

1  
2 STATE OF MISSOURI  
3 PUBLIC SERVICE COMMISSION  
4

5  
6 TRANSCRIPT OF PROCEEDINGS  
7

8 Hearing

9 March 19, 2007

10 Jefferson City, Missouri  
11 Volume 23

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 MORRIS L. WOODRUFF, Presiding,  
20 DEPUTY CHIEF REGULATORY LAW JUDGE  
21 JEFF DAVIS, Chairman,  
22 CONNIE MURRAY,  
23 STEVE GAW,  
24 ROBERT M. CLAYTON III  
25 LINWARD "LIN" APPLING,  
COMMISSIONERS.

26 REPORTED BY:

27 PAMELA FICK, RMR, RPR, CCR #447, CSR  
28 MIDWEST LITIGATION SERVICES

## 1 APPEARANCES:

2 JAMES B. LOWERY, Attorney at Law  
3 Smith Lewis  
4 P.O. Box 918  
5 Columbia, Missouri 65205  
6 (573) 443-3141  
7 lowery@smithlewis.com

8 THOMAS M. BYRNE, Attorney at Law  
9 WENDY TATRO, Attorney at Law  
10 1901 Chouteau Avenue  
11 St. Louis, Missouri 63103  
12 (314) 554-2514  
13 tbyrne@ameren.com

14 ROBERT J. CYNKAR, Attorney at Law  
15 Cuneo, Gilbert & LaDuca, LLP  
16 507 C Street N.E.  
17 Washington, D.C. 20002

18 JAMES FISCHER, Attorney at Law  
19 Fischer & Dority  
20 101 Madison Street  
21 Jefferson City, Missouri 65101

22 FOR: Union Electric Company.

23  
24 DOUGLAS E. MICHEEL, Assistant Attorney General  
25 ROBERT E. CARLSON, Assistant Attorney General  
P.O. Box 899  
Supreme Court Building  
Jefferson City, Missouri 65102-0899

FOR: State of Missouri and Department  
of Economic Development.

1 TODD IVESON, Assistant Attorney General  
2 P.O. Box 899  
3 Supreme Court Building  
4 Jefferson City, Missouri 65102

5 FOR: Department of Natural Resources.

6 DIANA VUYLSTEKE, Attorney at Law  
7 Bryan Cave, LLC  
8 211 North Broadway, Suite 3600  
9 St. Louis, Missouri 63102

10 FOR: Missouri Industrial Energy  
11 Consumers.

12 LISA LANGENECKERT, Attorney at Law  
13 The Stolar Partnership, LLP  
14 911 Washington Avenue, Suite 700  
15 St. Louis, Missouri 63101

16 FOR: Missouri Energy Group.

17 RICK D. CHAMBERLAIN, Attorney at Law  
18 Behrens, Taylor, Wheeler & Chamberlain  
19 Suite 400, 6 N.E. 63rd St.  
20 Oklahoma City, OK 73105  
21 (405) 848-1014

22 FOR: The Commercial Group.

23 STUART W. CONRAD, Attorney at Law  
24 Finnegan, Conrad & Peterson  
25 3100 Broadway, Suite 1209  
Kansas City, Missouri 64111.  
(816) 753-1122  
stucon@fcplaw.com

FOR: Noranda Aluminum, Inc.

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

3  
4 FOR: AARP and Consumers Council of  
Missouri.

5 GAYLIN RICH CARVER, Attorney at Law  
Hendren and Andrae  
6 221 Bolivar Street  
Jefferson City, Missouri 65101

7  
8 FOR: Missouri Association for Social  
Welfare.

9

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

13 FOR: Missouri Retailers Association.

14

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

17  
18 FOR: Laclede Gas Company.

19 RUSS MITTEN, Attorney at Law  
Brydon, Swearngen & England  
20 312 East Capitol Avenue  
Jefferson City, Missouri 65102

21  
22 FOR: Aquila, Inc.

23

24

25

26

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

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

5

6 KEVIN THOMPSON, General Counsel  
STEVEN DOTTHEIM, Chief Deputy General Counsel  
7 NATHAN WILLIAMS, Senior Counsel  
DENNIS L. FREY, Senior Counsel  
8 STEVE REED, Litigation Attorney  
DAVID A. MEYER, Senior Counsel  
9 JENNIFER HEINTZ, Associate General Counsel  
BLANE BAKER, Attorney at Law  
10 P.O. Box 360  
Jefferson City, Missouri 65102

11 FOR: Staff of the Missouri Public  
12 Service Commission.

13

14

15

16

17

18

19

20

21

22

23

24

25

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

2                   JUDGE WOODRUFF: Let's come to order,  
3 please.

4                   Good morning, everyone, and welcome back  
5 for week two of the hearing in the Ameren Electric  
6 rate case, and a couple matters I wanted to bring up  
7 before we started on testimony.

8                   One of the last things we did on Friday  
9 was hand out copies of depositions. As we discussed  
10 at that time, Mr. Conrad had voiced an objection to  
11 those depositions being -- coming in wholesale, and  
12 he's not here this morning, won't be here until later  
13 today. We'll wait until he gets here to allow him to  
14 voice those oppositions before we take up the  
15 admission of those depositions.

16                  But I did want to indicate that we  
17 didn't get a copy of No. 100, which was Dr. Proctor's  
18 exhibit -- or deposition. So at the first break, I  
19 believe that was coming in from the company, if they  
20 would just get us copies of those.

21                  I also wanted to give you a little bit  
22 of good news. Since the coffee shop here is gonna be  
23 closed today, Kay, the Chairman's secretary, is in  
24 the process of setting up a coffee pot in one of the  
25 conference rooms across the hallway here, and so

1     you're welcome to coffee. We don't want anybody to  
2     go through caffeine withdrawal.

3                   MR. LOWERY: You can have them now if  
4     you'd like them, your Honor. They probably just  
5     couldn't locate them.

6                   JUDGE WOODRUFF: There was a lot of  
7     stuff being handed back and forth.

8                   MR. LOWERY: There you go.

9                   JUDGE WOODRUFF: Thank you very much.

10                  Any there other matters anybody wants to  
11     bring up before we get started for the day?

12                  (NO RESPONSE.)

13                  JUDGE WOODRUFF: All right then. I  
14     believe the next issue we're moving into is the EEInc  
15     issue, and we have offered the parties in the past  
16     earlier in this case an opportunity to do mini  
17     direct -- or mini openings, I should say, as we go  
18     into new issues.

19                  Do the parties wish to do openings on  
20     this issue?

21                  MR. CYNKAR: We do, your Honor.

22                  JUDGE WOODRUFF: All right. Then we'll  
23     begin with Ameren.

24                  MR. CYNKAR: May it please the  
25     Commission. Good morning, Judge Woodruff. My name

1 is Bob Cynkar and I'm here on behalf of AmerenUE this  
2 morning. And so we finally come to the EEInc issue,  
3 which is obviously a big issue in this case. And the  
4 evidence that you are going to see in this case on  
5 EEInc will show that the only money that AmerenUE  
6 ratepayers have expended regarding EEInc was for the  
7 purchase of power from EEInc through a long-term  
8 purchase power contract.

9                   In the 50-year history of these  
10 contracts, no one has ever suggested that they were  
11 imprudent or in any way bad for Ameren's customers.  
12 In fact, far from it. They were cost-based contracts  
13 and they were a very good deal for AmerenUE's  
14 customers. So this was not any kind of disappointing  
15 performance by AmerenUE at all. Far from it. This  
16 was excellent performance by AmerenUE and that's why  
17 we're here.

18                   The last of these contracts ran from  
19 1987 to 2005 when it expired by its own terms. In  
20 that time, a new regulatory world came into existence  
21 with FERC approving market pricing for wholesale  
22 power.

23                   When that contract expired, the market  
24 price for EEInc's power was significantly higher than  
25 the cost-based price that had been used in previous



1    years, and EEInc made the decision to sell its power  
2    at market value.

3                   Now, the other parties blame AmerenUE  
4    for the fact that EEInc does not want to sell its  
5    power at below-market value. They claim a right to  
6    this power, even though the contract has expired, but  
7    a right to this power at a below-market value. And  
8    to punish AmerenUE for not fulfilling this supposed  
9    right, they propose adjustments here to Ameren's cost  
10   of service to impute millions of dollars of revenue  
11   which they say represents the value of this lost  
12   power to the ratepayers.

13                   Here on this issue, it is the other  
14   parties that are advancing creative and aggressive  
15   theories to try to revive an expired contract. Those  
16   theories run roughshod over well-established rules of  
17   law. And what's particularly troubling is that those  
18   rules of law embody basic notions of loyalty and  
19   business ethics that we have seen violated so often  
20   in the recent past.

