

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Hearing
8 March 12, 2007
9 Jefferson City, Missouri
10 Volume 13
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:
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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Let's come to order,
3 please. Good morning, everyone, and welcome to the
4 hearing today. This is Case Number ER-2007-0002,
5 which is the Union Electric Company tariffs
6 increasing rates for the electric service provided
7 through Missouri customers. We're gonna begin today
8 by taking entries of appearance.

9 But before that I need to make an
10 announcement. You may have noticed the signs as you
11 were coming in about turning off BlackBerries and
12 cell phones, and that's very important. It's not
13 just that we don't want phone calls to interrupt the
14 proceedings. That's, of course, common courtesy.
15 But the problem is that the wireless signals that
16 those devices send out cause problems for our
17 electronic recording system here. It can actually
18 move the cameras and it can stop the recording
19 process.

20 So we ask you to please turn those off.
21 Just turning it to vibrate doesn't help. They
22 actually need to be off. All right?

23 Like I say, we're gonna go ahead and
24 start by taking entries of appearance, so we'll begin
25 with AmerenUE.

1 MR. LOWERY: Good morning, your Honor.
2 Entering my appearance on behalf of AmerenUE, James
3 W. Lowery and William J. Powell from the law firm of
4 Smith Lewis, LLP, 111 South Ninth Street, Columbia,
5 Missouri 65201.

6 JUDGE WOODRUFF: Thank you.

7 MR. BYRNE: Also on behalf of AmerenUE,
8 I'm Thomas M. Byrne and Wendy K. Tatro, 1901 Chouteau
9 Avenue, St. Louis, Missouri 63103; Robert J. Cynkar,
10 C-y-n-k-a-r, Cuneo, Gilbert & LaDuca, LLP,
11 507 C Street N.E., Washington, D.C. 20002, and James
12 Fischer from Fischer & Dority, 101 Madison Street,
13 Jefferson City, Missouri 65101.

14 JUDGE WOODRUFF: Thank you. And for
15 Staff.

16 MR. DOTTHEIM: Steven Dottheim, Kevin
17 Thompson, Nathan Williams, Denny Frey, Steven Reed,
18 David Meyer, Jennifer Heintz and Blane Baker, Post
19 Office Box 360, Jefferson City, Missouri 65102,
20 appearing on behalf of the Staff of the Missouri
21 Public Service Commission.

22 JUDGE WOODRUFF: Thank you, sir. And
23 for the Office of Public Counsel.

24 MR. MILLS: Up until a couple of days
25 ago, I would have felt severely outdone, but I've

1 pulled in another person. So on behalf of the Public
2 Counsel, Lewis Mills and Christina Baker, P.O. Box
3 2230, Jefferson City, Missouri 65102.

4 JUDGE WOODRUFF: Thank you. For the
5 State of Missouri.

6 MR. MICHEEL: Douglas E. Micheel and
7 Robert E. Carlson appearing on behalf of the State of
8 Missouri and DED, P.O. Box 899, Jefferson City,
9 Missouri 65102-0899.

10 JUDGE WOODRUFF: Thank you. For the
11 Department of Natural Resources.

12 MR. IVESON: Todd Iveson from the
13 Attorney General's Office on behalf of the Department
14 of Natural Resources, Post Office Box 899, Jefferson
15 City, Missouri 65102.

16 JUDGE WOODRUFF: Thank you. And of
17 course we are overcrowded, so if you'd come up to the
18 microphone, it would be appreciated. So for the
19 Missouri Industrial Energy Consumers.

20 MS. VUYLSTEKE: Diana Vuylsteke of the
21 law firm of Bryan Cave, LLC, 211 North Broadway,
22 Suite 3600, St. Louis, Missouri 63102, on behalf of
23 the Missouri Industrial Energy Consumers.

24 JUDGE WOODRUFF: Thank you. For the
25 Missouri Energy Group.

1 MS. LANGENECKERT: Lisa Langeneckert
2 with the law firm of The Stolar Partnership, LLP,
3 911 Washington Avenue, Suite 700, St. Louis, Missouri
4 63101, appearing on behalf of the Missouri Energy
5 Group.

6 JUDGE WOODRUFF: Thank you. And for the
7 Commercial Group.

8 MR. CHAMBERLAIN: Rick D. Chamberlain of
9 the law firm of Behrens, Taylor, Wheeler &
10 Chamberlain. Our address is 6 N.E. 63rd, Suite 400,
11 Oklahoma City, Oklahoma 73105.

12 JUDGE WOODRUFF: Thank you. For
13 Noranda.

14 MR. CONRAD: On behalf of Noranda
15 Aluminum, please enter the appearance of Stuart W.
16 Conrad of the law firm of Finnegan, Conrad &
17 Peterson, 3100 Broadway, Suite 1209, Kansas City,
18 Missouri 64111. Telephone number there is
19 (816) 753-1122, and occasionally I can be accessed at
20 extension 211.

21 JUDGE WOODRUFF: Thank you, sir. And
22 for AARP.

23 MR. COFFMAN: John W. Coffman appearing
24 on behalf of AARP as well as the Consumers Council of
25 Missouri. My address is 871 Tuxedo Boulevard,

1 St. Louis, Missouri 63119.

2 JUDGE WOODRUFF: And for the Department
3 of Economic Development.

4 MR. MICHEEL: Douglas E. Micheel and
5 Robert E. Carlson on behalf of the Department of
6 Economic Development.

7 JUDGE WOODRUFF: Missouri Association
8 for Social Welfare.

9 MS. CARVER: Gaylin Rich Carver on
10 behalf of Missouri Association for Social Welfare at
11 the law firm of Hendren and Andrae, 221 Bolivar
12 Street, Jefferson City, Missouri 65101.

13 JUDGE WOODRUFF: And Missouri Retailers
14 Association, is anyone here for the Retailers
15 Association?

16 (NO RESPONSE.)

17 JUDGE WOODRUFF: Okay. Mo-Kan/CCAC, is
18 anybody here for that party?

19 (NO RESPONSE.)

20 JUDGE WOODRUFF: For Laclede Gas
21 Company.

22 MR. PENDERGAST: Thank you, your Honor.
23 Appearing on behalf of Laclede Gas Company,
24 Michael C. Pendergast, and my business address is
25 720 Olive Street, St. Louis, Missouri 63101.

1 JUDGE WOODRUFF: Thank you. For Aquila.

2 MR. MITTEN: Good morning, your Honor.

3 Russ Mitten, Brydon, Swearngen & England, 312 East

4 Capitol Avenue, Jefferson City, Missouri 65102,

5 appearing on behalf of Aquila, Inc.

6 JUDGE WOODRUFF: And for the UE Joint

7 Bargaining Committee, anyone here for that party?

8 (NO RESPONSE.)

9 JUDGE WOODRUFF: I don't see anyone.

10 All right. There's a couple preliminary matters I

11 want to bring up. First of all, there's been a

12 number of motions filed in the last couple days.

13 Several of them are fairly minor things, requesting

14 extra time to file documents and so forth. I'll run

15 through those and ask if anyone has objections to

16 them, and then I'll rule upon them from the bench.

17 And there's also a motion filed I

18 believe on Friday from Office of Public Counsel.

19 We'll deal with that separately. The first one was

20 Staff's motion for leave to late file the rebuttal

21 testimony that was filed on February 28th.

22 Does anyone have any objection or wish

23 to make any statements regarding that motion?

24 (NO RESPONSE.)

25 JUDGE WOODRUFF: Hearing nothing, then

1 that motion will be granted. Second one is Noranda's
2 motion for a one-day extension to file their
3 prehearing brief. It was filed on March 6th. Does
4 anyone have any objection to that motion?

5 (NO RESPONSE.)

6 JUDGE WOODRUFF: Hearing none, it will
7 be granted. Third one is Public Counsel's motion to
8 late file their prehearing brief which was also filed
9 on March 6th. Does anyone have any objection to that
10 document or that motion?

11 (NO RESPONSE.)

12 JUDGE WOODRUFF: Hearing none, it will
13 be granted.

14 Fourth is Staff's motion to late file
15 their list of issues which was filed on March 7th.
16 Any objection to that motion?

17 (NO RESPONSE.)

18 JUDGE WOODRUFF: Hearing none, it will
19 be granted. No. 5 is Staff's motion to late file
20 response to UE's combined motion, and that was filed
21 on March 7. Any objection to that motion?

22 (NO RESPONSE.)

23 JUDGE WOODRUFF: Hearing none, it will
24 be granted. Six is Staff's motion to late file the
25 reconciliation that was filed on March 9th. Any

1 objection to that motion?

2 (NO RESPONSE.)

3 JUDGE WOODRUFF: Hearing none, it will
4 be granted.

5 Finally, No. 7, MASW's request to late
6 file their prehearing brief. That was also filed on
7 March 9th. Any objections?

8 (NO RESPONSE.)

9 JUDGE WOODRUFF: Hearing none, it will
10 be granted. The eighth one is Public Counsel's
11 motion to compel discovery that was filed shortly
12 after five o'clock on Friday. I assume AmerenUE will
13 want an opportunity to respond to that.

14 MR. BYRNE: Yes, your Honor.

15 JUDGE WOODRUFF: I'll ask you to respond
16 by eight o'clock tomorrow morning and I'll plan on
17 putting it on the agenda for the Commission's
18 decision on Tuesday.

19 MR. BYRNE: Okay.

20 JUDGE WOODRUFF: Or actually -- okay.
21 Prefiled exhibits are already marked so we don't need
22 to mark them now at this point. I'll just ask that
23 when you get to the point in the hearing where you'd
24 want to offer them into evidence, you need to provide
25 a copy to the court reporter. Everyone else should

1 have the copies that we need.

2 I believe that's all I had as far as
3 preliminary. Any other preliminary matters any of
4 the parties want to bring up at this point?

5 MR. CONRAD: Judge, I did have one
6 question with respect to your premarking.

7 JUDGE WOODRUFF: Yes, Mr. Conrad.

8 MR. CONRAD: I'm not sure whether this
9 will be necessary, but if it does occur, should we
10 treat those premarked exhibits as though they have
11 been marked and presented even though they haven't
12 been offered for purposes of cross-examination at an
13 earlier point in time before a witness reaches the
14 stand?

15 JUDGE WOODRUFF: As far as referring to
16 them?

17 MR. CONRAD: Yes, sir.

18 JUDGE WOODRUFF: Yeah, I believe that
19 would be appropriate.

20 MR. CONRAD: Okay. Thank you.

21 JUDGE WOODRUFF: And if there's any
22 specific problems that come up, just let me know and
23 we'll deal with it at the time. All right. Before
24 we get started on opening statements, we'll take a
25 short break and I'll let the Commissioners know and

1 give them time to come down here.

2 MR. LOWERY: Go ahead, Mr. Dottheim. I
3 have a couple matters also.

4 MR. DOTTHEIM: Judge, as indicated last
5 week, even after the list of issues was filed,
6 various of the parties that do have issues listed are
7 still talking with AmerenUE. One of the issues
8 that's listed for today still we believe has settled.
9 We just need some final verification on that.

10 And we think also that the issue that is
11 shown for Thursday is likely going to settle also,
12 and we need to verify that. That's the income taxes
13 issue that was a matter that the Commission took up
14 last Thursday in its agenda. These items would be
15 memorialized in a Stipulation and Agreement.

16 There are a number of other issues that
17 have settled. I don't know that the Commissioners or
18 yourself have had much time to look at the
19 reconciliation. If you have, you have probably
20 noticed that there are a number of large-dollar
21 issues and not very many small-dollar issues. There
22 are any number of small-dollar issues that have
23 settled.

24 The parties have been working on for
25 some time Stipulations and Agreements to file with

1 the Commission which we anticipate the Commission
2 would take up, and we are attempting to complete
3 those Stipulations and Agreements.

4 So at the moment it would appear that
5 very possibly after the opening statements and the
6 appearance of Mr. Warner Baxter and Mr. Maurice
7 Brubaker on overview and policy, the one issue that
8 remains for the day that has not settled would be the
9 fuel and purchased power expense issue; A, diesel
10 fuel hedge costs that's shown on page 15 of the list
11 of issues and schedule of issues.

12 JUDGE WOODRUFF: Okay. Very good.
13 Mr. Lowery? Go ahead, Mr. Mills.

14 MR. LOWERY: Go ahead, Lewis.

15 MR. MILLS: When you went through the
16 outstanding motions that were still pending, I
17 believe one that is still pending is Public Counsel's
18 motion to dismiss the case.

19 JUDGE WOODRUFF: That is correct.

20 MR. MILLS: That was filed quite some
21 time ago. UE responded to that and I believe I
22 responded to UE's response and nothing has been filed
23 with regard to that for quite some time now. I
24 believe that as far as the filings on that issue go,
25 I believe -- I think it's done and it's ripe for a

1 ruling.

2 JUDGE WOODRUFF: I'm not gonna make a
3 ruling from the bench on that, and I'll let you know
4 later in the proceeding whether we're gonna do it
5 then. Mr. Lowery?

6 MR. LOWERY: Judge Woodruff, there's a
7 couple of procedural matters, and I don't know if you
8 want to take them up now or later, but we have a
9 number of witnesses. I believe it's 17 total between
10 the Staff and company, and I believe there's one for
11 the State who are not scheduled to appear at all
12 because of issues that have settled but they've all
13 filed testimony, and I thought it might be
14 appropriate to -- I don't know if you want to just go
15 ahead and show that as admitted into the record now,
16 if you want to do it at a different time, but that
17 testimony I think needs to be admitted into the
18 record to support the settlements, for one thing, but
19 those witnesses won't be appearing, so we obviously
20 wouldn't do it when they come to the stand.

21 JUDGE WOODRUFF: Let's deal with that
22 then after the opening statements.

23 MR. LOWERY: Okay. And the other matter
24 I want to bring up is that the company intends to
25 offer the depositions of opposing witnesses that

1 we've taken as admissions of a party opponent. Those
2 depositions, I think, as you know, are admissible for
3 any purposes -- any purpose under the Missouri Rules
4 of Civil Procedures as they were revised just a few
5 years ago, and these are admissions of a party
6 opponent to any event, and I don't know whether you
7 find it appropriate to just go ahead and offer those
8 now or have them admitted or you want to do them in
9 connection with when the witness appears. Some of
10 those depositions, in a few cases, those witnesses
11 will not be appearing, just like with the prefiled
12 testimony.

13 JUDGE WOODRUFF: Let's wait and deal
14 with that when we get to those particular issues and
15 particular witnesses so it will be clearer on the
16 record what we're doing.

17 MR. LOWERY: Okay. Very well. Thank
18 you.

19 JUDGE WOODRUFF: Any other matters
20 anyone wants to bring up?

21 MR. LOWERY: I'm sorry, I forgot one. I
22 think counsel had talked about last week, as has been
23 done in some recent cases, to try to save some time,
24 to waive the preliminary questions when a witness is
25 put up on direct, unless there are some corrections

1 that need to be made. And I would suggest that's
2 something that we should adopt, unless somebody has
3 an objection, just as an operating rule, which will
4 at least save a little bit of time over the three
5 weeks.

6 JUDGE WOODRUFF: Any objection? Anybody
7 have any objection to doing that?

8 (NO RESPONSE.)

9 JUDGE WOODRUFF: That sounds reasonable
10 to me.

11 MR. LOWERY: Thank you.

12 JUDGE WOODRUFF: All right. Mr. Mills?

13 MR. MILLS: Sorry. Another thing we've
14 done in recent cases is, particularly in long cases
15 such as this, is when we get to an individual issue,
16 we make sort of brief opening statements to sort of
17 refresh the bench's recollection of what the issue
18 is. Would that be appropriate in this case?

19 JUDGE WOODRUFF: I think that is a good
20 idea, and I think we did it in the MGE rate case
21 which was the last major rate case we did and we
22 called them mini openings. And I think that's
23 appropriate. Which means you don't have to go into
24 as much detail today for your major opening.

25 Each day as we get into a new issue,

1 we'll allow five, ten minutes to do a mini opening to
2 explain what that particular issue is all about, and
3 I found that to be helpful last time.

4 MR. MILLS: Thank you.

5 JUDGE WOODRUFF: All right. Anything
6 else anybody wants to bring up preliminarily?

7 (NO RESPONSE.)

8 JUDGE WOODRUFF: All right. At this
9 time we'll take about a five-minute break and we'll
10 come back on the record at 8:55.

11 (A RECESS WAS TAKEN.)

12 JUDGE WOODRUFF: All right. Let's come
13 to order, please. Once again, my name is Morris
14 Woodruff. I'm the regulatory law judge assigned to
15 this case, and I want to again remind you to make
16 sure you've turned off your cell phones and your
17 BlackBerries since you've come back from the break so
18 it doesn't interfere with the electronic recording
19 equipment.

20 All right. I believe we're ready to
21 begin with opening statements and we'll begin with
22 Ameren.

23 MR. LOWERY: Good morning. May it
24 please the Commission. My name is Jim Lowery and I
25 represent AmerenUE. In its first rate increase since

1 1987, like utilities across the country and certainly
2 in Missouri as well, significant and continuing
3 increases in the cost that we need to incur to
4 provide service to our customers in the investments
5 that we must make to -- in the infrastructure to
6 provide that service to meet growing customer needs
7 and the return on a large capital investment that our
8 shareholders have made that is necessary to attract
9 needed capital has, for the first time in a couple of
10 decades, necessitated a sizeable rate increase for
11 AmerenUE. This is also a trend that we're seeing not
12 only in the world of regulated utilities, but we're
13 seeing it in the world of utilities generally as
14 evidenced by the sizeable rate increases that we've
15 seen among Missouri's rural electric cooperatives
16 recently and the increases that they've announced
17 that they expect to occur over the next few years.

18 Now, I don't think it's surprising that
19 others take a different view as evidenced by Staff's
20 over-earnings complaint and the rather large
21 disparity in revenue requirement among the various
22 parties' positions. There's nearly a 400 million
23 dollar annual revenue requirement disparity between
24 the Staff's position and the companies, for example.

25 But the evidence we believe in this case

1 will show that those differences are based upon
2 positions taken by others that simply cannot be
3 sustained in many cases by the facts or by the law.
4 And the latter point is just as important as the
5 former, particularly in this case, because as you
6 know, the Commission not only sits as a fact-finding
7 body in a rate case, but also as an adjudicatory
8 body, and the Commission, like all of us, is bound to
9 apply and set just and reasonable rates for the
10 utilities under its jurisdictions within the bounds
11 of the law, and we are confident the Commission, of
12 course, will do that.

13 Like most rate cases, this case will
14 require the Commission to resolve a number of very
15 technical and complex revenue requirement and rate
16 design issues. You're going to hear those matters
17 addressed by county and engineering and finance and
18 legal experts, among others, but as I am sure this
19 Commission is aware, when you set rates, it's not
20 just a mechanical application of a bunch of numbers
21 and formulas and resolving technical arguments among
22 experts. Rate setting involves more than that. It
23 involves an exercise of your common sense, it
24 involves an exercise of your judgment and it requires
25 that you balance the interest of all stakeholders,

1 whether it be the customers, whether it be the public
2 and, of course, the interests of the utility as well.

3 Moreover, we believe it's important that
4 the Commission take into account the long-term impact
5 of the decisions that it makes when it sets rates
6 rather than, as we believe the evidence that we would
7 expect to see is going to indicate, take in a
8 shortsighted view in an effort to just simply try to
9 keep rates as low as possible, bare bones and below a
10 reasonable level for the short-term so-called benefit
11 of doing so rather than considering the long-term
12 impacts of what that decision might mean. And we're
13 confident that the Commission will take the long-term
14 view and consider those larger issues as it processes
15 this case.

16 Now, in making the remainder of my
17 opening statement, rather than try to recite detailed
18 information on all of the positions that we have in
19 all of these issues because there are many of them, I
20 thought it would be more helpful to try to step back
21 a bit and consider some broader considerations that
22 we believe should guide the Commission as it hears
23 the evidence and it makes its decision in this case.

24 First, I'd like to explain our view of
25 the larger context in which this rate case is being

1 heard and why consideration of that larger context is
2 important as you hear the case. Second, I want to
3 talk about some of the evidence that we expect to be
4 presented that indicates that the apparent motivation
5 of some of the parties in the case is to simply keep
6 the company's rates as low as possible and below a
7 reasonable level, and that they have done so by
8 taking unreasonable positions, both on the facts and
9 in some cases on the law.

10 And third, I want to address the
11 company's proposals for wind power, demand side
12 management and also talk about the storms that
13 occurred in 2006, so reliability considerations and
14 those types of things as they impact the case.

15 Now, stepping back and taking a look at
16 the big picture, to put this case in its proper
17 context I believe means that the Commission has to
18 keep in mind that big picture even as it considers
19 these technical accounting, legal and financial
20 issues.

21 AmerenUE has operated as a locally owned
22 utility and provided electric service to Missourians
23 for more than 100 years. It's part of Ameren
24 Corporation which is one of only a handful of
25 Fortune 500 companies that are headquartered in the

1 City of St. Louis. And AmerenUE has been a good
2 corporate citizen for many years, creates thousands
3 of jobs and provides many community benefits that are
4 too numerous to mention throughout its service
5 territory.

6 Also, while its parent's company stock
7 is traded on the New York Stock Exchange, that stock
8 is owned by tens of thousands of Missourians, and
9 even more than that, there are many pension funds and
10 mutual funds and so on that Missourians invest in
11 that are impacted by the performance of that stock
12 and, of course, AmerenUE's Missouri operations have a
13 great impact on how that stock performs.

14 For all of these reasons, AmerenUE's
15 ability to exist and prosper as a Missouri-based
16 electric utility company and even grow its
17 Missouri-based operations is in the interest of the
18 state as a whole.

19 Another aspect of the big picture is
20 that, as the evidence will show, AmerenUE's rates
21 have been and continue to be very, very low compared
22 to the rates of other investor-owned utilities in
23 Missouri and elsewhere. For example, AmerenUE's
24 average rates are significantly below the rates of
25 other Missouri electric utilities. They're today at

1 least 16 percent below the average of other Missouri
2 IOUs, investor-owned utilities, they're 21 percent
3 below Midwest averages and they're 37 percent below
4 national averages.

5 If you look at the chart that Mr. Byrne
6 put up and you compare AmerenUE, if you compare the
7 metropolitan area of St. Louis to other major
8 metropolitan areas, and of course, a predominance of
9 AmerenUE's customers, at least in terms of number,
10 are located in a metropolitan area, you can see that
11 there's only one metropolitan area in the entire
12 country that has rates that are lower than AmerenUE,
13 and that's Seattle. And of course, as you probably
14 know, Seattle is located such that it benefits from a
15 lot of very cheap hydroelectric power which is not an
16 option that most utilities have. And the rates are
17 substantially lower than many, many of these large
18 metropolitan areas. So you can see by comparison the
19 company's rates have been quite low.

20 Even if AmerenUE's entire rate increase
21 were to be granted, it would still have low rates
22 compared to other utilities in the state, in the
23 Midwest and across the country, and that's shown by
24 the second chart that Mr. Byrne is putting up. The
25 line at the top of the bright-most arrow shows where

1 AmerenUE's rates would be relative to others if the
2 entire rate increase were granted, and it would
3 still -- our rates would still be lower than all of
4 the other comparison groups on that chart.

5 The line at the top of the next arrow
6 shows where Missouri IOU rates would be if the
7 pending Kansas City Power & Light and Aquila rate
8 increases were granted, and that would be an
9 apples-to-apples comparison if you're looking at our
10 requested increase and theirs. And you can say that
11 we would be even lower relative to those other
12 utilities even if the entire rate increase were
13 granted.

14 Similar information is also depicted on
15 the next chart, and this chart just presents
16 information a little bit of a different way; it shows
17 rates trends. And as you can see, the bottom line is
18 AmerenUE's rates over the last five years. All of
19 the other lines show the trend in rates that's taking
20 place both in Missouri, Midwest, other
21 nonrestructured states which is a good comparison
22 group for AmerenUE and nationally.

23 I think to believe that the downward
24 trend that we see for AmerenUE over the last few
25 years can continue indefinitely as at least the Staff

1 and others who are recommending a rate decrease in
2 this case contend, flies in the face of common sense.
3 In the rising cost environment and the utility
4 environment that we're in, it simply doesn't make
5 sense that that kind of trend can continue, given
6 what's happening elsewhere.

7 My final point with respect to the big
8 picture is to put the fact that AmerenUE has not had
9 a rate increase in 20 years into some perspective.
10 Think about it, 1987 to 2007, that's -- that's quite
11 a long time. I was barely out of college in 1987. I
12 think there's some people in this room that were
13 probably still in college in 1987. My oldest
14 daughter who's now 16 years old had not even been
15 born at that time. The price of almost everything we
16 buy has gone up and gone up substantially since that
17 time.

18 However, if you look at the cost of
19 electricity for AmerenUE, you'll see that the cost of
20 electricity for AmerenUE over that period -- actually
21 this is from 1990 -- has gone down by 13 percent.
22 While we look at the cost of consumer products,
23 homes, medical care, gasoline, fuel oil, think about
24 college tuition as I mentioned a moment ago, college,
25 housing, books. All of those things have increased

1 substantially, while the cost of electricity for
2 AmerenUE has decreased substantially.

3 In recent years we continue in
4 particular to experience huge increases in many of
5 the basic things that we need to provide service.
6 Since 2002 when our rates were last set, the cost of
7 copper wire is up 147 percent, aluminum conductors 93
8 percent, transformers are up 57 percent, wages,
9 insurance, medical costs. All of those things are
10 continuing to relentlessly and substantially increase
11 as well as fuel cost.

12 To take another -- another way of
13 looking at this, if our entire rate increase were
14 granted in this case, our rates today would be
15 4 percent higher than they were in 1990, which, if
16 you were to spread that out and average it over that
17 period of time, would be an increase of less than one
18 quarter of 1 percent per year as opposed to all of
19 the other cost increases that we've all experienced
20 and that we see.

21 Now, some of our opponents would say you
22 should ignore all of those things, you should put on
23 blinders, you should put on an accountant's eyeshades
24 as you consider each of the individual issues in this
25 case. But our view is that you don't have to check

1 your common sense at those sliding doors behind you
2 when you walk into this room. We think that it's
3 more than a little bit relevant when you're
4 considering the credibility of the positions that are
5 being taken in the case and what various people have
6 to say on these arguments to consider that AmerenUE
7 is a locally owned utility with extremely low rates
8 and it's not had a rate increase in 20 years.

9 A second issue that I would like to
10 discuss is the apparent motivation based upon the
11 evidence that is going to be presented from a number
12 of the other parties in the case, whether it be the
13 Staff or the Office of Public Counsel or the State
14 represented by General Nixon's office to take
15 whatever position they think they can to keep the
16 rates at unreasonably low levels. These parties have
17 had more than eight months to pick apart the
18 company's case and we think that they have taken some
19 very unreasonable and at times unlawful positions in
20 their zeal to keep rates as low as possible.

21 Perhaps the most egregious example of
22 this deals with their position that a substantial
23 amount of cost-based power from the company called
24 Electric Energy, Inc. or EE, Inc., as I will refer to
25 it, should be imputed in calculating AmerenUE's

1 rates.

2 As you may already know, EE, Inc. is an
3 Illinois company that was formed in the 1950s by
4 several utilities including Union Electric Company to
5 build a coal-fired power plant eight miles from a
6 U.S. Government-owned uranium enrichment facility in
7 Paducah, Kentucky. This was part of the government's
8 buildup in a national defense initiative at the time.

9 To that end, EE, Inc. shareholders, one
10 of which was Union Electric Company, paid to
11 construct the Joppa plant. AmerenUE has owned 40
12 percent of the stock in that company since the early
13 1950s. AmerenUE has also had a contractual right
14 under separate purchased power agreements to take
15 excess power that the government did not take to
16 serve the uranium enrichment facility under a series
17 of purchase agreements.

18 But the plant has never been in
19 AmerenUE's rate base, the stock has never been in
20 AmerenUE's rate base, and AmerenUE's customers have
21 never paid anything associated with EE, Inc. other
22 than to have included in AmerenUE's cost of service
23 the invoiced cost of power that AmerenUE has paid
24 under those purchase agreements for power that's
25 actually taken by AmerenUE from EE, Inc., and those

1 contracts expired by their own terms at the end of
2 2005.

3 If you look at the next chart, you can
4 see that over the years AmerenUE paid only a very
5 small percentage of the costs related to EE, Inc.
6 through its purchases of power from that company.
7 That -- that chart equates to about 16 percent of the
8 total cost. AmerenUE, as I mentioned, owns 40
9 percent of the issues in outstanding shares of the
10 company that owns the power plant. The vast majority
11 of the power and the vast majority of the costs have
12 been paid by the government consistent with the
13 original purpose of the company. The price that
14 AmerenUE paid for this power was the same price that
15 the government paid.

16 Cost-based contracts were the norm for
17 decades until the FERC unbundled the electricity
18 markets, created regional transmission organizations
19 and, in fact, until April of 2005, in this region
20 there was no reliable way to price power market until
21 the MISO started its Day 2 market.

22 It's important to note that EE, Inc.'s
23 Joppa plant has been the low-cost source of power for
24 both the government, which bought most of the power,
25 and the sponsors, including UE, for a long time. The

1 bottom line, however, is that EE, Inc. was never
2 included in the company's rate base, the
3 shareholders' investment was never included and at
4 the same time, however, ratepayers were -- had
5 benefited greatly because the company was able to buy
6 this power under the power contracts at cost base
7 rates.

8 In this case, however, some of the
9 parties are now taking the position that because
10 AmerenUE purchased power under power contracts, that
11 somehow that has transformed AmerenUE's customers
12 into owners of this plant or owners of the stock in
13 EE, Inc. which, in turn, owns the plant. And they
14 from that base then argue that those ratepayers are,
15 in effect, entitled to seize the earnings on the
16 shareholders' investment in the plant from this
17 below-the-line unregulated plant and investment
18 apparently forever.

19 This is truly an astounding position and
20 one that is flatly contrary to the law. AmerenUE's
21 historic purchase of power from EE, Inc. no more
22 entitled the ratepayers to own the plant or to own
23 that stock than would a grocery shopper's purchase at
24 a grocery store entitle the grocery shopper to own
25 the store.

1 Robert Downs, a law professor at UMKC
2 who has spent his entire 30-year career in matters of
3 corporate law and who's an expert on corporate
4 government -- governance will provide testimony that
5 demonstrates that the position that is being taken is
6 180 degrees contrary to and inconsistent with the
7 law.

8 And Michael Moehn, our vice president of
9 corporate planning, will provide testimony on how
10 these parties' positions are inconsistent with the
11 facts given, that AmerenUE was a purchaser of power
12 from EE, Inc. and that is all.

13 Because these other parties' positions
14 on this issue are so astounding, we're also
15 presenting the testimony of David A. Svanda who is a
16 former Commissioner for nearly eight years on the
17 Michigan Public Service Commission and also is the
18 former president and chair of NARUC and the former
19 president of MARC.

20 The EE, Inc. issue is perhaps the best
21 example of the extreme positions that some of the
22 parties have taken in this case to twist the facts
23 and in some case to disregard the law. Honestly, I
24 think that they are asking you to disregard the law
25 in this regard as well, and to consequently take

1 unsupportable positions to keep rates at an
2 unreasonably low level regardless of whether the
3 facts and the law dictate the different result.

4 But there are a few other examples. The
5 Staff is recommending an ROE as low as 9 percent in
6 this case. We think that's patently unreasonable and
7 confiscatory. The Staff is essentially, in
8 calculating depreciation rates, suggesting to you
9 that our fossil power plants are going to last
10 literally forever, which obviously cannot be the
11 case. We don't believe that's a responsible
12 assumption and it's 180 degrees contrary to
13 mainstream depreciation policies employed by just
14 about other -- every other state regulatory
15 Commission in the country as well respected
16 depreciation expert and AmerenUE witness Bill Stout
17 will testify.

18 OPC and the State together have proposed
19 tens of millions of dollars of disallowances of
20 acquisition and construction cost for combustion
21 turbines that the company recently built or acquired.
22 But they've done no -- they've done no meaningful
23 engineering or cost analysis to support those
24 disallowances. And, in fact, while Staff initially
25 proposed a portion of those disallowances after

1 discovery, Staff has withdrawn its advocacy of any
2 disallowances of any acquisition or construction cost
3 for any of the company's combustion turbines.

4 There's one final substantive and
5 discrete issue that I want to address before I talk
6 about DSM, wind power and the storms and reliability
7 as I mentioned at the beginning of my statement, and
8 that area relates to the company's request for a fuel
9 adjustment clause and the treatment of off-system
10 sales, and those two things bear a relationship to
11 each other in this case.

12 I think the Commission is well aware
13 that just last September you enacted rules that allow
14 Missouri to take advantage of the mainstream
15 regulatory tools reflected in Senate Bill 179. Those
16 rules were the result of nearly a year of
17 exhausting -- exhaustive, perhaps exhausting as well,
18 informal workshops, more than 15 of them, and
19 ultimately there was a rulemaking that the Commission
20 completed. When those rules were adopted, the
21 Commission put itself in a position to join 27 of the
22 other 29 nonrestructured states that are regulated
23 similarly to Missouri to take advantage of this
24 mainstream regulatory tool.

25 Indeed, 21 of 24 nonrestructured states

1 who have a very heavy reliance on coal just like
2 Missouri, and of course, like AmerenUE, utilize
3 FACs. In adopting the rules allowing fuel adjustment
4 clauses, the Commission sent a powerful and important
5 signal to investors and debt holders who we rely on
6 for the large sums of capital necessary to provide
7 service. Certainly, this proceeding is being watched
8 carefully to see how Missouri will implement the fuel
9 adjustment clause that it now has at its disposal for
10 the first utility to ask for one and for its largest
11 utility.

12 Missouri's FAC statute in this
13 Commission's rules contain numerous consumer
14 protections. I won't go through all of them, but
15 it's noteworthy, for example, and this is unlike any
16 other state that has an FAC, that the Commission's --
17 or the statute requires that the company or any
18 utility come back 37 months after the conclusion of
19 the rate case in which the FAC is established and the
20 Commission will then review the operation of the
21 entire FAC anew again, and of course, the Commission
22 will review all cost and revenues and circumstances
23 as it would do in any rate case in that rate
24 proceeding that must occur.

25 Now, obviously because FACs are new in

1 Missouri or at least new since the late '70s, the
2 precise design and structure of FACs are -- are
3 something that I believe are going to evolve over
4 time. And after considering the testimony of another
5 party through their direct and rebuttal cases, the
6 company has effectively accepted some of the
7 proposals that other parties have made in this case,
8 and has also addressed various criticisms through a
9 compromised FAC that is outlined in detail in the
10 surrebuttal testimony of AmerenUE witness, Martin J.
11 Lyons, Junior. That compromised FAC nets off-system
12 sales against fuel cost in the FAC in order to allay
13 fears that off-system sales might mitigate fuel
14 volatility that under traditional ratemaking where
15 the netting does not occur might be retained by
16 AmerenUE for the benefit of shareholders.

17 That compromised FAC also reduces the
18 number of adjustments that would occur from four to
19 three annually, although the Commission's rules
20 contemplate up to four. It also spreads recovery of
21 or return of any balances that need to be trued up
22 each year over 12 months to mitigate any great
23 volatility that might occur because of the
24 adjustments, and it largely accepts a proposal by
25 Noranda witness Donald Johnstone to implement a

1 4 percent cap on annual FAC adjustments with
2 deferrals that there would be any because of the cap
3 to be recovered over a 12-month period.

4 Now, it's not surprising, I don't think,
5 given the flat-out rejection of the legislature's
6 decision to authorize the use of FACs in Missouri
7 that we've seen from General Nixon's office and the
8 Office of the Public Counsel, in particular, that
9 some parties just simply propose -- or excuse me,
10 oppose the FAC request entirely.

11 The Staff opposes it too, but they
12 oppose it on a totally different basis, and that
13 basis is really based upon a completely incorrect
14 notion that somehow off-system sales act as a
15 so-called natural hedge against fuel cost increases.

16 We have thoroughly rebutted that
17 position in the rebuttal testimony of AmerenUE
18 witness Shawn Schukar, and, in fact, that -- that
19 supposition simply is not true except in a couple of
20 very highly unlikely cases that the Staff constructed
21 to support its view in this case.

22 Now, as I mentioned, the company is
23 addressing concerns expressed by others by proposing
24 to net its off-system sales revenues against fuel
25 costs in the FAC and -- in the FAC, and is also

1 proposing to couple that netting through the FAC with
2 a sharing mechanism that would allow the company, if
3 and only if, the company can completely offset the
4 known fuel cost increases that I think just about
5 everybody in this case agrees are coming through
6 increased efficiency or more off-system sales would
7 allow the companies to share in a cost -- in a share
8 of those fuel costs savings if we were able to offset
9 those higher costs that we know are coming.

10 Under this proposal the customers will
11 benefit from the very first dollar of known fuel cost
12 increases that we are going to experience to the
13 extent we're able to offset those with, for example,
14 higher off-system sales. And indeed, under the
15 sharing mechanism, once you offset those costs and
16 you start -- start sharing additional fuel cost
17 savings, the sharing mechanism is set up in such a
18 way that the customers stand to gain more than twice
19 as much as the company could gain under that sharing
20 mechanism. The company's potential share is, in
21 fact, capped whereas the customer's share is not
22 capped. And that cap would operate in such a way
23 that if other costs and revenues remained equal, the
24 company could at most improve its return on equity by
25 a modest approximately 100 basis points and no more.

1 Moreover, if the company's FAC
2 off-system sales netting proposal is adopted, the
3 company is making a commitment of its shareholders'
4 money to continue to fund its existing Dollar More
5 Program and to continue to fund its existing energy
6 efficiency programs at the levels in the case of the
7 energy efficiency program that's recommended by
8 Staff. This will represent a shareholder commitment
9 of two and a half million dollars per year for those
10 programs.

11 We believe that the evidence in this
12 case will show that most of the other parties in the
13 case have not made any sincere effort to balance the
14 interest of AmerenUE and its customers or to be fair
15 in proposing the adjustments that they have proposed.
16 We would simply ask and we're confident that you'll
17 do that, that you attempt to address those issues in
18 a fair manner.

19 Finally, I'd like to, as I mentioned,
20 talk about the company's proposals related to wind
21 power, demand side management and address storm and
22 reliability issues as they bear on this case. As
23 discussed in the testimony of AmerenUE witness
24 Michael Moehn, the company is committed to developing
25 at least 100 megawatts of wind energy by 2010,

1 assuming that it technologically will work in
2 Missouri in the locations that we need it to work,
3 and assuming that stakeholders support our effort to
4 do that, including this Commission.

5 The company has also, as I believe
6 you're aware, from the company's integrated resource
7 planning docket, engaged in very intensive
8 collaborative effort with stakeholders on various
9 resource planning issues, including those involving
10 demands by management.

11 And Mr. Moehn discusses in his testimony
12 the company's support of a minimum level of DSM
13 funding of \$13 million per year that would start this
14 year and that would ramp up to \$20 million per year
15 as a minimum level by 2010.

16 Now, with respect to the recently
17 experienced storms that we've all experienced, many
18 Missourians have experienced and obviously have been
19 a great inconvenience to many of them, I would like
20 to reiterate that those storms were, as I think you
21 know, they were truly unusual.

22 In the July storms a train was blown
23 completely off its tracks. Three buildings in
24 downtown St. Louis were knocked down completely. The
25 roof of Lambert Airport blew onto I-70 and numerous

1 18-wheeled trucks were blown over.

2 As the Staff's report from the July
3 storms confirmed, this was a very unusual and
4 devastating series of weather events. The subsequent
5 ice storms were also very devastating and caused
6 considerable damage for our system. Although
7 AmerenUE's service territory was perhaps the hardest
8 hit, we know we were not alone. The Seattle area
9 suffered outages lasting three weeks recently, and as
10 we all know, in southwest Missouri and I believe in
11 Oklahoma as well and other areas, we had outages
12 because of the January ice storms that lasted more
13 than three weeks.

14 Now, having said that, we recognize and
15 the company fully recognizes that it cannot use
16 unusually severe weather as an excuse over the long
17 term. If the weather is changing -- and
18 unfortunately it appears that the weather is changing
19 when you look at the intensity and the number of
20 storms that we're having over the last several
21 years -- the company fully recognizes that it needs
22 to take steps to harden its system to try to protect
23 even more against these types of events and to limit
24 the duration of outages when outages occur to the
25 extent those outages are simply unavoidable.

8 Also, the company is working and has
9 worked with the Commission's Staff to develop more
10 rigorous rules relating to the inspection and
11 standards for our facilities, including enforcement
12 measure -- enforcement measures if those facilities
13 don't measure up.

25 Now, related to the storms, obviously we

1 incurred a great level of cost in 2006 in responding
2 to these storms. We incurred \$34 million of
3 operating and maintenance expenses that were directly
4 caused by these storms in the last half of the year.
5 So long as the company's proposal to establish a
6 regulatory liability and withhold all future revenues
7 from any sales of emission allowances is adopted, and
8 that regulatory liability proposal is very similar to
9 a proposal that Staff has also proposed in this case,
10 as long as that's adopted, we do not intend to seek
11 recovery of that \$34 million of O&M costs resulting
12 from these storms at all.

