

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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6 TRANSCRIPT OF PROCEEDINGS  
7 Hearing  
8 March 13, 2007  
9 Jefferson City, Missouri  
10 Volume 15  
11  
12 In the Matter of Union )  
13 Electric Company d/b/a AmerenUE )  
14 for Authority to File Tariffs )  
15 Increasing Rates for Electric ) Case No. ER-2007-0002  
16 Service Provided to Customers )  
17 in the Company's Missouri )  
18 Service Area )  
19  
20  
21 MORRIS L. WOODRUFF, Presiding,  
22 DEPUTY CHIEF REGULATORY LAW JUDGE  
23 JEFF DAVIS, Chairman,  
24 CONNIE MURRAY,  
25 STEVE GAW,  
ROBERT M. CLAYTON III  
LINWARD "LIN" APPLING,  
COMMISSIONERS.  
  
23 REPORTED BY:  
24 PAMELA FICK, RMR, RPR, CCR #447, CSR  
25 MIDWEST LITIGATION SERVICES

1 APPEARANCES:

2

3 JAMES B. LOWERY, Attorney at Law  
Smith Lewis  
4 P.O. Box 918  
Columbia, Missouri 65205  
5 (573) 443-3141  
lowery@smithlewis.com

6

7 THOMAS M. BYRNE, Attorney at Law  
WENDY TATRO, Attorney at Law  
8 1901 Chouteau Avenue  
St. Louis, Missouri 63103  
9 (314) 554-2514  
tbyrne@ameren.com

10

ROBERT J. CYNKAR, Attorney at Law  
11 Cuneo, Gilbert & LaDuca, LLP  
507 C Street N.E.  
12 Washington, D.C. 20002

13 JAMES FISCHER, Attorney at Law  
Fischer & Dority  
14 101 Madison Street  
Jefferson City, Missouri 65101

15

16 FOR: Union Electric Company.

17

KEVIN THOMPSON, General Counsel  
18 STEVEN DOTTHEIM  
NATHAN WILLIAMS  
19 DENNY FREY  
STEVEN REED  
20 DAVID MEYER  
JENNIFER HEINTZ  
21 P.O. Box 360  
Jefferson City, Missouri 65102

22

23 FOR: Staff of the Missouri Public  
Service Commission.

24

25

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

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

6 DOUGLAS E. MICHEEL, Assistant Attorney General  
7 ROBERT E. CARLSON, Assistant Attorney General  
P.O. Box 899  
8 Supreme Court Building  
Jefferson City, Missouri 65102-0899

9 FOR: State of Missouri and Department  
10 of Economic Development.

11  
12 TODD IVESON, Assistant Attorney General  
P.O. Box 899  
13 Supreme Court Building  
Jefferson City, Missouri 65102

14 FOR: Department of Natural Resources.

15  
16 DIANA VUYLSTEKE, Attorney at Law  
Bryan Cave, LLC  
17 211 North Broadway, Suite 3600  
St. Louis, Missouri 63102

18 FOR: Missouri Industrial Energy  
19 Consumers.

20 LISA LANGENECKERT, Attorney at Law  
21 The Stolar Partnership, LLP  
911 Washington Avenue, Suite 700  
22 St. Louis, Missouri 63101

23 FOR: Missouri Energy Group.

24  
25

1 RICK D. CHAMBERLAIN, Attorney at Law  
Behrens, Taylor, Wheeler & Chamberlain  
2 Suite 400, 6 N.E. 63rd St.  
Oklahoma City, OK 73105  
3 (405) 848-1014

4 FOR: The Commercial Group.

5  
STUART W. CONRAD, Attorney at Law  
6 Finnegan, Conrad & Peterson  
3100 Broadway, Suite 1209  
7 Kansas City, Missouri 64111.  
(816) 753-1122  
8 stucon@fcplaw.com

9 FOR: Noranda Aluminum, Inc.

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

13 FOR: AARP and Consumers Council of  
Missouri.

14

15 GAYLIN RICH CARVER, Attorney at Law  
Hendren and Andrae  
16 221 Bolivar Street  
Jefferson City, Missouri 65101

17

18 FOR: Missouri Association for Social  
Welfare.

19

20 SAMUEL E. OVERFELT, Attorney at Law  
618 E. Capitol Avenue  
21 Jefferson City, Missouri 65101  
(573) 636-5128  
22 moretailers@aol.com

23 FOR: Missouri Retailers Association.

24

25

1 MICHAEL C. PENDERGAST, Attorney at Law  
720 Olive Street  
2 St. Louis, Missouri 63101  
(314) 342-0532

3  
4 FOR: Laclede Gas Company.

5  
6 RUSS MITTEN, Attorney at Law  
Brydon, Swearngen & England  
312 East Capitol Avenue  
7 Jefferson City, Missouri 65102

8 FOR: Aquila, Inc.

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

2 JUDGE WOODRUFF: Good morning. Welcome  
3 to day two. Let's come to order, please. Good  
4 morning and welcome back to day two of the hearing.  
5 And before we get started on the first witness, which  
6 I believe has been Mr. Brubaker, I want to bring up  
7 another -- a matter that was raised by the Consumers  
8 Council involving the Safety Net Program.

9 That issue does not appear on my list of  
10 issues, and I'm just wondering how the parties want  
11 to deal with that. Mr. Coffman?

12 MR. COFFMAN: It wasn't -- it wasn't put  
13 on the list because it wasn't the subject of any  
14 prepared testimony.

15 JUDGE WOODRUFF: Right. Presumably you  
16 still want the Commission to rule on that somehow, so  
17 I want to give the other parties a chance to respond,  
18 and I'm looking for suggestions on how to do that.

19 MR. LOWERY: Your Honor, I apologize but  
20 what is the issue that they want to put on the table?

21 JUDGE WOODRUFF: This whole Safety Net  
22 Program idea of payments to consumers if there's been  
23 an outage. And apparently it was brought up in  
24 the -- a couple of local public hearings and Consumer  
25 Council's brief mentioned it, and Mr. Coffman had

1     some questions and mentioned it in his opening. And  
2     I don't need an answer this moment, but I want the  
3     parties to be thinking about that and give me some  
4     idea of how they want to respond to that.

5                 MR. LOWERY: Your Honor, we would need a  
6     little bit of time to think about whether -- whether  
7     we think it's appropriate to put that on the list or  
8     not, so we will do that. And when would you like  
9     to --

10                JUDGE WOODRUFF: If you can let me know  
11     tomorrow.

12                MR. LOWERY: Tomorrow. Okay.

13                MR. COFFMAN: I assume if Ameren was  
14     gonna respond, they would have in a rebuttal or  
15     surrebuttal, and I don't know if I have any --  
16     necessarily any objection. If they want to provide  
17     some testimony on it, I wouldn't object.

18                JUDGE WOODRUFF: All right.

19                MR. COFFMAN: Live perhaps.

20                JUDGE WOODRUFF: Well -- well,  
21     presumably. Anyway, if you let me know about that  
22     first thing tomorrow and we'll decide where we want  
23     to go from there.

24                MR. LOWERY: Certainly.

25                JUDGE WOODRUFF: All right. Then I

1 believe we're ready to go ahead with our next  
2 witness, which would be Mr. Brubaker.

3 MS. VUYLSTEKE: Your Honor, I understand  
4 we're skipping the preliminary questions; is that  
5 correct?

6 JUDGE WOODRUFF: That was my  
7 understanding from yesterday.

8 MS. VUYLSTEKE: So I would go ahead and  
9 tender Mr. Brubaker for cross-examination at this  
10 time.

11 JUDGE WOODRUFF: All right. Did you  
12 wish to offer exhibits at this point also?

13 MS. VUYLSTEKE: Yeah. At this point I'd  
14 like to offer the direct testimony of Maurice  
15 Brubaker. And, your Honor, I apologize, I should  
16 know the answer to this, but do you want us to have  
17 all of his testimony introduced into the record?

18 JUDGE WOODRUFF: Why don't you come to  
19 the microphone so they can hear you out in the world  
20 there.

21 MS. VUYLSTEKE: Should we introduce all  
22 of his testimony on all issues at this point or just  
23 the policy, cost-of-service policy testimony?

24 JUDGE WOODRUFF: I assume it's not a  
25 separate -- I mean, the testimony is all mixed



1     together, I assume?

2                   MS. VUYLSTEKE:  Yeah, it is.

3                   JUDGE WOODRUFF:  Okay.  Do the parties  
4     have any -- any views on that?

5                   MR. MILLS:  We kind of struggled with  
6     this in both the KCPL and the Empire case.  And from  
7     my point of view, I think the simplest way is, the  
8     first time the witness gets on the stand just to  
9     offer all the testimony.

10                  MR. LOWERY:  Yeah, we agree too.

11                  MR. MICHEEL:  My caveat to that would be  
12     I don't mind that you offer all the testimony, but I  
13     don't think it should be admitted until the last time  
14     the witness goes on the stand because there may be  
15     motions to strike and things like that or other  
16     arguments.

17                  And, you know, I'll just speak for  
18     myself; I haven't, you know, formulated all of those.  
19     I've thought about some of them, but I'm not  
20     prepared, you know, so that's the way I think we  
21     should do it.

22                  MR. DOTTHEIM:  The Staff would concur  
23     with the State on -- on that item.

24                  JUDGE WOODRUFF:  Yeah, I think that's  
25     reasonable.

1                   MR. CONRAD: And we would -- we would  
2 also.

3                   JUDGE WOODRUFF: Okay.

4                   MR. CONRAD: I think actually, while  
5 Mr. Mills has a -- has an excellent point, it does  
6 perhaps add some level of efficiency. It actually  
7 makes it a little bit more confusing because you  
8 don't know what's -- what's coming and what hasn't.  
9 And I think, to my recollection, what we ended up  
10 doing in that was making a formal offer, Judge, when  
11 the witness was last --

12                  JUDGE WOODRUFF: Okay.

13                  MR. CONRAD: -- on the stand. No  
14 problem with marking. Of course, we were doing -- he  
15 was doing that in a different way in the KCPL case.  
16 As I recall, he didn't -- didn't quite have the same  
17 approach to the list that your Honor has had. So  
18 that may be the most -- most efficient way to do it.

19                  JUDGE WOODRUFF: All right. Well, I  
20 think for my ease it'll be easier if we -- if all his  
21 testimony is offered at this point. I won't make any  
22 sort of ruling on it or even ask for objections to it  
23 at this point. That way if we get to the end of the  
24 hearing and we don't have a witness on the stand but  
25 we've got something that hasn't been offered, we

1 don't have to go through that.

2 All right. So are you gonna offer his  
3 testimony at this point?

4 MS. VUYLSTEKE: Yes, your Honor. I will  
5 offer Exhibits 700, 701, 702, 703, 704HC and 704P  
6 into the record at this time.

7 JUDGE WOODRUFF: Okay. And as we  
8 indicated yesterday, P would normally mean  
9 proprietary, and I assume P in this case means  
10 public?

11 MS. VUYLSTEKE: Right.

12 JUDGE WOODRUFF: Okay. So we'll mark it  
13 as 704NP, nonproprietary.

14 MS. VUYLSTEKE: Okay. Thank you.

15 JUDGE WOODRUFF: All right. Those  
16 exhibits have been offered as we just discussed.  
17 I'll ask for objections and actually rule on  
18 admitting them later in this proceeding. All right.

19 MR. CONRAD: Judge, I'm sure you were  
20 not going to omit this and I -- if I remain silent,  
21 but one preliminary matter that we probably ought to  
22 do on the record with regard to all of the witnesses  
23 is swear them in.

24 JUDGE WOODRUFF: You're absolutely  
25 correct, and I thank you for bringing that up,

1 Mr. Conrad, because when we do without the  
2 preliminaries, it tends to confuse things, so I  
3 appreciate that. And if anybody else sees me doing  
4 something stupid, please tell me.

5 All right, Mr. Brubaker.

6 MR. CONRAD: On or off the record?

7 JUDGE WOODRUFF: Well, either way.

8 Please raise your right hand.

9 (The witness was sworn.)

10 JUDGE WOODRUFF: All right. Thank you.

11 And for purposes of cross-examination, we can begin  
12 with MEG.

13 MS. LANGENECKERT: No questions.

14 JUDGE WOODRUFF: Noranda?

15 MR. CONRAD: We do not have any  
16 questions for this witness, your Honor.

17 JUDGE WOODRUFF: Thank you. Commercial  
18 Group?

19 (NO RESPONSE.)

20 JUDGE WOODRUFF: Okay. Missouri  
21 Retailers?

22 MR. OVERFELT: No questions.

23 JUDGE WOODRUFF: For the State?

24 MR. MICHEEL: No questions of  
25 Mr. Brubaker.

1 JUDGE WOODRUFF: DNR?  
2 (NO RESPONSE.)  
3 JUDGE WOODRUFF: Staff?  
4 MR. DOTTHEIM: No questions.  
5 JUDGE WOODRUFF: Laclede?  
6 (NO RESPONSE.)  
7 JUDGE WOODRUFF: Aquila?  
8 (NO RESPONSE.)  
9 JUDGE WOODRUFF: Public Counsel?  
10 MR. MILLS: No questions.  
11 JUDGE WOODRUFF: AARP and Consumers  
12 Council?  
13 MR. COFFMAN: No questions.  
14 JUDGE WOODRUFF: Mo-Kan CCAC?  
15 (NO RESPONSE.)  
16 JUDGE WOODRUFF: MASW?  
17 (NO RESPONSE.)  
18 JUDGE WOODRUFF: UE Joint Bargaining  
19 Committee?  
20 (NO RESPONSE.)  
21 JUDGE WOODRUFF: AmerenUE?  
22 MR. BYRNE: No questions.  
23 JUDGE WOODRUFF: Okay. We're rolling  
24 right along so far. We'll come up for questions from  
25 the bench, then. Commissioner Murray, do you have

1 any questions for Mr. Brubaker?

2 QUESTIONS BY COMMISSIONER MURRAY:

3 Q. Good morning, Mr. Brubaker.

4 A. Good morning, Commissioner.

5 Q. You're here this morning on just policy;  
6 is that correct?

7 A. That is correct.

8 Q. And is your testimony -- I'm trying to  
9 see exactly where you address policy. Is it  
10 throughout your testimony or is there a section of it  
11 that is specifically devoted to that?

12 A. Commissioner, I think I would direct you  
13 to Exhibit 700, the direct testimony, where I  
14 responded to essentially Mr. Baxter's testimony on  
15 rate comparisons and trends and rates and trends and  
16 costs. That's what -- that's what I think of as the  
17 policy part.

18 There is some policy part on fuel  
19 adjustment clause and cost of service, but I had  
20 assumed I would be up for those on those specific  
21 topics. But of course if you have questions, I'm  
22 here.

23 Q. Okay. But basically was it cost of  
24 service and revenue application rate design that --  
25 is that what you said?

1           A.       For later, yes.

2           Q.       Okay.

3           A.       For -- as for the specific piece of  
4 testimony, Exhibit 700 --

5           Q.       And I haven't marked my number. I'm  
6 sorry.

7           A.       -- primarily direct testimony on revenue  
8 requirements, I summarize the direct presentation  
9 that MIEC was making, and then I responded to a  
10 couple of points in Mr. Baxter's testimony on trends  
11 and rates and trends and costs and how I thought that  
12 did or did not apply to determining the company's  
13 revenue requirement.

14          Q.       Okay. And I had read all your  
15 testimony. I'm just trying to relate it to the  
16 policy issues.

17          A.       I know. I have two boxes full myself.

18                   COMMISSIONER MURRAY: All right. I  
19 don't think I have any questions for you at this  
20 time. Thank you.

21                   JUDGE WOODRUFF: Commissioner Appling?

22 QUESTIONS BY COMMISSIONER APPLING:

23          Q.       Good morning, sir.

24          A.       Good morning, Commissioner.

25          Q.       I'm looking for some wisdom.

1           A.       Keep looking.

2           Q.       Well, I need a little bit from you.  
3       Here in May this Commission's gonna have to render a  
4       decision on this company, which, you know, hopefully  
5       we can do that before then. But I -- I'm not so much  
6       interested and we're not gonna talk about this rate  
7       of return, depreciation and all that stuff, but what  
8       I'm looking for is a few nuggets of gold here. I  
9       assume that you look at companies all across this  
10      country inside and outside of the state of Missouri  
11      to stay abreast of what -- what they advise you, your  
12      clients on?

13          A.       We come across issues in a number of  
14      states, yes, sir.

15          Q.       Okay. And Ameren has encouraged us or  
16      asked us and urged us, the Commission, that is, to  
17      take a look at the long haul as far as the operation  
18      of this company. So share with me your thoughts on  
19      what you're gonna offer to this Commission and to  
20      Ameren about the long haul for this company. Just  
21      summarize that for me what you're thinking about that  
22      would be helpful to the companies in which you  
23      represent.

24          A.       Well, Commissioner, I guess I would say  
25      first that as consumers we're interested in having



1 adequate and reliable power at reasonable rates,  
2 fundamentally. And the way we get there, I think, is  
3 the test-year process --

4 Q. Uh-huh.

5 A. -- that we have in Missouri and other  
6 cost-of-service regulated states where we look at the  
7 expenses, the investments, cost of capital, revenue  
8 offsets for things like off-system sales in kind of a  
9 coordinated, synchronized basis, you know, the test  
10 year concept, and then update reasonably for pro forma  
11 adjustments.

12 Like in this case everybody has agreed  
13 we would look at the new fuel costs effective January  
14 1, 2007 which is a -- really somewhat beyond a test  
15 year but it makes sense to put those known and  
16 measurable costs in.

17 Then I think when you analyze the cost  
18 of capital, you need to look and see what kind of  
19 coverage ratios and financial metrics that produces  
20 against the company's investment to see whether or  
21 not an increase that's granted would allow the  
22 company to maintain credit quality and be investment  
23 grade, and we have tried to do that as part of our  
24 presentation.

25 Mr. Gorman in particular addresses the

1 credit quality. So if we put the company in a  
2 position where it can cover its costs or have a  
3 reasonable opportunity of doing so and put it in a  
4 position where it can finance the needed capital  
5 investments that it has to put in into the future, I  
6 think that's -- that's the way that you should go.

7                   Now, you can look out into the future,  
8 but, you know, we have a test year and the test year  
9 is kind of a coordinated look. I have trouble  
10 sometimes with the long-term forward view because we  
11 don't have a new -- we don't have a future test year.  
12 We don't have specific investments or expense  
13 projections for 2007, '8 or '9 to look at. We have a  
14 historic test year with adjustments for known and  
15 measurable changes, and as long as we keep those in a  
16 kind of a synchronized fashion, if we up expenses we  
17 need to look at the revenue facts of that, the  
18 investment and depreciation, I think that's the best  
19 you can do. And I think that's all you need to do.

20                   Then at the end of the day if  
21 everything's been accounted for and if the rate of  
22 return granted is adequate and capable of giving the  
23 company an investment grade bond rating in letting it  
24 finance for the future, I think you've done -- done  
25 your job.

1           Q.       What are your thoughts on the fuel  
2 adjustment clause?

3           A.       I'm opposed to the fuel adjustment  
4 clause that Ameren has proposed. We have proposed an  
5 alternative fuel adjustment clause that would correct  
6 some of the problems that we perceive in the  
7 company's proposal, initial proposal, so we are -- we  
8 are receptive to some kind of fuel adjustment clause  
9 if it's structured appropriately.

10          Q.       I'm still looking for wisdom. Is there  
11 anything else -- is there anything else you would  
12 like to offer before you step down this morning  
13 concerning policy?

14          A.       Well, I suggest you keep looking and  
15 I'll look with you. I'm not sure what -- you know,  
16 what's in the back of your mind, Commissioner. What  
17 area can I address for you?

18          Q.       No, I'm giving you a chance to talk  
19 because I watched you yesterday sitting back there  
20 and yours and my hair are gray, and it indicates to  
21 me that you ought to have a little wisdom. So do you  
22 see anything else that you can speak to this morning  
23 about policy that --

24          A.       Well, I think in a more specific context  
25 when we address class cost of service and how do you

1 set rates, I think it's important to pay attention to  
2 the results of the cost-of-service studies. I think  
3 artificially capping a class that's deficient at some  
4 level like half the system average increase and  
5 putting the balance on the commercial and industrial  
6 customers is just plain bad policy from a regulatory  
7 perspective and from a state economic development  
8 perspective.

9                   Now, that's outside the mainstream of  
10 what is done. It's not unusual to look at impacts on  
11 customers, but typically when we look at impacts, we  
12 have a situation where, say, an average increase is  
13 10 percent and a particular class needs 20. You  
14 don't want to go to 20 so you go someplace between 10  
15 and 20. You wouldn't go to 5 because that would  
16 actually make the situation worse --

17           Q.       Right.

18           A.       -- for the subsidized class and for the  
19 classes that are doing the subsidizing. So I think  
20 that, in a broader context, is an important  
21 consideration for the Commission in deciding how to  
22 divide up whatever money you decide is appropriate  
23 for the company.

24                   COMMISSIONER APPLING: Thank you very  
25 much, sir.

1 THE WITNESS: Thank you.

2 COMMISSIONER APPLING: And you'll be  
3 back again, won't you?

4 THE WITNESS: If I find more wisdom,  
5 I'll be sure to share.

6 COMMISSIONER APPLING: Thank you very  
7 much.

8 THE WITNESS: Thank you.

9 JUDGE WOODRUFF: Does anyone wish to  
10 recross based on those questions?

11 (NO RESPONSE.)

12 JUDGE WOODRUFF: I don't see anyone.  
13 Any redirect?

14 MS. VUYLSTEKE: No, no questions.

15 JUDGE WOODRUFF: Then Mr. Brubaker, you  
16 can step down for the moment.

17 THE WITNESS: Thank you.

18 JUDGE WOODRUFF: And I believe that  
19 takes care of the overview and policy issues at this  
20 point. I understand the Callaway nonlabor  
21 maintenance expense has been settled; is that right?

22 MR. BYRNE: That's correct, your Honor.

23 MR. DOTTHEIM: That is correct.

24 JUDGE WOODRUFF: And will there be a  
25 stipulation filed on these issues that have been

1 settled?

2 MR. DOTTHEIM: Yes. And the Staff is  
3 not pursuing its diesel fuel hedge cost issues, so as  
4 far as the remainder of the first day, that would  
5 complete the issues that were listed for the first  
6 day because previously the nuclear fuel prices and  
7 the nuclear fuel inventory issues have settled and --

8 JUDGE WOODRUFF: So we're down to the  
9 fuel adjustment clause?

10 MR. DOTTHEIM: Yes. At the start of the  
11 second day, yes.

12 JUDGE WOODRUFF: Okay. And I assume  
13 we'll be doing mini openings on those, then, also?

14 MR. BYRNE: Yes.

15 JUDGE WOODRUFF: All right.

16 MR. CONRAD: Judge?

17 JUDGE WOODRUFF: Yes.

18 MR. CONRAD: This raises kind of at some  
19 point an interesting process. Mr. Dottheim indicated  
20 that there would be a stipulation to be submitted  
21 later. I'm presuming that's also the case with  
22 respect to the hedging, the fuel hedging issue, the  
23 diesel fuel --

24 MR. BYRNE: Staff has withdrawn their  
25 adjustment on that. There may not be a need for a

1 stipulation on that.

2 MR. CONRAD: Well, here's my -- here's  
3 my -- here's my concern. I don't know that it rises  
4 to the level of the problem, but I think it perhaps  
5 is something you ought to think about. If a  
6 stipulation is done on these issues, I'm presuming  
7 that it would in most cases be nonunanimous which  
8 triggers the usual process. And let us  
9 hypothetically say that somebody comes in, I doubt  
10 that it would be us, but somebody comes in and says I  
11 have a problem, and then we have a hearing or some  
12 other kind of a process on that, so when we don't --  
13 you see the awkwardness in that? I don't know how --

14 JUDGE WOODRUFF: Yes, we need to get the  
15 stipulations very quickly.

16 MR. CONRAD: I don't know how you deal  
17 with that, but it's out there and it would encourage  
18 the stipulating parties or the principal combatants,  
19 if you will, on that issue to, shall we say with  
20 all -- what is it, all deliberate speed.

21 JUDGE WOODRUFF: That sounds like a good  
22 term, yes. Mr. Dottheim, where are we as far as  
23 getting stipulations done?

24 MR. DOTTHEIM: There is one stipulation  
25 which has generally been referred to as -- amongst

1 parties as a tier 1 stipulation that the Staff is  
2 reviewing for final language which Staff believes is  
3 final language and will be executing and providing to  
4 the other parties. The company has advised the Staff  
5 that as far as the company's concerned, it is final  
6 language. The Staff hopes that that would be filed  
7 within the next day.

8               There is what has been referred to as a  
9 tier 2 stipulation involving a number of issues  
10 between the companies and the Staff and hopefully  
11 could be filed within the next day or two also.

12              There are a number of issues that have  
13 just also recently settled that might be able to be  
14 rolled into that tier 2 settlement or might be a  
15 tier 3 and we are still talking, that is, the Staff  
16 is, with the company about certain other issues. So  
17 we hope to get that the expedited as much as  
18 possible.

19              Frankly also too, as we have been able  
20 to resolve a number of issues that appears depending  
21 upon how much cross there is on the remaining issues  
22 that are coming up in the next couple of days, and of  
23 course, we -- that is, the parties, have no idea how  
24 much cross there may be from the bench, there may be  
25 an opportunity for some time for the parties off the



1 record to be conferring and to be speeding along  
2 these stipulations and agreements. Of course, we're  
3 aware that the Commission wants to push the  
4 proceedings as expeditiously as possible.

5                   If we would not literally be in the  
6 hearing room conducting proceedings, that would not  
7 mean that we would not be expediting the proceedings  
8 by attempting to complete and file stipulations and  
9 agreements respecting issues that have been resolved  
10 so that if there is any objecting party, that party  
11 could file an objection with the Commission and a  
12 hearing could be had.

13                   JUDGE WOODRUFF: I certainly understand  
14 that -- what you're saying, Mr. Dottheim, and I quite  
15 agree with you. And as needed we can certainly -- as  
16 breaks come up in the schedule, and it appears that  
17 they may, I'm certainly willing to allow you to do  
18 that.

19                   MR. DOTTHEIM: Okay.

20                   JUDGE WOODRUFF: But as Mr. Conrad  
21 indicated, there's -- there's certainly a concern  
22 that we need to make sure that nothing comes up at  
23 the last minute that causes problems and we're  
24 running out of hearing time and won't have time to  
25 deal with those issues, so ...

1                   MR. DOTTHEIM: Yes, having -- excuse me,  
2 Judge. Having been in the Empire and Kansas City  
3 Power & Light hearings with Mr. Conrad, I share his  
4 concerns.

5                   MR. CONRAD: Well, I just -- part of the  
6 problem is about 100 years ago, you know, as I  
7 sometimes say when we have less formal proceedings, a  
8 long, long time ago in a galaxy far away, we used to  
9 just pull issues off the table, and in many instances  
10 that worked simply because it worked. It's becoming  
11 more and more apparent that as these matters become  
12 somewhat more complex, I call it the game of  
13 Whackamo, that it becomes more and more difficult to  
14 do these things on a bilateral basis.

15                   Many times it's still possible, and the  
16 issues that are -- that are resolved don't have  
17 implications elsewhere, sometimes they do. And I  
18 am -- I am cautioned that I want to avoid -- since  
19 I'm probably one of the few people in the room that  
20 has ever played the game -- I want to avoid being  
21 snookered. That seems to be the term of art that has  
22 been used here lately.

23                   And when stipulations have implications  
24 that go beyond the settlement and issue in a  
25 particular case and reach out into the future, given

1 the Commission's proclivity to ignore what contract  
2 law is as demonstrated by past cases, it gives me  
3 some concern and I kind of need to look at those  
4 things and make sure that I'm not being snookered and  
5 that the parties understand the duration of the  
6 contract that we're into.

7 JUDGE WOODRUFF: And then particularly  
8 in this case where there's such a large number of  
9 parties, there's always the possibility that one of  
10 those parties might have concerns. As Mr. Conrad  
11 indicated, with all deliberate speed we need to get  
12 those in.

13 I believe, then, we're ready for mini  
14 openings on the fuel adjustment clause issue, and  
15 I'll just go back to the list for opening statements  
16 and we'll begin with Ameren.

17 MR. BYRNE: Thank you, your Honor. May  
18 it please the Commission. AmerenUE is requesting a  
19 fuel adjustment clause or an FAC in this proceeding.  
20 Fuel adjust clauses are mainstream cost recovery  
21 mechanisms that are in use in almost all of the other  
22 jurisdictions in the United States. As AmerenUE  
23 witness Lyons has testified, 27 of the 29 other  
24 nonrestructured states permit their electric  
25 utilities to use fuel adjustment clauses, and all of

1 the restructured states have energy cost recovery  
2 mechanisms that are similar to fuel adjustment  
3 clauses.

4 Credit rating agencies have come to  
5 expect electric utilities to be able to use an FAC,  
6 and not having an FAC can adversely impact the  
7 ability of an electric utility to borrow money needed  
8 for infrastructure improvements at reasonable rates.  
9 As you know, in 2005 the Missouri legislature enacted  
10 Senate Bill 179 which enabled the Commission to enact  
11 fuel adjustment clauses for electric utilities. And  
12 last year, after extensive roundtables, the  
13 Commission enacted rules governing FACs.

14 AmerenUE has complied with all of the  
15 many requirements of Senate Bill 179 and the  
16 Commission's rules in proposing its FAC. A number of  
17 other parties in this proceeding argue that AmerenUE  
18 does not need a fuel adjustment clause for a variety  
19 of reasons that I don't think would stand scrutiny.  
20 Staff in particular argues that the company's  
21 off-system sales margins provide a natural hedge that  
22 offsets fuel cost increases. But as company witness  
23 Schukar has explained in his surrebuttal testimony,  
24 this is simply not true.

25 Off-system sales margins only provide a

1     hedge in the unlikely and narrow cases that the Staff  
2     has constructed where AmerenUE's fuel costs and  
3     energy prices are assumed to be increasing or  
4     decreasing in lockstep. In the real world, these  
5     items do not consistently track each other, and  
6     therefore the hedge that the Staff suggests exists  
7     really does not exist.

8                 Others argue that AmerenUE should not be  
9     permitted to use a fuel adjustment clause because it  
10    relies on coal-fired generation which historically  
11    has enjoyed more stable fuel cost than gas-fired  
12    generation. First, it is important to point out that  
13    FACs are widely used in other jurisdictions by many  
14    utilities with -- that rely just as heavily on  
15    coal-fired generation as AmerenUE. The mere fact  
16    that AmerenUE has coal-fired plants should not  
17    disqualify it from using an FAC.

18                Second, AmerenUE has provided testimony  
19    that its fuel costs are, in fact, dramatically  
20    increasing and their volatility is increasing. Coal  
21    and coal transportation costs, nuclear costs, gas  
22    costs are all increasing and all becoming  
23    increasingly volatile.

24                Finally, to the extent AmerenUE has made  
25    good business decisions and by creating a low cost

1 mix of generation, it should not be penalized by  
2 being denied the use of an FAC. It's particularly  
3 disturbing to see some parties suggest that if only  
4 AmerenUE was more reliant on gas-fired generation, it  
5 could avail itself of this mainstream regulatory  
6 tool.

7 AmerenUE's fuel adjustment clause has  
8 evolved since this proceeding began. Our initial  
9 proposal was simply to flow through qualifying costs  
10 in compliance with Senate Bill 179 and the  
11 Commission's rules. Our original proposal contained  
12 all of the many consumer protections that Senate Bill  
13 179 and the Commission's rules require, but it  
14 basically was simply recovering our qualifying costs.  
15 But in response to other parties' comments and other  
16 parties' testimony, we have revised our FAC proposal  
17 to attempt to incorporate some of their ideas.

18 First, and perhaps most importantly, we  
19 are now proposing to net off-system sales margins  
20 against fuel costs that will eliminate any incentive  
21 that some parties pointed out we might otherwise have  
22 to allocate costs in between native load and  
23 off-system sales improperly. It will also guarantee  
24 that every dollar of off-system sales margins is  
25 credited to customers.

1                   Second, in response to other concerns  
2   that parties have expressed, we've reduced the number  
3   of potential filings from four to three to provide  
4   more stability, and finally, we've incorporated  
5   mitigation measures that were proposed by Noranda and  
6   Office of the Public Counsel. And specifically those  
7   mitigation measures mean that we're gonna spread any  
8   fuel adjustment cost changes over 12 months instead  
9   of a quarterly period as we had originally proposed,  
10   and we are capping the potential increase by rate  
11   class at 4 percent.

12                   We think with these additional consumer  
13   protections, our proposed fuel adjustment clause is  
14   the most consumer-friendly fuel adjustment clause in  
15   the country. There's simply no reason that the  
16   Commission should not approve this mainstream cost  
17   recovery mechanism for AmerenUE.

18                   As part of its FAC proposal, the company is  
19   also recommending that the Commission adopt a sharing  
20   mechanism. Under this sharing mechanism, if the company  
21   was able to overcome the significant known fuel cost  
22   increases that are coming in the next couple of years  
23   through more efficient operations or the generation of  
24   additional off-system sales margins, the company would  
25   be permitted to share in a portion of the savings.

1           The company would not be able to begin  
2   to keep any part of the savings until the known cost  
3   increases are overcome, and even then its participation  
4   in the savings would be limited to a maximum of  
5   approximately 100 basis points in an absolute best-case  
6   scenario. Customers will benefit from the very first  
7   dollar of known fuel cost savings, and of course  
8   their participation in -- in additional savings  
9   is unlimited.

10           We think that this mechanism will provide  
11   the company with the incentive to operate its plants  
12   as efficiently as possible. To the extent that it  
13   has any control over fuel costs -- and its control  
14   over fuel costs is pretty limited -- but to the  
15   extent it has any control over fuel costs, it will  
16   provide an incentive to exercise that control, and it  
17   also will provide it an incentive to maximize off-system  
18   sales revenues. Ultimately, this incentive will benefit  
19   both the company and its customers by encouraging  
20   more efficient operations. Thank you.

21           JUDGE WOODRUFF: Thank you. For Staff?

22           MR. DOTTHEIM: May it please the  
23   Commission. The Staff believes that this Commission  
24   should not allow AmerenUE to implement the fuel and  
25   purchased power cost recovering mechanism, a fuel



1 adjustment clause, or an interim energy charge. The  
2 Staff's opposition is based on the following  
3 considerations: One, AmerenUE did not need an FAC  
4 since its revenue opportunities and off-system sales  
5 mitigate much of its fuel price risk; two, AmerenUE  
6 does not need an FAC in order to have a reasonable  
7 opportunity to achieve its authorized rate of return;  
8 and three, although it is not a sufficient reason  
9 alone, not providing AmerenUE with an FAC preserves  
10 strong incentives for AmerenUE to be prudent in its  
11 efforts to purchase fuel and power.

12               Staff's analysis shows that AmerenUE's  
13 revenues from off-system sales significantly reduce its  
14 downside risk related to fuel expense. Increases in  
15 fuel cost are mitigated by increases in off-system  
16 sales revenues. It is the Staff's position that if  
17 AmerenUE is granted a fuel adjustment clause by the  
18 Commission, revenues from off-system sales should flow  
19 through the FAC to reduce both the level of the FAC  
20 rate and its volatility rather than be shared with  
21 AmerenUE shareholders.

22               If the Commission were to authorize an FAC  
23 for AmerenUE or any other electric utility, the Staff  
24 believes that pursuant to 4 CSR 240-3.161 (2) (P) and  
25 (3) (Q), the utility must have procedures in place

1     that, one, require testing of generation plant heat  
2     rates not less frequently than every two years; two,  
3     generally conform to industry standard performance  
4     testing methodologies; three, require identification  
5     of plant components that are diminishing overall  
6     plant heat rates; and three, (sic) require cost-  
7     effective maintenance or replacement activities,  
8     plant components that have been identified as  
9     diminishing overall plant heat rates.

10                 The Commissioners will hear in these  
11     opening statements repeated references to proposals  
12     regarding off-system sales. Off-system sales is an  
13     issue that is scheduled to be heard immediately after  
14     fuel adjustment clause.

15                 The two issues have become very much  
16     intertwined with -- with each other. It is virtually  
17     impossible at this point, not, in part, to try the  
18     two issues together. And I don't know any clean way  
19     of trying to separate the two.

20                 So hopefully, the parties and the  
21     Commission will bear with the parties as we -- as we  
22     go through the two issues, and fuel adjustment clause  
23     may be raised in the context of the off-system sales  
24     issue, and off-system sales has already, in the first  
25     two opening statements, been raised very much as a

1 component of the fuel adjustment clause issue.

2 JUDGE WOODRUFF: Thank you. Public Counsel?

3 MR. MILLS: Good morning. May it please  
4 the Commission. This, I think, as you recognize from  
5 the parties' opening statements yesterday, is one of  
6 what the parties consider to be a major issue in this  
7 case. This is a case of first impression for this  
8 Commission. There's not been fuel adjustment clauses  
9 in Missouri for about 30 years.

10 Senate Bill 179 was enacted just a few  
11 years ago to permit the Commission to allow fuel  
12 adjustment clauses for electric utilities. It does  
13 not require the Commission to allow fuel adjustment  
14 clauses for electric utilities. I think the language  
15 that the legislature put in there was deliberate. I  
16 don't think that one can assume that the legislature  
17 meant for the Commission to approve any fuel  
18 adjustment clause that came along and simply made the  
19 language permissive without thinking about it.

20 I think there was enough discussion in  
21 the legislature among interested parties, including  
22 AmerenUE, including Public Counsel, including the  
23 Commission, including just about everybody who's  
24 interested that it would be beyond belief to think  
25 that the legislature didn't know what they were doing

1     when they made it permissive rather than mandatory.

2                     AmerenUE doesn't really dispute that.

3     However, they don't offer the Commission any guidance  
4     on how the Commission should decide whether or not a  
5     utility should get an FAC. In fact, I don't believe  
6     from AmerenUE's point of view that there are any  
7     reasons that would allow the Commission to reject a  
8     fuel adjustment clause.

9                     Certainly AmerenUE -- if there are any  
10    utilities in Missouri which should not get a fuel  
11    adjustment clause, AmerenUE would have to be at the top  
12    of the list. Its fuel prices are less volatile than  
13    any other utility, its ability to sell in the off-system  
14    sales market is probably just about as strong as any  
15    other utility, its financial situation is stronger than  
16    any other utility. All of these factors mitigate  
17    against awarding AmerenUE a fuel adjustment clause.

18                    You know, as the parties have been  
19    discussing this issue, it's my opinion and I think it  
20    may be shared by others that if the Commission  
21    decides that AmerenUE should have a fuel adjustment  
22    clause, then it's pretty much a given that all  
23    utilities in this area will have a fuel adjustment  
24    clause. And that may be the Commission's approach,  
25    that may be what the Commission wants to do. I don't

1 think -- I don't think that's the appropriate  
2 approach. The Commission was given the discretion  
3 and should exercise that and decide whether each  
4 utility should have a fuel adjustment clause.

5               Some of the factors to evaluate whether  
6 a utility should be awarded a fuel adjustment clause  
7 are listed in the testimony of Public Counsel witness  
8 Ryan Kind. One of those is, does the utility have a  
9 need for an FAC because it would face a substantial  
10 threat to its financial viability if it did not have  
11 the ability to recover costs of fuel through a fuel  
12 adjustment clause.

13              Certainly AmerenUE does not meet that  
14 criteria. It has operated at a very satisfactory  
15 profit over much of the last few decades. Even the  
16 one year that AmerenUE witness Baxter talked about  
17 last year as disappointing was -- was a 9 percent  
18 return roughly, and that was a year in which there  
19 was a number of negative impacts: Two massive  
20 storms, the impact of the Taum Sauk disaster the  
21 December of the year before. For a company to be  
22 able to earn 9 percent in the face of those kinds of  
23 challenges indicates to me a pretty strong company  
24 without a fuel adjustment clause. I think adding a  
25 fuel adjustment clause would simply be gravy.