21                   In the end, cutting through all the  
22   testimony -- and there's a lot of testimony on this  
23   issue -- this boils down to a legal question: If  
24   AmerenUE legally could not do anything to compel  
25   EEInc to sell its power at a below-market price,

1 then there can be no basis to blame AmerenUE, and the  
2 proposed adjustments are unfair and cannot be  
3 justified.

4                   So how do the other parties create this  
5 novel right? The evidence will show that their  
6 arguments boil down into two basic concepts. First,  
7 the sponsoring companies controlled EEInc; and number  
8 two, that during the course of this relationship  
9 between EEInc and AmerenUE, risk was shifted to  
10 AmerenUE's ratepayers in a way that created some  
11 novel ownership-like rights in this stream of power  
12 at a below-market price.

13                   The control plan. First, the evidence  
14 will show that EEInc is an Illinois corporation  
15 that's not regulated by this Commission. The  
16 evidence will show that AmerenUE owns 40 percent of  
17 the stock that was purchased with shareholder money.  
18 It does not own any other asset of EEInc. It does  
19 not own the Joppa plant. It does not own any other  
20 asset of EEInc. Five of the seven directors of EEInc  
21 are affiliated with Ameren companies.

22                   Most importantly, the evidence will also  
23 show that there is no provision in the expired  
24 purchased power agreement that created a mechanism  
25 for extending or reviving it.

1                   EEInc's bylaws addressed allocation of  
2 power because, after all, the purpose of this  
3 contract was to serve DOE, and the bylaws did provide  
4 for a change in allocation of that excess power, but  
5 nothing in the bylaws addressed pricing or much alone  
6 guaranteed a particular price.

7                   On this notion of control, you will hear  
8 from Professor Robert Downs, who I think some of you  
9 know, from the UMKC school of law. Professor Downs  
10 is a distinguished professor of corporate law, and  
11 through his long career both as a scholar and as a  
12 lawyer, he has focused his work on the very  
13 principles of corporate governance that are at issue  
14 here and advises corporate boards and businessmen  
15 about them.

16                   He will testify to a number of  
17 important points that I think are key to this issue,  
18 and I'm not gonna go through all of them, but I  
19 would just briefly like to highlight a couple of them  
20 here.

21                   First of all, under the law,  
22 shareholders, even those who control most of the  
23 stock of a corporation, do not and cannot manage the  
24 business -- I'm sorry. And I know I was supposed to  
25 turn them off from last week. I apologize.

1                   Shareholders cannot do the business of  
2     the corporation. The directors and officers under  
3     the law have the responsibility and the legal duty to  
4     run the business of the corporation. AmerenUE had no  
5     legal right to direct or compel the directors to do  
6     anything, much less to compel them to take an asset  
7     of the corporation and give it away at less than  
8     market value to another corporation.

9                   And critically, and you're gonna hear a  
10    lot of testimony about this and there's already been  
11    some discussion of this, the directors have a legal  
12    duty, individually, a fiduciary duty to act in the  
13    best interests of their corporation.

14                  Now, it is very common on corporate  
15    boards for people from other businesses who have  
16    experience in business to serve on corporate boards,  
17    and they obviously have loyalties to those other  
18    corporations, but the law is that those other  
19    loyalties must be dropped at the boardroom door and  
20    their sole interest is in advancing the interests of  
21    the company on whose board they serve.

22                  In many respects it's analogous to the  
23    position of Commissioners, because Commissioners here  
24    are appointed by the Governor, but once you are and  
25    you assume office, it is your job to exercise your

1 independent judgment about the business of the  
2 Commission in applying the rules of law here.

3               Here the duty for directors of EEInc was  
4 clear. As the size of these adjustments indicate,  
5 the difference between the market price and the  
6 cost-based price of EEInc's power was great, and  
7 there was no other business deal that could be cut,  
8 and maximizing the value of the corporate asset is a  
9 basic responsibility of corporate directors.

10              Now, you're also going to hear and  
11 you've already heard some reference to the EEInc  
12 members who -- who were nominated by Kentucky  
13 Utilities who serve on the board of EEInc. Professor  
14 Downs will testify that these folks apparently  
15 opposed the move to sell EEInc's power at a market  
16 basis. We don't know, there's no evidence, no  
17 testimony from these folks, so I can't tell you or no  
18 one can tell you what their motivation was or what  
19 their thinking was and, indeed, they offered none for  
20 that position in the proceedings of the EEInc board.

21              But Professor Downs will testify that  
22 their position violated their fiduciary duties, and  
23 that if it had carried the day, it would definitely  
24 be a breach of fiduciary duties. So there is no  
25 legal basis for the claim that Ameren could compel

1 EEInc to sell its power.

2                   The second group of -- of issues by  
3 which the other parties justify this adjustment is  
4 this risk-shifting claim, and they really point to  
5 two groups of facts to justify that.

6                   The first is that in this cost-based  
7 contract between AmerenUE and EEInc, all of the costs  
8 of the Joppa Power that were being delivered to  
9 Ameren ratepayers were covered, and our response is:  
10 Of course. There is no implication in any of the  
11 evidence that these were unusual contracts in that  
12 sense. There was an energy charge and there was a  
13 demand in capacity charge. As is traditional, a  
14 capacity charge covers the fixed costs of the utility  
15 producing the power, and included in that is a return  
16 on equity, and the return on equity that was approved  
17 in the context of this contract was a 15 percent  
18 return on equity. Just like any commodity, the price  
19 has got to cover all the costs; otherwise, the seller  
20 is out of business.

21                   Now, there's also another implication  
22 besides dealing with the normal terms of the contract  
23 that somehow by virtue of buying this power and  
24 through the slivers of power that AmerenUE bought,  
25 that the ratepayers really supported the financial

1 vitality of EEInc in some special way.

2 Well, that's true in the sense of any  
3 consumer who buys anything supports the vitality of  
4 the seller, but the bottom line really is that if you  
5 think about it in that way -- remember, the purpose  
6 of this contract was to provide power to the  
7 Department of Energy, and on average, over that  
8 50-year history, Ameren only bought 16 percent of the  
9 power of EEInc coming out of the Joppa plant. So by  
10 that reasoning, the Department of Energy must have a  
11 huge ownership interest in the Joppa plant and its  
12 power. But, of course, it doesn't.

13 The second group of facts on this  
14 risk-shifting point that the other parties point to  
15 are really four: First of all, EEInc when it was  
16 originally put together was highly leveraged.  
17 Second, the sponsoring companies, which includes  
18 obviously AmerenUE, committed to buy all of EEInc's  
19 power if DOE stopped buying it. Third, there was a  
20 monthly capacity charge. And even if EEInc did not  
21 produce power, that charge had to be paid. And then  
22 finally, in 1977, the sponsoring companies guaranteed  
23 a ten million dollar bond that EEInc had issued in  
24 order to finance investment in various environmental  
25 improvements and antipollution material.

1                   Now, the reality is, is that none of the  
2 consequences of these risks ever materialized. No  
3 cost of these risks ever had to be absorbed. So the  
4 question then becomes "What if?" What if that had  
5 happened?

6                   AmerenUE has said the EEInc investment  
7 was an investment of its shareholders, and no one  
8 disputes that AmerenUE's shareholders bought the  
9 stock. AmerenUE had said it's a below-the-line  
10 investment and that it would never have asked to  
11 recover those excess costs, if let's say, the Joppa  
12 plant blew up and those creditors in that highly  
13 leveraged debt structure had to be paid off. It  
14 would have been AmerenUE's shareholders who would  
15 have had to pay that.

16                   Now, of course, none of these happened,  
17 and we can say we have not behaved inconsistently  
18 with that, but there's been no occasion in any kind  
19 of official proceeding for Ameren to say that;  
20 there's been no issue. But there have been losses of  
21 several of the subsidiaries of EEInc, and those  
22 losses have never been passed on.

23                   But let's say you take the most hostile  
24 attitude towards AmerenUE and you say, You guys are  
25 just ginning up this statement for this rate



1 proceeding; it's in your interest now to do that.  
2 Well, at the end of the day we come back to the law,  
3 and the reason why AmerenUE wouldn't have proposed to  
4 have its ratepayers recover those costs is because  
5 the law that governs this Commission says it  
6 shouldn't. And even if you assume the worst motives  
7 on the part of Ameren, this Commission would never in  
8 a million years have allowed those costs to be passed  
9 on to ratepayers.

