4 do teach at Duke and I am on the Duke faculty.

5 Q. Do you teach undergraduates at Duke?

6 A. Business faculty don't teach
7 undergraduates. I teach in executive education.

8 Q. Now, you indicate, I guess, that you're
9 part of the research faculty. You're a research faculty
10 member, then; is that what I heard you say?

11 A. No, you didn't hear me say that. You heard
12 me say that I teach in executive education at Duke
13 University.

14 Q. And your direct testimony indicates that
15 you're a research professor; is that correct?

16 A. That's my title, yes.

17 Q. Now, I presume that you means that you
18 write research articles and publish them in academic
19 journals?

20 A. I have done that, yes.

21 Q. Would you agree with me that the last
22 academic article that you published was in 1988?

23 A. No.

24 Q. When was the last academic article that you
25 published and what was the name of the journal?

1 A. It was in the Journal of -- it's -- I can't
2 recall the exact name of the journal, but it's industrial
3 economics, and it was published within the last three or
4 four years.

5 Q. Now, also on the -- is Duke School of
6 Business, it's called the Fuqua, is that --

7 A. That's correct.

8 Q. I found a news release regarding an item on
9 an updated survey on a study by John Graham and Campbell
10 Harvey. Are those two faculty members at Duke?

11 A. Yes.

12 Q. And are you familiar with the work of
13 Graham and Harvey?

14 A. Yes, I am.

15 Q. And would you agree with me that those are
16 two Duke professors who publish articles on finance?

17 A. Yes.

18 Q. And would you agree with me that they're
19 the two Duke professors who do a survey of CFOs which they
20 do in conjunction with CFO Magazine?

21 A. Yes, I would.

22 Q. And the study that they conduct of CFOs,
23 that's to get their opinions on numerous items in the
24 financial community; is that correct?

25 A. I'm not sure what you mean by numerous

1 items.

2 Q. Well --

3 A. It's to get their opinions on things like
4 an expected risk premium, yes.

5 Q. And numerous other items, returns, risk
6 premiums --

7 A. Some other items.

8 Q. Okay. More than one item, how about that?

9 A. Yes.

10 Q. Would you agree with me that CFOs of major
11 corporations tend to be savvy about financial issues
12 affecting corporations?

13 A. They tend to be savvy about corporate
14 finance issues more affecting their own corporations than
15 other corporations.

16 Q. Would you agree with me that as part of
17 that survey done by those two professors at Duke
18 University, that the CFOs are asked for the expected
19 return on the S&P 500 over the next ten years?

20 A. Yes.

21 MR. MICHEEL: May I approach the witness
22 again?

23 JUDGE WOODRUFF: You may.

24 BY MR. MICHEEL:

25 Q. Let me hand you page 33 from the CFO study

1 done by your professors at -- I guess your colleagues at
2 your institution. I'd like to ask you some questions
3 about that. Does that indicate that it was recently --
4 that that was recently completed in the winter of 2007?

5 A. Yes, it does.

6 Q. And the question at the top on
7 February 19th, the annual yield on ten-year Treasury bonds
8 was 4.7 percent, please complete the following. Do you
9 see that?

10 A. Yes, I do.

11 Q. And do you see the second question, over
12 the next ten years, I expect the average S&P return will
13 be?

14 A. Yes.

15 Q. Do you see the mean response there of
16 8.12 percent?

17 A. Yes.

18 Q. And would you agree with me that the number
19 of respondents was 418?

20 A. Yes.

21 Q. Would you agree with me that CFOs would
22 tend to know what the historical returns are for the stock
23 market?

24 A. I don't have any opinion on that.

25 Q. Okay. Let me ask you this: If you take

1 the mean expected return of the S&P 500 of 8.12 percent
2 and subtract the ten-year Treasury yield that's used there
3 of 4.7 percent, would you agree that the expected market
4 risk premium is 3.42 percent?

5 A. I agree with your arithmetic. I would not
6 agree that that's an expected market risk premium.

7 Q. Would you agree that's one way you could do
8 it, whether you agree with the -- that's one way you could
9 determine expected market risk premium?

10 A. Survey methods are one way. I would not
11 agree that it's a good way to do it.

12 Q. But using that survey, that would be the
13 method you would use; is that correct? I understand that
14 you don't accept that.

15 A. Would you repeat your question?

16 Q. Sure. Using that survey, that's how you
17 would determine the market risk premium; isn't that
18 correct?

19 A. It might be one way you could do that.

20 MR. MICHEEL: Thank very much for your
21 time, sir.

22 JUDGE WOODRUFF: Does Public Counsel wish
23 to cross?

24 MR. MILLS: Yes, thank you.

25 CROSS-EXAMINATION BY MR. MILLS:

1 Q. Good evening, Dr. Vander Weide.

2 A. Good evening.

3 Q. How does Mr. King's list of comparable
4 companies differ from yours?

5 A. I don't have his list in front of me.

6 Q. Do you recall that he limits his companies
7 to those that have at least 65 percent of their income
8 derived from regulated services?

9 A. I don't recall the exact number, but I
10 believe that he has such a limit.

11 Q. And do you recall why he placed that limit
12 on his comparable companies?

13 A. I believe it's because he thought that
14 would make them more comparable.

15 Q. Okay. And isn't it true that only
16 regulated companies have their earnings determined based
17 on book value capital structures?

18 A. Yes.

19 MR. MILLS: That's all the questions I
20 have. Thank you.

21 JUDGE WOODRUFF: Thank you. For Staff?

22 CROSS-EXAMINATION BY MR. THOMPSON:

23 Q. Good evening, Dr. Vander Weide.

24 A. Good evening.

25 Q. It's nice to see you again, sir.

1 A. Good to see you as well.

2 Q. I have a visual aid I'd like to draw your
3 attention to. This is very serious, please. This
4 purports to graphically represent the recommendations
5 regarding return on equity made by the various witnesses
6 who will testify in this case, and I believe that your
7 recommendation is 12.2 percent, is it not?

8 A. Yes.

9 Q. Okay. And are you familiar with this
10 Commission's analytical device that has been termed the
11 zone of reasonableness?