1                   Another one of the big factors that the  
2   Commission should consider when deciding whether to  
3   award an FAC is the degree to which the utility is  
4   subject to volatility in the fuel and purchased power  
5   market. AmerenUE, with its reliance on hydropower,  
6   hopefully in the relatively near future, pumped hydro,  
7   coal and nuclear, has much less exposure to the most  
8   volatile fuel costs, which are those of natural gas,  
9   than utility -- than the other utilities in Missouri.

10                   Its fuel costs, although they may be  
11   rising slowly because of increases in coal prices,  
12   are not nearly as volatile as other utilities. In  
13   fact, they are hardly volatile at all.

14                   And another factor that the Commission  
15   should consider in deciding whether to award a fuel  
16   adjustment clause is whether the utility has the ability  
17   and has, in fact, shown -- shown that it can and will  
18   take steps to hedge its exposure to fuel costs  
19   volatility.

20                   Again, AmerenUE has done both of those  
21   things. It has the ability to hedge its fuel costs,  
22   it has done so effectively in the past. There's no  
23   reason to think that it can't do so effectively in the  
24   future. Because it faces less volatility because it  
25   has the ability to hedge against what little volatility

1 it does face, the use of a fuel adjustment clause for  
2 AmerenUE is simply not necessary. Thank you.

3 JUDGE WOODRUFF: Thank you. For the State?

4 MR. MICHEEL: May it please the Commission.  
5 I would simply echo what Mr. Mills said about Senate  
6 Bill 179, and that is that that bill makes it permissive  
7 for giving a fuel adjustment clause.

8 And the way I understand the legislation,  
9 this Commission is the expert and it's going to hear  
10 from the expert witnesses, and based on the evidence  
11 that it hears in the hearing, it's going to make a  
12 determination on whether or not a fuel adjustment clause  
13 is appropriate for each utility on a case-by-case basis.

14 You have a wealth of testimony in this  
15 case, specifically about AmerenUE. And again, Ameren's  
16 argument on this issue seems to be, everybody else is  
17 doing it, so should we. That's not a very persuasive  
18 argument. I think the legislature, in its wisdom,  
19 required us to look at the specifics of each company to  
20 determine whether or not a fuel adjustment clause is  
21 necessary.

22 The State has engaged an expert witness  
23 Michael Brosch who's presented testimony and come to  
24 the conclusion that a fuel adjustment clause for  
25 AmerenUE based on its unique facts as a company is

1 not appropriate.

2 In reaching that conclusion, Mr. Brosch  
3 tells you that there are five screens that the State  
4 went through to determine whether or not AmerenUE  
5 needs a fuel adjustment clause.

6 First, are the costs substantial enough  
7 to have a material impact upon revenue requirements  
8 and the financial performance of the business between  
9 rate cases? I think we came to the conclusion in  
10 AmerenUE's case it's not. And I think the evidence  
11 is going to show that empirically in the last 30  
12 years, AmerenUE has not had a fuel adjustment clause,  
13 and yet we've seen outstanding returns and declining  
14 rates. The proof there is in the pudding.

15 Second, the cost should be beyond the  
16 control of management where utility management has  
17 little influence over experienced revenue or cost  
18 levels. Once again, the proof is in the pudding.  
19 AmerenUE does have the ability to control its fuel  
20 costs, it has been controlling its fuel costs, the  
21 evidence will show, and therefore, a fuel adjustment  
22 clause is not necessary.

23 The third criteria this Commission  
24 should use is that it's volatile in amount, causing  
25 significant swings in incomes and cash flows if not



1 tracked through an adjustment clause. And I think  
2 the evidence in this case is going to be that's  
3 simply not the case for UE.

4 Fourth, a fuel adjustment clause should  
5 be straightforward and simple to administer, readily  
6 audited and verified through expedited regulatory  
7 reviews. I think, especially coupled with all of  
8 these intertwining with the off-system sales and the  
9 complications and the specific factors and when you  
10 factor in the Taum Sauk disaster, this is going to be  
11 a regulatory nightmare.

12 And if you're going to approve a fuel  
13 adjustment clause for this company, I think you-all  
14 need to be over at the legislature getting a few more  
15 FTEs because your Staff is going to need those  
16 people, new people to keep up with the complexity of  
17 this fuel adjustment clause to ensure that the costs  
18 that would be approved by a fuel adjustment clause  
19 are just and reasonable.

20 Fifth, it should be balanced and not  
21 distortive of test-year-period relationships  
22 reflective of factors that mitigate impacts in a  
23 manner that preserves the testing or matching  
24 principles. And I think as a general rule,  
25 adjustment clauses simply do not meet that. Because

1    what they do is, they take one cost out of all the  
2    cost in isolation, and they change it. That distorts  
3    the test year. And I think that's the screen that  
4    this Commission should use in determining whether or  
5    not to grant a fuel adjustment clause for UE.

6                   And after you've listened to the  
7    evidence and looked at that screen and listened to  
8    Mr. Brosch's testimony, you'll come to the conclusion  
9    that for AmerenUE, in this case at this time, a fuel  
10   adjustment clause is not appropriate. That's not to  
11   say in the future there may be new facts and new  
12   evidence where it would be appropriate, but not on  
13   this record, not at this time.

14                   JUDGE WOODRUFF: Thank you. DNR?

15                   (NO RESPONSE.)

16                   JUDGE WOODRUFF: MIEC?

17                   MS. VUYLSTEKE: May it please the  
18   Commission. We agree with the statements of the  
19   Office of Public Counsel and the Staff and the  
20   Attorney General that Ameren does not need a fuel  
21   adjustment clause to cover its costs. And I think we  
22   also agree that the legislature could have mandated a  
23   fuel adjustment clause and didn't, and if there's any  
24   utility in the state that didn't need it, it would be  
25   Ameren.

1                   That being said, I think that there is a  
2   reason to have a fuel adjustment clause for Ameren.  
3   And that is, if it is -- if we can capture off-system  
4   sales revenues through that. And that is our  
5   proposal in this case.

6                   Our proposal is, despite the fact that  
7   we oppose AmerenUE's approach, we oppose their  
8   proposed FAC, we have our own proposal that includes  
9   off-system sales. And if the clause allows that to  
10  be tracked, then I think that what we have is a good  
11  solution for -- for AmerenUE's alleged problem and  
12  also for a problem that ratepayers have been tracking  
13  with those sales revenues.

14                  The clause that we propose in the form  
15  of Maurice Brubaker's testimony includes an  
16  appropriate incentive mechanism that allows for a  
17  sharing of increases and decreases, and we would urge  
18  you to take a hard look at his proposal. Thank you.

19                  JUDGE WOODRUFF: Thank you. MEG?

20                  MS. LANGENECKERT: May it please the  
21  Commission. The Missouri Energy Group does not have  
22  any testimony on the fuel adjustment clause, but we  
23  do have some on off-system sales. And as  
24  Mr. Dottheim noted, they're becoming intermingled.  
25  The MEG does not believe, as the parties other than

1 Ameren have stated, that Ameren at this time needs a  
2 fuel adjustment clause.

3               We were a part of the negotiations with  
4 the legislature, and I say that at the risk of  
5 getting smacked in the back of the head with a piece  
6 of fruit. But in that legislation it specifically  
7 says that it has to be reasonably necessary for them  
8 to earn a fair return on their equity. And I believe  
9 that you'll note -- I think it's difficult for any  
10 reasonable person to say that right now Ameren does  
11 need this.

12              So I will close with that. I will ask  
13 one accommodation. Our witness Billie LaConte will  
14 be here today, but she had something come up and will  
15 not be available to speak on off-system sales. I  
16 would like, if anyone has any questions for her, that  
17 they put it off until the end of the hearing when  
18 she's also speaking on class cost of service and rate  
19 design.

20              JUDGE WOODRUFF: Thank you. Commercial  
21 Group?

22              (NO RESPONSE.)

23              JUDGE WOODRUFF: Noranda?

24              MR. CONRAD: Resisting the urge to talk  
25 to you about the winter tail-block rate, I will

1     instead talk to you about the position of Noranda  
2     Aluminum.

3                     Noranda, as you most certainly realize,  
4     operates a smelter with what are called three pot  
5     lines down near New Madrid. In doing so, it -- it  
6     consumes a reasonable amount of electricity. Its  
7     load is roughly 450 megawatts. Everything is going,  
8     and interestingly, everything is going most all of  
9     the time. And as a result, the load factor for  
10    Noranda is approximately 99 percent. And that may  
11    vary slightly from one month to the next, but I  
12    believe that's -- that's fairly accurate.

13                    The billings vary but only slightly, and  
14    depending on which set of numbers one uses, I believe  
15    it's well over \$100 million a year. And so these  
16    issues are a concern to Noranda. The strains,  
17    however, of Kumbaya that we all heard, albeit  
18    distantly, talking about tier 1 settlements seem to  
19    have evaporated when the parties addressed this  
20    issue.

21                    Unlike that, my client is not going to  
22    take a position with respect to whether or not you  
23    should approve a fuel adjustment clause for this  
24    utility. Implicit in that, however, is recognition  
25    that it is permissive; it is not an entitlement. And

1 the legislature wisely did not choose that.

2 Commissioner Appling, if you are looking  
3 for wisdom, I don't know that I have any either,  
4 although my hair is perhaps somewhat grayer and is  
5 getting rapidly more gray over this case, but I could  
6 suggest some places that you might not want to look  
7 for that wisdom.

8 So while we are not taking a position,  
9 thumbs up or thumbs down on this clause, I would tell  
10 you that the structure of that clause that you-all  
11 would approve is a deep and abiding concern to  
12 Noranda. And we have focused through the testimony  
13 of Mr. Johnstone, Mr. Swogger, who will be here --  
14 he's scheduled Friday, possibly earlier, to talk to  
15 you about those -- those concerns, as well as the  
16 implications that we have for the community down in  
17 the southeast Missouri area.

18 And that's part of why we are here.  
19 Those of you who remember the discussions in the 179  
20 rulemaking proceeding will remember that one of the  
21 concerns that Noranda has is the -- the mitigating of  
22 volatility. I had heard Mr. Baxter yesterday  
23 indicate that they feel that they are making some  
24 movement in that area, and Ameren counsel this  
25 morning made a similar statement. And we applaud

1     that and that's a good thing.  Let me tell you  
2     briefly why that's a good thing.

3                     The nature, I am told, of Noranda's  
4     operations down there is such that if they were faced  
5     with an extraordinary and very sharp increase in  
6     electrical cost, because the electrical costs are so  
7     much a part of their operations, that they might very  
8     well be faced with the choice of just closing the  
9     doors.  And the information that we have is that were  
10    that to happen, it would be unlikely, given the state  
11    of capital within that company, that it would be  
12    reopened.

13                    That's not a threat.  I don't mean it  
14    that way.  I don't mean it to be a promise or  
15    anything like that.  It's just a concern.  And it is  
16    something that you-all need to be concerned about.  
17    So even though later on, three months, six months,  
18    12 months later you get some kind of a refund or a  
19    reduction, it doesn't help if you're gone.  Any  
20    number times zero remains zero.

21                    And we've looked at that in two  
22    different ways:  The Noranda -- the Ameren folks have  
23    indicated that they have modified or apparently are  
24    willing to modify the original proposal to a 12-month  
25    spread, and that helps.  They have also indicated --

1 and counsel indicated this this morning -- an  
2 agreement to a cap, and the term -- the percentage  
3 cap factor of 4 percent has been mentioned.

4               We had -- we, being Noranda, had  
5 indicated our support for that kind of a proposal  
6 when we were dealing with the 179 rule and said,  
7 well, it should be structured if we were doing it as  
8 a deferral mechanism, that you just simply defer  
9 whatever's above that until a future period and  
10 thereby further levelize things. Again, the idea of  
11 volatility.

12              And it's important, as Mr. Johnstone's  
13 testimony points out, the consistency of the approach  
14 that is used in allocating particular types of costs.  
15 You've already heard discussions this morning, you'll  
16 hear more I'm sure through the day, about off-system  
17 sales, how they're tracked, whether you deal with  
18 things on a demand or an energy basis, some of the  
19 technical things. I think our thrust and my point  
20 this morning is just there be a consistency because  
21 if there is an inconsistency, you get the law of  
22 unintended consequences working very -- in full force  
23 and those types of things. Those are the concerns  
24 that we have.

25              There are others. As I've said, we're



1 not gonna take a position as to whether or not they  
2 should -- they should have one or not have one. Part  
3 of the problem that we have at this particular point,  
4 and that is at 9:28 by my watch this morning -- I  
5 think I got that set after the weekend; I'm still  
6 looking for that hour -- is we haven't seen the  
7 language on this. And the devil is in the details.

8                   Mr. Dottheim's opening statement  
9 indicated some of the details of this, and he made  
10 reference to the rule that you-all had approved, and  
11 we spent quite a bit of time on that in trying to  
12 develop a structure. So the structural issues are  
13 the ones that are of concern to us, and we need to  
14 see that language.

15                   And it's good to have -- to have folks  
16 that said, well, we're willing to do this, we're  
17 willing to do that and so on. But to borrow from  
18 Tom -- I believe it's -- maybe it's not Tom Hanks,  
19 but who's the other guy, Tom Cruise, the  
20 bouncing-on-the-sofa guy -- "Show me the money," show  
21 me the language. And let's look at -- let's look  
22 through it, let's push pencils through it, let the  
23 experts do that, and let's see what we've got,  
24 because that's -- that's at the bottom line what  
25 we're gonna end up paying. We need to see that

1 language and we need to see it in time that we can  
2 intelligently work through it.

3 I don't know -- I mean, this issue set  
4 for this day is set for two weeks or whatever. We  
5 still don't have -- we still don't have that  
6 language. And so I'm in something of a -- of a  
7 quandary as to how to ask questions of company  
8 witnesses who maybe, in all good faith and all  
9 sincerity, say we've done this. But I hope you-all  
10 should realize, some of you being long-time  
11 practitioners, know when you get to language, it  
12 sometimes becomes problematic to try to get that.

13 And Mr. Chairman, I want to do  
14 everything I can do to avoid being snookered. I  
15 can't -- I can't conscientiously allow my client to  
16 be snookered. I am very concerned about where those  
17 red balls are. Thank you.

18 JUDGE WOODRUFF: Thank you. AARP and  
19 Consumers Council?

20 MR. COFFMAN: Thank you. Good morning  
21 again. This issue of the fuel adjustment clause is  
22 of very great interest and importance to the members  
23 of AARP and also the Consumers Council of Missouri.  
24 AARP has a witness that you'll hear of much later in  
25 the hearing. I believe not at this stage in the

1 hearing, but I would commend to you the testimony  
2 that has been prepared and prefiled, the testimony of  
3 Ron Binz, who I guess has now ascended to the chair  
4 of the Colorado PUC, will not be here. But Nancy  
5 Brockway, our new witness, is adopting that and has a  
6 surrebuttal testimony of her own, and I urge you to  
7 ask her questions regarding this important issue.

8 I absolutely agree with Staff, Public  
9 Counsel and the State of Missouri and their very good  
10 testimony on this issue of whether a fuel adjustment  
11 clause is needed or appropriate for AmerenUE. I  
12 think that Warren Wood's testimony and the testimony  
13 of Mike Brosch and Ryan Kind are particularly  
14 compelling, and as has been noted earlier, if there  
15 is a utility that is not well suited to a fuel  
16 adjustment clause in this state, it would certainly  
17 be AmerenUE.

18 And as has been pointed out prior, the  
19 legislature of this state put the words approve,  
20 modify or reject into the law, and presumably they  
21 saw the potential that the reasonable thing to do  
22 would be to reject a fuel adjustment clause for a  
23 particular utility in a particular situation. So  
24 if -- if a fuel adjustment clause is ordered for this  
25 company, I assume you're just gonna be able to pick

1 up a fuel adjustment clause form at the door and  
2 everyone's gonna get one.

3 I don't think that -- just don't see how  
4 it would be needed for this utility, given their  
5 state of earnings, the state of their resource  
6 planning and the potential for harm. Not only is it  
7 not needed for this particular utility, but one of  
8 the many harms is much more likely to occur. And  
9 this is the fact that AmerenUE has been frequently,  
10 over the last 20 years, in a state of overearnings.

11 They have had a generally declining cost  
12 of service, and when you have a situation like that  
13 and yet have a single issue surcharge that is linked  
14 to something that you heard AmerenUE state earlier,  
15 they expect fuel costs to increase over the next  
16 couple of years, you're -- you're setting up a  
17 potentially unfair situation.

18 So I would also point out that the harms  
19 that consumer advocates have been mentioning before  
20 you for a long time are in some senses with this  
21 company potentially exaggerate -- or more likely to  
22 occur. And we're worried about that as obviously we  
23 would prefer to have the strong incentive of a --  
24 just a flat rate cap which AmerenUE CEO about eight  
25 years ago did acknowledge was the reason that they

1 have had some success in their resource planning over  
2 the years.

3 We oppose that to a system that would  
4 essentially leave you with only the tool of prudence  
5 reviews to encourage efficiency, and our testimony  
6 addresses why we believe that that is -- is crude and  
7 not as effective as the traditional methods.

8 So again, certainly, if you are gonna  
9 consider a fuel adjustment clause, the one that  
10 AmerenUE has proposed is not -- is not fair in our  
11 opinion. Its off-system sales plan is not fair in  
12 our -- in our estimation, the 4 percent cap is not  
13 something that we find necessarily appealing other --  
14 either, given that the overage is proposed to be  
15 carried over to another period with interest and wind  
16 up getting hit with that even later. So I'm not  
17 really sure that that even, over time, really  
18 mitigates anything. So I'd urge you to reject a fuel  
19 adjustment clause for this particular utility in this  
20 case. Thank you.

21 JUDGE WOODRUFF: Thank you. MASW?

22 (NO RESPONSE.)

23 JUDGE WOODRUFF: Missouri Retailers  
24 Association?

25 MR. OVERFELT: No additional comment.

1 JUDGE WOODRUFF: Mo-Kan CCAC?  
2 (NO RESPONSE.)  
3 JUDGE WOODRUFF: Laclede?  
4 (NO RESPONSE.)  
5 JUDGE WOODRUFF: Aquila?  
6 (NO RESPONSE.)  
7 JUDGE WOODRUFF: Joint Bargaining  
8 Committee?  
9 (NO RESPONSE.)  
10 JUDGE WOODRUFF: I believe that's  
11 everybody. Then we'll go to the first witness, which  
12 I believe is Mr. Baxter again. Good morning.  
13 Welcome back, Mr. Baxter.  
14 THE WITNESS: Thank you, Judge. How are  
15 you?  
16 JUDGE WOODRUFF: And you were sworn  
17 yesterday so you're still under oath.  
18 THE WITNESS: I was.  
19 JUDGE WOODRUFF: And Ameren, I assume  
20 that you tender this witness for cross?  
21 MR. LOWERY: We do, your Honor.  
22 JUDGE WOODRUFF: Okay. And for  
23 cross-examination we begin with Aquila.  
24 (NO RESPONSE.)  
25 JUDGE WOODRUFF: Laclede?

1 (NO RESPONSE.)

2 JUDGE WOODRUFF: Joint Bargaining

3 Committee?

4 (NO RESPONSE.)

5 JUDGE WOODRUFF: DNR?

6 (NO RESPONSE.)

7 JUDGE WOODRUFF: Missouri Retailers?

8 (NO RESPONSE.)

9 JUDGE WOODRUFF: Mo-Kan?

10 (NO RESPONSE.)

11 JUDGE WOODRUFF: MASW?

12 (NO RESPONSE.)

13 JUDGE WOODRUFF: MIEC?

14 (NO RESPONSE.)

15 JUDGE WOODRUFF: Commercial Group?

16 (NO RESPONSE.)

17 JUDGE WOODRUFF: MEG?

18 MS. LANGENECKERT: No questions.

19 JUDGE WOODRUFF: All right. AARP?

20 MR. COFFMAN: One or two.

21 CROSS-EXAMINATION BY MR. COFFMAN:

22 Q. Good morning, Mr. Baxter.

23 A. Good morning, Mr. Coffman.

24 Q. I think I'm just gonna ask you about

25 something that has been included in your proposal

1 relating to low-income energy assistance. You have  
2 chosen to package with your fuel adjustment clause  
3 proposal a commitment to provide some funding for  
4 low-income energy assistance. Could you explain to  
5 me why that is part of the package?

6 A. Well, we simply thought because of some  
7 concerns cited by consumers about the potential  
8 impact of rising costs on consumers, that packaging  
9 low-income energy assistance with the fuel adjustment  
10 clause was appropriate.

11 Q. Is that because you believe that a fuel  
12 adjustment clause will increase the amount of  
13 electric rates that low-income consumers may have to  
14 pay?

15 A. Compare -- that is certainly a  
16 possibility.

17 Q. Okay. And this -- the \$2 million per  
18 year proposal would be money that goes into your own  
19 fuel fund; is that correct?

20 A. I'm sorry. My -- our -- Mr. Coffman, I  
21 don't -- fuel fund? I'm not sure I quite understand.

22 Q. Tell me, where -- you state that the  
23 company will provide a \$2 million per year  
24 contribution to low-income energy assistance  
25 programs. Which specific programs will that money go



1     into?

2           A.       I believe our witness Richard Mark will  
3     be able to give you more of the details, but it's in  
4     our Dollar More Program.

5           Q.       And that's -- that's a program that  
6     AmerenUE controls the distribution of funds; is that  
7     correct?

8           A.       In terms of how those funds are  
9     distributed, you really should ask Mr. Mark.

10           MR. COFFMAN:   Okay.   That's all I have.  
11     Thank you.

12           JUDGE WOODRUFF:   Thank you, sir.   For  
13     Noranda?

14     CROSS-EXAMINATION BY MR. CONRAD:

15           Q.       Good morning, Mr. Baxter.

16           A.       Mr. Conrad, good morning.

17           Q.       It just seems like yesterday.

18           A.       Only because it was.

19           Q.       Did you -- I'm sure you were in rapt  
20     attention to my opening statement, but did you at  
21     least hear the thrust of my comments?

22           A.       I did.

23           Q.       And I heard you yesterday talk about the  
24     various revisions that you have offered to the  
25     original proposal of the fuel adjustment clause, some

1 of which are apparently -- are apparently done to  
2 accommodate issues that Noranda had raised; is that  
3 correct?

4 A. That's correct.

5 Q. Have those revisions yet been reduced to  
6 writing?

7 A. Those revisions are in the process of  
8 being finalized. As for being reduced -- I guess  
9 reduced, they're in the process of being finalized.  
10 And our witness Marty Lyons certainly would be in a  
11 position today to describe in more detail, should you  
12 care to discuss that with him, the potential  
13 revisions, and as well, we would be happy to share  
14 the final revisions, the words, the devil which is in  
15 the details, with all the parties to make sure that  
16 they have a clear understanding of our proposal. We  
17 will not be in a position to do that this morning,  
18 though, Mr. Conrad.

19 Q. I understand that. How would you  
20 suggest -- in your search for wisdom, how would you  
21 suggest that we handle the timing of that issue,  
22 Mr. Baxter?

23 A. Well, probably it would be appropriate  
24 for me to discuss this with counsel to make sure that  
25 we don't get too far afoot, but certainly with regard

1 to Mr. Lyons, once we put that in writing, we would  
2 be happy to avail himself to come back with the  
3 parties and be cross-examined after the parties have  
4 had a chance to look at that document.

5 Q. If I understood your testimony and the  
6 statement of your counsel, which I trust you also  
7 heard this morning?

8 A. I did.

9 Q. Had a -- and let's just call it a  
10 30,000-foot view, okay?

11 A. Thank you. That would probably be the  
12 appropriate place for me.

13 Q. Well, there was an old tale one time  
14 that somebody said the French lived on the land, the  
15 German -- or the English on the sea and the Germans  
16 in the air, referring to their philosophical  
17 commitment. So you just stay up there for a moment  
18 with me. When we talk about the volatility  
19 mitigation, can you describe at a 30,000-foot view  
20 what your revision was?

21 A. In general, the volatility mitigation  
22 was to cap and defer for later recovery changes in  
23 costs being recovered through the fuel rider at  
24 4 percent, and I believe what Mr. Byrne said and what  
25 Mr. Lyons will be able to testify to by rate class.

1           Q.       And explain briefly in your concept of a  
2   30,000-foot view, please, how that cap would work.  
3   You referred to it as a deferral mechanism. Explain  
4   real quickly.

5           A.       Well, to the extent that any fuel cost  
6   would exceed that 4 percent cap, then, say, if fuel  
7   costs would go up 4 and a half percent, or the rate  
8   would be -- that 50-basis-point difference would --  
9   would then be recovered over some future period to  
10  reduce the potential volatility to customers. In  
11  terms of what that period would be, I think you'd be  
12  better served asking Mr. Lyons.

13                   But -- but the important point --  
14  difference between a cap and a cap-and-defer is a cap  
15  says that -- that the amount over 4 percent is never  
16  recovered. What we are discussing, and which I  
17  believe was discussed and reflected in the rules, was  
18  that that incremental amount would be recovered over  
19  some future period.

20                   MR. CONRAD: Your Honor, subject to, as  
21  the witness indicates, some more detailed analysis of  
22  the proposal, that's really all we can -- I can't go  
23  below 30,000 foot, so we've pretty much got to stay  
24  at that level. And that would be, then, all that I  
25  have for this witness at this time.

1 JUDGE WOODRUFF: Okay.

2 MR. CONRAD: Thank you.

3 JUDGE WOODRUFF: Then for the State?

4 MR. MICHEEL: No questions.

5 JUDGE WOODRUFF: Public Counsel?

6 MR. MILLS: Yes.

7 CROSS-EXAMINATION BY MR. MILLS:

8 Q. Mr. Baxter, this is a preliminary  
9 matter, and I don't mean this to be in a derogatory  
10 way, but is the -- is the testimony in your  
11 surrebuttal about the fuel adjustment clause  
12 essentially a repeat of what other witnesses talk  
13 about in their surrebuttal testimony in more detail?

14 A. Yes. Principally, Mr. Lyons in  
15 particular has the majority of that, that is correct.  
16 I mean, of course, there are some policy issues but I  
17 think Mr. Lyons echoes those as well.

18 Q. Okay. So generally, you're summarizing  
19 what the other witnesses have talked about in their  
20 testimony on the fuel adjustment clause in the  
21 surrebuttal rather than making unique proposals in  
22 yours that aren't in theirs; is that correct?

23 A. I don't believe I'm take -- making any  
24 unique proposals, but just what's contained in their  
25 testimony. To the best of my knowledge, subject to

1 my attorneys stating other ones.

2 MR. LOWERY: I think that's correct.

3 THE WITNESS: Thank you.

4 MR. MICHEEL: Are you testifying now?

5 BY MR. MILLS:

6 Q. On page 2 of your surrebuttal  
7 testimony --

8 A. Thank you.

9 Q. -- line 18. In what sense do you use  
10 the word "necessary" there? I'm sorry. Line 8.

11 A. Okay. Thank you. To make sure I -- the  
12 context is that we believe an FAC is both appropriate  
13 and necessary for AmerenUE, and so in the context  
14 that we believe it's necessary for AmerenUE is to  
15 have the ability to fully recover our prudently  
16 incurred fuel and purchased power cost.

17 Q. Okay. So you don't -- you're not  
18 testifying that it's necessary for UE to earn a  
19 sufficient return on its investment in Missouri; is  
20 that correct?

21 A. Well, certainly it is important for us  
22 to earn a sufficient return on our investment in  
23 Missouri. That's what this case is all about.

24 Q. Is it necessary for you to earn a  
25 sufficient return on your investment in Missouri?

1           A.       In my opinion it is, yes.

2           Q.       So if you don't get a fuel adjustment  
3 clause in this case in the future, you will not be  
4 able to earn a sufficient return in Missouri; is that  
5 your testimony?

6           A.       That is certainly a strong possibility.

7           Q.       Well, necessity doesn't imply a  
8 possibility in my mind; necessity means it's  
9 absolutely necessary and required. Is it absolutely  
10 necessary and required for you to have a fuel  
11 adjustment clause in order to be able to earn a  
12 sufficient return on your Missouri investment in the  
13 future?

14                   MR. LOWERY: Objection, that's  
15 argumentative.

16                   JUDGE WOODRUFF: Overruled.

17                   THE WITNESS: I believe it is.

18 BY MR. MILLS:

19           Q.       I'm sorry. I didn't hear you.

20           A.       I said I believe it is.

21           Q.       Now, you had some testimony yesterday  
22 about your earnings in the recent past; for example,  
23 the years 2003, 2004 and 2005. In those years did  
24 you earn a sufficient return on your investment in  
25 Missouri?

1           A.       Yes, we did.

2           Q.       How about 2006?

3           A.       I would say that we earned an  
4   insufficient return on our investment.

5           Q.       Okay. And was the insufficiency due to  
6   the fact that you did not have a fuel adjustment  
7   clause?

8           A.       In part.

9           Q.       And how big of a part was that in 2006?

10          A.       I don't recall specifically how much  
11   our fuel cost rose, but it was in the tens of  
12   millions of dollars, '05 to '06.

13          Q.       And just so that I'm clear on what  
14   your testimony is, you believe that there is no  
15   other way for you to earn a sufficient return on  
16   your Missouri investments other than the Commission  
17   granting you a fuel adjustment clause in this  
18   case?

19          A.       Given the -- the rising fuel costs that  
20   we foresee, that we know about in the future,  
21   absolutely we believe we need a fuel adjustment  
22   clause.

23                   MR. MILLS: Thank you.

24                   JUDGE WOODRUFF: And for Staff?

25                   MR. DOTTHEIM: No questions.



1 JUDGE WOODRUFF: All right. We'll come  
2 up for questions from the bench, then, beginning with  
3 Commissioner Murray.

4 QUESTIONS BY COMMISSIONER MURRAY:

5 Q. Good morning, Mr. Baxter.

6 A. Good morning, Commissioner.

7 Q. This may be a question that would be  
8 more appropriate for Mr. Lyons and if so, just tell  
9 me, please.

10 A. Certainly.

11 Q. But can you indicate how this revised  
12 proposal with the netting of off-system sales and the  
13 cap of 4 percent compare with the company's ability  
14 or lack of ability to recover fuel cost increases up  
15 to 4 percent currently?

16 A. Commissioner, I'm trying to make sure I  
17 under -- understand the question. Currently, under  
18 current ratemaking, any increases in fuel costs  
19 during an -- in between rate cases, we simply absorb  
20 all those increases in fuel costs.

21 Q. But at the same time, you have the  
22 off-system sales that are in the current -- in this  
23 proposal would be netted against your ability to  
24 recover an increase. So if you're only talking about  
25 an increase of up to 4 percent, can you make any

1 comparison there or not? It may be too complicated  
2 to ...

3 A. Well, are you asking me, Commissioner,  
4 whether we believe the change in our net fuel costs  
5 when offsetting -- when reflecting off-system sales  
6 against fuel, whether we will hit that 4 percent cap?

7 Q. No, I'm not -- I don't think that's what  
8 I'm asking you, because -- and maybe I should just  
9 leave the 4 percent out of it altogether since the  
10 proposal is that that be recovered but over a  
11 deferral --

12 A. That's correct.

13 Q. -- for a period.

14 A. It's not a cap, it's a cap and deferral.  
15 You're correct, Commissioner.

16 Q. So let's just leave the 4 percent out of  
17 it and say -- and I realize there's a sharing  
18 mechanism for the off-system sales included as well.  
19 So depending on what level of off-system sales you're  
20 talking about, the numbers would change. But assume  
21 the off-system sales are below the threshold level of  
22 what is 183.

23 A. Correct. That number, I believe, as I  
24 stated yesterday, based upon revisions to  
25 Mr. Schukar's testimony, is somewhere now, I believe,

1     between 200 and 205 million, Commissioner.

2           Q.     Okay. All right. Assume the off-system  
3     sales are below that amount but you have fuel  
4     increases of whatever percentage, fuel cost  
5     increases. How would the recovery differ under this  
6     proposal versus currently? And I'm talking about  
7     considering off-system sales as well as --

8           A.     Well, under currently, if -- if we had  
9     a -- if there's an amount established in base rates  
10    for fuel and off-system sales, if our fuel costs  
11    rose, obviously under current, we would -- we  
12    would -- we would not -- we would under-recover, we  
13    would have a net impact on our cash flows and  
14    earnings as a result of that.

15                   And similarly, if we had an amount  
16    established in base rates for off-system sales and  
17    ultimately what we're able to achieve for off-system  
18    sales was less than that, then, too, we would -- we  
19    would not recover, we would actually have a  
20    shortfall.

21                   Under our existing proposal if that  
22    would both be the case, we would have the -- we  
23    would -- we would recover the increase in fuel costs  
24    as -- well, the net -- our current proposal is a net  
25    fuel number, and so we would recover the -- the --

1 the net increase in our net fuel cost.

2 Q. Okay. And I'm still a little confused  
3 and it's probably just me. But if -- right now --  
4 and I guess maybe that's where some of my confusion  
5 comes in too, is the current treatment of off-system  
6 sales. Can you summarize how the current treatment  
7 of off-system sales differs from your proposal here  
8 for treatment of off-system sales in connection with  
9 the fuel adjustment clause?

10 A. Commissioner, can I ask a clarifying  
11 question? Are you speaking to our original proposal  
12 in this case or are you speaking to our operations as  
13 they stand just today?

14 Q. The operations as they stand today.

15 A. Okay. As our operations stand today, of  
16 course, with all the black box settlements that we've  
17 had over time, it's not particularly clear just  
18 exactly what level of off-system sales may be in base  
19 rates.

20 Q. Okay.

21 A. And so that -- so that is really the --  
22 a fundamental -- if you had -- if you knew exactly  
23 what that would be, then to whatever extent that  
24 off-system sales would be above or below the amount  
25 in base rates, then that would have a one-for-one

1 relationship to what it would be in your cash flows  
2 or earnings.

3 COMMISSIONER MURRAY: Okay. I think I'm  
4 gonna pass for now. Thank you.

5 THE WITNESS: Sure, Commissioner.  
6 You're welcome.

7 JUDGE WOODRUFF: Mr. Gaw?

8 QUESTIONS BY COMMISSIONER GAW:

9 Q. Good morning.

10 A. Good morning, Commissioner, how are you?

11 Q. Fine, thank you. Explain your latest  
12 proposal.

13 A. Sure. Our latest proposal basically  
14 nets off-system sales against fuel costs. And so  
15 basically we -- we -- we change, then, as the net  
16 fuel costs, whereas before our original proposal was  
17 that we're gonna recover all of our prudently  
18 incurred fuel and purchased power costs. And then we  
19 had a separate mechanism for off-system sales outside  
20 the fuel adjustment mechanism. What we've done now  
21 is, in response to many concerns by the consumer  
22 groups, we are now netting our off-system sales  
23 against our fuel costs.

24 And then prospectively should then --  
25 then what we do is we monitor how net fuel costs

1 change from period to period. And to the extent --  
2 and we know today that fuel costs are rising. And so  
3 what we -- so what we have done is to try and address  
4 that particular issue as to the extent that net fuel  
5 costs -- well, we have a sharing mechanism to the  
6 extent that we can drive net fuel costs lower. Then  
7 we will have those net fuel costs shared between  
8 ratepayers and shareholders. But only -- and only to  
9 the extent that first we offset the known increases  
10 in fuel costs from period to period.

11               So if we know today that our fuel costs  
12 next year as an example are going up \$50 million, net  
13 fuel costs, what we first must do as a company under  
14 this new proposal is offset, through operations,  
15 through off-system sales, through better productivity  
16 from our power plants, we first must offset that  
17 \$50 million first, and all that flows dollar for  
18 dollar back to ratepayers.

19               Once we get beyond that particular --  
20 once we offset that 50 million to the extent we can,  
21 then there is a sharing mechanism which is set forth  
22 in Mr. Lyons' testimony that says how net fuel costs  
23 beyond that number that I just referred to are shared  
24 between ratepayers and shareholders.

25               Q.       Let's back up one more time. You said

1 something about initially -- give me your scenario  
2 again, how many -- how many dollars in you said net  
3 fuel costs for a particular year, how many dollars?

4 A. 50 million.

5 Q. 50. What -- what do you mean net? What  
6 does that mean?

7 A. Well, let me -- let me restate that.  
8 What I'm -- what I'm saying, Commissioner, is that --  
9 and out of this case you establish a net fuel cost  
10 number, a baseline number, okay?

11 Q. Baseline number --

12 A. With off-system sales, that's fuel and  
13 purchased power cost minus off-system sales.

14 Q. And that -- and what happens with that  
15 number in your proposal?

16 A. That becomes sort of the baseline for --

17 Q. Does that go into base rates?

18 A. That would become the base for which  
19 off-system -- I don't know if that really goes into  
20 base rates or if it's based upon which off-system  
21 sales -- probably -- you know, I'd want to make sure.  
22 Mr. Lyons -- I'd probably want to make sure. He's  
23 probably -- in terms of how this works in the tariff.  
24 I don't want to muck that up.

25 Q. You're not sure where it would go?

1           A.       I don't know if it's in base rates or if  
2   it's part of the baseline for the fuel adjustment  
3   mechanism.

4           Q.       That does -- does make it a little --  
5   I'm violating our rule here, evidently, by having my  
6   phone on. Let me fix that. Now --

7           A.       And from --

8           Q.       -- you're not sure whether it goes in  
9   base rates or not, so I'm having a little difficulty  
10   understanding what -- what the proposal is if you  
11   don't have -- have -- can't tell me that basic part  
12   of the -- of the program.

13          A.       Well, I guess what I was trying to  
14   explain to you, Commissioner, is how it was gonna  
15   work from a -- a -- as Mr. Conrad said, a 30,000-foot  
16   level. But Mr. Lyons would certainly be able to  
17   explain to you specifically how that would work  
18   through the -- through the tariff.

19                   What I was trying to articulate to you  
20   is how the mechanism would work once the baseline  
21   number was established.

22          Q.       Well, let's assume that there is this  
23   baseline number which is some sort of a number that  
24   is based on what, some historical figure or that  
25   you've already identified of what sales -- net sales,



1 off-system sales were and what fuel costs were in a  
2 particular year?

3 A. As a result of this case, it would be --  
4 it would be -- and specifically the fuel and  
5 purchased power costs that are determined would be  
6 appropriate for this case as well as the off-system  
7 sales margins.

8 Q. All right.

9 A. So that will be --

10 Q. Do you have that number as a part of the  
11 proposal?

12 A. Yes, we do.

13 Q. What is that number?

14 A. I do not know that specific number.

15 Q. All right. Where did that number come  
16 from?

17 A. That number came from the testimony of  
18 our witnesses in this case. That would include  
19 witnesses Mr. Neff, Mr. Schukar, as well as Mr. Lyons  
20 who summarizes that.

21 Q. But you don't know what historic period  
22 or what projected period that -- that base net number  
23 came from?

24 A. It came from --

25 Q. I'd have to ask them or --

1           A.       Well, it would -- the number came from  
2     the testimony presented in this case which included  
3     the June 30 test year updated for known and  
4     measure -- measurable items.

5           Q.       Okay. And then you're suggesting that  
6     there's some sort of a sharing of whatever occurs  
7     over and above that figure that's put in some sort of  
8     a baseline?

9           A.       To the extent that there are -- that you  
10    have your net fuel costs and fuel costs which we know  
11    are going to rise, my point was that only to the  
12    extent --

13          Q.       Your testimony --

14          A.       -- excuse me.

15          Q.       Your testimony is that they're going to  
16    rise, let's just say that.

17          A.       That's correct.

18          Q.       Okay.

19          A.       And I believe the Staff witness in this  
20    case has stated the same.

21          Q.       Keep going. I want to -- I want to  
22    understand --

23          A.       Sure.

24          Q.       -- what you're saying. Go ahead.

25          A.       So what I'm saying is that over this net

1 fuel cost number, to the extent that we are able to  
2 lower our net fuel costs below the baseline number,  
3 then there would be some level of sharing. My point  
4 was, was that we know that from beginning even in  
5 2008 that our fuel costs are rising.