10               So the notion that at the end of the day  
11 there were any risks that Ameren's ratepayers had  
12 coming out of the EEInc contract is not plausible  
13 from any perspective. Nothing happened here to give  
14 our ratepayers the unprecedented ownership rights,  
15 and AmerenUE had no legal power to compel EEInc to  
16 sell its power below market. And, therefore, I would  
17 suggest that the evidence that you will see will  
18 direct you to reject these adjustments.

19               Thank you.

20               JUDGE WOODRUFF: Thank you, sir.

21               Opening statement for Staff.

22               MR. DOTTHEIM: May it please the  
23 Commission. In the early 1950s when Union Electric  
24 Company sought Missouri Commission's authorization to  
25 acquire 40 percent of the shares of EEInc,

1     represent -- of EEInc, representation was made that  
2     the Joppa plant was to be constructed and would in  
3     essence serve as an addition to the UE system. A  
4     similar representation was made to the SEC in the  
5     1950s.

6                     Up until January 1, 2006, the Joppa  
7     plant provided electric energy and capacity to the UE  
8     native load customers at cost-based rates. The Staff  
9     will show that AmerenUE has been imprudent in not  
10    pursuing and retaining its access to capacity and  
11    energy from the EEInc Joppa plant at cost-based  
12    rates.

13                    Ameren in various FERC dockets has made  
14    representations to the FERC in response to protests  
15    from the Office of Public Counsel and the FERC has  
16    stated that EEInc's provision of capacity and energy  
17    to the AmerenUE system at cost-based rates is a state  
18    ratemaking issue.

19                    AmerenUE asserts in this proceeding that  
20    that is not a state ratemaking issue, despite its  
21    representations previously to the FERC. The question  
22    has even been raised by AmerenUE in this proceeding  
23    whether Missouri Commission's silence in those FERC  
24    proceedings means concurrence with Ameren's filed  
25    positions.

1                   As the Commission has already heard,  
2     Kentucky Utilities, which owns the remaining 20  
3     percent of the shares of EEInc, that is, the other  
4     shares not held either by AmerenUE or Ameren Energy  
5     Resources, has a very different, a contrary view of  
6     the law than AmerenUE. The value of the issue itself  
7     is, as indicated, large: \$78 million as quantified  
8     by the Staff.

9                   There is another unique aspect to this  
10    issue, and it has been noted that the company has  
11    filed the testimony of a law school professor on the  
12    law. There is an issue as to whether that is proper  
13    testimony before the Commission. There is case law  
14    that indicates that it is not. The Staff has cited  
15    that case law in its prehearing brief.

16                  The Staff raises an objection to the  
17    testimony of Professor Downs. The Staff will not  
18    suggest to the Commission that the testimony of  
19    Mr. Downs be stricken at this point or that Professor  
20    Downs not be permitted to take the stand. The Staff  
21    would suggest that this issue be taken with the case  
22    and that one of the issues to be determined by the  
23    Commission is whether Professor Downs' testimony is  
24    proper before the Commission. Again, this case law  
25    is cited. The rule is that the opinion of an expert

1 on issue -- issue of -- on issues of law is not  
2 admissible.

3 Thank you.

4 JUDGE WOODRUFF: Thank you, sir.

5 Public Counsel.

6 MR. MILLS: Good morning. May it please  
7 the Commission. I'll be very brief. This issue is  
8 nowhere near as complicated as UE makes it out.  
9 There was a 50-year arrangement between UE and EEInc  
10 whereby UE got power from the Joppa at cost. That  
11 expiration -- that contract expired at the end of  
12 2005. Several contracts during the period of time in  
13 which UE got power from EEInc had expired. They've  
14 been renewed on substantially the same terms.  
15 There's nothing that would have prevented UE, had it  
16 chosen to do so, from once again renewing that  
17 contract beyond the end of 2005.

18 Kentucky Utilities, you will hear and  
19 you will see evidence, was a minority partner or  
20 shareholder in the EEInc, and KU wanted to continue  
21 getting power at cost after the end of 2005. If  
22 Union Electric had sided with KU, together they had  
23 the votes to continue that at-cost arrangement. They  
24 chose not to.

25 This is no different than UE looking at

1 a purchased power agreement and then passing on it so  
2 that a nonregulated affiliate can make more profit.  
3 UE has an obligation to its ratepayers to obtain the  
4 least cost power that it can. It chose not to do so  
5 in this case.

6 JUDGE WOODRUFF: Someone has a cell  
7 phone or Blackberry turned on. Please turn it off.  
8 That causes that interference coming over the system.

9 MR. MILLS: This is not an attempt by  
10 Public Counsel or the Staff or the state to punish  
11 Union Electric. It's simply an effort on behalf of  
12 those entities to ensure that ratepayers are getting  
13 power at the cost that they could have. We allege  
14 that UE was imprudent in not obtaining that power at  
15 the cost, and so as a result of that imprudence, we  
16 propose imputing power at that cost. It's as simple  
17 as that.

18 JUDGE WOODRUFF: Thank you. Thank you,  
19 Mr. Mills.

20 For the State?

21 MR. MICHEEL: May it please the  
22 Commission. Much of the dispute in this proceeding  
23 revolves around AmerenUE's affiliate transactions  
24 involved in major power production. In particular,  
25 this issue, EEInc, and an issue that you're going to

1   hear on Friday, Pinckneyville and Kinmundy, both  
2   involve recent transfers of power plant capacity  
3   between Union Electric and affiliated companies, in  
4   both instances the disadvantage of ratepayers and the  
5   advantage of shareholders.

6                   To help understand this, I ask you to  
7   consider a hypothetical. It's a little bit  
8   complicated, but it's insightful regarding these  
9   issues. Assume that you have a trusted, good friend  
10   find you an apartment and your friend arranges for  
11   you to become a tenant in a new building called Joppa  
12   that is owned by your friend's brother. On your  
13   trusted friend's advice, you sign a highly unusual  
14   long-term lease that your friend negotiated with his  
15   brother containing the following terms:

16                   One, you pay rent that is not based on  
17   market conditions at the time but instead is designed  
18   to produce if you will cost recovery for the brother  
19   in every future year for the next 50 years, plus a 15  
20   percent return on the brother's equity.

21                   Second, your obligation to pay the rent  
22   is unconditional and absolute. Even if the building  
23   collapses, burns or cannot be occupied for any  
24   reason, you still owe cost-based rent every year.

25                   Third, because he was dealing with his

1 brother, your friend had you agree to lease  
2 provisions that allow the brother to evict you at  
3 will, but you cannot void the lease for any reason.  
4 Additionally, even though you're paying all the  
5 costs, you have no purchase option on the building.

6 Fourth, fortunately the building proves  
7 to be attractively located and cost-effective, and  
8 you live there and bear the full cost of the building  
9 over the next 50 years plus 15 percent return. Then,  
10 after 50 years, market changes and the Joppa  
11 neighborhood has become a trendy resort area. The  
12 brother calls you one day saying he's discovered the  
13 market value of the Joppa building is far higher than  
14 what would have been -- than what you have been  
15 paying for years, so you're evicted, at which time  
16 the brother starts renting the building to a new  
17 tenant for ten times the rent you're paying.

18 Commissioners, in this proceeding Union  
19 Electric has been the trusted friend for many  
20 decades, and ratepayers, the tenant in my example,  
21 have a right to be disappointed. The evidence in  
22 this case will show that through affiliate  
23 transactions with EEInc, ratepayers have borne all  
24 the UE shares of cost and risks of EEInc's Joppa  
25 plant since it was built only to see UE attempting to

1 now remove that facility outside regulation through  
2 affiliate maneuvering that was never approved by this  
3 Commission.

4           The company will argue that the lease,  
5 in this case an affiliate power supply agreement,  
6 defines all the ratepayers' equitable and legal  
7 rights in this matter. However, affiliate  
8 transactions must be held to a higher standard  
9 because of the potential for abuse of transactions  
10 such as this one.

11           You're gonna hear a lot of evidence  
12 about this and I think you should consider it. This  
13 case also contains an interesting parallel issue, one  
14 we're gonna hear on Friday. To understand this one  
15 we need to go back to the hypothetical I described  
16 and have AmerenUE as your trusted friend find you a  
17 replacement apartment.

18           By now your friend's brother has been  
19 speculating in the real estate market and built a  
20 shiny new building called the Pinckneyville/Kinmundy  
21 building that had hoped to make him rich in the  
22 new hot market area. Unfortunately, the this  
23 market softened and the brother really needs to get  
24 out of his Pinckneyville Kinmundy project. You  
25 still have not learned that your so-called friend



1 cannot be trusted to help you in dealing with this  
2 brother, so on his recommendation you buy his  
3 Pinckneyville/Kinmundy building at a price based not  
4 on the current depressed market value of that asset,  
5 but instead at the much higher book cost incurred by  
6 the brother to build the asset.