12 A. I'm not sure I would agree with your
13 characterization of it.

14 Q. Okay. How would you characterize it?

15 A. I would characterize it as a zone of
16 reasonableness that the Commission used in a particular
17 case. It's very reasonable to use a zone of
18 reasonableness, but there's nothing that I know of that
19 would bind anyone, including the Commission, to using the
20 same zone of reasonableness in every case. It would
21 depend on the evidence in this case.

22 Q. Okay. And the Commission has defined that
23 zone as extending 100 basis points above and 100 basis
24 points below the national average of recently awarded ROEs
25 for regulated utilities within the industry under

1 consideration; isn't that correct?

2 A. If you're asking did they define it that
3 way in particular in a particular case, the answer would
4 be yes, that would be relevant to that particular case. I
5 would also note that certainly in the Kansas City Power &
6 Light case, the Commission chose a number at the upper end
7 of the zone of that zone of reasonableness, and that
8 itself would now indicate a zone of reasonableness.

9 Q. But it was within that zone; isn't that
10 correct?

11 A. It was at the upper end of the zone.

12 Q. At the upper end but within the zone,
13 correct?

14 A. Yes.

15 Q. Okay. And in that case, the zone was
16 defined as I stated, was it not?

17 A. In that case, it was, yes.

18 Q. And it was also defined that way in the
19 Empire case in which you testified recently; isn't that
20 correct?

21 A. I don't recall how the Commission stated it
22 in that case.

23 Q. And it was also defined in that
24 way in an earlier Empire case in which you testified,
25 Case ER-2004-0570; isn't that correct?

1 A. Again, I don't recall how they stated the
2 zone of reasonableness. I recall the results that they
3 came up with were 11 and 10.9.

4 Q. Yes, sir. Very well. Now, you are being
5 compensated for traveling here and testifying; isn't that
6 correct?

7 A. Yes.

8 Q. And you stated in your testimony that your
9 method was to apply several standard models to groups of
10 comparable companies using the method approved by this
11 Commission in ER-2004-0570, that Empire case I referred
12 to, and then to adjust that result to reflect the risk of
13 UE's capital structure compared to that of the
14 comparables; isn't that correct?

15 A. Yes.

16 Q. Okay. And you also indicated that the use
17 of a reasonably large sample of comparables reduces error
18 of estimation; isn't that correct?

19 A. Yes.

20 Q. And your group of comparables, I believe,
21 included 34 electricians from ValueLine; isn't that correct?

22 A. That was the number in my direct testimony.
23 I updated my DCF results in my rebuttal testimony and used
24 a group of 32.

25 Q. And used a group of 32. Okay. What would

1 your opinion be of the group of 17 used by your colleague,
2 Ms. McShane?

3 A. I would say that obviously I prefer to use
4 the criteria that I did in using the larger group, but it
5 apparently doesn't have a significant impact on the result
6 because we both arrived at similar results, similar
7 recommendations.

8 Q. Okay. And so would I be correct, then, in
9 understanding that you each exercised your professional
10 judgment in a somewhat different way in putting together
11 your analytical methods; she used 17 comparables, you used
12 34, later adjusted to 32?

13 A. Yes.

14 Q. Okay. And you have no quibble with her
15 result?

16 A. Not in terms of the final numbers. It's
17 very similar to mine.

18 Q. Okay. And now, would you agree that all of
19 the witnesses on rate of return on -- return on equity
20 that are going to testify here are, in fact,
21 professionally qualified to do so?

22 A. Yes.

23 Q. Okay. Now, you did employ a DCF analysis,
24 didn't you?

25 A. Yes, I did.

1 Q. And your result was 10.7?

2 A. That was in my direct testimony. In my
3 rebuttal testimony, I updated that number. It --
4 including all the companies, it was 11.75, and then since
5 in the Empire case the Commission had asked me to consider
6 what would happen if I eliminated the top two and the
7 bottom two results, I did that as well and showed both
8 with all the companies and with the top two and bottom two
9 eliminated, and I got a 10.8.

10 Q. I see. Sensibly doing that work at home
11 before you got here to the witness chair.

12 A. That's correct.

13 Q. Now, in your ex ante risk premium in your
14 direct testimony, you reported a result of 11.8; isn't
15 that correct?

16 A. Yes.

17 Q. And did you update that in your rebuttal?

18 A. No.

19 Q. And on your ex post risk premium, you get a
20 result in your direct testimony of 11.4; isn't that
21 correct?

22 A. Let me just be sure. I believe you're
23 calling them right, but let me look at it. Yes, it is
24 11.4.

25 Q. And did you update that in your rebuttal?

1 A. No. Interest rates -- the main thing that
2 would have changed would have been interest rates, and
3 they were virtually the same at the time of my rebuttal
4 and at the time of my direct, so I didn't feel a need to
5 change those.

6 Q. Very well. You also reported a historical
7 CAPM?

8 A. Yes.

9 Q. In your direct, the result was 11.7; isn't
10 that correct?

11 A. Yes.

12 Q. And did you update that?

13 A. I did update that, and I don't recall what
14 page it's on, but the effect was to increase that number
15 slightly because of the higher betas at the time of my
16 rebuttal testimony.

17 Q. Very well. And then you also reported a
18 DCF CAPM in your direct with a result of 12.8?

19 A. Yes.

20 Q. And did you update that one?

21 A. No, I did not.

22 Q. Okay. Now, based on your updates, did your
23 final result, your recommended ROE change?

24 A. No.

25 Q. Okay. And in selecting these models, you

1 exercised professional judgment, did you not?

2 A. Yes, I did.

3 Q. In other words, in picking which one to
4 use, for example, you indicated that you used a quarterly
5 dividend version of the DCF rather than the annual
6 dividend version because, in fact, the comparable
7 companies pay dividends quarterly?

8 A. Yes.

9 Q. Okay. And that's an exercise of your
10 expert professional judgment?

11 A. That's correct.

12 Q. Okay. And, in fact, in forming your
13 comparable group, that was also an exercise of your expert
14 professional judgment?

15 A. It was an exercise of professional judgment
16 supported by the reasoning and the logic that I presented
17 in my testimony.

18 Q. Absolutely. Now, I won't go through every
19 one of these comparable companies that you used, but you
20 would agree with me that several of them are certainly not
21 located in the midwest; isn't that correct?

22 A. Yes.

23 MR. THOMPSON: I think that's all the
24 questions that I have. Thank you very much, Doctor.

25 JUDGE WOODRUFF: Thank you. Come up for

1 questions from the Bench. Commissioner Murray?