13 Typically you would seek recovery with a
14 four or five-year amortization and typically what's
15 been done in past storms, particularly on the western
16 side of the state, we will simply forego recovery of
17 that, and because we have been able to generate SO2
18 allowance revenues in the last half of the year to
19 offset those negative cash flows, we will just forego
20 recovery of those in this case. And in fact, we'll
21 actually just forego recovery entirely of \$2 million
22 of costs because the emission allowance revenues are
23 actually less than the O&M cost.

24 One final word about these recent
25 storms. We also believe that the Commission has a

1 significant role to play in the process of
2 determining how the company and other utilities for
3 that matter can better prepare for these kinds of
4 storms.

5 In addition to providing a form for
6 customer complaints and addressing reliability and
7 infrastructure rules as you are doing, the Commission
8 should provide AmerenUE and other utilities with the
9 financial wherewithal that they need in order to make
10 needed investments in their facilities, to borrow the
11 money at reasonable cost that they need to make those
12 investments and to otherwise provide the support that
13 the companies need to harden and improve their
14 systems.

15 For those reasons as well, I would
16 encourage you not to endorse the positions of Staff
17 and others that simply would hold our rates at a
18 level that is unreasonable and below what we need to
19 make sure that we can deliver reliable electricity
20 service to the company. If those positions were
21 adopted, it's going to impair the company's financial
22 strength, it's gonna compromise the company's credit
23 rating, leading to higher borrowing costs and higher
24 rates, and it's going to make it difficult and
25 perhaps to some extent impossible to make all of the

1 infrastructure investments that we need to make.

2 In summary, the evidence in this case
3 will show that after nearly two decades of declining
4 rates, AmerenUE needs a sizeable rate increase. In
5 the big picture, and I think your common sense will
6 confirm that that's the case, and will confirm that
7 also granting AmerenUE a fuel adjustment clause in
8 this case to bring Missouri into the mainstream of
9 public utility regulation and take advantage of the
10 tool that you now have before you is the right thing
11 to do. I want to thank you for your attention this
12 morning, and we look forward to presenting the case
13 to you over the next three weeks.

14 JUDGE WOODRUFF: Thank you, sir.
15 Opening statement, then, from Staff.

16 MR. THOMPSON: May it please the
17 Commission. I almost wasn't able to get up because I
18 was weeping so hard after listening to that litany
19 from Mr. Lowery of how cruel and heartless the Staff
20 and the other parties have been in trying to prevent
21 Ameren from earning as much money as it believes it
22 needs. But I've recovered, thank you.

23 I remember an old song, The Eyes of
24 Texas Are Upon You. Today the eyes of Missouri are
25 upon you, Commissioners, and what you do in this case

1 will be scrutinized by the ratepayers, the voters,
2 the citizens. This is probably the highest profiled
3 case that you will address this year. Ameren seeks,
4 according to Staff's reconciliation, over
5 \$250 million in additional revenue on an annual basis
6 from its electric operations. Staff proposes a
7 reduction of over \$88 million on an annual basis.

8 Not long ago we were here for a rate
9 case for Kansas City Power & Light Company. That
10 company's theme you'll recall was, oh, what a great
11 company we are. We should be rewarded for our
12 outstanding performance in every respect. Today,
13 though, we begin a case for a disappointing company.
14 This is a company through -- that through its
15 carelessness allowed its upper reservoir at Taum Sauk
16 to collapse, destroying the Johnson's Shut-Ins State
17 Park, one of the crown jewels of Missouri's state
18 park system. And Mr. Lowery has just mentioned the
19 repeated failures by this company to keep the lights
20 on in St. Louis, the ice storm this past winter, two
21 storms the previous summer, a storm the summer before
22 that. There's a great deal of public frustration,
23 even outrage with this company.

24 And so as the company asks you to
25 require Missouri families to pay more money for what

1 they already receive from this company, you will have
2 to carefully, carefully sift and winnow the evidence
3 that you will hear to see whether any kind of
4 increase is warranted by that evidence.

5 The largest single issue in this case is
6 cost of capital. Staff and the company are poles
7 apart with respect to the estimated return on equity.
8 The difference in their positions amounts to over
9 \$122 million on an annual basis. A great deal of
10 expertise has been brought to bear on this topic.
11 Its worth noting that the recommendations offered by
12 the expert witnesses that you will hear provided by
13 the State of Missouri, by Staff, by the Public
14 Counsel and by the Missouri Industrial Energy
15 Consumers Group form a range from 9 percent to
16 9.8 percent. Those values are closely clustered. On
17 the other hand, using unusual and not widely accepted
18 methods, the experts retained by the company offer
19 recommendations of 12 percent and 12.2 percent;
20 significantly higher than the figures offered by the
21 other experts.

22 These figures of 12 and 12.2, these are
23 figures you might award to a really good company, a
24 company that regularly exceeds others in important
25 performance measure metrics. This is not the type of

1 figures you would award to a company that's
2 disappointing, a company that can't keep the lights
3 on, a company that doesn't pay much attention to the
4 water levels in its upper reservoir.

5 The next largest issue is EE, Inc. You
6 heard about that from Mr. Lowery. This issue is
7 worth \$78 million. This issue has to do with UE's
8 40 percent ownership interest in EE, Inc.'s
9 generating plant at Joppa, Illinois. This is a very
10 efficient plant. It's a coal plant and it makes
11 power significantly more cheaply than other coal
12 plants do. For years this inexpensive power was
13 available to AmerenUE's ratepayers. The effect was
14 to keep prices down.

15 Now that there's a spot market, an
16 unregulated market where power can be sold at a
17 profit, suddenly that power's not available anymore.
18 Suddenly we're told, well, that was always the
19 shareholders' investment, and, gosh, the board, the
20 directors of EE, Inc., they have a fiduciary duty to
21 make the most money they can for the owners; they
22 have no choice.

23 The evidence you will hear, however,
24 will show you that Union Electric Company has
25 repeatedly since the 1950s assured federal and state

1 regulators that that plant in Joppa, Illinois
2 constitutes part of its integrated system for serving
3 the needs of its ratepayers. Approvals have been
4 sought by UE and obtained on the strength of those
5 assurances. Missouri ratepayers have even guaranteed
6 debt incurred to fund improvements at the Joppa plant
7 on the strength of those now evidently worthless
8 assurances.

9 The third issue in this case in terms of
10 size is off-system sales. This issue is worth over
11 \$54 million on an annual basis. This is a
12 complicated issue and to help you with it, we have
13 offered the testimony of Dr. Michael Proctor. Part
14 of this amount can be traced to a disagreement
15 between Staff and the company on the natural gas
16 dispatch price to be used in calculating off-system
17 sales. UE would like to base this figure on 2006
18 prices, while Staff uses a three-year average based
19 on prices for the years 2003 through 2005. Another
20 part of this issue relates to the spot market
21 electricity prices used in calculating off-system
22 sales.

23 The area of depreciation includes
24 several issues worth over \$56 million. One important
25 issue in depreciation has to do with service lives.

1 Just how long will those fossil-fueled and
2 hydroelectric plants last? Staff's position is that
3 depreciation rates for those plants should be based
4 on average service lives with no truncation, that is,
5 with no cutoff, because historical experience with
6 these types of plants is that they remain in
7 operation as long as possible.

8 Secondly, Staff has received no
9 indication from AmerenUE that the retirement of any
10 of these plants is imminent, and Ameren has disclosed
11 no plans to Staff, as it is required to do by
12 Commission rule, as to how it will replace the
13 capacity of any of these plants that are retired.

14 Secondly, the service life of the
15 Callaway Nuclear Plant is expected to be extended.
16 Staff's position is that Callaway will be relicensed
17 for an additional 20 years. Because 20-year license
18 renewals is an industry practice, Ameren has made
19 statements indicating that it plans to seek such a
20 renewal. And, as with the hydro and coal-fired
21 plants, Ameren has disclosed no plans to Staff, as it
22 is required to do by Commission rule, as to just how
23 it expects to replace the output of the Callaway
24 plant if its service life is not extended.

25 Finally, I'll touch on the fuel

1 adjustment clause issue. Staff is opposed to a fuel
2 adjustment clause for AmerenUE. The reasons are that
3 AmerenUE's off-system sales mitigate much of its fuel
4 cost risk; secondly, that Ameren does not require a
5 FAC to have a reasonable opportunity to earn its
6 authorized rate of return; and finally, that the lack
7 of a FAC gives UE a strong incentive for prudence in
8 its fuel and purchased power purchases.

9 You will hear short opening statements
10 before each issue that's tried during this case and
11 you will get more details on those issues at that
12 time. Thank you very much.

13 JUDGE WOODRUFF: Thank you, sir. Office
14 of the Public Counsel.

15 MR. MILLS: Good morning. May it please
16 the Commission. As Mr. Thompson just indicated, the
17 parties, or at least some of them, intend to make
18 opening statements at the beginning of each issue.
19 I'll go into more detail there about specific
20 evidence and what it will show with regard to those
21 issues. My opening statement this morning will be
22 more general to talk about the overall case and to
23 touch on some of the big issues in the case.

24 This case, Judge Thompson talked about
25 the KCPL case and how that -- how the theme there

1 that -- was that KCPL was a great company and that
2 AmerenUE is a disappointing company. I can't
3 disagree with that. However, my take is a little bit
4 different. I think this case is more about arrogance
5 and greed than disappointing performance. You'll
6 hear from this case -- in this case from AmerenUE
7 that customers really don't matter. Profit is what
8 counts. Profit is what drives this company. The
9 well-being of the customers, the service provided to
10 the customers, those are not material.

11 You've heard a lot of that from the
12 customers themselves. Many of you went to the local
13 public hearings around the state. There were quite a
14 few of them between the storm cases and this rate
15 case. There was very little that you heard that was
16 positive from any of the customers. Most of it was
17 negative.

18 I went to, I think, all the local public
19 hearings except for perhaps one. I can't recall one
20 where we didn't have a customer talk about the
21 customer service that they received from Ameren, the
22 attitude of the customer service reps. I think in
23 two different occasions on widely geographically
24 disparate locations, I think we've heard the same
25 phrase, "mean and nasty." I think that's an

1 utility, sided with Kentucky Utilities rather than
2 siding with its corporate parent Ameren and voted its
3 shares with KU, Missouri ratepayers would be getting
4 that power at cost. But they didn't. They chose to
5 go for the profits rather than for the low-cost power
6 for the ratepayers.

7 SO2 allowances, that's another big issue
8 in this case. That's another issue that I think
9 points out the way that Ameren operates. SO2
10 allowances are generated essentially by running
11 plants, and those plants are paid for by ratepayers.
12 So from my point of view, SO2 allowances are an asset
13 that the utility holds on behalf of its ratepayers.
14 They should be used to minimize the cost of
15 environmental compliance; sold when the market is
16 high, banked when necessary to defer expenses for
17 pollution control equipment.

18 Is that the way Ameren uses them? No.
19 Ameren uses them to -- to push or pull earnings per
20 share when necessary. Those are ratepayer assets
21 that Ameren uses to maximize profits.

22 And I think there are more examples, and
23 those are the ones I'm going to highlight here. And
24 I'll go through some of the big issues in the case,
25 and I think they are mostly the same issues that

1 Judge Thompson talked about.

2 Rate of return. I think he did a good
3 job of pointing out that most of the parties in this
4 case have a tightly packed -- if you looked at a dart
5 board, all of our darts would be in the same spot.
6 Then you've got AmerenUE's that's way over in a
7 different area.

8 Another issue with regard to rate of
9 return capital structure is the double leveraging
10 issue. Public Counsel witness Charles King points
11 out the double leveraging effects of the capital
12 structure. You'll see very little direct opposition
13 to that position. Although AmerenUE tries to pick at
14 it around the edges, they can't really fight the
15 basic principle because it's mathematically proven in
16 Mr. King's testimony.

17 I've already touched on EE, Inc. and
18 sulfur dioxide allowances. Depreciation is another
19 big issue. Public Counsel witness Bill Dunkel
20 provides compelling testimony about the likelihood of
21 the licensing renewal of the Callaway plant. You
22 will hear from no AmerenUE witnesses that they have
23 made firm plans to not relicense it. The best they
24 can offer is that they haven't made a definitive
25 decision yet.

1 But as we all know, that decision is
2 coming, and I think you, as Commissioners, should put
3 them on the spot and ask them, what are you gonna do
4 in five years when you come before us and say, oh,
5 we're relicensed in Callaway. How come you didn't
6 know that five years ago? Well, was it unlikely then
7 but now it's certain? I don't think so. I think all
8 the evidence in the case shows that it is much, much
9 more likely than not that the Callaway plant will be
10 relicensed, and that's the -- that's the way that the
11 depreciation calculation should be made.

12 Depreciation isn't like known and
13 measurable changes; it doesn't have to be known. By
14 definition you're setting depreciation rates based on
15 things that are likely to happen in the future. The
16 best you can do is go with the likelihood. You can't
17 go with certainties. Nobody knows exactly what a new
18 turbine will cost ten years from now. Nobody knows
19 exactly when coal plants will be retired. But you
20 can make -- you can make sophisticated estimations
21 based on the evidence in this case, and the best
22 estimation of the life span of the Callaway plant is
23 the 2044 after the 20-year relicensing period.

24 The fuel adjustment clause, another huge
25 issue in this case, is essentially a case of first

1 impression for this Commission. The last fuel
2 adjustment clause in Missouri was done away with in
3 the late '70s. It's a whole new era.

4 The testimony of Public Counsel witness
5 Ryan Kind talks about the policies, the
6 considerations that the Commission should give in
7 deciding whether or not to award a fuel adjustment
8 clause for a utility. Some of those, and perhaps one
9 of the most important as Mr. Thompson pointed out, is
10 whether or not the utility has a reasonable
11 opportunity to earn its return without a fuel
12 adjustment clause. AmerenUE certainly does. It does
13 not have the kind of exposure to natural gas prices
14 that some of the smaller utilities in Missouri have.

15 Much of its generation is coal-fired.
16 Much of the price determination for coal plants is
17 determined ahead of time. It's either locked in or
18 it's hedged. Coal prices in general have tended to
19 be much, much flatter than the volatile natural gas
20 prices. And to the extent that the natural gas
21 prices do go up, AmerenUE will actually benefit more
22 likely than be affected, because as natural gas
23 prices go up, the market price for electricity
24 generally goes up as well, all right? AmerenUE is
25 less affected by the natural gas price hikes

1 adversely than it is beneficially affected by the
2 increase in the off-system sales market.

3 Finally, an issue that I don't believe
4 either of the previous speakers have touched on is
5 rate design. In this case, as in most rate cases,
6 once the Commission has determined a revenue
7 requirement, it must then determine how to spread
8 that revenue requirement across the classes. In this
9 case the most compelling evidence, the most detailed,
10 the most reliable is that of Barb Meisenheimer who
11 did not only a time of use study for her cost study,
12 but also a more traditional cost study. Both of
13 those studies result in rate design impacts that I
14 think are much less severe in terms of residential
15 customers than a lot of the parties would have you
16 believe are necessary.

17 And I urge you to give very serious
18 consideration to the rate design portion of this case
19 because in the event that there is a significant
20 increase in the overall rates for AmerenUE customers,
21 any rate shift to residential customers could work a
22 horrible hardship. So I think that's an extremely
23 important factor in this case.

24 With that, I will conclude my opening
25 statement and I will give you more detail on all of

1 these issues as we get to them. Thank you.

2 JUDGE WOODRUFF: Thank you, Mr. Mills.

3 Next would be the State of Missouri, Department of
4 Economic Development.

5 MR. MICHEEL: May it please the
6 Commission. Pardon me, I have a cold today so I
7 might not be as loud as I normally am.

8 Commissioners, this is not your typical
9 rate case and I think we all know it. It's the
10 largest rate case filed in Missouri history. And my
11 good friends at AmerenUE are not content to comply
12 with the normal calculations of its rated base and
13 operating income using traditional regulatory
14 approaches. The company's filings and positions
15 taken in litigation are individually unique and
16 create a -- all at the same time they have one
17 consistent theme. Every new legal theory and every
18 novel ratemaking approach AmerenUE will present in
19 this case pushes the limit of any rational view of
20 just and reasonable rates, indicating an aggressive
21 regulatory posture that will be revealed to this
22 Commission as hearings continue.

23 This morning you heard Mr. Lowery
24 discuss the "unreasonable" positions that the Staff,
25 the State and the Office of Public Counsel has taken.

1 I submit to you that it is not those parties who've
2 taken the aggressive and unreasonable positions, it's
3 AmerenUE. What the State has done is conduct an
4 audit of the company using traditional cost of
5 service rate base rate of the return regulation.

6 In this case the company intends to test
7 the Commission's limits of jurisdiction over EE,
8 Inc., a coal-fired generating station in Joppa,
9 Illinois for which Missouri ratepayers have been
10 served for many years. At the same time, AmerenUE
11 seeks to remove the low-cost Joppa-based low
12 generation from Missouri regulation. Keeping the
13 valuable output for its shareholders, the company
14 also seeks to put into rate base high cost combustion
15 turbine generation at Pinckneyville and Kinmundy.
16 These CTs were initially nonregulated capacity that
17 were built by an Ameren affiliate to go into the
18 competitive market and earn large profits. However,
19 when the market conditions became unfavorable for
20 gas-fired CTs, Ameren Corporation now wants those in
21 rate base at book cost to protect those investments
22 from competition.

23 On the depreciation front, the
24 Commission is asked by AmerenUE to ignore the
25 likelihood that the Callaway Nuclear Plant will, like

1 most other large nuclear generating stations around
2 the country, ultimately seek and be granted an
3 extension to its NRC operating license. And I ask
4 you to ask the Ameren witnesses, Callaway is
5 10 percent of their base load generation. If it's
6 going out of service in the short 18 years, what's
7 their plan to replace it? I've seen nothing.
8 They've presented nothing. They've suggested
9 nothing. But they do tell us in their testimony that
10 Callaway has gone gangbusters, has been low cost, has
11 been a great operating plant.

12 It defies logic why a company with a
13 nuke that operates allegedly as well as Callaway
14 would not seek a license extension. By ignoring this
15 reasonable expectation, AmerenUE seeks to increase
16 nuclear depreciation expenses substantially.
17 AmerenUE is also seeking large depreciation increases
18 on the rest of its plant's investments to collect
19 inflation-adjusted future removal cost.

20 These adjustments are pushing the
21 envelope, and the parties to this case, including the
22 State, have opposed them. That doesn't make what the
23 State has done or suggested seeking the low, lowest,
24 low cost. What we've suggested is that this
25 Commission set rates based on Ameren's cost of

1 service.

2 Energy -- energy cost recovery is
3 another place where AmerenUE is pushing the envelope.
4 It's not surprising that UE wants to avail itself to
5 the opportunity to transfer the risks of its
6 gradually increasing fuel expenses to ratepayers
7 through the recently enacted fuel adjustment clause.

8 Let me just say something about SB 179.
9 If the legislature had wanted to make a fuel
10 adjustment clause a requirement, they would have
11 passed legislation that made it mandatory that you
12 grant every utility in the state of Missouri a fuel
13 adjustment clause. They did not do that. They made
14 that legislation permissive. Why? I think because
15 in their good judgment they recognized that there are
16 certain companies like AmerenUE where the facts and
17 circumstances do not lead to the conclusion that a
18 fuel adjustment clause is needed.

19 Moreover, to amplify the benefit of the
20 proposed fuel adjustment clause, UE would prefer to
21 understate its growing off-system sales profits and
22 keep any differences for shareholders. AmerenUE, the
23 evidence is going to show, operates a large fleet of
24 highly efficient coal and nuclear plants that
25 include -- that are included in Missouri's rate base

1 and that produce hundreds of millions of dollars in
2 off-system sales profits. The amount of this profit
3 that should be recognized in setting rates is hotly
4 disputed. But one thing is clear, Ameren wants to
5 keep the expected growth of its off-system sales
6 profits or at least a share of those profits under
7 the proposed heads, they win, tails, customers lose
8 sharing proposal, and the State is opposed to that.

9 AmerenUE's fuel adjustment clause
10 proposal is opposed by the Staff, by the State and I
11 believe by all other parties because it's not
12 justified for a utility that uses very little gas or
13 oil-fired generation where prices are volatile. And
14 again, that goes to where the legislature gave you
15 the ability to look at each company's generation.

16 This rate case will include the last
17 actual known fuel prices for setting rates, and after
18 doing so, this company's revenue requirement as
19 calculated by the Staff and State is still negative.
20 This means when all changes in the company's revenues
21 and costs are considered, gradually increasing fuel
22 costs are more than paid for by customers and revenue
23 growth, off-system sales profits, productivity
24 effects -- productivity effects and the balance of
25 the business.

1 AmerenUE's fuel adjustment clause
2 proposal represents piecemeal regulation through
3 which the company hopes to selectively transfer the
4 expected cost of gradually, key word, gradually
5 increasing fuel prices to consumers on a piecemeal
6 basis without accounting for revenue growth or
7 productivity gains that affect that.

8 One might expect a reasonable return on
9 equity recommendation from a utility seeking the
10 benefits of a FAC, of retention of off-system sales,
11 of massive increases in depreciation of removal of
12 the Joppa plant, you know, their retention requests
13 for all admission allowances, but that's not the
14 case.

15 AmerenUE has asked for a 12 percent
16 return on equity and then suggests, and no one's
17 talked about this, that an obscure rule,
18 4 CSR 240-10.020, be used to add millions of dollars
19 in additional revenues only to be used as a backstop
20 against any ratemaking adjustments the Commission may
21 find reasonable.

22 The State is confident that the
23 Commission's careful scrutiny of UE's proposal will
24 reveal them for what they are: Unique, creative,
25 aggressive and mostly wrong. I agree with Mr. Lowery

1 that this Commission should not put on blinders when
2 they're deciding this case. You should follow the
3 law. In Missouri we set rates based on
4 cost-of-service rate base regulation. That's what
5 the law requires.

6 It's been asserted that the State had a
7 "zeal" to keep rates low. That's simply not the
8 case. We have a "zeal" to adhere to sound cost of
9 service regulation. Mr. Lowery's not a mind reader,
10 and I ask each Commissioner to ask every one of my
11 witnesses that come up, was the purpose of your
12 adjustment to keep rates the "lowest of low"? Were
13 you given any direction by the State to find
14 adjustments that keep rates the "lowest of low"?

15 There were no preordained outcomes,
16 Commissioners. Frankly, I resent the claim and
17 there's gonna be absolutely no evidence that any of
18 these parties intentionally wanted to keep rates low.
19 We simply audited the books and records and came to
20 different conclusions than the company. That's like
21 me saying that Ameren had a "zeal" to keep rates
22 high. They came to their conclusions.

23 And I think you'll find that we agreed
24 with Ameren more than we disagreed. We do recommend
25 a rate decrease in this case because that's what our

1 audit of the company revealed. Nothing more, nothing
2 less. And I think at the close of all evidence, it
3 will be clear that's what this company deserves, a
4 rate decrease. Not because it has lower rates
5 compared to its neighbor utilities or some other
6 state or a nation; because its cost of service is
7 lower than those utilities. Nothing more, nothing
8 less.

9 And that's the charge, the legal charge
10 of this Commission. You're supposed to determine
11 what this utility's cost of service is, not what it
12 is in relation to some other Missouri utility, not
13 what it is in relation to some other regional utility
14 and not what it is in relation to a national utility.
15 Thank you.

16 JUDGE WOODRUFF: Thank you, sir.
17 Department of Natural Resources.

18 MR. IVESON: May it please the
19 Commission, Judge Woodruff. The Department of
20 Natural Resources' energy center has a particular
21 interest in two issues in this case that you haven't
22 heard a lot of discussion of yet this morning.

23 First, demand side management,
24 specifically energy efficiency measures. Every
25 megawatt of power that is not consumed is a megawatt

1 of power that does not have to be generated. That
2 makes sense economically by reducing the need for
3 investments in new generation -- generation capacity,
4 and it certainly makes sense environmentally.

5 The other major issue that we're
6 interested in is wind power and other alternative
7 energy resources. These sources now can compete
8 economically with traditional sources such as gas and
9 coal. And unlike traditional sources, alternative
10 energy sources reduce the adverse impact on the
11 environment, increase energy security through
12 diversity and are not vulnerable to coming carbon
13 regulations.

14 Now, the people that have come before me
15 have spoken about some big-dollar items, and I don't
16 want you to think that because there's not a lot of
17 focus on this that these issues are not important.
18 They are extremely important for the long-term public
19 interest in Missouri. Unfortunately, AmerenUE does
20 not have a history of supporting either demand side
21 management or wind power and other alternative energy
22 sources.

23 Only recently in a Stipulation and
24 Agreement in the Commission's IRP case, AmerenUE
25 finally, after many years, agreed to engage in a

1 study and collaborative process to identify some
2 cost-effective demand side management programs and to
3 investigate the possibility of wind power. Based on
4 their past history, though, it is of some concern
5 that that Stipulation and Agreement does not
6 specifically require them to implement any of those
7 programs. This Commission in this case can and
8 should take that next essential step.

9 In its testimony the energy center
10 identified two ways that have been applied in other
11 states for requiring a commitment from Ameren on
12 those issues or particularly on the demand side
13 management issue. First, some states have required
14 that a percentage of gross annual sales revenue be
15 committed to demand side management. Based on what
16 other states have done, a commitment of half percent
17 of those revenues annually immediately rising to
18 1 percent by 2010 would be reasonable. Based on the
19 testimony of Mr. Moehn -- and Mr. Lowery mentioned
20 it -- it appears that UE agrees that goals very
21 similar to those suggested by the energy center would
22 be appropriate in this case.

23 Second, some states have also required
24 goals for a percentage reduction in the annual growth
25 of energy and peak demand through implementation of

1 energy efficiency measures. Again, based on what
2 other states have done and how little UE has done in
3 the past, a goal of 10 percent by 2009 rising to
4 25 percent by 2015 would be reasonable, and the Staff
5 concurs with that position.

6 The specific programs to be funded will
7 be identified through the process that was adopted in
8 the IRP case. The energy center is confident that
9 AmerenUE will have no problem achieving either of
10 those goals if it engages in that process in good
11 faith.

12 The low-income weatherization program is
13 a form of demand side management but it has
14 additional considerations that deserve to be
15 addressed in this case. Not only does it reduce
16 consumption, it also allows those who participate to
17 meet the basic energy needs of everyday life.
18 AmerenUE has funded this program in the past but
19 no -- no funding is included in its tariff filed in
20 this case. The need for this program is even greater
21 now considering the significant rate increase
22 AmerenUE seeks. Funding for these programs should be
23 continued at \$1.2 million annually which should not
24 be included in the goal for demand side programs, the
25 other demand side programs.

1 Prior to this case, AmerenUE had never
2 made any effort to include wind power in its
3 generation portfolio. Now, for the first time in
4 testimony filed by Mr. Moehn, AmerenUE has committed
5 to adding 100 megawatts of wind power by 2010,
6 assuming that it can find a way to do that
7 technologically.

8 That's a good first step but it's not
9 enough. AmerenUE must commit to fully and
10 aggressively investigating wind and other alternative
11 energy sources and to adding it to its generating
12 capacity. We agree with AmerenUE, the Commission
13 should look at the long-term public interest in this
14 case.

15 A sustained, ongoing commitment in
16 these -- in both the wind power and the demand side
17 management is essential to make those programs
18 effective. That's been proven time and again in
19 state after state with utility after utility. For UE
20 the time to start that commitment is in this case.
21 Thank you.

22 JUDGE WOODRUFF: Thank you. For the
23 Missouri Industrial Energy Consumers.

24 MS. VUYLSTEKE: May it please the
25 Commission. The Missouri Industrial Energy Consumers

1 is a group of the state's largest energy users. Its
2 members are among the state's largest employers and
3 taxpayers. Reliable utility service at reasonable
4 rates is essential to the health and competitiveness
5 of Missouri business and industry. Missouri industry
6 is facing potentially crippling rate increases.
7 Ameren proposes to increase industrial rates by
8 43 percent. It also proposes a fuel adjustment
9 surcharge which will make rates more volatile.

10 The allocation that AmerenUE proposes of
11 this rate increase has no basis in sound cost of
12 service principles. The PSC Staff filed its
13 successive rate complaint against UE in this case
14 based on the results of a formal overearnings
15 investigation ordered by the PSC in May of 2006. As
16 soon as it was announced that this investigation
17 would go forward and be formalized, AmerenUE stated
18 it would request a rate increase.

19 Similarly, AmerenUE also claimed back in
20 2002 that it needed a rate increase of up to
21 \$400 million after the PSC filed a \$280 million
22 overearnings complaint. In that case AmerenUE's
23 rates were decreased by about \$110 million annually,
24 and ratepayers received over \$40 million in
25 additional credits.

1 The AmerenUE's rate increase in this
2 case, its proposal, appears to be a defensive measure
3 to avoid a rate decrease resulting from the PSC
4 overearnings investigation. Nonetheless, its
5 proposal exposes Missouri industry to major cost
6 increases that similar to a large tax increase could
7 kill jobs and undermine opportunities in this state
8 for businesses to grow and to expand. This is
9 especially true for the energy-intensive
10 manufacturing and biotechnology industries.

11 Ameren implies that its rates should be
12 increased because they haven't had a rate increase in
13 20 years and it says its rates are low. This is not
14 an appropriate basis for the Commission to set rates,
15 and it would result in a very misguided policy. The
16 touchstone of ratemaking is to ensure that rates
17 cover the utilities' reasonable cost of service plus
18 a fair profit to the utility. It is no argument to
19 say increase our rates because utilities have higher
20 rates elsewhere. This issue -- the issue in this
21 case is profits, and Ameren is very profitable.

22 In fact, Ameren is among the nation's
23 most profitable regulated utilities, and it has the
24 financial strength to invest in all resources needed
25 to serve Missouri's energy needs. AmerenUE has

1 achieved record profits by selling power, low-cost
2 excess power in the competitive marketplace. Its
3 high profits can be maintained without the requested
4 rate increase to Missouri industrial and residential
5 consumers.

6 Missouri industry competes globally
7 while AmerenUE is a monopoly with a guaranteed
8 customer base and no real competition. Missouri
9 industry is the economic base of the state.
10 Enhancing AmerenUE's profits at the expense of
11 industry takes Missouri's economy in the wrong
12 direction.

13 The Missouri Industrial Energy Consumers
14 have filed testimony in this case on the issues of
15 return on equity, depreciation, fuel adjustment,
16 proper treatment of off-system sales revenues and
17 cost-of-service rate design, and we will look forward
18 to providing additional information about our
19 positions as each issue is addressed. Thank you.

20 JUDGE WOODRUFF: Thank you. Missouri
21 Energy Group.

22 MS. LANGENECKERT: I think I'm gonna
23 stand back here since everybody else is sick and I'm
24 well. May it please the Commission. Missouri Energy
25 Group has offered testimony on four issues in this

1 case: Return on equity, off-system sales, class cost
2 of service and then industrial demand response
3 program.

4 Witness Billie LaConte has fleshed out
5 these issues in her testimony filed in this case, and
6 she will also provide testimony before this
7 Commission, so I'll just touch on these issues today.

8 The Missouri Energy Group recommends
9 that if the Commission determined after looking at
10 all the relevant factors that Ameren deserves an
11 increase that will allow an ROE that is lower than
12 AmerenUE's proposed 12 percent ROE, the MEG asks the
13 PSC to recognize AmerenUE's reduced risk and lower
14 its proposed ROE due to several risk-mitigating
15 factors, such as the availability of the FAC when it
16 is necessary, the environmental cost recovery clause
17 which is also available through Senate Bill 179, and
18 the pension tracker, just to name a few.

19 One second. In its off-system sales,
20 the MEG believes that it would be beneficial to
21 provide incentives for AmerenUE to increase its
22 off-system sales whenever reasonably possible.
23 Ms. LaConte will discuss this issue in further detail
24 later this week.

25 For class cost of service, Ameren has

1 proposed a 10 percent cap on residential rates.
2 Ameren's nonresidential customers would receive
3 between 19 and 43 percent increases. Now, granted,
4 I'm not an accountant or an economist, but no matter
5 how hard I try to calculate it, I cannot find a way
6 to have Mr. Lowery's one quarter of 1 percent a year
7 analysis, described earlier in his opening statement,
8 come out to a 43 percent increase.

9 The MEG asks that this Commission reject
10 the proposed class -- cross class subsidy of
11 residential customers by nonresidential customers.
12 Further arguments will be presented when this issue
13 is heard the last week of the hearing.

14 As for the industrial demand response
15 program, it will definitely be a more cost-efficient
16 method for AmerenUE to obtain short-term power as
17 opposed to using power from gas combustion turbines.
18 The MEG believes that the parameters of the IDR
19 program proposed by AmerenUE should be expanded.
20 Ms. LaConte will also discuss her suggestions at the
21 end of this hearing when the issue is discussed.
22 Thank you.

23 JUDGE WOODRUFF: Thank you. For The
24 Commercial Group.

25 MR. CHAMBERLAIN: Good morning,

1 Commissioners, Judge Woodruff. My name is Rick
2 Chamberlain. I'm from the neighboring state of
3 Oklahoma, and this is my first opportunity to address
4 this Commission. I thank you for that opportunity.

5 I represent a group by the name of The
6 Commercial Group that consists of Lowe's Home
7 Centers, Inc., J.C. Penney Corporation, Inc. and
8 Wal-Mart Stores East, L.P. Collectively, the members
9 of The Commercial Group own and operate some 76 large
10 retail stores and other facilities in AmerenUE's
11 Missouri service territory. They purchase
12 approximately 236 million kwh annually from Ameren
13 under primarily the LGS and SBS rate schedules.

14 Needless to say, the requested Ameren
15 rate increase would have a significant impact on the
16 cost of The Commercial Group members doing business.
17 The Commercial Group has presented the testimony of
18 an expert witness by the name Mr. Kevin Higgins.
19 Mr. Higgins has filed five separate pieces of
20 testimony. We have not addressed each and every
21 issue in the case as some parties have. Rather, we
22 have chosen to focus on a few of those items, the
23 most important in our view anyway, the most important
24 of those issues, and my purpose today is to give you
25 an overview or a thumbnail sketch of what our

1 testimony will show.

2 In the revenue requirement portions of
3 the proceeding, we will provide testimony on three
4 issues. The first of those -- the first of those
5 issues is EE, Inc. as you've heard much about. Let
6 me just say that our position generally is opposed to
7 Ameren's position, and we are recommending a
8 disallowance of certain costs associated with the EE,
9 Inc. issue.

10 Secondly, we are providing testimony on
11 the appropriate treatment of off-system sales and how
12 those sales margins should be treated. We also are
13 opposed to Ameren's position in that case on that
14 issue, but we provide some alternative ways that
15 off-system sales margins could be shared in what we
16 think is a more appropriate way.

17 And then lastly in the revenue
18 requirements portion, you will hear testimony from
19 our witness on the fuel adjustment clause issue. We
20 don't take a position either for or against a fuel
21 adjustment clause. I'm not advocating a position
22 either way on that issue, but what we are saying is
23 that whether or not this Commission grants a fuel
24 adjustment clause could impact the way in which our
25 recommended EE, Inc. adjustment is implemented. Let

1 me -- let me rephrase that. We recommend an
2 adjustment, a disallowance on the EE, Inc. issue.

3 The way in which that disallowance will
4 be implemented depends upon whether this Commission
5 allows a fuel adjustment clause or not, and our
6 witness, Mr. Higgins, goes into some detail about
7 that; again, offers several alternatives for
8 implementing that change.

9 With regard to the class cost of service
10 and rate design portion of the proceeding, The
11 Commercial Group also offers testimony on those
12 issues. Primarily, we are advocating a movement
13 toward the cost of service for each individual class.
14 We are opposed to the arbitrary 10 percent cap on
15 residential class, but we are not insensitive to the
16 need to mitigate the rate increase to the residential
17 class. After all, the residential customers are my
18 clients' customers as well. And so for that reason
19 we offer several different alternatives for moving
20 toward cost of service for the individual classes
21 while still mitigating the impact on the residential
22 customers. And I will go into more detail as these
23 issues arise. Thank you again for the opportunity to
24 address the Commission. Thank you.

25 JUDGE WOODRUFF: Thank you, sir. For

1 Noranda Aluminum.

2 MR. CONRAD: Good morning and may it
3 please the Commission. My comments at this point are
4 going to be very brief because they would otherwise
5 be, I think, unduly repetitive.

6 Like several of the others that have
7 preceded me, Noranda's interest has been focused.
8 Noranda is, we believe, the largest retail load on
9 this system. We also believe it to be the largest
10 retail customer in this state. And as such, we have
11 some conflicts in the capabilities of the
12 Commission's Staff, of OPC, of the State of Missouri
13 to present the revenue issues to you.

14 Our focus as you will see has been on
15 the structure of the FAC, of the fuel adjustment
16 clause. We have not taken a position as to the need
17 therefor. We have also taken positions on cost
18 allocation, believing as we do, that cost causers
19 should be cost payers and that that should be the
20 primary driver of class cost of service as well as
21 rate design.

22 We've also proposed some modifications
23 to the FAC as that has been proposed by Ameren and
24 other parties, and we would expect to address those
25 in more particularity as those issues are presented

1 to the Commission.

2 And with that, I will be seated.

3 JUDGE WOODRUFF: Thank you, sir. For
4 AARP and the Consumers Council.

5 MR. COFFMAN: Good morning and may it
6 please the Commission. I'm here representing both
7 AARP and the Consumers Council of Missouri. As has
8 been stated before, the procedural posture of this
9 case may be different in that it was initiated by a
10 rate increase request as opposed to a rate decrease
11 complaint as it was four and a half years ago, but I
12 believe that the evidentiary posture of this case is
13 really not all that different.

14 AmerenUE then, as it has today, bases a
15 lot of its argument on the fact that well, heck,
16 everything's going up and we haven't had a rate
17 increase for about 20 years. Well, we think that the
18 evidence will show a variety of reasons about why
19 that is. One reason is back 20 years ago ratepayers
20 had to swallow rather large percentage increases for
21 the Callaway plant and other things, and are now, in
22 my opinion, enjoying related depreciation of those
23 plants.

24 Another significant reason, in my
25 opinion, which I believe is beared (sic) out by the

1 evidence that will be presented in this case, is that
2 the fuel -- the lack of a fuel adjustment clause has
3 helped AmerenUE focus itself on very prudent fuel and
4 purchased power management. It's had the means and
5 it's had the incentive to do that.

6 Just speaking briefly on the fuel
7 adjustment clause -- we'll certainly talk about that
8 later -- it's been described as a mainstream tool,
9 and that may be if you're looking at certain states.
10 But if that is the case, it is also mainstream, I
11 would point out, for states to apply such fuel
12 mechanisms to only those utilities that appear to
13 need it or to which a fuel mechanism suits.

14 If we look at our neighbor next door in
15 Kansas, I believe two of their electric utilities
16 have a fuel mechanism and two of them do not. And
17 in -- the evidence in this case is I think rather
18 convincing in that AmerenUE of any utility in this
19 state is one to which a fuel adjustment clause is
20 really not well suited. It certainly isn't needed
21 for them to have an opportunity to earn a reasonable
22 return.

23 As has been mentioned, their -- their
24 very significant off-system sales opportunities and
25 resource planning generally just is not such that

1 they are susceptible to the same fluctuations as
2 other electric utilities in the state. So for
3 that -- for those reasons alone, I think you can look
4 at the statute and say that this is a situation where
5 you do not need to resort to a fuel adjustment clause
6 for which I think we can all agree shifts a
7 significant amount of risk from the utility onto
8 ratepayers who do not have the means to mitigate that
9 volatility and risk.

10 And obviously, with AmerenUE we have a
11 monopoly that does have the ability to manage it and
12 has -- it has admitted in the past has certainly
13 profited from the incentive that the lack of a fuel
14 adjustment clause has provided them.

15 Ameren -- or AARP will present testimony
16 regarding the fuel adjustment clause, supporting a
17 position that one is not needed here, but that if one
18 is, it should have -- it should still retained a
19 significant amount of that -- that incentive such as
20 the 50/50 idea where only 50 percent of the deviation
21 would be recognized in the fuel adjustment clause.
22 The other 50 percent would be recognized in the base
23 rates.

24 AARP will also present its class cost of
25 service study which it believes is fair to both large

1 customers and small, and which also includes a
2 proposal to mitigate the growing winter/summer
3 differential and more about that later as well.

4 Just let me -- let me finish by asking
5 you to pay particular attention to the sworn
6 testimony that is already in the record from the
7 public itself. And if you'll recall, AmerenUE
8 opposed the number of local public hearings requested
9 in this case, and thankfully the Commission went
10 ahead and granted them anyway and even granted a
11 couple extras. And the public is certainly thankful
12 that the Commission went ahead and did that. As a
13 result, we now have volumes of public testimony. And
14 I know that most of you attended many of those public
15 hearings, and for those of you who did not attend, I
16 urge you to read the transcript because it is really
17 compelling testimony.

18 And you know, I'm frequently asked by
19 members of the public, you know, who might be cynical
20 and worn down and, you know, will it even matter if I
21 go to a public hearing? Does the Public Service
22 Commission even listen to this or do they just go
23 back to Jefferson City and forget what they hear?

24 And I try to encourage them and say,
25 well, yes, it is, it will be -- if you go and you're

1 sworn in, particularly, it will become part of the
2 evidence of the case. And the Public Service
3 Commission is bound by the law to protect the public.
4 That is its highest purpose. And in order to reach a
5 reasonable result that balances ratepayer concerns
6 with the monopoly's interest, that they have to
7 consider that and they can use that as a competent,
8 substantial evidence to support a decision that is
9 fair.