7                   In Missouri, under the Commission's  
8 affiliate transaction rules, utilities are supposed  
9 to pay assets to affiliates at the lower of cost or  
10 fair market value while selling to affiliates at the  
11 higher of cost or fair market value. UE in this case  
12 has done just the opposite, paying the affiliate  
13 costs when the market was lower and letting a  
14 valuable asset slip away through the expiring  
15 affiliate contract when market value far exceeded  
16 cost. This is intolerable.

17                   Now, the evidence is going to show in  
18 this case, and I think it's important for this  
19 Commission to understand that the State's proposed  
20 adjustment in this case doesn't change any of the  
21 facts related to EEInc, doesn't attempt to undo any  
22 of the transactions. They merely impute a certain  
23 amount of revenue into the revenue requirement. So  
24 you're gonna hear a lot of testimony about we're  
25 trying to undo corporate items and things like that,

1 and it's simply not true. I urge you to ask  
2 Mr. Brosch about the specifics of the State's  
3 adjustment, and I think at the end of the day it will  
4 become clear that the adjustment proposed by the  
5 State should be adopted.

6 JUDGE WOODRUFF: Thank you, sir.

7 DNR? MIEC? MEG? Commercial Group?

8 MR. CHAMBERLAIN: May it please the  
9 Commission. Your Honor, thank you for the  
10 opportunity to address the Commission this morning.  
11 I think the phrase in my mind that best captures the  
12 debate on this issue is "form over substance." Are  
13 you going to look at the form of this transaction,  
14 these series of transactions, or are you going to  
15 look past that form and look at the substance, the  
16 reality of the transactions?

17 The form argument is that this was the  
18 free decision or freestanding independent corporation  
19 to do as they please. The reality of it is that it  
20 was a series of affiliates making decisions to  
21 benefit the corporate structure as a whole.

22 The evidence will show that the decision  
23 to allow this cost-based power service agreement to  
24 expire was not the arm's length transaction of an  
25 independent corporation; rather, it was a carefully

1     orchestrated plan to benefit the affiliates of  
2     AmerenUE at the expense of its customers. And while  
3     AmerenUE is certainly free as a matter of management  
4     discretion to do that sort of thing, they are not  
5     free to pass those costs along to their customers.  
6     That is a decision for this Commission. This  
7     Commission is legally vested with the authority to  
8     make the decision as to what costs are passed on to  
9     AmerenUE's ratepayers. For ratemaking purposes, this  
10    Commission certainly is not a hostage to the  
11    decisions by Ameren affiliates.

12                 The Commercial Group's witness in this  
13    case, Kevin Higgins, will testify that in his expert  
14    opinion it was imprudent for Ameren to him allow its  
15    cost-based power service agreement with EEInc to  
16    expire. He will testify that as a result of that  
17    decision that there are additional costs to AmerenUE  
18    and to the customers if AmerenUE is allowed to pass  
19    those costs through, and then he will also recommend  
20    that these additional costs be disallowed from the  
21    requested rate increase before you.

22                 I would like to say that we can tell you  
23    with certainty what those costs are, but we cannot.  
24    Mr. Higgins will testify that as a part of the  
25    discovery process he asked the company to calculate

1     those costs for him. They refused to do so, and as a  
2     result, he was forced to come up with a couple of  
3     alternative estimates. And so we would ask that you  
4     would listen carefully to the evidence and that you  
5     would choose to believe the substance of the  
6     transaction rather than the form.

7                     Thank you.

8                     JUDGE WOODRUFF: Thank you, sir.

9                     Noranda? AARP? MAS -- do you wish to  
10    open?

11                    MR. COFFMAN: My clients would like to  
12    concur in the position and comments of the Public  
13    Counsel on this.

14                    JUDGE WOODRUFF: All right. Thank you.

15                    MASW? Retail Association?

16                    MR. OVERFELT: No comment.

17                    JUDGE WOODRUFF: Mo-Kan? Laclede?

18    Aquila? Joint Bargaining Committee?

19                    (NO RESPONSE.)

20                    JUDGE WOODRUFF: All right. It's my  
21    understanding that -- from conversations on Friday  
22    that the parties want to have Mr. Rainwater testify  
23    first; is that correct?

24                    MR. CYNKAR: That's correct, your Honor.

25                    JUDGE WOODRUFF: And it's also my

1 understanding that Mr. Rainwater is actually being  
2 called by the Staff?

3 MR. DOTTHEIM: That is correct.

4 JUDGE WOODRUFF: So we will treat him as  
5 a Staff witness.

6 MR. CYNKAR: Your Honor, we had spoken,  
7 we thought, since Mr. Rainwater doesn't have prepared  
8 testimony, he could come up, be sworn in, I would  
9 just tender him for cross-examination and we'd  
10 proceed along those normal lines if that's agreeable  
11 with your Honor.

12 JUDGE WOODRUFF: Is that agreeable with  
13 Staff?

14 MR. DOTTHEIM: Yes.

15 JUDGE WOODRUFF: Staff doesn't wish to  
16 do any direct on this witness?

17 MR. DOTTHEIM: Well, we have -- we have  
18 cross-examination, yes -- I mean direct.

19 JUDGE WOODRUFF: Yeah. So really it  
20 would be direct with you treating him as a hostile  
21 witness; is that --

22 MR. DOTTHEIM: Yes. Exactly.

23 JUDGE WOODRUFF: Because that creates a  
24 little problem, because what's he gonna be  
25 cross-examined about if he hasn't given any

1 testimony? Have the parties given that any thought?

2 MR. DOTTHEIM: Well, he served on the  
3 board of directors of EEInc, and that was the reason  
4 for deposing him and calling him --

5 JUDGE WOODRUFF: Well, I understand the  
6 reason -- I understand the reason for having him.  
7 I'm just trying to figure out procedurally how we're  
8 gonna do this, because if we treat him as a Union  
9 Electric witness, Staff would be the last to cross,  
10 and it seems it would put all the other parties at a  
11 disadvantage because we wouldn't have any idea of  
12 what Staff wanted from this witness.

13 MR. DOTTHEIM: I -- I certainly can  
14 proceed first, but I -- I view Mr. Rainwater as a  
15 hostile witness, yes.

16 JUDGE WOODRUFF: Certainly. Okay.

17 Any other parties wish to be heard on  
18 that point?

19 Mr. Mills?

20 MR. MILLS: Is it the idea that Staff  
21 will go first treating Mr. Rainwater as a hostile  
22 witness to be followed by other parties --

23 JUDGE WOODRUFF: Other parties, yes.

24 MR. MILLS: -- and then UE last?

25 JUDGE WOODRUFF: UE would be the last on

1 cross-examination of a Staff witness, yes.

2 MR. MILLS: I think that's fine with me.

3 JUDGE WOODRUFF: Well, then, Staff will  
4 treat -- we'll do it that way. If you want to call  
5 Mr. Rainwater as your witness and do your hostile  
6 direct. Of course, any nonattorneys out there, by  
7 saying hostile direct, I don't mean hostile.

8 That's a term of art for -- within the  
9 profession, meaning he can lead and so forth on your  
10 direct. So I assume the Staff wishes to call  
11 Mr. Rainwater.

12 MR. DOTTHEIM: Yes, the Staff would call  
13 Mr. Gary L. Rainwater.

14 (The witness was sworn.)

15 JUDGE WOODRUFF: Okay. Staff, you may  
16 proceed.

17 MR. DOTTHEIM: Judge, we've previously  
18 marked as Exhibit 258 the deposition of  
19 Mr. Rainwater. Do you want to defer any sort of  
20 ruling or --

21 JUDGE WOODRUFF: Yes, I'll defer making  
22 a ruling on that until later in this proceeding.

23 MR. DOTTHEIM: Okay.

24 DIRECT EXAMINATION BY MR. DOTTHEIM:

25 Q. Would you please state your full name

1 for the record, please.

2 A. Gary L. Rainwater.

3 Q. And would you please state your  
4 employment.

5 A. I am employed by Ameren Corporation as  
6 chairman, president and CEO.

7 Q. And will you please state your address  
8 of your employment.

9 A. 1901 Chouteau, St. Louis.

10 Q. Mr. Rainwater, have you at any time  
11 served on the board of directors of EEInc?

12 A. Yes, I have.

13 Q. Could you identify over what time period  
14 you served on the board of directors of EEInc?

15 A. I'll have to approximate. From about  
16 1998 until about May of 2004.

17 Q. And when you were serving on the board  
18 of directors of EEInc, were you the representative of  
19 any of the shareholders of EEInc?