2 COMMISSIONER MURRAY: I don't have any
3 questions, thank you.

4 JUDGE WOODRUFF: Commissioner Appling?

5 QUESTIONS BY COMMISSIONER APPLING:

6 Q. Doctor, how you doing?

7 A. Doing fine. Thank you very much.

8 Q. Good to see you again.

9 A. Thank you. Good to see you as well.

10 Q. Here pretty soon the Commissioners and I
11 are going to have to render a decision on this company,
12 and Ameren certainly has grabbed their part of headlines
13 over the past year, but let's flip to your rebuttal
14 testimony, to page 8 where you say -- the page with
15 Mr. Hill's 9.25.

16 A. Yes.

17 Q. Let's go to the charts that Mr. Thompson
18 described and is very proud of. Let's take a look at it.
19 You came up with a 12.2?

20 A. Yes.

21 Q. Would you explain to me -- now, I've read
22 your testimony and all that, but how did you arrive at a
23 12.2?

24 A. I employed five different cost of equity
25 methodologies and found a cost of equity for -- an average

1 cost of equity based on those five for a proxy group of
2 companies of 11.5, and then I adjusted that cost of equity
3 estimate for the difference in financial risk between the
4 proxy companies and the -- and the recommended capital
5 structure in this proceeding, and that led me to the 12.2.

6 Q. Mr. Thompson has a 9.8 on his chart there?

7 A. Yes.

8 Q. If I recommended that, would that have a
9 positive or a negative on Ameren's rating?

10 A. I think it would undoubtedly have a very
11 negative effect on Ameren's rating. I think we're in an
12 unusual situation where the Commission has rendered
13 decisions within a very short time frame on several
14 electric utilities in the state of Missouri. In the most
15 recent Empire case it was 10.9. In the Kansas City Power
16 & Light case, it was 11.25 percent.

17 Ameren bond ratings are very similar to the
18 bond ratings of Kansas City Power & Light and Empire.
19 Empire's are triple B minus, AmerenUE's are triple B by
20 S&P, and Kansas City Power & Light's are triple B. If
21 this Commission, in my opinion, were to come up with a
22 significantly different and lower cost of equity or return
23 on equity award for Ameren so shortly after it arrived at
24 an award on return on equity for other Missouri utilities,
25 I think the financial market would view that as punitive.

1 Q. What's the average for ROEs across this
2 country?

3 A. I believe that it's been stated that that
4 was 10.5 percent.

5 Q. Okay. Do you have any idea for Ameren what
6 the ROE was for the test year? Did you by any chance make
7 assessment of that?

8 A. No, I did not.

9 Q. Do you have any idea today where that
10 number's at?

11 A. No, I do not, what their actual earned ROE,
12 I do not.

13 Q. Okay.

14 A. But I do know that the -- also that the
15 same 10.5 percent was used in the Kansas City Power &
16 Light case in which the Commission reached a decision of
17 11.25.

18 Q. Looking at your 12.2, that's a high number
19 compared. Are you still settling on that number?

20 A. Yes.

21 Q. Mr. Thompson hasn't moved you to the left
22 or right on that?

23 A. No, he has not.

24 COMMISSIONER APPLING: I think that's all
25 the questions I have. Thank you very much.

1 JUDGE WOODRUFF: Commissioner Clayton, do
2 you have any questions for Mr. Vander Weide?

3 COMMISSIONER CLAYTON: Just a few.

4 QUESTIONS BY COMMISSIONER CLAYTON:

5 Q. And I apologize for coming in the middle of
6 your testimony.

7 You mentioned that you were not aware of
8 Ameren's actual ROE during the test year. Are you aware
9 of AmerenUE's actual ROE for any previous years?

10 A. No, I'm not.

11 Q. Didn't look at that at all?

12 A. No.

13 Q. Doesn't make any difference in your
14 calculation?

15 A. The ROE in previous years is the -- is
16 based on their historical performance. The cost of equity
17 is forward-looking. So I looked at cost of equity methods
18 that look to the future to determine investors'
19 requirements on other companies of comparable risk.

20 Q. Is it a risk factor to assess whether or
21 not the company is capable of earning its actual or its
22 authorized return on equity? Is that an important factor
23 to consider?

24 A. It is if either the conditions that allowed
25 it or did not allow it to earn its authorized return on

1 equity were continuing to affect its future ability to
2 earn its rate of return on equity.

3 Q. So favorable conditions allowing a company
4 to earn its authorized return on equity would, in turn,
5 forward-looking suggest less or more risk?

6 A. That isn't the way I would look at it. If,
7 for example, a company had been able to earn above its
8 cost of equity -- and again, I don't know whether it did
9 or not -- or its allowed return on equity, because it had
10 long-term contracts at fixed rates or it had purchased
11 power at -- long-term purchased power contracts at fixed
12 rates, but those contracts were coming to an end and
13 purchased power prices and fuel rates had gone up
14 significantly and there were no fuel adjustment clause
15 that would allow them to have those costs reflected in
16 rates, then I wouldn't expect those conditions to
17 continue.

18 Q. Let's talk about some of those factors
19 looking forward. Is your 12.2 recommended ROE at this
20 time?

21 A. Yes.

22 Q. And does that calculation contemplate that
23 AmerenUE will or will not have a fuel adjustment clause?

24 A. That contemplates that they will.

25 Q. That they will?

1 A. It's based on my proxy companies, and the
2 vast majority of my proxy companies have fuel adjustment
3 clauses. In fact, of the 32 that I used in my updated
4 testimony, 27 have fuel adjustment clauses, and one of
5 those, of that five that did not has it in one of the
6 states that they operate in.

7 Q. Okay. What is the highest ROE that a
8 company -- that an electric company is authorized to earn
9 for an electric company in the United States right now, do
10 you know?

11 A. Well, there are -- I report in my direct
12 testimony that electric transmission allowed rates of
13 return have been over 12 percent.

14 Q. That's transmission. How about electric,
15 just electric distribution company or a vertically
16 integrated?

17 A. I believe in California that Edison
18 International is allowed 11.6.

19 Q. So that would be -- the 11.6 be the
20 highest, the highest electrical company ROE that you're
21 aware of?

22 A. I don't know that for sure. I just know
23 that that's one I recall.

24 Q. So that makes AmerenUE the riskiest
25 electric company in the country with your recommendation

1 of 12.2?