6 And so if, say, they are rising \$50  
7 million before, my point was before we would be able  
8 to share anything, we first have to offset that  
9 entire \$50 million to get back down to the baseline,  
10 and therefore beyond that baseline that we would  
11 share. And so ratepayers would benefit to the extent  
12 that we would improve our operations for that \$50  
13 million.

14 Q. What's the sharing mechanism, the  
15 percentage?

16 A. It's set forth in Mr. Lyons' testimony.  
17 I do not have that with me.

18 Q. You don't know?

19 A. It is tiered over several tiers, but he  
20 would be able to go through that in more detail with  
21 you.

22 Q. Your off-system sales figures in  
23 comparison to the -- to your fuel costs, how do they  
24 net historically?

25 A. In terms of changes you mean?

1 Q. No. In terms of absolutes generally.

2 A. Well, we certainly have net fuel costs.  
3 Our off-system sales do not -- margins do not exceed  
4 our net fuel costs.

5 Q. How close are those figures?

6 A. I don't know honestly, Commissioner. We  
7 can get that information for you, though.

8 Q. You don't even have a ball park for me?

9 A. No, I would not like to venture a guess.  
10 Mr. Lyons may be able to address that for you.

11 Q. The off-system sales figures for sales  
12 to affiliates of UE, how are they calculated in your  
13 proposal?

14 A. Commissioner, I'm not sure we have in  
15 our proposal off-system sales to affiliates.

16 Q. Really? So are they -- are they not  
17 counted as off-system sales?

18 A. I don't believe we have any that are  
19 made to an affiliate from AmerenUE.

20 Q. Historically have you not had sales of  
21 energy produced by UE to affiliates of UE?

22 A. That -- if you're speaking in connection  
23 with the joint dispatch agreement, yes, but that --  
24 that has now gone away and is not reflected in our  
25 proposal. We assume the joint dispatch agreement has

1     been terminated.

2           Q.     I understand that. But are you saying  
3     because there is no JDA, there are no -- no sales  
4     from UE to Ameren affiliates?

5           A.     To the best of my knowledge, no. But  
6     Mr. Schukar, who -- who is over Ameren Energy, would  
7     know whether there are any off-system sales to  
8     affiliates.

9           Q.     Why would there not be any sales to  
10    affiliates if there had historically been sales in  
11    the past under the JDA?

12          A.     In the past under the JDA, there were  
13    system energy transfers that happened between the  
14    parties.

15          Q.     Yes. And --

16          A.     So there -- I presume --

17          Q.     Yes, and some sort of incremental cost  
18    under the JDA or something.

19          A.     Yes, it was at cost. I mean, and to the  
20    extent that any of our affiliates need any additional  
21    power, those transactions would both be at market,  
22    whether it be to a third party or to AmerenUE, so our  
23    affiliate would probably be indifferent.

24          Q.     Well, that's why I'm not understanding  
25    why your testimony is that you don't believe there

1 are now any off-system sales from UE to any of its  
2 affiliates at the expiration of the JDA. Is there  
3 some reason why? Is there some rule prohibiting  
4 off-system sales to affiliates?

5 A. Well, I believe under -- well, again,  
6 Commissioner, this is -- this is probably a subject  
7 that you're gonna be better versed to speak with  
8 Mr. Schukar as to how he accesses the marketplace  
9 with the excess generation for AmerenUE. I think he  
10 will be able to give you a complete explanation why  
11 that may or may -- it may be simply that -- the MISO  
12 marketplace in terms of how that functions. But I  
13 would prefer to leave it with -- to him to explain  
14 that.

15 Q. Purchases of energy by UE from  
16 off-system. In other words, purchases of energy that  
17 are not produced by UE but for use by UE?

18 A. Uh-huh, yes, sir.

19 Q. Do you know -- do you know how the trend  
20 is for those purchases if we look back over the last  
21 five -- five years or so? Is it an increasing,  
22 remaining pretty steady, decreasing?

23 A. You know, Commissioner, my sense is that  
24 those purchases vary depending upon maintenance  
25 outages among our systems, especially with Callaway

1 as an example, as it has a scheduled maintenance  
2 outage. So I would think that you'll see some  
3 choppiness just in terms of the volumes as a result  
4 of that. I think that's probably the principal  
5 driver associated with that. And of course, dollar  
6 amounts are going to be impacted by market prices.

7 Q. Sure, but do you know if there are  
8 trends there for Ameren?

9 A. I would -- I understand your question.  
10 I don't know if I could speak directly to trends in  
11 terms of what they've done over the last five years.

12 Q. And those would be included in your  
13 proposal as a part of the -- of the fuel adjustment  
14 mechanism?

15 A. Yes, it's a purchased power cost as  
16 well.

17 Q. So it would be important for us to have  
18 some perspective on how that impacts the overall plan  
19 and proposal, correct?

20 A. Certainly. We -- we reflect certainly  
21 in our testimony all those costs, including purchased  
22 power costs, fuel purchased power, transportation.

23 Q. Who would know the trends on those --

24 A. Probably the best person would again be  
25 Mr. Schukar. He probably works in those markets

1 because he is responsible for purchasing the  
2 necessary power to meet native load needs as well  
3 as -- principally native load needs.

4 COMMISSIONER GAW: That's all I have  
5 right now. Thank you.

6 JUDGE WOODRUFF: All right. Thank you.  
7 Commissioner Clayton, we're having some technical  
8 difficulties with the recording of the process so  
9 we're due for a break here anyway. So if you don't  
10 mind, we'll -- we'll take a break. We'll come back  
11 at 10:25.

12 (A RECESS WAS TAKEN.)

13 JUDGE WOODRUFF: Let's come to order,  
14 please. All right. Welcome back from the break and  
15 we've got our technical difficulties taken care of  
16 and apparently we didn't lose any of the recording.  
17 When we took a break, we were on the bench for  
18 questions.

19 MR. CONRAD: That's a relief.

20 JUDGE WOODRUFF: Yes, I'm sure.  
21 Commissioner Clayton?

22 QUESTIONS BY COMMISSIONER CLAYTON:

23 Q. Hey, Mr. Baxter, you may want to move  
24 over a little bit. It's probably easier for us to  
25 move than to ask the court reporter.



1                   Yesterday I asked some questions about  
2   return on equity, and I want to go back to that just  
3   a little bit because I believe your testimony states  
4   that a fuel adjustment clause is necessary for  
5   AmerenUE to achieve its authorized return. And I  
6   wanted to ask you if you've been able to compile or  
7   have your staff compile any of those numbers?

8           A.       We have not completed that,  
9   Commissioner, I'm sorry. But we can certainly do  
10   that.

11          Q.       Okay. Do you know off the top of your  
12   head what AmerenUE's return on equity -- how many  
13   years back can you go from memory?

14          A.       The best one I can give you with clarity  
15   is the one that we talked about, 2006, and that was  
16   at 9 percent. Beyond that I think I would be --

17          Q.       And that was excluding EEInc?

18          A.       That's correct.

19          Q.       And including EEInc was 10 to 11  
20   percent, I believe is what you said?

21          A.       Yes.

22          Q.       Okay. So in your testimony when you  
23   said it was necessary going forward to have a fuel  
24   adjustment clause, are you basing it purely on  
25   forward-looking numbers or is there a history that

1 supports a fuel adjustment clause is necessary?

2 A. No. It's principally based on  
3 forward-looking numbers as we see -- we know that  
4 fuel costs are rising, and -- as our witness Bob Neff  
5 discusses.

6 Q. Okay. So really it's not your testimony  
7 that a lack of a fuel adjustment clause in the past  
8 has kept AmerenUE from earning its authorized return  
9 on equity?

10 A. That's correct.

11 Q. Okay. Okay. So there's been no  
12 problems in the past, this is purely a  
13 forward-looking exercise in your opinion?

14 A. Yes, Commissioner. I said in my  
15 testimony that conditions have changed and so  
16 therefore we -- we think a -- a -- a -- a new  
17 framework, especially that with a fuel adjustment  
18 clause, is appropriate going forward.

19 Q. Okay. Now, you would agree that  
20 AmerenUE faces less volatility in fuel costs than,  
21 say, a utility that reply -- relies on a significant  
22 amount of natural gas fuel for generation; would you  
23 agree with that general statement?

24 A. Historically, that is -- that is true.  
25 That would be proven to be true.

1           Q.       So you agree with it historically, but  
2 forward-looking do you agree with it?

3           A.       Depending upon what happens with natural  
4 gas prices, again, we do know that fuel costs are  
5 going up and they are volatile -- excuse me, coal  
6 costs are going up and they are volatile. Natural  
7 gas prices, if they follow their historical trend,  
8 are certainly volatile as well.

9           Q.       Now, when you say coal is volatile, do  
10 you mean it is as volatile as natural gas has been  
11 volatile in the last four or five years?

12          A.       You know, I believe -- from my  
13 perspective I don't believe it has been, but our  
14 witness Bob Neff probably could address that a little  
15 bit more, because I know in his testimony he  
16 addresses volatility of coal and related  
17 transportation, and perhaps it may be similar.

18          Q.       So when you say that -- in your  
19 testimony that volatility in fuel prices requires a  
20 fuel adjustment clause, you're relying on your  
21 experts from Ameren, it's not based on your own --  
22 your own knowledge of what fuel costs are?

23          A.       Well, it certainly is based upon my  
24 knowledge of the marketplace, but certainly I rely  
25 more on our experts from Ameren.

1           Q.       Okay. Explain to me why a -- well, let  
2 me ask the question this way: Are you aware of  
3 Ameren's fuel purchasing practices?

4           A.       I am.

5           Q.       Okay. And are you aware, for example,  
6 on coal, how far into the future does Ameren make  
7 purchases of coal, either on paper or however it's  
8 done?

9           A.       I'll give it the appropriate level.  
10 Mr. Neff will be able to address it in the specifics,  
11 but generally --

12          Q.       You keep saying "the appropriate level."

13          A.       Yeah, that's right. That's right.  
14 The -- it's generally three to five years out is what  
15 we try to contract our coal and related  
16 transportation contracts to the extent that we're  
17 able to.

18          Q.       So has -- has Ameren purchased 100  
19 percent of its coal needs for, say, 2008? Are you  
20 aware of that?

21          A.       It is close to 100 percent. I don't  
22 know if it's exactly 100 percent, but it's above  
23 90 percent.

24          Q.       Is it fair to say 2007, 100 percent is  
25 purchased?

1           A.       That's correct.

2           Q.       Okay. And so 2008 would be near 100

3 percent?

4           A.       (Nodded head.)

5           Q.       How about 2009?

6           A.       Less than that.

7           Q.       Would you say 75 percent or --

8           A.       I would say -- well, there are a couple

9 of things in terms of our coal needs I could say that

10 we've purchased, and I believe it's in the 75 percent

11 range. But the one thing which -- which relates to

12 that is a thing called the diesel fuel adder which

13 is, for all practical purposes, the railroad's

14 version of a fuel adjustment clause, but we --

15          Q.       How is that working out for you?

16          A.       Well, you know, it's added costs and

17 there's volatility --

18          Q.       It's added cost?

19          A.       Absolutely.

20          Q.       Do you consider that rider a

21 consumer-friendly rider?

22          A.       I think we -- we manage within it.

23          Q.       Would you agree that it does add costs

24 that perhaps would be unexpected?

25          A.       Well, to the extent that we try to

1 manage it, we try to hedge it as best we can. We  
2 expect that's part of the deal that we signed up for  
3 and that's what the market dictates.

4 Q. When did the diesel rider actually  
5 begin, or has it been around for many years, are you  
6 aware?

7 A. It has been around for a few years, but  
8 Mr. Neff will certainly be able to tell you the  
9 specifics on that.

10 Q. I just want to go out to 2010. Do you  
11 have any idea what the coal needs would be for -- or  
12 what percentage of coal has been purchased out to  
13 2010, would you estimate?

14 A. My guess is that it would fall off at  
15 least another 20 percent from --

16 Q. 50 to 75, something like that?

17 A. I wouldn't say -- probably closer from  
18 50 to 60, but again, I'll let Mr. Neff give you the  
19 specifics about that. When you get out that far,  
20 that would generally be our practice.

21 Q. Well, would you agree that over the next  
22 four years that it -- that you could -- or I should  
23 say Ameren could come close in estimating its total  
24 coal fuel costs for the next four years?

25 A. No, Commissioner, no. I think that we

1     could -- not when you -- even when we have had -- for  
2     2007 and 2008 you have still -- when you talk about  
3     fuel costs, we could do that, but of course, we  
4     haven't talked about purchased power which has some  
5     volatility. But just dealing with fuel, there are  
6     pieces associated with not just coal and  
7     transportation, but also nuclear that has volatility.  
8     So I think with '07 we certainly have a lot more  
9     certainty, '08 still some, but each year as you go  
10    out it becomes meaningfully less certain.

11           Q.     If we were to look over a four --  
12    four-year period, 100 percent of 2007 -- and I'm  
13    looking totally at coal -- 2007; nearly 100 percent  
14    2008; 75 percent in '09; 50 to 60 percent in 2010.  
15    And then somewhere in there I think the -- well,  
16    maybe we'd have one more year.

17                   Wouldn't it be possible to estimate what  
18    that fuel cost would be? Isn't it possible to  
19    accurately estimate that cost and just put in a base  
20    rate amount for coal purchases if you just look over  
21    a four-year period?

22           A.     Commissioner, are you stating that you  
23    put in a base rate amount and -- and today you would  
24    put in a base rate amount that would accommodate all  
25    those increases?

1           Q.       Well, if I -- if I refer to -- the  
2   four-year, I believe, is the life of a fuel  
3   adjustment clause according to rule and, I think,  
4   statute; would you agree with that?

5           A.       I would.

6           Q.       So I'm looking over a life of four years  
7   and I'm trying to understand why a fuel adjustment  
8   clause is preferable to Ameren than just including a  
9   base rate amount of coal purchases.

10          A.       Well, I think the biggest issue we have  
11   with that is regulatory lag, and that -- that simply  
12   means that even -- even this year we knew -- we  
13   foresaw the meaningful increases in 2007 which, you  
14   know, is probably close to \$100 million, '07/'06.  
15   And working with Staff and others to try and time  
16   that as well as we could to get known and measurable  
17   costs into this year, the fact of the matter is that  
18   our rates will not be put into place until June. And  
19   so from January until June, we are not going to  
20   recover prudently incurred fuel costs.

21          Q.       So when you say "regulatory lag," are  
22   you referring just to the length of duration of a  
23   rate case?

24          A.       Yes, a standard rate case of 11 months,  
25   that's correct. And so similarly, if we -- if we



1 would, say, come right out of this rate case and file  
2 another rate case effective July 1st and we know  
3 today that there are increases effective 1/1/07, if  
4 you headed an 11-month rate case which is typical for  
5 a rate increase, the best we could do is have rates  
6 again put in place in June of the next year.

7               So again, we would eat the  
8 incremental -- incremental costs for all of our fuel  
9 and purchased power and transportation for January to  
10 June, and that is not an effective means to recover  
11 those. That's why in the rising-cost environment  
12 that we see that's now and certainly in the future,  
13 we feel the fuel adjustment mechanism is an efficient  
14 mechanism to address those things as -- as does many  
15 others throughout the country.

16           Q.       Would you agree that regulatory lag  
17 could go both ways; it could benefit Ameren as well  
18 as hurt Ameren?

19           A.       In general, yes, but in this particular  
20 case over the next four years I don't see that  
21 happening with regard to fuel and purchased power.

22           Q.       Okay. It has been stated by Ameren on  
23 several occasions that the fuel adjustment clause  
24 that it is seeking is a consumer-friendly fuel  
25 adjustment clause?

1           A.       Yes.

2           Q.       Would you -- I'm not sure if it's in  
3   your testimony.  It was in the opening statement of  
4   Mr. Byrne earlier today.  Do you agree with that  
5   assessment?

6           A.       I do.

7           Q.       Could you tell me or give me a few  
8   examples of why you think you can identify a fuel  
9   adjustment clause as being consumer-friendly?

10          A.       The -- when we talk about  
11   consumer-friendly -- and I believe it was in  
12   Mr. Lyons' testimony -- we certainly talk about it in  
13   terms of general terms of consumer-friendly and  
14   certainly when you compare it to others around the  
15   country of our fuel adjustment clause as being  
16   consumer-friendly.

17                   And some of the unique aspects of this  
18   fuel adjustment mechanism that was embodied in the  
19   legislation as well as the rules that the Commission  
20   established where, number one, having a rate case  
21   requirement to implement a fuel adjustment clause  
22   which is, you know, indeed, very rare, but even not  
23   just having it at the inception, but also a  
24   requirement to come back in four years later with  
25   another fuel adjustment clause; that's, indeed,

1 unique.

2                   The second thing has to do is that our  
3 fuel adjustment clause is based on historical costs.  
4 Most fuel adjustment clauses, just as our PGA  
5 mechanism is in Missouri, is based on projected  
6 costs. And so therefore, there's always a lag  
7 associated with -- with -- with fuel costs.

8                   Thirdly, this particular mechanism and  
9 the rules and what we have proposed, includes a  
10 volatility-mitigation mechanism. And what that is --  
11 this is what Mr. Conrad was talking about -- that the  
12 cap and deferral, you don't see that in all  
13 jurisdictions. And again, this is to try to mitigate  
14 the potential increases to customers.

15                  Similarly, when you look at the proposal  
16 that we've made today, again, in response to some of  
17 the consumers concerns, over- and under-recoveries in  
18 any particular period are often recovered very  
19 swiftly, that is, perhaps, over the next quarter. In  
20 our particular clause that we're proposing in this  
21 case is that those over- and under-recoveries will be  
22 recovered over 12 months, again, trying to mitigate  
23 the potential increases.

24                  Also in this particular clause as well  
25 as the rules are extensive filing and monitoring

1 surveillance requirements that were -- that came out  
2 of the rulemaking process which I know you're aware  
3 of. Again, this helps consumers to continue to  
4 monitor the performance of AmerenUE as well as keep a  
5 check on us with regard to overearnings should they  
6 believe that that is, indeed, taking place.

7 I'm sure there are others that just  
8 don't come to mind. Mr. Lyons will be able to give  
9 you some more examples, but off the top of my head,  
10 these are -- these are -- these are pieces of our  
11 fuel adjustment clause mechanism which we believe are  
12 very unique compared to others.

13 Q. In general, do you believe this fuel  
14 adjustment clause that's been proposed is more  
15 consumer-friendly than just assigning an amount to  
16 base rates? Which is more consumer-friendly?

17 A. It depends on how you define  
18 consumer-friendly, Commissioner.

19 Q. How do you define it?

20 A. Well, let me tell you, I do believe a  
21 fuel adjustment clause in the long run will benefit  
22 ratepayers. All we are simply doing is recovering  
23 our prudently incurred fuel and purchased power  
24 costs, no more no less. We're just trying to find  
25 an --

1           Q.       I understand -- I understand the purpose  
2 of it, but in terms of a consumer perspective.

3           A.       But from a consumer perspective, as  
4 rating agencies and investors look out and look at  
5 the Missouri regulatory environment, look at the  
6 various utilities in there, the presence of a fuel  
7 adjustment clause is seen as a positive. And so it's  
8 in my view in the long-term, you -- you -- you will  
9 see lower borrowing cost as a result of that.

10                   And I think that's important because  
11 lower borrowing costs are very important now when you  
12 have the utilities in this state and especially  
13 Ameren even over the next five years investing over  
14 \$3 billion back into our infrastructure. And so cash  
15 flows to rating agencies, cash flows to investors,  
16 the timely receipt of cash flows are very important.  
17 And so from that perspective I think it's certainly  
18 consumer-friendly.

19           Q.       As a -- as a consumer of coal, consumer  
20 of diesel power, is it more consumer-friendly to have  
21 the diesel rider on your transportation cost or not  
22 to have it?

23           A.       I think that with regard to the diesel  
24 rider, again, it's what the market bears. There's no  
25 decision and that was --

1           Q.       I'm not gonna get any admissions out of  
2   you at all, am I?  Not at all.  I do want to ask some  
3   serious questions.  You brought up -- brought up  
4   discussion about rating agencies, and is that an  
5   important -- in your opinion is that an important  
6   factor that should be considered by this  
7   Commission --

8           A.       I think --

9           Q.       -- what rating agencies think of the  
10   State?

11          A.       Certainly.  Because they have an impact  
12   on credit ratings which has an impact on your -- your  
13   borrowing cost from debt.

14          Q.       Is -- is a fuel -- fuel adjustment  
15   clause, is this purely a Wall Street or  
16   investor-driven issue?  Is it more important to  
17   people listening from far away than it actually is in  
18   this instance considering your reliance on coal as  
19   opposed to natural gas?  Is that where the emphasis  
20   is coming for a fuel adjustment clause?

21          A.       Well, I guess, Commissioner, the fuel  
22   adjustment clause is a mechanism that's used in  
23   virtually every state in the country, both  
24   restructured and nonrestructured.  So I don't know if  
25   it's sort of being driven by Wall Street.  I think

1 it's because policymakers across the country have  
2 determined that this is an effective and efficient  
3 mechanism for the utilities to utilize.

4           So I wouldn't say -- I mean, certainly  
5 when you think about a fuel adjustment clause,  
6 investors like stability, they applaud it, rating  
7 agencies like stability, they applaud it, and I think  
8 in the long-term that gives you a lower cost of  
9 capital. And so therefore, that is why it ultimately  
10 benefits ratepayers in the long run.

11         Q.       Is there any connection among the  
12 various divisions that issue -- I assume they issue  
13 their own debt between Illinois properties, Missouri  
14 properties. Is there any correlation between each of  
15 those divisions on ratings of the company? Do  
16 they -- do they track each other? For example, if we  
17 take some action in Missouri versus action in  
18 Illinois, do they -- do they drop or go up in the  
19 same mechanism or are they completely separate  
20 entities?

21         A.       Generally speaking, it depends on the  
22 rating agency. Generally speaking, they're  
23 completely separate. And if you look at the ratings  
24 for both S&P and Moody's, they have separate ratings  
25 for the individual utilities in both Missouri and

1 Illinois.

2 Q. Well, after reviewing some of the  
3 newspaper articles in today's paper and recognizing  
4 some significant -- significant issues that Ameren is  
5 facing in the state of Illinois, is the recent  
6 ratings change on the Illinois properties, does that  
7 have any impact on the ratings of the Missouri  
8 properties?

9 A. It -- it -- it potentially could  
10 because -- especially with regard to -- yes, it  
11 potentially could.

12 Q. Has -- has AmerenUE's debt been reduced  
13 because of actions in Illinois?

14 A. Specific for Illinois, no, I don't  
15 believe so, not just principally because of Illinois.

16 Q. Have -- have there been any changes in,  
17 say, the last six to 12 months regarding rating  
18 agencies' treatment of Missouri debt?

19 A. Yes.

20 Q. And what has been -- what has been that  
21 change?

22 A. Just recently they've been downgraded.

23 Q. How long ago did that occur?

24 A. Just last evening Moody's downgraded our  
25 AmerenUE debt.



1 Q. Just last evening it was downgraded?

2 A. Yes.

3 Q. Has Missouri been reduced to junk  
4 status?

5 A. No, it has not.

6 Q. What is our -- what is our level of  
7 rating for the AmerenUE properties right now?

8 A. If -- for the -- the issue of rating I  
9 believe is B double A 1 for Moody's, and it's triple B  
10 for S&P, which is -- the Moody's -- the S&P is two  
11 notches above investment grade, and the -- the Moody's  
12 is one notch above that.

13 Q. How many notches did they fall?

14 A. One.

15 Q. One notch for each of the rating  
16 agencies?

17 A. With regard to S&P, that didn't happen  
18 last evening, but Moody's came down a notch, yes.  
19 And then in there they cited the -- the -- the  
20 challenges facing the company and the cash flows  
21 associated with the company in the rate case.

22 Q. Is that because of the -- just  
23 because -- just because of the questions that were  
24 asked yesterday it got downgraded?

25 A. I don't know if that's what led to their

1 evaluation or not, honestly.

2 Q. Or was that -- do you think that was  
3 purely a connection with what's going on in Illinois  
4 and pending legislation?

5 A. I think that -- no, I think that the  
6 principal downgrade related to their concerns about  
7 the rising cost and cash flows that we're facing in  
8 Missouri, the challenging, as they put it, regulatory  
9 environment that we are facing, the concerns they  
10 have about this existing rate case and recovering  
11 adequate rates to recover our costs in the future,  
12 and then they cite also some of the issues  
13 potentially in Illinois potentially impacting the  
14 Missouri company.

15 Q. So do the rating agencies, are they  
16 setting odds on what we're gonna do? Is that what's  
17 going on?

18 A. I don't know how they -- I mean, they  
19 don't tell us. I mean, I can only read what they  
20 say. But certainly, they are very attuned to what  
21 happens in this hearing room. They are very attuned  
22 to what happens in the Commission's orders, not just  
23 for Ameren but they look at it across the state, very  
24 attuned to what happens in the legislature, and  
25 they're very attuned to what happens in terms of what

1 legislative leaders are doing.

2                   They keep a careful eye. They monitor  
3 daily, especially when you're in the midst of a major  
4 rate case, what happens. And so I don't know  
5 specifically what was discussed in committee, but I  
6 do know that that's what happened.

7           Q.       In Illinois, the committee in Illinois?

8           A.       No, I'm talking about the committee  
9 that -- the Moody's committee.

10          Q.       The Moody's committee, the committee  
11 that makes --

12          A.       Yeah, the Moody's committee, yes.  
13 That's what I was referring to, Commissioner.

14                   COMMISSIONER CLAYTON: Okay. I don't  
15 believe I have anything else. Thank you.

16                   THE WITNESS: Sure, Commissioner.

17                   JUDGE WOODRUFF: Commissioner Appling?

18 QUESTIONS BY COMMISSIONER APPLING:

19          Q.       How you doing this morning?

20          A.       I'm doing well, Commissioner. How are  
21 you?

22          Q.       I think I have a short question, but I  
23 believe that most of it was covered with Commissioner  
24 Clayton's comments. That's on fuel costs. I think  
25 you talked a little bit about the uncertainty of rail

1     transportation costs, coal costs and increase in  
2     nuclear fuel, but what you-all are proposing on the  
3     FAC here, Dr. Proctor made an argument that any  
4     increase in fuel cost would be offset by increased  
5     margins in off-system sales. You read his rebuttal  
6     testimony, I assume?

7             A.       I did.

8             Q.       Okay. What do you have to say to that,  
9     and why?

10            A.       Commissioner, I will -- I will give you  
11     my two cents worth on it, and I encourage you to ask  
12     Mr. Schukar to give his ten cents worth on it,  
13     because he did an extensive analysis of Dr. Proctor's  
14     testimony.

15                    But basically, it is our view that it is  
16     not a given that off-system sales margins will rise  
17     to offset increases in fuel costs.

18                    The simple example -- I try to cite two  
19     simple examples as to why that's the case. We have  
20     growth in our service territory, one and a half to 2  
21     percent every year. And so what that ends up doing,  
22     if you have a set amount of generation which is  
23     available and you have growth to serve your native  
24     load needs, that means that the excess generation  
25     that you normally would have to sell for off-system

1 sales shrinks every year. So while the amount of  
2 generation you have available to sell shrinks every  
3 year, and we know fuel costs are rising, that  
4 phenomena in and of itself says that off-system sales  
5 margins, that's driven by just bulk price and  
6 generation available, is -- is not going to  
7 necessarily offset increases in fuel costs.

8 Similarly, and as Mr. Schukar will be  
9 able to point out even more fully to you, as our  
10 costs for doing business rise, then -- then, of  
11 course, our off-system-sales-margin opportunities  
12 shrink. Our -- our economic generation which is  
13 available shrinks.

14 And so for those two reasons -- and  
15 Mr. Schukar went through several different scenarios,  
16 you know, our view is that it is not an offset and  
17 there are cases where, in fact, that they go in just  
18 the opposite direction.

19 COMMISSIONER APPLING: Thank you. I  
20 think that answers my question on that. Okay. Thank  
21 you.

22 THE WITNESS: Sure. You're welcome,  
23 Commissioner.

24 JUDGE WOODRUFF: Commissioner Murray, do  
25 you have some other questions?

1                   COMMISSIONER MURRAY: I do have a couple  
2 more. Sorry.

3 QUESTIONS BY COMMISSIONER MURRAY:

4           Q.       And it's just -- this one is kind of a  
5 follow-up from where Commissioner Appling was just  
6 inquiring. Part of the Staff's argument is that a  
7 rising -- that argument against the fuel adjustment  
8 clause is that a rising cost is mitigated by the  
9 off-system sales revenue. And as I've been trying to  
10 analyze that, I'm trying to understand how an  
11 increase in the cost for fuel that goes to provide  
12 native load could be offset or mitigated by a  
13 revenue -- by revenue from off-system sales if that  
14 increase in revenue is to recover the increased fuel  
15 cost for the off-system sales.

16                   And -- in other words -- and I think you  
17 just said it in answering Commissioner Appling --  
18 that the margin for off-system sales does not  
19 necessarily increase when the cost for fuel to  
20 off-system sales increases. In fact, it may do the  
21 opposite.

22           A.       I agree with you, Commissioner. That is  
23 exactly what I said. And I think Mr. Schukar would  
24 be able to go through certainly more detail. But you  
25 hit the nail on the head, that is our position.

1           Q.       Okay. And then it was also argued that,  
2 I believe the State of Missouri in setting out the  
3 five criteria that are being examined to see whether  
4 Ameren meets the criteria for a fuel adjustment  
5 clause, and the second one was cost should be beyond  
6 the control of management.

7                   And it's argued that Ameren has control  
8 over the fuel costs, and my question to you, is  
9 Ameren any different than any other utility in the  
10 state in terms of how much control it has over fuel  
11 cost?

12          A.       No. Commissioner, as you know, it's the  
13 market and Ameren doesn't control the market pricing.  
14 And -- and -- and so certainly, while we can hedge,  
15 that doesn't mean that we can reduce or eliminate by  
16 hedging. All's that potentially does is -- is -- is  
17 lock in what market prices may be. It takes some  
18 price exposure risk off the table, but it doesn't  
19 mean that we have the ability to manage what the PRB  
20 coal companies are going to sell to us, what the  
21 rails are going to sell to us, what we're gonna have  
22 to go over internationally to deal with nuclear fuel  
23 among other things. We can't control that. That is  
24 why we say it's largely a cost that is -- that we  
25 cannot control.

1           Q.       And would you say that is something that  
2 is shared by all of the other utilities in Missouri?

3           A.       I agree, I do agree with that.

4           Q.       All right. And then I wanted to pursue,  
5 if I could, how the EEI, the cancellation of the  
6 EEI -- that may not be the proper way to say it, but  
7 the contract no longer in existence. First of all,  
8 what was the date of the expiration of that?

9           A.       The date of the expiration, I believe,  
10 was December 31st, 2005.

11          Q.       Which was in the test year?

12          A.       It was in -- it was in -- it was -- a  
13 portion of that was in the test year and -- and --  
14 and from a modeling perspective, we have addressed  
15 that issue. We have taken EEI out of the -- out of  
16 the mix as part of our modeling to normalize fuel  
17 costs in this particular case as we similarly did  
18 with the JDA.

19          Q.       Okay. Now, if -- if Ameren had not  
20 filed a rate case but that contract had expired,  
21 would the shareholders have absorbed the difference  
22 in cost for replacement of that power pending another  
23 rate case?

24          A.       Well, the simple answer is -- is -- is  
25 yes, yes. Share -- but the -- you have the increase



1 in market prices that you're selling that power from  
2 EEI, but then again, we're replacing that power from  
3 EEI with higher-cost generation sources. So the net  
4 of those -- I'm not suggesting that they're exactly  
5 the same, but the net is what happens during a rate  
6 moratorium.

7 Q. Okay. Now, on the other hand, if there  
8 had been a fuel adjustment clause in place at the  
9 time, would the added cost have been passed onto  
10 ratepayers just without -- without a rate case?

11 A. It -- I guess, Commissioner, assuming  
12 that, for instance, the -- the -- the mechanism -- we  
13 went through all of the regulatory process and the  
14 fuel costs had been in place, it would have depended  
15 upon the nature of that fuel cost. So it would have  
16 been passed -- those increasing costs would be passed  
17 through to customers.

18 Of course, it may be mitigated by some  
19 of the things that we've talked about. It wouldn't  
20 happen on day one. It would actually take place over  
21 some period of time. Potentially -- unless those  
22 costs, those increased costs could be -- would be  
23 offset by incremental -- by other cost savings from a  
24 fuel perspective but ...

25 Q. So really, with the statement that

1 AmerenUE had a fiduciary duty to protect the  
2 shareholder interest of AmerenUE by not extending  
3 that cost base contract, that ability to protect the  
4 shareholder interest could only exist because the  
5 additional cost of fuel would be paid by the  
6 ratepayers and not the shareholders; is that right?

7 A. Well, Commissioner, I guess the way I  
8 see it is that the EEInc board made that decision.  
9 That was a decision by the EEInc board and AmerenUE  
10 didn't make that decision. It was a decision by that  
11 board.

12 Q. But -- okay. But AmerenUE -- you stated  
13 at some point, and I realize I'm going back to  
14 another issue, but it's -- it's -- to me it's  
15 somewhat interrelated here. I believe you stated  
16 yesterday that AmerenUE had a fiduciary duty to  
17 shareholders?

18 A. It certainly does.

19 Q. And in exercising that fiduciary duty  
20 you did not seek the continuation of the cost base  
21 purchases?

22 A. I guess, Commissioner, it -- it -- it --  
23 it was an EEInc board decision, and so AmerenUE  
24 didn't have a decision to make. EEInc did not extend  
25 the right to AmerenUE to -- to -- to extend that cost

1 base contract. It was not an AmerenUE decision, it  
2 was a decision by the EEInc board. And so AmerenUE  
3 simply didn't have a cost base alternative in the  
4 first place.

5 Q. Is it true that the revenue -- increased  
6 revenue from EEI sales would go only to shareholders  
7 and not to ratepayers? Is that a true statement?

8 A. That -- it would -- that's correct, it  
9 would be a shareholder -- those would be shareholder  
10 returns.

11 Q. Okay. Now, just one last question and  
12 this is -- this is all back to policy which I know  
13 you were on for yesterday, but --

14 A. Happy to address them.

15 Q. -- does -- in your opinion does AmerenUE  
16 have the duty to get the best possible price for fuel  
17 on the ratepayers' behalf?

18 A. Certainly.

19 COMMISSIONER MURRAY: All right. I  
20 think that's all. Thank you.

21 JUDGE WOODRUFF: Chairman Davis?

22 QUESTIONS BY CHAIRMAN DAVIS:

23 Q. Mr. Baxter, going back to Commissioner  
24 Clayton's question, is AmerenUE ring-fenced from  
25 Illinois? Is AmerenUE ring-fenced from Illinois?

1           A.       Commissioner -- excuse me. Mr. Chairman,  
2 ring-fencing is a term of art from a legal  
3 perspective.

4           Q.       Okay.

5           A.       I will say -- so having said, so I --  
6 and I don't want to get into some of the technical  
7 terms, but what I will say is that AmerenUE is what  
8 we call financially quarantined from the -- the  
9 Illinois situation. And what I mean by that is that  
10 AmerenUE has separate credit facilities.

11          Q.       Uh-huh.

12          A.       They do not provide any inter-company  
13 loans to the -- to the Illinois utilities. They have  
14 their own separate debt and they're not obligated for  
15 the debt for any of the Illinois companies. They  
16 issue their own separate debt. And so we have --  
17 again ring-fencing is a term of art, but we have  
18 separated the -- the -- the impacts --

19          Q.       Okay.

20          A.       -- from a legal perspective as best we  
21 can.

22          Q.       So why in your opinion would -- would  
23 Moody's downgrade AmerenUE yesterday?

24          A.       I believe Moody's in their press release  
25 stated very clearly that their concerns are ongoing

1 cash flows associated with AmerenUE, and -- and --  
2 and receiving necessary and adequate rates to address  
3 what they perceive to be rising operating costs for  
4 all of its business, rising capital investments in  
5 its business, and their concerns that there are  
6 parties in this case who are proposing meaningful  
7 rate decreases. And so as a result, they look at  
8 that and they conclude that they believe that  
9 AmerenUE's debt ratings should have been lowered.

10 Q. Mr. Baxter, can you briefly describe --  
11 do you know how rating agencies are compensated?

12 A. I do not know.

13 Q. Okay. Let me ask you this, then: In  
14 your experience, have you ever seen a decision by a  
15 rating agency to downgrade a utility based on a  
16 Commission decision where the Commission didn't get  
17 blamed?

18 A. Mr. Chairman, I'm not sure I understand  
19 the question.

20 Q. Okay. It's real simple. This is a yes,  
21 no, maybe, I don't know question. In your  
22 experience, have you ever seen a decision by a rating  
23 agency to downgrade a utility based on a Commission  
24 decision where in their -- in their review they  
25 didn't blame the Commission?

1           A.       You know, Commissioner, I think that in  
2     rating agencies they would look -- they would  
3     certainly put --

4           Q.       If you had to answer yes, no, maybe or I  
5     don't know to that question, Mr. Baxter, how would  
6     you answer it?

7           A.       I guess I would say maybe.

8           Q.       Maybe?

9           A.       And if I could -- if I could qualify.

10          Q.       Okay. Please elaborate.

11          A.       What I was meaning to say, certainly  
12     they would look at what the Commission's order was,  
13     and if they downgraded solely due to that  
14     Commission's order, then obviously they would look at  
15     the Commission's decision solely. But they would  
16     also look at other factors, they look at other  
17     factors when they consider debt ratings that are just  
18     beyond the regulatory framework.

19                    They look at the political environment  
20     in a state, and they'll look at treatments,  
21     potentially not just that utility, but treatment of  
22     other utilities in the state from a regulatory  
23     perspective as well. So that's -- that's the "maybe"  
24     qualifier.

25          Q.       Mr. Baxter, my impression of rating

1 agencies is that their solution for everything is  
2 give management more money. Tell me -- tell me, do  
3 you think that's an incorrect assumption? It seems  
4 like to me that their solution for bad management,  
5 for mismanagement, for no management, for any  
6 management is just give them more money. And is  
7 that -- is that an unfair assumption?

8 A. Commissioner, I wouldn't suggest that  
9 the rating agencies throughout every rating that  
10 they've made is give utilities more money because  
11 oftentimes rating agencies, when they're holding debt  
12 ratings stable and haven't changed them for some  
13 period of time, are not saying give them more money.

14 However, when they evaluate the cash  
15 flows of a particular entity, they look at the  
16 environment that they're operating within, they look  
17 out ahead to see what they are facing in terms of  
18 capital expenditures, operating costs and the like.  
19 They often do conclude that incremental cash flows  
20 are necessary out of the regulatory framework.

21 And one of the things that they look  
22 very carefully at are cash flows, as you know. And  
23 one of the most important things or one of the key  
24 things that they look at relates to a fuel adjustment  
25 clause mechanism as another thing that is an

1 important aspect in their decision-making.

2 Q. You don't recall what rating S&P had for  
3 Enron immediately prior to their collapse, do you?

4 A. I do not, Mr. Chairman.

5 Q. Okay. In your job, do you follow the  
6 legislatures both here and in Illinois?

7 A. I do.

8 Q. Why do you think the Illinois Senate  
9 would be sponsoring a bill that would somehow hold  
10 ComEd harmless but be punitive towards AmerenUE? Why  
11 would that bill be moving forward in the Illinois  
12 Senate? Can you give us any insight into that?

13 A. I can't read the minds of the various  
14 senators in the state of Illinois. Certainly,  
15 certain senators are concerned about some of their  
16 constituents because of the potential rate increases  
17 that they're seeing. So it's their constituents that  
18 they're trying to protect.

19 With regard to why ComEd is not being  
20 impacted, as you know, there is a House bill in the  
21 Illinois legislature that includes a rate freeze for  
22 both Ameren and ComEd.