20 A. When I served on the board of EEInc, I  
21 represented EEInc. I was nominated by the  
22 shareholders of EEInc to serve on the board there.

23 Q. And at the time you were serving on the  
24 board of EEInc, were there any individuals who had  
25 been nominated by AmerenUE or Union Electric Company



1 to serve on the board of EEInc?

2 A. Yes. At that time it was the practice  
3 for AmerenUE to nominate two directors and for CIPS  
4 to nominate two, for Dynegy to nominate two and for  
5 Kentucky Utilities to nominate two.

6 Q. Okay. And could you identify who were  
7 the individuals who were nominated by AmerenUE over  
8 that time period, if you recall?

9 A. I don't recall for sure, but at the time  
10 I think it was Chuck Miller and Alan Kelley.

11 MR. DOTTHEIM: If I may have one moment,  
12 please.

13 BY MR. DOTTHEIM:

14 Q. At the time you served on the board of  
15 directors of EEInc, did EEInc have any legal counsel?  
16 Was there a -- a -- anyone who was retained to  
17 provide legal services to EEInc?

18 A. Yes, it did.

19 Q. And who was that individual or firm?

20 A. Well, it actually probably employed more  
21 than one firm. I recall that Jones Day at times  
22 worked as counsel for EEInc.

23 Q. Were there ever any questions or issues  
24 that Jones Day addressed regarding fiduciary duty?

25 A. Not that I can recall.

1           Q.       Were the members of the board of  
2       directors briefed or advised of their -- what was  
3       deemed to be their fiduciary duties as members of the  
4       board of directors?

5           A.       Not that I recall.

6           Q.       How regularly did the board of directors  
7       of EEInc meet while you were on the board?

8           A.       I don't recall exactly but I think about  
9       four times per year.

10          Q.       Were there ever any other meetings held  
11       in advance of the regular board meetings?

12          A.       Yes. We sometimes met in advance of  
13       board meetings.

14          Q.       Were there communications in advance of  
15       board meetings that addressed the upcoming board  
16       meetings?

17          A.       Yes, there were. Normally directors  
18       were provided an agenda before the board meetings.  
19       They could review materials, they could discuss  
20       materials between -- prior to the meetings with other  
21       directors.

22          Q.       Over the time period that you served on  
23       the board of directors, did the matter of the end of  
24       the power supply agreement that began in 1987, was  
25       that an item that was ever discussed by the board of

1 directors?

2 A. I don't recall if it was discussed in  
3 formal board meetings, but I do recall discussions  
4 with other directors regarding expiration of the  
5 contract.

6 Q. And do you recall the nature of those  
7 discussions?

8 A. The question was generally what to do  
9 with the power when the contract expired, and the  
10 questions were around the issue of changes in the  
11 wholesale power markets because -- since the Energy  
12 Policy Act that was passed in 1992 essentially was at  
13 least the first step in creating a wholesale market.  
14 Markets at that time were changing so that there was  
15 the possibility that at the end of the power  
16 contract, EEInc would take a fundamentally different  
17 approach to selling power; to sell power in the  
18 wholesale markets at a market rate rather than to  
19 sell power at a cost-based rate as it had in the  
20 past.

21 Q. Were the discussions that you're  
22 referring to involve representatives who had been  
23 nominated by Kentucky Utilities?

24 A. Yes, they would have been a part of  
25 those.

1           Q.       Mr. Rainwater, did you retain any  
2 records from your years of serving on the board of  
3 directors of EEInc?

4           A.       No, I have not, but I'm sure that all of  
5 the records of the board meetings are available at  
6 EEInc.

7           Q.       Do you presently in your position  
8 receive communications in respect to EEInc?

9           A.       I don't recall receiving any recently,  
10 but I might. I might receive the annual report for  
11 EEInc.

12          Q.       And do you receive e-mails or any  
13 written correspondence other than an annual report?

14          A.       I don't recall receiving any.

15          Q.       And what is your record retention  
16 approach?

17          A.       Well, I generally like to try to take  
18 action on anything I need to take action on in order  
19 to minimize accumulation of paper. So I don't keep a  
20 lot of things. I read it, I dispose of it. If I  
21 need to keep it for a while, I may stick it in a desk  
22 drawer file, and when I no longer need it, I throw it  
23 away.

24          Q.       Does that mean that you have no paper  
25 retention, no paper files?

1           A.       That doesn't mean that as a corporation  
2 we don't keep records. Our corporate secretary keeps  
3 all appropriate records, my secretary keeps records  
4 of things that need to be kept. But, no, I'm not a  
5 very neat record keeper, and I don't keep very good  
6 records.

7           Q.       Meaning you personally do not -- do not  
8 retain written correspondence or e-mail, do you?

9           A.       Not normally, no.

10          Q.       Mr. Rainwater, were you involved in  
11 drafting the 1987 power supply agreement?

12          A.       Yes, I was.

13          Q.       Did the power supply agreement, the one  
14 in 1987 and the other power supply agreement, provide  
15 that the sponsoring companies had the right to take  
16 power from the EEInc generating facility based upon  
17 the company's ownership shares and the amount of  
18 power not taken by DOE?

19          A.       Well, I don't remember the formula, but  
20 as a general concept, I do believe that's correct.

21          Q.       Was there ever a limitation regarding  
22 the number of months that AmerenUE or UE could take  
23 power from EEInc?

24          A.       Yes, there was at the beginning of the  
25 contract. The amount of power that UE could buy was

1 fairly restricted. Most of the power went to the  
2 Department of Energy, but UE had options in its  
3 contract that allowed it to take increasing amounts  
4 of time -- power over time.

5 Q. Mr. Rainwater, you indicated, did you  
6 not, in your deposition on January 25 of this year  
7 that Union Electric Company considered canceling the  
8 power supply agreement with EEInc sometime in the  
9 late 1990's so as to earn a higher return in the  
10 unregulated market?

11 A. No, I don't believe I did. What I said,  
12 or at least what I would have meant, is that EEInc  
13 considered canceling the contract. And as I  
14 mentioned a minute ago, we've had those discussions  
15 on the EEInc board that go back at least as far as  
16 the mid 1990's.

17 And when you say canceled the contract,  
18 that's a decision that would have had to have been  
19 made prior to about the year 2000 to be effective,  
20 and at that point there simply wasn't a sufficient  
21 wholesale market evolution to allow with any  
22 certainty directors to make that decision.

23 Q. Mr. Rainwater, do you have a copy of  
24 your deposition?

25 A. No, I don't.

1                   MR. DOTTHEIM: May I approach the  
2 witness?

3                   JUDGE WOODRUFF: You may.

4 BY MR. DOTTHEIM:

5           Q.       Mr. Rainwater, I've handed to you a copy  
6 of your deposition from January 25, 2007. And I'd  
7 like to direct you to page 121, starting at line 10.  
8 And starting on page 121, line 10.

9                   "Question: There's cancellation  
10 provisions in this contract, if I understand that, in  
11 section 6. I think it's .02. And do you know, did  
12 Union Electric ever consider canceling on the five  
13 years' notice?

14                   "Answer: When you say Union Electric, I  
15 guess the thought crossed my mind that we might  
16 cancel the contract under these provisions, but I  
17 didn't think it was the right thing to do. We  
18 committed to the contract and we should honor the  
19 contract.

20                   "Question: And why did the thought  
21 cross your mind to cancel the contract?

22                   "Answer: Because markets were changing  
23 over a period of this contract, and there would have  
24 been an opportunity for EEInc to use this power to  
25 earn a higher return by selling it in the unregulated

1 market, and that occurred before the end of the  
2 contract. But the contract was in place and it's  
3 what we agreed to, and I felt we should honor the  
4 contract and stick to the contract through the term  
5 of the contract.

6 "Once the contract expired and there was  
7 no longer any commitment or obligation on the part of  
8 either party, then that was the proper time for us  
9 then to recognize the changes taking place in the  
10 market.

11 "Question: But at that time did you  
12 have a fiduciary duty to the shareholders to get as  
13 much value from the EEInc asset as you could?

14 "Answer: Yes, I've always had that  
15 fiduciary duty:

16 "Question: And yet, if I understand --

17 "Answer: And maybe I made a mistake.  
18 Maybe I made a mistake and should have canceled.  
19 Maybe we should have canceled the contract, but my  
20 judgment is a contract is a contract, and the right  
21 thing to do is to honor the contract.