2 A. No, it wouldn't. I -- my 12.2 is based on
3 my analysis of comparable utilities, and it reflects the
4 same risk as those comparable utilities.

5 Q. I understand, but if a company in
6 California's earning 11.6 and you're recommending a 12.2,
7 wouldn't that suggest that Ameren is a riskier company and
8 requires a higher return on equity to attract investment?

9 A. First of all, the 11.6 is not -- it was not
10 decided using the same set of data. It was based on a
11 different set of data at a different point in time.

12 Q. Were you involved in that case?

13 A. I was not for Edison International. I was
14 involved for one of the California utilities, STG&E.

15 Q. Do you believe that Ameren is a riskier
16 company than that California company earning 11.6?

17 A. No. I believe they have the same risk.

18 Q. The identical risk?

19 A. Well, risk is never identical. I believe
20 they have comparable risk.

21 Q. Do you believe if you were to break
22 companies into say quartiles, do you believe Ameren is in
23 the riskiest quartile or the least riskiest quartile or
24 somewhere in the middle?

25 A. I believe they're -- they have average

1 risk. For example, for my proxy companies, the average
2 S&P bond rating was triple B plus, and Ameren, at the time
3 of my testimony, had a triple B plus, AmerenUE that is.
4 AmerenUE now has a triple B from S&P. So they've moved
5 slightly below the average. But I don't believe they're
6 in the top quartile. I believe they're average for the
7 electric utility industry.

8 Q. If we adopt your recommendation of
9 12.2 percent for ROE, you would agree that that would make
10 AmerenUE with the highest ROE of any electrical company in
11 the United States?

12 A. With regard -- not with regard to
13 transmission operations. With regard to integrated
14 utility operations, it would. On the other hand, if any
15 of the numbers in the 9s were adopted, that would make
16 them among the lowest. Again, a benchmark would be the
17 11 percent returns that the Commission has recently
18 allowed, and I think that would be a benchmark that the
19 financial community would look at.

20 COMMISSIONER CLAYTON: Thank you very much.

21 JUDGE WOODRUFF: Commissioner Gaw, do you
22 have some questions?

23 COMMISSIONER GAW: Just continuing for a
24 moment, Judge, on that line of questioning.

25 QUESTIONS BY COMMISSIONER GAW:

1 Q. You testified about the highest. Why don't
2 you give us the other end? What's the lowest authorized
3 ROE of a vertically integrated utility?

4 A. I don't have that -- I don't have that in
5 front of me, what the lowest is. I happen to have been in
6 the other case. I've not been in the case where the
7 lowest was, but I will say that I have not been in --

8 Q. Well, you can't take responsibility for
9 that low ROE then, can you?

10 A. No, I can't. I have not been in a -- I've
11 not -- I don't recall being in a case where a 9 was --
12 anything in the 9s was awarded, and certainly it's well
13 below average, and any of those 9 numbers is well below
14 the 11.

15 Q. I'm just trying to get an answer to my
16 question right now, Dr. Vander Weide. So you don't know
17 the answer to my question, is what you're saying?

18 A. That's correct.

19 Q. Are you familiar -- you were in -- were you
20 either the KCP&L or Empire case?

21 A. I was in the Empire case.

22 Q. Did you have any testimony about the Empire
23 case regarding risk that Empire faced that might not be
24 faced by some other utilities?

25 A. I did.

1 Q. Do you recall? Do you remember what those
2 factors were?

3 A. I mentioned the fact that fuel prices were
4 highly volatile and that Empire was subject to fuel price
5 risk, and that without a fuel adjustment clause, that was
6 particularly risky for them because the -- I'm searching
7 for the word. They had some type of a clause that allowed
8 them to pass some percentage of their fuel costs.

9 Q. An interim energy charge?

10 A. An interim energy charge. But that was
11 insufficient to reflect the very high increases in fuel
12 cost that they had experienced.

13 Q. And that company's risk in part you felt
14 was because of the generation mix being heavily dependent
15 on natural gas in part?

16 A. Well, I think more generically one would
17 say it was due to fuel prices.

18 Q. You don't recall making any comments about
19 the generation mix of Empire in your testimony?

20 A. I certainly did make comments about the
21 generation mix.

22 Q. And did you not suggest that that was part
23 of the additional risk that they had was because of their
24 heavy dependence on natural gas?

25 A. I suggested that their dependence on

1 natural gas was the -- was the ultimate cause, but
2 generically, it would be similar for any fuel cost that
3 was rising rapidly or any other cost increases that could
4 not be reflected in rates.

5 Q. I understand. But my question was, and I'm
6 not cutting you off, even though I might have done that.
7 But I understand that from your perspective that there was
8 a uniqueness to the factors that you -- in regard to your
9 testimony in the Empire case regarding its generation mix,
10 and I think you said that's true.

11 A. With regard to Empire, that was the issue.

12 Q. Okay.

13 A. Because they -- their situation --

14 Q. Let me move along to the other company, and
15 I want to ask you this question. You didn't testify in
16 KCPL; is that correct?

17 A. That's correct.

18 Q. In regard to Kansas City Power & Light, are
19 you familiar with the plans that KCP&L has to build a new
20 coal-fired unit?

21 A. I'm familiar with the Iatan 2 project
22 because Empire was also -- had a participation.

23 Q. That was actually another factor in regard
24 to your risk profile for Empire, wasn't it?

25 A. The fact that they had a construction

1 program, yes.

2 Q. Yes. Okay. And the majority of that risk
3 in regard to the interest in that plant, if you -- if you
4 recall, is with Kansas City Power & Light, correct?

5 A. Yes.

6 Q. Now, does Ameren have a situation where
7 they are currently in a position to construct a new
8 facility of the size and magnitude of the Iatan 2
9 facility?

10 A. With regard to that one issue, no. But as
11 I stated earlier, Ameren has a very similar bond rating to
12 both Empire and to Kansas City Power & Light.

13 Q. I forgot. You did mention that. Now, tell
14 me this: Is that a bond rating that they have held for
15 very long, this bond rating that you mentioned?