23 Q. So I guess that gets back to my  
24 question. You can't offer us any insight as to why  
25 the Illinois Senate would -- would -- would take a



1 contrary position in that, in essence, the bill is  
2 only punitive toward AmerenUE? Is that a -- is that  
3 a fair statement?

4 A. I assume you mean the Ameren Illinois  
5 utilities and not Ameren --

6 Q. Yes, I apologize. The Ameren Illinois  
7 utilities.

8 A. Well, again, Mr. Chairman, I think it's  
9 due to the -- to the various price increases that are  
10 being experienced. Generally speaking in Illinois,  
11 going into the deregulated environment, our rates and  
12 Ameren Illinois utilities were 15 to 20 percent  
13 already below those rates of ComEd -- Commonwealth  
14 Edison.

15 As you know, in the restructured  
16 environment basically our rates are virtually the  
17 same. And so our Illinois customers, because of that  
18 disparity that we started with, because we had lower  
19 rates for over a decade than ComEd, are seeing more  
20 significant rate increases.

21 Similarly, we had some electric space-  
22 heating customers, a fair amount of those over in the  
23 Metro East and other areas that are experiencing even  
24 greater levels of increases because of the rate  
25 design associated with those electric space-heating

1 customers.

2                   So those two factors are causing a lot  
3 of the -- the political rhetoric. And as you know, I  
4 think it really cites the point that I made with the  
5 rating agencies when they watch the political  
6 spectrum and forum. They are taking actions as a  
7 result of simple discussions without actually bills  
8 being passed over in the legislature, as they could  
9 do the same in Missouri as well.

10           Q.       Okay. If this Commission does not award  
11 Ameren a fuel adjustment clause in this case, is it  
12 your position that there's no way through a  
13 combination of depreciation and off-system sales  
14 that -- that Ameren can make up those potential lost  
15 revenues or lost expenses when, I guess, Ameren's new  
16 coal contract would kick in in January 1 of 2008?

17           A.       Commissioner, I'm not sure if I  
18 understand through your depreciation -- I'm not sure  
19 I quite understand.

20           Q.       Well, Ameren -- Ameren's depreciating  
21 out what, roughly 2, \$300 million a year. And I know  
22 it's simultaneously adding plant, but obviously, that  
23 depreciation, you know, the company benefits from  
24 that, does it not?

25           A.       Certainly, but our capital expenditures

1 are far in excess of our depreciation.

2 Q. Okay. And rising off-system -- well,  
3 we've covered the rising off-system sales margins.

4 CHAIRMAN DAVIS: Judge, I think I need  
5 to go in-camera to ask a couple of questions.

6 JUDGE WOODRUFF: All right. At this  
7 point, then, we're gonna go in-camera. Anyone who  
8 needs to leave the room, please do so. And I'll ask  
9 the attorneys to look around and make sure everyone  
10 that's staying can stay.

11 Is the room okay? All right.

12 (REPORTER'S NOTE: At this point, an  
13 in-camera session was held, which is contained in  
14 Volume 16, pages 499 through 505 of the transcript.)

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1 COMMISSIONER GAW: Thank you, Judge.

2 QUESTIONS BY COMMISSIONER GAW:

3 Q. As Commissioner Murray did, I want to  
4 venture a little bit back into yesterday's testimony  
5 partly because we left some items open. First of  
6 all, in regard to the corporate structure, would it  
7 be accurate to say that Ameren Corporation had as  
8 subsidiaries Ameren Energy, Ameren Energy Resources,  
9 Ameren Services, and operating companies as  
10 subsidiaries, Ameren SOCO, Ameren CIPS, Ameren IP and  
11 Ameren UE?

12 A. Commissioner, I believe that's correct.

13 Q. And would it also be accurate to say  
14 that Ameren Energy Resources had as subsidiaries  
15 Ameren Energy Marketing, Ameren Energy Generating and  
16 Ameren Energy Fuels and Services?

17 A. Commissioner, I believe that is correct.

18 Q. All right.

19 A. I'm not sure about Ameren Energy  
20 Marketing -- I take that to be true.

21 Q. Do you have any idea whether or not  
22 Ameren's web site is -- is kept up to date?

23 A. I presume it is generally kept fairly  
24 current.

25 Q. Okay. Is it -- would it be accurate to

1 say that Ameren Energy Generating senior management  
2 includes Alan Kelley as president and Jerry Simpson  
3 as vice president?

4 A. I believe that's the case.

5 Q. Would it be accurate to say that Ameren  
6 Energy Marketing had as president Andrew Serri?

7 A. I believe that's accurate as well.

8 Q. And Don Mosier as vice president?

9 A. I believe that's correct.

10 Q. Would it be accurate to say that Ameren  
11 Energy senior management included Tom Voss as Ameren  
12 executive vice president and chief operating officer?

13 A. This may be one of those situations,  
14 Commissioner, that has changed. As you know, as we  
15 stated yesterday, Mr. Voss is now president and CEO  
16 of AmerenUE so he may still have that title for  
17 Ameren Energy, but his title certainly has changed  
18 and his responsibilities have changed.

19 Q. Well, I'm asking now in regard to Ameren  
20 Energy's senior -- Ameren Energy itself, whether he  
21 is the executive -- is he the vice president of  
22 Ameren Energy, do you know?

23 A. I don't know, Commissioner Gaw, whether  
24 that has changed subsequent to January 1st. If  
25 you're looking at a document that --

1           Q.       I'm looking at something that's off of  
2       your web site.

3           A.       And hence, that's what I was saying.  
4       I'm not sure if the web site has been updated for all  
5       those subsidiaries because of the management changes  
6       effective January 1st. I just don't know.

7           Q.       But at least through January 1st of this  
8       year, he would have been executive vice president and  
9       chief operating officer of Ameren Energy?

10          A.       He was the executive vice president --  
11       he was the executive vice president and chief  
12       operating officer for all of Ameren so I would  
13       presume, then, for Ameren Energy he was in that same  
14       role as well.

15          Q.       Okay. And Shawn Schukar was vice  
16       president?

17          A.       Yes.

18          Q.       Is he still?

19          A.       I believe he is.

20          Q.       And Ameren Energy Resources, was Tom  
21       Voss the executive vice president and chief operating  
22       officer at least through January 1st?

23          A.       I -- I don't know for that specific  
24       subsidiary. Again, I can speak to how he was for the  
25       entire Ameren Corporation, so it's certainly possible

1     that he would have been as well.

2           Q.     You don't -- you don't know what he is  
3     today or who is the -- who is the lead management  
4     official at AER?

5           A.     Yes, that would be Alan Kelley. He's  
6     the president and chief executive officer of our  
7     nonrate-regulated generation which would include AER.

8           Q.     Okay. Well, that is -- okay. Now, wait  
9     a minute. Again, who is that?

10          A.     Alan Kelley.

11          Q.     Okay. He is the president of Ameren  
12     Energy Generating Company, correct?

13          A.     I believe -- I don't know if he still,  
14     again, holds that title. His position -- I'm sorry,  
15     Commissioner.

16          Q.     That's all right. All I have to go with  
17     right now is your testimony, and I was asking  
18     yesterday if you could update this information for me  
19     and it appears that you haven't had time to do that.

20          A.     No, we have not had a chance to do that,  
21     Commissioner.

22          Q.     And your web site -- and all -- and I'm  
23     asking you whether your web site is accurate, and it  
24     sounds like it may not be?

25          A.     I think because of the changes effective

1 January 1st, I don't know if that's entirely accurate  
2 at this point in time.

3 Q. Okay. So we -- we shouldn't be  
4 depending upon things we find in your web site, it  
5 sounds like. Let me ask -- let me ask you this:  
6 Does your web site -- do you know if your web site  
7 contains a map of the generating resources available  
8 to Ameren Energy Marketing?

9 A. I do not know if it does or not.

10 Q. Would it surprise you if on that  
11 web site Ameren Energy Marketing listed as one of  
12 its -- or stated that AEM has the strength of more  
13 than 6,000 megawatts of generating capacity  
14 primary -- primarily located in the state of  
15 Illinois?

16 A. It wouldn't surprise me. I don't know  
17 if the number -- if that number is exactly right but  
18 that is certainly a possibility.

19 Q. Would it surprise you if EEI, Inc. (sic)  
20 was listed as one of the generating resources of  
21 Ameren Energy Marketing?

22 A. That would certainly be a possibility.

23 Q. Is it not accurate to say, Mr. Baxter,  
24 that looking at this from the 30,000-foot level, as  
25 someone said earlier, that what has happened with EEI



1 is that it has moved as a resource of UE and become a  
2 resource of Ameren Energy Marketing as a result of  
3 Ameren's decisions in the last couple of years?

4 A. It was not an Ameren decision, it was an  
5 EEInc decision that changed that -- that contract.  
6 If you're talking about as it relates to --

7 Q. Would it be accurate to say that  
8 Ameren -- that EEI, Inc. has moved from a resource of  
9 UE at least for 40 percent of the -- of the plant's  
10 energy and capacity, to a resource where -- a  
11 resource of Ameren Energy Marketing?

12 A. Commissioner, I'm not sure what you're  
13 referring to as a resource. There was a power supply  
14 contract between EEInc and AmerenUE. That contract  
15 expired.

16 Q. And now -- and now is there a contract  
17 between Ameren Energy Marketing and EEI, Inc.?

18 A. I do believe there is.

19 Q. And what is the -- what is the nature of  
20 that contract?

21 A. Commissioner, as I said yesterday, I  
22 don't know the details of that contract.

23 Q. But you don't dispute that the amount on  
24 your web site now shows EEI, Inc. as -- as a resource  
25 of Ameren Energy Marketing?

1           A.       Commissioner, if you tell me that's what  
2 the web site says, then I'll -- I believe it.

3           COMMISSIONER GAW:   Maybe we should get  
4 this into the record or something, except my copy's  
5 been marked up.   So we'll look at that a little later  
6 if we need to.

7           THE WITNESS:   Sure.

8           JUDGE WOODRUFF:   And EEInc will be a  
9 separate issue later in the hearing, so --

10          COMMISSIONER GAW:   I understand, but it  
11 is wrapped around this issue of available coal  
12 reserves and -- and the impact of volatility of  
13 natural gas on fuel adjustment, so I don't see how  
14 you can separate the two.

15          JUDGE WOODRUFF:   Well, I wasn't implying  
16 that you could.   But you may want -- I was just  
17 saying you could leave it for that point.

18          COMMISSIONER GAW:   Thank you for that,  
19 Judge.

20   BY COMMISSIONER GAW:

21          Q.       Can you tell me the difference in the  
22 generation mix of Ameren with the loss of EEI, Inc.  
23 and the addition of gas-fired generation in  
24 Pinckneyville and -- what's the other one?

25          A.       Kinmundy.

1 Q. Kinmundy --

2 A. The --

3 Q. -- on capacity and energy?

4 A. No, I cannot, Commissioner, off the top  
5 of my head.

6 Q. Either one of them, capacity or energy?

7 A. No, sir.

8 Q. Would it be accurate to say that  
9 Ameren's -- AmerenUE's base -- base load capacity  
10 access has dropped with the expiration of the EEI,  
11 Inc. contract?

12 A. Their base load -- I think the base load  
13 capacity was the same before or after the EEI  
14 contract.

15 Q. You do? Explain that to me, please.

16 A. AmerenUE had ratepaying assets that were  
17 part of the base load capacity. Those same assets  
18 were available before the contract as they were after  
19 the contract.

20 Q. But you lost the access to the capacity  
21 from EEI, Inc. at the expiration of the contract as  
22 UE, didn't you?

23 A. Commissioner, I don't know if that was  
24 capacity. It was simply the power supply agreement.  
25 That power supply agreement went away.

1           Q.       You did not -- UE did not have access  
2   pursuant to that contract to the capacity of --  
3   40 percent of the capacity at EEI?

4           A.       It had a contract for the purchase of  
5   the power.

6           Q.       Isn't that access to capacity?

7           A.       I don't know if I would consider that  
8   access to the capacity.

9           Q.       What would you consider it?

10          A.       I would consider -- it would -- it had a  
11   purchased power agreement.

12          Q.       To utilize up to 40 percent of the  
13   available capacity or how much?  What's the detail of  
14   that?

15          A.       Again, that gets into the specific  
16   contract terms which I think Michael Moehn would be  
17   better suited to answer that, Commissioner.

18          Q.       Well, are you telling me that you --  
19   you're representing that you -- that it is your  
20   opinion that there is no difference in the base load  
21   capacity before and after the expiration of the EEI  
22   contract as far as UE is concerned?

23          A.       That is my opinion.

24          Q.       So you still can access that capacity  
25   like you could before the expiration of the EEI

1 contract; is that what you're telling me?

2 A. I'm not sure I understand your question,  
3 Commissioner. I can still access that capacity?

4 Q. Yes, I guess you must be able to because  
5 you just said that you had the same access before and  
6 afterwards, didn't you?

7 A. I said the base load units -- I guess  
8 what I'm saying, Commissioner, the base load units  
9 that were rate-based units for AmerenUE absent --  
10 well, base load units for AmerenUE were the same  
11 before and after the contract that were in rate base.

12 Q. The owned rate -- the owned assets but  
13 that's not the question I'm asking you. The question  
14 I'm asking you is what access to base load capacity  
15 did AmerenUE have before as compared to after the  
16 expiration of the EEI contract? I'm not asking you  
17 what's in rate base. I'm asking you what access they  
18 had to base load capacity.

19 A. They had the same access to the same  
20 base load capacity before or after that contract with  
21 the assets that were in rate base, and they had a  
22 power supply agreement --

23 Q. I'm not asking you what's in rate base,  
24 Mr. Baxter. I'm asking you what access they had to  
25 the EEI capacity, and your testimony seems to be

1     telling me that it's the same before and afterwards,  
2     and I am having difficulty reconciling that.

3           A.       Commissioner, I think we may -- I'm  
4     not --

5           Q.       If I'm using the wrong terminology, then  
6     please correct me.

7           A.       Maybe we're talking by each other. All  
8     I'm simply saying, if there was a contract that  
9     EEI -- excuse me, that EEInc had between them and  
10    AmerenUE, and -- and how you define that, whether  
11    it's access to capacity or not, that -- that to me  
12    ultimately is probably more of a legal determination,  
13    or certainly I'm not the expert to -- to address  
14    that. I'm simply saying that that contract was  
15    between EEInc and AmerenUE and that contract expired.

16          Q.       That's -- that's the point of  
17    demarcation that my question revolves around, is the  
18    expiration of that contract. Before the expiration  
19    of that contract, did UE not have access to capacity  
20    from EEI?

21          A.       Commissioner, if that ultimately is a  
22    legal determination or someone who is more expert,  
23    then perhaps we should defer to them.

24          Q.       I don't think it's an expert question or  
25    it would be difficult for me to ask it. What is

1 the -- did not AmerenUE have access to energy  
2 generated from the EEI unit before the expiration of  
3 that EEI contract?

4 A. Again, Commissioner, it gets to the  
5 specifics. I'm not trying to be difficult. I'm  
6 simply saying I'm not an expert in the details of  
7 that contract. If Mr. Moehn would have the ability  
8 potentially to answer that more fully, then so be it.

9 Q. But you did answer it for me or I  
10 wouldn't be pursuing it, and I don't understand your  
11 answer.

12 A. Well, I guess --

13 Q. You gave me an answer, if I understood  
14 you correctly, that said the capacity was the same --  
15 the access to the capacity was the same before and  
16 afterwards, and I -- and I cannot understand how you  
17 could come to that opinion. And now you're telling  
18 me that I need to ask somebody else about how you  
19 came to that opinion.

20 A. No, Commissioner Gaw, I qualified my  
21 statement. I said the base load capacity that was --  
22 the way I understood the question originally -- is  
23 the way I understood it, was that the base load  
24 capacity in rate base for AmerenUE --

25 Q. I have clarified.

1           A.       I know but that's how I answered --

2           Q.       Yes, I --

3           A.       You're saying how I changed my answer.

4           Q.       All right.

5           A.       I haven't changed my answer. That was  
6 the understanding that I had of the question and  
7 that's how I answered it originally. If -- now that  
8 you've clarified your question, that is why I'm  
9 saying you then need to have someone who's more  
10 expert in the terms of the contract.

11          Q.       So the answer, then, that you're giving  
12 me is that you don't know whether the access to  
13 capacity was the same or different before and after  
14 the expiration of that contract?

15          A.       Having understood your question now,  
16 and I misinterpreted that originally, that is  
17 accurate.

18          Q.       It's easy to misinterpret my questions,  
19 but I'm not gonna give up until I get to the -- to at  
20 least having some answer to it. Now, if that's -- if  
21 that's the case, then you're telling me that access  
22 to capacity at EEI, Inc. from your standpoint is a  
23 legal question?

24          A.       Certainly --

25          Q.       Requiring legal expertise?



1           A.       Well, it could require --

2           Q.       Do I understand?

3           A.       My answer is that it could require legal  
4 expertise or somebody who is more expert in the terms  
5 of the contract.

6           Q.       How much energy has UE utilized from  
7 EEI, Inc. subsequent to the expiration of the  
8 contract between EEI, Inc. and UE?

9           A.       Commissioner, I don't know.

10          Q.       Has it used any?

11          A.       Say that again.

12          Q.       Has it used any energy from EEI, Inc.  
13 subsequent to the expiration of the contract between  
14 UE and EEI?

15          A.       Are you talking about AmerenUE?

16          Q.       Yes.

17          A.       I don't know.

18          Q.       Okay. In total how much -- what  
19 percentage of the voting -- let me start over. What  
20 percentage of shares of EEI, Inc. are -- are owned  
21 or -- directly or indirectly by Ameren, the holding  
22 company?

23          A.       I believe that would be 80 percent.

24          Q.       And how -- and again, how are those  
25 shares allocated?

1           A.       Well, there's a 40 percent ownership  
2     interest by AmerenUE, and I believe the other  
3     40 percent ownership interest is under Ameren Energy  
4     Resources.

5           Q.       And the old contracts prior to the  
6     expiration of the contract between UE and EEI, Inc.  
7     how were they divided up as far as energy or capacity  
8     were concerned?

9           A.       I'd prefer you to ask Michael Moehn that  
10    question.

11          Q.       Because you don't know?

12          A.       I don't know for sure.

13          Q.       You don't know at all or you don't  
14    know -- you're not positive or what would -- what  
15    would be the answer that I would --

16          A.       I'm not positive so I prefer to get a  
17    more definitive answer from Mr. Moehn in terms of  
18    those prior contracts.

19          Q.       The shares of stock of EEI, Inc., are  
20    they owned at the same percentage as the voting  
21    rights on the board?

22          A.       I'm -- I'm not certain but I believe  
23    they are.

24          Q.       And so the shares are -- as far as  
25    Ameren is concerned, and I think you may have already

1 said this, but 40 percent owned by UE, correct?

2 A. Correct.

3 Q. 40 percent owned by Ameren Energy --

4 A. -- Resources, I believe.

5 Q. -- Resources. Now, who elects the board  
6 members to EEI, Inc.?

7 A. Commissioner, I don't know.

8 Q. Who knows that?

9 A. Trying to think which witnesses in this  
10 case would be helpful in that regard. The witnesses  
11 potentially would be -- Mr. Moehn or Mr. Naslund  
12 would probably be able to provide some insight on  
13 that.

14 Q. Do you know how often those elections  
15 are held?

16 A. I do not.

17 Q. When you say that there is a fiduciary  
18 duty of the board members of EEI, Inc., to whom is  
19 that fiduciary duty owed -- owed? Excuse me.

20 A. They have a fiduciary obligation to the  
21 shareholders. I think -- I think we had that right.  
22 Yes, I think I understood your question.

23 Q. To the shareholders, correct?

24 A. That's correct.

25 Q. Okay. And those shareholders, again,

1     you've already defined who those shareholders are,  
2     correct?

3             A.       To the best of my knowledge.

4             COMMISSIONER GAW:   That's all I have  
5     right now.

6             JUDGE WOODRUFF:   Thank you.

7             COMMISSIONER MURRAY:   Judge, could I ask  
8     just one more?

9             JUDGE WOODRUFF:   Go right ahead.

10    QUESTIONS BY COMMISSIONER MURRAY:

11            Q.       I just would like to know, in your  
12    opinion is there a difference between access to  
13    capacity and access to energy?

14            A.       Yes.   My understanding -- and again,  
15    Mr. Schukar would probably understand the -- the  
16    contractual terms that -- there are capacity-only  
17    contracts and energy-only contracts in the  
18    marketplace, is my understanding.

19            Q.       And the contract between EEI and UE,  
20    what was that?

21            A.       Again, Commissioner, I think Mr. Moehn  
22    would probably be able to address that better.

23            COMMISSIONER MURRAY:   Thank you.

24            JUDGE WOODRUFF:   Mr. Chairman?

25    QUESTIONS BY CHAIRMAN DAVIS:

1           Q.       Mr. Baxter, if we have questions about  
2 AmerenUE's corporate structure, Ameren's corporate  
3 structure, the structure of any of these alleged  
4 affiliates, who is the most knowledgeable person in  
5 the Ameren system to answer those questions?

6           A.       My sense it would be someone in Steve  
7 Sullivan's organization if not Steve Sullivan  
8 himself.

9                   CHAIRMAN DAVIS: All right. Thank you,  
10 Mr. Baxter.

11                   THE WITNESS: You're welcome.

12                   JUDGE WOODRUFF: All right. We'll go  
13 back to recross based on questions from the bench.  
14 Rather than go down the whole list of people here,  
15 I'll ask does anyone want to ask recross questions?

16                   All right. I believe MIEC would be the  
17 first on the list, so go ahead.

18 RECROSS-EXAMINATION BY MS. VUYLSTEKE:

19           Q.       Good morning, Mr. Baxter.

20           A.       Good morning.

21           Q.       What do you think would happen to  
22 AmerenUE's credit rating if the AmerenUE -- excuse  
23 me, the Ameren Illinois distribution companies were  
24 downgraded or put into bankruptcy, rather?

25           A.       I can't predict, Ms. Vuylsteke.

1           Q.       Okay.  When Entergy Corporation put  
2   Entergy New Orleans into bankruptcy after Hurricane  
3   Katrina, do you know what happened to the ratings in  
4   the other energy operating companies in Mississippi,  
5   Louisiana and Texas?

6           A.       I do not.

7                   MS. VUYLSTEKE:  All right.  Thanks.

8                   THE WITNESS:  Thank you.

9                   JUDGE WOODRUFF:  I believe the State  
10   would be the next on the list.

11   RE CROSS-EXAMINATION BY MR. MICHEEL:

12           Q.       Mr. Baxter, Commissioner Gaw had a  
13   series of questions about your -- your company's new  
14   off-system sales proposal fuel adjustment clause --  
15   clause proposal that showed up for the first time in  
16   your surrebuttal testimony.  Do you recall that?

17           A.       I do recall that.

18           Q.       And that's the first time a proposal's  
19   made, correct, in testimony?

20           A.       In testimony, that's correct.  And  
21   again, as I have said before, it's in response to  
22   intervenors' concerns.

23           Q.       But it's a new proposal; isn't that  
24   correct?

25           A.       It is a new proposal, that's correct.

1           Q.       And under the Commission rules, no other  
2 party has a chance to file any testimony about that  
3 new proposal; isn't that correct?

4           A.       I will leave that to my attorneys to  
5 address that.

6           Q.       Well, let -- let me ask you this:  
7 Setting aside what your attorneys want or don't want,  
8 you wouldn't -- you wouldn't oppose, perhaps, the  
9 State being able to put on maybe a little bit of live  
10 testimony from its witness to explain our view of  
11 that proposal, would you?

12                   MR. LOWERY: I'm gonna object to the  
13 extent Mr. Micheel is asking Mr. Baxter to make a  
14 legal judgment about what is or is not appropriate  
15 procedural --

16                   JUDGE WOODRUFF: I think that's more  
17 appropriately addressed to the -- to the bench.

18                   MR. MICHEEL: Well, I said "putting  
19 aside the legal issues."

20                   JUDGE WOODRUFF: Well, in that case it's  
21 irrelevant what he wants.

22                   MR. MICHEEL: Okay. Well, let me ask  
23 you this, then -- let me ask the judge, then. Are we  
24 gonna get a chance to respond to this?

25                   JUDGE WOODRUFF: I would say yes.

1 MR. MICHEEL: Okay. Thanks.

2 JUDGE WOODRUFF: All right. Public  
3 Counsel?

4 RE-CROSS-EXAMINATION BY MR. MILLS:

5 Q. Good morning, Mr. Baxter.

6 A. Good morning. It is still morning.

7 Q. Yes, it is. Long morning for you, I  
8 take it?

9 A. It has been.

10 Q. In response to some questions from  
11 Commissioner Clayton, you talked about the recent  
12 Moody's downgrade. Do you recall that?

13 A. I do.

14 Q. Do you have any actual knowledge about  
15 what the analysts at Moody's were thinking when  
16 they -- when they downgraded AmerenUE?

17 A. I can simply look at their -- their  
18 statement and that's what I -- that's the best I can  
19 do.

20 Q. Okay. So if their -- if your testimony  
21 on the stand today is different from or expands on  
22 what Moody's statement that was issued last night  
23 says, you'd simply be speculating; is that true?

24 A. Speculating may be too strong a term. I  
25 don't know what happened in committee yesterday, but



1 certainly I've had conversations with Moody's and all  
2 the rating agencies frequently throughout the years,  
3 so it isn't just based on any knowledge. I don't  
4 know what took place yesterday in their committee  
5 meeting.

6 Q. Have you spoken to any analysts in  
7 Moody's since the downgrade?

8 A. No, I have not.

9 Q. Have you spoken to any analysts in  
10 Moody's since the rate case began?

11 A. Yes, numerous times.

12 Q. Have you spoken to any analysts at  
13 Moody's since the hearings began yesterday?

14 A. No.

15 Q. Now, you said that you've spoken to  
16 Moody's analysts many times during the course of this  
17 hearing? Do you know --

18 A. Excuse me, I'm sorry. During the course  
19 of the hearing or during --

20 Q. I'm sorry. In the course of this rate  
21 case.

22 A. Oh, thank you. I just -- I just want to  
23 make sure.

24 Q. Yeah. Do you know where Moody's  
25 generally gets the information on which it bases its

1 ratings?

2 A. It gets it from a variety of sources.  
3 Certainly the company is a source. I think external  
4 sources is one. I think they get sources from the  
5 Commission itself, meaning the orders for other  
6 companies. So they look at a variety of sources in  
7 rendering their decisions.

8 Q. Do you know if they -- during the course  
9 of this rate case, whether they have talked to the  
10 Staff auditors to get information?

11 A. I do not know.

12 Q. Do you know if they've talked to the  
13 UtiliTech auditors to get information?

14 A. I do not know.

15 Q. But you do know that they got  
16 information from you?

17 A. We, in the normal course of business in  
18 or outside of a rate case, we provide information to  
19 Moody's. That's not extraordinary.

20 Q. Now, do you know whether any Missouri  
21 utilities got upgraded when Senate Bill 179 passed?

22 A. I do not know.

23 Q. Did AmerenUE?

24 A. I don't recall.

25 Q. Do you know whether any Missouri

1     utilities got upgraded when Senate Bill 179 became  
2     law?

3             A.       I don't recall. I do not know.

4             Q.       Okay. Did AmerenUE?

5             A.       I -- I don't recall but I don't believe  
6     so.

7             Q.       Do you know whether any Missouri  
8     utilities got upgraded when the Commission  
9     promulgated rules implementing Senate Bill 179?

10            A.       Again, I don't know.

11            Q.       Did AmerenUE?

12            A.       I don't -- I don't believe so but I  
13     don't -- no, I don't believe so.

14            Q.       How about when those rules became  
15     effective?

16            A.       For any utility or AmerenUE?

17            Q.       Any utilities first.

18            A.       Either way?

19            Q.       Either way.

20            A.       That -- AmerenUE did not get upgraded to  
21     the best of my knowledge, and I can't speak for other  
22     utilities.

23            Q.       Now, you had some discussion -- I  
24     believe it was with Commissioner Murray -- on the  
25     cost of coal. Is the cost of coal the same if the

1 buyer wants one ton or one million tons?

2 A. I don't know. I think Mr. Neff would be  
3 the appropriate person to talk to that.

4 Q. Whether the -- whether the buyer wants a  
5 one-year term or a three-year term?

6 A. Speak to Mr. Neff.

7 Q. Okay. Do you know whether AmerenUE  
8 negotiates with coal users?

9 A. Again, to the best of my knowledge, I  
10 believe they do, but Mr. Neff would be able to give  
11 you the best response to that.

12 Q. Are there a number of coal producers in  
13 the U.S.?

14 A. How do you define "a number"?

15 Q. More than one.

16 A. That would be a number. Yes, there are  
17 more than one coal producers in the United States.

18 Q. Do you know roughly how many producers  
19 there are in the Powder River Basin?

20 A. Ask Mr. Neff. He'd probably be able to  
21 give you the best response to that.

22 Q. Okay. Does that mean you don't know?

23 A. I would venture a guess.

24 Q. I don't want you to guess, I want you to  
25 tell me that you don't know or that you do know.

1           A.       I don't know definitively how many coal  
2     producers are in the Powder River Basin. I know  
3     there are more than one.

4           Q.       When you -- when you simply answer "ask  
5     Mr. Neff," that leaves me to wonder whether that  
6     means you don't know, you don't want to answer or --

7           A.       I'm sorry, Mr. Mills. I guess -- I'm  
8     sorry. I understand your question. What I'm doing  
9     is providing the best expert witness from AmerenUE to  
10    respond to your question.

11          Q.       Okay. Do you negotiate prices for  
12    nuclear fuel?

13          A.       Do I personally?

14          Q.       Does AmerenUE?

15          A.       To the best of my knowledge, yes.

16          Q.       Does AmerenUE negotiate rail transfer  
17    prices?

18          A.       To the best of my knowledge, yes.  
19    Again, the best expert for both of those questions,  
20    should you want to pursue it, would be Mr. Naslund  
21    and -- for our nuclear and Mr. Neff for the coal.

22          Q.       Now, when Commissioner Murray asked if  
23    UE had a duty to get the best possible fuel prices  
24    for customers, you hesitated a long time before  
25    answering "certainly." Why the hesitation?

1           A.       I would like to think about it.

2           Q.       Okay.

3           A.       But I think my answer stands as it is.

4           Q.       That wasn't immediately obvious to you  
5   that that's a duty that AmerenUE has?

6           A.       I'm a little slow sometimes, Mr. Mills.

7           Q.       Now, in the resource planning process,  
8   in the past up until the end of 2005, was the output  
9   from the Joppa plant, the output that UE got from the  
10   Joppa plant considered as a supply side resource?

11          A.       I'm sorry, Mr. Mills. Could you restate  
12   the question, please?

13          Q.       Okay. Under the resource planning  
14   process that AmerenUE goes through, up until the end  
15   of 2005 when the power supply agreement expired, was  
16   the output from the Joppa plant to which UE was  
17   entitled considered a supply side -- supply side  
18   resource for UE?

19          A.       I don't recall.

20          Q.       Okay.

21          A.       Mr. Moehn would be able to recall. He  
22   was -- as you know, he's been involved in the  
23   integrated resource plan.

24          Q.       Now, you spoke with Commissioner Gaw  
25   about fiduciary obligations to shareholders. Do you

1 recall that --

2 A. I do.

3 Q. -- those questions? If -- and this  
4 is -- this is a hypothetical question. If a board  
5 member of a company knows that a majority of its  
6 shareholders want a certain outcome, does the board  
7 member have an obligation to try to satisfy that  
8 outcome?

9 MR. LOWERY: Object to the extent it  
10 calls for Mr. Baxter to draw a legal conclusion.

11 MR. MILLS: Well, I'm not asking him for  
12 a legal conclusion, I'm asking for his opinion. This  
13 is -- this is a natural outgrowth of the question  
14 that Commissioner Gaw asked him, and I think I'm  
15 allowed to explore this area because it was opened up  
16 by the bench. If it was objectionable, then I  
17 believe that Mr. -- Mr. Lowery should have objected  
18 to Commissioner Gaw's question. Once this area has  
19 been opened up without objection, I think I'm allowed  
20 to explore it.

21 MR. LOWERY: Judge, I don't believe I'm  
22 required to object to one counsel's question that  
23 makes a later question nonobjectionable just because  
24 an objection wasn't lodged earlier. And if he's  
25 asking Mr. Baxter for his opinion, I don't know what

1 other opinion he could be asking for other than a  
2 legal one.

3 JUDGE WOODRUFF: I believe it's asking  
4 for a legal one and I'll sustain the objection.

5 MR. MILLS: Okay. No further questions.

6 JUDGE WOODRUFF: Okay. Thank you.

7 CHAIRMAN DAVIS: Judge, can I interrupt  
8 and just ask Mr. Baxter one question in follow-up to  
9 one of Mr. Mills' questions? I don't think there  
10 will be any follow-up from this.

11 JUDGE WOODRUFF: All right, then.

12 QUESTIONS BY CHAIRMAN DAVIS:

13 Q. Mr. Baxter, how many -- how many coal  
14 company -- how many coal producing companies are  
15 headquartered in the St. Louis area?

16 A. To the best of my knowledge, I believe  
17 there are at least two.

18 Q. And they would be?

19 A. Peabody and Arch.

20 CHAIRMAN DAVIS: Thank you. No further  
21 questions.

22 JUDGE WOODRUFF: All right. I will  
23 warn -- we'll go ahead with cross-examination -- or  
24 recross from Staff, but I will warn you we need to  
25 break at 12 o'clock for -- for agenda, so I may have



1 to interrupt you.

2 MR. DOTTHEIM: Okay.

3 COMMISSIONER CLAYTON: Judge, can I  
4 ask -- can I ask for one additional piece of  
5 information? I'm not gonna ask any questions, but I  
6 wanted to see, since we do have the CFO available, I  
7 was wondering if he could compile a sheet that would  
8 set out, beginning January 1, 2000, of what Ameren  
9 Corp., the parent company, and AmerenUE's ratings  
10 were, beginning on that day, and then list out all  
11 subsequent changes in ratings with the dates from  
12 both the rating -- or the Standard & Poor's and  
13 Moody's were the two that you referenced today -- and  
14 set out what they started with, with a rating  
15 January 1, 2000, and then any subsequent changes up  
16 to the present.

17 THE WITNESS: Happy to provide that.

18 COMMISSIONER CLAYTON: I don't know how  
19 extensive that is, but I'd appreciate seeing that.

20 THE WITNESS: Happy to do that for you.

21 COMMISSIONER CLAYTON: Thank you.

22 JUDGE WOODRUFF: All right. You may  
23 proceed.

24 MR. DOTTHEIM: I actually have copies of  
25 what appears to be the rating action taken by Moody's

1 Investor Service yesterday. I'd like to have that  
2 marked as an exhibit.

3 JUDGE WOODRUFF: All right.

4 MR. DOTTHEIM: I think that might be  
5 Exhibit No. 255.

6 JUDGE WOODRUFF: 255.

7 (EXHIBIT NO. 255 WAS MARKED FOR  
8 IDENTIFICATION BY THE COURT REPORTER.)

9 JUDGE WOODRUFF: And before you start  
10 again, the chairman has informed me that we'll go  
11 ahead and finish this witness before we go into  
12 agenda.

13 RECROSS-EXAMINATION BY MR. DOTTHEIM:

14 Q. Mr. Baxter, have you had a chance to  
15 take a look at the document that's been marked as  
16 Exhibit 255?

17 A. I have.

18 Q. Okay. That document has at the top  
19 "Moody's Investor Service" in the upper left-hand  
20 corner, and the upper right-hand corner it has,  
21 "Global credit research rating action 12 Mar. 2007,"  
22 and then again on the left-hand margin, "Rating  
23 action, Union Electric Company, Moody's downgrades  
24 Ameren and utility subs, ratings remain on review,  
25 approximately five billion of debt securities

1     downgraded. New York, March 12, 2007." Did I read  
2     that accurately?

3             A.       Yes.

4             Q.       Do you know, is that the information  
5     that you referred to earlier this morning respecting  
6     Moody's downgrading yesterday concerning AmerenUE?

7             A.       Yes.

8             Q.       Okay. And if I could direct you in  
9     particular to the third paragraph on the bottom of  
10    the page, and I'll read the last three paragraphs.  
11    Not everyone has a copy of this document.

12                    "The downgrade of the ratings of Union  
13    Electric is prompted by higher costs at that utility,  
14    lower financial metrics and a continued challenging  
15    regulatory environment in Missouri most recently  
16    illustrated by the Missouri Public Service  
17    Commission, MPSC, Staff's recommendation that Union  
18    Electric's annual electric revenue be reduced between  
19    136 and \$168 million compared to the utility's  
20    request for a \$360 million rate increase.

21                    "Although the MPSC is not expected to  
22    rule on the case until later this year and may come  
23    to a more constructive decision than the Staff  
24    recommendation, the large differential between the  
25    Staff recommendation and utility's request makes it

1 unlikely that AmerenUE will obtain sufficient rate  
2 relief to maintain financial ratios consistent with  
3 its former rating category.

4 "The ratings downgrade reflects  
5 increased cost pressures at Union Electric including  
6 for environmental compliance, coal and coal  
7 transportation costs, transmission and distribution  
8 system and other energy infrastructure investments,  
9 and other expenses that are unlikely to be offset by  
10 sufficiently higher rates, said Haggerty.

11 "The lower rating also reflects Moody's  
12 expectation that Ameren may have to rely more on  
13 Union Electric for upstream dividends if rate freeze  
14 legislation is passed and enacted in Illinois,  
15 severely restricting dividends from the other Ameren  
16 utility subsidiaries. The rating outlook of Union  
17 Electric is negative due to anticipated continued  
18 cost pressures at the utility, the uncertain outcome  
19 of the utility's pending Missouri rate case, the  
20 ongoing uncertainty with regard to its affiliate  
21 utilities in Illinois and their ability of Ameren's  
22 Illinois subsidiaries to provide dividends to the  
23 parent going forward.

24 "The downgrade of parent company Ameren  
25 considers the challenging political and regulatory

1 environment facing the company in both of its  
2 jurisdictions and the importance of the three  
3 Illinois utility businesses to its consolidated  
4 financial profile. The Illinois utilities make up  
5 nearly half of Ameren's total utility business and  
6 any material financial -- financial deterioration of  
7 those subsidiaries is expected to severely limit  
8 upstream dividends to the parent which will increase  
9 the reliance of the parent on Union Electric to meet  
10 parent company interest and dividend obligations."

11 Did I read those three paragraphs  
12 accurately?

13 A. I believe you did, Mr. Dottheim. I  
14 didn't follow you word for word but I believe you  
15 did.

16 Q. Mr. Baxter, I think you also made  
17 reference to Standard & Poor's to a question or  
18 questions from the bench in reference also to  
19 Moody's --

20 A. Yes.

21 Q. -- earlier this morning? And the last  
22 in the way of ratings from Standard & Poor's was a  
23 placing on a credit watch by Standard & Poor's. Is  
24 that what your recollection is as far as --

25 A. I believe that's correct. I'm pretty

1     sure that's the proper term, the credit watch.

2                   MR. DOTTHEIM:   Okay.   I'd like to have  
3     marked as Exhibit 256 a document which is a copy of  
4     the December 8, 2006 Standard & Poor's credit  
5     rating -- ratings direct respecting Union Electric  
6     Company.

7                   JUDGE WOODRUFF:   All right.

8                   MR. DOTTHEIM:   If I may approach the  
9     witness?

10                  JUDGE WOODRUFF:   You certainly may.

11                  (EXHIBIT NO. 256 WAS MARKED FOR  
12     IDENTIFICATION BY THE COURT REPORTER.)

13                  JUDGE WOODRUFF:   Mr. Dottheim, is there  
14     a question out there?

15                  MR. DOTTHEIM:   Yes.   No, I'm sorry.

16     BY MR. DOTTHEIM:

17                  Q.     Mr. Baxter, have you had an opportunity  
18     to review Exhibit 256?

19                  A.     Is that the Standard & Poor's document?

20                  Q.     Yes, I'm sorry.   That is the Standard &  
21     Poor's document.

22                  A.     Yes, I have.

23                  Q.     Have you seen that document before?

24                  A.     Yes.

25                  Q.     Okay.   And it's dated December 8th,

1 2006?