22 "Question: If at some point it hurts  
23 the shareholders --

24 "Answer: Let me read the cancellation  
25 provision.



1 "Question: Sure

2 "Answer: Cancellation provision  
3 requires" --

4 MR. CYNKAR: Excuse me, your Honor. I'm  
5 gonna object now. I don't know exactly what  
6 Mr. Dottheim is trying to do in terms of impeachment,  
7 but we're covering so much of this transcript with so  
8 many different topics, I think it's getting a little  
9 confusing.

10 So if there is some answer that  
11 Mr. Rainwater gave before that should be impeached,  
12 that's fine, but this covers so many topics. I don't  
13 think this is a proper foundation for impeachment.

14 JUDGE WOODRUFF: Mr. Dottheim, where  
15 is the reference?

16 BY MR. DOTTHEIM:

17 Q. In particular, the reference to Union  
18 Electric Company, Mr. Rainwater, on page 121.

19 A. Uh-huh. From a UE point of view --  
20 and -- and I would certainly agree that the  
21 questioning is confusing because it jumps back and  
22 forth between UE and EEInc. And at the time I was an  
23 officer of UE and I was a director of EEInc.

24 From a UE point of view, the right thing  
25 for us to do was to allow the contract to run its

1 term. From an EEInc point of view, the right thing  
2 to do was to consider canceling the contract prior to  
3 the end of the contract.

4 We -- we, being EEInc, did not make that  
5 decision simply because there was too much  
6 uncertainty prior to the five-year cancellation  
7 provision being effective to make that kind of  
8 decision.

9 In the entire line of questioning,  
10 though, Mr. Dottheim, I have to say that it was  
11 confusing the way that -- to me, the way that you  
12 were continually jumping back and forth between UE  
13 and EEInc, and I do have roles in both companies, and  
14 many of our officers have roles in more than one  
15 company.

16 But to keep things simple, officers and  
17 directors understand that when they're acting on  
18 behalf of one company, they're make decisions on  
19 behalf of that company. When they're acting on  
20 behalf of another company, they make decisions on  
21 behalf of that company.

22 I have always tried to do that and tried  
23 to do that clearly. And as a general rule -- you  
24 know, we've talked about affiliate transactions. As  
25 a general rule, I would prefer not to have affiliate

1 transactions between Ameren-affiliated companies --

2 Q. Mr. Rainwater, thank you.

3 Mr. Rainwater, how do you know -- how  
4 did you know what your fiduciary duty was?

5 A. Well, all officers of our company have a  
6 general understanding of fiduciary duties, and we've  
7 provided training at times to people or people have  
8 provided training on their own.

9 Speaking for myself, when I was  
10 appointed to the EEInc board ten years or so ago,  
11 that was probably the first corporate board that I'd  
12 been appointed to. I went to a bookstore and bought  
13 a book on what it means to be a director of a  
14 company, and I read it and, you know, what I recall  
15 from that is that it means that I have a duty to act  
16 in the interest of that company.

17 Q. Did EEInc provide any training?

18 A. Not that I can recall.

19 Q. Did Union Electric Company provide any  
20 training?

21 A. Not that I can recall.

22 Q. So the training you received was from  
23 the book you bought?

24 A. Training may have been provided. I'm  
25 just saying that this is ten years ago. I don't

1 recall. I do remember buying the book and reading  
2 the book.

3 Q. Mr. Rainwater, votes of the board of  
4 directors, I'd like to ask you a question as to how  
5 they were recorded. If a -- if a vote was unanimous,  
6 do you recall if the minutes reflected that the vote  
7 was unanimous?

8 A. I don't recall but votes generally were  
9 unanimous.

10 Q. If a vote was not unanimous, do you  
11 recall if the minutes reflected that the resolution  
12 passed or carried?

13 A. Well, certainly the minutes would  
14 reflect if it did or not, and it would most likely  
15 record the vote.

16 Q. Okay. So you're indicating that the  
17 minutes would indicate if there were -- if the vote  
18 was not unanimous, there would be an indication that  
19 there were votes against the resolution?

20 A. Actually I don't know because I don't  
21 recall that ever happening when I was a director.

22 Q. Can you identify who's the president and  
23 chairman of the board of directors of EEInc?

24 A. Alan Kelley is now.

25 Q. And is he an employee of Ameren or an

1 Ameren affiliate?

2 A. Yes. He's now president of Ameren  
3 Energy Resources Company.

4 Q. And is Robert L. Powers the president of  
5 EEInc?

6 A. Yes, that's correct.

7 Q. Okay. And is he an employee of Ameren  
8 or an Ameren affiliate?

9 A. Yes, he is.

10 Q. Okay. Could you identify the position  
11 he holds?

12 A. He is an officer in Ameren Energy  
13 Resources.

14 Q. Is William H. Shepard presently vice  
15 president of EEInc?

16 A. I believe that's correct.

17 Q. And is he an employee of Ameren or an  
18 Ameren affiliate?

19 A. He is an employee of EEInc.

20 Q. Can you identify what position he holds?

21 A. I think he is vice president and plant  
22 manager.

23 Q. And is James M. Helm a  
24 secretary/treasurer of EEInc?

25 A. That is correct.

1           Q.       Is he an Ameren or Ameren affiliate  
2 employee?

3           A.       He is an employee of EEInc.

4           Q.       Mr. Rainwater, could you identify what  
5 is the senior team?

6           A.       The senior team was a group of officers,  
7 essentially all the officers of the company of Ameren  
8 Corporation, who reported directly to me.

9           Q.       Does the senior team presently exist?

10          A.       A senior team of sorts. We've changed  
11 the name to another name, but it consists now of the  
12 officers who report directly to me, with the addition  
13 of Chuck Naslund, to represent the nuclear function  
14 of the company.

15          Q.       And is Mr. Naslund a member of the board  
16 of directors of EEInc?

17          A.       Yes, he is.

18          Q.       Is this -- the replacement of the new  
19 name of senior team, is it the executive leadership  
20 team?

21          A.       Yes, it is.

22          Q.       And did the senior team and the  
23 executive leadership team discuss matters respecting  
24 EEInc?

25          A.       I can't recall discussions of EEInc

1 issues, but they may have come up.

2 Q. So you don't recall discussions of the  
3 senior team regarding the end of the 1987 power  
4 supply agreement of the sponsoring companies with  
5 EEInc?

6 A. No, I don't. And in thinking about it,  
7 it's probably not likely that it came up in that  
8 forum. It would have come up in discussions among  
9 directors of EEInc. Those who were affiliated with  
10 Ameren would have talked about that as well as at  
11 EEInc board meetings.

12 Q. Mr. Rainwater, respecting Ameren  
13 Corporation's acquisition of Illinois Power Company,  
14 did Ameren Corporation commit at the FERC in 2004 to  
15 undertake mitigation measures in the event its  
16 acquisition of Illinois Power Company was  
17 consummated, including the acquisition by Ameren  
18 Energy Resources Company, of a 20 percent interest in  
19 EEInc from Illinova Generating Company?

20 A. I'm not sure I understand the question.  
21 Did we undertake mitigation measures to mitigate from  
22 what?

23 Q. Market power concerns that were raised  
24 at the FERC.

25 A. I don't recall.

1                   MR. DOTTHEIM: Now, I'd like to have  
2 marked as an exhibit, Exhibit 263.

3                   JUDGE WOODRUFF: All right.

4                   MR. DOTTHEIM: May I approach the  
5 witness?

6                   JUDGE WOODRUFF: You certainly may.

7                   (EXHIBIT NO. 263 WAS MARKED FOR  
8 IDENTIFICATION BY THE COURT REPORTER.)

9                   JUDGE WOODRUFF: Mr. Dottheim, are we  
10 ready to proceed?

11 BY MR. DOTTHEIM:

12               Q.       Mr. Rainwater, you've had a chance to  
13 take a look at the document marked 263?

14               A.       Yes, I have.

15               Q.       The prepared direct testimony of Craig D.  
16 Nelson on behalf of Ameren Corporation in FERC docket  
17 No. EC-04- -- I believe 081, the merger application  
18 of Ameren Corporation, Dynegy Inc., Illinova  
19 Corporation, Illinova Generating Company and Illinois  
20 Power Company.

21                   Mr. Rainwater, I'd like to direct you to  
22 the bottom of page 2.

23                   MR. CYNKAR: Your Honor, I object.

24 There is absolutely no -- nothing close to a proper  
25 foundation for using this hearsay document in these



1 proceedings. The last words we heard from  
2 Mr. Rainwater is in response to a question from  
3 Mr. Dottheim that he did not recall, concerning some  
4 representation or something that had been said in  
5 these FERC proceedings. This document itself is  
6 prepared testimony for Craig Nelson. It's dated  
7 2004.