10 I tell you, if the Commission ignores
11 the evidence that was taken in this case from
12 consumers who have very serious concerns about their
13 rates and their -- the quality of service that they
14 have been receiving from AmerenUE, then I might have
15 to change what I tell consumers because I think that
16 if ever there was a case where public comment should
17 bear on a rate decision, it is this case.

18 And one specific item that is in that
19 public testimony and not -- not significantly in the
20 expert testimony is the idea of some type of
21 ratepayer refund or credit that would give consumers
22 some recognition of the terrible inconvenience and
23 even safety risk that goes along with being out of
24 service for, say, over two days. And I would point
25 you to the Pacific Gas and Electric voluntary

1 program, coined the Safety Net, I believe, which does
2 gives consumers a small credit, \$25 a day for each
3 day after 48 hours of outage.

4 And there is -- there is substantial
5 evidence in the record in these public hearings, I
6 believe, to support that type of tariff being
7 approved, to just give a small monetary recognition
8 for the inconvenience. And I think that certainly
9 Ameren can afford it. Certainly compared with the
10 other revenue opportunities and expenses that it
11 faces, this is something very small to ask, and I
12 believe the public would be very thankful and I think
13 it would go a long way.

14 If AmerenUE is not willing itself to
15 give such small recognition to its customers, I mean,
16 I know all I've gotten so far is this colored flier
17 in the mail. If AmerenUE is not willing to
18 voluntarily put something in place as much as PG&E
19 has done, I urge the Commission to order them to do
20 some type of small service.

21 It would also, I believe, serve as some
22 financial incentive for the planning processes that
23 AmerenUE to more align itself to the type of
24 distribution reliability that we would expect. And I
25 don't think that expecting the majority of

1 individuals to be reconnected after 48 hours is
2 asking too much. Or if so, to at least compensate by
3 \$25 a day those consumers who have been out that
4 long.

5 So with that particular item which is
6 not, I believe, before you in the prepared testimony
7 today, I would conclude and ask that you issue a
8 decision in this case that is just and reasonable for
9 captive residential customers. Thank you.

10 JUDGE WOODRUFF: Thank you, sir.
11 Missouri Association for Social Welfare.

12 MS. CARVER: May it please the
13 Commission. The Missouri Association for Social
14 Welfare is a nonprofit organization that advocates
15 for those who are economically disadvantaged, and our
16 interest in this case and our testimony will
17 specifically be in regards to the rate design.

18 By freezing the rates or by putting a
19 cap or a limit as to when the rate increase will
20 apply will protect the interest of those who are the
21 most disadvantaged. Specifically, I'm talking
22 about -- obviously about residential usage. That
23 those people who are the most disadvantaged in our
24 state need to be protected from the rate increase
25 because they're the least able to afford that.

1 They need the protection for the
2 essential services that our utilities provide:
3 Lights, refrigeration, climate control. Our
4 testimony will be in regards to placing a limit or a
5 cap, protecting not only those who are the most
6 disadvantaged, but will also protect all Missouri,
7 especially our middle -- all Missouri families,
8 especially our middle-income families who will also
9 be protected who also can't afford the kind of
10 residential and rate increase that's being proposed.
11 Thank you.

12 JUDGE WOODRUFF: Thank you. Missouri
13 Retailers Association.

14 MR. OVERFELT: May it please the
15 Commission. Sam Overfelt. I'm representing the
16 Missouri Retailers Association. We do not have a
17 witness. There is a duplication of representation in
18 regard to the commercial class. The J.C. Penney
19 Company and Lowe's are both members of our
20 association. We represent not only the box stores
21 and large stores in the state, but also small
22 individual mom and pop types of stores.

23 Many of the mom and pop stores are
24 actually represented by the Public Counsel because of
25 their size, and so even though we don't have a

1 witness, we've been attending many of the preliminary
2 hearings and the study, and I commend the Staff for
3 the work that they have done and look forward to
4 participating as we can in the -- as we go along with
5 the work that you are now doing. Thank you.

6 JUDGE WOODRUFF: Thank you,
7 Mr. Overfelt. I believe you arrived a little bit
8 late today so you didn't get a chance to enter your
9 appearance. Would you go ahead and do that now for
10 us?

11 MR. OVERFELT: Yes, I've got it
12 prepared.

13 JUDGE WOODRUFF: Okay. And just give it
14 to the court reporter later.

15 MR. OVERFELT: Certainly.

16 JUDGE WOODRUFF: Mo-Kan/CCAC, is anyone
17 here for them?

18 (NO RESPONSE.)

19 JUDGE WOODRUFF: Seeing no one, we'll
20 move on to Laclede.

21 MR. PENDERGAST: May it please the
22 Commission. Thank you, your Honor. As you've
23 listened to counsel address the various major issues
24 in this case, I'm sure that a burning question
25 filtering through your mind has been, but what about

1 the winter tail-block rate? And that's what Laclede
2 is here to address very briefly today.

3 The winter tail-block rate is not a new
4 issue between Laclede and AmerenUE. It's been a
5 matter of Commission decision and litigation in the
6 past. Basically, what it comes down to is that we
7 believe for cost of service reasons that the winter
8 tail-block rate differential between the summer
9 should not be as great as it is. I believe that AARP
10 has also filed testimony to that effect in this case.

11 The Staff has also filed rate design
12 recommendations which are proposing basically an
13 equal percentage increase in those components. We
14 have talked to the company, and I think that they
15 have graciously agreed towards working towards that
16 goal at least as far as it pertains to winter
17 tail-block rate. I'm hopeful that AARP will also be
18 on board with that, so that may be one issue that --
19 among others that we'll be able to go ahead and
20 resolve.

21 As far as the remaining issues are
22 concerned, we are steadfastly in support of the
23 concept that you should do what is just and
24 reasonable, not just for the here and now, but over
25 the long term, and we are confident that you will.

1 Thank you.

2 JUDGE WOODRUFF: Thank you, sir. For
3 Aquila.

4 MR. MITTEN: If it please the
5 Commission, Judge Woodruff. As Aquila stated in its
6 application to intervene in this case, its interest
7 in this case is limited to one issue and that's the
8 proposed fuel adjustment clause. So I would like to
9 reserve my opening statement until the Commission
10 hears that issue.

11 I would also like to request, because of
12 Aquila's limited interest in this case, if it could
13 be excused from those portions of the case that do
14 not relate to the fuel adjustment clause.

15 JUDGE WOODRUFF: Certainly. Any party
16 that does not wish to participate at various times of
17 the various issues of this hearing is certainly
18 excused and that applies to all the parties, not just
19 to Aquila. There's no reason we have to have this
20 room quite this crowded throughout the hearing. So
21 you are certainly excused as you find to be in the
22 best interest of your client.

23 MR. MITTEN: Thank you, your Honor.

24 JUDGE WOODRUFF: All right. UE Joint
25 Bargaining Committee.

1 (NO RESPONSE.)

2 JUDGE WOODRUFF: I don't see anyone for
3 them. I believe that's all the parties. I haven't
4 missed anyone, have I?

5 (NO RESPONSE.)

6 JUDGE WOODRUFF: I don't see anybody
7 jumping up to say anything. We're due for a break.
8 We'll take a break and come back at 10:45 and we'll
9 start with testimony. Thank you.

10 (A RECESS WAS TAKEN.)

11 JUDGE WOODRUFF: All right. Let's come
12 to order, please. Welcome back from break. And I
13 see Mr. Baxter's already taken the stand, and so
14 we'll go ahead with our first witness for AmerenUE.

15 MR. LOWERY: Your Honor, since we're
16 dispensing with the preliminaries, I would just move
17 for the admission of AmerenUE Exhibits 1, 2HC and 2P
18 which are the three testimonies prefiled by
19 Mr. Baxter.

20 JUDGE WOODRUFF: All right. Before we
21 do that, let me go ahead and swear Mr. Baxter.

22 (The witness was sworn.)

23 JUDGE WOODRUFF: All right. You may be
24 seated. We discussed this before as to waiving the
25 preliminaries. For this first time, just so it's

1 clear in the record what the preliminaries are, I'm
2 gonna ask you to go through them and if you'd come on
3 up to the podium.

4 MR. LOWERY: I'd be happy to do that.

5 DIRECT EXAMINATION BY MR. LOWERY:

6 Q. Please state your name for the record.

7 A. Warner L. Baxter.

8 Q. Mr. Baxter, did you cause to be filed in
9 this docket four different pieces of prefiled
10 testimony: Direct testimony; rebuttal testimony, a
11 highly confidential version; rebuttal testimony, a
12 public version and surrebuttal testimony?

13 A. I did.

14 Q. And is that the same testimony that's
15 been marked Exhibits 1, 2HC, 2P and 3?

16 A. It is.

17 Q. Mr. Baxter, do you have any changes or
18 corrections to that testimony?

19 A. I do not.

20 Q. And Mr. Baxter, if I were to ask you the
21 same questions that were posed in that testimony,
22 would you give the same answers that are reflected in
23 that prefiled testimony?

24 A. I would.

25 MR. LOWERY: With that, your Honor, I'd

1 tender the witness for cross-examination and move the
2 admission of Exhibits 1, 2HC, 2P and 3 into the
3 record.

4 JUDGE WOODRUFF: All right. That is my
5 understanding of the standard opening comments that
6 would be waived for every witness. Anybody disagree
7 with that?

8 (NO RESPONSE.)

9 JUDGE WOODRUFF: All right. As
10 indicated by the parties previously, we will waive
11 the requirement of that formality for additional
12 witnesses unless something else comes up as we go
13 through. All right. Exhibits 1 --

14 MR. MICHEEL: Your Honor, I'd like to
15 interpose an objection, if that's okay.

16 JUDGE WOODRUFF: Go right ahead.

17 MR. MICHEEL: And this is a blanket
18 objection to all of the testimony to preserve some
19 issues that we dealt with before the hearing started
20 with respect to whether or not AmerenUE was allowed
21 to file the supplemental fuel adjustment clause.

22 And so as a blanket continuing
23 objection, I would just reassert all the reasons that
24 the State has raised in its filings prior to all of
25 that fuel adjustment clause testimony that's coming

1 in, the file and suspend issue and all of that, and
2 make it a continuing objection for every AmerenUE
3 witness.

4 And that way I've preserved objections
5 to all that testimony as set out in my papers filed
6 in that issue and we don't have to do it anymore.

7 JUDGE WOODRUFF: Okay. I don't
8 believe -- did this witness file anything specific as
9 far as the fuel adjustment clause or is it --

10 MR. LOWERY: Your Honor, that -- that
11 particular, I believe, would -- objection or
12 continuing objection that Mr. Micheel was lodging
13 would not apply to Mr. Baxter. He filed no
14 testimony in connection with the September 29th
15 filing.

16 MR. MICHEEL: Well, he does have fuel
17 adjustment clause testimony and, you know, if I went
18 on that, my objection to all of that stands and I'd
19 ask that it be stricken from the record, obviously.
20 And I just want to do it now --

21 JUDGE WOODRUFF: I'm sorry. What are
22 you asking to be stricken from the record?

23 MR. MICHEEL: If -- if -- well,
24 assuming -- not stricken from the record --

25 JUDGE WOODRUFF: Okay.

1 MR. MICHEEL: -- but that, you know, his
2 surrebuttal testimony talks about the fuel adjustment
3 clause, and I just want to interpose a continuing
4 objection to the arguments that I made for the
5 September 29th filing so they're preserved for the
6 record so no one can say that I waived them or that
7 they're gone for purposes of appeal.

8 JUDGE WOODRUFF: Okay. I believe I
9 understand what -- what you're stating there and
10 we'll accept that as a continuing objection.

11 Exhibits 1, 2HC and NP and Exhibit 3
12 have been offered into evidence. Other than the
13 continuing objection from the State, are there any
14 other objections to their admission?

15 MR. MILLS: I don't have an objection, I
16 have a clarifying question. 2P, would that be
17 2 public or 2 proprietary?

18 MR. LOWERY: That stands for 2 public.
19 When we designated our exhibits as P, we -- that's
20 going to be assumed as public.

21 JUDGE WOODRUFF: Thank you. And that is
22 a little confusing because P is generally used by the
23 Commission for proprietary. I've gone ahead and
24 marked them on my chart as NP, which would be
25 nonproprietary, non-HC, okay?

1 MR. LOWERY: My apologies, your Honor,
2 but -- that would be fine. I'd be happy to just
3 redesignate the rest of them for the record as NP
4 when they -- which means --

5 JUDGE WOODRUFF: Meaning public, right.

6 MR. LOWERY: Right. Which means public.

7 JUDGE WOODRUFF: All right. With those
8 statements noted, Exhibits 1, 2HC and NP and
9 Exhibit 3 will be received into evidence.

10 (EXHIBIT NOS. 1, 2HC, 2NP AND 3 WERE
11 RECEIVED INTO EVIDENCE AND MADE A PART OF THE
12 RECORD.)

13 MR. LOWERY: Thank you, your Honor.

14 JUDGE WOODRUFF: And for cross-examination
15 we begin with Staff. And I might, once again, remind
16 you to make sure you turn off your cell phones and
17 BlackBerries.

18 I'm sorry. For cross we begin with
19 Aquila. I was looking at the wrong place on my
20 chart. Did Aquila wish to cross?

21 (NO RESPONSE.)

22 JUDGE WOODRUFF: All right. Then we'll
23 move on to Laclede.

24 MR. PENDERGAST: No questions, your
25 Honor.

1 JUDGE WOODRUFF: The UE Joint Bargaining
2 Committee is not here. Natural Resources?

3 MR. IVESON: No questions, your Honor.

4 JUDGE WOODRUFF: Missouri Retailers
5 Association.

6 MR. OVERFELT: No questions.

7 JUDGE WOODRUFF: Mo-Kan/CCAC is not
8 here. Association for Social Welfare.

9 (NO RESPONSE.)

10 JUDGE WOODRUFF: She may have left also.
11 All right. MIEC.

12 CROSS-EXAMINATION BY MS. VUYLSTEKE:

13 Q. Good morning, Mr. Baxter.

14 A. Good morning.

15 Q. I just have a few questions for you.

16 I'm gonna refer first to your direct testimony. At
17 the bottom of page 12 of your direct, you state that
18 Ameren's -- AmerenUE's rates are about 15 percent
19 below the Midwest average, and that would be, I
20 think, line 20.

21 A. Yes, I see that.

22 Q. Is that 15 percent amount before the
23 proposed increase?

24 A. Yes.

25 Q. If a rate class is currently 15 percent

1 below the Midwest average and you increase that rate
2 by 43 percent, how much above the average would it
3 be?

4 A. Are you speaking to a rate class?
5 Because this 15 percent was not related to a rate
6 class. It related to the average retail rates for
7 all customer classes.

8 Q. Okay. Let's say the rate class is the
9 large power service class and it's 15 percent below
10 the Midwest average.

11 A. Uh-huh.

12 Q. Okay. If you increase that by 43
13 percent?

14 A. It would be something above 50. It
15 wouldn't be exactly 43, less -- plus 15 but it would
16 be -- it would be in the neighborhood of probably
17 around 40 percent, would be my guess.

18 Q. Would you -- it would be around 40
19 percent above the average?

20 A. No. Excuse me, it would be 43 less 15
21 percent roughly.

22 Q. Would you accept, subject to check, 22
23 percent above the average?

24 A. Sure, something -- in that -- in that
25 territory.

1 Q. Okay. In referring to your schedule
2 WLB-7, that shows the impact of the proposed increase
3 based on the 18 percent increase, overall rate
4 increase, correct?

5 A. Yes, and that schedule was updated at
6 WLB-15.

7 Q. Okay. Now, I want to refer now to your
8 direct, page 12, line 6.

9 A. I'm sorry. Say that again, please.

10 Q. Sure. Page 12, line 6 of your direct.
11 You discuss the reasons that rates have been able to
12 go down over the last 20 years. Is it true that the
13 corporate income tax rates have decreased from 50
14 percent to 35 percent?

15 A. I do not know if that's true from 19 --
16 or from over the last 20 years. I don't know if
17 that's to be true.

18 Q. Does that sound about right to you, just
19 referring to the Tax Reform Act of 1987?

20 A. I simply don't know.

21 Q. From 50 down to 35?

22 A. I simply don't know. I know the
23 corporate income tax rate is 35 percent today, but I
24 don't know where it was back in 1987, I apologize.

25 Q. Would you accept that it's gone down

1 significantly?

2 A. I simply do not know.

3 Q. Okay. Have interest rates on double A
4 utility bonds decreased from over 12 percent in the
5 early 1980s when Callaway was being financed to
6 around 7 percent which allowed refinancing of data
7 and reduction in interest rates?

8 A. With regard to where the interest rates
9 were back in Callaway refinancing days, again, I -- I
10 don't know exactly where those rates were at this
11 point in time. The rates that you quote today are
12 generally in the ball park.

13 Q. Okay. And I just want to confirm
14 other -- one other thing in your rebuttal testimony,
15 page 7, line 8. You say that, "Our case is not
16 premised on the rates data and trends I have
17 discussed in my direct and rebuttal testimonies." I
18 just want to confirm that that's still your
19 testimony?

20 A. I'm sorry. Again, where did you refer
21 me to?

22 Q. Page 7, line 8 of your rebuttal
23 testimony.

24 A. Excuse me, I was looking at the wrong
25 one.

1 Q. Sorry. Okay.

2 A. Yes, clearly, I say that, "Our case
3 isn't premised on the -- the -- what we'd consider
4 the compelling evidence that reflects our true costs,
5 investments and related returns that we need to
6 recover in order to deliver safe and reliable service
7 to our customers."

8 And then I offer later the importance of
9 the context of -- of where our rates are for the
10 Commission to consider in making their decision. I
11 think Mr. Lowery described some of those a little bit
12 earlier in terms of the context that those rates --
13 where our rates are today.

14 And that's where we've quoted where the
15 rates are -- the national average compared to the
16 other Missouri investor-owned utilities. I think
17 it's important for the Commission to understand that
18 context.

19 Q. Okay. But the specific statement, "Our
20 case is not premised on the rates data and trends I
21 have discussed in my direct and rebuttal
22 testimonies," that is still your testimony today?

23 A. Oh, certainly it is.

24 MS. VUYLSTEKE: Thank you.

25 JUDGE WOODRUFF: Thank you. The

1 Commercial Group.

2 MR. CHAMBERLAIN: No questions, your
3 Honor.

4 JUDGE WOODRUFF: MEG.

5 MS. LANGENECKERT: No questions, your
6 Honor.

7 JUDGE WOODRUFF: AARP and Consumer
8 Council.

9 CROSS-EXAMINATION BY MR. COFFMAN:

10 Q. Good morning, Mr. Baxter.

11 A. Good morning, Mr. Coffman.

12 Q. I want to ask you a couple of questions
13 about the Safety Net Program of Pacific Gas &
14 Electric. Have you reviewed that program? Are you
15 familiar with it?

16 A. I am not familiar nor have I reviewed
17 it.

18 Q. Have you reviewed the public testimony
19 that was received into this record at the various
20 local public hearings?

21 A. I have not seen all the public record of
22 all the hearings, I have not.

23 Q. How much of the public testimony have
24 you read?

25 A. I've read bits and pieces of it,

1 Mr. Coffman. I couldn't tell you how much. There
2 was obviously quite a bit of testimony at those
3 hearings.

4 Q. Has someone prepared a summary of that
5 testimony for you to review?

6 A. No one's prepared a summary, but
7 certainly the testimony that was prepared at the
8 hearings has been discussed --

9 Q. Okay.

10 A. -- among senior management at the
11 company.

12 Q. Well, since you haven't reviewed any of,
13 I guess, the Pacific Gas & Electric program, are you
14 familiar with any program that would provide
15 consumers some rate credit or refund based on the
16 duration of an extended outage?

17 A. I am not personally familiar with any
18 program, no.

19 Q. Has anyone amongst the senior team or
20 top executives at AmerenUE ever discussed the
21 possibility of implementing a program that would
22 provide credits for consumers who have been out of
23 power?

24 A. I guess that it's possible, but I'm not
25 aware of the discussions. They have not had the

1 discussion with me.

2 Q. I know you may -- you may or may not be
3 a rate design expert, but are you generally familiar
4 with the purpose of the customer charge of a fixed
5 portion of the electric bill? Do you know what the
6 purpose of that is?

7 A. In general.

8 Q. And what's your opinion of that purpose?

9 A. Well, the -- the -- the opinion of the
10 fixed charge of the customer's bill is to recover
11 some of the -- I guess the fixed charge associated
12 with our business.

13 Q. Would you agree that --

14 A. But I will stipulate that I am not a
15 rate design expert. I will agree with you there 100
16 percent.

17 Q. Would you agree that one of the purposes
18 is to pay for the -- the ability to be able to have
19 electricity at the meter, the right to demand
20 electricity at the meter?

21 A. I think, Mr. Coffman, in terms of the
22 specifics of that, probably Will Cooper would be your
23 best witness to really go through that with you,
24 because I am not that familiar with the details on
25 that.

1 Q. Okay. Are you familiar with the systems
2 at AmerenUE that record or log when a customer is out
3 of service and when their service is restored again?

4 A. I'm generally aware that we have systems
5 that track that.

6 Q. And AmerenUE does have a system that
7 would tell -- tell you if you wanted to look it up
8 exactly when I was out of power and when my power was
9 restored again; is that not correct?

10 A. That is my understanding, that's
11 correct.

12 Q. So AmerenUE would know to the minute the
13 duration of an outage that I had, say, this past
14 winter?

15 A. That's probably going beyond my ability
16 to say if it's down to the minute. Mr. Zdellar who
17 is going to be coming on, he would probably be a
18 wonderful person to ask those questions.

19 Q. Are you familiar with your company's
20 system for claims if a customer believes it has --
21 they have damages as a result of an electric outage?

22 A. I'm not familiar with the specific
23 program and the -- the requirements associated with
24 that. I'm aware that customers have that ability to
25 do so, but the specifics I am not that familiar with.

1 Q. Do you know what a customer is told if
2 they call and ask if they can be reimbursed for
3 spoiled food after they've been out of power for many
4 days?

5 A. I do not. That has never been -- no, I
6 do not.

7 MR. COFFMAN: All right. You don't
8 know. That's all I have. Thanks.

9 JUDGE WOODRUFF: Thank you. Noranda.

10 CROSS-EXAMINATION BY MR. CONRAD:

11 Q. Good morning, Mr. Baxter.

12 A. Good morning.

13 Q. Mr. Baxter, have you had occasion to
14 ever meet a gentleman named Matt Blunt?

15 A. I have.

16 Q. Do you think you would recognize him if
17 you saw him?

18 A. I do believe I would.

19 Q. And who is Matt Blunt?

20 A. He's the Governor of the State of
21 Missouri.

22 Q. Have you had an occasion to meet a
23 gentleman by the name of Gregory Steinhoff?

24 A. I have.

25 Q. Would you recognize him if you saw him?

1 A. I would.

2 MR. CONRAD: May I have leave to

3 approach?

4 JUDGE WOODRUFF: You certainly may.

5 BY MR. CONRAD:

6 Q. Mr. Baxter, I have shown you three --

7 MR. LOWERY: Mr. Conrad, I'm sorry to

8 interrupt, but may I get a copy of those, please?

9 MR. CONRAD: Oh, you sure can.

10 MR. LOWERY: Thank you.

11 MR. CONRAD: In fact, everybody else can

12 get one since you mentioned it. Let's just try to

13 take care of that right now.

14 JUDGE WOODRUFF: Go right ahead. Are

15 you gonna mark these as an exhibit?

16 MR. CONRAD: That's what I was asking

17 about earlier.

18 JUDGE WOODRUFF: They're attached to

19 testimony?

20 MR. CONRAD: Yes, they are.

21 JUDGE WOODRUFF: That's fine.

22 BY MR. CONRAD:

23 Q. Mr. Baxter, I have handed you and other

24 counsel in the room three pages that are together

25 schedule 1, pages 1, 2 and 3, attached to what has

1 been marked or will be marked for identification as
2 the surrebuttal testimony of Donald Johnstone.

3 MR. CONRAD: That's 606, your Honor, on
4 the list. We can assign a number to this but it
5 would be conflicted with, so --

6 JUDGE WOODRUFF: No, I agree. It's not
7 necessary to assign a separate number.

8 BY MR. CONRAD:

9 Q. In looking at, Mr. Baxter, the lower
10 right-hand corner on the page, schedule 1, page 1, do
11 you recognize the smile on the face there?

12 A. If you're asking me would I recognize
13 whether that to be Governor Matt Blunt, I do.

14 Q. The young and exuberant governor of our
15 beloved State of Missouri, correct?

16 A. Correct.

17 Q. Now, in his paragraph he starts and
18 encloses some language in quote, and just follow
19 along with me. I just want to look at the first
20 sentence of that. "The dynamic and aggressive new
21 approach our Department of Economic Development is
22 taking to attract new business and business expansion
23 to our state sends the clear message that Missouri is
24 open for business." Did I read that correctly?

25 A. I'm sorry -- oh, yes, I do. Thank you,

1 I see what you're saying, yes.

2 Q. Do you see that?

3 A. I do.

4 Q. My question to you with respect to that
5 page is very simple: Do you agree with that as a
6 goal for the State?

7 A. I believe the State has many goals and
8 that would certainly be one of them.

9 Q. And you agree with it?

10 A. Certainly as one of their goals.

11 Q. Look, please, at the following two
12 sheets, schedules 1, pages 2 and 3, and if you can
13 identify that person for me, please do so.

14 A. That would be Mr. Steinhoff on page --
15 schedule 1, page 2.

16 Q. He has several paragraphs which he puts
17 under the heading "Welcome From Director Steinhoff,"
18 does he not?

19 A. He does.

20 Q. Look down with me, please, to the fourth
21 paragraph on page 2 of schedule 1. Are you with me?

22 A. I am.

23 Q. And follow along with me, please, and
24 tell me if I'm doing this correctly. "Furthermore,
25 as director, I am committed to improving the State's

1 business climate in support of economic and
2 entrepreneurial growth. The practical, varied
3 business experience I have gained over the years as a
4 private sector business owner has prepared me to
5 better understand the challenges facing Missouri
6 employers and entrepreneurs."

7 And I go on to the next paragraph,
8 Mr. Baxter. "Under my leadership, the department
9 will work closely with Governor Blunt to chart a new
10 course for economic development in Missouri, a
11 direction that will create more new family-supporting
12 jobs, improve Missouri's competitive advantage and
13 produce better economic conditions across the state."
14 Did I read that correctly?

15 A. You did.

16 Q. Do you agree or disagree with those
17 goals for the state, Mr. Baxter?

18 A. Do I agree or disagree -- I'm sorry.
19 Your question again, please?

20 Q. Do you -- as goals for the State of
21 Missouri?

22 A. That is what director Steinhoff says
23 they are.

24 Q. Do you agree with those goals?

25 A. I think, as I said before, it is one of

1 the goals for the State of Missouri to encourage
2 economic development.

3 Q. Do you agree with them?

4 A. I think I just said yes, as one of the
5 goals.

6 MR. CONRAD: Thank you, Mr. Baxter.
7 Your Honor, that's all I have.

8 JUDGE WOODRUFF: All right. Thank you.

9 THE WITNESS: Excuse me.

10 JUDGE WOODRUFF: For the State of
11 Missouri.

12 CROSS-EXAMINATION BY MR. MICHEEL:

13 Q. Now, Mr. Baxter, you're the executive
14 vice president and CFO of both Ameren Corp. and
15 AmerenUE; is that correct?

16 A. That is correct. My title has since
17 changed, but I am the chief financial officer of
18 both.

19 Q. Well, what I'm -- your title has changed
20 from the time you did your testimony?

21 A. It was -- yes, from the time I did my
22 testimony back in July, effective January 1st my
23 title is now president and CEO of Ameren Services and
24 chief financial officer.

25 Q. So we should make that correction in

1 your testimony, then?

2 A. I believe it was made a little bit later
3 in my testimony, the one that I filed after the first
4 of the year.

5 Q. Okay. So do you no longer have any
6 oversight of AmerenUE?

7 A. No, I am the chief financial officer of
8 AmerenUE as well.

9 Q. And do you still have oversight of the
10 budget, corporate planning at AmerenUE?

11 A. I do.

12 Q. And you still have oversight of the
13 budget and corporate planning at Ameren Corp.?

14 A. I do.

15 Q. And just to be clear, Ameren is the --
16 at the top of the pyramid, they're the holding
17 company, and AmerenUE is a wholly-owned sub; is that
18 correct?

19 A. That's correct.

20 Q. And AmerenUE is the regulated utility
21 that operates here -- well, actually, it's Union
22 Electric doing business as AmerenUE that operates
23 here and is subject to the Commission's jurisdiction;
24 is that correct?

25 A. AmerenUE's rate-regulated portion of its

1 business, that is correct.

2 Q. And AmerenUE is really Union Electric
3 doing business as AmerenUE, right?

4 A. Well, I want to be sure that I'm being
5 clear. It's the rate-regulated business of AmerenUE.
6 AmerenUE also has investments which are
7 nonrate-regulated which are not part of the
8 jurisdiction.

9 Q. You know, Mr. Baxter, that wasn't my
10 question. I'm just trying to establish that in the
11 state of Missouri, Union Electric does business under
12 the fictitious name AmerenUE?

13 A. If that's the legal corporate name, then
14 I'll stipulate that to be true, but that would be a
15 legal question if that's exactly how we do business.

16 Q. As CFO you don't know whether or not you
17 operate in the state under a fictitious name?

18 A. Oh, no, I'm not suggesting that. I'm
19 talking about the formal name. But certainly we --
20 UE is the name that I'm aware of, and we talked about
21 AmerenUE as well.

22 Q. What's the purpose of the budget
23 function at Union Electric?

24 A. Well, the purpose of the budget function
25 is to establish goals and targets to help manage our

1 business in the most effective and efficient way.

2 Q. And when you have employees that report
3 to you come with -- with their proposed budget with
4 the goals and targets, what are your expectations for
5 those budgets?

6 A. I'm not sure I understand exactly what
7 you mean.

8 Q. Well, it's my understanding that you're
9 in charge of the budget function at Union Electric,
10 correct?

11 A. That's correct.

12 Q. And I would assume that as part of that,
13 you oversee the entire budget process; is that
14 correct?

15 A. I oversee the entire budget process with
16 the folks that work for me, that is correct.

17 Q. And I would assume that when a budget is
18 brought forward, let's say, for example, for approval
19 of the board of directors, you, as the person in
20 charge over all of that budget have certain
21 expectations of the individuals who are preparing
22 that budget, what you want to see in the budget? I
23 mean, do you want them to get it right, get it wrong?

24 A. I want them to reflect in the budget
25 what they believe is their -- their expectations of

1 what they may be able to make. However, a budget
2 is -- reflects several assumptions, and so it's
3 important for us to understand the various
4 assumptions upon which that budget is reflected.

5 However, the budget isn't established to
6 say this is going to be true, period. We understand
7 as we prepare the budget there are sensitivities and
8 variabilities that could occur during the course of a
9 year.

10 Q. Should the budget assumptions be
11 reasonable?

12 A. Yes, in some respects they should be
13 reasonable, but also in some respects budgets could
14 be coined as aggressive and some as not aggressive.
15 It just depends.

16 Q. Should the budget assumptions be
17 achievable?

18 A. Certainly.

19 Q. Would you recommend a budget for
20 approval to the board of directors that was not
21 achievable?

22 A. I would recommend -- I think when we
23 talk to the board of directors about our budgets, we
24 make sure that they understand the various
25 assumptions which underlie those budgets. And so as

1 we speak to them, we have specific facts and figures
2 and even dollar amounts associated with those
3 budgets, and we tell them there's variability
4 associated with that.

5 And so when we explain that to them, we
6 make sure they understand the context upon which the
7 budget is made. So when we present that to them,
8 there are a range of outcomes that we often talk
9 about associated with the budget.

10 Similarly, when we talk to -- to
11 analysts and others in the -- in the investment
12 community about expectations in the future, we talk
13 about the various outcomes and variabilities which
14 could take place because of a lot of potential
15 changes. And so it's within -- a budget is not just
16 one specific number. A budget, when we talk about
17 it, has a range of outcomes and sensitivities
18 associated with it.

19 Q. Do employees at AmerenUE, and I don't
20 know -- I don't think this is gonna be HC, but is
21 part of the incentive compensation at AmerenUE based
22 in part on whether or not people meet budget numbers?

23 A. I -- for certain levels of employees in
24 certain groups, that could certainly be true.

25 Q. Especially for upper management such as

1 yourself?

2 A. There are expectations associated with
3 incentive compensation that we have to meet certain
4 earnings targets, that's correct.

5 Q. And other budgets, for example, a budget
6 of certain departments, you can't be way over budget
7 or you don't get your moneybag filled?

8 A. Certainly that's how we've come to be
9 one of the most cost-effective companies in the
10 country, by making sure we manage those budgets.

11 Q. So there's consequences if the budget
12 that AmerenUE has approved or presented for approval
13 doesn't come to fruition; is that correct?

14 A. There could potentially be consequences
15 in terms of certainly how we would manage the overall
16 business, that's true.

17 Q. And so those employees are taking
18 caution to get it right because there's a financial
19 incentive in there for them, right?

20 A. Well, to be clear, with regard to
21 employees and when you go to certain groups, it isn't
22 always that the budgeted figures which comprise
23 the -- say, the dollar-amount budget or even the
24 earnings-per-share budget at the corporate level that
25 they have their incentive compensation tied to that.

1 Oftentimes, our employee groups, we have
2 scorecards. And so at times those scorecards may not
3 have anything to do with financial matters at all but
4 it may be other types of performance. So it would
5 just depend. Not always is the case.

6 Q. I didn't say always, but I said in the
7 case when an employee has a budget scorecard
8 checkmark to get to fill their moneybag, they pay
9 attention to that because if they're not on budget,
10 they don't fill the moneybag, according to your
11 incentive plans; isn't that correct?

12 A. That's correct. That was the first time
13 I heard you talk about the moneybag in terms of the
14 scorecard.

15 Q. Okay. I'm sorry.

16 A. Just wanted to make sure --

17 Q. If you don't understand my question, you
18 just tell me you don't understand and we'll backtrack
19 like that, because I don't want to spend a lot of
20 time doing that. Now, what's the purpose of the
21 corporate planning function? You're also in charge
22 of that at Union Electric, correct?

23 A. That's correct. The corporate planning
24 function does several things. One, it oversees the
25 performance management process which, in part, we

1 just talked about. It also talks -- it also
2 addresses resource planning. It also addresses
3 forecasting and does a host of other special studies
4 from a -- a corporate strategic planning standpoint
5 among other things.

6 Q. And what kind of items do you forecast?

7 A. We forecast from the corporate planning
8 department what trends would be in terms of costs,
9 potential revenues, the energy markets. We forecast
10 what the impact could be of new environmental
11 requirements on our system. We also look at how
12 various trends within the industry could affect our
13 company, and so that -- therefore, could impact our
14 overall forecast for other aspects of our business.

15 Q. Now, are there scorecards related to
16 corporate planning that attach the moneybags for the
17 incentive compensation that you're aware of?

18 A. The corporate planning department has a
19 scorecard which has moneybags.

20 Q. And so those -- those corporate planners
21 pay attention because if they get it wrong, they may
22 miss out on their moneybag incentive compensation,
23 correct?

24 A. If they get what wrong, Mr. Micheel?

25 Q. Well, the corporate plan that they're

1 working on.

2 A. Well, it depends upon what specifically
3 you're talking about. I mean, they have various
4 projects upon which they are incented, so which
5 projects are you speaking to?

6 Q. The ones that they're incented on.

7 A. Okay.

8 Q. Is that correct?

9 A. Yes, they have various projects upon
10 which they are incented to and -- not achieve
11 necessarily targets, whether they actually achieve
12 expectations of the people upon which they're doing
13 the project for. It isn't necessarily driven by how
14 well they have forecasted something or how well they
15 actually achieve their budgeted O&M. It could simply
16 be whether the quality of the work that they've
17 prepared for someone who asked them to prepare
18 something, they would be incented by that.

19 Q. Is it correct that you're at least one
20 of the individuals responsible for developing Union
21 Electric's regulatory policy positions?

22 A. It is.

23 Q. And you did that in this case, did you
24 want?

25 A. I was certainly a participant, a major

1 participant.

2 Q. And would you agree with me that Union
3 Electric has low-cost price -- it's a low-cost
4 utility compared to both national utilities and
5 regional utilities?

6 A. Yes.

7 Q. And would you agree that the national
8 average includes high-cost areas such as on the East
9 Coast, the West Coast, Alaska and Hawaii?

10 A. Yes. The national average would
11 incorporate all those. I wouldn't stipulate whether
12 all those areas are high cost, but certainly some of
13 those are.

14 Q. Well, did you look at the chart that
15 Mr. Byrne so nicely held up here in the opening?

16 A. Oh, certainly I -- I certainly looked at
17 it. It's in my testimony.

18 Q. So that's got a lot of big cities on the
19 coast, right, both the East and West Coast?

20 A. Surely, and it has a lot of cities in
21 the Midwest and right next to Missouri as well.

22 Q. Now, you've attached schedule WLB-1 that
23 shows what you claim is a favorable trend line for
24 Union Electric with rates decreasing, do you not, to
25 your direct testimony, Exhibit 1?

1 A. If I could turn to that, please. Yes,
2 and I believe as I told Ms. Vuylsteke, that was
3 updated on WLB-12.

4 Q. And the trend is still going down?

5 A. Most certainly I would actually -- what
6 trend -- what trend are you speaking towards?

7 Q. The AmerenUE MO trend.

8 A. I think what that schedule clearly shows
9 is that our rates have been going down and everyone
10 else's has been going significantly up.

11 Q. Would you agree with me that the results
12 that are shown on either this schedule or your
13 updated schedule result from agreements or orders by
14 this Commission that AmerenUE reduce its rates; is
15 that correct?

16 A. Yes.

17 Q. And would you agree that that chart
18 reflects the fact that prices -- your prices, UE's
19 prices are earned by a stable cost structure with no
20 new base load units needing to be added in rate base?

21 A. I would suggest that our rates are based
22 on cost of service, but I wouldn't suggest that, you
23 know, the rates upon which those rates are based
24 on -- when you say "stable cost structure," what do
25 you mean by "stable cost structure"?

1 Q. Well, how do you understand it? What do
2 you mean if you use the term "stable cost structure"?

3 A. I don't necessarily know if I used the
4 term "stable cost structure."

5 Q. Well, can you have decreasing rates if
6 your -- if your cost structure is increasing?

7 A. In the form of this particular
8 agreement --

9 Q. That wasn't my question. My question
10 was, can you have decreasing rates if your cost
11 structure is increasing?

12 A. Well, certainly that's possible, yes.

13 Q. Would that be the right move for
14 shareholders?

15 A. No, it wouldn't be the right move for
16 shareholders, nor would it be --

17 Q. During -- during the 20 years that
18 AmerenUE has been reducing rates, has Ameren's cost
19 structure when they've reduced the rate been
20 increasing or decreasing?

21 A. Depends upon the -- the particular year.
22 If you're looking in general, I think our cost
23 structure has gone down and -- because of the various
24 efficiencies in general, I would agree with that.
25 However, if you look at a particular year and if you

1 look at where things are in, say, '05 versus '06 or
2 '04 versus '05, I think what you would find is our
3 cost structure has continued to go up at a time when
4 our rates have been going down.

5 And in fact, what that has shown is that
6 our returns on equity for UE have been consistently
7 declining over the last several years because, while
8 rates have been going down, our costs have been going
9 up. So it is possible, then, to answer to your
10 question, the rates could be going down while our
11 costs are going up. Hence, is why -- the reason why
12 we're here for the rate case this week.

13 Q. Would you agree with me that utility
14 management effectiveness cannot be judged by rate
15 comparisons to national averages?

16 A. No, I wouldn't agree to that.

17 Q. Okay.

18 A. I wouldn't agree to that solely.

19 Q. So you think it's appropriate to look at
20 Hawaii's rates, an island state, that has no coal
21 generation, and say, well, they have the highest
22 rates in the United States, and boy, we're beating
23 them and those guys are bad?

24 A. I'm sorry, Mr. Micheel, was that a
25 question?

1 Q. It was.

2 A. I think I'm not comparing -- well, I
3 wouldn't compare my rates to Hawaii, and I don't
4 think I have provided evidence that compares the
5 rates to Hawaii. I've prepared -- we've shown
6 comparisons to the U.S., we've shown comparisons to
7 nonrestructured states, very similar to states that
8 we operate at since we're now restructured here in
9 Missouri. We show Midwest states and we show -- we
10 show also the other Missouri IOUs.

11 Q. You show no Hawaii; is that your
12 testimony?

13 A. Not singularly.

14 Q. Not singularly. Let's look at your
15 schedule WLB-4, if you will.

16 A. Certainly. That's in my direct
17 testimony. If you could hold on, please. Yes, I
18 have it.

19 Q. Unless you have it in WLB-4 in two
20 places.

21 A. I have WLB-4 right here. Thank you.

22 Q. Now, that is a Commission press release
23 that you've attached; is it not?

24 A. That is.

25 Q. And it indicates that Missouri electric

1 rates for homes and businesses are among the lowest
2 in the nation; is that correct?

3 A. That is correct.

4 Q. Now, that schedule notes that,
5 "Hydroelectric fuel states of Idaho and Washington
6 have consistently been the lowest cost states"; is
7 that correct?