2 A. I believe, yeah. I don't see -- oh,  
3 yes, I see it.

4 Q. And in all fairness, I'll first direct  
5 you to the second page, the third paragraph on that  
6 page which states, "A responsive rate order from the  
7 Missouri Public Service Commission, MPSC, with regard  
8 to UE's pending electric rate case is also crucial to  
9 help sustain current credit quality.

10 In July 2006 UE filed for 360.7 million,  
11 a 17.7 percent rate increase. At the same time UE  
12 asked MPSC to adopt a fuel adjustment mechanism that  
13 would allow the company to recoup fuel and purchased  
14 power costs in a timely manner. A final Commission  
15 decision is expected by June 2007." Did I read that  
16 paragraph accurately.

17 A. Yes, you did, Mr. Dottheim.

18 Q. And I'd also like to direct you to  
19 the -- the next paragraph. "Ameren's weak business  
20 profile of 7 (business profiles are categorized 1,  
21 excellent to 10, vulnerable) results from  
22 increasingly hostile political environment in  
23 Illinois, the challenges" --

24 (OVERHEAD ANNOUNCEMENT.)

25 JUDGE WOODRUFF: Sorry about that

1 interruption.

2 BY MR. DOTTHEIM:

3 Q. "... the challenges of owning and  
4 operating a nuclear facility and the riskier  
5 unregulated generating fleet offset somewhat by its  
6 position as one of the lowest cost producers in the  
7 Midwest, strong transmission ties and limited  
8 industrial exposure. The Illinois Utilities business  
9 risk profiles are also regarded as weak at 8 and  
10 AEGC's business profile is considered a vulnerable 9.

11 "On a stand-alone business" -- excuse  
12 me, "On a stand-alone basis, UE's business profile is  
13 stronger than that of Ameren at a satisfactory 5,  
14 reflecting the absence of the unregulated generation  
15 businesses but encompassing many of the  
16 aforementioned attributes and weaknesses. Union  
17 Electric also has a healthier financial condition due  
18 to a lower debt burden."

19 Mr. Baxter, did I read that accurately?

20 A. Mr. Dottheim, I believe you did.

21 Q. Mr. Baxter, in response to a question or  
22 questions from Commissioner Clayton earlier this  
23 morning, you made reference to the billions of  
24 dollars that AmerenUE in the future will invest in  
25 infrastructure. Do you recall that?



1           A.       Yes, I do.

2           Q.       And those dollars in infrastructure, are  
3 those related to environmental matters?

4           A.       In part.

5           Q.       Okay. As -- as part of AmerenUE's rate  
6 case filing, was part of that filing provision for an  
7 environmental cost rider if the Commission had  
8 promulgated rules addressing the provisions of SB 179  
9 that cover environmental cost recovery?

10          A.       Yes, I believe that's correct.

11          Q.       Is it the intent of AmerenUE to seek an  
12 environmental cost rider once the Commission does  
13 adopt rules consistent with SB 179?

14          A.       Mr. Dottheim, we'll make that decision  
15 once we see what the ultimate rules are.

16          Q.       But it was the company's intent to -- to  
17 propose an environmental cost rider in the presently  
18 pending case if the Commission had adopted rules in  
19 the context of this proceeding?

20          A.       That's correct. We were looking to  
21 potentially pursue that. Obviously, that wasn't the  
22 case so it's kind of a moot point.

23                   MR. DOTTHEIM: Thank you once again,  
24 Mr. Baxter.

25                   THE WITNESS: You're welcome,

1 Mr. Dottheim.

2 JUDGE WOODRUFF: Mr. Dottheim, do you  
3 wish to offer Exhibit 255 --

4 MR. DOTTHEIM: Yes, I'd like to offer  
5 Exhibits 255 and 256.

6 JUDGE WOODRUFF: All right. 255 and 256  
7 have been offered into evidence. Any objection to  
8 their receipt?

9 (NO RESPONSE.)

10 JUDGE WOODRUFF: Hearing none, they will  
11 be received into evidence.

12 (EXHIBIT NOS. 255 AND 256 WERE RECEIVED  
13 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

14 JUDGE WOODRUFF: And we'll go to  
15 redirect.

16 REDIRECT EXAMINATION BY MR. LOWERY:

17 Q. Mr. Baxter, Mr. Mills asked you some  
18 questions about Moody's, I believe, in particular,  
19 and of course Mr. Dottheim asked you some questions  
20 about these credit rating reports for Moody's and  
21 from Standard & Poor's that have been marked and  
22 admitted as Exhibits 255 and 256, and I think you  
23 talked with Mr. Mills about external sources being  
24 one of the sources of data that the credit rating  
25 agencies rely upon; is that right?

1           A.       Yes.

2           Q.       Do you know, could Moody's or Standard &  
3 Poor's for that matter, could they watch the  
4 Commissioner's hearings, for example, from yesterday  
5 and today, could they watch those and use that  
6 information in making their decisions?

7           A.       They certainly -- they certainly can.

8           Q.       Do you know if they have access to the  
9 public filings that are made via the Commission's  
10 electronic filing and information system that they  
11 could use to make decisions about ratings?

12          A.       I have no reason to believe that they  
13 don't.

14          Q.       You were asked some questions by  
15 Mr. Mills about negotiations relating to coal that  
16 the company would obtain or transportation for that  
17 coal or nuclear fuel; do you remember those?

18          A.       I do.

19          Q.       Do you know how much bargaining leverage  
20 Union Electric has over coal and transportation and  
21 nuclear fuel suppliers?

22          A.       No -- my -- my view of that is that is  
23 consistent with the Commissioners and others. I  
24 think Mr. Neff would be absolutely the proper person  
25 to talk about that.

1           Q.       But you don't -- you yourself, you  
2 don't --

3           A.       Personally.

4           Q.       -- really know how much leverage Union  
5 Electric Company does or doesn't have over any of  
6 those --

7           A.       You were asking my opinion, that's  
8 right. No, I don't personally know how much.

9           Q.       Do you know how many railroads are  
10 available to move PRB coal to Union Electric's  
11 plants?

12          A.       I do not know.

13          Q.       Do you know what the Joint Line railroad  
14 is?

15          A.       I know -- I know of the Joint Line  
16 railroad, but I don't know the specifics associated  
17 with that.

18          Q.       Do you know what happens if coal  
19 price -- to coal prices if the railroad has a  
20 disruption in its ability to deliver coal?

21          A.       I can speak to what happened in 2005  
22 when there were disruptions in rails and the coal  
23 prices shot up meaningfully.

24          Q.       Do you know what happens to gas prices  
25 if there are disruptions of gas supplies?

1           A.       Based upon what I've read and seen, they  
2     have -- they go up.

3           Q.       Do you know what happens to energy  
4     prices that affect off-system sales margins or that  
5     affect purchased power costs if those kinds of supply  
6     disruptions in coal and gas were to occur?

7           A.       Energy prices could rise.

8           Q.       Could they become more volatile?

9           A.       Certainly.

10          Q.       Now, I think Mr. Conrad asked you some  
11     questions about volatility mitigation and I think  
12     specifically you talked with him about the 4 percent  
13     cap proposal that Mr. Johnstone had made and that the  
14     company had largely accepted in its -- its latest  
15     proposal?

16          A.       That's correct.

17          Q.       Were there -- are there other -- are  
18     there other volatility mitigation concerns that have  
19     been raised in this case that the company has  
20     addressed?

21          A.       Yes. I believe it was a witness from  
22     the Office of Public Counsel and I believe  
23     potentially Noranda brought up an issue in terms  
24     of -- in any particular true-up period since we  
25     are -- since we're filing for the fuel cost to be --

1 to have adjustment mechanisms three times a year,  
2 there was a concern that -- that if those -- if you  
3 had an under-recovery in any particular time for fuel  
4 costs, that if those were recovered rapidly, say over  
5 the next quarter, that that could have a significant  
6 impact on customers.

7                   And so they requested as part of their  
8 filing that that time period be extended. And what  
9 we've since done is that for any over- or  
10 under-recovery that the recovery of those costs would  
11 be taking place over the next 12 months. So again,  
12 that's kind of a volatility mitigation factor aside  
13 from the 4 percent cap and deferral.

14           Q.       And your understanding is that on that  
15 particular issue, that's what they wanted us to do  
16 and that is what the company's agreed to do?

17           A.       That's correct, in many respects with  
18 the proposals that were made.

19           Q.       I think Commissioner Gaw asked you some  
20 questions about the level of the net fuel costs,  
21 questions along those lines. Do you remember that?

22           A.       I do.

23           Q.       Can you explain your understanding of  
24 how a net fuel cost number is determined and how it  
25 is set in a rate case?

1           A.       It would be set on, I guess, under a  
2     normalized basis, meaning that in terms of  
3     determining fuel costs to off-system sales revenues  
4     in this case, there have been models that have been  
5     run by both the Staff and the company. And basically  
6     objective of the models in all the works and  
7     assumptions incorporated, that would be to determine  
8     a normalized level of fuel costs and off-system sales  
9     revenues to establish base rates. And in this  
10    particular case, it could also affect, then, the -- a  
11    fuel adjustment clause.

12          Q.       So to summarize, is it your  
13    understanding that the Commission openly decides what  
14    the net fuel cost number in base rates is?

15          A.       That's correct.

16          Q.       I think Commissioner Clayton asked you  
17    some questions about fuel costs going forward and if  
18    we know what those are, could we set those in rates  
19    and things along those lines. Do you remember those  
20    questions?

21          A.       I do.

22          Q.       The fuel cost increases that you talked  
23    about with Commissioner Clayton about, are those just  
24    projections or are they based on something? What --  
25    what -- you indicated that the company knows those

1 costs are going up. What is that based on?

2 A. Well, it's based largely on the fact  
3 that, as I believe it was Commissioner Clayton, as we  
4 talked about, that we have already contracted out for  
5 many of those costs. So we do know that costs are  
6 going up in 2008, and we do know that those costs  
7 based upon the levels that we have purchased already  
8 are going up in 2009. And although we are less  
9 hedged in 2010, certainly looking at the market and  
10 knowing what we've already purchased, we expect those  
11 costs to continue to go up even more so.

12 Q. Stated another way, the prices under  
13 those contracts that are signed, those prices are  
14 going up every year?

15 A. That's correct.

16 Q. And is that just for fuel or is it for  
17 other components of what it takes to get fuel to the  
18 plant; transportation, for example?

19 A. Well, that's correct. The statement I  
20 was making to Commissioner Clayton was both fuel and  
21 related transportation, and included in that  
22 potential assessment was also nuclear fuel.

23 Q. Just to clarify, I think, for the record  
24 and for the Commissioners as well, when we talk about  
25 net fuel costs, we're really talking about the



1 commodity cost, the transportation to get that  
2 commodity to the plant, and we also may be talking  
3 about purchased power cost as well, correct?

4 A. That's correct. Basically, our witness  
5 Marty Lyons lays out all of the costs that we're  
6 talking about that would be reflected in the fuel  
7 clause, including the ones that you just mentioned.

8 Q. And if you're netting off-system sales,  
9 you're really talking about net of off-system sales  
10 margins when we're talking about fuel costs, correct?

11 MR. MICHEEL: Your Honor, could you --  
12 could you direct counsel not to lead this witness?  
13 This is -- this is redirect and I've let it go a  
14 little bit because I know we're getting close, but I  
15 don't want it to become a habit. So that's an  
16 objection.

17 JUDGE WOODRUFF: The objection is well  
18 taken.

19 MR. LOWERY: Certainly, your Honor.

20 JUDGE WOODRUFF: Sustained.

21 BY MR. LOWERY:

22 Q. If the company had a fuel adjustment  
23 clause over the past 20 years, do you know what that  
24 would have meant for the consumers?

25 A. Over the past 20 years?

1                   MR. MICHEEL: I'm gonna object, calls  
2 for speculation.

3                   JUDGE WOODRUFF: Overruled.

4                   MR. LOWERY: If you know.

5                   JUDGE WOODRUFF: Overruled. You can  
6 answer the question if you know.

7                   THE WITNESS: Thank you. I believe that  
8 if we had a fuel adjustment clause over the last 20  
9 years ...

10 BY MR. LOWERY:

11           Q.       Well, let me ask it this way: Over the  
12 last 20 years, what have fuel costs been doing from  
13 the perspective of the trend of fuel costs? Have  
14 they been going down, have they been flat, have they  
15 been going up?

16           A.       Mr. Lowery, it probably would depend  
17 upon what period of time that you were looking at. I  
18 believe fuel costs during certain periods of those  
19 times have been going down, and I think it depends  
20 upon if you slice it up in different years you might  
21 get a different conclusion.

22           Q.       Okay. If -- if -- during periods when  
23 they were going down, if a fuel adjustment clause is  
24 in place, do you know what would happen to customer  
25 rates then?

1           A.       Ratepayers would clearly benefit from  
2     that.

3           Q.       I think Commissioner Murray asked you  
4     some questions about fuel costs in the fuel -- fuel  
5     adjustment clause relating to EEInc. What in your  
6     view would have happened if Union Electric would have  
7     said to EEInc that Union Electric wanted to extend  
8     the contract at cost base rates?

9           A.       Could you repeat the question, please?

10          Q.       Sure. What in your view would have  
11     happened had Union Electric Company gone to EEInc and  
12     said we want you to extend that contract to cost base  
13     rate?

14          A.       I think --

15                   MR. MICHEEL: Objection, calls for  
16     speculation.

17                   JUDGE WOODRUFF: Sustained.

18     BY MR. LOWERY:

19          Q.       In your view did UE have an ability to  
20     tell EEInc's board what to do with EEInc's power?

21          A.       No.

22          Q.       I think Commissioner Davis asked you  
23     some questions about the company's budget for 2007;  
24     do you recall those?

25          A.       I do recall that.

1           Q.       Do you know what major base load units  
2   are scheduled to be on extended planned outages in  
3   2007 for AmerenUE?

4           A.       I do not know but I believe Mr. Schukar  
5   certainly does.

6           Q.       Do you know if budgeted costs are  
7   included in the revenue requirement analysis that has  
8   been done in this case by the State and the Staff and  
9   the company?

10          A.       Repeat the question, please.

11          Q.       Do you know if budgeted costs for 2007  
12   have been included in the revenue requirement  
13   analysis -- analyses that have been done by the Staff  
14   and the State and the company in this case?

15          A.       To the best of my knowledge, no.

16          Q.       And do you have an understanding of why  
17   budgeted items are typically not included in the  
18   revenue requirement analysis in a rate case?

19          A.       Because they're -- they're outside of  
20   the test year.

21          Q.       Commissioner Gaw, I believe, asked you  
22   some questions about EEInc and suggested, I believe,  
23   something about 40 percent of EEInc's output being  
24   available to AmerenUE. Do you remember those  
25   questions?

1           A.       I do.

2           Q.       Do you know historically what percentage  
3 of power AmerenUE has taken from EEInc?

4           A.       I believe it has been somewhere around  
5 15 percent.

6                   MR. LOWERY: That's all the questions I  
7 have, your Honor. Thank you.

8                   JUDGE WOODRUFF: Thank you. Then you  
9 may step down.

10                  THE WITNESS: Thank you.

11                  COMMISSIONER GAW: Judge, I may have  
12 some more questions with this witness, especially in  
13 light of his new knowledge that he apparently has  
14 gained in the last few minutes, but I'll wait for a  
15 while before I go back there.

16                  JUDGE WOODRUFF: All right. We're ready  
17 for a break, then. We'll take a break now for lunch  
18 and we'll come back at 1:45.

19                   (THE LUNCH RECESS WAS TAKEN.)

20                   (EXHIBIT NOS. 1, 2HC AND 2NP WERE MARKED  
21 FOR IDENTIFICATION BY THE COURT REPORTER.)

22                   (EXHIBIT NOS. 19, 20 AND 21 WERE MARKED  
23 FOR IDENTIFICATION BY THE COURT REPORTER.)

24                  JUDGE WOODRUFF: Let's come back to  
25 order, please. Welcome back from lunch and the

1     tornado drill. Mr. Byrne, you indicated you had some  
2     discussion you wanted to bring up, so go ahead.

3                   MR. BYRNE: Yes, your Honor. I guess  
4     our first witness this afternoon is Mr. Lyons who's  
5     the sponsor of our fuel adjustment clause testimony.  
6     Some of the parties have asked if our proposal and  
7     surrebuttal testimony is reduced to writing because  
8     the devil's in the details and things like that.

9                   We have reduced our proposal for an FAC  
10    in surrebuttal to tariff language which I have with  
11    me. I guess I would propose to distribute it to the  
12    parties to have Mr. Lyons sponsor it,, but since  
13    the -- but since the other parties haven't seen it  
14    yet, since they don't have it, I would suggest maybe  
15    a good way to proceed is to schedule a time later on  
16    in the proceeding when they could cross-examine  
17    Mr. Lyons about this tariff language. To the extent  
18    Mr. Micheel has asked, you know, for the opportunity  
19    potentially to present evidence in response, we could  
20    do that then as well.

21                  JUDGE WOODRUFF: Do you want to take  
22    Mr. Lyons entirely out of the question for today or  
23    do you want --

24                  MR. BYRNE: I guess I'd prefer to go  
25    ahead since he's here and ready to go and people have

1 prepared for him, I guess I would propose to go ahead  
2 and have him take the stand today, but then he could  
3 come back later on this -- on this tariff language.  
4 But I'm -- I'm open to suggestion, whatever you'd  
5 prefer.

6 MR. MICHEEL: I mean, the only issue  
7 that I have with that is maybe this new stuff takes  
8 away from things that I would ask based on old stuff.  
9 In other words, maybe this clears up some questions  
10 that I have.

11 JUDGE WOODRUFF: Yeah, and it may not be  
12 necessary to do as much cross or maybe additional  
13 cross. I see Mr. Conrad shaking his head in  
14 agreement back there.

15 MR. MICHEEL: I'm willing to proceed if  
16 that's how you rule. But just so you know, there  
17 might be overlap or the answer from -- from Mr. Lyons,  
18 maybe that's taken care of now.

19 JUDGE WOODRUFF: Okay. Well, it looks  
20 like we're probably not going to finish this issue  
21 today. Do we want to just wait for Mr. Lyons and  
22 bring him up tomorrow on that issue? No one's seen  
23 this yet, so I ...

24 MR. BYRNE: Well, I mean, you know, part  
25 of -- part of the concern I have is, you know, the

1 Commissioners -- I mean, this issue's been scheduled  
2 and there may be people who have questions right now  
3 that they want to have answered about the FAC.

4                   And there are other questions and other  
5 issues that aren't really necessarily impacted by  
6 this tariff language, so I guess my preference would  
7 be to proceed, but whatever the -- whatever the judge  
8 wants to do.

9                   MR. CONRAD: We don't have -- for our  
10 part, we don't have any particular objection to what  
11 Mr. Byrne is suggesting which does seem at least an  
12 appropriate -- well, at least a way. There is no  
13 "the way," I was telling somebody earlier. It is a  
14 way to handle this.

15                   I am one who asked for these materials  
16 to be set in writing so we have, you know, instead of  
17 a moving target or something that's somewhat vague.  
18 And most if not all of our areas of potential inquiry  
19 would be directed, as I tried to make clear to the  
20 bench this morning, would be directed to the  
21 structure.

22                   And it's possible -- I don't know,  
23 having not, you know, reviewed this and gone over  
24 with the consultant, Judge, it's possible that that  
25 might obviate a number of questions. It might raise



1 others, and so we might be wasting a lot of time. I  
2 do think Mr. Micheel's point has some merit, though,  
3 that if there are other parties that want to ask the  
4 witness questions about more generic-type issues,  
5 that might be appropriate to proceed. We're -- we're  
6 not trying to be an obstacle here.

7 JUDGE WOODRUFF: I understand. Staff  
8 and Public Counsel, I haven't heard from you. Do you  
9 have a view on this?

10 MR. MILLS: I'm sorry. The choice is do  
11 we go ahead with Mr. Lyons on FAC and then perhaps  
12 come back to him after he has some tariff language  
13 prepared, or do we simply wait and do him later when  
14 he does have tariff language prepared?

15 JUDGE WOODRUFF: That's -- that's  
16 correct.

17 MR. MILLS: I don't have a preference  
18 one way or the other. I'm prepared to go ahead with  
19 Mr. Lyons and recall him later or I can wait, either  
20 way.

21 JUDGE WOODRUFF: Mr. Dottheim?

22 MR. CONRAD: I do think, Judge, that it  
23 probably would be good if -- however it can be  
24 orchestrated, is to get whether this document is --  
25 is admitted, marked, whatever -- excuse me -- it

1 would be nice to at least get it so it's -- so  
2 whatever it is is stabilized so it's not  
3 continuing --

4 JUDGE WOODRUFF: I understand. The  
5 document is ready now; is that right?

6 MR. BYRNE: Yes, your Honor.

7 MR. MICHEEL: And your Honor, I would  
8 just ask that we get more than like one night to look  
9 over a -- what we believe is a complicated tariff.

10 JUDGE WOODRUFF: It may very well be,  
11 and that's why I was asking.

12 MS. VUYLSTEKE: Your Honor, I just  
13 wanted to express our preference that we go forward  
14 with Mr. Lyons today and then pick him up  
15 additionally to ask about the tariff later tomorrow.

16 JUDGE WOODRUFF: All right. That's what  
17 we'll do, then.

18 MR. BYRNE: Okay.

19 JUDGE WOODRUFF: And if you -- if you  
20 need to ask him some questions on direct tomorrow,  
21 get that exhibit marked or the new tariff language  
22 marked as an exhibit, we'll do that too.

23 MR. BYRNE: Okay. Great. Thank you,  
24 your Honor.

25 JUDGE WOODRUFF: All right.

1                   MR. CONRAD: Judge, there was some  
2 discussion earlier, whether it was on or off the  
3 record, I can't recall now. As I -- as I grow older  
4 my mind becomes more blurry. The -- but the question  
5 is that there seemed to be currently nothing either  
6 that was set originally or now the issue that had  
7 been set for Thursday have been ticked off. I don't  
8 know if that's true or not and whether it would be  
9 beneficial to take a moment or two off the record and  
10 let counsel discuss with your Honor if there is a  
11 potential for doing that.

12                   One of our witnesses, Mr. Swogger, is --  
13 is here today and I think was originally scheduled  
14 for Friday, but that was in deference to his time  
15 commitments in the latter part of the hearing that he  
16 had to be out of the state away.

17                   If -- I think it would benefit him if we  
18 could move that, you know -- him up and -- with the  
19 provision that we had in the agreement was that that  
20 would not be done without the consent or knowledge at  
21 least of all parties.

22                   So if there is a potential to use that  
23 time on Thursday, perhaps for Mr. Lyons, that might  
24 address Mr. Micheel's problem with which I certainly  
25 agree, and still allow us to go forward today.

1 JUDGE WOODRUFF: What we'll do is we'll  
2 take a five-minute break, go off the record, the  
3 parties can discuss all these matters amongst  
4 themselves, and when we come back, we'll decide what  
5 to do. So at this point we're off the record.

6 (DISCUSSION HELD OFF THE RECORD.)

7 (EXHIBIT NO. 104 WAS MARKED FOR  
8 IDENTIFICATION BY THE COURT REPORTER.)

9 JUDGE WOODRUFF: All right. We're back  
10 on the record. Did the parties reach an agreement  
11 while we were having that discussion?

12 MR. BYRNE: Yes, your Honor, we did.  
13 Mr. Lyons is gonna go ahead and take the stand and  
14 answer questions on our fuel adjustment clause today,  
15 but then we passed out the proposed tariff language  
16 and he will be available on Thursday also to answer  
17 questions on this tariff language.

18 JUDGE WOODRUFF: Okay. And Mr. Swogger,  
19 what are we gonna do with him?

20 MR. CONRAD: I think there was gonna be  
21 some -- some checking done. It's possible that there  
22 might not even be questions for him.

23 JUDGE WOODRUFF: Okay.

24 MR. CONRAD: I haven't heard from all  
25 parties. We certainly haven't heard from your Honor

1 or the Commissioners, some of whom might have a  
2 question or 14 for him. But we would try to have him  
3 available here on Thursday. He would be here on  
4 Friday per the schedule, but if he could get out  
5 earlier, that would be --

6 JUDGE WOODRUFF: We'll certainly try and  
7 accommodate his schedule as best we can. All right.  
8 At this point, then, I believe we're ready for  
9 Mr. Lyons.

10 (The witness was sworn.)

11 JUDGE WOODRUFF: Thank you. You may  
12 inquire.

13 DIRECT EXAMINATION BY MR. BYRNE:

14 Q. Mr. Lyons, first of all, do you have any  
15 corrections to your prefiled testimony?

16 A. I do.

17 Q. Could you tell me what those corrections  
18 are?

19 A. Yes. On page 24 of my surrebuttal  
20 testimony, lines 20 to 24, I want to strike a  
21 sentence that begins, "Moreover" and ends four lines  
22 later on line 23 at, "Binz," and line 24, strike the  
23 words "purchased power."

24 Q. What page is that on again?

25 A. Page 24 of my surrebuttal testimony.

1           Q.       Okay. Any other changes besides that to  
2 your prefiled testimony?

3           A.       No. No.

4           Q.       Mr. Lyons, do you have the set of five  
5 tariff sheets that has been marked Exhibit 107?

6           A.       Yes.

7                   JUDGE WOODRUFF: Mr. Byrne, I'm looking  
8 at my list. I saw your last exhibit as 103. Was  
9 there something else in between which would be the  
10 Schallenberg deposition?

11                  MR. LOWERY: It should be 104, Tom. My  
12 apologies.

13                  MR. BYRNE: You're correct, your Honor.  
14 It should be 104. Can you mark it as 104? I  
15 apologize.

16 BY MR. BYRNE:

17           Q.       And Mr. Lyons, then, do you have the set  
18 of five tariff sheets that's been marked Exhibit 104?

19           A.       Yes.

20           Q.       And can you tell me what those are?

21           A.       It is a proposed rider to implement a  
22 fuel adjustment clause for AmerenUE.

23           Q.       And did these tariff sheets reflect the  
24 proposal that's contained in your surrebuttal  
25 testimony in this case?

1           A.       Yes, it does.

2                   MR. BYRNE:   Okay.   All right.   Thank  
3   you, your Honor.   I have no further questions.   I  
4   guess I'd offer Exhibit 104 but I realize  
5   cross-examination will be later.

6                   JUDGE WOODRUFF:   All right.   104's been  
7   marked and I'm not gonna ask for objections at this  
8   time but agreement of the parties.   Mr. -- this  
9   witness will be back -- Mr. Lyons will be back on  
10   Thursday for cross-examination regarding this  
11   document.   But we'll go ahead and proceed forward  
12   with other cross-examination at this point.   So for  
13   cross-examination we'll begin with Aquila?   Laclede?  
14   Joint Bargaining Committee?   DNR?   Retailers  
15   Association?   Mo-Kan?   MASW?   MIEC?  
16   CROSS-EXAMINATION BY MS. VUYLSTEKE:

17           Q.       Good afternoon, Mr. Lyons.

18           A.       Good afternoon.

19           Q.       Does the company's latest fuel  
20   adjustment clause proposal include all MISO revenues,  
21   credits and charges except for those under MISO's  
22   schedules 10, 16, 17 and 24?

23           A.       Yes, that is true.

24           Q.       Okay.   Does the company's latest FAC  
25   proposal exclude capacity charges for contracts with

1 terms in excess of one year?

2 A. Yes, it does.

3 Q. Does the company's latest fuel  
4 adjustment clause proposal include revenues from  
5 off-system sales and capacity?

6 A. I believe it does.

7 Q. Okay. Are any off-system sales revenues  
8 or fuel costs excluded from AmerenUE's latest FAC  
9 proposal?

10 A. I'm sorry. Could you repeat the  
11 question?

12 Q. Are any off-system sales revenues or fuel  
13 costs excluded from AmerenUE's latest FAC proposal?

14 A. Only in the nonjurisdictional portions  
15 of those -- those costs and revenues.

16 Q. I'm referring to your surrebuttal  
17 testimony on page 21. Is it correct that it is now  
18 the company's proposal to flow its off-system sales  
19 margin through its proposed FAC?

20 A. Yes, it is.

21 Q. Is it correct that the company proposes  
22 to flow its off-system sales margin through the  
23 proposed FAC by crediting off-system sales revenues  
24 against total fuel costs?

25 A. It is.



1           Q.       Does the company agree that for the FAC  
2   this will avoid the need to allocate fuel cost and  
3   MISO charges between native load and off-system  
4   sales?

5           A.       That is correct.

6           Q.       Is it correct that the company's  
7   proposal for sharing fuel costs, less off-system  
8   sales revenues, is summarized at the table at the top  
9   of page 22 of your surrebuttal?

10          A.       I'm at page 22.  Would you mind  
11   repeating that question?

12          Q.       Sure.  I just want to confirm that that  
13   is the company's proposal for sharing the fuel costs,  
14   less off-system sales revenues?

15          A.       That is correct.

16          Q.       Okay.  Is it correct that the company's  
17   new sharing proposal splits any savings of fuel  
18   costs, less off-system sales, between the company and  
19   ratepayers -- I'm sorry.  Off-system sales margins  
20   between the company and ratepayers?

21          A.       I guess the way I would characterize it  
22   is that what our -- what our sharing grid proposes to  
23   do is to the extent that we reduce net based fuel  
24   cost as compared to the net based fuel costs  
25   established in this case during any true-up period

1 prospectively that, again, to the extent net based  
2 fuel costs were reduced, we would -- the company  
3 would share in those savings as illustrated at the  
4 top of page 22.

5 Q. Okay. So -- so again, just to confirm  
6 that your proposal splits savings in fuel costs, less  
7 the off-system sales margins, it splits those savings  
8 between the company and the ratepayers?

9 A. No, I -- I think that -- well, when I  
10 hear "split" I think of 50/50, and what we're saying  
11 is that to the extent we are able to overcome the  
12 fuel cost increases, let's say, through whatever  
13 measures that to the extent those net based fuel  
14 costs were reduced, then we would share according to  
15 that grid.

16 Q. It's the sharing -- the word "split" is  
17 what you object to, but sharing is --

18 A. Right, yeah.

19 Q. Okay.

20 A. That was my ...

21 Q. And is it correct that under the  
22 company's proposal, 100 percent of any increase in  
23 fuel costs, less off-system sales revenues, will be  
24 assigned to ratepayers?

25 A. Could you repeat that again, please?

1 I'm sorry.

2 Q. Is it correct that under the company's  
3 proposal 100 percent of any increase in fuel costs,  
4 less off-system sales revenues, will be assigned to  
5 ratepayers?

6 A. Less off-system sales revenues, yes.

7 MS. VUYLSTEKE: Thank you.

8 JUDGE WOODRUFF: For the Commercial  
9 Group? MEG?

10 CROSS-EXAMINATION BY MS. LANGENECKERT:

11 Q. Good afternoon, Mr. Lyons.

12 A. Good afternoon.

13 Q. Could you please refer to your  
14 surrebuttal testimony, Exhibit 21? And on page 21 is  
15 where I'd like to start.

16 A. Page 21, okay.

17 Q. Starting at line 11 you state, beginning  
18 in the middle of the sentence, "We adopt  
19 Mr. Brubaker's recommendation to implement the FAC  
20 such that OSS margins are netted against native load  
21 fuel and purchased power costs. The netting of OSS  
22 margins against native load fuel costs will be  
23 achieved simply by crediting total OSS revenue  
24 against total fuel cost (i.e., native load and OSS  
25 fuel cost)"; is that correct?

1           A.       It is.

2           Q.       Is the company no longer offering its  
3 off-system sales sharing mechanism?

4           A.       Are you referring to the --

5           Q.       The original one that you filed in  
6 your -- in the direct case.

7           A.       It is not our primary proposal at this  
8 time. To the extent, you know, the Commission wanted  
9 to rule in favor of that, that -- obviously we'd live  
10 with that, but I think this is -- this is the sharing  
11 proposal that we -- we have made.

12          Q.       Okay. So you've kind of changed your  
13 mind a little?

14          A.       We have moved -- as illustrated in my  
15 testimony, we moved to what we believe to be a  
16 compromised position in reading the rebuttal  
17 testimony of numerous parties and considering the  
18 arguments made, and tried to put forth a fuel  
19 adjustment clause that we believed represented a  
20 compromise.

21          Q.       Okay. What level of off-system sales  
22 revenue is the company currently proposing?

23          A.       I believe the number in terms of  
24 off-system sales revenues is approximately 300 to  
25 \$305 million.

1           Q.       Okay. Mr. Baxter stated in his  
2 testimony earlier that the margin the company is  
3 proposing is 200 to 205 million; is that correct?

4           A.       He did say that and I believe that to be  
5 correct as well.

6           Q.       Do you believe that? Okay. What level  
7 of fuel cost is the -- is the company currently  
8 proposing, the total amount and also the  
9 cents-per-kwh amount?

10          A.       I believe -- you know, obviously through  
11 the course of the case, things -- you know, things  
12 are negotiated and changed to some extent, but I  
13 believe the fuel and purchased power costs are in the  
14 range of \$650 million.

15          Q.       And how much is that on a cents-per-kwh  
16 basis?

17          A.       I don't believe I have the exact number  
18 that goes along with that. The -- in the direct  
19 testimony that we filed that had the majority of our  
20 fuel costs in there in terms of a frame of reference,  
21 we had 1.341 cents per kilowatt hour at that time.

22          Q.       All right. Now, if you could refer to  
23 page 22 of that same testimony.

24          A.       I'm sorry. Could you repeat that?

25          Q.       Page 22.

1           A.       Oh, yes, thank you.

2           Q.       At the top of that page there's a  
3   sharing mechanism that the -- that you -- the company  
4   has proposed. I'm not sure I understand how it would  
5   work, so I'd like to lead you through an example.  
6   Assume that the company has made 350 million in  
7   off-system sales revenue, and the forecast margin is  
8   200 million but the actual margin is now 230 million,  
9   or 30 million more than was included in base rates.

10                   I heard a voice and I was trying to  
11   figure out -- thought I was being called away. Okay.

12                   Furthermore, assume that the company's  
13   fuel costs have not changed. If we net the  
14   off-system sales margins against the fuel costs, then  
15   the fuel costs relative to the normalized test year  
16   level is negative 30 million; is that correct?

17           A.       I'm fairly sure I missed a piece of  
18   information in there. I've got -- I've got  
19   off-system sales --

20           Q.       Okay.

21           A.       -- in the test year, I believe, of  
22   350 million.

23           Q.       Right.

24           A.       Margins in the test year --

25           Q.       -- 200 million.

1           A.       -- 200 million. And then you said  
2 actual off-system sales was --  
3           Q.       Actual margin is 230 million.  
4           A.       Okay. Okay.  
5           Q.       And your fuel costs haven't changed.  
6           A.       Okay.  
7           Q.       If we net the OSS margins against the  
8 fuel costs, then the fuel costs relative to the  
9 normalized test year level is negative 30 million; is  
10 that correct?  
11          A.       Net fuel costs have been reduced by  
12 30 million.  
13          Q.       We net the OSS margins against the fuel  
14 costs, the net fuel costs. Okay. So the net fuel  
15 costs have been reduced by 30 million is what your  
16 testimony is?  
17          A.       Yes, yes.  
18          Q.       Okay. Now, if I look at your sharing  
19 grid, I have calculated for the first ten million of  
20 savings the company will retain 75 percent and the  
21 customers will receive 25 percent or 2.5 million; is  
22 that correct --  
23          A.       Correct.  
24          Q.       -- under that scenario?  
25          A.       Correct.

1           Q.       Okay. For the next 20 million the  
2 company will retain 10 percent or 2 million and the  
3 customers will receive the main -- remaining 90  
4 percent or 18 million. So the company keeps 9.5  
5 million and the customers get back 20.5 million; is  
6 that correct?

7           A.       Could you repeat that question?

8           Q.       Sure. For the first 10 million of  
9 savings, the company retained 75 percent which is 7.5  
10 million, and the customers receive 25 percent or 2.5  
11 million.

12          A.       Uh-huh.

13          Q.       For the next \$20 million the company  
14 retains 10 percent or 2 million and the customers  
15 receive the remaining 90 percent or 18 million. So  
16 under this scenario the company keeps 9.5 million and  
17 the customers get 20.5 million; is that correct?

18          A.       That is correct.

19          Q.       Okay. Now, let's assume the opposite.  
20 Hopefully, it won't be quite as painful as that one.  
21 The company made 350 million in off-system sales  
22 revenue, the OSS margin is 230 million. So the  
23 amount above the forecast margin is 30 million.  
24 However, the fuel costs are now 60 million more than  
25 the normalized test year. If we net the OSS margin



1     against the fuel cost, the net impact is an extra  
2     30 million; is that correct?

3             A.       That is correct.

4             Q.       Okay. What happens to that 30 million?

5             A.       That 30 million would be recovered from  
6     ratepayers.

7             Q.       Okay. Through the FAC?

8             A.       Correct.

9             Q.       So just to be clear, using the examples  
10    above, if AmerenUE reduces its fuel costs by  
11    30 million, it keeps 9.5 million of that savings.  
12    But if Ameren increases its fuel costs by 30 million,  
13    it does not pay for that 30 million but passes it on  
14    to customers; is that correct?

15            A.       Holding all other things constant, that  
16    is correct. As has been testified in this case,  
17    there are known fuel prices -- fuel price increases  
18    that we face in the coming years --

19            Q.       Right.

20            A.       -- which have not been factored into  
21    this --

22            Q.       Scenario?

23            A.       -- scenario.

24            Q.       Okay. Now, Mr. Baxter stated that the  
25    company expects rising fuel costs in the future.

1     What is the expected percentage increase in fuel cost  
2     for 2007 and 2008? I know that you've got about  
3     90 percent in 2007 already -- or 100 percent in 2007  
4     and 90 percent in 2008 determined. What is that  
5     percentage increase as you see it?

6             A.       I don't know the percentage increase off  
7     the top of my head.

8                     MS. LANGENECKERT: All right. Thank  
9     you.

10                    JUDGE WOODRUFF: AARP?

11     CROSS-EXAMINATION BY MR. COFFMAN:

12             Q.       Good afternoon, Mr. Lyons.

13             A.       Good afternoon.

14             Q.       Let me ask you, who's in a better  
15     position to mitigate fuel cost volatility, AmerenUE  
16     or its customers?

17             A.       I'm not sure that -- I'm not -- when you  
18     say "mitigate fuel cost volatility," I'm not -- I'm  
19     not sure either one can do anything necessarily about  
20     fuel cost volatility.

21             Q.       Well, does the typical AARP member in  
22     St. Louis, Missouri have the ability to seek  
23     financial instruments to hedge against the volatility  
24     that they're gonna -- that they might face from a  
25     fuel surcharge?

1           A.       I doubt that --

2           Q.       I mean -- go ahead.

3           A.       I doubt that they do. I -- thinking of  
4 my own family, we'd certainly have the ability to  
5 adjust our energy consumption.

6           Q.       Now, I assume you believe that fuel and  
7 purchased power cost variation that you forecast in  
8 the future you believe is a significant risk to the  
9 company you work for?

10          A.       We do perceive that to be a significant  
11 risk, yes.

12          Q.       And this is a risk that your company has  
13 borne over the last 20-some years in between rate  
14 cases; is that correct?

15          A.       I've been there for five but that is my  
16 understanding.

17          Q.       Okay. And under your proposal -- and I  
18 can't say I've read every word of the new tariff I  
19 was just handed -- but I assume that you're proposing  
20 that 100 percent of the variation be passed through  
21 to consumers; is that correct?

22          A.       100 percent -- 100 percent of fuel cost  
23 and off-system sales subject to the sharing grid that  
24 was outlined on page 22 of my surrebuttal testimony.