8                   There is no indication whatsoever that  
9 Mr. Rainwater had anything to do with this, knows  
10 anything about it, and I think we have to get a lot  
11 more foundation, if it's possible to lay a  
12 foundation, to be able to use this and have material  
13 from this document into the record.

14                   JUDGE WOODRUFF: Mr. Dottheim, it's not  
15 been offered at this point is my understanding, so  
16 the objection may be a little premature.

17                   MR. CYNKAR: Well, I think it isn't  
18 because if Mr. Dottheim is going to be reading  
19 sections of this into evidence or asking  
20 Mr. Rainwater about it, I would think you need a  
21 foundation before even that gets into the record.

22                   MR. DOTTHEIM: That's fine.

23                   JUDGE WOODRUFF: All right,  
24 Mr. Dottheim, can you provide further foundation?

25                   MR. DOTTHEIM: Of course.

1 BY MR. DOTTHEIM:

2 Q. Okay. Mr. Rainwater, can you identify  
3 Craig D. Nelson.

4 A. Yes, I can. He's an employee of Ameren.

5 Q. Can you identify the FERC docket in  
6 which Ameren Corporation, Dynegy, Illinova  
7 Corporation, Illinova Generating Company and Illinois  
8 Power Company filed for application for merger before  
9 the FERC?

10 MR. CYNKAR: Your Honor, not to be  
11 difficult, but I must object. If Mr. Dottheim is  
12 merely asking Mr. Rainwater to read from the front of  
13 this document, that's one thing. But if he's asking  
14 him if he independently recalls the docket from a  
15 FERC case from 2004, that's a different question, and  
16 it's not clear. So I apologize for interrupting, but  
17 I just think we need to be clear.

18 JUDGE WOODRUFF: What is your question?

19 MR. DOTTHEIM: I'm asking Mr. Rainwater  
20 if he recalls that docket.

21 JUDGE WOODRUFF: So that would be  
22 independent of what's on this document?

23 MR. DOTTHEIM: Yes.

24 JUDGE WOODRUFF: Okay.

25 MR. CYNKAR: Thank you, your Honor.

1                   THE WITNESS: Yes, I do recall the  
2 docket.

3 BY MR. DOTTHEIM:

4           Q.       And in recalling the docket, you recall  
5 that merger proceeding at the FERC, do you not?

6           A.       Yes, I do.

7           Q.       Do you recall any of the details of that  
8 proceeding, Mr. Rainwater?

9           A.       No. I was not involved in the  
10 proceeding.

11          Q.       Do you recall if Ameren made any  
12 commitments respecting EEInc in that proceeding?

13                  MR. CYNKAR: I object, your Honor. I  
14 believe Mr. Rainwater has already answered he wasn't  
15 involved in the proceeding and Mr. Dottheim has just  
16 asked another question about the proceeding. So I  
17 think this has been asked and answered effectively.

18                  JUDGE WOODRUFF: I'll overrule the  
19 objection. You can answer if you can.

20                  THE WITNESS: Repeat the question,  
21 please.

22 BY MR. DOTTHEIM:

23          Q.       Mr. Rainwater, do you recall whether  
24 Ameren made any commitments in that proceeding  
25 respecting EEInc?

1           A.       No, I do not.

2           Q.       Thank you. Mr. Rainwater, under your  
3 understanding of fiduciary duty and AmerenUE's 40  
4 percent shareholder position in EEInc, can AmerenUE  
5 make any commitments as to how its directors would  
6 vote?

7           A.       No, it cannot.

8           Q.       When you say no you cannot, no you  
9 cannot what? I'm sorry.

10          A.       The way I understood the question is can  
11 AmerenUE make any commitment as to how its  
12 directors -- now, when you say its directors, what I  
13 assumed you meant was the directors of EEInc that  
14 AmerenUE nominated to be directors of EEInc. Can  
15 AmerenUE direct those directors on how to vote? No,  
16 it cannot.

17          Q.       Mr. Rainwater, what does the Ameren  
18 Services affiliate do?

19          A.       It provides administrative and general  
20 kind of services for the -- for most of the Ameren  
21 subsidiaries. It in general does not provide those  
22 services for EEInc, but it provides them for the  
23 utilities and for Ameren Energy Resources Company.

24          Q.       Does it operate on a nonprofit basis?

25          A.       Yes, it does.

1           Q.       Does it provide its services by -- by  
2     contract?

3           A.       I'm not sure that we have contracts.  It  
4     provides those services based on a general allocation  
5     methodology that was prescribed by the Public  
6     Utilities Holding Company Act.  It really is a  
7     creature, so to speak, of the Public Utilities  
8     Holding Company Act.  It was a requirement when we  
9     created Ameren and merged with CIPS to create a  
10    service company for the purpose of allocating service  
11    costs between the companies.

12          Q.       Could it be said that it provides  
13    service at either a cost or fair market value basis?

14          A.       It certainly provides service at a -- at  
15    a cost basis, and I would certainly hope that that  
16    service is at a fair market value basis.  But the  
17    companies receiving the service really don't have the  
18    option to go out and outsource those services.

19                 It's essentially like the arrangement  
20    that existed before the merger took place when those  
21    services would have been provided from within Union  
22    Electric.  I suppose we could have decided at any  
23    time to outsource those services, but it's not  
24    something we would generally do.

25          Q.       Does EEInc receive any services from

1 Ameren Services?

2 A. EEInc receives services from Ameren Fuel  
3 Service (sic) Company, which is essentially the same  
4 nature. It's a cost -- cost-based service. What I  
5 mean by that is that it's charged only its cost of  
6 performing the service. But Ameren Fuels purchases  
7 coal, and when there's a need to sell emission  
8 allowances, it markets those emission allowances for  
9 EEInc. I don't believe there are any other services  
10 provided by Ameren Services, but there could be.

11 Q. Is Ameren Fuel Services compensated in  
12 some manner for the services it provides to EEInc?

13 A. It's compensated based on its cost of  
14 providing those services.

15 MR. DOTTHEIM: May I approach the  
16 witness?

17 JUDGE WOODRUFF: You certainly may.

18 BY MR. DOTTHEIM:

19 Q. Mr. Rainwater, I've handed you a copy of  
20 the August 5, 2005 meeting minutes of the EEInc board  
21 of directors. I'd like to direct you to page 2.3.

22 MR. CYNKAR: Your Honor, I believe Steve  
23 has some extra copies. I think it would help other  
24 counsel too if we could see what we're talking about.

25 MR. DOTTHEIM: Yes, I'm sorry.

1 JUDGE WOODRUFF: Mr. Dottheim, did you  
2 wish to mark this as an exhibit also?

3 MR. DOTTHEIM: Not at the moment.

4 JUDGE WOODRUFF: All right.

5 BY MR. DOTTHEIM:

6 Q. Mr. Rainwater, I'd like to direct you to  
7 the second paragraph where there's a reference to  
8 Mr. Jerry E. Birdsong.

9 MR. CYNKAR: Your Honor, I object. Once  
10 again, this document is hearsay and we have no  
11 foundation. I don't, as of yet, get a sense that  
12 this is being used as impeachment. There's been no  
13 question about Mr. Birdsong to Mr. Rainwater, so I  
14 think we're putting the cart before the horse using  
15 this' document.

16 JUDGE WOODRUFF: I'll overrule the  
17 objection at this point.

18 BY MR. DOTTHEIM:

19 Q. Mr. Rainwater, can you identify  
20 Mr. Jerry E. Birdsong?

21 A. Jerry Birdsong is treasurer of Ameren  
22 Corporation.

23 Q. Okay. And that paragraph, that first  
24 sentence says, "The chairman then introduced  
25 Mr. Jerry Birdsong who discussed the current and

1 future financing needs of the company."

2 Do you know whether Mr. Birdsong would  
3 be at the EEInc board of directors discussing the  
4 current and future financing needs of EEInc as part  
5 of Ameren Services or in what capacity, if you might  
6 know?

7 A. No, I don't know. Services I do know  
8 were from -- Ameren Services were not routinely  
9 provided to EEInc. EEInc is much more self-contained  
10 than other Ameren subsidiaries, so I'm not sure what  
11 basis Jerry Birdsong would have been providing any  
12 information to EEInc under.