16 A. No, it's not.

17 Q. Has it changed recently?

18 A. Yes.

19 Q. When did it change, approximately?

20 A. I think it was in November.

21 Q. November?

22 A. It changed to triple B from triple B plus.

23 Q. What rating agency?

24 A. Standard & Poor's.

25 Q. Is that the one you usually rely on?

1 A. Yes.

2 Q. What's the reason for that? I'm just
3 curious. Why do you like that one instead of some of the
4 others?

5 A. I have just found from my experience that
6 they're a little more widely used. Other people may have
7 other experiences. I've not ever found a difference, a
8 significant difference in the rankings on bond ratings.
9 They may have different categories, but I have tended to
10 rely on Standard & Poor's.

11 Q. Do you know whether or not part of the
12 rationale for the downgrade for Ameren has had to do with
13 its -- with concerns about the environment and the
14 regulatory situation in Illinois?

15 A. I believe that was part of it.

16 Q. That's okay. I want to -- and then my next
17 question is, if that's the case, do you believe that
18 Missouri ratepayers should have to pay for additional risk
19 that's caused by the regulatory scheme in another state?

20 A. No, and I'm not asking that they would.

21 COMMISSIONER GAW: Okay. That's all the
22 questions I have. Thank you very much.

23 JUDGE WOODRUFF: Thank you, sir.

24 COMMISSIONER CLAYTON: Can I ask one
25 question?

1 JUDGE WOODRUFF: Go right ahead.

2 FURTHER QUESTIONS BY COMMISSIONER CLAYTON:

3 Q. Mr. Vander Weide, can you tell me your
4 hourly rate?

5 A. Yes. It's \$375 an hour.

6 Q. And can you give me an idea of what you
7 think your total number of hours of service to Ameren will
8 be in this case in estimation, best you can?

9 A. I just don't know.

10 Q. Don't think I'm singling you out. We've
11 been going a long time.

12 A. I understand, but I prepared for the issues
13 in this proceeding. I just can't even guess at how many
14 hours that I have.

15 Q. Haven't even written any time down on your
16 sheets, your time sheets?

17 A. No, I have done that. I'm just not --
18 that's not something that I would have looked at before I
19 came here because I'm concerned with my cost of equity.

20 Q. Well, for a case of similar size, would you
21 anticipate more or less than 50 hours?

22 A. Well, it would be more than 50 hours.

23 Q. More or less than 100 hours?

24 A. More than 100 hours.

25 Q. More or less than 150 hours?

1 A. It's certainly going to be more than 150,
2 but we're getting into the gray area where I'm just not as
3 certain about how many hours.

4 COMMISSIONER CLAYTON: Okay. Thank very
5 much.

6 JUDGE WOODRUFF: Thank you. Does anyone
7 wish to recross based on questions from the Bench?

8 MS. VUYLSTEKE: I have a few questions.

9 RECROSS-EXAMINATION BY MS. VUYLSTEKE:

10 Q. Good evening.

11 A. Good evening.

12 Q. My name is Diana Vuylsteke and I represent
13 the Missouri Industrial Energy Consumers.

14 A. Okay.

15 Q. Doctor, I believe you testified that a
16 9.8 percent ROE in this case would be punitive; is that
17 correct?

18 A. Yes.

19 Q. What was the rate of return authorized for
20 Ameren's Illinois utilities in their most recent case.

21 A. I don't know.

22 Q. Would you accept, subject to check, that
23 it's 10.4 percent?

24 A. I would. My only comment would be is that
25 I think the investment community views the regulatory

1 process in Illinois as being punitive.

2 Q. Why do you think that the regulatory
3 process in Illinois would be punitive? What evidence do
4 you have that the 10.4 percent ROE established by the
5 Illinois order was punitive?

6 A. The evidence I have is that that in
7 conjunction with the entire regulatory model in Illinois
8 has led the bond rating community to downgrade the
9 Illinois utilities.

10 Q. Have you seen any reports or any evidence
11 that the 10.4 percent ROE was a factor in what you
12 described as the negative regulatory environment?

13 A. I haven't examined all the aspects of the
14 regulatory environment.

15 Q. Have you reviewed the transcript of
16 Ameren's conference call with analysts on February 15th,
17 2007?

18 A. No.

19 Q. Do you know if any analysts on the call
20 expressed concerns about a 10.4 percent ROE? I know you
21 haven't seen the transcript, but have you heard any
22 concerns expressed by analysts about that ROE?

23 A. Let me ask for a clarification. I earlier
24 heard you refer to a 9.4, and now I'm hearing a 10.4.

25 Q. If I said 9.4, I misspoke. I'm sorry.

1 10.4.

2 A. I didn't -- I haven't read or heard the
3 conference call.

4 Q. Okay. Do you know, did Ameren request
5 rehearing of the Illinois Commerce Commission's order
6 authorizing, establishing a 10.4 percent ROE?

7 A. I have no idea.

8 Q. Okay. No other questions. I'm sorry. I
9 have two more questions. I apologize.

10 In response to a question from Commissioner
11 Clayton, I believe you stated that Edison International
12 was awarded an 11.6 percent ROE recently in California; is
13 that correct?

14 A. I forgot if I used the word recently or
15 not. It's certainly within the last year or two.

16 Q. Okay. And you stated, I believe, that you
17 did not represent Edison in that proceeding; is that
18 correct?

19 A. Yes.

20 Q. You represented San Diego Gas and Electric?

21 A. Yes.

22 Q. What ROE did San Diego Gas and Electric
23 receive in California?

24 A. I believe they received a 10.75 because
25 they had a higher bond rating.

1 MS. VUYLSTEKE: Thank you.

2 JUDGE WOODRUFF: Anyone else wish to
3 recross? Any redirect?

4 MR. CYNKAR: Yes, your Honor.

5 REDIRECT EXAMINATION BY MR. CYNKAR:

6 Q. Dr. Vander Weide, do you recall the
7 discussion you had with Mr. Micheel concerning surveys as
8 a method to determine market risk premium?

9 A. Yes, I do.

10 Q. And do you recall that you observed that
11 you did not think that that was a good way of determining
12 market risk premium?

13 A. Yes.

14 Q. Could you explain why?

15 A. Yes. People -- it's easy for people to
16 respond to a survey where they don't have to put their
17 money on the line. Where you really determine what
18 returns people are required is when they actually have to
19 put their money on the line in some way. The same surveys
20 indicate that the same executives when they set internal
21 hurdle rates set internal hurdle rates at a higher level
22 than the numbers that they are providing on the survey.