25          Q.       Okay. And so is that a yes to my

1 question, that it would -- 100 percent of the  
2 variability would be passed onto consumers?

3 A. It was a yes subject to what I outlined  
4 on page 22. And I would also highlight that we also  
5 have incorporated in this -- in the surrebuttal  
6 testimony and in the rider certain -- certain  
7 measures to defer recovery of costs as well as to cap  
8 percentage increases in classes rate -- you know,  
9 increases that might be -- might result from the fuel  
10 adjustment clause.

11 Q. Okay. I want -- I want to get to that  
12 later.

13 A. Okay.

14 Q. But those -- but those caps are not hard  
15 caps; those are caps you propose to ultimately get  
16 any amounts over those caps with interest later,  
17 correct?

18 A. They are deferrals.

19 Q. And so the current situation is that  
20 Ameren and every other Missouri electric utility over  
21 the past so many years has not -- has had zero  
22 variation passed through in between rate cases, and  
23 in this case you're proposing 100 percent of the  
24 variation be ultimately passed onto the consumer,  
25 correct?

1           A.       We are proposing that 100 percent of the  
2 cost be passed through the fuel adjustment clause.

3           Q.       And I assume that you read the direct  
4 testimony, the prepared testimony of Ron Binz, filed  
5 by AARP?

6           A.       I did at some point, yes.

7           Q.       And you saw that the -- I guess, the  
8 second best proposal of AARP that would be a 50/50  
9 variation-type proposal. Did you review that?

10          A.       I did.

11          Q.       You didn't address that in your rebuttal  
12 or surrebuttal testimonies, did you?

13          A.       No, I did not. Well, I'd have to look.  
14 We did -- I did address a -- 50/50 sharing mechanisms  
15 and I think one of the points I made in the testimony  
16 was that in a situation where you have known rising  
17 costs in the future and we're using a historical test  
18 year for setting base rates, a 50/50 sharing  
19 mechanism doesn't seem to be a symmetrical sharing to  
20 my way of thinking.

21          Q.       So you're predicting that over the next  
22 couple of years that fuel costs will go up for  
23 AmerenUE?

24          A.       Yes.

25          Q.       But you understand the concept of a --

1 let's just call it the 50/50 proposal for lack of a  
2 better word. You understand that that would be  
3 symmetrical and in the situation where costs would go  
4 down, that only 50 percent of that reduction would  
5 pass to the consumers and the electric company would  
6 benefit from that scenario?

7 A. I do understand that.

8 Q. But you're just saying it's asymmetrical  
9 in your prognostication of the soon -- the next two  
10 years?

11 A. Well, that's right. I'm saying that if  
12 we used a forecasted test year to compute in that  
13 base fuel cost and then shared 50/50 around that, it  
14 would be different than setting base rates based upon  
15 historical cost and then with known price increases  
16 on the horizon, sharing 50/50 around that.

17 Q. If you had your preference between no  
18 fuel adjustment clause at all and one that recognized  
19 50 percent of deviation, which would you choose?

20 A. I don't know. The proposal we've made  
21 is the one contained in my testimony --

22 Q. My question is with regard to AARP's  
23 second best alternative and no fuel adjustment clause  
24 at all. Which would you choose as your preference,  
25 if you had to choose?

1           A.       Well, I -- I think if faced with that or  
2   no fuel adjustment clause at all, we might choose  
3   that.  However --

4           Q.       Choose which?

5           A.       Excuse me?

6           Q.       You said "choose that."  I wasn't sure  
7   what you meant by "that."

8           A.       Well, I guess what I'm saying is --

9           Q.       Could you just answer the question  
10   which --

11          A.       I don't know.

12          Q.       Okay.  Would it depend on where the fuel  
13   cost allowance was set in the revenue requirement?  
14   Would it depend on what amount was set for rates  
15   going forward?

16                   MR. BYRNE:  I'm gonna object to the  
17   question.  It's already been answered.  He said he  
18   doesn't know.

19                   JUDGE WOODRUFF:  Overruled.  You can go  
20   ahead and answer.

21                   THE WITNESS:  Could you repeat it?  I  
22   didn't understand the question.  Could you rephrase,  
23   perhaps?

24   BY MR. COFFMAN:

25          Q.       Okay.  I was asking if it would

1 matter -- would it matter to you if -- or would it  
2 make a difference if you knew what the  
3 no-fuel-adjustment-clause scenario consisted of as  
4 far as what revenue requirement you were allowed?

5 A. I'm still not sure that I understand the  
6 question, honestly.

7 Q. Would it be fair to say that you  
8 would -- if you got a rate increase large enough to  
9 cover what you thought your fuel cost might be, you  
10 might not care whether you received a fuel adjustment  
11 clause?

12 A. Well --

13 Q. Or simply having that fuel adjustment  
14 clause, just have some --

15 MR. BYRNE: Your Honor, could the  
16 attorney let him answer the question before he moves  
17 onto another question?

18 MR. COFFMAN: I apologize.

19 JUDGE WOODRUFF: Go ahead and answer the  
20 question if you can.

21 THE WITNESS: I will try. It's a lot of  
22 considerations, Mr. Coffman. I mean, what we're --  
23 what we're proposing is a mechanism which we would  
24 believe would be efficient and appropriate for a  
25 collection of prudently incurred costs, and we're



1     doing that for a number of reasons which I've  
2     outlined, including, for instance, concerns of credit  
3     rating agencies about stability of cash flows and the  
4     collection of those costs.

5                     And you know, when you ask that  
6     question, I couldn't tell whether you were saying  
7     that we would use forecasted test years to establish  
8     rates prospectively. I didn't --

9     BY MR. COFFMAN:

10            Q.     I was -- I was simply saying that if the  
11     revenue requirement -- would there be a point where a  
12     rate increase was high enough that the fuel  
13     adjustment clause was not seen as a necessity in your  
14     mind? If you got -- in other words, if you got the  
15     fuel and purchased power cost that you are requesting  
16     in this case and maybe a little more, would it  
17     matter? Or is simply the fact that you have some  
18     variable portion of your bill have some other  
19     intrinsic value, or is it simply that you want the  
20     money?

21                    JUDGE WOODRUFF: I don't know -- you're  
22     getting into several compound questions here I think.

23     BY MR. COFFMAN:

24            Q.     Sorry to be so --

25            A.     I don't know. I mean, it's a

1     hypothetical that I don't know.

2             Q.       Is there something about the fuel  
3     adjustment clause that is simply being proposed to  
4     satisfy credit analysts apart from what you believe  
5     your company needs?

6             A.       In my testimony I outlined a number of  
7     different benefits that we perceive there to be of a  
8     fuel adjustment clause.

9             Q.       Uh-huh.

10            A.       And we do perceive the fuel adjustment  
11    clause as a mechanism by which we would be able to  
12    recover our prudently incurred fuel costs on a -- on  
13    a timely basis.  Yes, credit rating agencies would  
14    perceive a fuel adjustment clause as a positive  
15    versus not having a fuel adjustment clause, which we  
16    believe would be beneficial to our credit ratings and  
17    our cost of borrowing prospectively.

18                    We also believe at a time when fuel  
19    costs are increasingly volatile, that a fuel  
20    adjustment clause provides a -- a good regulatory  
21    mechanism for adjusting rates up or down as prices  
22    move to reflect those costs outside of a general  
23    proceeding such as this one.

24                    And you know, again, as outlined in my  
25    testimony, that's why we believe that, you know, so

1 many utilities across the country utilize fuel  
2 adjustment clauses.

3 Q. Okay. Toward the end of your  
4 surrebuttal testimony, I believe page 24, you just  
5 had a couple of sentences stricken; is that correct?  
6 The last two sentences on page 24; is that correct?

7 A. That's correct.

8 Q. And why did you take that out of your  
9 testimony?

10 A. I took that out of my testimony because  
11 Mr. Brubaker was nice enough yesterday to share with  
12 me a tariff for this utility that, I guess, went into  
13 effect subsequent to the work that I had done upon  
14 which I based this statement. And in that tariff it  
15 looks like the -- that this particular utility has --  
16 in Wyoming is not only now recovering its purchased  
17 power cost through a fuel adjustment clause, but is  
18 also now recovering its fuel costs through a fuel  
19 adjustment clause.

20 Q. Okay. And was that tariff that you just  
21 reviewed, is that different than the tariff that's  
22 attached to Ron Binz's testimony?

23 A. I don't recall.

24 Q. Did you review Ron Binz's testimony?

25 A. I did review it. I do not have it with

1 me, however.

2 Q. Okay. Let me ask you a question about  
3 this 4 percent soft cap. Would that be fair to  
4 describe that as a soft cap?

5 A. I don't know definitionally what you  
6 mean by "soft."

7 Q. You address it in your testimony, your  
8 surrebuttal testimony on page 13, and I'm just  
9 assuming that that -- that there has not been any  
10 change in your more recent tariff proposal that was  
11 handed to me just a few minutes ago; is that correct?  
12 Is this 4 percent deferral cap the same in  
13 Exhibit 107 that was just handed out? Is that the  
14 same as the one that you describe in your surrebuttal  
15 testimony?

16 A. I believe the exhibit number is 104.

17 Q. Oh, I'm sorry.

18 A. And if that is the case, the answer is  
19 yes.

20 MR. LOWERY: It's 104, Mr. Coffman.

21 MR. COFFMAN: Thank you.

22 BY MR. COFFMAN:

23 Q. I just want to ask a couple questions so  
24 that I -- that I'm sure that I'm understanding it's a  
25 4 percent mitigation proposal correct -- correctly.

1 And the idea is that anything over a 4 percent  
2 deviation, or say a 4 percent increase in one year  
3 would be passed to the next year plus interest; is  
4 that fair?

5 A. Well, the 4 percent cap would apply  
6 during any recovery period for over/under recoveries  
7 that accumulated there during the accumulation  
8 period. So during the recovery period, if a  
9 customer's rate would increase to 4 percent greater  
10 than its average rate in the prior year, we would cap  
11 the rate at that point and defer the difference and  
12 then begin to recover that in a 12-month period  
13 following that particular recovery period.

14 Q. All right. I'm gonna ask you to assume  
15 a scenario that the -- without this -- without this  
16 volatility mitigation cap, the rate increase would be  
17 6 percent in three consecutive years. So under this  
18 proposal, would it be correct that the first year the  
19 consumer would only see a 4 percent increase in that  
20 charge?

21 A. (Nodded head.)

22 Q. In the second year it would be  
23 10 percent plus interest, correct? 4 plus the 6  
24 percent from the previous year?

25 A. Roughly, yes.

1           Q.       And then the third year would again be  
2 another 10 percent because the -- or no, I guess --  
3 I'm sorry. It wouldn't be 10. It would be -- sorry.  
4 It would be 8 percent plus interest and then the next  
5 year 8 percent plus interest as well; is that right?  
6 I've tried to come up with simple numbers. Assume --  
7 assume that without this cap it would be a 6 percent  
8 increase for three years in a row.

9           A.       Yes.

10          Q.       With the volatility mitigation cap, what  
11 would be the increase to the consumer in each of  
12 those three years?

13          A.       Well, in the first year there would be a  
14 4 percent increase because we would hit the cap.  
15 That additional two would be recovered in the next  
16 year not subject to the cap. However, the rate could  
17 only go up another 4 percent versus the prior year so  
18 it would be approximately 6 percent.

19          Q.       6 percent plus interest, correct?

20          A.       Plus interest, yes.

21          Q.       And then the third year, I guess, would  
22 be 6 percent plus interest from the previous year,  
23 correct?

24          A.       Approximately.

25          Q.       And then the -- then the 2 percent for

1     that year is carried over to the next year plus  
2     interest, correct?

3             A.       Yes. I mean, it's capped at 4 percent  
4     per year except for the recovery of the deferrals  
5     from the cap. Those deferrals would be recovered  
6     over a 12-month period following, again, the recovery  
7     period that created those deferrals.

8             Q.       So doesn't this really only reduce the  
9     rates in the very first year to the consumer and then  
10    over the long run consumers are paying somewhat more  
11    because of the deferral interest?

12            A.       The customers would pay for the interest  
13    which, if the fuel adjustment clause did pass through  
14    the fuel cost more rapidly, they would not pay that  
15    interest, that's correct.

16            Q.       Why would they not pay the interest?

17            A.       Well, because -- because the balances  
18    wouldn't -- wouldn't be deferred.

19            Q.       Are you saying -- are you assuming a  
20    scenario where the increase would be less than  
21    4 percent?

22            A.       No. I was assuming a -- a fuel  
23    adjustment clause that did not have the volatility  
24    mitigation in place that we've embedded in this -- in  
25    this rider, so to the extent that the full rate

1     increase were -- were allowed to occur, then the  
2     interest would be avoided.

3                   MR. COFFMAN:   Okay.   That's all that I  
4     have.

5                   JUDGE WOODRUFF:   Thank you.   For  
6     Noranda?

7                   MR. CONRAD:   Judge, by your leave, I was  
8     kind of looking at my notes.   It might be more  
9     efficient for me, because of our position on this  
10    issue and our concern about the structure of this, to  
11    reserve until this time on Thursday when Mr. Lyons  
12    would return.

13                   My concern is that I would ask questions  
14    that review might obviate and might miss things that  
15    review would identify.

16                   JUDGE WOODRUFF:   All right.

17                   MR. CONRAD:   So if that would be  
18    agreeable, I would pass the witness at this point.

19                   JUDGE WOODRUFF:   That's fine.   We'll let  
20    you take another crack at him on Thursday.

21                   MR. CONRAD:   Thank you, sir.

22                   JUDGE WOODRUFF:   For the State?

23    CROSS-EXAMINATION BY MR. MICHEEL:

24                   Q.     Mr. Lyons, you're the controller of both  
25    Ameren Corp. and AmerenUE; is that correct?



1           A.       That is correct.

2                   MR. MICHEEL: I need to get an exhibit  
3 marked, your Honor. I believe it's gonna be  
4 Exhibit 510.

5                   JUDGE WOODRUFF: That's right, it will  
6 be 510.

7                   (EXHIBIT NO. 510 WAS MARKED FOR  
8 IDENTIFICATION BY THE COURT REPORTER.)

9 BY MR. MICHEEL:

10           Q.       Let me know when you're ready,  
11 Mr. Lyons, and I want to ask you some questions.

12                   Mr. Lyons, are you familiar with your  
13 organizational chart of AmerenUE -- or of Ameren  
14 Corporation?

15           A.       Yes.

16           Q.       And was that provided in response to a  
17 Staff data request 0008 asked by John Cassidy?

18           A.       It appears so, yes.

19           Q.       And I'm sorry. My copy got kind of out  
20 of whack. The response page was -- the 12th page it  
21 indicates was responded to by Carol Head on  
22 July 13th, '06; is that correct? Do you see that? I  
23 mean, the pages aren't numbered, but on my copy it's  
24 the 12th page in.

25           A.       The 12th page. I'm sorry.

1           Q.       Sorry about that. That's operator error  
2 on my part.

3           A.       Yes, yes, I've got you. I'm with you.

4           Q.       And that indicates it was responded to  
5 by someone at Ameren, a paralegal apparently, a Carol  
6 Head?

7           A.       Correct.

8           Q.       And at least as of the date of that  
9 answer, that was AmerenUE's -- or Ameren's  
10 organizational chart; is that correct?

11          A.       I assume so.

12                   MR. MICHEEL: With that, your Honor, I  
13 would move admission of the organizational chart.

14                   JUDGE WOODRUFF: All right. Exhibit 510  
15 has been offered into evidence. Any objection to its  
16 receipt?

17                   MR. BYRNE: Your Honor, I don't have any  
18 objection, but couldn't we just put the -- as long as  
19 we're doing it, why don't we reorder the pages so  
20 that the -- so that that -- the answer sheet's on the  
21 top so it just makes more sense when people look at  
22 it --

23                   JUDGE WOODRUFF: Okay.

24                   MR. BYRNE: -- if that would be okay.

25                   MR. MICHEEL: It's the 12th sheet in,

1 your Honor. And again, I apologize.

2 JUDGE WOODRUFF: It's after the listing,  
3 I believe, the 72. Or it's after the charts too,  
4 isn't it? "Response, see attached" -- is that --

5 MR. MICHEEL: Yes, it is, your Honor.

6 JUDGE WOODRUFF: I'm just going to go  
7 ahead and deal with -- Exhibit 510 has been offered.  
8 There was no objections so it will be received into  
9 evidence.

10 (EXHIBIT NO. 510 WAS RECEIVED INTO  
11 EVIDENCE AND MADE A PART OF THE RECORD.)  
12 BY MR. MICHEEL:

13 Q. As of January of this year, there may  
14 have been some slight changes to that organizational  
15 chart; is that correct?

16 A. There may have been slight changes to  
17 the organizational chart. I'm not sure. There were  
18 certainly changes to the responsibilities of several  
19 officers.

20 Q. Do you know whether or not Ameren  
21 provided an update to that data request response?

22 A. I -- I do not know.

23 Q. Do you know whether or not Ameren had an  
24 obligation to do that?

25 A. I don't know that personally either.

1           Q.       On page 5 of your rebuttal testimony you  
2 talk about -- and focusing on lines 2 through 4 you  
3 talk about three witnesses, "Mr. Brosch, Mr. Binz and  
4 Mr. Kind argue the FAC should be rejected. Of  
5 course, it is important to remember that the parties  
6 represented by these witnesses are not supportive of  
7 Senate Bill 179 or the Commission rules implementing  
8 that legislation"; is that correct?

9           A.       That was my understanding and  
10 recollection.

11          Q.       Is it your testimony that the Office of  
12 Administration opposed SB 179 or the Commission  
13 rules?

14                   MR. BYRNE: I'm gonna object. He's  
15 mischaracterized the testimony. It says they did not  
16 support it, not that they were opposed to it.

17                   JUDGE WOODRUFF: Do you want to rephrase  
18 your question?

19 BY MR. MICHEEL:

20          Q.       Okay. Let me rephrase that. Did not  
21 support it?

22          A.       That's my understanding.

23          Q.       The State Office of Administration --

24          A.       Oh, I'm -- no, I -- I'm sorry. To be  
25 honest with you, when you say -- no -- well, hold on

1 a second. Which page again? I'm sorry, Mr. Micheel.

2 Q. Okay. I'm on page 5 of your rebuttal  
3 testimony.

4 A. Yes.

5 Q. I'm looking at your answer, lines 1  
6 through 5, and my question to you is, is it your  
7 testimony that the Office of Administration did not  
8 support SB 179 or the Commission rules?

9 A. That -- that --

10 COMMISSIONER CLAYTON: Judge, can we get  
11 the page and line numbers?

12 MR. MICHEEL: Page 5 of the rebuttal  
13 testimony, lines 1 through 4.

14 THE WITNESS: To the extent these  
15 parties represent, yes.

16 BY MR. MICHEEL:

17 Q. Okay. Well, do you understand here  
18 today that I'm representing the State of Missouri as  
19 a consumer, the Office of Administration?

20 A. I do, sir.

21 Q. Do you understand that I'm not  
22 representing the Office of the Attorney General?

23 A. I do.

24 Q. Do you understand that I'm representing  
25 the Department of Economic Development in this

1 proceeding?

2 A. I do, sir.

3 Q. Do you understand that Mr. Brosch is  
4 testifying on behalf of the Office of Administration,  
5 State of Missouri and the Department of Economic  
6 Development?

7 A. Yes, sir.

8 Q. Do you understand that the comments and  
9 the opposition to the rules were filed on behalf of  
10 the Office of the Attorney General?

11 MR. BYRNE: I --

12 THE WITNESS: No, sir. There may have  
13 been some confusion on my part.

14 BY MR. MICHEEL:

15 Q. I mean, I'm just -- I'm just their  
16 lawyer representing them. Do you understand that?

17 A. I -- yes, sir.

18 Q. And you understand that the State of  
19 Missouri pays approximately \$1.6 million per month  
20 for electricity to AmerenUE?

21 A. I was unaware of that figure.

22 Q. You're aware that the State of Missouri  
23 has numerous buildings: The Capitol complex,  
24 prisons; you name it, we have it?

25 A. I understand that the State of Missouri

1 owns and operates a lot of property, yes.

2 Q. And so a large rate increase also  
3 impacts the State of Missouri budget; you understand  
4 that?

5 A. Certainly so.

6 Q. And you understand that that's our  
7 function in this case, do you not, to represent the  
8 State as a consumer?

9 A. I do.

10 Q. Would you agree with me, sir, that  
11 SB 179 is a permissive law with respect to the fuel  
12 adjustment clause and not a mandatory law?

13 A. I do.

14 Q. Would you agree with me that had the  
15 legislature desired to make it a mandatory law, i.e.  
16 direct this Commission to grant every utility a fuel  
17 adjustment clause, it would have certainly been  
18 within their right to do so?

19 A. I believe that to be true.

20 Q. Now, you note also on page 5 of your  
21 testimony that almost every other nonrestructured  
22 state has a fuel adjustment clause; is that correct?  
23 I'm looking at lines 15 through 19 in your rebuttal  
24 testimony, sir.

25 A. Yes, I say that all but two of 29

1 traditionally regulated states other than Missouri.

2 Q. Right. And the two you set out are Utah  
3 and Vermont?

4 A. That's correct.

5 Q. Would you agree with me just because  
6 everyone else is doing something doesn't make it  
7 correct?

8 A. I would generally agree with that, yes.

9 Q. Would you agree with me that if that  
10 argument held some sway, the legislature would have  
11 made the fuel adjustment clause mandatory because  
12 everybody else is doing it?

13 A. I can't answer that question. I don't  
14 know, I should say.

15 Q. Would you agree with me that the purpose  
16 of regulation is to stand in the stead of a  
17 competitive market because they're a national --  
18 because AmerenUE is a natural monopoly?

19 A. I agree with that.

20 Q. Would you agree with me that UE  
21 generated 79 percent of its electricity from  
22 coal-fired plants in the test year?

23 A. That percentage sounds appropriate, yes.

24 Q. And that's included in Mr. Neff's  
25 testimony?



1           A.       It would be, yes.

2           Q.       I want to talk to you now about the  
3   progression of UE's position on -- on this issue. Is  
4   it correct that in your supplemental direct, the  
5   primary position of AmerenUE was to fix off-system  
6   sales margins in rates and not track or share changes  
7   in the off-system sales margins?

8           A.       That was our initial position, yes.

9           Q.       And you had an alternative position, did  
10   you not? And that alternative position in the direct  
11   case was to share increases in margins based on a  
12   sharing grid in your direct testimony at page 9 --  
13   you had a sharing grid, that was the alternative  
14   position; is that correct?

15          A.       We did outline an alternative sharing  
16   grid, and yes, it is on page 9 of my direct.

17          Q.       Now, as I stand here, there's a third  
18   proposal discussed in your surrebuttal testimony that  
19   nets the off-system sales revenues instead of --  
20   instead of margins with a new sharing grid; is that  
21   correct?

22          A.       That is correct.

23          Q.       First of all, does that new proposal,  
24   the newest one in your surrebuttal testimony, does  
25   that improve upon your first two alternatives?

1           A.       Mr. Micheel, I hadn't considered which  
2     one was frankly better than the others and there are  
3     multiple facets to consider.

4           Q.       So sitting here today, you can't tell me  
5     which one's gonna produce or gonna be recommended to  
6     be consistent with just and reasonable rates?

7           A.       I think they both have the potential to  
8     provide for just and reasonable rates.

9           Q.       Okay. I thought we had three proposals  
10    and you said "they both."

11          A.       There were two. The -- well, it was the  
12    initial proposal we put on the table which was to  
13    have off-system sales in base rates, and then there  
14    was the sharing proposal that we have in my  
15    surrebuttal testimony.

16          Q.       And you had -- you had a primary  
17    position to fix off-system sales margins and rates  
18    and not track or share changes in the off-system  
19    sales margins, right?

20          A.       That was the -- our original primary  
21    proposal.

22          Q.       And then you had an alternative position  
23    to that, did you not?

24          A.       We did outline an alternative, yes.

25          Q.       So by my count that's three proposals,

1 correct?

2 A. Okay.

3 Q. And I guess my question is as I struggle  
4 with trying to litigate this case, and I guess for  
5 the Commission to decide, are we supposed to litigate  
6 all three of these proposals or does -- does the  
7 third proposal supersede those two proposals? I  
8 mean, what -- what is UE's position at this point? I  
9 mean, I was troubled by an answer you gave --

10 MR. BYRNE: I'm gonna object because  
11 he's -- because he's answered that question before.  
12 He said our primary proposal is on our surrebuttal  
13 testimony, and Mr. Micheel's just badgering him about  
14 something he's already explained.

15 JUDGE WOODRUFF: I'm gonna overrule the  
16 objection. If the witness wants to give that answer,  
17 he's welcome to.

18 THE WITNESS: Can you repeat the  
19 question?

20 BY MR. MICHEEL:

21 Q. I guess my question -- well, let me  
22 simplify it. Are the first two proposals, have you  
23 abandoned those? When I say you, I mean Union  
24 Electric, not you personally.

25 A. Our primary proposal, our proposal --

1 our proposal is the one in the surrebuttal testimony.

2 Q. So I needn't concern myself with the  
3 other two?

4 A. Agreed.

5 Q. Thank you. That's all I wanted to know.  
6 Now, in your rebuttal testimony you talk about coal  
7 prices, do you not, Mr. Lyons?

8 A. I do.

9 Q. And you indicate that UE's coal costs  
10 have increased and are expected to increase; is that  
11 correct?

12 A. That is correct.

13 Q. And how certain are you about -- about  
14 those future price levels?

15 A. Well, as indicated in testimony we heard  
16 today and in testimony of Mr. Neff in this case, we  
17 have hedged a significant portion of our fuel  
18 costs -- and our fuel needs and related fuel costs  
19 for the next couple of years.

20 Q. So are you -- does that mean you're  
21 pretty certain about those price increases?

22 A. Yes.

23 Q. And part of your certainty stems from  
24 the fact that you've been able -- again, you, I mean  
25 the company's been able to hedge those costs; is that

1 correct?

2 A. The company has been able to hedge those  
3 costs.

4 Q. And specifically on page 10 at lines 12  
5 through 14, you indicate that, "Recent forecasts show  
6 commodity coal prices and coal transportation costs  
7 are expected to continue to increase by 5 to 10  
8 percent"; is that correct?

9 A. Correct.

10 Q. And do you believe those numbers to be  
11 reliable?

12 A. Again, these are -- these are forecasted  
13 of commodity coal and coal transportation costs that  
14 are -- that are forecasted to rise 5 to 10 percent,  
15 and at the time I submitted this testimony, yes.

16 Q. Have they changed since you submitted  
17 the testimony?

18 A. No, no, no, no.

19 Q. So sitting there today, those are  
20 reliable; is that correct?

21 A. I believe so. I personally don't have  
22 the information, let's put it that way.

23 Q. Would you agree with me that UE's  
24 freight prices are locked in via contracts such that  
25 the only -- only the diesel surcharge element is

1 subject to any significant variability?

2 A. Certainly the diesel surcharge does  
3 introduce variability. Mr. Neff can answer whether  
4 that's the only element in transportation contracts  
5 that are subject to variability.

6 Q. And earlier we had a -- we had an issue  
7 with respect to the fact that Union Electric hedges  
8 against that variability; is that correct?

9 A. We do the best we can to try to hedge  
10 those costs, that's true.

11 Q. And the parties have agreed and, in  
12 fact, the State agreed right from the get-go with  
13 Union Electric to include the cost of that hedging in  
14 rates; is that correct?

15 A. I don't recall specifically.

16 Q. So you don't know if the State was  
17 supportive of Ameren on that issue?

18 A. I don't recall specifically.

19 Q. Do you know that that issue is settled  
20 in Ameren's favor and the State's favor?

21 A. I don't recall.

22 Q. Who would know that?

23 A. Mr. Neff would know that.

24 Q. Would you agree with me that Ameren does  
25 not buy its coal at spot prices?

1           A.       We typically utilize forward contracts  
2     to buy our coal, but I would not say definitively  
3     that we never buy on the spot -- spot market.

4           Q.       Would you agree with me that well over  
5     98 percent of the company's coal is not purchased on  
6     the spot market?

7           A.       That would not surprise me, but Mr. Neff  
8     would be the expert on that.

9           Q.       Would you agree with me that the company  
10    employs risk management strategies to time  
11    contracting to limit price volatility?

12          A.       We -- we do try to manage price  
13    volatility, limit price volatility to the extent that  
14    we can. The -- the fundamental view that I have is  
15    that the prices are going to -- are going to be  
16    volatile, and what we try to do simply is stagger our  
17    contracts so that over time we can try to mitigate  
18    some of that volatility that is naturally occurring  
19    in those commodity markets.

20          Q.       And the company's been very successful  
21    at that, have they not?

22          A.       We have -- we have dampened the  
23    volatility some, yes.

24          Q.       And the cost for those folks are  
25    included in rates, are they not?

1           A.       Could you repeat the question?

2           Q.       The cost for the folks or the charges  
3   that are charged, I guess, from Ameren Fuel Services  
4   for dealing with the price volatility of the fuel  
5   markets, those are included in rates, are they not?

6           A.       You're asking about the costs of the  
7   staff that hedged those costs?

8           Q.       (Nodded head.)

9           A.       Yes, that is correct.

10          Q.       And nobody's recommended a disallowance  
11   of that?

12          A.       No, not to my knowledge.

13          Q.       And if -- if -- if Ameren didn't feel  
14   that there was some reasonable need for those folks,  
15   they wouldn't have a department; is that correct?

16          A.       That is correct.

17          Q.       Can price increases -- can prices  
18   increase without being volatile?

19          A.       Well, typically I see volatility as  
20   price movement, up or down.

21          Q.       Well, can prices increase without being  
22   volatile, though? Or let me ask you this: How do  
23   you define volatility, Mr. Lyons?

24          A.       Price movement.

25          Q.       Any price movement?



1           A.       Well, any price movement is volatile --  
2   you know, is volatility in prices.

3           Q.       Can prices be volatile without trending  
4   upward or downward?

5           A.       Yes.

6           Q.       Would you agree with me that spot  
7   pricing is generally only relevant when Union  
8   Electric is contracting for new coal supply?

9           A.       Can you repeat that question?

10          Q.       Yes.  Would you agree with me that spot  
11   pricing is only relevant when UE is contracting for  
12   new coal -- new coal supplies?

13          A.       I think -- I think Mr. Neff would be  
14   best to answer that question.

15          Q.       Would you be surprised that you answered  
16   a question just like that in your rebuttal testimony?  
17   If you turn to page 11 --

18          A.       Sure.

19          Q.       -- and look at line 19 through 23.

20                   MR. BYRNE:  What page are you on?

21                   MR. MICHEEL:  Page 11.

22                   MR. BYRNE:  Okay.  What line?

23                   MR. MICHEEL:  Lines 19 through 23.

24                   MR. BYRNE:  19 through 23?

25                   MR. MICHEEL:  Of his rebuttal.

1                   MR. BYRNE:   Okay.   Okay.   That?   Okay.

2                   THE WITNESS:   I'm sorry.   I didn't see  
3   that being the same question you asked but perhaps  
4   I'm wrong.

5   BY MR. MICHEEL:

6           Q.       Well, let me ask you this:   UE actually  
7   mitigates its exposure to spot prices by using term  
8   contracts, does it not?

9           A.       Yes, it does.

10          Q.       And the only time a spot price would  
11   come in is when one of your staggered term contracts  
12   come up; is that correct?

13          A.       I believe that to be true.

14          Q.       And so if these prices are so volatile  
15   all the time, you could just wait to contract when  
16   we're in a trough; isn't that correct?

17          A.       Well, again, I am not a coal buyer, but  
18   my perception is that it is difficult to impossible  
19   to accurately predict upward and downward movements  
20   in prices so as to always be capturing the -- you  
21   know, the lowest price during a period of volatility.

22          Q.       But the company has staggered contracts;  
23   is that correct?

24          A.       The company does have staggered  
25   contracts, yes.

1           Q.       Now, on page 11 of your rebuttal  
2     testimony, you note that, "Only 15 percent of coal  
3     transportation costs are indexed to volatile oil and  
4     gasoline prices"; is that correct?

5           A.       I'm sorry. I'm trying to keep up. What  
6     page did you turn to?

7           Q.       Page 11, sir, of your rebuttal  
8     testimony.

9           A.       Oh. I'm there already. Okay. Thank  
10    you.

11          Q.       I'm looking at --

12          A.       I'm on that page. Thank you.

13          Q.       You say approximately 15 percent are  
14    subject to volatility, right?

15          A.       I do say that, yes.

16          Q.       So it's somewhere really south of  
17    15 percent, would you agree, or maybe north of  
18    15 percent a little bit?

19          A.       Approximately 15.

20          Q.       The other 85 percent is not indexed;  
21    it's locked into the price per the multiyear  
22    contracts; is that correct?

23          A.       That is correct.

24          Q.       And you would agree with me that the  
25    15 percent diesel surcharge exposure that we're

1     talking about has been hedged by Union Electric via  
2     the heating oil contracts; is that correct?

3           A.       We have attempted to hedge those with  
4     heating oil contracts. My understanding is those --  
5     those heating oil contracts do act to somewhat manage  
6     the price volatility associated with those. However,  
7     they are short term contracts in duration. And my  
8     other understanding, again from talking to Mr. Neff,  
9     is that as transportation contracts are renewed, the  
10    portion subject to the diesel fuel price adjustment  
11    is expected to increase.

12          Q.       And the costs of hedging that are gonna  
13    be paid by ratepayers; is that correct?

14          A.       Well, they would be paid by AmerenUE,  
15    and then to the extent we have a fuel adjustment  
16    clause, we propose they would run through --

17          Q.       Right now they're gonna be built into  
18    rates, are they not?

19          A.       The cost of the -- the current hedging  
20    as you've described, uh-huh.

21          Q.       Now, you speculate on page 11, line 7,  
22    that without the fuel adjustment clause, AmerenUE  
23    would be forced to file frequent rate cases; is that  
24    correct?

25          A.       I believe that is true.

1           Q.       Would you agree with me that empirically  
2 frequent rate cases were not required when Ameren  
3 didn't have a fuel adjustment clause?

4           A.       Again, I've been with the company, as  
5 you know, about five years, and the reasons why the  
6 company did or did not have rate cases or what is  
7 frequent, you know --

8           Q.       Were you here for the opening,  
9 Mr. Lyons?

10          A.       I was here for the opening, yes.

11          Q.       Did you hear Mr. Lowery say this is our  
12 first rate increase case in 20 years?

13          A.       I did hear him say that, yes, sir.

14          Q.       Do you have any reason to disbelieve  
15 that?

16          A.       No, but I thought there were rate cases  
17 in between.

18          Q.       Well, there were -- there were rate  
19 complaint cases where Ameren reduced their rates; is  
20 that correct?

21          A.       There were, yes.

22          Q.       And there's a difference, is there not,  
23 between a complaint case and a rate case? One,  
24 you're asking for money; one, you're lowering your  
25 rates?

1           A.       I understand, correct.

2           Q.       And so historically empirically, even  
3 without a fuel adjustment clause, Ameren's been able  
4 to lower rates; is that correct?

5           A.       That has been correct, yes.

6           Q.       Would you agree with me that the fuel  
7 adjustment clause rules that were promulgated by this  
8 Commission actually require a rate case to be filed  
9 at least every four years?

10          A.       I believe a rate case needs to be  
11 concluded every four years. I think we'd have to  
12 file for a rate case sooner than that.

13          Q.       So less than four years; like 37 months?

14          A.       Correct.

15          Q.       Would you agree with me that that's more  
16 frequent than the historical rate case intervals of  
17 this company?

18          A.       Historical, I believe that to be true.

19          Q.       Would you agree with me that even with  
20 the fuel price increases that are being captured at  
21 January in this rate case test year, the Staff and  
22 the State of Missouri both calculate rate reductions  
23 are needed?

24          A.       Was your question whether I disagree  
25 with that? Or -- I'm sorry.

1 Q. No, no.

2 A. I'll ask you to repeat the question.

3 Q. Just the facts, Mr. Lyons. You know,  
4 even with the fuel price increases that are captured  
5 at January in this case, Staff and the State both  
6 calculate, Staff and the State, that rate reductions  
7 are needed; is that correct?

8 A. That is correct.

9 Q. I'm not asking you to agree -- I  
10 understand you disagree with that, do you not?

11 A. Yes, sir.

12 Q. I want to be fair. Do you think the  
13 fact that the Staff and the State of Missouri are  
14 recommending rate decreases is further indication  
15 that maybe a fuel adjustment clause is not needed for  
16 Union Electric because in view of those two parties,  
17 Union Electric is overearning?

18 A. No.

19 Q. You note at page 12, line 6 of your  
20 testimony, that "Long-term coal contracts certainly  
21 do not provide" --

22 MR. BYRNE: Which testimony,  
23 Mr. Micheel?

24 MR. MICHEEL: I haven't left the  
25 rebuttal testimony. When I leave that, I will

1 signpost it; I will say on your surrebuttal testimony  
2 or on your direct testimony.

3 MR. BYRNE: Thank you.

4 MR. MICHEEL: You're welcome.

5 BY MR. MICHEEL:

6 Q. You note on page 12 of your rebuttal  
7 testimony at line 6, starting at line 6, "Long-term  
8 coal contracts certainly do not provide a complete  
9 hedge against delivered coal cost -- delivered coal  
10 cost, particularly transportation costs"; is that  
11 correct?

12 A. Correct.

13 Q. And that's because when contracts  
14 expire, they must be renewed at market rates,  
15 correct?

16 A. That particular sentence was simply  
17 meant to say that long-term contracts to purchase  
18 coal don't provide a complete hedge of delivered coal  
19 cost because delivered coal cost also includes the  
20 cost of transportation.

21 Q. But that doesn't mean that Union  
22 Electric's risk management strategy is not effective,  
23 does it?

24 A. No.

25 Q. As a matter of fact, Union Electric



1     thinks its risk management strategies have been quite  
2     effective, does it not?

3           A.       We believe that we do have good risk  
4     management strategies. I mean, we believe that we  
5     have entered into contracts to hedge volatility and  
6     the price of coal and in the price of transportation,  
7     that those contracts dampen volatility. However, as  
8     prices move, you know, our costs, our delivery costs  
9     will go up or down depending upon the underlying  
10    price movements.

11          Q.       Would you agree --

12          A.       But, yes, I mean, we believe our risk --  
13    and we would continue to pursue those with or without  
14    a fuel adjustment clause.

15          Q.       Would you agree with me that UE can  
16    exercise some discretion over whenever it renews its  
17    contracts?

18          A.       Yes.

19          Q.       If the spot price for coal is as  
20    volatile as you would have the Commission believe,  
21    can't UE simply wait for the price to dip to renew  
22    the long-term contract?

23          A.       Again, I don't think we can predict  
24    when, you know, dips will occur, and our concern  
25    first and foremost is having the fuel available when

1 needed to generate electricity to serve the  
2 customers. And so we cannot -- we cannot wait for a  
3 dip in the market that we don't know is going to  
4 occur.

5 Q. Can you predict when the big price  
6 spikes are gonna happen?

7 A. No, not -- no, we can't.

8 Q. Now, on page 12 of your rebuttal  
9 testimony, again at line 8, you say, "A large portion  
10 of transportation cost relate to diesel fuel adders";  
11 is that correct?

12 A. Yes, I see that.

13 Q. What's a large portion?

14 A. Costs that are in the millions of dollars.

15 Q. Well, give me a percentage. What's a  
16 large portion in terms of a percentage?

17 A. I'm, you know, not sure percentage-wise.  
18 I mean, if it's in the millions of dollars, it's, in  
19 my mind, material.

20 Q. Well, give me a percentage. What would  
21 be a large percentage, a large portion, what  
22 percentage?

23 A. I would think when you're talking about  
24 transportation cost, that even a percent could be  
25 material.

1           Q.       You note at page 12 your belief that,  
2       "Fuel adjustment clauses -- clauses are approved  
3       because it's impossible to synchronize contracts"; is  
4       that correct?