8 A. That's what the press release says.

9 Q. And you agree we that, do you not? I
10 mean, you use it in your testimony.

11 A. I think with regard to the data here, I
12 did not do a study to say whether that is exactly
13 right for everything in here. It was meant to show
14 that the State of Missouri and this Missouri Public
15 Service Commission agrees with our claim that our
16 rates are among the lowest in the nation.

17 Q. And utility management could be mediocre
18 in Idaho and Washington, but they're blessed with a
19 natural resource, hydropower, that results in low
20 cost; isn't that correct?

21 A. That is a possibility.

22 Q. And WLB-4 also notes that Hawaii has
23 consistently been the highest cost state for electric
24 power, does it not?

25 A. It does say that.

1 Q. And that's because Hawaii is an island
2 with no coal-fired generation or no natural resources
3 and it's got to rely almost exclusively on high-cost
4 oil for generation; isn't that correct?

5 A. I don't know the specific issues
6 associated with Hawaii.

7 Q. Okay. You know they have the highest
8 rates though, do you not?

9 A. This is what this says, so if that's
10 what that says, I'll stipulate to the -- if that's
11 what that says, I will take it --

12 Q. So the Hawaii executives may be doing a
13 super job of controlling the cost, but because of
14 their geography, their rates are high; is that
15 correct?

16 A. That is a possibility.

17 Q. And that's a cost structure both for
18 Idaho and Washington and for Hawaii that has nothing
19 to do with what the hard working utility executives
20 do; it has everything to do with geography, doesn't
21 it?

22 A. It certainly could be in part to that.
23 It could be due to the hard work that the utilities
24 are doing or not. It's a number of factors that go
25 into ultimately what rates are and what costs are for

1 a particular utility.

2 Q. But this press release, at least on the
3 low end, notes that Idaho and Washington have the
4 super low-cost hydropower; isn't that correct?

5 A. It does say that.

6 Q. Does the fact that UE is now asking for
7 the largest proposed rate increase in Missouri
8 history mean that its historical management levels
9 are now declining?

10 A. Oh, no. I think what that simply means
11 is that the reason why we're asking for the largest
12 rate increase in history is because costs are rising,
13 and we've made significant investments in our energy
14 infrastructure, and so we're seeking a return of and
15 an appropriate -- a recovery of and appropriate
16 return on our investments. That's the basis upon
17 which our case is made.

18 Q. And that's the basis upon which any
19 utility's case is made that's under cost of service
20 rate base regulation, isn't it, Mr. Baxter?

21 A. Well, I think as I say in my testimony
22 several times, that that is the fund -- that is the
23 fundamental basis. But at the same time, as we all
24 know, there are literally mounds and mounds of
25 testimony that have been filed in this case, and so

1 it's important to be able to step back and I think
2 it's important for the Commission to step back and
3 have the ability and they can choose to decide if
4 it's relevant or not, to see whether our rates are
5 reasonable.

6 And because there are a lot of divergent
7 opinions in this case in terms of what's right or
8 what's wrong with regard to cost, with regard to
9 ROEs, and as you know, many folks just spoke about
10 that during opening statements. And so there are two
11 things when people think about our rates. They
12 think, one, people look at 360 million and 18 percent
13 and say, gee, that's a -- that's a really big number.

14 And you know, it is a big number, yet at
15 the same time, understanding the context upon which
16 we're asking for that rate increase is at a point
17 when you look at our charts, that virtually everyone
18 across the country, including the state of Missouri,
19 are receiving rate increases because their costs are
20 going up similar to what we are facing.

21 And so I think, number one, it says
22 that, you know, maybe it isn't so extraordinary or
23 unusual for us to be asking for a rate increase. And
24 I think secondly, I think what it also does, say,
25 given the risks and uncertainties and the costs that

1 we're experiencing in our business, it then calls the
2 Commission into question when they look at the
3 various witnesses as to what their credibility may or
4 may not be associated with that.

5 And so -- and so as they assess the
6 particular cases and they say well, does it make
7 sense when everyone else in the country, when even
8 Missouri IOUs have been coming through and looking
9 for rate increases, does it make sense when I look at
10 the AmerenUE's cost structure, I'm looking at all the
11 issues that they have, does it make sense that they
12 should, indeed, be having a rate decrease when, in
13 fact, everyone else around them is having a rate
14 increase. That's ultimately for the Commission to
15 decide, and in my opinion, I think it's relevant to
16 present that to them.

17 Q. But nonetheless, you would agree with me
18 that the decision should be based on the evidence in
19 AmerenUE's cost of serving its customers, not any
20 other utilities; isn't that correct?

21 A. I think our evidence certainly will show
22 that the cost of serving our customers, that's
23 what -- we deserve a rate increase, and then
24 secondly, the context upon which the Commission can
25 choose to do with that information as they wish.

1 Q. Do you have kids, Mr. Baxter?

2 A. I certainly do.

3 Q. Did you find that argument persuasive,
4 "everyone else is doing it" when your kids make that
5 argument? Do you find that persuasive?

6 A. No. What I find to be persuasive is if
7 my child is in school and they come back and -- I
8 know you have children and maybe they're still too
9 young, -my child said, "You know, I really had a
10 tough time on this test today." And I sit there and
11 say, "Well, did you not study?" And she goes, "No,
12 it was just a very difficult test and everyone in the
13 room didn't do very well either." And I go to the
14 teacher and she says, "Yeah, you know, mainly they
15 didn't get it."

16 The point being is that my child who
17 comes to me and says she got a D perhaps on that test
18 and everyone else got a D, I'd sit there and say,
19 well, you know, maybe what they said to me is
20 credible as opposed to them coming in to me saying,
21 you know, maybe they were out playing on the computer
22 all day. That's the context in which you've got to
23 understand some of these things.

24 Q. So -- so -- so the context here is all
25 the other IOUs based on their own cost of service

1 have come in and asked for a rate increase and so
2 we're doing it too?

3 A. Oh, no, Mr. Micheel. Let me be clear.
4 And I think as I've said, our -- the case that we
5 have presented here is based upon our cost of doing
6 business, and it's based upon the investments we've
7 made and the returns that we have required. I
8 haven't backed off of that. What I'm talking simply
9 about -- I think you're asking me about these charts
10 and the relevance, and I'm trying to tell you why I
11 believe they're relevant.

12 Q. Is it correct that UE's not raised rates
13 in 20 years and has cut rates by 13 percent since
14 1987?

15 A. We have not raised rates in 20 years,
16 and if I can refer back to a schedule of mine, I
17 believe what you just stated was, indeed, true.

18 Q. Well, are you aware that on AmerenUE's
19 website that you guys have in claims and facts is
20 actually about the rate case?

21 A. I am aware of that.

22 Q. Would you be shocked if that claim and
23 fact appeared on your website?

24 A. No, I wouldn't be shocked, and I
25 believe -- and I'm sorry, Mr. Micheel. I was looking

1 at my schedule WLB-9 which basically states exactly
2 what you said. Since 1990 our rates have gone down
3 13 percent while electricity rates in the Midwest
4 have gone up 6 percent. The nonrestructured states'
5 rates have gone up 20 percent and the U.S. rates have
6 gone up 20 percent. I think our customers have
7 generally fared pretty well during that time period.

8 Q. And would you agree that despite those
9 rate cuts since 2002, AmerenUE has invested \$2.6
10 billion in Missouri?

11 A. Frankly, it's probably closer to
12 3 billion now, but at the time when we filed our
13 testimony, we invested 2.6 billion. It's now
14 probably closer to 3 billion.

15 Q. Would you agree with me that those
16 previous rate cuts have not caused UE to cut corners
17 or failed to invest in its systems?

18 A. Those previous rate cuts have allowed us
19 to continue to earn solid returns in the past as well
20 as invest into our system, and that's what we're
21 hoping to get a constructive regulatory framework
22 going forward out of this case, to be able to
23 continue to do that.

24 MR. MICHEEL: May I approach the
25 witness?

1 JUDGE WOODRUFF: You may.

2 BY MR. MICHEEL:

3 Q. I just want to hand you the claims and
4 facts from your -- from your website there.

5 A. Uh-huh.

6 Q. And I'm focusing on this claim and fact
7 here at the top of page 2.

8 MR. MICHEEL: Let me -- I can hand some
9 out -- I'm not gonna make this an exhibit but I guess
10 I've got enough to hand out to the bench. It's on
11 page -- top of page 2. Maybe I don't have enough.
12 And I apologize, I'm one short.

13 BY MR. MICHEEL:

14 Q. Now, Mr. Baxter, at the top of page 2
15 is -- the claim is, "Ameren is making a lot of money
16 and its utility companies don't need an increase."
17 Do you see that, sir?

18 A. Yes. Just to make sure I -- we
19 understand that the context of this, this is a claim
20 made by others, and so we are trying to address
21 claims made by others. Would that be fair?

22 Q. Yeah, and you agree with me this appears
23 on your website?

24 A. Oh, yes. I just want to make sure
25 everyone understood the context. That wasn't Ameren

1 saying that.

2 Q. And this document was prepared by an
3 Ameren person?

4 A. Yes, I presume it was.

5 Q. Or Union Electric person. I don't want
6 to -- someone --

7 A. Someone in Ameren Corporation, and that
8 employee could do work on behalf of AmerenUE as well.

9 Q. Now, the first fact you have is, "The
10 facts are that AmerenUE's return on equity for its
11 Illinois utilities is in single digits, well below
12 the national average"; is that correct?

13 A. It is.

14 Q. Is that also a true statement for
15 Missouri?

16 A. The -- yes, that is true. At the end of
17 2006 our return on Missouri business was in the
18 single digits, Missouri-regulated business.

19 Q. So for 2005, Ameren made \$346 million;
20 is that correct?

21 A. I'm sorry. Say that again, please.

22 Q. In 2005, UE earned \$346 million; is that
23 correct?

24 A. That's correct.

25 Q. And what was its return?

1 A. In 2005, if I recall, that return was
2 about 11 percent, if I'm not mistaken.

3 Q. In '04 UE earned \$373 million; is that
4 correct?

5 A. That's correct.

6 Q. What was its return?

7 A. Mr. Micheel, I honestly don't recall off
8 the top of my head.

9 Q. Was it double digits?

10 A. It would have been in double digits,
11 that's correct.

12 Q. In '03 UE earned \$441 million; is that
13 correct?

14 A. That's correct.

15 Q. Had a double-digit return, did it not?

16 A. I would presume that's the case.

17 Q. What were UE's earnings in '06?

18 A. UE's earnings in 2006 were -- if you
19 could bear with me for one moment.

20 Q. I'd be happy to bear.

21 A. Our rate regulated operations for UE,
22 their earnings in 2006 were \$267 million.

23 Q. And what were the total earnings for
24 AmerenUE? Because you've said rate-regulated.

25 A. Uh-huh.

1 Q. Is that the total?

2 A. For AmerenUE the -- the company which
3 includes the nonregulated portion as well?

4 Q. Yes.

5 A. No, that would be higher.

6 Q. And what would that be?

7 A. If you could bear with me again.

8 Q. Sure.

9 A. AmerenUE's earnings for 2006, which
10 includes both rate-regulated and nonrate-regulated
11 investments, was \$343 million.

12 Q. And what nonregulated part of AmerenUE
13 contributed the lion's share of that?

14 A. Our equity and income of EE, Inc.

15 Q. And what percent -- or what number would
16 that be, the EE, Inc. number?

17 A. The equity and the income of our
18 unconsolidated investment of EE, Inc., this is net of
19 income taxes, was \$54 million roughly.

20 Q. The 267 million that you said for
21 rate-regulated UE, did that have any one-time
22 adjustments to it?

23 A. One-time adjustments, what do you mean
24 by one-time adjustments?

25 Q. Well, unique adjustments like, say, you

1 spent a lot of money in that year on storm costs --

2 A. Okay.

3 Q. -- took one-time adjustments. You're an
4 accountant. I mean, isn't that a term of art that
5 you accountants use?

6 A. Yeah, but a storm isn't a one-time
7 adjustment. An adjustment is -- is not necessarily
8 something that is a result of operational issues. It
9 could be because you had to increase reserves or
10 something like that. So I just wanted to make sure
11 we understood.

12 Q. Did --

13 A. Certainly with regard to 2006, we
14 incurred storm costs.

15 Q. And was that an adjustment to earnings?

16 A. It decreases -- it went to decreased
17 earnings, that's correct.

18 Q. And how much did it decrease those
19 earnings?

20 A. I believe for operations for 2006, the
21 number on a pretax basis, as I put in my testimony,
22 was approximately 30 to \$35 million, pretax. And so
23 you'd have to add -- to tax add, so it would be
24 probably somewhere in the tune of 18 to \$20 million.

25 And there are other factors which affect

1 the 2006 range. Of course, one of the major factors
2 is that we didn't have a scheduled refueling outage
3 at the Callaway Nuclear Plant. So that would have
4 impacted our earnings, as well as the fact that we
5 had sales of emission allowances in 2006 which were
6 larger than normal.

7 Q. And so AmerenUE is hardly being starved.
8 Regulated it made \$267 million, correct?

9 A. No, I -- let me -- I'm not sure what you
10 mean by starved. How do you define that?

11 Q. Well, let's put it this way: AmerenUE
12 regulated made a profit, did they not?

13 A. They made a profit.

14 Q. Of \$267 million; is that correct?

15 A. That's correct. But I wouldn't suggest
16 that that is a reasonable return on the investment.
17 Just because you make ten dollars of profit doesn't
18 mean that you're operating or providing a reasonable
19 return on your investment to -- to shareholders.

20 Q. What -- what was your consolidated
21 return on investment for AmerenUE in '06, regulated
22 and nonregulated combined?

23 A. I don't know. I have not done that
24 calculation.

25 Q. Could you do it?

1 A. I probably could.

2 Q. Why don't you go ahead and do it for me.

3 A. I would assume that that number --

4 Q. You can just ball park it.

5 A. With the -- my guess is if you added

6 that just with the 343 million, it would probably be

7 around 11 percent roughly. Ten, 11 percent.

8 Q. And the lion's share of that nonreg is

9 the EE, Inc.; is that correct?

10 A. The difference between the two numbers

11 is primarily EE, Inc., that's correct.

12 Q. And in years past EE, Inc. would have

13 been not a factor?

14 A. I'm not sure what you mean by not a

15 factor.

16 Q. Not a factor in earnings.

17 A. EE, Inc. is always a factor in the UE

18 consolidated returns. However, if EE, Inc. in the

19 past is the same as it is in the future, it was

20 always a nonrate-regulated investment and treated as

21 such.

22 Q. Now, at page 6 of your direct testimony,

23 I guess it's Exhibit 1, line 8, you indicate that,

24 "UE is an exceptionally cost-effective utility with

25 high customer service satisfaction and low rates"; is

1 that correct?

2 A. That's correct.

3 Q. Would you consider UE's responsiveness
4 to the ice storms and the other storms to have helped
5 or harmed customer satisfaction?

6 A. Mr. Micheel, it's -- I think with regard
7 to that, we've obviously known that the customers
8 went through a great deal of hardship as a result of
9 those storms and I think we've talked quite a bit
10 about --

11 Q. Help or harm?

12 A. I think at the end of the day our
13 customer satisfaction ratings were harmed by the
14 severe storms.

15 Q. And have you done new customer
16 satisfaction surveys since the storms?

17 A. I believe that Ron Zdellar's group and
18 Richard Mark's group have done some -- I don't know
19 if I'd call them formal surveys, but certainly they
20 have been listening very carefully to our customers'
21 concerns. Whether they've done a formal survey that
22 met -- that measures where our customer satisfaction
23 is, I can't speak to that directly.

24 Q. And who can, Mr. Zdellar or --

25 A. Mr. Zdellar and Mr. Mark certainly would

1 be able to do that.

2 Q. Oh, I'll talk to them about that. Now,
3 again, focusing on your direct testimony at page 8,
4 line 21, you discussed UE's continued investment in
5 infrastructure as a burden facing your company, do
6 you not?

7 A. I do.

8 Q. Would you agree AmerenUE continues to
9 recover from its customers return on and a return of
10 its existing investment through its depreciation
11 accruals?

12 A. Could you say that again, please?

13 Q. Yes. Would you agree that UE continues
14 to recover from its customers a return on and of its
15 existing investment through its depreciation
16 accruals?

17 A. I'm not sure if we are -- we are
18 certainly recovering -- I'm not sure we're recovering
19 a return on through our depreciation accruals. We're
20 recovering our investment through our depreciation
21 accruals.

22 Q. Let me ask you this: Would you agree
23 that those depreciation accruals generate
24 internally-generated funds that UE can use to
25 finance its capital investments?

1 A. Certainly in part.

2 Q. And you also note in your testimony that
3 UE has spent approximately \$700 million for about
4 2,600 megawatts of new generation to meet increasing
5 demand; is that correct?

6 A. That's correct.

7 Q. You would agree with me that ever
8 increasing demand is good because UE makes additional
9 profit margins when sales increase?

10 A. I think ever increasing demand is good
11 assuming that you have the resources to serve that
12 demand and you have the ability to -- leave it at
13 that, that you have the resources to serve that
14 demand.

15 Q. And you would agree with me that sales
16 increases provide funds for expanded investment, do
17 they not?

18 A. Investment in general. If you are
19 earning a margin on those, they certainly give you
20 the ability to help, not -- it does not solve the
21 problem but certainly helps.

22 Q. Would you rather be managing a growing
23 or a shrinking company?

24 A. Certainly would be rather managing a
25 growing company.

1 Q. And AmerenUE is a growing company, is it
2 not?

3 A. How do you define growing?

4 Q. Well, the way you do in your direct
5 testimony talking about growing customer demands.

6 A. In that regard -- in that regard --

7 Q. Is it your testimony that AmerenUE has
8 had growing customer demand?

9 A. Yes, we certainly do.

10 Q. At page 12 of your direct testimony
11 starting at line 9, you talk about the noteworthy
12 aspects of UE's proposal; is that correct?

13 A. I'm sorry. What line, please?

14 Q. Page 12. I'm looking -- starting at
15 line 9.

16 A. I'm sorry. I'm on page 12, line 9 and
17 it's talking about the company's experimental
18 alternative regulation plan.

19 Q. Hold on. Maybe I'm in your rebuttal
20 testimony. Let me look here. Well, just let me ask
21 you this: I'll skip that question. Would you agree
22 with me that the test year adopted in this case is
23 very accommodating to UE's desire to minimize
24 regulatory lag and fully recover its cost?

25 A. Please explain to me what you mean by

1 accommodating.

2 Q. Well, you're capturing all your historic
3 costs in the test year, are you not?

4 A. That's correct.

5 Q. And would you agree with me that major
6 cost elements are to be updated via the true-up?

7 A. Through the end of the year certain cost
8 elements are updated through the true-up, that's
9 correct.

10 Q. For example, your coal contracts?

11 A. That's correct.

12 Q. And that's a major cost?

13 A. Certainly one of them.

14 Q. Now, is it correct that the company's
15 prefiled case was \$367.7 million, give or take?

16 A. Yes.

17 Q. Its current -- if I understand the
18 reconciliation now, UE's current revenue requirement
19 is in the \$260 million range; is that correct?

20 A. That's my understanding as well, yes.

21 Q. Now, I just want to make it clear. So
22 that's the amount that Ameren now is seeking -- Union
23 Electric is now seeking, right?

24 A. That's subject to -- to the -- there was
25 a reconciliation that was prepared by Staff, and

1 certainly our original request has been reduced.
2 Whether we say as -- I know that our folks are still
3 reviewing that and I'm not suggesting whether the
4 Staff's reconciliation is incorrect or not, but
5 certainly directionally, our revenue requirement that
6 we are seeking has been reduced, and it's probably in
7 that ball park, but I --

8 Q. Yeah, and I'm not trying to --

9 A. I know.

10 Q. I have the same issue with
11 reconciliation on our side, so I get that. I'm just
12 trying to establish that we've moved away from the
13 370.

14 A. Certainly. And, now, the --

15 Q. Assuming all the stipulations are
16 approved and all of those caveats?

17 A. That's right. And other parties have
18 moved away from their positions as well.

19 Q. Would you agree with me that UE's
20 treatment of EE, Inc. is opposed by all parties
21 having testimony on that issue?

22 A. I believe that's correct.

23 Q. And UE's not surprised by that, are
24 they? Because, I mean, UE filed no fewer than three
25 pieces of testimony in its direct case on that issue,

1 did you not?

2 A. We did file several pieces of testimony
3 associated with EE, Inc., that's correct.

4 Q. In fact, AmerenUE raised that issue
5 first, did you not?

6 A. We certainly, in my direct testimony and
7 others, we brought the issue of EE, Inc. to the
8 attention of the Commission, we certainly did.

9 Q. Is it correct also that UE has provided
10 no quantification of the impact of the expiration of
11 the power supply agreement between UE and its
12 affiliate?

13 A. I'm not sure exactly what kind of
14 analysis you're looking for.

15 Q. Well, I mean, the State has recommended
16 some sort of adjustment and the Staff has recommended
17 some sort of adjustment and other parties have
18 recommended some sort of adjustment. Ameren's not
19 done any quantification, have they?

20 A. To the best of my knowledge, no.

21 Q. So -- so if the Commission disagrees
22 with UE, it must use one of the adjustments provided
23 by the other parties in this case, correct?

24 A. Well, you know -- no, I'm not sure if
25 that's the case. If I recall, Mr. Moehn -- of

1 course, I'll stipulate that we vigorously disagree
2 with the positions being taken by all the parties, as
3 you know, but Mr. Moehn in his testimony suggested
4 that should the Commission ultimately rule in favor
5 of the parties, that in fact, that 70 to \$80 million
6 number which is being thrown out should actually be
7 reduced, and I'm not sure what the number is, but
8 it's tens of millions of dollars.

9 Q. So I should really chat with Mr. Moehn
10 about that?

11 A. Yeah, that would probably be the right
12 thing to do.

13 Q. Or Mr. Byrne, I guess. UE doesn't
14 contest the fact that it owns 40 percent of EE,
15 Inc.'s stock, does it?

16 A. UE, no, it does -- we do not contest
17 that.

18 Q. So you would agree that any transactions
19 between UE and EE, Inc. is clearly an affiliate
20 transaction?

21 A. It is a transaction between two parties.
22 If it's an affiliate transaction as defined by the
23 Missouri rules, I'll leave that to my attorneys to
24 define that if that's true.

25 Q. EE, Inc.'s affiliated to Ameren, is it

1 not?

2 A. Certainly we have an investment interest
3 in EE, Inc.

4 Q. You'd agree with me that off-system
5 sales is a major issue in this case?

6 A. It is.

7 Q. Would you agree with me that all nonUE
8 parties offering a position are recommending a higher
9 value on off-system sales than UE?

10 A. I believe that to be the case.

11 Q. Would --

12 A. But -- I believe that to be the case.
13 Some are actually very close to AmerenUE's
14 recommendations and others are higher.

15 Q. Would you agree with me that no party is
16 accepting UE's off-system sales sharing proposal?

17 A. I believe that's right as designed in
18 our most recent testimony.

19 Q. And --

20 A. Although I will say that our off-system
21 sales sharing proposal addresses many aspects of
22 other parties' recommendations throughout the case.

23 Q. And I'm getting there because that
24 position has evolved like many of AmerenUE's
25 positions, so what is --

1 A. As well as others in the case.

2 Q. Certainly, certainly. What is UE's
3 present position regarding off-system sales?

4 A. Our position with regard to off-system
5 sales really -- you have to talk about it in the
6 context of the fuel adjustment clause. So in this
7 particular situation our position with regard to the
8 fuel adjustment clause and off-system sales is that
9 the fuel adjustment clause should be based on net
10 fuel costs and thereby, we would offset our
11 off-system sales revenues against our fuel costs.

12 That was principally done to address
13 concerns cited by many parties that they didn't want
14 to set off-system sales as a separate item in base
15 rates. And so we -- we -- we did that by design to
16 try and address many of those parties' concerns. And
17 then what we do beyond that with regard to off-system
18 sales, and really it's really with regard to net fuel
19 costs, is that we have a sharing mechanism associated
20 with net fuel costs to the extent that we are able to
21 lower net fuel costs and both ratepayers and
22 shareholders will benefit.

23 Importantly, with regard to the
24 mechanism that we have today, which is interesting --
25 and I was listening to some of the opening statements

1 and I don't think they were characterized very
2 properly -- we know today that our fuel costs are
3 rising and we know -- in not just '07 but they're
4 going up in '08 and 2009.

5 And so with regard to off-system sales,
6 to get back to your question, for us to be able to --
7 to offset those potential -- or for customers, say,
8 if our rates are gonna -- our fuel costs are going up
9 \$60 million, before our sharing mechanism would kick
10 in, AmerenUE would have to lower its fuel costs
11 either through potentially off-system sales margins,
12 through the better productivity at its facilities, it
13 would have to offset those dollars first before any
14 sharing mechanism would be kicked in.

15 And so in the instance that I just
16 cited, if fuel costs are going up 60 million year
17 over year, then shareholders -- or excuse me,
18 ratepayers would benefit before the sharing mechanism
19 would go in place by the fact that we would have to
20 lower our net fuel costs by \$60 million.

21 So that is our primary proposal, to
22 finish answering your question, then, and then as
23 we also stated in our testimony, that should the
24 Commission not accept that proposal, we also said
25 that our original proposal that we had reflected

1 in our case which is a fuel adjustment clause and
2 establishing off-system sales as part of base
3 rates, that would be acceptable as long as the
4 off-system sales number that is established in base
5 rates is an appropriate and normalized level of
6 off-system sales.

7 And we also had a sharing mechanism
8 which we had originally but -- so -- and again, we
9 give the Commission those options.

10 Q. Let me ask you about that. Is that
11 appropriate number to establish still \$183 million?

12 A. No. We would say that the appropriate
13 number to establish in our most recent filed
14 testimony is 200 to 205 million.

15 Q. And what caused the increase?

16 A. I believe as we looked at additional
17 testimony presented in the -- this case by other
18 witnesses, we looked at the various prices that
19 were utilized, we tweaked our prices up to get to
20 that new number.

21 Q. What amount of off-system sales margins
22 are included in the company's board-approved 2007
23 budget for UE for fuel?

24 A. For UE.

25 Q. And I think that's an HC number?

1 A. Yes, please.

2 Q. So --

3 THE WITNESS: Jim, how do we do an HC
4 when we're --

5 MR. LOWERY: Your Honor, we would need
6 to go into in-camera session to cite that number in
7 the record.

8 JUDGE WOODRUFF: Okay. Do you intend to
9 go into any other details in-camera?

10 MR. MICHEEL: Nope. Just the number,
11 or I mean, if you're happy to ball park it or is
12 it --

13 THE WITNESS: No, I really shouldn't do
14 that. From an investor standpoint that would be
15 inappropriate.

16 MR. MICHEEL: Okay.

17 JUDGE WOODRUFF: Okay. All right. We
18 will need to go in-camera then to get that answer
19 into the record. Mr. Micheel, before we do that, we
20 are about time for lunch here. Do you want -- are
21 you nearly done?

22 MR. MICHEEL: I'm nearly done.

23 JUDGE WOODRUFF: All right.

24 MR. MICHEEL: Believe me.

25 JUDGE WOODRUFF: Okay. Well, let's

1 go in-camera, then, at this point. Anyone who's
2 not authorized to hear highly confidential
3 information needs to leave the room, and I'm gonna
4 put the system on mute here.

5 And I'll ask the parties to look around
6 and make sure there's no one here that shouldn't be
7 here.

8 (REPORTER'S NOTE: At this point, an
9 in-camera session was held, which is contained in
10 Volume 14, pages 197 through 198 of the transcript.)

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1 CROSS-EXAMINATION (CONTINUED) BY MR. MICHEEL:

2 Q. And why is it your view that that's an
3 inappropriate number to use for setting rates?

4 A. Well, as you know, when you set rates
5 there with regard to off-system sales, there are a
6 couple of things which are very important. One is to
7 have a normalized level of plant availability
8 reflected, and then secondly, what would be an
9 appropriate rate to apply to those off-system sales.

10 And so when you look at our 2007 budget,
11 it is not based upon a normalized level of planned
12 availability. In fact, in this case I believe there
13 are several averaging techniques over the last
14 several years that need to be factored in. And so
15 that's number one.

16 In fact, what we are experiencing in
17 2007 related to our fossil fuel plants is that
18 they -- we expect those to be more available this
19 year than they have in the past just due to
20 maintenance outages.

21 And then secondly, with regard to our
22 budget, basically that budget was -- was established
23 and finalized around January 2nd. And what we -- the
24 price that we applied to that was simply the snapshot
25 forward curve at the day upon which we established

1 that budget, recognizing that there's a meaningful
2 amount of variability potentially around that.

3 And so when you go to establish rates as
4 many of the witnesses have done in this case, there
5 are a host of averaging techniques and estimation
6 techniques in terms of what should be established for
7 base rates. So there's a meaningful difference
8 between what we have in our budget versus what we
9 might be able to -- what should be utilized for
10 ratemaking purposes.

11 Q. Now, in your -- I believe it is your --
12 well, let me ask you this one final question: You
13 would agree with me that in setting your rates, this
14 Commission should look at UE's cost of service; is
15 that correct?

16 A. They should look at our cost of service
17 based upon appropriate ratemaking principles
18 associated with the establishment of test year.

19 Q. And that's what all parties have tried
20 to do in this case, is it not?

21 A. Certainly, including AmerenUE.

22 Q. You would be included in all parties,
23 right?

24 A. You bet.

25 Q. And you've done no discovery or asked no

1 questions about the State's witnesses, of the State's
2 witnesses, if they're seeking to get the lowest of
3 low rates, have you?

4 A. I cannot speak to whether we've done
5 discovery around that or not.

6 Q. Do you have any reason to believe that
7 was their goal?

8 A. I have no reason to believe that -- I
9 have no reason to believe that but I haven't asked
10 them the question.

11 Q. Do you know if anyone at Ameren has?

12 A. No, I don't.

13 MR. MICHEEL: Thank you very much for
14 your time.

15 THE WITNESS: You're welcome.

16 JUDGE WOODRUFF: Thank you, Mr. Micheel.

17 Now, at this time we'll take a break for lunch.

18 We'll come back at, let's say, about 1:15.

19 (THE NOON RECESS WAS TAKEN.)

20 JUDGE WOODRUFF: Let's come to order,
21 please. Welcome back from lunch. When we left off
22 we had just completed the cross-examination from the
23 State of Missouri, so we're now ready for
24 cross-examination by Public Counsel.

25 CROSS-EXAMINATION BY MR. MILLS:

1 Q. Good afternoon Mr. Baxter.

2 A. Good afternoon, Mr. Mills.

3 Q. Just to start off with, can you tell
4 me -- and you may have done all of this with
5 Mr. Micheel, but can you tell me all of the positions
6 that you currently hold at UE and other Ameren
7 affiliates?

8 A. My title effective January 1st of 2007,
9 is president and CEO of Ameren Services, and I'm also
10 the chief financial officer of Ameren Corporation and
11 all of the affiliates.

12 Q. Okay. And those are the only positions?

13 A. Yes.

14 Q. Okay.

15 A. I'd like to believe that's enough.

16 Q. Okay. And I think in response to one of
17 Mr. Micheel's questions you said that you are one of
18 the major participants in regulatory planning for
19 this case?

20 A. Yes.

21 Q. Who are the other participants in that
22 process?

23 A. Well, certainly all of our counsel
24 associated with this case and Steve Sullivan, and
25 certainly we've had discussions around the regulatory

1 policies in this case with other senior management
2 individuals.

3 Q. You categorize yourself as a major
4 participant. Who are the other major participants?

5 A. I would characterize Steve Sullivan as
6 being the other major participant in this as well in
7 terms of presenting our approaches around the case
8 and then, of course, we discuss these with -- with
9 other members of senior management at Ameren.

10 Q. Okay. Now, there used to be -- maybe
11 it's not an organization, maybe more of an informal
12 group, there used to be something called a senior
13 team at Ameren; is that correct?

14 A. Yes, a group of individuals that were --
15 that directly reported to Gary Rainwater was commonly
16 referred to as the senior team.

17 Q. Does that -- does that still exist?

18 A. It -- it -- not with the same
19 individuals. It's called now -- a group of
20 individuals is called executive leadership team, but
21 the concept is still there. The direct reports to
22 Gary Rainwater are a group of individuals that get
23 together periodically to discuss operations of the
24 company.

25 Q. And you call that the executive --

1 A. -- leadership team.

2 Q. -- leadership team. And who are the
3 members of that team?

4 A. As of January 1st?

5 Q. Uh-huh.

6 A. This is where we've made some of the
7 management changes but as of January 1st Gary
8 Rainwater's direct reports consist of myself, Tom
9 Voss, Alan Kelley, Scott Cisel, Steve Sullivan and
10 Donna Martin. I believe that's all of them.

11 Q. And who is Alan Kelley?

12 A. Alan Kelley is the CEO over our -- our
13 nonregulated generation operations.

14 Q. Does he have any role at EE, Inc.?

15 A. I believe Alan Kelley is -- I believe
16 he's the president of EE, Inc. but I'm -- yes, I
17 believe he's -- I believe he's the president but I
18 may not be right there.

19 Q. Now, is it -- just in general, how are
20 policy decisions made at Union Electric Company?

21 A. With regard to -- to what, Mr. Mills?

22 Q. You're the policy witness. All kinds of
23 policy. How -- what is the process?

24 A. Well, you know, I think it depends on
25 the various issues. If you're talking about risk and

1 risk management, there's a -- there are a group of
2 people that we have established policies for certain
3 types of things that are -- that are written, that
4 are followed, and then we have people who have
5 oversight of those.

6 And then there are other matters in
7 terms of day-to-day operations which are done today
8 within the various business units, and it would be
9 people, for instance, like Tom Voss who is the
10 president and CEO of AmerenUE, and his direct reports
11 would make policy decisions with regard to AmerenUE.
12 And it's the same for our Illinois regulated
13 regulations, and Alan Kelley would denominate (sic)
14 regulated operations and others.

15 And then, as certain of those issues
16 continue to evolve and depend upon the nature of
17 those policy issues, they are certainly discussed
18 with what is now called the executive leadership team
19 and decisions may or may not be made by that group or
20 at least discussed.

21 And then certainly finally to the --
22 dependant upon the nature of the decision-making
23 process, certain of those things can go to the board
24 of directors depending upon the nature of those
25 decisions. So it's a compilation of all those things

1 that -- that evolve into policymaking at Ameren.

2 Q. Now, does AmerenUE have a board of
3 directors?

4 A. It does.

5 Q. And does Ameren Corporation have a board
6 of directors?

7 A. It certainly does.

8 Q. Are they -- are the members of those two
9 boards different?

10 A. Yes.

11 Q. Is there some overlap?

12 A. No, not that I'm aware of.

13 Q. Okay. Now, in your role in management
14 of the company -- let me backtrack a little bit.
15 You're familiar with the EE, Inc. issue in this case,
16 are you not?

17 A. I am.

18 Q. And are you familiar with Union
19 Electric's theory that EE, Inc.'s board has a
20 fiduciary duty to maximize profit for EE, Inc.?

21 A. EE, Inc.'s board -- could you repeat the
22 question again? I'm sorry, Mr. Mills.

23 Q. Are you familiar with the position that
24 Union Electric has taken in this case that EE, Inc.'s
25 board of directors has a fiduciary duty to maximize

1 profits for EE, Inc.?

2 A. Yes, and its shareholder as well, UE,
3 and others.

4 Q. So the EE, Inc. board has a duty to
5 maximize profits for Union Electric Company?

6 A. For its shareholders. For its
7 shareholders, certainly.

8 Q. For Union Electric Company's
9 shareholders?

10 A. Ultimately, because UE's shareholder is
11 Ameren Corporation and Ameren Corporation's
12 shareholders are the host of shareholders, I believe
13 that Mr. Lowery pointed out this morning.

14 Q. And I am not trying to put words in your
15 mouth.

16 A. Oh, I know, I know. I'm just trying to
17 make sure we understand how it all --

18 Q. I thought that's what you had said.

19 A. Uh-huh.

20 Q. Okay. So does the Union Electric board
21 have the same sort of fiduciary duty to maximize
22 profits for UE's shareholders?

23 A. Certainly.

24 Q. And do you, as a member of Union
25 Electric management, have that same sort of duty?

1 A. Well, as a member of Union Electric
2 management, certainly. As a member of Union
3 Electric's board I do as well.

4 Q. So in both your role as a manager and a
5 board member you believe you have a fiduciary duty?

6 A. Oh, certainly.

7 Q. Okay. Now, would it be contrary to that
8 fiduciary duty to make policy decisions that don't
9 maximize the interest of Union Electric's owner,
10 Ameren Corporation?

11 MR. LOWERY: I'm just gonna object to
12 the extent that Mr. Mills is asking Mr. Baxter to
13 draw legal conclusions about exactly what the
14 confines of fiduciary duties are or not. If he knows
15 he can answer a question, but he's not a lawyer.

16 MR. MILLS: I'm not asking him for a
17 legal conclusion, I'm asking him for the way he
18 conducts himself as a board member.

19 JUDGE WOODRUFF: I'll overrule the
20 objection. I understand the word -- the basis for
21 the objection and certainly this witness is not
22 required to make any sort of legal opinion, and I
23 don't think that's necessarily what Mr. Mills is
24 asking for.

25 MR. MILLS: No, I'm not asking that.

1 I'm simply asking -- he is a board member. I'm
2 asking how he conducts himself as a board member.

3 THE WITNESS: Sure. The way I -- and
4 stipulating to Mr. Lowery's objection, I'm not
5 gathering a legal conclusion about how I conduct
6 myself as management. I'm mindful of several things.
7 Certainly I'm mindful of my fiduciary duty to
8 shareholders but I'm also mindful of our obligation
9 to ratepayers as well which is to provide safe and
10 reliable service at a reasonable cost. And so in
11 conducting our business, we're mindful of both of
12 those things.

13 BY MR. MILLS:

14 Q. Okay. So the fiduciary duty to maximize
15 profits has some exceptions, for example, for
16 ratepayer considerations?

17 A. Not necessarily.

18 Q. No?

19 A. No.

20 Q. Okay.

21 A. No. I think that -- Mr. Mills,
22 investor-owned utilities have been around for
23 probably over 100 years, at least in the case of
24 Ameren Corporation, and duties and obligations for
25 both ratepayers and shareholders have been around,

1 and that's how you manage the business.

2 And so, no, you know, there are
3 obviously challenges that you have and decisions that
4 you have to make but you keep both of those
5 obligations in your mind.

6 Q. Okay. The question I asked is, there
7 are exceptions to the fiduciary duty to maximize
8 profits and you said no?

9 A. I'm not -- if you could cite me an
10 exception, perhaps I could respond to that.

11 Q. I'm just asking if there's any room for
12 consideration of ratepayers in the pursuit of
13 profits?

14 A. Well, certainly there's consideration of
15 ratepayers. I think in just the normal regulatory
16 framework, when we have investors, we pursue profits
17 and at the same time we try and have just and
18 reasonable rates. And, in fact, you see in my
19 testimony I think we've been able to deliver that.
20 We have had low rates which are very good for
21 customers for a long period of time. And at the same
22 time, we've been able to deliver solid returns to our
23 shareholders. That's a regulatory compact in a
24 framework that has actually been very successful.
25 They both work.

1 Q. Okay. We talked in general about policy
2 decisions, and let's get into a little more specifics
3 because I think you answered the general question.
4 In terms of environmental compliance policy
5 decisions, how are those policies determined at Union
6 Electric?

7 A. Well, environmental compliance
8 decisions, probably have several people who provide
9 analyses around those issues, folks in the -- if
10 we're talking about AmerenUE, there's certainly
11 operational folks. People like Mark Birk and others
12 who have detailed knowledge of the plans and how they
13 may function in terms of, you know, what type of
14 equipment we may or may not use.

15 We have people in corporate planning who
16 do some modeling around that, and as you know,
17 resource planning as you've participated in several
18 of those meetings and you've seen a lot of those
19 corporate planning people there.

20 And you have people like Tom Voss who is
21 the CEO of Ameren who obviously is informed as to
22 environmental compliance issues. You have people in
23 the regulatory area and in the political area who
24 advise us as to what may or may not be going on in
25 terms of environmental rules and regulations. All

1 those resources come together and talk about the
2 issues and concerns and forward-thinking options we
3 may or may not have in terms of environmental
4 compliance.

5 Ultimately depending upon the nature of
6 the decision, it may simply rest with AmerenUE or it
7 may depend upon the nature of the decision. It could
8 ultimately go to the board of directors of Ameren
9 Corporation as well as AmerenUE.

10 Q. So it could go to both boards?

11 A. Well, certainly. I think there's
12 certainly AmerenUE board members who are members of
13 the executive leadership team who would be informed
14 and weigh in on some of those issues along the way.

15 Q. Now, getting even more specific, who
16 makes the policy decision regarding timing and
17 magnitude of SO2 allowance sales?

18 A. I think it's a fairly similar process
19 that I just described. I think that ultimately a
20 host of people will talk about -- when you think
21 about SO2 allowance sales, you have to think of a lot
22 of things. You have to think about the SO2 allowance
23 bank and how that bank will be utilized for
24 environmental compliance purposes.