23 When the -- the internal hurdle rates are
24 used for real investment decisions where you have to put
25 your money on the line. So I don't believe that surveys

1 where you provide an opinion with nothing at stake
2 provides useful information for real decisions.

3 Q. Just so we're clear and I'm not the only
4 person ignorant of the term, could you explain what a
5 hurdle rate is?

6 A. Yes. A hurdle rate is a cost of capital
7 that is used for internal investment decisions, and it
8 means that if a particular project earns -- is expected to
9 earn a return that's greater than the hurdle rate, the
10 project will be accepted, and if it's expected to earn a
11 return less than the hurdle rate, the project will be
12 rejected.

13 Q. Great. Now, you recall your conversation
14 with my colleague, Mr. Thompson, concerning his work of
15 art over here (indicating)?

16 A. Yes.

17 Q. And I'm not going to mark on it. I'm going
18 to just use stickies because I would hate to destroy the
19 work of art. Now, you testified that Empire got 10.9?

20 A. Yes.

21 Q. Let's see. I'll say that for a -- I can't
22 even put stickies on it, much less try to duplicate this
23 chart.

24 MR. THOMPSON: Go ahead and mark on it.

25 MR. CYNKAR: No, no. I hate to destroy it.

1 BY MR. CYNKAR:

2 Q. So that's Empire. Now, Kansas City Power &
3 Light was 11.25?

4 A. Yes.

5 Q. I'll put it over here. Let's see. Now,
6 I'd like to ask you a couple questions about in terms of
7 at least this Commission's choices about ROE in the past,
8 and the utility of the device of zones of reasonableness
9 to help them make their judgment.

10 First of all, do you have any observations
11 or opinions concerning what this Commission has done as it
12 relates to what you and Ms. McShane are proposing here?

13 A. Yes. I think that the 10.9 to 11.25 would
14 be the center of a zone of reasonableness, that one would
15 expect, given the recent time frame of those orders
16 compared to today and the fact that there's comparability
17 in risk among the utilities, and that one could easily
18 take the midpoint of that 10.9 to 11.25 range and add
19 100 basis points to that. The midpoint would be roughly
20 11.1 or 11.2. Add a range above that and a range below
21 that number and use that as the zone of reasonableness.

22 MR. CYNKAR: Thank you. No further
23 questions, your Honor.

24 JUDGE WOODRUFF: All right. Did you wish
25 to offer Mr. Vander Weide's testimony?

1 and I believe the next witness is Mr. Svanda for the
2 company.

3 MS. VUYLSTEKE: Your Honor, before we go
4 back on the record, your Honor, I wanted to fix an error
5 that I made in my questioning. I asked him if he would
6 accept, subject to check, that the ROE granted the
7 Illinois utilities was 10.4 percent, and it's actually
8 10.0 percent. I apologize for my error.

9 JUDGE WOODRUFF: Thank you for checking.
10 All right. Let's go with Mr. Svanda.

11 MR. CYNKAR: I tender the witness for
12 cross-examination.

13 JUDGE WOODRUFF: And he will be back again
14 at another time, will he not, or is this the last time?

15 MR. CYNKAR: This is the last time.

16 JUDGE WOODRUFF: All right. Does anyone
17 wish to cross Mr. Svanda on these issues. Mr. Micheel?

18 DAVID SVANDA testified as follows:

19 CROSS-EXAMINATION BY MR. MICHEEL:

20 Q. Good evening, Mr. Svanda.

21 A. Good evening.

22 Q. I've got some questions on your surrebuttal
23 testimony. Do you have a copy of that with you?

24 A. I do have.

25 Q. At page 10 of your surrebuttal testimony,

1 sir, you talk about the average allowed ROEs by state
2 regulatory commissions in the midwest was 10.6 for
3 electric utilities; is that correct?

4 A. That is correct.

5 Q. And if I follow that over to the top of
6 page 11, you have a footnote 11 there; is that correct?

7 A. Yes.

8 Q. And that's the Regulatory Research
9 Associates Regulatory Focus, Major Rate Case Decisions; is
10 that correct?

11 A. Yes, it is.

12 Q. And is that the source for that
13 information?

14 A. Yes.

15 Q. And you're familiar with that, are you not?

16 A. Uh-huh. Yes.

17 Q. And are you aware that the Regulatory
18 Research Associates update that Regulatory Focus?

19 A. I am aware of that.

20 Q. Have they updated it since that time?

21 A. I believe they probably have, yes.

22 MR. MICHEEL: May I approach the witness?

23 I need to get an exhibit marked, and it's 519 maybe.

24 JUDGE WOODRUFF: Well, you can certainly
25 approach, and let me find your number here. You're

1 correct, 519.

2 (EXHIBIT NO. 519 WAS MARKED FOR
3 IDENTIFICATION BY THE REPORTER.)

4 BY MR. MICHEEL:

5 Q. Mr. Svanda, I've handed you what's been
6 marked for purpose of identification as Exhibit 519. Do
7 you have that in front of you, sir?

8 A. I do have.

9 Q. And is that the Regulatory Research
10 Associates Regulatory Focus dated January 30th, 2007?

11 A. Yes, it is.

12 Q. And I'm looking at -- to your knowledge, is
13 that the most recent Regulatory Focus?

14 A. To my knowledge.

15 Q. Does that indicate on the first paragraph
16 there that the average return on equity, paren, ROE
17 authorized electric utilities in 2006 approximated
18 10.4 percent, compared to 10.5 percent in 2005?

19 A. Yes.

20 Q. And if you could, sir, turn to page 6 there
21 of that document, and let me know when you're there.

22 A. I am there.

23 Q. Do you see there, where it starts 2006, it
24 says first quarter averages total median observations?

25 A. Yes.

1 Q. And then you flip the page over to page 7,
2 and that is the total for the year of 2006, isn't it?
3 That's got the fourth quarter there and they do it
4 quarterly?

5 A. In the box you're saying is the full year,
6 yes.

7 Q. Yes, sir.

8 A. Yes.

9 Q. And would you agree with me that the full
10 year average return on equity for electric utility
11 decisions was 10.36 percent?