5           A.       I'm sorry, Mr. Micheel. Which line  
6       again?

7           Q.       Starting at line 15 you say, "I believe  
8       most state regulatory commissions implement fuel  
9       adjustment clauses in part because it is difficult,  
10      if not impossible, to synchronize the expiration  
11      renewal of fuel and transportation contracts at  
12      numerous power plants with rate cases."

13          A.       Correct.

14          Q.       In which states are you aware of any  
15      order stating this?

16          A.       I'm not aware of any orders that -- that  
17      state that. That's my belief.

18          Q.       Which states have legislatively mandated  
19      fuel adjustment clauses versus Public Service  
20      Commission-ordered fuel adjustment clauses?

21          A.       I'm not sure that I know that number.

22          Q.       Let me ask you this: If -- if prices  
23      are so volatile and unpredictable, how can you assert  
24      that delivered -- delivered coal prices are expected  
25      to increase for a number of years?

1           A.       Because as we have entered the coal  
2 market over the past couple of years to hedge our  
3 future needs, we have locked in prices which are  
4 escalating coal and transportation costs.

5           Q.       Are you aware that coal commodity  
6 prices, particularly from the Powder River Basin coal  
7 that UE uses a lot, have been declining since early  
8 2006?

9           A.       You're referring to spot prices?

10          Q.       Just prices in -- spot prices, yeah.  
11 Start with spot prices.

12          A.       I believe that is true.

13          Q.       So we're already seeing declining spot  
14 prices; is that correct?

15          A.       Commodity prices do move up and down,  
16 there's no question.

17          Q.       Now, at line 9, page 13 you say, "The  
18 already identified increases over the next several  
19 years alone would likely require the company to file  
20 several rate cases in an effort to keep up with  
21 rising fuel costs"; is that correct?

22          A.       That is -- yes.

23          Q.       In your testimony where is the  
24 quantification of the already quantified increases?

25          A.       I believe that -- I believe that those

1 increases are documented in the -- in the testimonies  
2 of Mr. Neff as well as Mr. Irwin who speaks to  
3 nuclear fuel costs as well. When I make this  
4 statement about my belief about the likelihood of  
5 rate increases, I'm thinking not only about the, you  
6 know, increasing fuel costs, but some of the other  
7 costs in our business as well.

8 Q. So AmerenUE may have to file rate cases  
9 irrespective of fuel costs; is that your testimony?

10 A. No. My -- my -- my testimony is that  
11 I'm not -- again, fuel is the largest single  
12 operating cost that we have, and I'm aware that the  
13 cost are escalating significantly over the next  
14 couple of years. And I'm not aware of other costs in  
15 our business which are declining which would produce  
16 a -- an offset to those costs.

17 Q. On page 19 of your testimony you talk  
18 about the formula that's included in your initial  
19 rider and you say, "It's a simple adjustment out."  
20 Just to put a point on this, that's not what UE's  
21 requesting anymore, so if I had a lot of  
22 cross-examination on that issue, I shouldn't do it?

23 A. That is correct.

24 Q. Okay. Because the company abandoned  
25 that position, correct?

1           A.       The company has -- has submitted a  
2       compromised proposal that we support in my  
3       surrebuttal testimony.

4           MR. MICHEEL:   Could we just take a break  
5       so I can reconfigure this to -- it will speed things  
6       along if I can do it at a break as opposed to --

7           JUDGE WOODRUFF:   That's fine.   We're due  
8       for a break anyway.   We'll come back at 3:45.

9           (A RECESS WAS TAKEN.)

10          JUDGE WOODRUFF:   Let's -- let's come to  
11       order, please.   All right.   We're back from break and  
12       you can go ahead and proceed with your cross.

13          MR. MICHEEL:   Your Honor, I need to get  
14       an exhibit marked and I believe it would be  
15       Exhibit 511, I believe is where we're at.

16          JUDGE WOODRUFF:   I believe that's  
17       correct.

18          (EXHIBIT NO. 511 WAS MARKED FOR  
19       IDENTIFICATION BY THE COURT REPORTER.)

20       BY MR. MICHEEL:

21          Q.       Mr. Lyons, I've handed you what's been  
22       marked for purposes of identification as Exhibit 511,  
23       and that is your company's response to AGUTI-207; is  
24       that correct?

25          A.       Yes.

1           Q.       And that's asking a question about your  
2 direct testimony; is that correct?

3           A.       Yes, it is.

4           Q.       And is that the company's response  
5 attached there, sir?

6           A.       It appears to be.

7           Q.       And is that true and correct to the best  
8 of your knowledge and belief?

9           A.       To the best of my knowledge.

10                  MR. MICHEEL:  And with that, I guess I  
11 would move for the admission of Exhibit 511, your  
12 Honor.

13                  JUDGE WOODRUFF:  511 has been offered  
14 into evidence.  Are there any objections to its  
15 receipt?

16                  MR. CONRAD:  No objection.

17                  JUDGE WOODRUFF:  Hearing none, it will  
18 be received into evidence.

19                  (EXHIBIT NO. 511 WAS RECEIVED INTO  
20 EVIDENCE AND MADE A PART OF THE RECORD.)

21           BY MR. MICHEEL:

22           Q.       And now I want to ask you some questions  
23 about that, Mr. Lyons.  This is -- this is trying to  
24 capture recoverable cost through the fuel adjustment  
25 clause; is that correct?

1           A.       Yes.

2           Q.       And what that shows, it's kind of a  
3   spreadsheet that shows the cost and generation source  
4   by each quarter, is that correct, and for various  
5   years?

6           A.       Various years.

7           Q.       Okay. And so we have -- on one column  
8   we have coal, nuke, hydro, CTG, others and purchases;  
9   is that correct?

10          A.       Yes.

11          Q.       And these are the costs, are they not,  
12   that the Staff, the Public Counsel and any other  
13   party would have to audit if a fuel adjustment clause  
14   were adopted; is that correct?

15          A.       I would assume they would want to audit  
16   it, yes.

17          Q.       Well, they're required by the rule at  
18   least -- at least your company is required by the  
19   rule to provide a lot of information; is that  
20   correct?

21          A.       We are, yes.

22          Q.       Let me ask you this: For Meramec how  
23   many coal contracts are there?

24          A.       I'm not sure offhand how many coal  
25   contracts there are for Meramec.



1           Q.       How many invoices would there be related  
2 to fuel?

3           A.       I'm not sure of that number either.

4           Q.       Is it bigger than a bread box?

5           A.       I don't know.

6           Q.       Who would know that?

7           A.       I'm not sure.  Someone in our fuel  
8 accounting group would probably know that.

9           Q.       Who testifying would know that?

10          A.       I'm not sure.

11          Q.       You don't know that?

12          A.       I don't know that.

13          Q.       And you're the person -- you're -- let  
14 me -- let me make sure I understand this.  You are  
15 the primary sponsor for the company's fuel adjustment  
16 clause; is that correct?

17          A.       That is correct.

18          Q.       And you do not know sitting there today.

19                 MR. BYRNE:  I'm gonna object.  He's  
20 already answered the question.

21                 JUDGE WOODRUFF:  Overruled.  Overruled.  
22 He can go ahead and answer -- or go ahead and finish  
23 your question.

24 BY MR. MICHEEL:

25          Q.       And you do not know sitting there today

1 the amount of information that would be produced to  
2 audit the fuel adjustment clause that you're  
3 proposing?

4 A. I don't know how many invoices, no.

5 Q. Can you ball park it?

6 A. I don't know how many invoices.

7 Q. Okay. Would the Staff be required --  
8 well, let me ask you this: Do you know whether or  
9 not Union Electric purchases their coal through a  
10 coal pool?

11 A. That is correct.

12 Q. So there would be allocations via that  
13 coal pool, would there not?

14 A. Yes.

15 Q. And so to determine the audit for that,  
16 you'd have to figure out what was allocated for the  
17 coal pool, would you not?

18 A. My understanding is the coal is all  
19 bought at a price and it's simply allocated based  
20 upon volumes.

21 Q. And you'd have to audit whether or not  
22 it was prudent to purchase the coal at that time,  
23 would you not?

24 A. There are prudence reviews that are  
25 required.

1           Q.       And you'd have to audit every coal  
2 contract to make sure that it was prudent, would you  
3 not?

4           A.       I don't know.

5           Q.       Would you have to review every invoice  
6 if you're going to be doing a thorough audit?

7           A.       Not necessarily, no.

8           Q.       Would you have to review most of the  
9 invoices?

10          A.       Assuming you were going to conduct an  
11 audit, I would think potentially a sampling.

12          Q.       Let me ask you this: Is there -- is  
13 there an actual cost adjustment audit required by the  
14 Commission's fuel adjustment rule?

15          A.       I see the words "examine," I see the  
16 words "a prudence review with the cost," you know,  
17 "shall be conducted."

18          Q.       Well, okay. If you want to quibble with  
19 the term "actual cost adjustment" I'm okay with that.  
20 I'm an old gas guy. Is there a prudence review  
21 required --

22          A.       Yes, there is.

23          Q.       -- and contemplated by the rule?

24          A.       Yes, sir.

25          Q.       And part of that prudence review would

1 be requiring that the parties, for sure the Staff and  
2 any other party, review UE's purchasing practices  
3 during the appropriate time frame; is that correct?

4 A. I would expect, yes, that they would.

5 Q. And that's one of the highly touted  
6 consumer protections of SB 179 and the Commission's  
7 rules, is it not?

8 A. It is a protection, yes.

9 Q. Do you think it's gonna be an effective  
10 protection?

11 A. I would think so.

12 Q. Let me ask you about the CTG costs that  
13 are -- that are listed on the first page of  
14 Exhibit 511. You've got the Venice plant there. Do  
15 you know how many gas contracts the Venice plant has  
16 in any given year?

17 A. I do not.

18 Q. Do you know how many transportation  
19 contracts the Venice plant has in any given year?

20 A. I do not.

21 Q. Would you agree with me, though, that  
22 for all of those gas turbines there, that all of  
23 those contracts would have to be audited and reviewed  
24 in a prudence review?

25 A. Again, I don't know the scope of the

1 prudence review that would be conducted.

2 Q. Well, do you think that -- that the  
3 Staff or any other party would want to make sure that  
4 all of the fuel costs that are being recovered from  
5 consumers are prudent or should we just look at half  
6 or a quarter?

7 A. I don't know.

8 Q. So you can't tell me whether or not the  
9 Staff will do a complete audit?

10 A. I would expect that the Staff would  
11 conduct a prudence review that it thought to be  
12 appropriate.

13 Q. Would you expect that the company's  
14 going to provide all of the information required by  
15 the rule to the Staff?

16 A. I do expect that, yes.

17 Q. And if the rule requires all of the  
18 information for every fuel purchase to be provided,  
19 the company will do that?

20 A. That is correct.

21 Q. Do you have any idea how much time it  
22 will take to do audits like that?

23 A. I don't know.

24 Q. Are you familiar at all with Ameren's  
25 gas business?

1           A.       Yes.

2           Q.       Are you familiar with the fact that --  
3   that ACA audits can last years?

4           A.       I was unaware that they lasted years.

5           Q.       There's also an interchange sales line  
6   under the purchases there, just looking on the first  
7   page. Do you see that?

8           A.       I do.

9           Q.       How many -- how many transactions there  
10   for interchange sales are upstream?

11          A.       I didn't understand the term "upstream."

12          Q.       Okay. So you don't -- you don't  
13   understand upstream so -- let me -- let me ask you  
14   this: What is an interchange sale, if you know?

15          A.       My understanding of interchange sales  
16   are sales -- spot market, MISO spot market or  
17   bilateral contracts.

18          Q.       And is there a lot of data related to  
19   those contracts?

20          A.       Yes.

21          Q.       And that would have to be audited, would  
22   it not?

23          A.       I would presume that would be audited,  
24   yes.

25          Q.       There's another transmission expenses

1 listed there, congestion charges, financial  
2 transmission, right, ancillary services. Do you see  
3 that?

4 A. Yes, I do.

5 Q. How complex is the analysis required to  
6 determine if UE charges for MISO for congestion  
7 charges and those other charges are prudently  
8 incurred and accurately recorded and allocated, if  
9 you know?

10 A. I don't know specifically.

11 Q. But that would have to be something that  
12 would have to be done in the prudence audit; is that  
13 correct?

14 A. I would imagine that could be an area  
15 that was reviewed in the prudence.

16 Q. Well, let me ask you this: Those MISO  
17 charges, those are a big chunk of your energy costs,  
18 are they not?

19 A. They're -- it's a significant amount of  
20 money, yes.

21 Q. Millions of dollars?

22 A. Yes.

23 Q. And so that would be something of  
24 interest to somebody who was looking at the fuel  
25 adjustment clause, don't you think?

1           A.       It's likely -- it is likely to be the  
2 case, yes.

3           Q.       And it would be prudent in that case to  
4 audit those, would it not?

5           A.       Again, the scope of the prudence review,  
6 I -- I -- I don't know.

7           Q.       Now, this data request also shows, does  
8 it not, fact data annually; is that correct?

9           A.       Oh, yes, there are -- annual columns?

10          Q.       Yes.

11          A.       Okay.

12          Q.       And the percent of native load  
13 generation, do you see that column? It's kind of on  
14 the top there.

15                   MR. MICHEEL: If I can approach, I can  
16 make it quicker. That would be better.

17                   THE WITNESS: Please. I see percent  
18 native load generation.

19 BY MR. MICHEEL:

20          Q.       Sorry about that. I just didn't direct  
21 you to the right page and I apologize for that.  
22 That's no longer an issue because we're no longer  
23 stacking; is that correct?

24          A.       If you mean allocating between native  
25 load and off-system sales margins, that is correct,



1     yes.

2             Q.       And we've referred to that as stacking?

3             A.       Yes, in -- yes, we have.

4             Q.       I want to ask you about -- also on here  
5     you have a hydro generation, the Taum Sauk values, do  
6     you not, in this Exhibit 511? Do you see that under  
7     hydro?

8             A.       I do.

9             Q.       And Taum Sauk has values for all years  
10    through 2005 but then a negative in 2006; is that  
11    correct? And that's the last page of the exhibit,  
12    the negatives. I'm not trying to trick you. If you  
13    want to look at it all, please do.

14            A.       No, I was trying to follow along. I  
15    didn't think you were trying to trick me. Yes, I see  
16    that.

17            Q.       And the negative values occur because  
18    Taum Sauk is no longer in service; is that correct?

19            A.       That is correct.

20            Q.       And this is where the special studies  
21    and adjustments are needed to prevent ratepayer harm  
22    from the Taum Sauk outage; is that correct?

23            A.       It depends on how we deal with Taum Sauk  
24    in the -- in the rider. A special adjustment will  
25    be -- will be necessary to ensure that customers are

1 not -- do not pay additional costs because of that  
2 outage.

3 Q. And the fact that Taum Sauk is no  
4 longer -- well, I know you're gonna rebuild, but  
5 right now sitting there, it's not in your order of  
6 dispatch; is that correct?

7 A. It is not in our order of dispatch, that  
8 is correct.

9 Q. Because it's out of service?

10 A. That's correct.

11 Q. So Taum Sauk, based on a whole bunch of  
12 different inputs, various costs, various needs, would  
13 be dispatched at a lot of different times based on a  
14 lot of different factors; is that correct?

15 A. I would think there are a number of  
16 factors to consider, yes.

17 Q. Because you go from the -- the least  
18 costly to the most costly; is that generally --

19 A. That is how we dispatch our plants, yes.

20 Q. And so sometimes Taum Sauk may be --  
21 just to make -- say you've got ten plants. It may be  
22 No. 5 and sometimes it may be No. 7 and sometimes it  
23 may be No. 4, based upon a lot of input?

24 A. It could be, yes.

25 Q. And so in order to accurately quantify

1    what the impact of Taum Sauk is, you would have to  
2    know almost at each time plants are dispatched where  
3    Taum Sauk would fit in that order of dispatch; isn't  
4    that correct?

5           A.       Well, in my testimony I proposed that  
6    one way to handle it is that -- my understanding in  
7    this case is that the parties that have prepared  
8    production cost models generally do not disagree over  
9    the assumptions upon which to model Taum Sauk.  And  
10   so I believe coming out of this case, once power  
11   prices are agreed to by the parties or ordered by the  
12   Commission, that there would be a value that would be  
13   ascribed to Taum Sauk.

14                   And what I've proposed in the testimony  
15   is that, you know, that value be subtracted from the  
16   net fuel cost prospectively when you compare the  
17   actual cost to the net based fuel cost to make sure  
18   that, you know, the customers are not overpaying.

19           Q.       All right.  And that's a static value  
20   that you've -- you've recommended; is that correct?

21           A.       That is correct.

22           Q.       And you noted in your answer that the  
23   parties that have access to a fuel production model  
24   can do that; is that correct?

25           A.       I believe so, yes.

1           Q.       And it's only the parties that have  
2 access to that; is that correct?

3           A.       I'm not sure.

4           Q.       And is it also correct that AmerenUE has  
5 refused throughout this proceeding to model anybody  
6 else's changes?

7           A.       I don't know.

8           Q.       Would you agree with me that actual fuel  
9 in the off-system sales impact from Taum -- from the  
10 Taum Sauk outage vary every year?

11          A.       Could you repeat that question?

12          Q.       Would you agree with me that the actual  
13 fuel and off-system sales impacts from Taum Sauk  
14 outage will vary in every year?

15          A.       The value of Taum Sauk would vary from  
16 year to year, yes.

17          Q.       And if fuel prices are increasing as you  
18 suggest is expected, the detrimental fuel cost impact  
19 of the Taum Sauk outage will grow, not average out  
20 over time; is that correct?

21          A.       I don't know.

22          Q.       Well, hydro is pretty cheap power, is it  
23 not?

24          A.       It is.

25          Q.       Okay. So you don't know if it would

1 grow?

2 A. Well, again, I'm not intimately familiar  
3 with where Taum Sauk is in the dispatch order of our  
4 power plants. You know, there's a cost of pumping  
5 that water up the mountain at night, and then there's  
6 a value when it -- the water comes down the mountain  
7 during the day and turns the turbine. And where that  
8 compares to the coal-fired power plants in our system  
9 and, you know, which fuel prices are going up at  
10 which power plants at which time, I don't know.

11 Q. Do you know if hydro is generally  
12 cheaper than most other type of power to generate?

13 A. Hydro that runs through a dam, yes.  
14 However, there is a cost to -- to power coming out of  
15 Taum Sauk.

16 Q. Let me ask you this: If energy market  
17 prices earned on the off-system sales increase, the  
18 Taum Sauk outage will also grow in value; is that  
19 correct?

20 A. Could you repeat that one too? I'm  
21 sorry.

22 Q. Yes. If market energy prices earned on  
23 off-system sales increase, the Taum Sauk outage will  
24 also grow in value; is that correct?

25 A. I believe with -- I believe with Taum

1     Sauk -- again, I'm not a production modeling person,  
2     but I believe with Taum Sauk that it would depend  
3     upon the differential between on-peak and off-peak  
4     price movements.

5             Q.       Would you agree with me, nonetheless,  
6     that the -- the calculations required to model for  
7     the absence of Taum Sauk are complicated?

8             A.       Again, we've proposed that a way to  
9     simplify that would be to include a static value in  
10    the formula.

11            Q.       That wasn't my question.

12            A.       I'm sorry.

13            Q.       My question was would you agree that the  
14    calculations of the value of the Taum Sauk outage are  
15    complicated?

16            A.       Well, not to diminish the work of people  
17    who do production cost modeling, which I don't -- I  
18    think it's a complicated subject -- my experience has  
19    been that once you have a model built and you have  
20    your assumptions in there, that -- that to the extent  
21    you want to model something, it's relatively easy.

22            Q.       So instead of putting the static value  
23    in, we should do it on a -- on a monthly basis, then,  
24    because once we've built the model, it's pretty easy?

25            A.       We -- we -- as I said in my testimony,

1 we can either do the static value or we can -- we can  
2 look back and actually model what we believe the  
3 value of Taum Sauk actually would have been during  
4 that period.

5 Q. Would you agree with me that the fuel  
6 modeling is controversial? I mean, Staff and the  
7 company have had dueling experts in this case?

8 A. There were differences that needed to be  
9 reconciled. Whether I characterize those as -- the  
10 word you used "controversial," I don't know.

11 Q. Would you agree with me that regulatory  
12 lag provides a strong incentive to a company?

13 A. Yes.

14 Q. Would you agree with me that a fuel  
15 adjustment clause completely removes regulatory lag  
16 because fuel and purchased power costs are passed  
17 through dollar for dollar?

18 A. No.

19 Q. Okay. Explain that.

20 A. Well, if you have a fuel and purchased  
21 power tracker, you are recovering your fuel cost  
22 dollar for dollar. However, other costs of your  
23 business are still going to be subject to the impacts  
24 of regulatory lag.

25 Q. Okay. But they wouldn't be an issue

1 with respect to fuel and purchased power costs; is  
2 that correct?

3 A. That is correct.

4 Q. And are you familiar with Charles  
5 Miller, former CEO of Ameren Corporation?

6 A. Yes.

7 Q. And are you familiar with the fact that  
8 he indicated in a letter to shareholders that UE's  
9 lack of a fuel adjustment clause made it more  
10 attentive to fuel costs?

11 A. Yes.

12 Q. Now move to your surrebuttal testimony.  
13 I just have a couple questions about that testimony.  
14 And you're aware at least that Mr. Trippensee has  
15 talked about the fact that the complexity of -- of,  
16 you know, the fuel adjustment clause and all of the  
17 things it would need to audit would overwhelm the  
18 regulatory process, has he not?

19 A. Yes.

20 Q. Have you examined and included any  
21 evidence of resource commitments made by regulators  
22 in other states to doing fuel adjustment clause  
23 reviews?

24 A. No, I have not.

25 Q. Would you agree with me that if all



1 Missouri utilities eventually got fuel adjustment  
2 clause -- clauses, the resource requirements would  
3 not be trivial?

4 A. I would expect the resources would be  
5 devoted to -- to review of the data that we would  
6 provide and the prudence reviews that are required.

7 Q. Do other states have the same audit  
8 requirements as set forth by the MPSC rule?

9 A. I believe that most states do have  
10 prudence reviews.

11 Q. Did you hear the opening of Mr. Lowery  
12 where he indicated that this was one of the most  
13 comprehensive fuel adjustment clauses of anyone?

14 A. I don't recall his exact words.

15 Q. But it was something to that effect?  
16 I'm not quoting him directly.

17 A. I remembered something along those  
18 lines.

19 Q. What if another Taum Sauk-type incident  
20 occurs, what action would be required to fix the fuel  
21 adjustment clause to avoid imprudent recoveries?

22 A. We would need to make an adjustment to  
23 the extent that there was an event which caused costs  
24 to increase which were due to something that was  
25 deemed inappropriate or the shareholders should --

1     should pay for, then you would have to decrease the  
2     actual fuel costs in the computation of the fuel  
3     adjustment clause to ensure that customers were held  
4     harmless for that.

5           Q.     Are you aware of procedures used to  
6     audit fuel adjustments in any other states?

7           A.     Procedures used by whom?

8           Q.     Any of the other states. I mean, your  
9     testimony, I think, trumpets 27 of the 29  
10    nonrestructured states have fuel adjustment clauses.

11          A.     That is correct, we do. I mean, one I  
12    was familiar with is prior to my joining Ameren as an  
13    auditor, I did audit the annual reconciliations of  
14    Illinois utilities that operated with a fuel  
15    adjustment clause.

16          Q.     In Illinois is it a mandatory or a  
17    permissive fuel adjustment clause regime?

18          A.     The -- in -- excuse me? I'm sorry.

19          Q.     In Illinois is it a mandatory or a  
20    permissive fuel adjustment clause regime?

21          A.     I am not sure whether it's mandatory or  
22    permissive.

23                   MR. MICHEEL: Just a minute. Thank you  
24    for your time, Mr. Lyons. I appreciate it.

25                   JUDGE WOODRUFF: Thank you.

1 Cross-examination by Public Counsel?

2 MR. MILLS: Yes, thank you.

3 CROSS-EXAMINATION BY MR. MILLS:

4 Q. Good afternoon, Mr. Lyons.

5 A. Good afternoon.

6 Q. Now, I'm gonna -- I'm gonna try not to  
7 ask you the same questions that Mr. Micheel asked,  
8 and I'm gonna try to generally defer questions about  
9 your new proposal in your surrebuttal and the new  
10 tariff sheets that just got distributed today until  
11 Thursday, but there may be some overlap, and I  
12 apologize for that, but that's my general approach so  
13 I'll give you a little fair warning.

14 A. Thank you.

15 Q. In your qualifications set out in your  
16 direct testimony, you state that you were an auditor  
17 with Price Waterhouse; is that correct?

18 A. I was, yes.

19 Q. And during your tenure there, what  
20 electric utilities did you supervise audits of?

21 A. Illinois Power and its parent company  
22 Illinova, Dayton Power & Light Company, South Texas  
23 Nuclear Project, Western Farmers' Electric  
24 Cooperative, San Miguel Power Cooperative, Empire  
25 District Electric Company. Offhand those are the

1 ones I recall supervising.

2 Q. And how many of those are regulated  
3 utilities, rate regulated utilities with fuel  
4 adjustment clauses?

5 A. I don't recall specifically.

6 Q. Or -- or any of the cooperatives in that  
7 category?

8 A. I don't recall specifically.

9 Q. Do you know of any cooperatives that are  
10 rate-regulated?

11 A. If you'll pardon me, this was, you know,  
12 six to ten years ago that I conducted these audits.  
13 Certainly they were subject to federal regulation.  
14 Whether it was federal rate regulation, I'm  
15 struggling to recall.

16 Q. Okay. Do you know today in Missouri,  
17 are cooperatives rate-regulated by this Commission?

18 A. I don't know.

19 Q. Okay. The Empire District Electric  
20 Company, I think you're too young to have audited  
21 them when they had a fuel adjustment clause so I  
22 assume that they did not; is that correct?

23 A. I don't -- I don't recall whether  
24 they -- they did not in Missouri. Of course, they're  
25 operating in three other jurisdictions where I think

1     they may have fuel adjustment clauses today but I  
2     don't know whether they did at that time.

3           Q.     Do you remember specifically auditing  
4     any electric utilities that did have fuel adjustment  
5     clauses?

6           A.     Illinois Power specifically did, yes.

7           Q.     Any others?

8           A.     I don't recall the others.

9           Q.     Now, have you been -- have you been in  
10    the hearing room all day today or -- or let me narrow  
11    it down some. Were you here when I was  
12    cross-examining Mr. Baxter about his -- his testimony  
13    with regard to the fuel adjustment clause?

14          A.     I think I may have been, but to be  
15    honest with you, it was a bit of a blur. I don't  
16    recall specifically.

17          Q.     Let me just ask you the question: Do  
18    you believe that absent the Commission granting a  
19    fuel adjustment clause in this case, that Union  
20    Electric has no hope of earning a satisfactory return  
21    on its Missouri investment?

22          A.     No hope?

23          Q.     Yes. Is it impossible for Union  
24    Electric to earn a satisfactory return without a fuel  
25    adjustment clause in this case?

1           A.       I don't -- well, over -- over what time  
2 period, I guess?

3           Q.       Next two years.

4           A.       I don't know.

5           Q.       You can't see any way short of a fuel  
6 adjustment clause that you could get out of this case  
7 and have a possibility of earning a satisfactory  
8 return?

9           A.       I suppose there is a possibility.

10          Q.       Okay. Now, have you seen Exhibits 255  
11 and 256, 255 being the Moody's 3/12 -- March 12th  
12 issuance, and 256 being the Standard & Poor's  
13 December 8th issuance?

14          A.       I believe I've seen them both.

15          Q.       Okay. Can you tell me from reading  
16 those whether it appears that either Standard &  
17 Poor's or Moody's cite the lack of a fuel adjustment  
18 clause in Missouri as a driving factor behind their  
19 actions in either of those releases? And I can  
20 provide you copies if you'd like.

21          A.       Would you mind? I'd appreciate that.

22                   In the Moody's release of March 12th, I  
23 don't see any specific reference. In the Standard &  
24 Poor's release that Barbara Iseman (phonetic  
25 spelling) put out on December 8th, she does discuss

1     that, you know, at the same time UE asked PSC to  
2     adopt a fuel adjustment clause that would allow the  
3     company to recoup fuel and purchased power costs in a  
4     timely manner. I've actually spoken to Barbara  
5     Iseman before on occasion --

6             Q.       And my question is --

7             A.       -- about the fuel adjustment clause.

8             Q.       -- only about what's in those two  
9     documents, not about other conversations you may have  
10    had with these people.

11            A.       Okay. Well, I see reference to it and I  
12    would assume that meant it was of some importance to  
13    her.

14            Q.       Can you tell from reading that document  
15    that it appears to be a driving factor in the S&P  
16    action on December 8th?

17            A.       I don't know whether it's a driving  
18    factor or not. It's mentioned.

19            Q.       Okay. Now, turning to your direct  
20    testimony at page 5, and the answer that begins on --  
21    well, the question that begins on 17 and the answer  
22    that follows. Is it your testimony that to date  
23    there has been a measurable impact on your cost of  
24    debt from the lack of a fuel adjustment clause?

25            A.       I believe there has been. Not that I

1 have measured it or seen it quantified.

2 Q. Okay. You believe that there is an  
3 impact on your cost of debt, but despite all the  
4 wrangling we went through over the SB 179 rules and  
5 the wrangling we're going to go through in this case,  
6 you have not quantified that impact; is that correct?

7 A. I personally have not, no.

8 Q. Now, is one of the considerations that  
9 prompted Union Electric to file this rate case its  
10 increased fuel costs?

11 A. Yes.

12 Q. If the Commission decides in this case  
13 that UE's current rates are adequate or more than  
14 adequate, will that take some of the strength out of  
15 your argument that a fuel adjustment clause is  
16 necessary to cope with the rising fuel costs?

17 A. No.

18 Q. Okay. So if the Commission believes  
19 that your current rates are excessive despite the  
20 fact that you claim that your fuel costs are  
21 increasing already, do you think you would still --  
22 do you think that that -- that doesn't hinder your  
23 argument that a fuel adjustment clause is necessary?

24 A. Mr. Mills, could I ask you just to  
25 repeat that question?



1           Q.       Yes.  If the Commission in this case  
2       decides that despite your already increasing fuel  
3       costs that your current rates are excessive, doesn't  
4       that take away some of the strength of your argument  
5       that you need a fuel adjustment clause to cope with  
6       rising fuel costs?

7           A.       I don't think so.

8           Q.       Okay.  Now, with respect to your direct  
9       testimony still, page 6, approximately lines 5  
10      through 7, do you know how many states require  
11      periodic rate cases for utilities with fuel  
12      adjustment clauses?

13          A.       Could you repeat that question, please?

14          Q.       Do you know how many states that have  
15      fuel adjustment clauses require periodic rate cases?

16          A.       Well, my schedule MJL 3.3 -- 3-3 I  
17      believe is responsive to that question.  In that  
18      schedule we listed all of the nonrestructured states,  
19      including Missouri, and in that -- in that document  
20      other than Missouri, I don't see another that, you  
21      know, I've listed as -- as requiring periodic rate  
22      cases.

23          Q.       Do you know which ones require  
24      volatility mitigation?

25          A.       I'm not sure of that.

1           Q.       Do you know if any require volatility  
2 mitigation?

3           A.       I'm not sure of that.

4           Q.       I'm gonna ask you some questions about  
5 your rebuttal testimony. Now, I think you answered  
6 this in a slightly different fashion from  
7 Mr. Micheel, but tell me, has UE had frequent rate  
8 cases in the past?

9           A.       It has had some rate cases in the past.

10          Q.       Let's just talk about the past 20 years.  
11 Has it had frequent rate cases in the last 20 years?

12          A.       I'm not exactly sure how many it has had  
13 in those 20 years.

14          Q.       Do you know if it's had any rate cases  
15 in the last 20 years?

16          A.       I remember there was a rate case back in  
17 2001/2002 time frame.

18          Q.       I'm talking about rate -- when I say  
19 rate case, I'm talking about a general rate increase  
20 case in which the utility filed either under the file  
21 and suspend method or the complaint method for a rate  
22 increase. Has Union Electric filed for a rate  
23 increase in the last 20 years?

24          A.       It's been about 20 years.

25          Q.       Would you consider once in 20 years

1 frequent?

2 A. No.

3 Q. Okay. I was gonna say, because if you  
4 did, I'd settle for frequent rate cases. Does UE  
5 have any concrete plans to file a rate case following  
6 the conclusion of this one?

7 A. No.

8 Q. Regardless of the outcome of this case?

9 A. We have no concrete plans.

10 Q. Okay. Now, at your rebuttal testimony,  
11 page 3, line 22, you talk about the review of  
12 Commission Staff and other interested stakeholders to  
13 make sure that least cost technologies are selected.  
14 Do you see that portion of your testimony?

15 A. I was trying to get there quickly. You  
16 say page 22?

17 Q. Page 3 --

18 A. Oh, page 3.

19 Q. -- line, basically 20 to 22. Do you see  
20 that section?

21 A. I do see that, yes.

22 Q. How does that review ensure that least  
23 cost technologies are selected?

24 A. I'm not sure that it ensures that, but I  
25 believe it's part of the process for looking at the

1 future resource needs of the utility and planning for  
2 those with cost as -- as a concern.

3 Q. Okay. Can that process ensure the least  
4 cost technologies are selected?

5 A. I don't think it can ensure it, no.

6 Q. Is it designed to ensure that?

7 A. I'm not specifically aware.

8 Q. Does the Commission's Staff or any other  
9 interested stakeholder have any authority through  
10 that process to require Union Electric to make any  
11 specific investments?

12 A. I don't know.

13 Q. Is the resource plans that are reviewed  
14 that you're discussing in that bullet point, are you  
15 talking about the integrated resource planning  
16 process pursuant to the Commission's rules?

17 A. That was what, yes, what I was referring  
18 to.

19 Q. Are you aware of current discussions  
20 about revising the integrated resource planning  
21 rules?

22 A. I'm not aware of that.

23 Q. If those rules are revised in the near  
24 future, would Union Electric support giving Public  
25 Counsel more authority over Union Electric's planning

1 decisions?

2 A. I don't know. It's not -- not my  
3 decision.

4 Q. Would it be something that you would  
5 support in your role as controller?

6 A. I don't know.

7 Q. So you wouldn't rule out giving Public  
8 Counsel more authority over your planning decision?

9 A. I don't know. I've not considered it.

10 Q. Still on your rebuttal testimony,  
11 page 5, line 4, I believe you're talking about Public  
12 Counsel there and you state that -- and I'm  
13 paraphrasing a little bit just to simplify the  
14 sentence -- that Public Counsel was not supportive of  
15 the Commission's rules implementing Senate Bill 179;  
16 is that correct?

17 A. To my knowledge, that's correct.

18 Q. You were fairly involved in that  
19 process, were you not?

20 A. Yes.

21 Q. The implementation rules?

22 A. Yes.

23 Q. Okay. What do you mean by Public  
24 Counsel was not supportive of the rules?

25 A. I guess what I -- I guess what I mean by

1     that is, you know, a proponent of use of fuel  
2     adjustment clauses.

3           Q.     Did Public Counsel oppose the Commission  
4     adopting rules?

5           A.     I didn't say that. I just said not  
6     supportive, meaning not a proponent.

7           Q.     Okay. Was Union Electric a proponent of  
8     the rules exactly as they were promulgated?

9           A.     No.

10          Q.     So was Union Electric supportive of the  
11     rules?

12          A.     Yes.

13          Q.     Okay. Because Union Electric  
14     participated in the process, is that how they were  
15     supportive?

16          A.     I -- I -- if it was worded a little  
17     improperly, I'm not sure, but I meant, you know,  
18     supportive of use of fuel adjustment clause.

19          Q.     Are you aware of any party that was  
20     involved in that rulemaking process that was  
21     completely satisfied with the rules as they  
22     ultimately came out?

23          A.     No.

24          Q.     Now, later on that same page you're  
25     talking about fuel adjustment clauses in other states

1 down about line 18. Can you tell me when fuel  
2 adjustment clauses were established for utilities in  
3 those states?

4 A. Not specifically, no.

5 Q. Do you know whether the Public Service  
6 Commission or Public Utility Commission or whatever  
7 the regulatory body is in each of those states,  
8 whether that body has discretion to approve or reject  
9 fuel adjustment clauses?

10 A. I do not.

11 Q. With respect to fuel adjustment clauses  
12 in Missouri, are there any Missouri electric  
13 utilities that you think should not be allowed a fuel  
14 adjustment clause?

15 A. I haven't considered the others.

16 Q. Are there any factors that you would  
17 suggest that should go into the Commission's  
18 consideration of where to allow fuel adjustment  
19 clauses for Union Electric or another utility?

20 A. I think in the testimony that we've  
21 outlined, we're in general agreement with other  
22 parties about, you know, fuel costs are a large  
23 component of the company's operating cost, if they're  
24 a volatile component of the company's operating cost,  
25 amongst a couple of other considerations.

1           Q.       So you generally agree with the types of  
2 factors that the other parties have proposed; you  
3 just don't agree with their conclusions based on  
4 consideration of those factors; is that fair?

5           A.       In my reading of the testimony, I  
6 believe that's true.

7           Q.       Okay. Now, in your rebuttal testimony  
8 at page 10, line 13, you're talking about forecasts  
9 for coal and transportation costs. What forecasts  
10 are those?

11          A.       I don't have such forecasts with me. I  
12 don't recall specifically which forecasts.

13          Q.       You don't know what forecasts you relied  
14 on to make that statement?

15          A.       I don't recall.

16          Q.       So is the 5 to 10 percent you're talking  
17 about there, is that 5 to 10 percent over several  
18 years or for each year over the next several years?

19          A.       My recollection is that was annual.

20          Q.       Okay. And how many years is "several"  
21 as you word it there?

22          A.       My recollection of graphs that I'm  
23 trying to recall were three to five.

24          Q.       Okay. So after five years according to  
25 this, you expect that commodity coal prices will be



1 50 percent higher than they are today or 25 -- 25 to  
2 50 percent higher than they are today?

3 A. I understand the math you're doing. I  
4 don't know. I'd have to go back and make reference.

5 Q. Do you disagree that this is math that  
6 is --

7 A. No, it is, it's --

8 Q. -- set out in your testimony?

9 A. I agree, it would be 25 to 50 based upon  
10 this.

11 Q. Okay. And that's -- that's the  
12 prediction that Union Electric is offering to this  
13 Commission?

14 A. I simply said the recent forecasts that  
15 show those commodity prices. Whether those are the  
16 prices that, you know, actually are transacted at, we  
17 don't know with certainty today. As our coal  
18 contracts roll off and we renew them, coal prices are  
19 volatile. Oftentimes, you know, I have to admit, you  
20 know, while people forecast it and we look at  
21 forecasts, they can be wrong.

22 Q. Are these the same forecasts that your  
23 coal buyers rely on?

24 A. I'm not specifically sure of that.

25 Q. Do you know if those forecasts that

1     you're talking about there have taken into account  
2     the decline in commodity coal prices since the  
3     beginning of 2006?

4           A.       I believe at the time that I was  
5     preparing this, it was a recent forecast. I can't  
6     say definitively, sir.

7           Q.       Now, you go on to say that these  
8     analyses by which I mean -- I take it to mean that  
9     you're referring to the recent forecast in the  
10    previous sentence; is that a correct reading of your  
11    testimony?

12          A.       Yes.

13          Q.       "Coupled with AmerenUE's knowledge of  
14    the coal market." On what do you base your  
15    understanding of AmerenUE's knowledge of the coal  
16    market?

17          A.       It would be through my discussions with  
18    Mr. Neff who I cite earlier in that paragraph and  
19    others.

20          Q.       Okay. So in order to get a better  
21    understanding of AmerenUE's knowledge of the coal  
22    market, I should ask Mr. Neff questions about  
23    AmerenUE's knowledge of the coal market?