25 Then you have to do some analyses and

1 modeling to determine whether you have potentially
2 excess allowances. To the extent you have excess
3 allowances, then you understand that perhaps there's
4 an opportunity to utilize those allowances in
5 consideration of not just market conditions but
6 ultimately what those allowances may or may not be
7 worth in the future due to potentially changes in the
8 environmental framework or regulatory environment.

9 And so those -- that input will be --
10 has been in the past forwarded to some folks like Tom
11 Voss and members of then the senior team or the
12 executive leadership team to discuss issues and
13 opportunities or policy associated with those.

14 Q. Now, I believe you mentioned -- and I'm
15 not sure exactly in what context -- but you mentioned
16 market conditions. Are those a factor in determining
17 sales, timing and quantities?

18 A. They are -- they are certainly a
19 component of them but it's not the sole component.

20 Q. Is it an important component?

21 A. It is one of the components. I don't
22 know if I want to weigh any one of them. I think the
23 most important component we have to deal with is
24 whether we have sufficient allowances to manage our
25 environmental compliance needs. That's first and

1 foremost.

2 Q. Okay. So is there a set person who has
3 to approve SO2 allowance sales, or it just depends on
4 the situation?

5 A. I don't know if there is a set person.
6 Ultimately those decisions are generally discussed
7 with the senior team, and to the extent they're
8 AmerenUE allowances, you know, it is possible, then,
9 that Tom Voss would convey those types of things to
10 appropriate people who manage the sales of those SO2
11 allowances.

12 Q. Does that -- does the process depend on
13 the magnitude of the sale?

14 A. In the overall analysis, is that what
15 you're talking about?

16 Q. The overall analysis and the final
17 approval process both.

18 A. In part. I think, again, to the extent
19 that the first hurdle you have to get over is whether
20 you have excess emission allowances to sell. And so
21 any amount -- if you didn't have excess emission
22 allowances to sell, then I would suggest that any
23 amount would be an issue to sell, whether it be
24 \$10,000 or \$10 million. Surely, to the extent that
25 the allowance levels get a little bit larger, there

1 are likely to be more internal discussions around
2 that particular issue.

3 Q. And how -- well, let me skip that.
4 We'll get into that later. In terms of planning for
5 this rate case, who made the policy decision that the
6 rate increase for the residential class should be
7 capped at 10 percent?

8 A. Well, I think it was -- again, it was a
9 discussion among many folks internally but certainly
10 Steve Sullivan and I were major players in
11 determining -- in making that determination as well
12 as discussions with other counsel on our team.

13 Q. Now, just in terms of general regulatory
14 policy, can you tell me what your understanding of
15 the purpose of regulation is?

16 A. I think the purpose of regulation is
17 ultimately to set just and reasonable rates, and then
18 ultimately that regulation is to -- is to ensure that
19 the utility has the ability to recover its costs as
20 well as its investments and an appropriate return on
21 the investment.

22 At the same time, in establishing that,
23 it isn't just simply looking at a bunch of
24 mathematical formulas and data. I think in
25 regulation and establishing rates you have to

1 consider long-term policy issues. I think this is not
2 just a rate-setting body; this is a body that
3 ultimately has to consider broader energy policy things.

4 And so as I set out in my testimony in
5 several instances, I think that this Commission has
6 to look at a bigger picture which also includes the
7 establishment of rates based on test year data and
8 data that's provided throughout this case by several
9 witnesses and experts.

10 Q. Okay. So would you disagree with the
11 proposition that the purpose of regulation is to
12 protect customers from the monopoly and that any
13 benefit given to the monopoly is purely incidental?

14 A. I would not subscribe that the
15 regulation is just to protect individuals from a
16 monopoly, but it's ...

17 Q. So you don't agree with that?

18 A. I don't agree with that.

19 Q. Now, can you tell me who Susan Gallagher
20 is?

21 A. Susan Gallagher is a primary
22 spokesperson to the media for -- for the company and
23 more specifically for AmerenUE.

24 Q. So she's an authorized spokesman for the
25 company?

1 A. She is.

2 Q. Now, think back with me, if you will, to
3 the last rate case, the one that ultimately ended up
4 as a Case Number EC-2002-1 that ultimately ended up
5 in a decrease and some credits. Do you recall that
6 Union Electric claimed that as a result -- that if
7 the result of that case was a reduction in rates,
8 that AmerenUE's credit rating may have gone down?

9 A. I don't recall if that statement was
10 made.

11 Q. You don't remember that?

12 A. I don't remember that from back in 2002.
13 I don't recall that.

14 Q. Okay. Do you know that in response to
15 the possibility that rates may be decreased in this
16 case as a result of the Staff's complaint that Susan
17 Gallagher has made that statement recently to the
18 press?

19 A. Yes. And I think the basis upon which
20 that statement was made was, frankly, reports that
21 were issued by S&P and Moody's who basically stated
22 that almost verbatim.

23 Q. Okay. Did UE get downgraded as a result
24 of that EC-2002-1.

25 A. I don't believe that occurred,

1 Mr. Mills.

2 Q. Have you had a chance to see the
3 St. Louis Post article that was published over the
4 weekend?

5 A. Yes.

6 Q. Now, Ms. Gallagher is quoted as having
7 said, "Other actions also may need to be taken to
8 further manage costs if the rate request is denied."
9 Do you know what actions Ms. Gallagher was talking
10 about?

11 A. No, not specifically.

12 Q. What actions generally has the senior --
13 the executive leadership team talked about?

14 A. I don't think the executive leadership
15 has talked about any specific actions, but if I could
16 speculate, I think --

17 Q. Oh, I'm not asking you to speculate.

18 A. No, no. I'm --

19 Q. If you don't know, then don't answer.

20 A. Well, I can say clearly that the
21 executive leadership team has not made any decisions
22 in terms of what would be, but I can tell you that
23 because if something would occur, things that we
24 would be mindful of before any actions would be taken
25 would be the impact on our credit ratings, whether

1 our credit ratings did, indeed, go down. It would be
2 the impact on our operations, if we have less cash
3 flows. Then if we have less cash flows, then we have
4 to look very carefully at our ability to continue
5 to -- to move forward with certain programs in the
6 same timely fashion that we may otherwise would like
7 to do that.

8 We would have to look at investors'
9 reactions because ultimately investors -- we have not
10 only just an obligation to our ratepayers as we said,
11 but we have an obligation to our shareholders as
12 well. And so a lot of those factors, before we
13 decide to make any decisions, would have to be
14 weighed and then perhaps other actions may need to be
15 taken. But I can't speculate exactly what those may
16 be at this time.

17 Q. Okay. So Ms. Gallagher was just talking
18 in general. There's no specific actions that have
19 been discussed?

20 A. Oh, that's correct.

21 Q. Okay. And I think in response to my
22 last question, you told me factors that you would
23 have to consider. What possible actions could have
24 come from the consideration of those factors?

25 A. You know, again, Mr. Mills, I hate to

1 speculate exactly what those could be, but I think
2 certainly with a rate decrease that simply means that
3 you're not recovering your cost of service in our
4 view. And you're certainly not earning an adequate
5 return on your investment. In fact, it may not be
6 recovered in your entire investment, so it has a
7 significant effect on cash flows.

8 Q. Now, isn't there a space between
9 recovering your costs of service and not making, from
10 UE's perspective, an adequate return?

11 A. Potentially.

12 Q. Okay.

13 A. Potentially. It depends on how you
14 define a return. But I think that to the magnitude
15 that Staff and others are proposing, then, you know,
16 it would be sizeable, significant.

17 Q. But if you make a one dollar profit,
18 you're recovering your cost of service, assuming you
19 could quantify it that accurately?

20 A. You may be recovering your -- you know,
21 you're recovering your operating costs, but you're
22 not recovering your cost of capital. No, you're not
23 recovering your cost of capital. You're losing
24 money.

25 Q. If you make a dollar profit you're

1 losing money?

2 A. Ultimately if you're not earning a
3 return on that investment, that's right. Your
4 overall cost of capital, it could be potentially
5 greater. Now, again, it depends on how that would
6 ultimately ...

7 Q. Explain to me how you're losing money if
8 you make a profit, please, because I'm not following.

9 A. Well, I guess when I'm sitting here --
10 what I'm sitting here saying is if I'm going out to
11 be investing in the future for -- if I only have one
12 dollar of profit and my cost of capital is 7 or 8
13 percent and I'm only gonna ultimately earn one dollar
14 of overall profit, I look at what -- the investments
15 because of regulatory lag as an example. I am not
16 recovering because, as you know, I'm making
17 investments in the future and I'm not gonna
18 ultimately be recovering my cost of capital entirely
19 and certainly not providing an adequate return on the
20 investment for shareholders.

21 Q. But you do understand those are two
22 different questions?

23 A. Yes. No, as I said --

24 Q. Profitability and adequate return?

25 A. That's right. You went down to the very

1 extreme.

2 Q. All right. Now, you work both for
3 Ameren Services and for AmerenUE, is that correct, as
4 well as several other operating companies?

5 A. That's correct.

6 Q. What sort of training and education
7 policy does -- do any or all of the Ameren
8 corporations have with regard to the Missouri
9 affiliate transaction rule?

10 A. Well, I know there are policy manuals
11 that -- that are out -- that -- that -- that are
12 published that have described what those rules are
13 and I know we have general services agreement which
14 are -- that are provided to our employees which --
15 which ensure that they're consistent with the -- the
16 affiliate rules in terms of how you should be not
17 only conducting your business, but how you charge
18 back your time and those types of things. And then
19 we have oversight by the legal department and others
20 to ensure we continue to follow those affiliate
21 transaction rules.

22 Q. Okay. Now, you say that there are --
23 there are -- did you call them policy manuals that
24 are published?

25 A. I know we have a general services

1 agreement and that's what I was referring directly
2 to.

3 Q. Okay. Is that something different than
4 a policy manual?

5 A. I would probably consider those one and
6 the same. And I'm not sure if we have other policy
7 manuals. When I was thinking of that, I was thinking
8 more of the general services agreement. Now, we may
9 have other policy manuals, I'm just not certain of
10 those with regard that. But I do know that in
11 speaking with counsel and others associated with the
12 affiliate transaction rules, that those transcript
13 rules are monitored.

14 Q. But from your own experience, the only
15 thing that you can think of that would guide you in
16 that would be the general services agreement; is that
17 correct?

18 A. Well, no, no. I have obviously the
19 ability to speak to Mr. Sullivan and others about the
20 transaction rules, and so I don't pretend to
21 necessarily be the foremost expert on those affiliate
22 transaction rules. But I do have that -- and I --
23 and others know that if there are issues associated
24 with that or questions, that they are to go to our
25 legal department as well as the regulatory

1 department.

2 Q. Does Mr. Sullivan conduct training in
3 regard to compliance with the affiliate transaction
4 rules?

5 A. I'm not sure, honestly.

6 Q. Has he ever conducted training that
7 you've been involved in?

8 A. Well, certainly, when we became a
9 holding company and we talked about the general
10 services agreement and we've submitted the general
11 services agreement among other things to the Staff up
12 here, there was training clearly associated that I
13 was involved in.

14 Q. And you became -- you created the
15 holding company structure when?

16 A. That probably goes back into the late
17 '90s when it was ultimately -- I guess I'm thinking
18 about the holding company came about as the merger
19 with the CIPS, and so it was sometime in the late
20 '90s. And then that services agreement has been
21 updated since then.

22 Q. That would have been Case Number EM-96,
23 what, 149?

24 A. I don't know if that's the case. If
25 that's the case associated with the merger, then it's

1 possible that's when it was done.

2 Q. Assume with me that that was a '96 case.
3 That would make it about ten years ago?

4 A. Yes, if that was the case when it
5 started, sure.

6 Q. Can you recall any training with regard
7 to compliance with affiliate transaction rules since
8 then?

9 A. I don't recall any training that I was a
10 direct participant in.

11 Q. Okay. Now, in terms of your role as one
12 of the major participants in the regulatory planning
13 process, at least for this case, let me ask you this:
14 Is your -- your own compensation affected by UE's
15 profitability?

16 A. My compensation is affected in part by
17 the earnings of Ameren Corporation of which UE is a
18 component.

19 Q. Okay. So if -- if AmerenUE's earnings
20 go down, then assuming all else is equal, Ameren
21 Corporation's earnings will down and that will affect
22 your compensation?

23 A. Potentially.

24 Q. Okay.

25 A. But not necessarily.

1 Q. Okay. Is any part of your compensation
2 affected by the level of customer satisfaction at
3 Union Electric?

4 A. Potentially. The program that we had
5 today for -- if you're talking about me personally?

6 Q. Yes.

7 A. Okay. Then there are two pieces of the
8 compensation package. Certainly, a piece of it is
9 driven by earnings of Ameren Corporation, but then
10 there is another factor that is more subjective, and
11 then to the extent that customer satisfaction -- and
12 I was a -- so a component of that subjective factor
13 could be -- could be customer satisfaction, it could
14 be.

15 Q. Has it ever historically been a portion
16 of that other component?

17 A. Historically, I have never been informed
18 that that was the reason why my compensation was
19 lowered as a result of customer satisfaction.

20 Q. Or raised?

21 A. That's correct.

22 MR. MILLS: Okay. That's all the
23 questions I have. Thank you.

24 JUDGE WOODRUFF: All right. Thank you.

25 Cross-examination from Staff.

1 CROSS-EXAMINATION BY MR. DOTTHEIM:

2 Q. Good afternoon, Mr. Baxter.

3 A. Mr. Dottheim, good afternoon.

4 Q. I'd like to refer you to your direct
5 testimony which is Exhibit 1. I'd like to refer you
6 to page 2, lines 15 to 17.

7 A. Yes, sir.

8 Q. Okay. You indicate, do you not, that
9 prior to taking employment with Union Electric
10 Company, you worked for Union Electric Company's
11 external auditor, Price Waterhouse?

12 A. I did.

13 Q. And you indicate, do you not, that Price
14 Waterhouse provided both audit and consulting
15 services to Union Electric Company?

16 A. As well as other clients in the utility
17 industry, that's correct.

18 Q. Could you indicate what consulting
19 services Price Waterhouse provided to Union Electric
20 Company?

21 A. During what period of time,
22 Mr. Dottheim?

23 Q. During the period of time that you were
24 with Price Waterhouse.

25 A. I'm trying to recall. That goes back

1 several years. That would have probably been back in
2 the early '90s perhaps, if not late '80s. But
3 typically those consulting services -- well, of
4 course, we provide audit services, and then at the
5 same time there's probably consulting services
6 associated with the information systems, potential
7 income tax issues and other things but I simply don't
8 recall beyond that.

9 Q. Okay. Should Price Coopers
10 Waterhouse --

11 A. Price Waterhouse Cooper is what they're
12 called these days.

13 Q. Is Price Waterhouse Cooper presently the
14 external auditor for Ameren?

15 A. They are.

16 Q. And AmerenUE?

17 A. Yes.

18 Q. Is Mr. Lyons formerly of Price
19 Waterhouse Coopers?

20 A. He is.

21 Q. Is Mr. Moehn formerly of Price
22 Waterhouse Coopers?

23 A. He is.

24 Q. Were both of those individuals at one
25 time working on engagements as external auditors of

1 AmerenUE for Price Waterhouse Coopers?

2 A. You know, I know that Mr. Lyons worked
3 on the audit engagement. I'm trying to recall if Mr.
4 Moehn worked on the audit engagement as opposed to
5 potentially working on a consulting piece of the
6 engagement. I just don't recall.

7 Q. Does Price Waterhouse Coopers presently
8 provide consulting to Ameren?

9 A. It provides both audit and audit-related
10 services to Ameren.

11 Q. And to AmerenUE?

12 A. Sure, yes.

13 Q. What would those services be other than
14 auditing?

15 A. Well, those services today would include
16 work around risk management, our risk management
17 systems. Sarbanes-Oxley in particular did quite a
18 bit of work that they are doing. As you know,
19 Sarbanes-Oxley, the advent of that has created quite
20 a bit of work. Also, they do work around accounting
21 matters, accounting consultations, technical issues
22 for us, and they obviously look at information
23 systems when they are put in place. They are charged
24 with reviewing whether those systems are implemented
25 and the controls around those are satisfactory, among

1 other things.

2 Q. Okay. I'd like to direct you again to
3 your direct testimony, Exhibit 1, to page 12, line 6
4 to 9.

5 A. Page 12? I'm sorry, Mr. Dottheim.

6 Q. Yes, lines 6 to 9.

7 A. Yes, sir.

8 Q. And in particular, you indicate in there
9 that the company's rates have declined steadily for
10 approximately 20 years, and you relate the seven rate
11 reductions since 1987 and the two experimental
12 alternative regulation plans, do you not?

13 A. I do.

14 Q. And I'd like to also direct you --
15 excuse me, to page 2 of your rebuttal testimony which
16 is Exhibit 2, lines 16 and 17.

17 A. I'm sorry, page 2?

18 Q. Page 2, line 16 and 17.

19 A. Yes.

20 Q. Where again you indicate that AmerenUE
21 has consistently reduced its rates over a 20-year
22 time period, do you not?

23 A. I do.

24 Q. Okay. AmerenUE reduced its rates over
25 that 20-year time period as a result of Missouri

1 Public Service Commission Staff audits, did it not?

2 A. As a result of Staff audits. I'm not
3 sure during those 20 years they were always as a
4 result of Staff audits.

5 Q. Do you recall AmerenUE filing a rate
6 reduction with the Missouri Commission on its own
7 without there first having been a Staff audit of
8 AmerenUE or Union Electric Company?

9 A. I don't recall that.

10 Q. You list throughout your direct
11 testimony, in particular, changes that have occurred
12 in the electric industry over an extended period of
13 time, do you not?

14 A. I list -- Mr. Dottheim, if you're
15 referring to page 8?

16 Q. Just changes in general.

17 A. Now, when you say over the next ten --
18 certainly I list meaningful changes that are taking
19 place in the electric utility industry, and I
20 wouldn't necessarily say they would all be over an
21 extended period of time. I think many of these are
22 more acute in terms of what we're seeing in today's
23 marketplace and what we expect to see in the future.

24 Q. Okay. One of the -- would you say that
25 one of the changes, major changes of that has

1 occurred at least as far as Union Electric Company is
2 concerned over the last ten or a little more than ten
3 years is Union Electric Company going from a
4 stand-alone vertically integrated electric utility
5 company to a subsidiary in a public utility holding
6 company?

7 A. If you're asking whether that is a --
8 are you asking, Mr. Dottheim, whether it's a
9 structural change? That certainly has been a
10 structural change, certainly.

11 Q. Would you consider that a major change
12 for Union Electric Company?

13 A. In terms of how Union Electric has
14 operated its business, I wouldn't say that becoming
15 part of a holding company has changed its -- its --
16 its approach to doing business and how it has always
17 been in the business of delivering safe, reliable
18 service and at reasonable rates.

19 So in that context, no. Having said
20 that, I do believe that as a result of us becoming --
21 not just becoming a holding company. I think as a
22 result of these mergers that we have done, we have
23 been able to drive out costs in our business,
24 especially administrative costs.

25 And so if -- if that's what you're

1 referring to, I think significant efficiencies and
2 cost reductions have come about as a result of those
3 types of activities.

4 Q. Mr. Baxter, I'm not going to ask you to
5 go into any detail of any discussions, but prior to
6 AmerenUE filing the present rate case that we're here
7 for purposes of towards the conclusion of the
8 moratorium that -- that came out of the Staff's
9 excess earnings complaint case against AmerenUE, did
10 AmerenUE hold any meetings with the Staff of the
11 Missouri Public Service Commission regarding the
12 conclusion of the moratorium period?

13 A. Well, we were always talking to Staff
14 about a number of different things, and so,
15 Mr. Dottheim, I'm not -- regarding the conclusion in
16 the moratorium period, we certainly -- before we
17 filed the rate case, let me say this, we did have
18 meetings with the Staff.

19 Q. And again, without going into any
20 detail, did those discussions include talks about
21 specifics as to what a rate case such -- what a rate
22 case might entail, such as test year, discussions of
23 that nature?

24 A. Certainly.

25 Q. Do you recall -- did you find those

1 discussions with the Staff to be of assistance?

2 A. Yes, I think in general I think it's
3 always a good idea to have constructive dialogue
4 around a number of issues, and I think that the
5 objective of us having those meetings with Staff was
6 to -- to make sure that if there are issues or
7 questions associated with the rate case, that we try
8 to address those issues and questions up front. So,
9 yes, I think they were constructive.

10 Q. I'd like to refer you back to your
11 direct testimony which is Exhibit 1 to page 16, and
12 I'd like to refer you to the bottom of the page, in
13 particular the last sentence on page 16 that carries
14 over to the top of page 17.

15 Okay. You make reference, do you not,
16 to reasonable but not necessarily the lowest possible
17 rates in the short term as an appropriate balance of
18 stakeholder interest, do you not.

19 A. I do.

20 Q. Okay. Mr. Baxter, are you saying that
21 AmerenUE's commitment to its customers is to provide
22 reasonable but not necessarily the lowest possible
23 rates in the short term?

24 A. I think our objective is to provide
25 safe, reliable service at reasonable rates.

1 Q. Do you know or recall whether AmerenUE
2 has recently told its customers that it will continue
3 to work with regulators, community leaders and
4 customers to provide reliable electricity at the
5 lowest possible price?

6 A. Depending upon the context of that
7 statement, I could understand how that statement
8 could be made, but, of course, they said the lowest
9 possible price. I think it's not terribly
10 inconsistent to say that would be at a reasonable
11 price because the lowest possible price would not
12 necessarily include -- provided in ways which aren't
13 ultimately recovered in your cost of service. I --

14 Q. Thank you, Mr. Baxter. I think you've
15 answered my question.

16 MR. DOTTHEIM: I'd like to have marked
17 as an exhibit.

18 JUDGE WOODRUFF: All right.

19 MR. DOTTHEIM: May I approach the
20 witness?

21 JUDGE WOODRUFF: You certainly may.
22 Your next number would be 254.

23 (EXHIBIT NO. 254 WAS MARKED FOR
24 IDENTIFICATION BY THE COURT REPORTER.)

25 BY MR. DOTTHEIM:

1 Q. Mr. Baxter, you have a copy of what's
2 been marked as Exhibit 254?

3 A. I do.

4 Q. And I think this is a copy of the
5 document that Mr. Coffman referred to earlier today.
6 Mr. Baxter, do you recognize this document?

7 A. Yes, I do.

8 Q. Okay. It's actually a one-page
9 document, copied both sides, one sheet to a side.
10 It's a flier from Ameren with a letter on one side,
11 dated January 24, 2007, signed by Richard J. Mark,
12 senior vice president, Missouri Energy Delivery. Can
13 you identify who Mr. Richard J. Mark is?

14 A. He's a senior vice president for
15 AmerenUE.

16 Q. And he has testimony filed in this case,
17 does he not?

18 A. Yes, he does.

19 Q. And in particular, I'd like to direct
20 you to the second-to-the-last paragraph in Mr. Mark's
21 letter and the second sentence. The second sentence
22 which states, "I assure you that we will continue to
23 work with regulators, community leaders and you to
24 provide reliable electricity at the lowest possible
25 price." Did I read that correctly?

1 A. You did.

2 Q. And you can identify this as a mailer or
3 a flier of Ameren?

4 A. Yes.

5 Q. Okay. Thank you. Mr. Baxter, I'd like
6 to refer you again to your direct testimony,
7 Exhibit 1. Starting on page 27, your testimony
8 contains a discussion of the EE, Inc. issue, does it
9 not?

10 A. Yes, it does.

11 Q. Okay. Is your discussion of the EE,
12 Inc. issue in your testimony based upon your own
13 knowledge of that issue?

14 A. What do you mean by my own knowledge,
15 Mr. Dottheim?

16 Q. Is that information that -- that you
17 acquired in your capacity as officer of Ameren or
18 AmerenUE as opposed to a witness in this case?

19 A. Well, it's certainly information that I
20 have acquired as an officer of Ameren, as an officer
21 of AmerenUE, and I provide testimony in this case
22 which summarizes the witnesses but I -- I do
23 understand the issue.

24 Q. And prior to this case, you were
25 familiar with EE, Inc., correct?

1 A. Oh, certainly. This issue came up at a
2 minimum several years ago during the Metro East case,
3 and so this is not a new issue.

4 Q. You make reference in your direct
5 testimony, I believe on -- for example, on page 28 to
6 the power supply agreements that have been in
7 existence between EE, Inc. and the sponsoring
8 companies, one of which has been Union Electric
9 Company, do you not?

10 A. I do.

11 Q. Have you read any of those power supply
12 agreements?

13 A. No. I've read legal summaries of those
14 power supply agreements.

15 Q. And when you say "legal summaries," what
16 do you mean by legal summaries?

17 A. Summaries of the issue and the
18 agreements prepared by counsel over the course of the
19 last several years.

20 Q. And can you identify -- when you say
21 "prepared by counsel," were they prepared in
22 particular for any purpose that you've reviewed them
23 for?

24 A. Well, I think if I go back, it probably
25 relates in part to the Metro East case, and certainly

1 we have not just had -- it wasn't just memos,
2 certainly. It was discussions with counsel and
3 others in connection with this particular case as
4 well.

5 Q. Okay. I'd like to direct you on page 28
6 of your direct testimony to lines 6 through 8. You
7 state there, do you not, that the contract between
8 the federal government and EE, Inc. ended on
9 December 31, 2005?

10 A. That's correct.

11 Q. Okay. Do you know whether that contract
12 was extended for an additional year?

13 A. I do not know that.

14 Q. I'd like to refer you to page 29 of your
15 direct testimony, lines 14 to 15, and in particular
16 on line 14 in testimony you use the word "prudent,"
17 do you not?

18 A. Yes.

19 Q. Okay. Is that your term or is that
20 someone else's term?

21 A. That would certainly be my term.

22 Q. Okay. And I'd like to refer you to
23 line 17 on page 29 and you use the term "fiduciary
24 duty," do you not?

25 A. I do.

1 Q. Okay. Did you use that term yourself in
2 the testimony or is that someone else's use of the
3 term?

4 A. Well, certainly it's my testimony so
5 it's my term, but I certainly have come to understand
6 that term from speaking with others about the issue.

7 Q. Okay. And what is your understanding of
8 that term?

9 A. My understanding of that term is we have
10 a fiduciary duty to our shareholders, and that
11 fiduciary duty is to maximize that shareholder's
12 investment; return of that shareholder's investment
13 is probably the better way to put it.

14 Q. You're not an attorney, are you,
15 Mr. Baxter?

16 A. I am not, no, sir.

17 Q. Mr. Baxter, I'd like to --

18 A. But I do understand, in my capacity as a
19 chief financial officer the importance of fiduciary
20 duties to shareholders. I do understand that because
21 I need to deal with that as part of my ongoing
22 duties, not just at AmerenUE, but certainly as Ameren
23 Corporation.

24 Q. Yes, and maybe we should -- we should go
25 to that. If I understand it correctly, you're

1 president and CEO of Ameren Services, are you not?

2 A. I am.

3 Q. And you are CFO of Ameren Corporation
4 and all affiliates?

5 A. That's correct.

6 Q. Okay. And do you have a fiduciary duty
7 in your capacity as president and CEO of Ameren
8 Services?

9 A. Ameren Services is a not-for-profit
10 entity, and so that is a different duty. The duty
11 principally for Ameren Services is to provide
12 services internally to our -- to our other companies
13 at the lowest possible cost. And so it's a different
14 fiduciary duty than I would have as the CFO of Ameren
15 Corporation to our shareholders.

16 Q. And your understanding of your fiduciary
17 duty as president and CEO of Ameren Services is based
18 on what?

19 A. It is based upon my opinion.

20 Q. And I think you've indicated that you
21 have a fiduciary duty as CFO of Ameren Corporation
22 and all affiliates?

23 A. Yes.

24 Q. And what would that fiduciary duty be?

25 A. Again, are you talking about the

1 fiduciary duty to -- my fiduciary duty to
2 shareholders is to maximize the return on those
3 investments, whether it be for the corporation
4 AmerenUE or the other entities.

5 Q. Would you have a fiduciary duty,
6 separate fiduciary duty to each of the affiliates?

7 A. In what regard, Mr. Dottheim?

8 Q. Well, as you understand it. I'm asking
9 for your understanding. Do you -- as far as your
10 understanding of what fiduciary duties you have, if
11 any, as CFO of Ameren Corporation and all its
12 affiliates.

13 A. If you're referring to my fiduciary
14 duty, which is -- I thought that's what we were
15 talking about, I have a fiduciary duty to
16 shareholders. I have duties and obligations, I
17 believe, to -- if you want to call it the affiliates
18 in terms of ratepayers, as I've said earlier, I
19 believe it was with Mr. Micheel, that we have a duty
20 to deliver safe and reliable service at reasonable
21 costs.

22 Q. And the basis of your understanding of
23 whatever fiduciary duties you have is what?

24 A. Well, the basis of my understanding for
25 my fiduciary duties to shareholders is my

1 understanding as the CFO and certainly as -- based
2 upon discussions with legal counsel. In this era
3 that we live in today, it's absolutely important that
4 you understand your fiduciary duties in this
5 post-Enron world that we live in. I think it's very
6 careful -- I mean, that's why we have Sarbanes-Oxley.

7 Among other things it's very important
8 that the chief financial officer as well as all
9 officers of a corporation understand their duties and
10 obligations to all stakeholders, and that fiduciary
11 obligation I'm referring to is the one that we have
12 to shareholders.

13 Q. Is your understanding of any of your
14 fiduciary duties based upon any documents that you've
15 reviewed that have been prepared for you?

16 A. Oh, I think that -- well, certainly my
17 understanding of the fiduciary duties is based upon
18 reviews of documents. Whether they were prepared
19 solely for my purpose, I can't say.

20 Q. Is your understanding of your fiduciary
21 duty or duties based upon any training that you may
22 have had?

23 A. Certainly we have had training
24 associated with Sarbanes-Oxley, we have corporate
25 governance training that is conducted.

1 Q. And what is the nature of that training?

2 A. That training is to educate officers
3 about corporate governance duties and obligations,
4 and it's done not just with officers, but it's also
5 done with our board of directors.

6 Q. Can you be more specific with regard to
7 the nature of the training?

8 A. In what way are you referring to,
9 Mr. Dottheim?

10 Q. Lectures, is it --

11 A. Well, there have been discussions at
12 board meetings. Certainly with regard to corporate
13 governance activities, we have a corporate governance
14 compliance policy -- I don't know if I have the right
15 term -- that talks about duties and obligations. And
16 so -- and certainly, there have been trainings
17 associated with Sarbanes-Oxley and the like that I
18 have participated in.

19 So I think that are -- it's in those
20 contexts that I understand some of these duties.

21 Q. Do you know if there's any potential
22 conflict amongst your fiduciary duties for these
23 various organizations for which you are an officer?

24 A. Mr. Dottheim, what do you mean by
25 "conflicts"?

1 Q. As far as the fiduciary duties that you
2 owe to Ameren Corporation while at the same time you
3 may owe fiduciary duties to an affiliate of Ameren
4 Corporation; is there any potential, as you
5 understand it, for a conflict?

6 A. If you're asking me to consider all
7 possible instances, I can't speak to that. From
8 where I sit, I think that if you -- if you understand
9 that your fiduciary duty -- you have to understand
10 the hat that you wear. If your fiduciary duty is to
11 your shareholder, then you act accordingly.

12 And I don't see -- I don't see any
13 particular conflict that I have in my role as CFO of
14 Ameren Corporation or my role in dealing with that
15 shareholder, or is my role as CFO of Ameren UE
16 dealing with this shareholder, which happens to be
17 Ameren Corporation, which happens to have the same --
18 it has its own set of shareholders. I don't see any
19 conflict.

20 Q. But you've indicated there are other
21 fiduciary duties other than the shareholders, have
22 you not?

23 A. I said there are other duties.

24 Q. Okay.

25 A. And I think -- I believe I -- I'm sorry,

1 Mr. Dottheim. I know I spoke about this before. I
2 think that this -- this duty, for instance, to
3 ratepayers and the duty to shareholders, that doesn't
4 have to be in conflict. In fact, I think it's been a
5 compact that we have worked very well in the past as
6 indicated by our very low rates and as indicated by
7 our solid returns. So they work -- they can work
8 hand in hand very well if done properly.

9 Q. Again, going back to the training that
10 you've received on fiduciary duties, you don't recall
11 there ever being any discussion of any potential for
12 conflict of fiduciary duties amongst the companies of
13 which you're an officer?

14 A. No conflicts that I recall being
15 discussed, as long as you follow the rules of which
16 you have to operate under for those affiliates and
17 others.

18 Q. I'd like to direct you again in your
19 direct testimony, Exhibit 1, to page 30, line 2. And
20 I'd like, in particular, to direct your attention on
21 line 2 to the word "unlawful." On what basis are you
22 using the word "unlawful"?

23 A. I think on the basis upon which you
24 would understand it. It would be against the law
25 for -- to accept Public Counsel's position that EE,

1 Inc. as a board member, regardless of who that
2 employer is, must vote to minimize EE, Inc.'s
3 profits. That's the context of which that says.

4 Q. And again --

5 A. AmerenUE -- if I can refer, maybe that's
6 the best way to describe it, Mr. Dottheim. "Not only
7 does AmerenUE which holds 40 percent of the shares of
8 EE, Inc. lack the power to force EE, Inc.'s board to
9 do anything, it would be unlawful and improper to
10 accept Public Counsel's position that EE, Inc. board
11 member, regardless of who his or her employer is,
12 must vote to minimize EE, Inc.'s profits by, in
13 effect, redirecting benefits to its shareholders who
14 are legally entitled to AmerenUE's ratepayers."
15 That's the context.

16 Q. And your use of the word "unlawful,"
17 again, you're not an attorney, are you?

18 A. I'm not an attorney, that is correct.

19 Q. And as a consequence, what are you --
20 what are you basing your --

21 A. I base that on the advice of counsel.
22 And I believe we have provided testimony to that
23 effect by Professor Downs in this rate case.

24 Q. If I could refer you to your rebuttal
25 testimony which is Exhibit 2, page 9, line 12, and

1 I'd like to refer you to the word "unlawfully."

2 A. Yes, sir.

3 Q. And what is the basis of your use of the
4 term "unlawfully" in that sentence?

5 A. And again, Mr. Dottheim, I'm not an
6 attorney. It's upon the advice of counsel and
7 understanding the issue over the last couple years in
8 terms of what this is all about as well as certainly
9 reading the testimony from Professor Downs and others
10 addressing this issue.

11 Q. Sorry to ask you to jump back and forth,
12 Mr. Baxter, but again, if I could direct you to
13 page 30 of your direct testimony.

14 A. Uh-huh.

15 Q. Line 3, and I think you've already noted
16 your use of the word "improper." In what context are
17 you using the word "improper"?

18 A. Well, I don't think the Commissioners
19 want me to read that whole paragraph again that I
20 just read. It's in the context of that whole
21 paragraph.

22 Q. All right. Also on that same page I'd
23 like to direct you to line 5, the phrase at the end
24 of line 5, "legally entitled to."

25 A. Yes.

1 Q. Yes. On what basis are you using the
2 phrase "legally entitled to"?

3 A. Again, it's my understanding of the
4 issue as explained to me by counsel in reading and
5 understanding this issue if not from, again, the
6 Metro East, but the documents associated with this
7 case, as were the other statements.

8 Q. Okay. Again, one last time I'd like to
9 refer you to your rebuttal testimony, Exhibit 2,
10 page 13.

11 A. Sure. Page 13, Mr. Dottheim?

12 Q. Yes. Lines 10 to 11. You make the
13 statement, "Aside from the legal issues associated
14 with retroactively moving allowance revenues into the
15 proposed regulatory liability," do you not?

16 A. I do.

17 Q. Your reference to retroactively moving
18 allowance revenues into the proposed regulatory
19 liability, is that a legal issue --

20 A. It is.

21 Q. -- if you know?

22 A. It is.

23 Q. And on what basis are you making that
24 statement?

25 A. Advice from counsel.

1 Q. Okay. Mr. Baxter, if I understood some
2 of your answers to Mr. Lewis (sic), I think you
3 indicated that directors have a fiduciary duty to
4 maximize a profit for the shareholders; is that
5 correct?

6 A. Yes.

7 Q. I'd like to direct you again to the
8 bottom of page 36 of your direct testimony. Bottom
9 of page 36 of your direct testimony. There's a
10 sentence at the bottom of page 36 that carries over
11 to the top of page 37.

12 A. Line 22, is that what you're referring
13 to, Mr. Dottheim?

14 Q. Yes, Mr. Baxter.

15 A. Okay.

16 Q. Where you state, "Finally, I would note
17 as explained in Mr. Weiss's direct testimony that the
18 company has provided additional support for the
19 increase in its rates requested in this case because
20 of the application of the Commission's depreciation
21 rule, 4 CSR 240-10.020 which would lawfully entitle
22 the company to an additional \$386,744,000 in revenue
23 requirement." Did I read that correctly?

24 A. You did.

25 Q. Okay. AmerenUE is not seeking recovery

1 of that additional \$386,744,000 which you assert it
2 is lawfully entitled to, is it?

3 A. No. We -- we -- we cite that as further
4 support as to why we believe the rate increase we
5 have requested is appropriate.

6 Q. Is that not a breach of the board of
7 directors of AmerenUE's fiduciary duty to not seek
8 recovery of that \$386,744,000?

9 A. No, I don't believe so. I think it is
10 an issue that obviously one has a legal debate, and
11 we believe to establish a fair and appropriate return
12 for our rate -- excuse me, our shareholders as well
13 as have a fair and appropriate return in this rate
14 case, that all we need to seek is the monies that
15 we've asked for in this case.

16 Q. Mr. Baxter, while you were a member of
17 the senior team, did it ever discuss the conclusion,
18 the end of the EE, Inc. contract with the sponsoring
19 companies, in particular, with AmerenUE on December
20 31, 2005, and what would occur after that date?

21 A. Are you -- Mr. Dottheim, is your
22 question whether the expiration of the contract
23 between EE, Inc. and AmerenUE was discussed at some
24 point during a senior team meeting?

25 Q. Yes.

1 A. Is that your question? As opposed to --
2 your question as opposed to that we discussed this as
3 the senior team with Kentucky Utilities as an
4 example? Is it the former?

5 Q. I'm just asking the former, yes.

6 A. Okay. Yes. I think the fact that the
7 contract was going to expire was known by the senior
8 team, certainly.

9 Q. What were the nature of the discussions
10 of the senior team upon the impending conclusion of
11 that contract as far as the effect on AmerenUE?

12 A. Well, I think as far as the effect on
13 AmerenUE, I think the -- the -- what do you mean by
14 that, Mr. Dottheim?

15 Q. Were there discussions as far as ever
16 seeking to continue that contract to extend it beyond
17 December 31 of 2005?

18 A. I don't recall those discussions ever
19 taking place because that was a decision for the EE,
20 Inc. board.

21 Q. Were there ever any discussions
22 regarding the position being taken by Kentucky
23 Utilities regarding the conclusion, the end of the
24 contract as of December 31, 2005, and its
25 continuation or possible continuation?

1 A. I -- to the best of my recollection, I
2 don't know if that was done with the entire senior
3 team or not, but I was aware that Kentucky Utilities
4 was considering seeking extension of that contract.

5 Q. Do you know whether Kentucky Utilities
6 actually did seek extension of that contract?

7 A. It is my understanding that they had
8 discussions. Whether they formally sought to extend
9 that, that I'm not sure of, but I certainly know that
10 was an issue that was brought up. I'm not sure what
11 formal actions they took beyond that.

12 Q. Were there any individuals who were
13 AmerenUE's representatives on the EE, Inc. board of
14 directors?

15 A. Were there any individuals that worked
16 for AmerenUE that were on AmerenUE -- or EE, Inc.'s
17 board? Yes. Yes, there were.

18 Q. Could you identify, if you know who
19 those individuals presently are? Should I -- let me
20 put a time frame on that.

21 A. Well, at the time the decision was made,
22 you had on the board, I believe, Tom Voss, David
23 Whiteley and Dan Cole who I believe were also
24 AmerenUE board members. And I may not have that
25 exactly right, and I may not have everybody, but I

1 certainly can speak for Mr. Voss and Dan Whitely and
2 Mr. Cole as well.

3 Q. Do you recall whether Mr. Naslund -- a
4 Mr. Naslund was on the board?

5 A. Oh, yes. Thank you, yes, yes, that's my
6 recollection as well. Thank you.

7 Q. One moment, please. Are any of those
8 individuals that you just named members of the senior
9 team? Were they members of the senior team?

10 A. Yes. At that time Mr. Cole, Mr. Voss
11 and Mr. Naslund were members of the senior team, I do
12 believe.

13 MR. DOTTHEIM: Thank you, Mr. Baxter.
14 You've been very patient.

15 THE WITNESS: You're welcome,
16 Mr. Dottheim.

17 MR. DOTTHEIM: Thank you.

18 JUDGE WOODRUFF: Mr. Dottheim, do you
19 wish to offer Exhibit 254?

20 MR. DOTTHEIM: Yes, at this time I would
21 like to offer Exhibit 254 into evidence.

22 JUDGE WOODRUFF: All right. Exhibit 254
23 has been offered into evidence. Are there any
24 objections to its receipt?

25 (NO RESPONSE.)

1 JUDGE WOODRUFF: Hearing none, it will
2 be received into evidence.

3 (EXHIBIT NO. 254 WAS RECEIVED INTO
4 EVIDENCE AND MADE A PART OF THE RECORD.)