12 A. Yes.

13 Q. And the median return on equity for
14 electric utilities was 10.25 percent for 2006?

15 A. Would you repeat that, please?

16 Q. Yes. The median for return on equity for
17 the year 2006 was 10.25 percent?

18 A. I would agree. I thought you said 10.5.

19 Q. I'm sorry. If I misspoke, the document's
20 got the right number in it. Let me ask you, do you see in
21 the first quarter of 2006 there's a Mid-American Energy
22 that has 11.9 ROE? Do you see that, sir?

23 A. I do.

24 Q. And do you see the paren 4 there? Does
25 that indicate that there's a footnote related to that?

1 A. It would.

2 Q. And if you could turn to the last page of
3 the document and let me know when you're there, sir.

4 A. I am there.

5 Q. Does that footnote 4 indicate that that ROE
6 applies only to a proposed 545 megawatt wind generation
7 project?

8 A. It does.

9 Q. So that's not an overall return on equity
10 for that particular electric utility; is that correct?

11 A. It would not appear to be.

12 Q. And you have no reason to doubt the figures
13 here, do you?

14 A. I do not.

15 Q. Now, if you would, sir, take a look at the
16 authorized ROEs in 2006, and would you confirm for me that
17 the -- that we're No. 1, the highest ROE granted an
18 electric utility in 2006 was the 11.25 percent given by
19 this Commission in Kansas City Power & Light?

20 A. There is the 11.90 that you previously
21 noted.

22 Q. But that wasn't for a complete company ROE;
23 isn't that correct?

24 A. Yes.

25 Q. And for a complete company ROE, we're

1 No. 1, isn't that correct, that 11.25 for Kansas City
2 Power & Light for 2006?

3 A. That seems correct, yes.

4 Q. And we're a full 100 basis points above the
5 median in 2006; isn't that correct?

6 A. Yes.

7 Q. Now, if you would, turn to page 6 of that.
8 Do you see for the second quarter of 2006 Central Hudson
9 Gas and Electric? Do you see that they were granted a
10 9.60 return on equity?

11 A. I do.

12 Q. Do you see there was a New York State
13 Electric and Gas that was granted a 9.55 percent return on
14 equity?

15 A. Yes.

16 Q. Do you see in the third quarter there was a
17 Unitel Systems in New Hampshire given a 9.67 return on
18 equity?

19 A. Yes.

20 Q. So if you just take a look, in the year
21 2006, there were three ROEs for electric utilities in the
22 9s; is that correct?

23 A. That appears correct.

24 Q. And there was, count them, one return on
25 equity for an electric utility in 2006 at 11 percent or

1 above; is that correct?

2 A. That number is correct. I am not certain
3 on the ones in the 9s, if they are fully integrated
4 utilities.

5 Q. That wasn't my question, sir. There's one
6 question pending. There's only one that's 11 above, and
7 that's the Kansas City Power & Light decision in 2006;
8 isn't that correct?

9 A. And I answered yes to that.

10 Q. So you would agree with me that the full
11 year average for 2006 was a return on equity of
12 10.36 percent, correct?

13 A. Yes.

14 Q. Now, if we use this handy-dandy chart here,
15 and the 10.5, and we update it for our most recent
16 information, which is 10.36 percent, that would lower this
17 average award using the Commission's zone of
18 reasonableness analysis; isn't that correct?

19 A. That seems to be the effect.

20 Q. Making the 12 percent and the 12.2 percent
21 posited by Dr. Vander Weide and Ms. McShane -- or
22 Vander Weide and Ms. McShane further beyond that zone of
23 reasonableness, would it not?

24 A. It would shift the yellow zone down.

25 Q. And that would make Mr. King and Mr. Gorman

1 further within that zone of reasonableness, and bring
2 Mr. Hill and Dr. Woolridge closer to that zone of
3 reasonableness; is that correct?

4 A. That would be the effect.

5 Q. Now, you testified in your surrebuttal
6 testimony that you found the 12 percent return on equity
7 that is recommended by AmerenUE to be reasonable, did you
8 not?

9 A. Yes, I did.

10 Q. And given the fact that the average last
11 year was 10.36 percent, is that still your belief today?

12 A. It is still my belief today based on the
13 reasoning that I spelled out in my testimony.

14 MR. MICHEEL: With that, I'd move the
15 admission of Exhibit 519, your Honor.

16 JUDGE WOODRUFF: All right. 519 has been
17 offered. Are there any objections to its receipt?

18 MR. CYNKAR: No objections.

19 MR. THOMPSON: No objections.

20 JUDGE WOODRUFF: Hearing none, it will be
21 received into evidence.

22 (EXHIBIT NO. 519 WAS RECEIVED INTO
23 EVIDENCE.)

24 MR. MICHEEL: If I could just have one
25 moment.

1 JUDGE WOODRUFF: Sure.

2 BY MR. MICHEEL:

3 Q. Sir, looking at Exhibit 519, that also has
4 returns on equity for national gas utilities, does it not,
5 for the year 2006?

6 A. What pages are you looking at?

7 Q. That would be on page 9.

8 A. Yes.

9 Q. And the 11.25 given by this Commission in
10 Kansas City Power & Light is higher than any ROE given for
11 an LDC last year in 2006; isn't that correct?

12 A. And could you ask your question again?

13 Q. Yes. The 11.25 given by this Commission to
14 Kansas City Power & Light for return on equity in the
15 electricity case is higher than any return on equity given
16 to an LDC or a local distribution company in the year
17 2006; isn't that correct?

18 A. That would appear to be the case.

19 Q. Okay. And if you could just look at -- so
20 I can get a flavor in the record. I mean, the exhibit's
21 in the record, but on the very front page of Exhibit 519
22 it indicates there were 25 electric ROE determinations in
23 2006; is that correct?

24 A. Where are you reading?

25 Q. The first paragraph.

1 A. First paragraph. Okay.

2 Q. It says there were 25 electric ROE
3 decisions in 2006. Do you see that, sir?

4 A. Yes.

5 Q. And it also indicates that there were 29 in
6 2005; is that correct?

7 A. Yes.

8 Q. And would you agree with me that the
9 average return on equity in 2005 was 10.5 percent,
10 according to this Regulatory Focus --

11 A. Yes.

12 Q. -- for electrics?

13 And so the return on equity from -- the
14 average return on equity from 2005 to 2006 went down, did
15 it not, ten basis points?