24          A.       Well, I hate to defer -- he is the  
25    expert, yes.

1           Q.       Okay. Now, skipping over some of this  
2 stuff because I'm gonna get to this on Thursday, up  
3 to page 29 of your rebuttal testimony, lines 9  
4 through 10, I believe you're talking about the  
5 resource planning process again. Is this the  
6 integrated resource planning process that we talked  
7 about a little earlier that you're referring to in  
8 your testimony?

9           A.       Yes. Yes, Mr. Mills.

10          Q.       When in that process were the additions  
11 of Pinckneyville, Kinmundy and Peno Creek reviewed?

12          A.       I don't know specifically. I don't  
13 know.

14          Q.       Do you know whether those additions were  
15 reviewed in the integrated resource planning process  
16 before or after those acquisitions were made --  
17 acquisitions or construction?

18          A.       I don't know.

19          Q.       So at least as far as your knowledge is  
20 concerned, it's at least possible that those  
21 acquisitions or construction in the case of Peno  
22 Creek could have taken place before any integrated  
23 planning resource review?

24          A.       Again, I don't know.

25          Q.       Okay. Now, let's talk about -- mostly

1 about your surrebuttal testimony. In general, do you  
2 agree that for a particular category of cost to be  
3 included in a fuel adjustment clause, that that cost  
4 must be largely outside of the utility's control?

5 A. I don't know that every specific item  
6 that needs -- that would be going through a fuel  
7 adjustment clause would need to be volatile.

8 Q. And that's really my question. I'm sort  
9 of talking about rail cars as one example.

10 A. Okay.

11 Q. UE considers the cost of rail cars to be  
12 associated with fuel, correct?

13 A. With the transportation of the fuel.

14 Q. Yes. And so even though perhaps the  
15 cost of -- of maintaining and running your own unit  
16 trains is not terribly volatile, is it?

17 A. I believe that the cost of rail  
18 transportation is volatile.

19 Q. I'm talking about the cost of  
20 maintaining and operating your unit trains.

21 A. They see that as a substitute for paying  
22 somebody else to do it through a rail transportation  
23 contract.

24 Q. But that wasn't my question. Is the  
25 cost of owning and maintaining your fleet of unit

1     trains volatile?

2             A.       I'm not sure.

3             Q.       Okay.  You don't know whether it's

4     volatile or not?

5             A.       Correct.

6             Q.       Okay.  And so from there I take it that

7     it doesn't matter whether it's volatile or not to

8     include it in a fuel adjustment clause from your

9     perspective?

10            A.       Could you repeat that question?

11            Q.       Have you proposed to include a cost of

12     owning and maintaining rail -- your unit trains in

13     the fuel adjustment clause?

14            A.       Yes, we have.

15            Q.       And you do not know whether that cost is

16     volatile?

17            A.       I do not.

18            Q.       Okay.  So does it matter whether a cost

19     is volatile for you to include it in your fuel

20     adjustment clause?

21            A.       Could you repeat the last question one

22     more time?

23            Q.       Does it matter whether the cost is

24     volatile for you to include it in your proposed fuel

25     adjustment clause?

1           A.       I think that use of a fuel adjustment  
2    clause is appropriate for a volatile cause which --

3                   MR. MILLS:  Your Honor, could I get a  
4    yes or no to that question?

5                   JUDGE WOODRUFF:  Yes.  If you could  
6    please answer that question yes or no.  It was a  
7    fairly simple question.

8                   THE WITNESS:  Not specific components,  
9    no.

10   BY MR. MILLS:

11           Q.       Okay.  Now, in your surrebuttal at  
12   page 6, lines 19 through 20, help me out with that  
13   sentence.  "The lack of a lockstep relationship does  
14   not exist."  Is that how you would read that sentence  
15   or is there a problem there or is there a problem  
16   with -- I'm not sure I understand what you're trying  
17   to say there.

18           A.       First, I'm not sure where you are at yet  
19   so I apologize.

20           Q.       Surrebuttal testimony, page 6 --

21           A.       Yes, got it.

22           Q.       -- lines 19 through 20.  The sentence  
23   reads, "In short, the lack of a lockstep relationship  
24   between fuel cost and marketing prices for fuel and  
25   purchased power does not exist."

1           A.       I'm sorry, Mr. Mills. I was in -- I was  
2 in the wrong testimony. I apologize.

3           MR. BYRNE: Which set of testimony is  
4 it?

5           MR. MILLS: I'm in surrebuttal, page 6.

6           MR. BYRNE: I was in the wrong witness's  
7 testimony.

8 BY MR. MILLS:

9           Q.       Mr. Lyons, do you see that sentence?

10          A.       I do see it, yes.

11          MR. CONRAD: Tom, this is Ameren.

12 BY MR. MILLS:

13          Q.       Is it -- there is not a lockstep  
14 relationship or there is a lockstep relationship?

15          A.       I see. There's a double negative. I  
16 apologize.

17          Q.       And I thought this was gonna be an easy  
18 question and I'm sorry.

19          A.       Okay. I haven't found any of them easy  
20 today myself. I do apologize. That -- it should  
21 be -- it shouldn't have said "the lack of," it should  
22 have said, "In short, a lockstep relationship."

23          Q.       Okay. That's what I thought. See, it  
24 was an easy one.

25          A.       Well, it was. I apologize for that. It

1 was confusing.

2 Q. Now, does Union Electric have any power  
3 whatsoever to control coal -- coal transportation,  
4 gas, nuclear fuel or purchased power costs?

5 A. It can exert -- well, it can employ  
6 strategies to try to make sure that we get the best  
7 price, but it cannot control the underlying market  
8 movements of prices for the commodities.

9 Q. But there are -- there are some actions  
10 that Union Electric can take to somewhat affect the  
11 prices it pays for those commodities?

12 A. There are, yes, purchasing strategies  
13 that can help to make sure that we get the lowest  
14 prices that we can.

15 Q. Is your ability to exercise those  
16 purchasing strategies dependent on whether or not you  
17 have a fuel adjustment clause?

18 A. No. No, it doesn't.

19 Q. You can take the same actions either  
20 way?

21 A. Yes.

22 Q. Is the incentive to take those actions  
23 the same whether or not Union Electric has a fuel  
24 adjustment clause?

25 A. I think there are incentives either way,



1 and I think what we're gonna get into, I know,  
2 next -- next -- next time, I think the -- the -- you  
3 know, sharing proposal that we've put with the fuel  
4 rider and the off-system sales certainly provides  
5 incentives as well.

6 Q. Okay. And then we will -- we will talk  
7 about that some more next time.

8 A. Sure.

9 Q. But my question was not are there  
10 incentives each way, are they the same incentives  
11 each way?

12 A. Well, I think there are meaningful  
13 incentives either way.

14 Q. Are they the same?

15 A. I don't think they are exactly the same.

16 Q. Now, let's talk for a little bit about the  
17 proposed 4 percent cap that Mr. Johnstone first proposed  
18 and I believe Union Electric has taken up in a  
19 slightly altered fashion in your surrebuttal testimony.

20 Assume with me that Union Electric does  
21 get a fuel adjustment clause in this case. And just  
22 to make it easy, assume with me that the effective  
23 date of this case is January 1, 2007, okay? A couple  
24 of months ago, just for this example.

25 A. Okay.

1           Q.       Just so the years will come out a little  
2 easier. And assume with me that Union Electric does  
3 not file another rate case until after 37 months,  
4 which is basically the end date according to the  
5 statute, okay?

6                    So you have a fuel adjustment clause,  
7 you have your 4 percent mitigation cap, you're gonna  
8 go four years without filing a rate case.

9                    Now assume with me that fuel and  
10 purchased power costs go up for 6 percent per year  
11 during those four years. Tell me what's gonna happen  
12 to a customer's rates.

13          A.       Okay. I think we went through a similar  
14 example earlier, but what would happen would be that  
15 through the operation of the cap during -- well, it  
16 depends on which that first 6 percent kicked in, but  
17 for sake of simplicity, if it kicked in immediately,  
18 the 6 percent, the customer's -- the customer class  
19 rates would be raised 4 percent.

20          Q.       Okay.

21          A.       Okay? And then the differential, the  
22 cost not recovered due to the imposition of that cap  
23 would be deferred to the end of that recovery period.

24          Q.       Okay.

25          A.       And then would be included over the

1 following 12-month period. So --

2 Q. Okay. So over the following 12-month

3 period, rates would go up 6 percent?

4 A. That is correct.

5 Q. Over the 4 percent?

6 A. Well, there would be a 4 percent

7 increase and then the next year, by reference to the

8 average retail rates paid in the prior year, it would

9 go up 4 percent plus --

10 Q. Plus the 2?

11 A. -- plus you would collect the -- the 2.

12 Q. For a cumulative increase of about

13 10 percent?

14 A. Hypothetically under your scenario, yes.

15 Q. Okay. Now let's move onto year 3.

16 A. Okay.

17 Q. In that case you have the -- in year 2

18 you've got the 4 percent plus the 2 percent deferred.

19 In year 3 you've got another 4 percent plus 4 percent

20 deferred?

21 A. I'm trying to think through it.

22 Q. Okay.

23 A. You would have recovered the first

24 deferral and so you'd be recovering the deferral

25 created in the second period.

1 Q. In the second period?

2 A. Yes.

3 Q. Okay. How about in the final year?

4 A. The final year, again, you would go  
5 4 percent and recover any deferrals from the prior  
6 year over that next year. I mean, it has the effect  
7 of rather than the rates going up 6 percent,  
8 modifying that, and the rates do grow over time but  
9 they grow at a -- a -- you know, a different rate.

10 Q. And by the end of the fourth year, by  
11 avoiding a 6 percent increase in any one year,  
12 customers may be hit with a -- with an 8 percent  
13 increase because of two deferrals?

14 A. They may be. There may be price  
15 declines during that period as well, or increases in  
16 off-system sales that would mitigate that.

17 Q. If the Commission adopts a fuel  
18 adjustment clause that has off-system sales in the  
19 fuel adjustment clause?

20 A. That's correct.

21 Q. Okay. That's not a given at this point,  
22 is it?

23 A. No. No, it's not a given.

24 Q. Okay. And those increases could happen  
25 even if there were cost decreases or productivity

1 gains in other areas of your utility business; is  
2 that correct?

3 A. If there were cost increases or  
4 productivity --

5 Q. I'm sorry. Cost -- cost decreases or  
6 productivity gains?

7 A. Either way, yes.

8 Q. Now, you talk a lot about -- and I  
9 believe Mr. Baxter and Mr. Lowery do as well -- about  
10 the mainstream in terms of utility regulation with a  
11 fuel adjustment clause. Are you familiar with that  
12 term?

13 A. I -- I am, yes.

14 Q. Is there something inherently wrong with  
15 being out of the mainstream in terms of utility  
16 regulation?

17 A. Well, I -- I think that, as we've  
18 suggested, that the credit rating agencies, all other  
19 things being equal, perceive there to be a lower  
20 credit risk with having a fuel adjustment clause.  
21 And so it does lower your cost of capital, all other  
22 things being equal. And, you know, I think their  
23 thought process there is that a fuel adjustment  
24 clause allows you to adjust the rates for cost  
25 increases and decreases allowing you not -- not to

1 maximize profits but to provide stability of cash  
2 flows to service that debt with. And a fuel  
3 adjustment clause provides that kind of mechanism.

4           And when we say mainstream, it's because  
5 of the, you know, significant number of other  
6 utilities that do utilize a fuel adjustment clause.  
7 And I think we've got all this in testimony, but, you  
8 know, 51 of 58 utilities in nonrestructured states  
9 have them, and with companies like us with coal  
10 capacity at greater than 50 percent, 21 of 24  
11 utilities in nonrestructured states have a fuel  
12 adjustment clause.

13           And that doesn't necessarily mean that  
14 we should just do whatever everybody else is doing  
15 for the sake of doing it. I simply offer that as  
16 context that other utilities, other commissions are  
17 using this as a tool, and it seems to me that the  
18 majority of folks out there feel it's a good and  
19 useful tool for recovery of these kinds of costs.

20           Q.       So those statistics are really more of a  
21 context rather than a reason in and of themselves to  
22 adopt a fuel adjustment clause?

23           A.       I agree with that.

24           Q.       Okay.

25           JUDGE WOODRUFF: Mr. Mills, I'm gonna

1 interrupt you here because it is five o'clock. We've  
2 not exactly made great progress today and I want to  
3 make some more progress before we stop for the day.  
4 In fact, I'd like to finish this witness if we can.

5 But we'll go ahead and take a short  
6 break now to allow anybody that needs to make phone  
7 calls about child care arrangements and so forth to  
8 do so. I expect we'll go until at least six o'clock  
9 and then we'll see what --

10 MR. MICHEEL: Your Honor, are you gonna  
11 take another witness tonight?

12 JUDGE WOODRUFF: I don't think so. I  
13 think this witness will be plenty for tonight.

14 MR. MICHEEL: Okay. Because if I can be  
15 excused, I'll just have to pass my questions from the  
16 bench.

17 JUDGE WOODRUFF: All right.

18 MR. MICHEEL: I can't --

19 JUDGE WOODRUFF: You're certainly  
20 excused. I understand your situation, Mr. Micheel.

21 MR. MICHEEL: Thank you.

22 JUDGE WOODRUFF: We'll take a break  
23 until 5:10 and then we'll come back.

24 MR. LOWERY: Your Honor, could I --  
25 could I take 30 seconds before we take that break and

1 just --

2 JUDGE WOODRUFF: Sure.

3 MR. LOWERY: Mr. Hanser was on the  
4 schedule for the fuel adjustment clause, and that  
5 really had been at the request of Mr. Conrad when we  
6 were doing the schedule last week.

7 Mr. Conrad informs me he doesn't  
8 actually have any questions for him. Neither do any  
9 of the other counsel. Although, Lewis, I haven't had  
10 a chance to ask you.

11 MR. MILLS: I have no questions for him.

12 MR. LOWERY: If that's the case, I'd ask  
13 that he be excused unless the Commissioners had  
14 questions.

15 JUDGE WOODRUFF: I'm sorry. Which  
16 witness?

17 MR. LOWERY: Mr. Hanser.

18 JUDGE WOODRUFF: Hanser.

19 MR. LOWERY: Who is actually gonna be  
20 back on rate design which is really where his area  
21 is, but he was only here because Mr. Conrad had asked  
22 about -- thought he might have some questions. He  
23 doesn't, and Mr. Hanser actually has a flight that he  
24 could catch, and I'd ask that he be excused if it  
25 suits the Commission.



1 JUDGE WOODRUFF: And he will be back  
2 later?

3 MR. LOWERY: He will be back on rate  
4 design the last week of the hearings.

5 JUDGE WOODRUFF: So if any of the  
6 Commissioners have questions for that witness on this  
7 issue, they could ask them then?

8 MR. LOWERY: They could, yes.

9 JUDGE WOODRUFF: He's excused.

10 MR. LOWERY: Thank you.

11 (A RECESS WAS TAKEN.)

12 JUDGE WOODRUFF: All right. We're back  
13 from the break, and Mr. Mills, you can continue with  
14 your cross.

15 BY MR. MILLS:

16 Q. Now, Mr. Lyons, before we broke we were  
17 talking about the mainstream. Let me ask you this:  
18 Are Union Electric's rates currently in the  
19 mainstream of utilities around the country?

20 A. No. They are -- they are a mix of the  
21 lowest rates, I believe.

22 Q. So in that context, being out of the  
23 mainstream is a good thing; is that correct?

24 A. Well, I think that generally is a good  
25 thing but I don't think that conflicts with the use

1 of a fuel adjustment clause. I mean, I think I  
2 pointed out in my testimony that of the 25 lowest  
3 rate -- you know, of utilities with the lowest rates  
4 in those nonrestructured states, 22 of those 25 had  
5 a -- had a fuel adjustment clause. I mean, yes, we  
6 have low rates and that is a good thing. I think  
7 that can be maintained with a fuel adjustment clause.

8 Q. Now, in your -- your testimony, and I'm  
9 thinking primarily your surrebuttal -- surrebuttal,  
10 but I think it comes up earlier, you talk about the  
11 purchased gas adjustment concept. Are you familiar  
12 with the concept of the purchased gas adjustment for  
13 gas utilities?

14 A. I am.

15 Q. When you buy fuel, be it natural gas or  
16 coal or whatever for your electric operations, do you  
17 simply turn around and resell that fuel to customers?

18 A. No, we do not.

19 Q. You use it to manufacture electricity  
20 with; is that correct?

21 A. That is correct.

22 Q. And then you sell the electricity to  
23 your customers?

24 A. That is correct.

25 Q. And there are -- in the case of natural

1 gas, for example, there are a number of different  
2 technologies that you could use to turn that natural  
3 gas into electricity; is that correct?

4 A. Yes, you can -- you can -- you can  
5 generate electricity using natural gas, if that's  
6 what you mean.

7 Q. Are there choices in the way in which  
8 you can generate electricity using natural gas, a  
9 combined cycle turbine, a combustion turbine without  
10 combined cycle, for example?

11 A. I've heard those terms but I'm not an  
12 engineer.

13 Q. Are all of the natural gas plants on the  
14 Union Electric system today identical?

15 A. I don't believe so.

16 Q. And are they all located in exactly the  
17 same spot?

18 A. No, they are not.

19 Q. So at some point someone at Union  
20 Electric made choices about what plants to build or  
21 buy and where they would be located; is that correct?

22 A. That is correct.

23 Q. Now, have you ever worked for a  
24 regulatory agency?

25 A. I have not.

1           Q.       Have you ever worked for a utility that  
2    had a fuel adjustment clause?

3           A.       Well, Ameren has gas utilities that have  
4    a purchased gas adjustment clause, and in Illinois at  
5    this time we do have a clause to pass through  
6    purchased power costs.

7           Q.       In your role as controller, do you have  
8    a responsibility for filing fuel adjustment clause  
9    changes in Illinois?

10          A.       I personally do not.

11          Q.       That doesn't fall under your department?

12          A.       I don't believe that it does.

13          Q.       Okay. Would you agree that a fuel  
14    adjustment clause is more complicated than a  
15    purchased gas adjustment?

16          A.       I think it would be a little more  
17    complicated.

18          Q.       Do you know how many staff members the  
19    Public Service Commission -- the Missouri Public  
20    Service Commission staff currently has to review  
21    purchased gas adjustments and actual cost adjustments  
22    for Missouri's natural gas utilities?

23          A.       I don't personally know. I believe  
24    Mr. Trippensee said it was approximately 12, but I  
25    have no personal knowledge.

1           Q.       Do you know how many natural gas  
2       utilities there are in Missouri?

3           A.       I don't.

4           Q.       Assuming that -- well, never mind. You  
5       personally and UE as a company have fairly regular  
6       contact with Staff on a lot of issues; is that true?

7           A.       Fairly regular.

8           Q.       Do you have any knowledge of the current  
9       work load of the Commission Staff?

10          A.       From what I'm told, it's heavy.

11          Q.       Do you think that there are Commission  
12       Staff members who have ample free time to take on  
13       additional duties that would be involved in reviewing  
14       fuel adjustment clause filings?

15          A.       I don't personally know.

16          Q.       Okay. Given the questions that  
17       Mr. Micheel asked you earlier about Exhibit 511, is  
18       it your understanding that the data submissions that  
19       Union Electric would be making pursuant to a fuel  
20       adjustment clause filing would be fairly significant?

21          A.       They would be.

22          Q.       Okay. And I believe you answered that  
23       you didn't really know how thorough a review Staff  
24       would do, but assume with me that the Staff would  
25       review all of the invoices, all of the contracts for

1 all of the fuel purchases and purchasing decisions  
2 during each period. Would you anticipate that it  
3 will take a significant amount of man hours to do  
4 that task?

5 A. Yes.

6 Q. Now, you've had fairly frequent contact  
7 with members from the Public Counsel's Office over  
8 the last year or two; is that correct?

9 A. Yes.

10 Q. Do you have an opinion on the work load  
11 of the Public Counsel's Staff members?

12 A. I don't specifically, Mr. Mills.

13 Q. Would you -- would it -- well, do you  
14 know what the current staffing level of the Public  
15 Counsel is?

16 A. I have no idea.

17 Q. Okay. Assume with me that it's 11,  
18 counting three administrative support positions. Do  
19 you believe that two accountants, two economists,  
20 four lawyers could adequately audit a fuel adjustment  
21 clause filing by Union Electric Company?

22 A. I -- I -- I don't know.

23 Q. Okay. Are you aware of the witnesses  
24 that the MIEC and the MEG have devoted to this case?

25 A. Not specifically, though I would think

1 it substantial.

2 Q. Substantial being how many?

3 A. How many?

4 Q. How many witnesses --

5 A. Oh.

6 Q. -- do each of those parties have in this  
7 case?

8 A. I don't know specifically how many. I  
9 was thinking in terms of hours.

10 Q. Oh, okay. Given the level of  
11 involvement and the number of witnesses that you've  
12 seen and the number of consultants you've seen  
13 involved on behalf of those two entities throughout  
14 this case and through the negotiations about the  
15 SB 179 rules, do you believe that either the MEG or  
16 the MIEC have the resources to do a fuel adjustment  
17 clause true-up audit?

18 A. I don't know the depth of their  
19 resources.

20 Q. Okay. Now, you may have answered this  
21 with Mr. Micheel, but if you did, bear with me. Do  
22 you have an opinion as to the number of people it  
23 will take on a staff or from a consultant to do an  
24 annual true-up audit under your FAC proposal?

25 A. Again, I don't. I don't know the scope

1    which the Commission or other parties might set in  
2    terms of performing those reviews and how many hours  
3    would need to be committed to performing those.

4           Q.       Given what you've seen from the Missouri  
5    Staff audit during the course of this rate case,  
6    would you anticipate that the Staff, if they could,  
7    would do a thorough review of your -- of any true-up  
8    audit?

9           A.       I think they would.

10          Q.       And if you assume with me that a  
11   thorough review is required or should be done or will  
12   be done -- let me start over.  If you agree that a  
13   thorough audit will be done, do you have an opinion  
14   on how many man hours that would take under your FAC  
15   proposal?

16          A.       I don't specifically know.

17          Q.       Now, specifically on -- your discussion  
18   of Mr. Trippensee's rebuttal testimony -- no, I'm  
19   sorry.  Let me back up.  Have you read  
20   Mr. Trippensee's surrebuttal testimony?

21          A.       I believe I did, yes.

22          Q.       Do you recall his discussion of the  
23   revenue and cost mismatch discussed at pages 2 to 5  
24   of his testimony having to do with the use of  
25   estimated versus actual?



1           A.       I do.

2           Q.       Do you agree or disagree with his  
3 analysis?

4           A.       I believe I agree with it, and I believe  
5 the formula in the new rider this morning should  
6 address his concern.

7           Q.       Now, we talked a little bit earlier  
8 about rail cars, and I want to talk about them a  
9 little bit more. Do you own rail cars to transport  
10 coal? You, being Union Electric; not you, being  
11 Marty Lyons personally.

12          A.       Thank you. I do understand the  
13 question, yes. Yes.

14          Q.       And does UE perform or cause to be  
15 performed maintenance on those rail cars?

16          A.       I believe that to be true.

17          Q.       And are those rail cars included in the  
18 rate base recommended in this case?

19          A.       I don't believe so but I'm not positive.

20          Q.       Okay. If they were included in rate  
21 base in this case, would the associated depreciation  
22 expense be included in the depreciation expense in  
23 this case?

24          A.       I'm not sure of that either. I think  
25 under the FERC chart of accounts, the depreciation

1     expense and the rail cars goes to fuel expense. So  
2     I'd have to examine the filing or talk to people in  
3     our group who prepare -- or the company who prepared  
4     the filing to know specifically which category it's  
5     included in for ratemaking purposes.

6           Q.     Would depreciation expense of anything  
7     that's included in rate base not be included in rates  
8     in this case, in depreciation expense in this case?

9           A.     I'm sorry. Could you repeat the  
10    question?

11          Q.     Can you -- in my previous question I  
12    asked you to assume that the rail cars were in rate  
13    base.

14          A.     Okay.

15          Q.     And then I asked you if they were, would  
16    depreciation expense be included -- for those rail  
17    cars be included in your depreciation expense in this  
18    case. And did you understand that question?

19          A.     I did and I thought I answered it  
20    clearly, and I'm sorry if I didn't.

21          Q.     Okay.

22          A.     I believe it would be included in the  
23    cost that we're getting recovery of or seeking  
24    recovery of in this case.

25          Q.     Okay. Now, did Union Electric make the

1 decision to purchase those cars?

2 A. Yes.

3 Q. And does UE schedule the maintenance on  
4 those cars?

5 A. I am not -- I'm not aware of whether we  
6 do that ourselves or outsource that to someone, I'm  
7 not sure.

8 Q. Would you agree that those costs are  
9 within the control of management of Union Electric?

10 A. To some degree I would think they would  
11 be, yes.

12 Q. What do you mean by "to some degree"?

13 A. Well, I don't know the specific nature  
14 of the costs. For example, labor costs or steel  
15 costs or whatever, so I mean, the cost of certain  
16 equipment, maybe.

17 Q. And I'm talking about rail cars that you  
18 currently own.

19 A. I understand.

20 Q. Okay. How would the cost of steel  
21 figure into -- into that?

22 A. Again, I don't know the maintenance, the  
23 specific maintenance procedures or not. I don't know  
24 if we have to patch holes in the cars and whether  
25 it's aluminum or steel or exactly what rail

1 maintenance entails.

2 Q. Now, returning to the purchased gas  
3 adjustment clause for the moment, are the  
4 transportation costs associated with natural gas  
5 purchases under AmerenUE's purchased gas adjustment  
6 for facilities owned by an entity other than  
7 AmerenUE?

8 A. I don't know.

9 Q. Does AmerenUE own any interstate  
10 pipelines?

11 A. Not that I'm aware of.

12 Q. Is the natural gas sold to your  
13 customers in Missouri transported to Missouri over  
14 interstate pipelines?

15 A. Yes, sir.

16 Q. Is the cost of that transportation  
17 loaded through the purchased gas adjustment clause?

18 A. That's the question I said I am not  
19 sure.

20 MR. MILLS: That you don't know. Okay.  
21 Those are all the questions I have. Thank you.

22 JUDGE WOODRUFF: All right. Thank you.  
23 Cross-examination by Staff?

24 MR. DOTTHEIM: Yes.

25 CROSS-EXAMINATION BY MR. DOTTHEIM:

1 Q. Good afternoon, Mr. Lyons.

2 A. Good afternoon, Mr. Dottheim.

3 Q. Mr. Lyons, in looking at your direct  
4 testimony, you indicate that prior to your employment  
5 at AmerenUE you were employed at Price Waterhouse  
6 Coopers --

7 A. That is correct.

8 Q. -- is that correct?

9 A. That is correct.

10 Q. And at the time of your employment at  
11 Price Waterhouse Coopers, was Price Waterhouse  
12 Coopers the external auditor of Ameren Corporation  
13 and AmerenUE?

14 A. They were, yes, sir.

15 Q. And while you were under the employ of  
16 Price Waterhouse Coopers, were you also functioning  
17 in a capacity of an external auditor of Ameren and  
18 AmerenUE?

19 A. Contrary to what Mr. Baxter said  
20 yesterday, he may have had me and Mr. Moehn confused.  
21 But I did not have any partner or lead senior manager  
22 responsibilities for -- for AmerenUE. However,  
23 working within the industry from time to time, I did  
24 consult with him on specific issues but it was very  
25 infrequent and minor amounts of time.

1           Q.       If I could refer you to your direct  
2     testimony, and in particular it's your schedule MJL-2  
3     and it's schedule MJL-2-10, the minimum filing  
4     requirements in response to the Commission's fuel  
5     adjustment clause rules. Would you be the  
6     appropriate company witness for me to direct  
7     questions regarding the efficiency deviation factor  
8     or would that be Mr. Birk? And I'm referring to the  
9     bottom of page -- or schedule MJL-2-10 and also the  
10    following page, schedule MJL-2-11.

11          A.       Yes, sir, as it relates to the  
12    nonnuclear generators, that would be appropriate.

13          Q.       Would you also then be indicating that  
14    in regards to the nuclear generator at Callaway, I  
15    should be directing my questions to Mr. Naslund?

16          A.       Mr. Dottheim, I would think so.

17          Q.       Okay. Mr. Lyons, do you have a copy of  
18    what's been marked Exhibit 104 which, in particular,  
19    is going to be the subject of questions when you take  
20    the stand again on Thursday, the tariff sheet that  
21    you've proposed -- that you prepared based upon your  
22    proposal or the AmerenUE proposal that appears in  
23    your surrebuttal testimony?

24          A.       Thank you, Mr. Dottheim. Yes, I do.

25          Q.       Okay. There's a question in particular

1     that I would like to ask you that might assist the  
2     parties in preparing for Thursday, so rather than  
3     wait for Thursday, I thought I just might ask you  
4     that question this afternoon.

5                     I'd like to direct you to the third page  
6     which is identified as sheet No. 98-4. And I'd like  
7     to direct you to the formula or the explanation for  
8     the abbreviation "CSP" that appears -- oh, maybe in  
9     the upper third portion of the tariff sheet, CSP  
10    standing for company sharing portion. Do you see  
11    that portion -- or that part of the tariff sheet,  
12    sheet No. 98.4?

13            A.       I do.

14            Q.       Okay. And what I'd like to do is direct  
15    you to the third line, the line that starts, "Costs  
16    of \$," and then it has 12 X's for an amount. And  
17    then I'd like to ask you, is that amount a fixed  
18    amount or is that an amount that will change? The  
19    line there seems to indicate parenthetically after  
20    the amount. Parenthetically are the words "TBD by  
21    rate case order" which I assume TBD stands for "to be  
22    determined" by rate case order. Am I correct in my  
23    reading of that?

24            A.       Yes, you are.

25            Q.       Okay. And to be determined by rate case

1 order, that would be the rate case order in this  
2 proceeding?

3 A. Yes, sir.

4 Q. Okay. And could you indicate whether  
5 that number would remain constant based upon the  
6 Commission's rate case order or would that number  
7 vary at all on an annual basis or any basis? Or if  
8 you're not able to answer that, that's something that  
9 the Staff would be interested in an explanation of,  
10 either if you could provide that now or on Thursday.

11 A. I'll certainly give it further  
12 consideration between now and Thursday, but we had  
13 intended for that to be a fixed number.

14 Q. Referring to the AmerenUE proposal that  
15 appears in your surrebuttal testimony which, if I  
16 understand correctly, is AmerenUE's only proposal  
17 presently in the case, your prior proposals having  
18 been superseded by -- by the proposal that is in your  
19 surrebuttal testimony; am I correct about that?

20 A. That is correct.

21 Q. Okay. Is that proposal in any manner  
22 contingent upon the Commission's determination of the  
23 off-system sales margins in this case? That is, if  
24 the Commission decided that the off-system sales  
25 margins were the number proposed by the Staff or the



1     number proposed by the State or the number proposed  
2     by the Office of Public Counsel, would AmerenUE still  
3     be proposing the fuel adjustment clause proposal that  
4     is in your surrebuttal testimony?

5             A.       Our expectation is that the Commission  
6     would rule on the appropriate level of off-system  
7     sales margins based upon the testimony that's been  
8     filed in the case. And the answer to your question  
9     is no, sir, -- well, I don't know if it's no or yes,  
10    the way you phrased the question. But this -- this  
11    proposal stands no matter what the outcome of the  
12    Commission is in terms of that dollar amount.

13            Q.       My next question is a hypothetical based  
14    upon the proposal that's in your surrebuttal  
15    testimony for the fuel adjustment clause. It's an  
16    effort to try to get a better understanding of that  
17    proposal, and I think it works off of the example  
18    that appears in your surrebuttal testimony, pages 21,  
19    22.

20                   And Ms. Langeneckert asked you various  
21    questions earlier today, but assuming the Commission  
22    adopted the AmerenUE proposal as it appears in your  
23    surrebuttal testimony and the off-system sale margins  
24    in the first year after the adoption of the fuel  
25    adjustment clause by the Commission increased by

1     \$30 million, would there be a level such that there  
2     would be a sharing between the company and  
3     ratepayers?

4           A.     Well, if this proposal was adopted, it  
5     would go into effect on July 1st and the true-up year  
6     would run through June 30 which would be the period  
7     under which you would do the calculation. I believe  
8     that our nuclear fuel costs are going up after the  
9     next reload. I believe our coal costs are going to  
10    increase again January 1st of next year, and there  
11    certainly could be other variables in gas or other  
12    things. So it's impossible to say whether that  
13    30 million would actually result in any sharing of  
14    this mechanism.

15          Q.     What I was trying to ask you and was  
16    unsuccessful in doing was whether your proposal  
17    rebases at all on an annual basis or under any  
18    circumstances or whether it is fixed for the  
19    four-year period.

20          A.     The -- again, you're referring to the  
21    CSP, right?

22          Q.     Yes.

23          A.     As stated earlier, it would be a fixed  
24    amount.

25                   MR. DOTTHEIM: Thank you, Mr. Lyons.

1     You've been very patient.

2                     JUDGE WOODRUFF:   Thank you,  
3     Mr. Dottheim.   Let's come up for questions from the  
4     bench.

5                     COMMISSIONER GAW:   Anybody else want to  
6     go first?

7                     COMMISSIONER APPLING:   I don't have any  
8     questions from the bench.

9                     COMMISSIONER GAW:   I mean, I will if you  
10    make me.

11                    JUDGE WOODRUFF:   Would you prefer to  
12    wait until tomorrow?

13                    MR. DOTTHEIM:   It's gonna take me longer  
14    than 30 minutes.

15                    CHAIRMAN DAVIS:   I mean, I'm just scared  
16    that one day on Thursday is not gonna be enough to  
17    make up for all the fun festivities that we can have.

18                    JUDGE WOODRUFF:   I understand.   Well,  
19    let me ask the parties, what are your feelings about  
20    where we're at on the schedule?   Obviously we didn't  
21    get through anywhere near what we've got -- what we'd  
22    anticipated for the day.

23                    MR. BYRNE:   I guess we're prepared to  
24    stay.   I mean, we are getting behind.   I guess I'd  
25    prefer to say.

1                   MR. MILLS: And really, I think -- and  
2 I'm not gonna speak for all the nonUE parties, but I  
3 think Mr. Lyons was the big witness on this issue,  
4 and I think -- and Staff can speak for themselves,  
5 but I think the other ones I'll have a few questions  
6 for, but nothing like the length of time that I took  
7 with Mr. Lyons.

8                   And of course, that gets us down to  
9 questions that UE has for all the other folks, and we  
10 don't know how long that will take.

11                  JUDGE WOODRUFF: Do you know how long  
12 your cross -- you anticipate your cross will take?  
13 Obviously you can't know for sure.

14                  MR. DOTTHEIM: The questions I have  
15 remaining are basically for Mr. Birk that Mr. Lyons  
16 has directed me to. I'd figure maybe half an hour,  
17 45 minutes max.

18                  JUDGE WOODRUFF: And then what about  
19 Ameren for the other witnesses?

20                  MR. LOWERY: Your Honor, I can tell you  
21 that, for example, Dr. Proctor's listed on the FAC,  
22 and we don't have any questions on the FAC for  
23 Dr. Proctor. He is gonna be appearing on off-system  
24 sales, so he actually, from our perspective, is  
25 really not on the FAC list.

1                   I don't know if others would have  
2     questions for him or not. Mr. Brubaker and  
3     Mr. Dauphanais, some questions but not a long  
4     cross-examination. Mr. Brosch probably longer,  
5     somewhat longer.

6                   MR. DOTTHEIM: There's also Mr. Cassidy  
7     listed for the Staff.

8                   MR. LOWERY: Limited. Nothing or  
9     limited.

10                  JUDGE WOODRUFF: All right. Well, I'm  
11     not inclined to go any further tonight simply because  
12     the parties aren't necessarily wanting to go forward  
13     at this point and aren't necessarily prepared to stay  
14     late tonight.

15                  If we find that we don't make any more  
16     progress or more substantial progress tomorrow, be  
17     prepared to go later tomorrow night.

18                  There was a couple other things I wanted  
19     to bring up. A suggestion was made that we try and  
20     see if we can reserve those last conference rooms  
21     across the hall for the use of the parties for  
22     discussions as they see fit. Would that be helpful  
23     to everyone?

24                  MR. BYRNE: We've kind of been using  
25     them.

1 JUDGE WOODRUFF: I know you have, and  
2 we'll see if we can reserve them. It's also  
3 suggested that we do a new reconciliation with --  
4 including the settled issues. Is that doable for  
5 Staff?

6 MR. DOTTHEIM: That's doable. I'll get  
7 back with you tomorrow morning as far as what the  
8 timing on that looks like. Of course, it's easy for  
9 me to say it's doable.

10 JUDGE WOODRUFF: You're not doing it.

11 MR. DOTTHEIM: One, I'm not doing it,  
12 and you haven't asked me or told me literally when  
13 you want it so -- but ...

14 JUDGE WOODRUFF: Well, that brings up  
15 the next question: When can we see the stipulations?

16 MR. DOTTHEIM: I think you can see at  
17 least one tomorrow -- well, tomorrow morning,  
18 depending upon signatures from the other parties. It  
19 should be circulated tomorrow morning.

20 JUDGE WOODRUFF: And can we see the  
21 others on Thursday?

22 MR. DOTTHEIM: I think that's -- I think  
23 that's possible.

24 JUDGE WOODRUFF: All right. Well, let's  
25 shoot for that, because if there are problems with

1     those stipulations, we don't want to run -- be  
2     running out of time as the Chairman indicated.  
3     Nobody wants to be here any longer than they have to  
4     be and --

5                     MR. DOTTHEIM:  No.  We will work towards  
6     that.

7                     JUDGE WOODRUFF:  All right.  All right.  
8     With that, then, we are adjourned.

9                     COMMISSIONER CLAYTON:  Judge, can I ask  
10    a question?  First of all, can we get some  
11    clarification on what issues have supposedly settled?  
12    Is there something that's filed that suggests -- I  
13    guess Thursday has been settled?

14                    MR. DOTTHEIM:  Yes.

15                    COMMISSIONER CLAYTON:  And all of  
16    yesterday was, so we skipped forward to the FAC.  Are  
17    there any other issues that we need to be aware of  
18    that --

19                    MR. DOTTHEIM:  I'm not aware of anything  
20    else at the moment.

21                    COMMISSIONER CLAYTON:  That's it?  
22    That's it?  Okay.  And then, Judge, are we just gonna  
23    proceed down the -- down the list that's set for  
24    Tuesday, March 13th, just go straight down the list?  
25    That's what you anticipate tomorrow?

1 JUDGE WOODRUFF: That's what I  
2 anticipate. There was an indication that the parties  
3 had no questions for Mr. Hanser on this issue. He  
4 will be back later, so he's been excused to catch his  
5 flight back to wherever he's from.

6 So we'd be finishing Mr. Lyons, going to  
7 Mr. Mayo, Mr. Neff, Mr. Birk, and then on down the  
8 line.

9 MR. BYRNE: Commissioner Clayton, I do  
10 know that in addition to those issues, a bunch of the  
11 smaller depreciation issues have been settled as  
12 well. The depreciation issues that are left are the  
13 life span issue --

14 COMMISSIONER CLAYTON: The big ones?

15 MR. BYRNE: Well, no. I think, like,  
16 terminal net salvage has been resolved. The life  
17 span is left, the 20-year life extension of Callaway  
18 is still left, and that might be all -- the rule, and  
19 that might be all.

20 So -- so quite a majority of the  
21 depreciation issues have settled.

22 JUDGE WOODRUFF: Those are for next week,  
23 or the third week?

24 COMMISSIONER GAW: The third week.

25 COMMISSIONER CLAYTON: Well, there



1    wasn't any risk of me jumping ahead anyway, but I  
2    appreciate knowing.

3                   COMMISSIONER GAW:   Okay.

4                   JUDGE WOODRUFF:   All right.  With that,  
5    then, we are adjourned until 8:30 tomorrow morning.

6                   (WHEREUPON, the hearing of this case was  
7    recessed until March 14, 2007, at 8:30 a.m.)

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