5 JUDGE WOODRUFF: And then we'll come up
6 to the bench for questions from the bench, beginning
7 with Commissioner Murray.

8 QUESTIONS BY COMMISSIONER MURRAY:

9 Q. Good afternoon, Mr. Baxter.

10 A. Good afternoon, Commissioner.

11 Q. Can you explain -- and I know you've
12 been asked quite a few questions about this, but in
13 terms of the EEI contract and the point in time in
14 which there could have been at least a request for a
15 renewal, I can't determine from what has been asked
16 and answered here so far what thought process or what
17 analysis that AmerenUE went through to determine
18 whether or not to seek renewal of that contract?

19 A. Well, Commissioner, I think that from
20 AmerenUE's perspective it was -- it was not
21 AmerenUE's ultimate, really, decision. It was
22 certainly a decision by the EE, Inc. board. And our
23 view was that the EE, Inc. board has an obligation to
24 maximize profits for its shareholder, which happen to
25 be AmerenUE.

1 And so the analysis, I think, was -- and
2 from the EE, Inc. board members' perspective -- and I
3 can't speak for them since I wasn't a board member --
4 but certainly from their perspective was do I extend
5 a cost-based contract understanding my fiduciary
6 duties, or do I, given that the fact is now that you
7 have a wholesale market out there for this power,
8 especially with the advent of MISO or do I simply
9 seek it and take that power to market upon the --
10 the -- the -- the -- the expiration of this contract.

11 Q. Okay. I understand that from the EI
12 standpoint, but from AmerenUE's standpoint, did not
13 AmerenUE have the opportunity to at least request the
14 renewal of the contract?

15 A. Well, certainly I guess AmerenUE had
16 that opportunity to request it, but, Commissioner
17 Murray, from AmerenUE's perspective, if -- if -- if
18 you believe that you have a fiduciary obligation --
19 and this is a -- a -- an investment which was a
20 shareholder investment, it is not an above-the-line
21 ratepayer investment. If it's a --

22 Q. Whose fiduciary duty are you talking
23 about?

24 A. I'm talking about AmerenUE's now.
25 Excuse me. From AmerenUE's perspective, if it is

1 a -- if it is a investment that from 1950 was a
2 nonrate-based investment whereby the shareholders
3 bore the entire risks for that enterprise for the
4 last 50-some-odd years, then their obligation was to
5 their shareholders.

6 And so from AmerenUE's perspective,
7 their obligation, then, is to their shareholder which
8 is Ameren Corporation which, as you know, has, you
9 know, over 200 million shares outstanding to other
10 shareholders.

11 So it was -- in AmerenUE's fiduciary
12 obligation, it was an appropriate thing for them not
13 to seek to have -- well, it was an EE, Inc. decision
14 at the end of the day, but it would be contingent
15 with Ameren's obligations as -- their fiduciary
16 obligations, they were aligned with EE, Inc.'s.

17 Q. Okay. And Kentucky Utilities, did they
18 have a fiduciary duty as well?

19 A. I do believe they did.

20 Q. Is it your opinion that they were not
21 acting in accordance with it?

22 A. Commissioner -- yes, I certainly can't
23 speak for the actions of Kentucky Utilities, and to
24 the best of my knowledge no one has certainly put on
25 testimony here, but, yes, I think that they took

1 actions inconsistent with that fiduciary duty.

2 I guess, Commissioner, to put it another
3 way, you know, at the end of the day, if a
4 shareholder put their money up for this investment
5 and has obviously bore all those risks to that
6 investment, and at the end of the day those
7 obligations were honored through the contracts and
8 that contract expired, you know, the shareholder
9 would simply ask, well, why would you extend the
10 cost-based contract?

11 And I think from AmerenUE's perspective
12 and then from an Ameren Corporation perspective, that
13 was the ultimate driver.

14 Q. Okay. I'm going to switch gears here a
15 minute --

16 A. Sure.

17 Q. -- and ask you regarding the issue of
18 Callaway and the fact that your testimony is that
19 you've not made a decision yet as to whether to apply
20 for recertification; is that what it's --

21 A. Relicensing, I believe, is the proper
22 term.

23 Q. And the other parties are claiming that
24 you have a duty to be preparing for replacement of
25 that fuel source. If you're not intending to get it

1 relicensed, what -- what is the position on that?
2 Are you planning an alternative fuel source or are
3 you -- are you not planning anything at this point
4 or --

5 A. Commissioner, Chuck Naslund is certainly
6 going to be on the witness stand, and I think it
7 would be certainly appropriate for him to answer
8 that. But from our perspective with regard to
9 Callaway, what we've said is that the relicensing
10 process is not a perfunctory process in that we -- we
11 have not said that we will not seek to relicense
12 Callaway, but what we have said is that to do it
13 prematurely doesn't necessarily make sense. And
14 there are a number of factors ultimately that need to
15 be considered.

16 Of course, regulatory review by the NRC
17 is not a perfunctory review. And so we don't take
18 that lightly. As any regulatory regime, you don't
19 take lightly the actions of regulators.

20 But also, I think Mr. Naslund points out
21 that there are other issues which ultimately could
22 cause us not to seek relicensing. Potentially, you
23 know, the condition of the reactor, water levels in
24 the Missouri River, God forbid, you know, terrorist
25 activities. These types of things are all factors.

1 But we're not suggesting that we can't
2 guarantee that -- that we will get the relicensing
3 activity. And should that be the case, we'll have to
4 take other steps. But as we sit here today, we think
5 it's still premature.

6 Callaway is only halfway through their
7 license, so the ultimate decision has not been made.

8 Q. And I'm just gonna ask you from a policy
9 standpoint. I realize there are other witnesses that
10 are here for each one of these issues, but from a
11 general policy perspective, why is Ameren attempting
12 to limit the percentage of rate increase that could
13 go to the residential customers?

14 A. Commissioner, that -- I know that this
15 is an important issue to many of our people here in
16 the room. When we made that decision, it was simply
17 to try and protect our most vulnerable customers from
18 our perspective to sizeable rate increases. And it
19 was really about as simple as that and coupled with
20 the fact that we thought that the other consumer
21 classes would have the ability to potentially absorb
22 those rate increases and operate their business.

23 Now, we recognize -- I recognize that,
24 you know, this is a major issue and it ultimately
25 comes down to rate design and that you'll have

1 several pieces of testimony by many in the audience
2 that's addressing this issue.

3 From Ameren's perspective, the most
4 important thing that we are seeking in this case is
5 full recovery of our prudently incurred cost, a
6 return of and a reasonable return on our investments.
7 That's -- that's the primary position.

8 Should the Commission, after they review
9 all the testimony in terms of rate design, decide to
10 do something that they believe is in the best
11 interest of the State of Missouri, we understand that
12 and certainly we are flexible in terms of -- of
13 course, we're flexible in terms of your order, but we
14 will leave that to the Commission's decision.

15 Q. When other rate classes such as the
16 large industrials, for example, are burdened with
17 more than their share of the -- of any increase, does
18 that not tend to negatively impact economic
19 development in this case?

20 A. Commissioner, that certainly is a
21 possibility, and to the extent, you know, that the
22 ultimate rate increase and the development of rate
23 design if the Commission believes that from a
24 regulatory policy perspective that they could be
25 designed in a different fashion to promote more

1 economic development, I certainly would understand
2 that.

3 Q. And doesn't that ultimately flow through
4 in costs? Not utility costs, but other costs to
5 those same people?

6 A. Potentially, that's correct, that is
7 right. I wouldn't disagree with that assumption.
8 That is certainly a possibility.

9 COMMISSIONER MURRAY: All right. I
10 think that's all I have. Thank you.

11 THE WITNESS: Sure, Commissioner.

12 JUDGE WOODRUFF: Commissioner Gaw.

13 QUESTIONS BY COMMISSIONER GAW:

14 Q. Good afternoon, Mr. Baxter.

15 A. Good after, Commissioner Gaw. How are
16 you?

17 Q. I'm well. How are you doing?

18 A. I'm well, thank you.

19 Q. Let me follow up a little bit with
20 Commissioner Murray's inquiry on the Callaway plant.
21 Are you telling -- are you telling us that you would
22 prefer that we direct our questions regarding the
23 future of the Callaway plant to another witness
24 besides yourself?

25 A. I think that witness Naslund, Chuck

1 Naslund would be in a better position to answer the
2 details associated with the Callaway relicensing
3 process. I can speak to it as I did with
4 Commissioner Murray on an overall policy basis.

5 Q. Well, would you -- what portion -- well,
6 it's probably HC. Does the Callaway plant make up a
7 significant portion of your base load portfolio for
8 UE?

9 A. Yes, it does, Commissioner.

10 Q. And would it -- would it be the case
11 that the discussion of the future of a plant of that
12 magnitude would not come for a policy-decision
13 discussion among the top tier of Ameren officials?

14 A. It would, certainly.

15 Q. And your testimony is that the future of
16 the Callaway plant is very much in question today; is
17 that your testimony?

18 A. No, no, Commissioner. What we're saying
19 is that the future of the Callaway plant in terms of
20 the relicensing process, we have not made -- taken
21 the steps or made the decision ultimately to
22 relicense because we think there are facts and
23 circumstances surrounding that decision-making
24 process. We don't feel the need today to make that
25 decision.

1 Q. You don't feel the need to make the
2 decision in regard to whether or not the reactor
3 should continue to be a part of your portfolio?

4 A. Well, beyond its relicensing period.

5 Q. So you have a plan --

6 A. Excuse me. By -- excuse me,
7 Commissioner. By its current license, that's what I
8 meant.

9 Q. And again, when does that license
10 expire?

11 A. 2024, I believe.

12 Q. All right. And so you have currently
13 some plans for some other replacement for that -- for
14 that facility?

15 A. No, not at this time, Commissioner.

16 Q. Is there any -- any contemplation of
17 moving toward some different reactor or generating
18 unit to replace Callaway subsequent to 2024?

19 A. No, not at this time, Commissioner. I
20 mean, Commissioner, I think the important --

21 Q. That's all right.

22 A. Okay.

23 Q. Now, in regard to -- in regard to the
24 plant, let me ask you this: Is there -- do you
25 follow -- do you follow the discussions of

1 legislation in Congress regarding energy issues?

2 A. I certainly do.

3 Q. Do you -- do you believe that the
4 discussion regarding additional restrictions on
5 carbon emissions is a factor that should be
6 considered when you're evaluating whether or not
7 certain plants continue to exist or new plants are
8 being built?

9 A. Absolutely.

10 Q. And tell me how much carbon emission you
11 have out of the Callaway nuclear facility.

12 A. None.

13 Q. So if we are looking at the potential
14 for additional carbon restriction, would you say that
15 that's a negative, a neutral or potential positive
16 for the continuation of the Callaway facility?

17 A. Commissioner, that's certainly a
18 positive.

19 Q. And do you regard the potential for the
20 passage of additional carbon restriction as being
21 fairly significantly positive in the next four years?

22 A. Make sure I understand. It's not a
23 positive development necessarily, but I think it is a
24 likely scenario if that's --

25 Q. In other words, you don't want -- you

1 don't want us to get into a discussion about whether
2 it's a positive or a negative development from a --
3 from a global warming perspective, do you?

4 A. That's a fair statement. But my
5 statement was more directed --

6 Q. Because I thought I heard you suggesting
7 that you wanted that discussion to take place.

8 A. No, I did not. I did not. I was
9 thinking in terms of the impact of ratepayers,
10 however.

11 Q. Well, in the -- relative to the
12 decision-making that goes on, first of all, let me
13 ask you just again that question: Do you view the
14 possibility of the passage of additional restrictions
15 on carbon by Congress to be fairly likely, likely,
16 unlikely? You gauge it and tell me what you think.

17 A. I think, Commissioner, based upon my
18 understanding of discussions with key legislative
19 personnel, I think it is a more likely than not
20 assessment that within the next three to five years
21 you will have carbon legislation passed.

22 Q. Tell me if I'm wrong with this
23 perception. Have there been discussions in the media
24 with some of your officials from Ameren regarding the
25 possibility of adding an additional nuclear facility

1 at the Callaway location?

2 A. There have been discussions associated
3 with -- there have been -- there are tests going on
4 around the Callaway nuclear unit site as to the
5 possibility of adding a future nuclear -- and whether
6 that would be an AmerenUE unit or someone else
7 building a unit on that site, those are just
8 assessments, and decisions have not been made at this
9 point in time.

10 Q. Is EEI contemplating an investment on
11 that location?

12 A. Not to the best of my knowledge.

13 Q. Oh, okay. Just thought I'd check. Now,
14 if I could ask you regarding the issue of that
15 possibility without -- without trying to pin you down
16 on whether or not that's going to occur or not, is
17 that discussion that has been had publicly
18 contemplating the closure of the current plan?

19 A. No, not at this point in time, no,
20 Commissioner.

21 Q. And, indeed, is it not a discussion that
22 would be an additional plant to -- if it occurred, to
23 be functioning along with the current plan?

24 A. That's correct.

25 Q. I want to talk with you a little bit

1 more about EEI if you don't mind.

2 A. Certainly.

3 Q. First of all, the ownership of EEI is,

4 again, 40 percent UE; is that correct?

5 A. That's correct.

6 Q. 40 percent Ameren -- what's the name --

7 A. Resource -- Energy Resources.

8 Q. Yeah, Energy Resources. AER?

9 A. I believe that's correct.

10 Q. Okay. And 20 percent Louisville?

11 A. Yes, Kentucky Utilities.

12 Q. Kentucky -- which -- which is the proper

13 name?

14 A. I think it's actually Kentucky Utilities

15 which is owned by Louisville Gas & Electric which is

16 own by E.ON, if I have the corporate structure there

17 proper.

18 Q. Is Kentucky Utilities itself a regulated

19 entity?

20 A. I believe they are.

21 Q. Regulated by whom other than --

22 A. I believe -- oh, I'm sorry. Excuse me,

23 Commissioner.

24 Q. On the state level?

25 A. On the state level, I assume by the

1 Kentucky Public Service Commission.

2 Q. Okay. And, now, did the Kentucky
3 Utilities contract expire at some point in time?

4 A. It expired at the same time. I believe
5 it was December 31st, 2005.

6 Q. And it was --

7 A. It was with UE.

8 Q. -- was not renewed? It was not renewed?

9 A. That's correct.

10 Q. Did Kentucky -- and Kentucky Utilities,
11 however, advocated for its renewal?

12 A. That's my understanding.

13 Q. Can you tell me who makes up the board
14 of EEI?

15 A. It consists of representatives from
16 Ameren Energy Resources, representatives from
17 AmerenUE and representatives from Kentucky Utilities.

18 Q. And do you know who they are?

19 A. Earlier I believe I -- today I believe
20 those members consist of Tom Voss, Dan Cole, Alan
21 Kelley, Andrew Serri, Chuck Naslund and there may be
22 others from Ameren Corporation. And I do not know
23 who represents Kentucky Utilities.

24 Q. Does each one of those members have a
25 vote on issues from the Ameren affiliates or are the

1 votes divided up in a certain way so that there's 40
2 percent from UE and 40 percent from AER?

3 A. It's my understanding, Commissioner,
4 that it's 40 percent for UE, 40 percent for AER and
5 20 percent for Kentucky Utilities.

6 Q. All right. I want you to tell me who
7 the AER representatives are and who the AmerenUE
8 representatives are. And I want to know specifically
9 whether -- what their positions are with each entity.

10 A. Sure.

11 Q. And if they have multiple positions with
12 both entities or other entities within Ameren, I want
13 to know what those positions are as well.

14 A. Certainly. To the best of my knowledge,
15 I think it's actually -- well, Tom Voss is president
16 and CEO of AmerenUE, Chuck Naslund is chief nuclear
17 officer of AmerenUE, Alan Kelley is the president and
18 CEO of our nonregulated generation entity, Andy Serri
19 is a -- I believe a senior vice president reporting
20 to Alan Kelley for Ameren Energy Marketing, and
21 Commissioner, I'm not sure what other -- oh, Dan Cole
22 is a member of AmerenUE's board. He's a senior
23 vice president.

24 Q. Do any of them hold additional positions
25 in any other entity besides the one that you

1 mentioned for each of them?

2 A. Dan Cole is a member of Ameren Services
3 Company, and so he -- he -- he serves the -- the
4 other companies as part of our Ameren Services
5 Company. Whether -- I'm not a -- I'm not aware of
6 whether he sits on other boards of other affiliates
7 within the Ameren families. But beyond that it's my
8 understanding that Tom Voss and -- and Chuck Naslund
9 are solely dedicated to AmerenUE.

10 Q. Do they have any -- so I have -- maybe I
11 didn't write this down correctly. I only have two
12 names for AER.

13 A. Yes, and there may be more,
14 Commissioner. I'm -- that's the best of my
15 recollection. I don't know if I have --

16 Q. Is that something you could supply at
17 some point?

18 A. Absolutely, we certainly could.

19 Q. And also you could update whether or not
20 they have other positions within -- within Ameren so
21 that I could see exactly what all those positions
22 are?

23 A. We'd be happy to provide that to you,
24 Commissioner.

25 Q. All right. And this -- the vote that

1 was -- that was -- was there a vote taken in regard
2 to continuing or renewing the contracts between UE
3 and EEI or Kentucky Utilities and EEI?

4 A. Commissioner, I don't know. Since I did
5 not attend that meeting -- I believe that there are
6 other witnesses in this case who could probably
7 provide that answer to you.

8 Q. Well, wasn't there a discussion among
9 the top UE officials regarding seeking the renewal of
10 that contract?

11 A. As I stated before, Commissioner, there
12 were discussions that we were aware that that
13 contract was expiring, and -- and that due to the --
14 to our fiduciary obligations, as we've discussed, the
15 decision was made not to -- not to renew that. Of
16 course, that was really an EE, Inc. decision at the
17 end of the day, it wasn't a decision made by the
18 senior team. It was the EE, Inc.'s decision, that
19 board.

20 Q. Well, it was a decision -- was it not a
21 decision of AmerenUE to decide whether or not it
22 would seek renewal of those contracts?

23 A. AmerenUE certainly could have sought and
24 chose not to because of its fiduciary obligation.

25 Q. Fiduciary obligation to the shareholders

1 as you said earlier?

2 A. That's correct.

3 Q. All right. Well, let me ask you this:
4 The power that was no longer available at cost from
5 EEI, I assume that AmerenUE didn't -- didn't suffer a
6 significant load loss that made that power -- access
7 to that power no longer necessary; would that be --

8 A. That's correct.

9 Q. So it had to be replaced somewhere?

10 A. Yes.

11 Q. Where was the power -- where did the
12 power come from to replace the loss of that EEI
13 contract?

14 A. Commissioner, I don't know if I can say
15 for certain, but my sense is it's a combination of
16 utilizing our existing generation as well as
17 potentially purchased power.

18 Q. And the other generation that was --
19 that was used for that, was that less expensive or
20 the same cost as the EEI generation that had cost
21 from EEI?

22 A. I would expect it was more expensive,
23 Commissioner.

24 Q. Yes. And -- and so you added cost onto
25 UE as a result of not having that contract continue,

1 correct?

2 A. Yes.

3 Q. And that was somehow good for your
4 shareholders; is that what you're telling me?

5 A. As it turned out, Commissioner, it was
6 a -- it was good for the shareholders as it stands
7 today, certainly.

8 Q. It was. Having additional expenses to
9 pay for generation has been good for your
10 shareholders up to this point in time?

11 A. I'm sorry, Commissioner. Could you say
12 that again, please? I misunderstood your statement.

13 Q. Your testimony is that it was good for
14 your shareholders to have UE have additional expense
15 for the power that was needed to serve UE's load
16 as --

17 A. Well, AmerenUE's shareholders have an
18 interest in EE, Inc., and so the incremental margins
19 associated with selling that power in the marketplace
20 was more favorable for the AmerenUE shareholders.

21 Q. That might be true standing on its own,
22 but I'm having trouble following you when you had to
23 replace that power with more expensive generation as
24 you just testified to. How does that net out? Did
25 you net it out and it's still -- still produced a

1 more positive result?

2 A. Certainly.

3 Q. Okay. Where -- and who has that
4 information?

5 A. Well, I think, Commissioner, the -- the
6 market prices that are out in the marketplace are
7 still above the -- if we utilize our existing
8 generation, those market prices are still above for
9 AmerenUE's shareholders at the end of the day.

10 Q. If I just look at the sales of EEI. But
11 I'm asking you if I have -- if I net out the
12 additional cost from -- in replacing the power that
13 I've lost at cost from EEI to UE, that figure still
14 generates a positive for UE; is that what you're
15 telling me?

16 A. I guess -- that's correct.

17 Q. Okay. Where -- and you must have looked
18 at those numbers when you made the decision not to
19 renew the contract. Tell me how much difference
20 there is and tell me what those figures are.

21 A. I do not have that analysis,
22 Commissioner.

23 Q. But you must have at one time to make
24 that decision. Somebody must have discussed it with
25 you.

1 A. I think the -- the decision when you
2 look at existing market prices for that power versus
3 the incremental costs, it was -- it was a better
4 decision -- remember, this was -- this was an EE,
5 Inc. decision, Commissioner.

6 Q. Well, it might have been an EE, Inc.
7 decision on the left hand, but on the right hand it
8 had to have been an AmerenUE decision not to seek
9 renewal of that contract. Help me to understand why
10 it was in AmerenUE's interest to lose access to power
11 at cost.

12 A. Well, Commissioner, I think the analysis
13 is that power prices in the marketplace are higher
14 than the cost that we had to replace that generation.

15 Q. Okay. And you saw those figures?

16 A. That analysis -- I have not seen a
17 specific analysis on that, but I know the general
18 cost of our generation would be for -- well, the
19 general cost of our generation versus what that could
20 get in the marketplace today, and those differences
21 would be meaningfully different.

22 Q. Okay. Tell me the breakdown of the
23 generation, then, that was used to replace it, then.

24 A. You know, Commissioner, again, not
25 knowing the specific analysis, but my sense is

1 that --

2 Q. Well, we -- this is a decision that I
3 assume -- and maybe you just don't remember, and I
4 understand that, but if -- but I'm hearing you say
5 there wasn't an analysis done specifically, it was
6 just general assumption that would be the case?

7 A. Well, I think --

8 Q. Which is correct? Was there an analysis
9 made that specifically said here's the bottom line
10 for UE: We get rid of this contract, we don't renew
11 this contract with EEI. And we replace it with power
12 that's purchased out there on the grid, and some of
13 it may be coming from our own generation units, the
14 type of which I still don't know at this point.

15 That kind of an analysis was made and
16 presented to you in the top level management, and UE
17 said, hey, this is better for our shareholders. We
18 see these numbers here. And that -- that kind of
19 analysis was made and presented to you.

20 A. I think the way the analysis -- well,
21 the way the discussion was, Commissioner, is that the
22 power prices in the marketplace could have ranged
23 anywhere from 45 to \$50 per megawatt hour. The cost
24 of generation associated with the replacement power
25 could have been somewhere between 20 and \$30 per

1 megawatt hour, and so that delta was meaningfully
2 different.

3 Q. And that was the information that was
4 presented to you?

5 A. It was not -- it was -- in general
6 discussions, we generally understood what those
7 issues would be. But I don't recall a specific
8 analysis or a spreadsheet that would show me that
9 specific information.

10 Q. And of course, that would have not been
11 true, would it, if -- if -- if this Commission says
12 that there was something that should be disallowed
13 about that additional expense because UE failed to
14 exercise its authority to vote those shares in favor
15 of continuing that contract?

16 A. Well, Commissioner --

17 Q. That assumption has to be made, does it
18 not?

19 A. Certainly, in part.

20 Q. Because you have --

21 A. Yes.

22 Q. -- you have to assume that this
23 Commission is going to tell the ratepayers of
24 AmerenUE it will be you that has to pay for that
25 difference so that the shareholders can get that

1 profit put in their pockets, correct?

2 A. Well, Commissioner, when that
3 decision --

4 Q. Is that not true?

5 A. Yes, sir.

6 Q. Thank you. Now, if I look at the
7 decision that was made by AmerenUE initially in
8 voting its 40 percent shares in the original contract
9 that was not extended, I assume that was done, that
10 they voted for that contract when they -- whoever was
11 sitting on the EEI board at the time it was
12 originally entered into or the last time it was
13 entered into, before this contract wasn't extended?

14 A. Are you talking about, Commissioner,
15 back in 1987? Is that what you're talking about
16 or --

17 Q. Tell me how many times that contract has
18 been entered and renewed.

19 A. Several times, Commissioner.

20 Q. Okay. And in all of those -- would you
21 say twice, five times? Just give me a general idea.

22 A. It's my understanding that that
23 contract's been modified in excess of ten times for a
24 variety of reasons.

25 Q. But all of the times it -- it was

1 reauthorized, was it basically an offering of the
2 power under the general terms and conditions of the
3 one that expired the last, whenever you said it
4 expired before?

5 A. Commissioner, I really won't -- I can't
6 speak to the specifics of all of those modifications.

7 Q. Did it offer basic -- did the last
8 contract provide power to UE from EEI basically at
9 cost?

10 A. That's my understanding, but Michael
11 Moehn who will be addressing the EEI --

12 Q. Well, I can ask him specifics about it.

13 A. Yes.

14 Q. But just in general, is that the case?

15 A. In general that is my understanding,
16 Commissioner.

17 Q. Okay. And you're saying that this last
18 vote that was -- that was cast by the UE
19 representatives of EE -- on EEI's board was a vote
20 representing their fiduciary duty to UE?

21 A. That's correct.

22 Q. And that Kentucky's vote on that board,
23 which was, I think, if I understood correctly, as
24 Commissioner Murray pointed out, a vote that was not
25 in the fiduciary interest of their utility?

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3 Q. All right. Well, that's okay. So I
4 would assume, then, that the prior votes on the ten
5 times or so that that contract was -- was entered
6 into by -- between UE and EEI and reauthorized, that
7 all those votes by the UE representatives logically
8 would have been against the fiduciary interest that
9 they held to UE?

10 A. No, I respectfully disagree,
11 Commissioner.

12 Q. I'm just trying to understand your
13 logic.

14 A. Well, sir, and the logic would be -- and
15 it wasn't until recently that we actually have an
16 open wholesale marketplace. In fact, when the
17 original contract for EEI was entered into, the only
18 real marketplace that was out there was the kind of
19 contract that they entered into, basically a
20 cost-plus type of contract. Those were the type of
21 bilateral contracts, because MISO, as you all know,
22 had not come into place, FERC had not put in many of
23 their new laws or regulations that really opened up
24 the marketplace.

25 And so really, UE or EE, Inc., EE, Inc.,

1 back then, voted in their -- consistently with their
2 fiduciary responsibilities because that was the best
3 type of contract that they simply could get. And
4 so now things have changed.

5 Q. To sell at cost to Ameren is the best
6 contract?

7 A. With a return. With a return.

8 Q. With a return?

9 A. Yes. Those -- those -- those were the
10 best contracts. Those were, for all practical
11 purposes, Commissioner, a market-based contract at
12 that point in time. But since then, things have
13 changed. And as you know very well, within the last
14 couple of years things have changed meaningfully.

15 And so as a result, now as EE, Inc. or
16 as UE's others, they look at the marketplace as much
17 different. And so there is a transparent marketplace
18 out there whereby these contracts can be entered into
19 readily, and so therefore, the fiduciary obligation
20 has been consistent and the decision was made to not
21 extend the existing contract.

22 Q. Was it -- was it the case that there
23 were no spot bilateral transactions taking place by
24 AmerenUE or any of the other utilities to the MISO
25 footprint prior to the Day 2 market in MISO?

1 A. I think back in -- to get a
2 full-requirements contract back in 1987, my
3 understanding is that was the best deal they could
4 have derived.

5 Q. That wasn't my question.

6 A. I'm sorry. I misunderstood, then,
7 Commissioner.

8 Q. My question was whether or not there
9 were -- there were spot market transactions that took
10 place within the MISO footprint prior to the opening
11 of a Day 2 market of the current MISO footprint.

12 A. Are you speaking potentially of MISO
13 Day 1 type of marketplace, is that what you're
14 referring to?

15 Q. Or even MISO day zero. Were there not
16 bilateral transactions taking place on a spot basis
17 with -- by Ameren UE and all of the other utilities
18 from time to time in the MISO footprint prior to --
19 prior to Day 2?

20 A. Potentially, yes.

21 Q. Potentially isn't the question at this
22 point. It's historical. Were there or were there
23 not?

24 A. I -- I -- I -- I do not know. I assume
25 certainly with regard to MISO Day 1, Commissioner,

1 that that absolutely took place.

2 Q. Well, how long have you been with
3 AmerenUE or Ameren itself now?

4 A. Ten years.

5 Q. That more than predates the opening --
6 the opening of MISO as an entity, correct?

7 A. Yes, that's correct.

8 Q. And you did during that time frame
9 review the books and records as CFO and your previous
10 roles in regard to sales and transactions that took
11 place with UE, didn't you?

12 A. I certainly did.

13 Q. And didn't you have spot market
14 transactions taking place during that time frame?

15 A. Commissioner, I -- to say -- I would
16 presume that we did.

17 Q. All right. Are EEI's current sales
18 subsequent to the expiration of these contracts all
19 done on -- in the day ahead or spot markets of MISO?

20 A. It's my understanding that they are not
21 all done just in the day-ahead marketplace.

22 Q. Some of them are done on longer term
23 contracts or not?

24 A. I believe that's correct.

25 Q. And are those -- any of those contracts

1 publicly known?

2 A. I don't believe so, Commissioner,
3 although I can't say for certain.

4 Q. Just tell me if I get into HC here.

5 A. Certainly.

6 Q. Are any of those contracts with Ameren
7 affiliates?

8 A. No, Commissioner, I'm not sure --
9 those -- the -- the sales from EE, Inc., if I recall
10 correctly, are to Ameren Energy Marketing, and then
11 Ameren Energy Marketing turns around and sells those
12 contracts outside to other third parties.

13 Q. So they are -- some of those contracts
14 are with Ameren affiliates, correct?

15 A. That's correct.

16 Q. Ameren Energy Marketing, what is the
17 function and role of AEM?

18 A. Function and role of AEM is to sell the
19 generation of our unregulated rate -- unregulated
20 rate -- or excuse me, unregulated generating
21 affiliate -- unregulated rate-regulated generation
22 affiliate. That's what I was trying to say. It's a
23 mouthful. Excuse me.

24 Q. Well, listen, I'll forgive you for that
25 one. That's easy to understand. Now, who does --

1 who does -- who does AEM sell power to?

2 A. Multiple third parties.

3 Q. And do they sell -- are they engaged in
4 the sale of power in Illinois?

5 A. Yes.

6 Q. Are they engaged in the sale of power in
7 the deregulated markets of Illinois?

8 A. Yes, they are.

9 Q. And are they -- do they sell directly to
10 an end-use customer or do they sell to load-serving
11 entities in Illinois?

12 A. Both.

13 Q. All right. Now, do you know the details
14 of the contract between AEM and EEI?

15 A. I do not know the specific details.

16 Q. Is there someone here who does know
17 that?

18 A. I mentioned Mr. Moehn may be someone who
19 you could ask that question to.

20 Q. Okay. Do you have any duties in
21 regard -- with regard to AEM?

22 A. No, I do not.

23 Q. AEM is a subsidiary of Ameren, the
24 holding company? Do you know?

25 A. I'm trying to make sure I understand

1 whether they -- if they're a subsidiary of Ameren
2 Energy Resources which ultimately is a subsidiary of
3 Ameren Corporation or a separate one, Commissioner.
4 I'm not certain of that.

5 Q. You mean they may be a subsidiary of
6 AER?

7 A. It -- well, I -- I -- I certainly -- I
8 simply don't know.

9 Q. Well, you do have a position with
10 Ameren, the holding company. I think I heard you say
11 that earlier.

12 A. I certainly do.

13 Q. And what is that position again?

14 A. Chief financial officer and president
15 and CEO of Ameren Services.

16 Q. Yes. Boy, there's another one.
17 Ameren -- is that Ameren Energy Services?

18 A. No, Ameren Services.

19 Q. Ameren Services.

20 A. Yes, sir.

21 Q. Okay. So in that position, don't you
22 have some familiarity with the corporate structure of
23 Ameren?

24 A. Oh, I certainly do, but with regard to
25 Ameren Energy Marketing, that -- again, there's

1 several subsidiaries, and how they're actually
2 legally structured, I -- I -- I just don't know all
3 those issues.

4 Q. All right. Well, I'm sure someone does.

5 A. We can certainly provide that
6 information to you, Commissioner. Happy to do so.

7 Q. I would -- I would really like to know
8 that because -- so I can understand how all of these
9 entities interrelate. That would be helpful.

10 A. Sure.

11 JUDGE WOODRUFF: Commissioner Gaw,
12 before we go into a new area, we've been going for
13 about two hours.

14 COMMISSIONER GAW: Do you want a break?

15 JUDGE WOODRUFF: We need to take a
16 break.

17 COMMISSIONER GAW: I'd love that.

18 JUDGE WOODRUFF: All right. Let's take
19 a break. We'll come back at 3:20.

20 (A RECESS WAS TAKEN.)

21 JUDGE WOODRUFF: All right. Let's come
22 back to order, please. All right. We're back on the
23 record. And Commissioner Gaw, if you wish to
24 continue with your questions.

25 COMMISSIONER GAW: Thank you, Judge.

1 BY COMMISSIONER GAW:

2 Q. You didn't come up with any new
3 information for me on the break, did you, about how
4 that ownership is?

5 A. No, I apologize. We can -- we are still
6 gonna gather that information for you, Commissioner.
7 I apologize.

8 Q. No, no. I just thought I'd check just
9 in case.

10 A. Yeah. You're referring to the -- to the
11 corporate structure, is that what you're referring
12 to?

13 Q. Yes.

14 A. Yes. I apologize, I did not do that.

15 Q. Did you find other information?

16 A. No, no.

17 Q. Regarding the -- regarding the issues of
18 amount of expenditures by AmerenUE on certain
19 subjects, I want to ask you who it is that's likely
20 to have the best information on budget expenditures
21 on these issues. Tree trimming?

22 A. Ron Zdellar.

23 Q. Okay. And infrastructure and
24 infrastructure replacement?

25 A. In part would be me as well as Michael

1 Moehn.

2 Q. Okay. Give me a little bit of an idea
3 about your -- depth of what you can talk about on
4 infrastructure replacement and budgeting.

5 A. Sure. I think I can certainly speak to
6 the budget that we have over the next five years.
7 When you get into the specifics of projects, then I
8 would suggest that the -- if you want to get into
9 those types of specifics, there's probably three
10 individuals who could be of very good assistance.
11 One would be Mark Birk on the fossil, the coal
12 plants; it would be Chuck Naslund on Callaway; and
13 then it would be Ron Zdellar on the distribution
14 system. Those -- if you want to get into the project
15 basis, Commissioner.

16 Q. Specifically I'm looking for a history
17 right now on infrastructure, in particular, the
18 distribution system.

19 A. Ron Zdellar, then, clearly is the right
20 person.

21 Q. Okay. And you wouldn't have much in the
22 way of specific information on that?

23 A. No, I would not.

24 Q. You did have some testimony in regard
25 to -- I think in regard to amount of expenditures on

1 infrastructure, didn't you, in your testimony?

2 A. Yes, and it was in total but not by --

3 Q. That's what -- that was my next question
4 was whether or not you had broken that down according
5 to expenditures on -- on distribution systems.

6 A. Yeah. No, no, no Commissioner. I
7 talked about the \$2.6 billion that we spent between
8 2002 to the current case but have not broken it down.
9 Certainly, that data is available, but I do not have
10 that with me.

11 Q. Do you know if Mr. Zdellar has broken
12 that down?

13 A. He has certainly -- we have information
14 and certainly he will be able to present information
15 or discuss the -- if you're looking on the
16 distribution system?

17 Q. Yes.

18 A. Yes, he would be -- he would have
19 knowledge of that.

20 Q. Okay.

21 A. In whatever format you would like to
22 have that, we can make sure we can --

23 Q. Well, part of the reason I'm asking you
24 right now is so someone will -- in -- because I know
25 there's testimony that will be introduced, but from

1 my standpoint, I intend to ask questions specifically
2 about the level of expenditures over the past several
3 years.

4 A. We will have him prepared to address
5 your questions on that.

6 Q. Okay. Now, I want to talk about Taum
7 Sauk for a little bit.

8 A. Certainly.

9 Q. It's my understanding that at one point
10 in time in this filing there was some request for
11 some amount to be included in rates regarding
12 recovery of the Taum Sauk incident.

13 A. Commissioner, that was done in error.

14 Q. I'm not necessarily disputing or trying
15 to argue that point.

16 A. No, I think that's --

17 Q. No, I'm just trying to understand. If
18 you would specifically tell me what was originally
19 included, if that was done in error?

20 A. I think, if I recall correctly -- and
21 Gary Weiss will be able to say specifically, but I
22 think it was \$10 million.

23 Q. Do you know what that was for?

24 A. I don't recall if it was for replacement
25 power or O&M, I don't recall. But \$10 million is the

1 number that -- it sounds like the number that was
2 ultimately removed from the request.

3 Q. Okay. Do you know in general in regard
4 to this case whether there's any issue in regard to
5 the loss in sales opportunities and what amount --
6 what figure has been placed into the case if it's not
7 disputed?

8 A. I don't believe it's in dispute,
9 Commissioner.

10 Q. That was generally my understanding.

11 A. Yeah.

12 Q. But I'm trying to understand, there
13 was -- there was some assumption made in regard to
14 lost opportunities and -- and there was some figure
15 substituted in. Are you familiar with that?

16 A. I think, Commissioner, basically in this
17 case we just assumed that Taum Sauk is not -- well,
18 that Taum Sauk has never left the system so there are
19 models that basically reflect that.

20 Q. Okay.

21 A. And I think there are a couple of
22 questions around how Taum Sauk would be handled in
23 the fuel adjustment clause, and I think that we
24 have -- I believe our witness Marty Lyons has been
25 responsive to that particular issue.

1 Q. Now -- and there is nothing in the rate
2 case regarding any of the expenditures that had been
3 had, whether they were from Ameren's -- Ameren's
4 pockets, for lack of better wording, or from any
5 other source?

6 A. No. To the best of my knowledge, no.

7 Q. Was there insurance money involved in
8 paying for some of the damages as a result of the
9 incident?

10 A. We believe that ultimately insurance
11 will cover a good portion or the vast majority of the
12 damages, but it doesn't really -- those -- those
13 insurance costs are not really affecting the case one
14 way or another because we're not flowing through the
15 expenditures either.

16 Q. I'm -- just say what you said at the
17 very end again, please, or say it in another way.

18 A. Well, the -- the -- the insurance
19 recoveries, to the extent that we have any -- and we
20 haven't received insurance recoveries for all the
21 expenditures for Taum Sauk -- they're not reflected
22 in the case either because we have not put the
23 expenditures in the case as well.

24 Q. Okay. Now, what -- what kind of
25 insurance is there that Ameren believes is available

1 or has been utilized already?

2 A. The --

3 Q. Just generally speaking.

4 A. Sure. Well, there's liability insurance
5 and then there's property insurance. Property
6 insurance really goes to the -- my understanding goes
7 to the -- to the rebuild of -- the potential rebuild
8 of the plant, and the liability insurance goes to the
9 damage that was caused.

10 Q. Are these third-party insureds that are
11 involved or is it self-insurance?

12 A. Third-party insureds principally.

13 Q. Okay. And can you tell me who they are?

14 A. I know that Egis and Lloyds of London
15 are two of those, and I think there are multiple
16 carriers at different layers, Commissioner, that I
17 don't know all of them.

18 Q. Okay.

19 A. But there are several.

20 Q. All right. And do you know whether or
21 not there has been any adjustment to premiums that
22 Ameren is paying as a result of the incidents --
23 incident?

24 A. As a result directly to this incident, I
25 don't know if we could pinpoint any change in

1 premiums as a result of the incident.

2 Q. Has there been a change in any of the
3 premiums of insurance that you have been paying in
4 the past that was -- where the insurance company had
5 a claim against it as a result of Taum Sauk?

6 A. I don't recall, Commissioner, when we
7 renewed some of those policies whether there was any
8 meaningful change or not because the policies changed
9 a little bit too. I just don't recall.

10 Q. Do you know if anyone's presenting
11 testimony on that?

12 A. I don't believe they are.

13 Q. Do you know whether you --

14 A. I presume, Commissioner, if there are
15 any changes that would have taken place this year,
16 they would have been outside of the test year anyway
17 in 2007 or late -- they -- I don't think they -- if
18 they have any effect, it would be virtually none
19 because the test year was June 30, and I'm not sure
20 if we updated for those items anyway --

21 Q. Okay.

22 A. -- and that would not have been a
23 significant cost component. So my sense is that
24 there's really no -- nothing in the case related to
25 that or any change associated with that.

1 Q. Okay. Perhaps -- perhaps if there's
2 anyone that has any information on that that's either
3 with Ameren or with any of the other parties so that
4 I can move on from that, I would appreciate knowing.

5 Toward the beginning of
6 cross-examination with you, Mr. Baxter, someone was
7 asking you questions in regard to whether you
8 attended any of the public hearings regarding this
9 rate case. Do you recall those series of questions?