16 A. Yes.

17 MR. MICHEEL: Thank you for your time, sir.
18 Did I move admission of Exhibit 519?

19 JUDGE WOODRUFF: Yes. It was admitted.

20 MR. MICHEEL: All right.

21 JUDGE WOODRUFF: Public Counsel?

22 MR. MILLS: No questions.

23 JUDGE WOODRUFF: Staff?

24 MR. THOMPSON: No questions.

25 JUDGE WOODRUFF: We'll come up for

1 questions from the Bench. Commissioner Murray?

2 COMMISSIONER MURRAY: No questions. Thank
3 you.

4 JUDGE WOODRUFF: Commissioner Gaw?

5 COMMISSIONER GAW: No questions.

6 JUDGE WOODRUFF: Commissioner Clayton?

7 QUESTIONS BY COMMISSIONER CLAYTON:

8 Q. Mr. Svanda, I was surprised to hear the
9 rankings of ROE, especially the two for Missouri being the
10 highest. Were you aware of that prior to preparing your
11 testimony in this case?

12 A. Yes.

13 Q. You were?

14 A. Yes.

15 Q. Does Wall Street consider that constructive
16 regulatory policy?

17 A. They would.

18 COMMISSIONER CLAYTON: Okay. Thank you.

19 JUDGE WOODRUFF: Commissioner Appling, do
20 you have any questions?

21 COMMISSIONER APPLING: No questions, Judge.

22 JUDGE WOODRUFF: All right. Does anyone
23 wish to recross based on those questions from the Bench?

24 Any redirect?

25 MR. CYNKAR: None, your Honor.

1 JUDGE WOODRUFF: Then Mr. Svanda, you can
2 step down.

3 MR. CYNKAR: Your Honor, I need to move
4 into evidence his written testimony, which I gave to the
5 court reporter yesterday, and so I would right now move
6 the admission of Exhibit 004, which is the direct
7 testimony of David A. Svanda, Exhibit 005, which is the
8 rebuttal of David A. Svanda, and 006, which is surrebuttal
9 testimony of David A. Svanda.

10 JUDGE WOODRUFF: All right. Exhibits 4, 5
11 and 6 have been offered into evidence. Are there any
12 objections to their admission?

13 MR. THOMPSON: No objection.

14 JUDGE WOODRUFF: Hearing none, they will be
15 received into evidence.

16 (EXHIBIT NO. 4, 5 AND 6 WERE RECEIVED INTO
17 EVIDENCE.)

18 JUDGE WOODRUFF: And, Mr. Svanda, you are
19 excused. Thank you.

20 I believe we can avoid taking any more
21 witnesses tonight. We seem to be back on schedule. Are
22 there any other matters that anyone wants to bring up this
23 evening? I did have one question --

24 MR. MILLS: Briefly, your Honor, and I
25 don't know how many people have questions for Mr. King,

1 but if there are very few questions, he can catch an
2 earlier flight tomorrow and get out of here, if we can do
3 him very quickly, but I don't know.

4 JUDGE WOODRUFF: What do the parties say?

5 MR. MICHEEL: I say no questions.

6 MR. CYNKAR: I also say no questions.

7 MR. THOMPSON: I have no questions.

8 JUDGE WOODRUFF: Let's formally bring him
9 up here. We will see if we can get him out of here.

10 (Witness sworn.)

11 JUDGE WOODRUFF: You may be seated.

12 And any preliminaries?

13 MR. MILLS: No. I tender the witness for
14 cross-examination.

15 JUDGE WOODRUFF: All right. Does any party
16 wish to cross-examine -- are you Charles King, I guess?

17 MR. KING: Yes, I am.

18 JUDGE WOODRUFF: I wanted to make sure who
19 we had on the stand. Does anybody wish to cross-examine
20 Charles King? All right. Any questions from the Bench
21 for Mr. King?

22 COMMISSIONER MURRAY: No questions here,
23 thank you.

24 JUDGE WOODRUFF: Commissioner Gaw?

25 COMMISSIONER GAW: I'm fine.

1 COMMISSIONER APPLING: I think I have ten
2 questions. No. No questions.

3 JUDGE WOODRUFF: All right. Since there
4 were no questions for cross or recross, there's no need
5 for recross or redirect. And, Mr. King, you can step down
6 and go home.

7 MR. MILLS: Do we want to go home and I'll
8 offer his exhibits in the morning?

9 JUDGE WOODRUFF: We can do that now.

10 MR. MILLS: On the list that I
11 precirculated to the parties and to the Bench, I had a
12 numbering error. Mr. King's direct testimony should be
13 No. 403, his rebuttal testimony should be 409 and his
14 surrebuttal should be 410.

15 JUDGE WOODRUFF: You said his direct should
16 be 403?

17 MR. MILLS: Yes, because I had a duplicate
18 number.

19 JUDGE WOODRUFF: I've got Mr. Dunkel's
20 surrebuttal as 403.

21 MR. MILLS: Yes, and I will have to
22 renumber Mr. Dunkel's surrebuttal.

23 MR. CYNKAR: Lewis, could you give us that
24 one more time, please?

25 MR. MILLS: 403 for direct, 409 for

1 rebuttal and 410 surrebuttal.

2 MR. CYNKAR: Thank you.

3 JUDGE THOMPSON: What is going to be 408,
4 then?

5 MR. MILLS: 408 was Mr. Kind's surrebuttal.

6 JUDGE WOODRUFF: Well, we'll sort this out.
7 403 is direct, 409 rebuttal and 410 is surrebuttal; is
8 that correct?

9 MR. MILLS: Yes, that's correct.

10 JUDGE WOODRUFF: 403, 409 and 410 have been
11 offered. Any objection to their receipt?

12 MR. CYNKAR: No, objection.

13 MR. THOMPSON: No objection.

14 JUDGE WOODRUFF: Hearing none, they will be
15 received that evidence.

16 (EXHIBIT NOS. 403, 409 AND 410 WERE MARKED
17 FOR IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

18 JUDGE WOODRUFF: Any other housekeeping
19 matters anyone wants to bring up before we adjourn for the
20 night? We are adjourned until 8:30 tomorrow morning.

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