10 A. Yes, Commissioner.

11 Q. And did I understand it correctly that
12 you did not attend any of those hearings?

13 A. I personally did not, no.

14 Q. And can you tell me who is in the top
15 tier, who are the top tier officers of AmerenUE?

16 A. Well, the direct reports of Gary
17 Rainwater, if that's how you want to perhaps define
18 the top tier, would be Tom Voss, would be Steve
19 Sullivan, would be myself, Alan Kelley, Scott Cisel,
20 Chuck Naslund, Donna Martin, and then there are other
21 senior executives who -- people like Ron Zdellar and
22 others, Richard Mark, who would be perhaps more --
23 well, who are part of AmerenUE and who are addressing
24 issues associated with the storm.

25 Q. Okay.

1 A. And principally, Commissioner, Richard
2 Mark and Ron Zdellar and their teams that are
3 addressing the issues associated from the hearings.
4 As you know, you've met -- and I think Mr. Zdellar's
5 been in front of you testifying on those issues in
6 the past.

7 Q. Now, in regard to the positions of -- I
8 want to go down through here and just -- just real
9 quickly you tell me the positions of these
10 individuals with UE and with the parent company
11 Ameren if they have one.

12 A. Sure.

13 Q. Mr. Voss.

14 A. Mr. Voss is president and CEO of
15 AmerenUE.

16 Q. Anything with Ameren itself?

17 A. No. Effective January 1st he used to be
18 the chief operating officer overall of Ameren, but
19 now his focus is now just president and CEO of
20 AmerenUE.

21 Q. Mr. Sullivan.

22 A. Mr. Sullivan is general counsel of
23 Ameren Corporation and then counsel of AmerenUE as a
24 result.

25 Q. And Mr. Kelley, I think?

1 A. Mr. Kelley is president and CEO of our
2 nonrate-regulated generation. That's the one I
3 struggled with before, unregulated entity.

4 Q. With UE?

5 A. No, no.

6 Q. No, I didn't think so.

7 A. No, no.

8 Q. I was really asking about UE, but --

9 A. Oh, I'm sorry. Yeah, he has nothing to
10 do with UE.

11 Q. Okay. That's why I was asking the
12 question.

13 A. Yes, okay.

14 Q. Okay. So with the list of people you
15 gave me, then, are really the top people at Ameren
16 itself; would that be more accurate?

17 A. Can I qualify that a little bit?

18 Q. Yes.

19 A. Chuck Naslund is AmerenUE.

20 Q. Okay.

21 A. Donna Martin is the chief human
22 resources officer, and so she acts similar as I do as
23 chief financial officer. She's the chief human
24 resources officer for the subsidiaries as well. And
25 I think, you know, Mr. Cisel is president of the

1 Illinois-regulated operations, so he has nothing to
2 do with AmerenUE.

3 Q. Okay.

4 A. And of course, you know Mr. Zdellar and
5 Mr. Mark are both vice president and senior vice
6 president of AmerenUE.

7 Q. And you mentioned Mr. Rainwater. And
8 again, that position -- his position is ...

9 A. Chairman and chief executive officer of
10 Ameren Corporation.

11 Q. Okay. Now, of the people that you
12 mentioned, other than Mr. Mark and Mr. Zdellar, how
13 many of those individuals attended those public
14 hearings?

15 A. I don't -- I do not know, Commissioner.

16 Q. Okay. Do you know whether there have
17 been discussions among these individuals in a
18 group-meeting setting about the particular complaints
19 that were raised at those public hearings?

20 A. It is my understanding that Mr. Zdellar
21 and Mr. Mark have a team of folks who have -- who are
22 working on -- and who not only heard the consumer
23 complaints but are working on trying to address some
24 of those consumer complaints and they're working with
25 Mr. Voss. I have not personally attended any of

1 those meetings, but I know that they have folks that
2 are working on them.

3 Q. Okay. And were those -- are those
4 meetings -- do those meetings include Mr. Rainwater?

5 A. They could but I don't know.

6 Q. Okay. Is there a reason why you're not
7 included in those meetings?

8 A. No specific reason, Commissioner Gaw. I
9 think principally the customer service folks for
10 AmerenUE have been, you know -- they've been -- I
11 think Gary was given the primary responsibility, and
12 I would say that Tom Voss who was given the primary
13 responsibility to that team. I would expect that
14 team, after they've finished their work, could very
15 well discuss the issues with the entire executive
16 leadership team.

17 Q. But up to this point in time, that
18 discussion has not taken place with you?

19 A. In a formal presentation, no, but
20 certainly there have been discussions among the
21 executive leadership team, I would say more
22 informally, in terms of what's happened at the
23 hearings and the concerns that have been cited, and
24 certainly Mr. Voss has briefed the executive
25 leadership team on some of the thoughts around what

1 we are doing, not just from a customer standpoint,
2 but what we're trying to do to strengthen the system.
3 Of course, his letter that he presented to the
4 Commission was discussed with the executive
5 leadership team as well.

6 Q. That letter was discussed in a formal
7 meeting?

8 A. Formal meeting -- I don't know if I'd
9 call it a formal meeting -- well, certainly there was
10 a meeting that we talked about the contents of the
11 letter before it was presented here in January.

12 Q. And in that discussion, and -- that was
13 held about that letter, were you briefed at that
14 point in time about the specific complaints that had
15 come about in those public hearings?

16 A. I don't recall if at that meeting when
17 we reviewed and discussed the contents of the letter
18 whether we were provided information on all the
19 hearings, but certainly prior to that time we -- I'm
20 aware of certain of those -- of the results of those
21 hearings, I believe, although I can't say for
22 certain, Commissioner, the timing associated with the
23 hearings and when that letter was issued.

24 Q. Were there discussions about -- so if I
25 heard you earlier correctly, you cannot today tell us

1 that you are familiar with the specifics of the
2 complaints that were given to the Commission as a
3 result of the public hearing process?

4 A. I could not tell you all the specifics
5 of all the complaints. I'm certainly aware of some
6 of the issues and concerns cited by customers, but to
7 say I could go through the specifics, Mr. Zdellar
8 would certainly be the most appropriate person to do
9 that -- or Mr. Mark, excuse me.

10 Q. Do you have influence as CFO of AmerenUE
11 over the budgeting of activities that go to service
12 to customers?

13 A. Do I have influences? As chief
14 financial officer, certainly I oversee the budget.
15 You know, we certainly discussed the level of
16 expenditures that are made for all the operating
17 companies, but the primary responsibility really lies
18 with Tom Voss and his team.

19 Q. Since January 1st?

20 A. Since January and even as chief
21 operating officer prior to that.

22 Q. Whose role was -- was that before
23 January 1st?

24 A. Well, before, Commissioner, we were more
25 organized in terms of business lines, as we call

1 them, generation, energy delivery type of business
2 line, whereas now we're organized more by entity
3 which would be the AmerenUE regulated operations, the
4 nonrate-regulated operations and their Illinois
5 regulated operations. So the responsibilities used
6 to cut this way, now they cut more this way.

7 But to answer your question, Tom Voss is
8 really the same person at the end of the day who is
9 chief operating --

10 Q. Are we sure about that?

11 A. I am sure. And, of course, you have
12 people like Ron Zdellar who oversaw a lot of the UE
13 operations -- excuse me, oversee the distribution
14 operations before and still does.

15 Q. Did -- did -- so who ran -- who ran at
16 the top of the totem pole here the AmerenUE
17 operations prior to January 1st?

18 A. Tom Voss would have been the chief
19 operating officer that oversaw the operations of
20 AmerenUE.

21 Q. So he didn't get a promotion on
22 January 1st?

23 A. You can define it any way you want,
24 Commissioner.

25 Q. I was asking you to define it for me --

1 A. I'm not gonna go into that.

2 Q. -- since you know the information better
3 than I do.

4 A. He changed titles.

5 Q. Did he change responsibility?

6 A. Certainly. He used to be chief
7 operating officer over all of Ameren's operations;
8 now he is president and chief executive officer over
9 AmerenUE. He has nothing to do, for instance, with
10 the distribution operations in -- formally with the
11 distribution operations in Illinois or the
12 nonrate-regulated generation operations.

13 Q. So was that a promotion or a demotion?

14 A. You can ask Mr. Rainwater in terms of
15 how he would assess that. It's a significant
16 responsibility, I think.

17 Q. Did he get more or less money?

18 A. I don't know.

19 Q. I guess I'll have to look at the
20 St. Louis paper and find out. How about your -- how
21 about your responsibilities, how did they change?
22 Did they grow or diminish?

23 A. They grew.

24 Q. All across the board or in particularly
25 with AmerenUE?

1 A. Well, I would say before I was chief
2 financial officer of AmerenUE and I still am.

3 Q. Okay.

4 A. And then with regard to other activities
5 that I oversee, a lot more of the administrative
6 services, things like information technology,
7 environmental health and safety, these are things
8 that previously did not report to me but now do.

9 Q. As a result of the feedback that
10 occurred, not just through the public hearing process
11 but through other things, other feedback, were there,
12 in your opinion, changes made to the management
13 structure that occurred in January?

14 A. As a result of the -- Commissioner, is
15 your question as a result of the --

16 Q. My question is inverted, but could
17 you ...

18 A. I just want to make sure. Are you
19 asking whether management -- were there changes in
20 the management structure as a result of the -- the
21 storms; is that your question or --

22 Q. It wasn't, but you may answer it that
23 way if you'd like.

24 A. Well, I don't -- I don't know if those
25 management changes were as a result of that. I think

1 what our management changes were and how Gary
2 Rainwater has articulated to the board is that he
3 wanted to change the management structure to be more
4 focused in terms of people's responsibilities.

5 Q. So in other words, no -- no one within
6 the Ameren management team has had any negative
7 impact as a result of AmerenUE's handling of the
8 events in 2006?

9 A. Commissioner, what do you mean by
10 "negative impact"?

11 Q. That they have suffered any consequences
12 to their job.

13 A. I do not know that within the entire
14 Ameren Corporation.

15 Q. Within UE?

16 A. Excuse me. Within UE in particular.

17 Q. You do not know?

18 A. I do not know.

19 Q. Who would know the answer to that?
20 Mr. Rainwater?

21 A. Mr. Rainwater is certainly a person that
22 you could ask. Again, Mr. Zdellar, if -- my sense
23 is, Commissioner, that -- that there were not any job
24 changes as a result of that, but I -- I don't know
25 for certain, but Mr. Zdellar -- especially if you're

1 focused on the distribution operations, and Mr. Mark
2 would be able to address those probably actually more
3 properly and better than Mr. Rainwater even.

4 Q. But they have lower positions in the
5 corporate structure than you or Mr. Voss or
6 Mr. Rainwater, correct?

7 A. Yes.

8 Q. Not that they have unimportant
9 positions, I don't mean that.

10 A. But yes, that's true, that's true.

11 Q. Does customer satisfaction rise above
12 the level of vice presidents in UE as an important
13 issue?

14 A. Well, it certainly is an important
15 issue. In fact, we have a corporate scorecard that
16 has customer satisfaction as one of the key things
17 that we monitor. And Mr. Mark, in fact, he is solely
18 charged for AmerenUE with -- with -- with not just
19 monitoring but trying to address and make changes to
20 improve customer satisfaction.

21 Q. I forgot. What was his position again?

22 A. He's senior vice president of customer
23 service, I believe, is his formal title.

24 Q. My question was whether it rose above
25 that level?

1 A. Well, certainly it does.

2 Q. But you haven't read or had briefed to
3 you the specific points of the public hearings in
4 regard to customer problems and complaints through
5 the public hearing process in this case?

6 A. I have -- well, to me personally there
7 have been discussions. To say I've had a formal
8 brief or read through the transcripts, no. But I
9 can't speak for --

10 Q. You don't --

11 A. -- I can't speak for Mr. Voss, though.

12 Q. Okay. Or Mr. Rainwater?

13 A. I can't speak for either one of them.

14 COMMISSIONER GAW: Okay. I'm going to
15 stop right now, Judge, but I may have questions
16 later. As I understand it, you may have more
17 information.

18 JUDGE WOODRUFF: Commissioner Clayton.

19 QUESTIONS BY COMMISSIONER CLAYTON:

20 Q. Good afternoon, Mr. Baxter.

21 A. Good afternoon.

22 Q. I know it's been a long day for you and
23 I appreciate you being available to go through a
24 number of questions.

25 My questions are gonna focus, I think,

1 on a couple of particular areas, and I want to finish
2 up with -- I want to finish up a few questions that I
3 had with regard to the public hearing process.

4 A. Uh-huh.

5 Q. I want to make sure I ask this in an
6 efficient manner without going around and around.
7 Management at Ameren was aware that it had had some
8 public relations problems with its customers
9 following, at the very least, the storms of July of
10 2006; would you agree with that?

11 A. I would agree.

12 Q. And you would agree that that was
13 probably enhanced somewhat by the storms of
14 November/December of 2006; would you agree with that?

15 A. I would agree with that.

16 Q. Okay. Now, was there ever any
17 discussion in management about making -- making
18 certain employees of Ameren available to attend the
19 local public hearings that were conducted throughout
20 the metropolitan area?

21 A. Well, I think, Commissioner, employees
22 did attend the public hearings throughout the
23 metropolitan area and throughout the state is my
24 understanding. Ameren employees did attend -- we had
25 Ameren employees at every one of those.

1 Q. Were there discussions about who would
2 be the most appropriate people to attend those
3 hearings?

4 A. Those discussions were not had with me,
5 but they could have been had.

6 Q. Was there ever any discussion about
7 upper management officials from Ameren attending any
8 of the local public hearings?

9 A. Again, those discussions were not had
10 with me, but they could have been had, Commissioner.

11 Q. Okay. Are you aware of whether
12 management -- upper management has ever made itself
13 available to either customer groups or neighborhood
14 groups or any type of citizen group in discussing
15 complaints regarding reliability or tree trimming or
16 any particular issues?

17 A. Sure, I believe we certainly have. I
18 think that certainly Mr. Zdellar and Mr. Voss have
19 appeared at hearings to discuss this over, I believe
20 not just in legislature but certainly -- well, here,
21 although I would say it's a little bit different
22 forum.

23 It's my understanding, if I recall, in
24 about -- within the last 30 or 45 days we've met with
25 several mayors of many of the local municipalities

1 that have been affected to hear their concerns and to
2 see what we can do to try and improve upon not just
3 our communications, but what we can do to try and
4 work with them trying to strengthen our system in the
5 future.

6 I believe there have been discussions
7 with customers. Certainly, there have been several
8 discussions with customers from a customer service
9 standpoint with our representatives, and I know that
10 Mr. Mark and others have been in the St. Louis
11 community working with the mayor's office, with
12 Charles Dulle and many others to try and address
13 their concerns as well as with legislators.

14 Q. Well, I appreciate that and I think what
15 I heard in your answer is that Mr. Zdellar and
16 Mr. Mark would have been the point people to have
17 those discussions?

18 A. Including Mr. Voss and Mr. Rainwater as
19 well. When the mayors came in, I am aware that
20 Mr. Rainwater, Mr. Voss and Mr. Mark, I believe -- I
21 don't know if Mr. Zdellar attended, but certainly
22 those three, to the best of my recollection, attended
23 those.

24 Q. Now, those meetings that you listed, I
25 think you included us, I think you included the

1 Public Service Commission. I think I heard
2 legislators, I think I heard mayors, I think I heard
3 county executives. I think my question was meetings
4 with the general public, with general customers,
5 neighborhood groups, citizen action groups. Have
6 upper management officials ever made themselves
7 available to have conversations with just regular
8 customers, not the politicians, not the regulators?

9 A. If you're -- Commissioner, if you're
10 asking whether that's been done in a formal setting,
11 I can't speak to that, but I am absolutely certain
12 that Richard Mark and Ron Zdellar, in the context of
13 the storms and thereafter, have met with and spoken
14 to customers and heard their concerns directly in
15 some form or fashion.

16 Q. And it would be limited to those two
17 members of upper management?

18 A. I use those as an example. I can't
19 speak to Mr. Rainwater and I can't speak to Mr. Voss
20 either, but that's certainly a possibility.

21 Q. Are you aware of whether Mr. Zdellar and
22 Mr. Mark ever attended any of the local public
23 hearings that the Public Service Commission
24 conducted?

25 A. I'm not aware of whether they did or

1 not, Commissioner.

2 Q. Okay. You are -- you have been and are
3 currently the chief financial officer of the
4 regulated entity Union Electric or AmerenUE; is that
5 correct?

6 A. That's correct.

7 Q. How long have you been the CFO of the UE
8 division of Ameren?

9 A. If I can get my dates right, I believe
10 it would have been in 2001 I was promoted to chief
11 financial officer from controller.

12 Q. Okay. Was that before or after the
13 Staff filed the earnings complaint, do you recall?

14 A. Commissioner, I believe it may have been
15 after the Staff filed their earnings complaint.

16 Q. Called in the big dogs?

17 A. Right.

18 Q. Now, the Staff complaint was filed in
19 2001 and was resolved in 2002; is that correct?

20 A. That's correct.

21 Q. And you have been CFO since that time?

22 A. I have been.

23 Q. Okay. Being CFO -- and you're a CPA, I
24 believe?

25 A. I am, indeed.

1 Q. And your position is to be responsible
2 for preparation or overseeing the preparation of all
3 the financial statements of AmerenUE?

4 A. That's correct.

5 Q. And that would include the balance
6 sheets, statement of cash flows, income statement as
7 well as I'm sure many others that are beyond my
8 reach?

9 A. Yes.

10 Q. Okay. Now, when -- when you prepare
11 a -- the financial statements for just Ameren
12 Corporation, or do you have financial statements that
13 address each of the divisions of Ameren Corporation?

14 A. We have financial statements that
15 address each of the subsidiaries of Ameren
16 Corporation that have either publicly held debt in
17 particular as well as the financial statements of
18 Ameren Corporation.

19 Q. So that would include AmerenUE, it would
20 include Ameren IP, Ameren SOCO, Ameren CIPS, AEM and
21 Ameren Services; is that correct?

22 A. No, not for --

23 Q. Help me understand which -- which
24 divisions have --

25 A. Sure.

1 Q. -- financial statements and which do
2 not.

3 A. Sure. Up to the point of AEM and Ameren
4 Services, you are correct, Commissioner. And I
5 believe there is a separate financial statement that
6 we prepare for Ameren Energy Generating Company, and
7 they're part of our filed financial statements with
8 the SEC.

9 Q. Ameren Energy Generating Company?

10 A. Yes.

11 Q. Okay. And is -- is that an unregulated
12 division?

13 A. Yes, it is.

14 Q. And what is the difference between
15 Ameren Energy Generating Company and Ameren Energy
16 Marketing?

17 A. Ameren Energy Marketing is basically an
18 affiliate who is assigned with just marketing the
19 power for Ameren Energy Generating. The Generating
20 is the company that has all the assets, but the
21 marketing company really provides a service for all
22 practical purposes to sell power.

23 Q. Okay. So you have financial statements
24 at the very least for the -- for the three Illinois
25 properties and the Missouri property?

1 A. Yes.

2 Q. Okay.

3 A. That's correct.

4 Q. Now, do you -- is it possible to
5 establish the actual return on equity for each of
6 those four divisions or is there only one
7 return-on-equity number for the holding company?

8 A. Commissioner, you could look at the
9 separate financial statements of -- of those
10 subsidiaries and come up with a return on equity for
11 each one of those.

12 Q. If -- since each of those four -- I
13 believe they're each wholly owned subsidiaries of
14 Ameren Corporation?

15 A. You're speaking specifically of
16 Ameren IP, Ameren CIPS, Ameren SOCO and AmerenUE, is
17 that -- those are the four that you're speaking to?

18 Q. Yes, those are the four entities that
19 have their own financial statements, correct?

20 A. And Ameren Energy Generating Company
21 does as well.

22 Q. I'm sorry. Okay. So the four
23 regulated -- well, sort of regulated entities?

24 A. Well, there's four -- the way we like
25 to -- everyone is regulated in some form or fashion,

1 but rate-regulated entities and -- versus the un --
2 the one that is not a rate-regulated entity.

3 Q. How do you compute the actual return on
4 equity for the divisions, considering that they don't
5 have their own separate stock?

6 A. Well, you look at the equity of those --
7 each of those entities have their own separate
8 statement of shareholders' equity, and we have their
9 own capital structure (sic).

10 Q. Okay. So you can clearly identify what
11 the return on equity is for each of those properties?

12 A. Yes, sir.

13 Q. Okay. Now, on one of the exhibits --
14 and I don't have a number on that, this was never
15 marked -- there was a -- there was a sheet that was
16 given to you, and I guess it wasn't marked as an
17 exhibit, but it was a printout from the Ameren
18 website that had a "Claims and Facts", or "For the
19 Record" component from www.ameren.com. Do you recall
20 that document? Do you have it or --

21 A. I recall the document and I -- I -- I
22 may have what it was. I -- yes, I believe I do have
23 it, Commissioner.

24 Q. Okay. Now, in addition, I think under
25 questioning earlier today, you said that in 2006 the

1 actual return on equity for the consolidated
2 companies for the Ameren Corporation was 11 percent;
3 is that correct?

4 A. Commissioner, I gave a consolidated
5 return on equity for the entire Ameren companies. I
6 think the question related to AmerenUE and I believe
7 the question was, well, was there a return on equity?
8 And I said for the rate-regulated portion of the
9 business it was in the single digits. In fact, it's
10 probably -- I think it is 8.8 percent for 2006. I
11 did say that.

12 Q. The consolidated was?

13 A. Well, that was for the rate-regulated
14 entity. And then if you incorporate the -- the --
15 the earnings from the EEI minority interest
16 investment, then that number is higher than that.
17 And I think, therefore, the return on equity, I
18 believe, would be somewhere between 10 and 11
19 percent. I didn't do the calculation.

20 Q. And that was for UE or for the
21 consolidated?

22 A. That was for UE.

23 Q. That was for UE.

24 A. With EEI. With and without EEI.

25 Q. All right. And is there -- do you

1 recall what for 2006 the actual ROE was for the
2 entire company for Ameren Corporation?

3 A. I do not recall, Commissioner.

4 Q. You don't recall?

5 A. No.

6 Q. Okay. Is it possible to -- is it
7 possible for you or your staff to prepare -- and you
8 may already have this in your schedule, so please
9 direct me if it's already there -- the actual return
10 on equity that UE has experienced the past seven
11 years? Is that possible?

12 A. Oh, certainly, certainly.

13 Q. Do you know off the top of your head
14 what that actual return on equity has been?

15 A. Over the last seven years, no, sir.

16 Q. No? You mentioned in 2006 it was
17 between 10 and 11?

18 A. No. No, sir. It -- let me make sure,
19 Commissioner Clayton, to be clear. When we talk
20 about AmerenUE, we -- there's the rate-regulated
21 entity for AmerenUE and then there's the consolidated
22 entity which includes EEI. We can certainly give you
23 a schedule as sort of a with and without of those
24 schedules, and that's what I was talking about
25 before.

1 The rate-regulated entity for -- on a
2 financial -- this is just a financial basis as I know
3 you understand. Again, that was 8.8 percent in 2006.
4 And when we put EEI -- I haven't done the
5 calculation, but we certainly can do that for you.

6 Q. So is it 8.8 plus whatever that
7 component was to get to between 10 and 11 percent?

8 A. I believe that -- I believe that's what
9 the result would be but I -- we still have to do the
10 calculation.

11 Q. Okay.

12 A. But to get to the -- to answer your
13 question, we can certainly do that if you would like
14 that over the last seven years. We can certainly do
15 that.

16 Q. If you could prepare that, I would
17 appreciated it.

18 A. Absolutely.

19 Q. Did you participate in the part of the
20 case that involves the natural gas utility?

21 A. This case that resulted? Yes.

22 Q. The settlement -- the Stipulation and
23 Agreement that's been filed for the natural gas
24 properties?

25 A. Yes, I did. And in part we have -- yes,

1 the simple answer is yes, I did participate.

2 Q. And I -- forgive me, I have not reviewed
3 the stipulation. I know it's come across the desk.
4 I have not yet reviewed it. Is there an ROE
5 contemplated in that settlement?

6 A. It was a black box settlement, and so to
7 say whether there's an ROE -- I will say if I recall,
8 that the settlement incorporates an ROE to be
9 utilized for ISRS -- did I say that correctly -- and
10 that was 10 percent, a specified ROE.

11 Q. Are there any representations that will
12 be made to the investment community with regard to
13 the -- the estimated return on equity as part of that
14 settlement?

15 A. Other than what I just spoke to you,
16 that would probably be the greatest extent that we
17 would talk to the investment community. We did issue
18 a press release, Commissioner, on this -- I believe
19 it was Friday -- that outlines that. There was no
20 specified ROE in there. We simply said that the gas
21 case had settled, it's presented to the Commission
22 for review and approval and that it would increase
23 our natural gas operating revenues by \$6 million
24 annually as well as provide other customer
25 information.

1 And there are other components to the
2 overall case with the issues associated with, you
3 know, how we transition to a single PGA, Ameren
4 contributions to low-income energy assistance of
5 \$260,000 a year and funding for energy-efficiency
6 purposes, among other things.

7 COMMISSIONER CLAYTON: I don't think I
8 have any other questions. Thank you.

9 JUDGE WOODRUFF: Commissioner Appling?

10 QUESTIONS BY COMMISSIONER APPLING:

11 Q. How you doing, sir?

12 A. I'm well, Commissioner. How are you
13 doing today?

14 Q. Doing great. I have just two or three
15 questions. If you're not familiar, can't answer
16 them, just tell me who it is and I'll ask this
17 question again tomorrow or the next day. It looks to
18 me, taking your Illinois and your Missouri plants,
19 that between 2020 and 2040, that most of your plants
20 is gonna be either this Commission or time is gonna
21 run out on them and something's gonna have to be
22 done.

23 A. I will say they'll be very old,
24 Commissioner, at that stage. That is exactly right.

25 Q. And if I calculate it correctly, we're

1 talking about \$20 billion that's gonna be spent over
2 a 20-year period of time?

3 A. \$20 billion, is that what you said?

4 Well, Commissioner --

5 Q. If we figure out about a hundred --
6 \$1,700 per kilowatt.

7 A. To the extent that those plants go out
8 of service during that period of time, they
9 certainly -- there could be a -- significant sums of
10 money to address the generating capacities that we'll
11 need.

12 Q. What kind of permits will you need for
13 those plants? Are you planning maybe to leave them,
14 specifically the coal one, knowing how difficult it
15 is to put down a plant in a new location? What are
16 your-all's thoughts and plans around that?

17 A. Well, certainly, Commissioner, as we go
18 to look at future generating capacity needs,
19 permitting is a challenge. It's a big challenge,
20 especially with the environmental requirements and
21 regulations that we have to meet. And obviously,
22 coal -- putting a new coal plant into service is
23 shown to be, not just here but throughout the
24 country, challenging, given the environmental
25 regulations.

1 As we look ahead in our resource plan,
2 we do look to try and consider multiple options to
3 address those future generating source's needs. It
4 could be coal, it could be nuclear, it could be other
5 forms of generation to try and meet those needs.
6 Those decisions have not been made at this point in
7 time.

8 Q. Last question, and this turns to
9 service. There's a lot of questions been thrown
10 around today, and I think I attended about 90 percent
11 of the public hearings. In fact, when I go into
12 St. Louis now, I only do it after the hours of
13 darkness. I don't go in there, okay? But just
14 thought I'd throw that in for a smile.

15 But anyway, your customers, the media
16 and some of the large number of legislators from that
17 side of the state perceive that AmerenUE has had
18 significant problems in providing reliable service.
19 That's the perception out here.

20 How will you -- once you get further on
21 down the road, what is your vision on how you will
22 reestablish your reputation for each one of those
23 entities? Talk to me a little bit about that.

24 A. Sure. Commissioner, we understand our
25 customers' concerns. We've heard them loud and clear

1 as an entity. We -- we have people within Ameren
2 Corporation who are dedicated solely to try and
3 address some of these issues. You know, the best way
4 to do it, first and foremost, is to make sure that
5 you reach out to these people, and we've attempted to
6 do that with some of the key stakeholders, as I said
7 earlier, in the city and the state to try and figure
8 out ways so we can move forward.

9 You know, at the end of the day, it is
10 gonna be one of those things where we just have to
11 continue to not just reach out to these customers,
12 but to deliver high quality reliable service to them.
13 And the way we're best gonna do that, among other
14 things, is communicate with them, making significant
15 and meaningful investments into our infrastructure to
16 harden the system, because the issue is -- ultimately
17 is, you know, customers don't like to be out of
18 service.

19 And, you know, I'm not going to come up
20 here and -- and you've heard many times from us in
21 terms of the issues associated with the severe storms
22 and those other types of things and how Mother Nature
23 was -- dealt us a tough blow, because our customers,
24 at the end of the day, they don't necessarily want to
25 hear that. They just want to know how you're gonna

1 continue to deliver reliable service.

2 And so our game plan is, as Mr. Voss
3 outlined, a host of ideas that we're considering to
4 try and improve our overall service. We have to go
5 out, in my view, and reach out into the community, be
6 part of the community to try and be part of the
7 solution with them, and then certainly bring ideas,
8 thoughtful ideas back to this Commission to try and
9 make some meaningful headway in terms of trying to
10 deliver -- as Gary Rainwater said, trying to meet
11 customers' expectations in the 21st century because
12 they're very high.

13 And that's our obligation, to try and do
14 our absolute best to do it. And you have our
15 commitment that we are going to do our absolute best
16 to try and do it.

17 I know along the way others believe that
18 we may have stubbed our toes and, you know, if that's
19 the case -- well, you know, look, we certainly can
20 improve. We could have improved and we're gonna work
21 hard and try to improve that going forward.

22 Q. Let me leave you with one point. And
23 I've run a lot of organizations in my life, but just
24 let me leave this and maybe you can share this over a
25 cup of coffee with your CEO. One of the things that

1 I've found out in my line of organization has been
2 people like to hear -- and Commissioner Gaw was
3 drilling down on this just for a little bit, but the
4 people out there want to hear from the CEO of this
5 organization.

6 And it certainly would be helpful if
7 somebody at the top kind of show up and assure people
8 that you're working on the things that's wrong.

9 So I'll leave it with that. You and I
10 have talked a lot about this, and I'll leave it at
11 that point. Good to see you and thank you for your
12 time here today.

13 THE WITNESS: Thank you for your
14 comments, Commissioner Appling. I will be sure to
15 pass your comment along to Mr. Rainwater.

16 COMMISSIONER APPLING: Thank you.

17 JUDGE WOODRUFF: Chairman Davis?

18 QUESTIONS BY CHAIRMAN DAVIS:

19 Q. Good afternoon, Mr. Baxter.

20 A. Mr. Chairman, how are you?

21 Q. So would you -- let me just refresh for
22 my recollection to make sure I heard you correct.
23 Would you characterize the events of the last 15
24 months as a, quote, toe stubbing?

25 A. I think I could characterize them as

1 more than just a toe stubbing.

2 Q. Okay. More than just a toe stubbing.

3 Okay. Commissioner Clayton touched on certain
4 forward-looking representations that may or may not
5 be made to the investment community. Hasn't Ameren,
6 in fact, already issued a release projecting that
7 this rate case would net \$100 million in additional
8 revenues?

9 A. Mr. Chairman, I wouldn't say that we
10 projected. That would be the result of the case.
11 Obviously the investment community is very
12 interested --

13 Q. Did issue -- you did issue a release
14 stating -- stating something to that effect that
15 there was a \$100 million number in there, correct?

16 A. That's correct. But what we told the
17 investment community, that was not our projection.
18 What we simply did was take the Staff's position
19 which at that point in time, I believe, was a rate
20 decrease of 160 million, and we took our rate
21 decrease -- or excuse me, increase of 360 million,
22 and we simply just took the midpoint.

23 What we said to the investment
24 community, this is nothing more than a placeholder,
25 that it is ultimately going to be decided by this

1 Commission. We are not saying this is what we
2 believe we should achieve or should not achieve; we
3 just simply took -- made it simple math, because when
4 you have a \$500 million difference, you have to try
5 to provide some level of information associated with
6 that.

7 And so that's what we simply did. And
8 that's what our documents and our conference call and
9 even our documents that we have reflected in our
10 analysts' presentation, it was simply taking the
11 midpoint between those two cases.

12 Q. All right. Earlier I believe I heard
13 you state that AmerenUE -- and correct me if I'm
14 paraphrasing this incorrectly -- that you're, quote,
15 putting off your decision to relicense the Callaway
16 plant; is that a fair statement?

17 A. I would characterize it as not putting
18 it off. It's that we don't believe it's appropriate
19 to make that decision yet today.

20 Q. Okay.

21 A. Putting off is -- well, enough said. I
22 believe we have just simply not made that decision at
23 this point today. We believe that decision should be
24 made here over the next several years, and then we'll
25 see what the conditions are at the Callaway plant and

1 then we move forward.

2 Q. Okay. Do you have any objection if this
3 Commission just extends out the depreciation schedule
4 for Callaway another 20 years and we defer making our
5 decision until you come in and tell us a decision
6 about what you're going to do, whether you're going
7 to relicense the plant or not?

8 A. Well, I think, Commissioner, that, you
9 know, we obviously will abide by whatever the
10 Commission ultimately decides in this thing. But
11 from a policy perspective, our view is that if the
12 decision is made to extend the depreciable life of
13 Callaway out 20 years, and then ultimately Callaway
14 is not extended, what you've done is you've taken
15 rates down here lower in the interim, and then
16 several years away a decision is made and then you're
17 going to shoot rates back up when you only have a
18 very short period of time at that point in time to
19 recover the remaining life of Callaway.

20 And so that may be from a policy
21 perspective -- and again, this is up to the
22 Commission to choose. It may not -- it may be
23 premature to make that decision. At the end of the
24 day when the decision is made to -- to -- if and when
25 it is made to -- to -- to relicense Callaway, then it

1 is appropriate to change the useful life. I think
2 certainly --

3 Q. Do you know how long it takes to get
4 a -- get a -- get a plant repermited, Mr. Baxter?
5 Do you have any idea? As Mr. Micheel would ask,
6 maybe a ball park estimate?

7 A. You know, Mr. Naslund would be the best
8 person, but I believe it's a couple-of-year process.

9 Q. Okay. And so at what point in the
10 future do you envision the company having any
11 discussions about the relicensure of Callaway?

12 A. Well, I think that I wouldn't suggest
13 that we have had no discussions about that even to
14 date. I believe that it will be -- it's a decision
15 that we'll have to make still several years down the
16 road to make sure that we -- if we are going to
17 relicense, that we get it done on a timely basis.

18 Q. So what discussions have you had to date
19 about the relicensure of Callaway, and who have you
20 had those discussions with?

21 A. Well, Mr. Naslund has briefed
22 executive -- the executive leadership teams to the
23 relicensing process and has cited as he cited in his
24 testimony some concerns and issues that need to be
25 considered associated with the relicensing. And

1 those are some of the things that he has pointed out
2 in his testimony which I articulated a little bit
3 earlier, some of the considerations that would factor
4 into that, including the condition of the reactor
5 vessel, Missouri water levels, issues associated with
6 the -- just with the ongoing operation of the plant.

7 Q. All right. Mr. Baxter, who sells
8 AmerenUE electricity off-system when AmerenUE makes
9 off-system sales?

10 A. Chairman, make sure I understand your
11 question. Are you asking who sells the excess
12 generation into the marketplace --

13 Q. Yes.

14 A. -- on behalf of AmerenUE?

15 Q. Yes.

16 A. Ameren Energy.

17 Q. Ameren Energy --

18 A. Period. Not Ameren Energy Marketing,
19 Ameren Energy.

20 Q. Okay. Now, who's Ameren Energy?

21 A. That is the -- that is the agent who
22 acts on behalf of AmerenUE to sell their excess
23 generation into the marketplace. And Shawn Schukar,
24 who is a witness in this case, is the person who
25 oversees those operations.

1 Q. Okay. Now, what is Ameren Energy's
2 relationship to AmerenUE?

3 A. They are the agent --

4 Q. They are --

5 A. -- for AmerenUE to sell their excess
6 power.

7 Q. Okay. They are the agent. Are they a
8 subsidiary or are they an affiliate or what -- help
9 me out here. I mean, I'm sure there's an Ameren
10 flowchart around here somewhere.

11 A. It's probably about as big as this
12 table, unfortunately. With regard to Ameren Energy,
13 I'm not -- I'm not sure if they are -- I don't
14 believe they're a wholly-owned subsidiary of
15 AmerenUE.

16 Q. Okay.

17 A. And what I am not -- and I believe they
18 are a subsidiary within the Ameren family and that
19 their role has been to act as an agent for AmerenUE.

20 Q. Okay. So does Ameren Energy charge
21 AmerenUE for those services?

22 A. Yes. Shawn Schukar -- as an example, he
23 and his organization would -- their -- their expense
24 in that organization would roll up through AmerenUE.

25 Q. Okay.

1 A. The chargeback or --

2 Q. Expenses would be -- but it's more of a
3 cost-based --

4 A. Certainly.

5 Q. -- transaction?

6 A. Certainly. Cost-based with regard to
7 the employees and the services, that's correct.

8 Q. All right. Now, did Ameren Energy have
9 the opportunity to sell the electric output from EEI
10 or was it just Ameren Energy Marketing?

11 A. Ameren Energy Marketing.

12 Q. Okay. So Ameren Electric didn't even
13 have the opportunity to pursue marketing that
14 electricity?

15 A. No, it was Ameren Energy Marketing is my
16 understanding.

17 Q. Okay. And so who made -- who made the
18 decision that, AEM over AE? And if you don't know,
19 that's fine.

20 A. Well, it -- I'm not sure who ultimately
21 made the decision.

22 Q. That's a yes or no question, Mr. Baxter.

23 A. It is a -- I don't know for certain who
24 made the decision, but it would make sense to me,
25 Chairman, that it would be AEM since they market

1 nonregulated generation.

2 Q. Okay. But at a minimum, assuming that
3 you have AmerenUE and assuming that, you know,
4 AmerenUE does not have any claim to the -- to the
5 output of EEI, I mean, at a minimum, you know, if --
6 depending on what AE's relationship is with AmerenUE,
7 we're still a little clear. I mean, wouldn't they
8 want AE to at least be in the mix and have an
9 opportunity to bring back some revenues for AmerenUE
10 as well?

11 A. Well, Mr. Chairman, I mean, the EEI, the
12 assets, you know, their contract -- EE, Inc.
13 contracted with AEM to sell its generation. This is
14 an EE, Inc. decision --

15 Q. All right.

16 A. -- to contract --

17 Q. You don't know if EE, Inc. put that up
18 for bid or not?

19 A. I -- I don't know.

20 Q. Okay. So it's --

21 A. So EE, Inc. --

22 Q. -- entirely possible --

23 A. I'm sorry. So EE, Inc. --

24 Q. It's entirely --

25 A. -- is the one who made --

1 JUDGE WOODRUFF: You're talking over
2 each other. One at a time.

3 THE WITNESS: I'm sorry, Mr. Chairman.
4 I just -- EE, Inc. is the one who made the decision
5 who would -- it's not an AmerenUE decision, it was an
6 EE, Inc. decision who would sell their -- their
7 power.

8 BY CHAIRMAN DAVIS:

9 Q. Right. But EE, Inc.'s family tree
10 doesn't fork very far from AmerenUE, does it?

11 A. Explain, Mr. Chairman.

12 Q. How many board members does EE, Inc.
13 have?

14 A. I went through some of those board
15 members earlier --

16 Q. Right.

17 A. -- with Commissioner Gaw.

18 Q. Right. We've --

19 A. I'm not sure of the total.

20 Q. You're not sure of the total?

21 A. But they are EE, Inc. board members.

22 Q. Right.

23 A. They are not -- they don't act -- as
24 EE, Inc. board members, they do not act in the
25 capacity of an AmerenUE officer.

1 Q. Right.

2 A. They act as an EE, Inc. board member.

3 Q. Right. And they have a fiduciary duty
4 to EE, Inc. which we've already -- we've already
5 heard lots about.

6 Now, wouldn't EE, Inc. have a fiduciary
7 duty to bid those services out and get the best --
8 get the best rate possible for EE, Inc.?

9 A. And they -- they -- they may have done
10 that.

11 Q. They may have but we don't know?

12 A. I personally don't know. I'm sure there
13 is a yes or no answer to that, but I just do not know
14 that.

15 Q. Okay.

16 A. Mr. Moehn, Chairman, will -- will be
17 able to address that.

18 Q. Okay. All right. Now, is it fair to
19 say that we still have the traditional cost base rate
20 of return system here in Missouri, correct?

21 A. Correct.

22 Q. So is it fair to say that pages 4 and 5
23 of your direct testimony as well as some of the
24 exhibits and some of the arguments made by Mr. Lowery
25 here today about rates rising elsewhere are largely

1 irrelevant?

2 A. Mr. Chairman, as I stated earlier, I
3 don't believe they're irrelevant at all. I think
4 that certainly in the context of the case, we believe
5 those charts are relevant for two reasons: One, in
6 the context of this case, as you well know and as we
7 just discussed a little bit before, we have a wide
8 swath of divergent opinions around some very
9 technical, difficult issues, \$500 million. And at
10 the end of the day, when you look at all of the
11 competing testimonies from a lot of very smart
12 experts, the Commission has to step back and say,
13 okay, what really makes sense here?

14 And so when you step back and you look
15 at what I'm sure would be testimony that's far in
16 excess of this -- you probably have it in your
17 office -- of this desk here, you would sit there and
18 say, does it make sense given all these facts and
19 given the trends throughout the country, given the
20 trends right here at home, literally right across the
21 state, among others, does it make sense when some of
22 those parties propose a meaningful rate decrease when
23 virtually everyone else in the country are seeing
24 rate increases, especially given the environment that
25 we're in, coupled with the fact where our existing

1 rates are. I think it's an issue in terms of context
2 that it matters to the Commission.

3 Q. Okay. In getting back, isn't the job of
4 this Commission to set rates based on costs plus a
5 reasonable return?

6 A. I think, Commissioner, that very last
7 statement was a very important one. It's certainly
8 your job to set based upon costs and what a
9 reasonable rate of return is, and as we've seen in
10 this case, there's a meaningful divergence of opinion
11 around reasonable rate of return.

12 In my opinion this Commission also has
13 to step back and look at long-term regulatory policy
14 and energy policy, what's in the best long-term
15 interest of the state, and that's certainly within
16 your domain.

17 But other issues that should be factored
18 in are things -- not just those charts, Mr. Chairman,
19 but certainly the environment in which we operate
20 where there are rising interest rates, increasing
21 costs, and importantly, the fact that over the next
22 five years AmerenUE is going to have to make
23 \$3 billion of capital expenditures into our energy
24 infrastructure.

25 We just got done making three over the

1 last five years. Over the next five years we're
2 gonna make yet another 3 billion. So these are all
3 important factors, I believe.

4 Q. Okay. And Mr. Baxter, is it fair to say
5 that you made those last three without a rate
6 increase?

7 A. We made those last three without a rate
8 increase, that is exactly right. I think we're able
9 to construct a -- a -- a solid regulatory framework.
10 But things have changed, Mr. Chairman. Things have
11 changed from the last five years to where they're at
12 today. And.

13 We face an environment which is much
14 different. It's one in which the costs are clearly
15 rising. We have a much more volatile commodity
16 marketplace that's not just domestic but
17 international, and the infrastructure requirements
18 continue to increase. And that's due largely to
19 increasing material and labor cost among other
20 things.

21 And so -- so what was okay and
22 appropriate in 2002, to strike a solid regulatory
23 compact, does not necessarily mean that's where
24 things are at today.

25 Q. Okay. Back to your comment about --

1 about stepping back -- and, you know, we still have
2 traditional rate of return regulation here in
3 Missouri, correct?

4 A. Yes.

5 Q. Based on some of the things that
6 Mr. Lowery said in his opening statement, some of the
7 prefiled testimony, is it fair to say that AmerenUE's
8 view in this rate case tends to trend away from the
9 traditional ratemaking method of companies, you know,
10 investing money and then filing a rate case and
11 seeking to have that plant placed in rate base and
12 then earning a return on that equity, and instead
13 basically coming here to this Commission with a sort
14 of a menu list of improvements that will be made if,
15 and only if, you get all or part of your rate
16 increase?

17 A. Mr. Chairman, I would disagree that we
18 are taking novel approaches in our case. Our case is
19 premised upon a cost of doing business. It's
20 premised upon the investments that we've made in rate
21 base, and it's premised upon what we believe is a
22 reasonable return on those investments.

23 We have offered in this case to get a
24 fuel adjustment clause. That is not novel. 27 of 29
25 nonrestructured states have that, and as Mr. Lyons

1 points out in his testimony, the vast majority of
2 coal-burning utilities have it. And as Mr. Lyons
3 also points out in his testimony, utilities with very
4 low rates have a fuel adjustment clause, so that is
5 really mainstream.

6 In the areas of depreciation, we're
7 looking to move to a lifespan approach. That is
8 mainstream. That is -- the extraordinary -- the
9 outside of the norm is where we're at in our current
10 depreciation policies.

11 And so I don't see us coming here -- we
12 talk about these charts, and I think they give you
13 context, but we're not coming here with novel
14 approaches. I think it's really just the opposite,
15 and I think it's no different than -- I mean, we're
16 here because our costs are rising, our investments
17 are significant and we think that we need to earn a
18 reasonable return on our investments for our
19 investors.

20 Q. Okay. Do you recall in Mr. Lowery's
21 opening statement he made some comments about parties
22 taking some aggressive positions? Do you remember
23 any statements by Mr. Lowery to that effect?

24 A. I believe so, yes, Mr. Chairman.

25 Q. Okay. When AmerenUE filed its class

1 cost of service study that was required to be filed,
2 I believe it was December 2005; is that correct? Do
3 you recall?

4 A. Yes, I believe we -- let me --

5 Q. Did -- okay. Well, anyway --

6 A. I'm sorry. Is that the one that was in
7 connection with the -- the -- the --

8 Q. The last over --

9 A. The last -- yes.

10 Q. The last overearnings complaint?

11 A. Uh-huh, yes.

12 Q. Would you characterize Ameren's filing,
13 that filing and that class cost of service filing as
14 taking aggressive positions?

15 A. Mr. Chairman, I can't remember all the
16 assumptions and everything that underlied our class
17 cost of service filing in 2005. I -- I believe that
18 the depositions we took were supportable, but I
19 couldn't tell you exactly what exactly what was --
20 what that filing consisted of. I simply don't
21 recall.

22 Q. And the last earnings complaint was
23 filed against AmerenUE in approximately 2001 and
24 settled in 2002, correct?

25 A. That is correct.

1 Q. And there was a Stipulation and
2 Agreement that was filed in that case?

3 A. There was.

4 Q. And AmerenUE agreed to that settlement?

5 A. We certainly did.

6 Q. Okay. And did AmerenUE view that
7 settlement as being positive at the time it was
8 signed?

9 A. Certainly did. We've never backed off
10 that statement.

11 Q. Okay. In that settlement vegetation
12 management was an issue, was it not?

13 A. In the settlement I'm not sure if
14 vegetation management was cited as a particular
15 component of the settlement.

16 Q. Do you recall vegetation management
17 being an issue at all?

18 A. I recall vegetation management being an
19 issue in the context of the rate case.

20 Q. Okay. But on the whole, the settlement
21 was viewed by Ameren as being positive in that there
22 was no -- no reason -- no lack of funding for a
23 vegetation management program that somehow prohibited
24 the company from signing the agreement or would have
25 the company view that as a bad deal; is that fair to

1 say?

2 A. No, Mr. Chairman, it was a black box
3 settlement that didn't go to that level of
4 specificity.

5 Q. Do you feel like in the 2002 settlement,
6 AmerenUE got enough money to execute a good
7 vegetation management program?

8 A. Yes.

9 Q. Okay. And certainly there's nothing in
10 that agreement that would prohibit AmerenUE from
11 spending more money on vegetation management, would
12 it?

13 A. No, Judge -- Mr. Chairman.

14 Q. Okay. And if vegetation-management
15 spending was a problem, you could have -- AmerenUE
16 could have filed a rate case prior to July 9th, 2006,
17 correct?

18 A. I believe as part of the stipulation we
19 could not have filed a rate case if I recall the
20 details. We were prohibited from filing a rate case,
21 I believe, Mr. Chairman. I don't know if it was in
22 January -- there was a particular period of time
23 where we could not file a rate case and I just don't
24 recall the specifics. We were precluded from doing
25 that.

1 Q. Okay.

2 A. And it wasn't until, I believe, the last
3 12 months but I'd stipulate I certainly don't know,
4 but we clearly were not able to do that.

5 Q. So in your opinion would it -- would it
6 be a little bit filaceous for representatives of
7 AmerenUE to be representing to the press and to
8 members of the General Assembly that the company was
9 somehow harmed by Staff's position with regard to
10 vegetation management in the case that was settled
11 back in 2002?

12 A. Mr. Chairman, I'm not sure if any
13 representatives are saying that we were harmed by
14 the --

15 Q. I'm just saying if they were making
16 those representations, would that be filaceous?

17 A. I would say that we had a black box
18 settlement and that there was -- nothing precluded us
19 from our spending -- that there's nothing that said
20 that what we had to spend associated with tree
21 trimming is part of that settlement.

22 Q. And you were -- you were and continue to
23 be satisfied with the results of that settlement; is
24 that correct?

25 A. In the context of the overall case, we

1 have constructive settlement. We've said that many
2 times.

3 Q. Okay. And management employees, were
4 they paid a bonus or received some other incentive
5 compensation based on their performance in
6 negotiating that settlement?

7 A. To the best of my knowledge I'm not
8 aware if there was something tied directly to the
9 settlement of that case.

10 Q. Okay. Now, as executive vice president
11 and CFO, are you responsible for the statements that
12 go to the SEC?

13 A. I am.

14 Q. Okay. Do you recall the Metro East
15 transfer case?

16 A. I do.

17 Q. Okay. Since the Metro East transfer --
18 or transfer case transpired, has Ameren -- Ameren or
19 AmerenUE filed anything with the SEC regarding
20 AmerenUE's potential environmental liabilities for
21 the Illinois properties that were part of the Metro
22 East transfer?

23 A. Mr. Chairman, I'm not sure if we filed
24 anything with the SEC that addresses that other than
25 what we may have addressed in the footnotes to the

1 financial statements, but we wouldn't have been
2 required to file any separate filing with the SEC
3 related to that.

4 Q. To your knowledge has AmerenUE
5 discovered any new potential environmental
6 liabilities associated with those properties in the
7 Metro East transfer since the Metro East transfer
8 case was decided?

9 A. Mr. Chairman, I don't recall. I know
10 there's testimony, I believe, filed in this case
11 related to that issue, and I believe it's sponsored
12 by Mr. Weiss, but the details, I'm just not -- I
13 don't know the specifics on that particular issue.

14 Q. Okay. Fuel and transportation costs for
15 fuel represent what portion of AmerenUE's total
16 expenses roughly?

17 A. Of the -- for 2006 if you're talking
18 about fuel transportation and purchased power,
19 Mr. Chairman, is that what you're referring to?

20 Q. Yes.

21 A. I believe of the roughly \$2 billion of
22 operating expenses, I believe it was somewhere
23 between 7 and \$800 million related to fuel and
24 purchased power, with a large portion of that,
25 Mr. Chairman, being fuel and related transportation

1 costs.

2 Q. Okay. Mr. Baxter, if you had to name
3 the five top employees at AmerenUE, who would they
4 be?

5 A. Certainly I would start with
6 Mr. Rainwater, and then I think what you would do is
7 you would look at his current CEOs of the
8 organizations. That would be Tom Voss, myself, Alan
9 Kelley and Scott Cisel and then --

10 Q. Okay. But now I'm talking just
11 AmerenUE.

12 A. Oh, excuse me. I'm sorry. I
13 misunderstood your question. Then the top -- with
14 regard to AmerenUE solely, obviously you have
15 Mr. Rainwater who is still overseeing AmerenUE, you
16 have Mr. Voss who is the president and CEO of
17 AmerenUE. I am certainly the chief financial officer
18 of AmerenUE. You have Richard Mark who is the senior
19 vice president for AmerenUE, you have Ron Zdellar who
20 is a vice president of distribution operations. You
21 have Chuck Naslund who is the chief nuclear officer
22 of AmerenUE. You have Mark Birk who is the vice
23 president overseeing the nonnuclear power plants.
24 Those off the cuff would be sort of the top officers
25 of AmerenUE today.

1 Q. Okay. So if we were gonna name the top
2 five, it would be Rainwater, Voss, yourself, Mark and
3 Zdellar, correct?

4 A. I think --

5 Q. I'm just gonna set aside the generation
6 people for the time being. Not to diminish
7 Mr. Naslund's role as taking care of Callaway,
8 because obviously that's important, but just ...

9 A. I think certainly when you link to the
10 distribution piece, I think that you've hit the nail
11 on the head, especially when you name Mr. Voss,
12 Mr. Mark and Mr. Zdellar.

13 Q. Okay. Now, I believe in your earlier
14 testimony you reference that employees get, quote,
15 scorecards?

16 A. Well, various units within Ameren
17 Corporation have scorecards, that's correct.

18 Q. Okay. Well, I guess what I want to know
19 is of those -- of those top five employees, how many
20 of those employees get, quote, scorecards for their
21 units, and could those scorecards be furnished to the
22 Commission?

23 A. Oh, certainly. I think that there are
24 scorecards for the -- especially in the distribution
25 area there are scorecards that can be furnished to

1 the Commission.

2 Q. I believe Mr. Dottheim asked you some
3 questions about Exhibit No. 254. I believe that was
4 the direct mail piece that was sent to all Ameren
5 customers; is that correct?

6 A. Yes, sir, Mr. Chairman.

7 Q. And do you know much about the
8 preparation of this mail piece?

9 A. I know that the person who led the
10 preparation of this mail piece is the person who
11 signed it, was Mr. Mark.

12 Q. Okay.

13 A. But I do know that Mr. Mark obviously
14 spoke with Mr. Voss and Mr. Rainwater about this
15 piece as well as our board of directors. I do recall
16 Mr. Voss telling our board of directors that this was
17 something that was going to take place.

18 Q. Okay. Now, do you know whether or not
19 these pictures that are actually used in this mail
20 piece, those are all pictures from other parts of the
21 country and these are not pictures from Missouri,
22 correct?

23 A. Mr. Chairman, I don't know if that is.

24 Q. You have no idea?

25 A. I just don't know.

1 Q. Okay.

2 A. If it says in here that's what they are,
3 then I believe -- I don't know. Mr. Mark certainly
4 would be able to address that specifically.

5 CHAIRMAN DAVIS: All right. Well, then,
6 we'll save these questions for Mr. Mark. Thank you,
7 Mr. Baxter.

8 THE WITNESS: Sure, Mr. Chairman.

9 JUDGE WOODRUFF: All right. Then we'll
10 go for recross based on questions from the bench,
11 beginning with Aquila.

12 (NO RESPONSE.)

13 JUDGE WOODRUFF: Laclede.

14 (NO RESPONSE.)

15 JUDGE WOODRUFF: The Bargaining
16 Committee.

17 (NO RESPONSE.)

18 JUDGE WOODRUFF: DNR.

19 MR. IVESON: No.

20 JUDGE WOODRUFF: The Retailers
21 Association.

22 MR. OVERFELT: No.

23 JUDGE WOODRUFF: Mo-Kan/CCAS.

24 (NO RESPONSE.)

25 JUDGE WOODRUFF: MASW.

1 (NO RESPONSE.)

2 JUDGE WOODRUFF: MIEC.

3 MS. VUYLSTEKE: No questions.

4 JUDGE WOODRUFF: Commercial Group.

5 (NO RESPONSE.)

6 JUDGE WOODRUFF: MEG.

7 MS. LANGENECKERT: No questions.

8 JUDGE WOODRUFF: AARP, Consumers

9 Council.

10 MR. COFFMAN: No questions.

11 JUDGE WOODRUFF: Noranda.

12 MR. CONRAD: Nothing further, your

13 Honor.

14 JUDGE WOODRUFF: For the State.

15 MR. MICHEEL: Oh, yeah.

16 JUDGE WOODRUFF: I thought you might.

17 RECROSS-EXAMINATION BY MR. MICHEEL:

18 Q. Commissioner Clayton asked you about a

19 discussion we had about the Ameren fact sheet.

20 A. Yes.

21 Q. And I just want to make it clear in --

22 in -- in '05, AmerenUE had earned \$346 million,

23 correct?

24 A. I have the fact sheet here. If --

25 Q. Here you go. Let me just approach --

1 A. No, I have it.

2 Q. Okay. And my question is, is that for
3 the regulated only or is that for the combined?

4 A. I don't know if that's regulated or
5 combined in the context of this discussion. I don't
6 know.

7 Q. Same with all the other numbers there,
8 you don't know?

9 A. Yes, that's right.

10 Q. Is it correct -- there was a bunch of
11 questions around EE, Inc. Do you recall those
12 questions?

13 A. Yes, sir.

14 Q. Is it your understanding that
15 Mr. Naslund is the only current EE, Inc. board member
16 that's testifying here in this case?

17 A. I believe that is correct.

18 Q. Are you aware that Mr. Naslund had his
19 deposition taken in this case?

20 A. I am aware of that.

21 Q. Would you be surprised if Mr. Naslund,
22 in response to a question I think from me, indicated
23 that there hadn't been any real analysis done
24 regarding the termination or not reupping the EE,
25 Inc. contract on behalf of AmerenUE?

1 A. I -- if that's what he said, I bet that
2 is -- that is certainly a possibility.

3 Q. And he'd be the one to know because he's
4 the EE, Inc. board member?

5 A. Yes, certainly, because the decision
6 ultimately on that particular issue was an EE, Inc.
7 decision, not an AmerenUE decision.

8 Q. Does AmerenUE keep track of its
9 investments?

10 A. In what way, Mr. Micheel?

11 Q. Well, AmerenUE owns 40 percent of EE,
12 Inc., right?

13 A. It does.

14 Q. Is that an important asset of AmerenUE?

15 A. AmerenUE as a whole, certainly.

16 Q. I mean, it returned almost, what, 60, 70
17 million bucks last year, right?

18 A. I know we discussed that a little bit
19 earlier, and I don't recall if that was a specific
20 number, but I'll stipulate if that's what we said
21 earlier.

22 Q. A decent return, a lot of money. At
23 least from my perspective, that is a lot of money.
24 So do you think it would be incumbent upon Ameren to
25 know what its board representative is gonna do at the

1 EE, Inc. board meetings?

2 A. I think what happens at the EE, Inc.
3 board member meeting is when Mr. Naslund and others
4 go to the EE, Inc. board meeting, they act on behalf
5 of EE, Inc. as a board member. That is their
6 responsibility. Their responsibility -- even though
7 they work for AmerenUE, this is not uncommon, that
8 employees can wear two hats.

9 When you're over at AmerenUE and
10 Mr. Naslund is the chief nuclear officer, he acts in
11 the capacity as the chief nuclear officer of
12 AmerenUE. When he goes into the EE, Inc. board
13 meeting, he acts in the capacity as an EE, Inc. board
14 member and has to make decisions in that context.

15 And so that is not uncommon at all. And
16 in fact, when Mr. Naslund said that there was no
17 specific analysis done, I assume you're speaking on
18 behalf of EE, Inc., then that's possible.

19 Q. Do you know if AmerenUE did any specific
20 analysis?

21 A. You know, at the end of the day -- you
22 know, I know Commissioner Gaw was asking me about
23 that, and, you know -- and I couldn't come up with
24 really an analysis and, you know, the fact of the
25 matter is, AmerenUE didn't have a choice. At the end

1 of the day it was an EE, Inc. decision and AmerenUE
2 didn't have a say in that decision. There was no
3 contract to be extended. That was made by the --

4 JUDGE WOODRUFF: If I could interrupt
5 you. If you'd just please answer the question that's
6 asked, yes or no if it's a yes or no question. It's
7 getting late in the day.

8 THE WITNESS: Okay. I'm sorry, your
9 Honor.

10 JUDGE WOODRUFF: That's all right.

11 THE WITNESS: But I wanted to make
12 sure --

13 JUDGE WOODRUFF: Wait, there's not been
14 a question asked. Just wait for the attorney to ask
15 the question.

16 THE WITNESS: Okay.

17 BY MR. MICHEEL:

18 Q. We'll talk some more about EEI.

19 A. I'm sure.

20 JUDGE WOODRUFF: We've got a whole day
21 set aside for that.

22 BY MR. MICHEEL:

23 Q. We're gonna have plenty of fun with this
24 issue so let's just wait. You talked with
25 Commissioner Applling about \$20 billion of investment

1 you'd have to make in-plant. Do you recall those
2 questions?

3 A. Commissioner Appling said that there may
4 be a need to invest \$20 billion between 2020 and
5 2040, and he went through an analysis as to how he
6 came up with that number.

7 Q. But AmerenUE is not committed to doing
8 that yet, are they?

9 A. We have not made a commitment to make
10 that kind of expenditure at this --

11 Q. And you haven't made a commitment to
12 retire any of your base load coal plants yet, have
13 you?

14 A. No. At this time I think what I told
15 Commissioner Appling is that those plants would,
16 indeed, be very old during that time period.

17 Q. And you have some really old plants now
18 that you are operating pretty efficiently, do you
19 not?

20 A. Yes. Yes, we do. And as every year
21 goes by, it becomes more and more difficult to keep
22 those operating as efficiently as possible.

23 Q. I believe Commissioner Davis asked you
24 about -- well, actually a lot of the Commissioners
25 asked you about the Callaway life extension and the

1 relicensing, and you indicated that -- that if -- if
2 we don't -- if we elongate the depreciation based on
3 the fact that you guys are going to perhaps relicense
4 Callaway and you don't do it, you lose out; is that
5 correct? You lose money because the depreciation
6 rate is reduced?

7 A. No, no, no, I did not say that.

8 Q. Okay.

9 A. I did not say we'd lose money. What I
10 said is that there would be volatility on customers'
11 bills. And so if you think about intergenerational
12 equity issues which was really what I was trying to
13 get to -- but at the end of the day, we will recover
14 whether we depreciate Callaway over 40 years or 60
15 years, we would cover the cost of the plant. It is a
16 meaningful cash flow issue, certainly a meaningful
17 cash flow issue.

18 Q. And the flip side of that is, if this
19 Commission buys off on your argument and believes,
20 well, we should keep the depreciation at the 18 years
21 and then two years from now you guys decide to
22 relicense, those depreciation rates are higher than
23 they otherwise should be; is that correct?

24 A. I think estimates are changed all the
25 time.

1 Q. The --

2 A. I don't know.

3 Q. That wasn't my question. My question
4 was, you know, all things equal, depreciation rates
5 would be higher than they otherwise would have to be.

6 JUDGE WOODRUFF: That is a yes or no
7 answer.

8 THE WITNESS: Well, I disagree.

9 MR. MICHEEL: Okay. Fair enough.

10 JUDGE WOODRUFF: All right. Thank you.
11 And for Public Counsel.

12 MR. MILLS: I have a few questions.

13 RECROSS-EXAMINATION BY MR. MILLS:

14 Q. I believe Commissioner Gaw and
15 Commissioner Murray as well asked you some questions
16 about Kentucky Utilities and the role Kentucky
17 Utilities played towards the end of the expiration of
18 the last power supply agreement at the Joppa plant.
19 Do you recall those questions?

20 A. I recall the discussion. I don't know
21 if I recall the specific questions, but certainly I
22 remember Kentucky Utilities coming up.

23 Q. Are you -- tell me your understanding of
24 what Kentucky Utilities did in the period of time
25 leading, say, a year or so before the expiration of

1 the power supply agreement at the end of 2005.

2 A. It's my understanding the Kentucky
3 Utilities had explored the possibility of extending
4 the contract.

5 Q. Have you seen a letter that Kentucky
6 Utilities sent to EE, Inc.?

7 A. I don't believe I have.

8 Q. Have you seen a letter that Kentucky
9 Utilities sent to the Kentucky Regulatory Commission?

10 A. No.

11 Q. Okay. Have you read the rebuttal --
12 surrebuttal testimony of Ryan Kind?

13 A. I've read a lot of different testimony.
14 I don't recall if I read every piece of testimony of
15 Mr. Kind's. I just don't recall.

16 MR. MILLS: May I approach?

17 JUDGE WOODRUFF: Yes, you may.

18 BY MR. MILLS:

19 Q. I'm gonna show you a copy Mr. Kind's
20 surrebuttal testimony and just flip you to two
21 attachments which are attachments -- whoops, 6 and 7
22 which are a letter from LG&E to the Kentucky
23 Commission from KU to EE, Inc. and ask you if you've
24 seen those before?

25 A. I've not seen the letter to the Kentucky

1 Commission nor do I recall seeing the letter to
2 Mr. Powers.

3 Q. Okay. Thank you. Do you know who
4 Mr. Powers is?

5 A. He's the president, I believe, of EE,
6 Inc. I believe that's his official title. The
7 reason, I saw the title there and I think that's his
8 official capacity.

9 Q. Now, you were asked some questions, I
10 believe, from Commissioner Clayton, from the fact
11 sheet that's on the Ameren website about earnings.
12 Before the calendar year 2006, would the unregulated
13 portion of AmerenUE's earnings be very great?

14 A. Before 2006. How do you define that,
15 Mr. Mills?

16 Q. Well, after --

17 A. We've always had an investment ownership
18 interest in that.

19 Q. After the expiration of the power supply
20 agreement at the end of 2005, did that event change
21 the proportionate regulated/unregulated returns in
22 UE's business in any significant manner?

23 A. I think if you're asking me whether --
24 if I believe EE, Inc.'s earnings went up after the
25 expiration of that contract in the year 2005, I

1 believe it did.

2 Q. By what percent?

3 A. I don't know. I haven't looked back at
4 the numbers in terms of where they were before
5 whether versus where they're at in 2006.

6 Q. Would it be just a percent or two or
7 would it be a fairly significant jump?

8 A. I would expect it would be a fairly
9 significant jump.

10 Q. Now, are UE's financials consolidated
11 with Ameren's for reporting purposes?

12 A. Yes, they are.

13 Q. And why is that?

14 A. Accounting rules require that you
15 consolidate those financial statements.

16 Q. And which accounting rules and why is
17 that?

18 A. Well, I'm not sure if I know the
19 specific GAAP accounting rule, but it is standard
20 practice that you consolidate all wholly-owned
21 subsidiaries. It's a generally accepted accounting
22 principle.

23 Q. And is it because of control or is it
24 because of ownership interest or both?

25 A. I think it's -- it depends upon the

1 facts and circumstances of that standard. I think
2 both of those play a role in making that decision.
3 There is no black and white line. Mr. Lyons, who is
4 a witness in this case, may be able to talk about the
5 consolidation as well as the specific standard if you
6 want to explore that with him further.

7 Q. And I may. Thank you. Are EE, Inc.'s
8 financials consolidated with Ameren's?

9 A. I'm sorry. Could you repeat?

10 Q. Are EE, Inc.'s financials consolidated
11 with Ameren's for reporting purposes?

12 A. For Ameren Corporation, EE, Inc.'s
13 financial statements?

14 Q. Yes.

15 A. Yes, I believe they are.

16 Q. And why are those consolidated?

17 A. Again, applying the same standard that
18 governs subsidiaries, the kind of requirements
19 require you to consolidate those. At an Ameren
20 Corporation level, there's an 80 percent ownership of
21 EE, Inc., and that certainly plays a factor.

22 Q. Okay. Now, you had a number of
23 questions about the Callaway relicensing, and let me
24 just ask you this flat out. As you sit there today
25 on the stand under oath, do you think it's more

1 likely that Callaway will be relicensed or not?

2 A. I don't know if I would say it's more
3 likely than not. I think it's impossible to say at
4 this point in time. I think that it is not unlikely,
5 but it doesn't -- I wouldn't say it is more likely
6 than not. I think, again, Mr. Naslund has absolutely
7 the best assessment in terms of those operations than
8 I do.

9 Q. So you have no opinion; it's a 50/50
10 chance as far as you're concerned?

11 A. It could be simply that, yes. Yes, at
12 this point in time.

13 Q. You do understand that the way the
14 issues are framed in this case, the Commission is
15 essentially going to have to decide that question?

16 A. I understand that.

17 Q. And you can't offer them any guidance?

18 A. Well, you asked me where I think it
19 could be, and I think as I look at the understanding
20 of the issues, as Mr. Naslund has pointed out in this
21 case, it wouldn't be appropriate for me to sit there
22 and place anything more than 50/50.

23 Now, if Mr. Naslund comes in here and
24 believes it's more likely than not based upon his
25 understanding of the plant's operations, his

1 understanding of the relicensing process, his
2 understanding of the risks and concerns of the
3 Callaway plant, then, you know, I stipulate that's
4 where my opinion would be too because he is the
5 expert.

6 Q. So if Mr. Naslund said after the recent
7 upgrades to the Callaway plant that that made the
8 plant good for the next 20 years and then 20 years
9 after that, would that give you any indication that
10 the plant may be good for another 40 years?

11 A. If that's what Mr. Naslund, indeed,
12 said. It's my understanding that the most
13 significant investments that we had made for the
14 Callaway plant here recently really was to make sure
15 that Callaway operated effectively and efficiently
16 through its current license period.

17 Q. If he did, indeed, say that, what would
18 your opinion be on my question about whether it's
19 more likely or not that it will be relicensed?

20 A. I think that would certainly weigh more
21 towards that you would relicense the plant. But I
22 still think you have those other issues that I
23 described earlier as something that has to be
24 considered.

25 Q. Who will ultimately make the decision on

1 whether or not to seek relicensing?

2 A. I think ultimately that decision will
3 likely lie with Mr. Naslund and Mr. Voss.

4 Q. Will Mr. Rainwater play a role?

5 A. I'm certain he will.

6 MR. MILLS: Okay. That's all the
7 questions I have. Thank you.

8 JUDGE WOODRUFF: Thank you. All right.
9 It is now nearly five o'clock. I usually like to
10 stop at five o'clock, but I'll throw it out to the
11 parties. We've still got recross from Staff and
12 redirect. How long do you think it will take?

13 MR. DOTTHEIM: Just a couple of minutes
14 for me, if it's even that long.

15 JUDGE WOODRUFF: Okay.

16 MR. LOWERY: I would say 10, 15 minutes,
17 probably not more.

18 JUDGE WOODRUFF: Well, I propose to
19 finish with this witness, then, today and we'll go
20 ahead with Staff.

21 THE WITNESS: Thank you, your Honor.

22 RE CROSS-EXAMINATION BY MR. DOTTHEIM:

23 Q. Mr. Baxter, in response to a question
24 from Chairman Davis, I think you used the term
25 "regulatory compact." Do you recall that?

1 A. Yes. I don't recall the context in
2 which I utilized itM but I do recall I did say that.

3 Q. That is a term with which you are
4 familiar, is it not?

5 A. Yes.

6 Q. Okay. Could you please define that term
7 as you'd use it?

8 A. Well, I think that in terms of -- in
9 trying to recall the -- actually the context that I
10 was using it with the Chairman, but I think it was
11 the regulatory compact between the company and its
12 stakeholders, and the stakeholders could be certainly
13 its ratepayers as well as others. There's a
14 regulatory compact that you have to operate under.

15 Q. Could you be more responsive?

16 A. Regulatory compacts. Well, I think with
17 regard as I've said earlier, you know, it is our
18 obligation to deliver safe and reliable service at a
19 reasonable cost. That, to me, is a regulatory
20 compact.

21 There's a regulatory compact potentially
22 in the context of settlements and stipulations.
23 There's sort of a regulatory compact that we abide by
24 under those types of situations as well.

25 Q. In looking at your direct testimony and

1 your activities when you were with Price Waterhouse
2 prior to being with Union Electric Company, you
3 worked in the manufacturing industry. Is regulatory
4 compact unique to the public utility industry,
5 something that you would not find in, for example, a
6 manufacturing industry?

7 A. Oh, it depends upon the manufacturing
8 industry, because as, Mr. Dottheim, I'm sure you're
9 aware, there are -- there are -- there are
10 potentially manufacturing industries that are highly
11 regulated and you may talk to an officer or one of
12 those entities and say they have a regulatory
13 compact.

14 So I can only speak to the regulatory
15 compacts of which I'm primarily aware, and that
16 would be in the regulated business that I'm
17 referring to.

18 Q. And the regulated business being the
19 public utility business?

20 A. Well, the regulatory compacts that I'm
21 referring to are the regulated business, not the
22 public utility business, because as you know, that
23 definition can be very broad.

24 Q. Okay. And when you're referring to, for
25 example, rate-regulated in manufacturing, what would

1 you be referring to?

2 A. I don't know if I was really referring
3 to a rate-regulated in manufacturing. I just wasn't
4 trying to explore all the potential possibilities.

5 Q. Well, could you provide an example other
6 than the public utility industry?

7 A. Well, that's rate-regulated or just --

8 Q. Yes. I'm trying to --

9 A. You know, and it's possible that maybe
10 the railroads are rate-regulated. I don't know if
11 I'd call that a manufacturer. That might be a
12 different entity.

13 Q. Well, I'm looking for an example for you
14 to provide, Mr. Baxter, not for -- not one for me to
15 provide to you.

16 A. Mr. Dottheim, off the top of my head I
17 can't think of one.

18 MR. DOTTHEIM: Thank you again,
19 Mr. Baxter.

20 THE WITNESS: Sure. My pleasure.

21 JUDGE WOODRUFF: Redirect.

22 REDIRECT-EXAMINATION BY MR. LOWERY:

23 Q. Mr. Baxter, I'm gonna take you back to,
24 I think even this morning when Ms. Vuylsteke asked
25 you a few questions. I think she asked you a

1 question about the effect of what she posited to be
2 tax rates and interest rates that, I guess, she was
3 positing had in her view gone down since the late
4 '80s or early '90s. Do you remember those questions
5 that she asked you at that time?

6 A. I believe I do.

7 Q. And I think her point was, well, tax
8 rates and interest rates perhaps have gone down so
9 perhaps that's why UE's rates have gone down. Let me
10 ask you a question about that. Would the changes
11 that she posited, let's assume that they actually
12 happened, would they have affected other utilities
13 and corporations in the same way that she was
14 suggesting they affected AmerenUE?

15 A. I would presume, yes.

16 Q. But AmerenUE's rates are still down
17 relative to those other utilities?

18 A. Absolutely.

19 Q. And would those changes have also, for
20 example, affected the earnings of MIEC in the same
21 way that she was suggesting that they would have
22 affected AmerenUE?

23 A. Certainly directionally I would expect
24 that they would have.

25 Q. Would they have tended to affect the

1 manufacturers or the retailers of all of the kinds of
2 products that we see have increased over the years in
3 the same way that she was suggesting?

4 A. Certainly the nature of the matters that
5 Ms. Vuylsteke was talking about, income taxes as well
6 as borrowing costs, they affect industry as a whole,
7 and so generally I would say yes.

8 Q. So if we look at schedule WLB-9 in your
9 testimony which I think is in either -- I believe
10 your rebuttal testimony, perhaps your surrebuttal,
11 for example, Proctor and Gamble is a consumer
12 products company and we see consumer product prices
13 have gone up 45 percent. Proctor and Gamble would
14 have benefited from lower interest rates and lower
15 tax rates as well, correct?

16 A. I am certain they would have.

17 Q. Same way for Exxon Mobile in the
18 gasoline area?

19 A. I would expect they would have as well.

20 Q. A number of questions were asked of you
21 about EE, Inc. and -- by various -- some of the
22 Commissioners as well as some of the attorneys for
23 some of the other parties. Do you know if a Union
24 Electric employee who also happens to sit on EE,
25 Inc.'s board is a particular representative of a

1 particular shareholder?

2 A. I'm sorry. Repeat the question again.

3 Q. Do you know whether a board member on a
4 corporate board represents a particular shareholder?

5 A. I think a board member on EE, Inc.'s
6 board represents -- is a board member for that board.

7 Q. And whose interest are they supposed to
8 represent in your view when they're sitting on that
9 board?

10 A. The -- the -- the interest of EE, Inc.
11 and the shareholders of EE, Inc.

12 Q. I believe Commissioner Gaw asked you
13 some questions about the various contract
14 modifications that had taken place with respect to
15 the purchased power contract between Union Electric
16 Company and EE, Inc. over the years. Do you remember
17 those questions?

18 A. Yes.

19 Q. Do you know if the purchased power
20 agreements were priced -- that you were discussing
21 with Commissioner Gaw were priced the same or
22 differently when those prior modifications were made
23 versus how purchased power is priced today?

24 A. They were priced differently back then.

25 Q. And why is that?

1 A. It's generally because those were the
2 types of contracts, for all practical purposes, that
3 were entered into back then, type of cost plus
4 contracts which they're meaningfully different today
5 because of the change in the marketplace.

6 Q. So in your view, were decisions made by
7 EE, Inc.'s board when those contract modifications
8 were made over the years consistent with the
9 decisions that the EE, Inc. board made, I guess, in
10 2005 when it decided to contract with AEM for power
11 at market-based rates?

12 A. Absolutely.

13 Q. And that's why? Could you elaborate
14 again why --

15 A. Well, I mean, basically for all -- I'm
16 sorry -- for all practical purposes is that those
17 contracts back then were, for all practical purposes,
18 the only kind of contracts you could really enter
19 into, and they were basically market for all
20 practical purposes. And that's the best contract
21 that the EE, Inc. board felt that they could get to
22 maximize the return for their shareholders.

23 Similarly, when they made the decision
24 here just recently, they went to, I assume, that same
25 exercise and came to a conclusion which is different

1 largely due to -- but they entered into a
2 market-based contract.

3 Q. I think you were asked some questions by
4 Mr. Micheel about the other parties' positions
5 relative to the company's fuel adjustment clause and
6 off-system sales proposals, and I think when you
7 answered that -- well, let me ask you this: When you
8 answered those questions, first of all, do you recall
9 those questions? I know they were a few hours ago.

10 A. Yes, I do.

11 Q. When you answered that question, what
12 fuel adjustment clause off-system-sales proposals
13 were you referring to?

14 A. Well, I think principally the only one
15 that was really on my mind was our original proposal
16 for the fuel adjustment clause as well as some of the
17 sharing mechanism for off-system sales associated
18 with that. Since that time, as I've stated in my
19 testimony and I think earlier today, we've made
20 significant modifications to our fuel adjustment
21 clause in large part to -- to address many of the
22 consumers' concerns associated with the fuel
23 adjustment clause as well as off-system sales where
24 by now our original provision did not have sharing --
25 or netting of off-system sales against fuel costs.

1 We have now, because of many parties'
2 positions in this case, have now taken that step to
3 net off-system sales against fuel costs.

4 Similarly, the volatility mitigation
5 factor which was, you know -- placed a cap and defer
6 potential increases under the fuel adjustment clause.
7 Consumers raise that issue, and we have since
8 addressed that in our most recent filing as well as
9 the number of filings for the FAC from four down to
10 three.

11 That was something that OPC was looking
12 for as well as potentially taking the over- and
13 under-recovery over 12 months, among other things.

14 So the fact of the matter is, that since
15 we filed this in surrebuttal, we have not heard or
16 seen where the parties' positions are in that. We're
17 hopeful as a result of the moves that we have made as
18 a result of that to debridge this gap that that,
19 indeed, may bring the parties to agreement. But I
20 have not seen their -- nor have I heard what their
21 positions are.

22 Q. Mr. Baxter, I think Mr. Mills asked you
23 some questions about customer service measures and
24 how those might affect compensation of personnel at
25 AmerenUE. Do you recall those questions?

1 A. Yes.

2 Q. Can you tell the Commission, how do
3 customer service metrics fit into AmerenUE's
4 compensation system for people with direct
5 responsible (sic) for delivering energy for customer
6 service at the company?

7 A. Well, certainly the various scorecards
8 that are throughout the company for those that are
9 applicable, customer service is often -- in various
10 forms of metrics with regard to customer service,
11 whether it be satisfaction or some of those other
12 measurements perhaps are on a various -- particular
13 division's scorecard, and so how the system performs
14 could, indeed, impact, then, the compensation for
15 those individuals.

16 Q. So the people who are responsible for
17 the system performance, they are incentivized along
18 those customer service and reliability kind of
19 measures?

20 A. I believe that to be the case. Of
21 course, Mr. Zdellar would be able to address that
22 absolutely specifically.

23 MR. LOWERY: Thank you, Mr. Baxter.
24 That's all I have, your Honor.

25 JUDGE WOODRUFF: All right. Thank you.

1 Mr. Baxter, you can step down.

2 THE WITNESS: Thank you.

3 JUDGE WOODRUFF: And I believe you'll be
4 seeing us several times over the next three weeks.

5 THE WITNESS: I believe that's the case.
6 Thank you, your Honor.

7 JUDGE WOODRUFF: All right. Well,
8 that's where we'll stop for tonight, then, and we'll
9 resume tomorrow, I believe with Mr. Brubaker on the
10 overview and policy issue. And it's my understanding
11 that the Callaway nonlabor maintenance expense issue
12 has been settled; is that correct?

13 MR. DOTTHEIM: That's correct.

14 JUDGE WOODRUFF: We'll address that
15 again tomorrow also. So then we have fuel and
16 purchased power expense and diesel fuel hedge cost
17 issue.

18 MR. DOTTHEIM: I need to visit with the
19 other parties, but I think we're gonna be able to go
20 straight into fuel adjustment clause.

21 JUDGE WOODRUFF: Okay. Very good.
22 Anything else anyone wants to bring up while we're
23 still on the record?

24 (NO RESPONSE.)

25 JUDGE WOODRUFF: All right. With that,

1 then, we are adjourned for the day. We'll resume at
2 8:30 tomorrow.

3 (WHEREUPON, the hearing of this case was
4 recessed until March 13, 2007, at 8:30 a.m.)

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19	* Many exhibits were officially marked for		
20	identification by the court reporter subsequent to		
21	their admission into evidence, but were premarked by		
22	the parties prior to the hearing.		
23			
24			
25			

1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)
5
6

7 I, PAMELA FICK, RMR, RPR, CSR, CCR #447,
8 within and for the State of Missouri, do hereby
9 certify that the witness whose testimony appears in
10 the foregoing deposition was duly sworn by me; that
11 the testimony of said witness was taken by me to the
12 best of my ability and thereafter reduced to
13 typewriting under my direction; that I am neither
14 counsel for, related to, nor employed by any of the
15 parties to the action to which this deposition was
16 taken, and further that I am not a relative or
17 employee of any attorney or counsel employed by the
18 parties thereto, nor financially or otherwise
19 interested in the outcome of the action.
20
21
22

23 _____
24 PAMELA FICK, RMR, RPR, CSR, CCR #447
25