13 Q. To your knowledge he's not an employee  
14 of EEInc, is he?

15 A. No, he isn't.

16 MR. DOTTHEIM: May I have a moment,  
17 please?

18 JUDGE WOODRUFF: Sure.

19 MR. DOTTHEIM: If I may approach the  
20 witness?

21 JUDGE WOODRUFF: You may.

22 BY MR. DOTTHEIM:

23 Q. Mr. Rainwater, I've -- well, what I've  
24 handed to you is the meeting minutes of the May 13,  
25 2005 meeting of the board of directors of EEInc, and



1 I'd like to direct you to page 1.3. And I'd like to  
2 direct you to the second full paragraph, the fourth  
3 sentence. And that sentence, Mr. Rainwater, you  
4 previously indicated that the 1987 power supply  
5 agreement of the sponsoring companies and EEInc, you  
6 participated in the drafting of that document, did  
7 you not?

8 A. Yes, I did.

9 Q. Okay. And would you characterize that  
10 yourself as a cost-based contract or a market-based  
11 contract?

12 A. It was cost-based.

13 Q. Okay. And in directing you to that  
14 fourth sentence on page 1.3, the second full  
15 paragraph, that sentence states, does it not,  
16 "Chairman noted that the current contracts are market  
17 based as the market was defined when the contracts  
18 were negotiated in the late 1980's."

19 A. I'm a little confused by that. There  
20 really wasn't a market in the late 1980's. There was  
21 a regulatory framework that allowed prices to be  
22 based on cost. I suppose you could consider that a  
23 market, but it would have been kind of a single price  
24 point market based on cost.

25 Q. Okay. And the chairman of EEInc in May

1 of 2005 would have been -- do you recall?

2 A. Alan Kelley.

3 MR. DOTTHEIM: May I approach the  
4 witness?

5 JUDGE WOODRUFF: You may.

6 BY MR. DOTTHEIM:

7 Q. Mr. Rainwater, I've handed you a copy of  
8 the meeting minutes of the board of directors of the  
9 October 28th, 2005 meeting. I'd like to direct you  
10 to page 1.2. And I'd like to direct you to the  
11 bottom half of that -- of that page, the last  
12 double-spaced paragraph, the fourth and the fifth  
13 sentences.

14 Those sentences state, "Mr. Powers  
15 informed the board the company would enlist the help  
16 of Ameren in marketing allowances. Mr. Powers also  
17 noted the company has requested Ameren to assist in  
18 natural gas purchases as well as gas transportation."

19 Do you know whether that would be Ameren  
20 Services that would assist in marketing allowances  
21 and assist in natural gas purchases as well as gas  
22 transportation

23 A. No. That would be an AFS, Ameren Fuel  
24 Services.

25 Q. And again, how would Ameren be

1       compensated for that assistance from EEInc?

2           A.       Based on its costs.

3           Q.       And again, is there -- do you know,  
4       would there likely be a written agreement or --

5           A.       I don't know. I don't -- no, I don't  
6       know what kind of agreement there would be. And  
7       actually when I say based on its costs, I am  
8       presuming it would be based on its cost. In fact, I  
9       don't know how it would be priced.

10                  MR. DOTTHEIM: If I could have a moment,  
11       please. May I approach the witness?

12                  JUDGE WOODRUFF: You may.

13       BY MR. DOTTHEIM:

14           Q.       Mr. Rainwater, I've handed you a copy of  
15       the EEInc board of directors minutes for November 7,  
16       2003, and I'd like to direct you to page 1.3 --  
17       excuse me, 1.2, bottom of the page, the last  
18       paragraph that carries over to the top of the next  
19       page, 1.3.

20                  And there is reference there to proposed  
21       allowance sale, and there's an amount that I don't  
22       need to mention respecting the allowances. And  
23       there's also a reference at the end of the paragraph  
24       on top of 1.3 that states, "However, prior to the  
25       allowance sale in 2004, the officers are to contact

1 and consult with the appropriate sponsor-company  
2 representative." Would you know if there was an  
3 AmerenUE sponsor-company representative to be --

4 A. No, I don't know what that sentence  
5 refers to. I would assume that they contemplated  
6 using AFS to sell the allowances.

7 Q. Mr. Rainwater, does Ameren Energy  
8 Marketing face less competition in Illinois markets  
9 by EEInc selling its capacity in energy to AEM than  
10 if EEInc were to sell its capacity and energy  
11 directly into the Illinois markets?

12 A. I wouldn't say it faces either more or  
13 less competition. The competition is -- you know, it  
14 is what it is. It -- it -- "it", being the EEInc  
15 power supply agreement, provides a resource to Ameren  
16 Energy Marketing that it uses in that market.

17 Q. Is it not true that AEM receives  
18 revenues on the EEInc capacity and energy greater  
19 than the amount of revenues that EEInc receives from  
20 AEM?

21 A. I don't know the terms of those  
22 agreements.

23 Q. You're not aware whether AEM receives  
24 over \$3 million more revenue than it paid EEInc for  
25 its capacity and energy in 2006?



1 in-camera at this point.

2 (REPORTER'S NOTE: At this point, an  
3 in-camera session was held, which is contained in  
4 Volume 24, pages 1860 through 1863 of the  
5 transcript.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 JUDGE WOODRUFF: And at this point,  
2 then, we will take a break. We'll come back at  
3 10:45.

4 (A RECESS WAS TAKEN.)

5 JUDGE WOODRUFF: All right. Let's come  
6 to order, please. We're back from break. And before  
7 break we were in-camera, and I assume we still need  
8 to be in-camera at this time?

9 MR. DOTTHEIM: Yes.

10 JUDGE WOODRUFF: All right. We'll go  
11 in-camera at this time.

12 (REPORTER'S NOTE: At this point, an  
13 in-camera session was held, which is contained in  
14 Volume 24, pages 1865 through 1868 of the  
15 transcript.)

16

17

18

19

20

21

22

23

24

25

1 JUDGE WOODRUFF: All right. We are back  
2 in regular session here. You're talking about the  
3 other -- 421HC we took in certain pages.

4 MR. DOTTHEIM: Yes, there was 32 -- it  
5 was during the off-system sales.

6 MR. MILLS: 32 to 42 were admitted. The  
7 rest were not admitted.

8 JUDGE WOODRUFF: And now you're asking  
9 to admit the rest of the document?

10 MR. DOTTHEIM: Yes, I am.

11 JUDGE WOODRUFF: Does anyone have any  
12 objection to admitting the rest of that document?

13 MR. CYNKAR: No objections, your Honor.

14 JUDGE WOODRUFF: Hearing no objections,  
15 the balance of 421HC is admitted into evidence.

16 (THE BALANCE OF EXHIBIT NO. 421HC WAS  
17 RECEIVED INTO EVIDENCE AND MADE A PART OF THE  
18 RECORD.)

19 MR. DOTTHEIM: May I approach the  
20 witness?

21 JUDGE WOODRUFF: Yes, you may.

22 MR. DOTTHEIM: Judge, what I've  
23 distributed I don't think I've distributed to the  
24 bench. It's the errata sheets to Mr. Rainwater's  
25 deposition. I can provide those now.



1 JUDGE WOODRUFF: Do you wish to mark  
2 those as a separate exhibit or how do you want to  
3 handle it?

4 MR. DOTTHEIM: Frankly, whatever you  
5 would think would be most convenient.

6 JUDGE WOODRUFF: Let's go ahead and mark  
7 it as 264.

8 (EXHIBIT NO. 264 WAS MARKED FOR  
9 IDENTIFICATION BY THE COURT REPORTER.)  
10 BY MR. DOTTHEIM:

11 Q. Now, Mr. Rainwater, do you have a copy  
12 of what's been marked as Exhibit 264?

13 MR. LOWERY: Your Honor, pardon for  
14 interrupting, but we'll stipulate to the authenticity  
15 of the document if that's the ultimate goal here.  
16 You can just admit it or deal with it with the  
17 depositions later, however you would want to do it.  
18 BY MR. DOTTHEIM:

19 Q. Mr. Rainwater, earlier this morning --

20 JUDGE WOODRUFF: Well, Mr. Dottheim,  
21 were you going ahead and laying foundation or should  
22 I deal with the admission of it?

23 MR. DOTTHEIM: Well, I was going to ask  
24 him a question --

25 JUDGE WOODRUFF: All right. Go ahead.

1 MR. DOTTHEIM: -- regarding it.

2 BY MR. DOTTHEIM:

3 Q. Earlier this morning I asked you a  
4 question respecting -- regarding whether Union  
5 Electric Company ever considered canceling the power  
6 supply agreement with EEInc and read from your  
7 deposition, pages 121 and 122.

8 And I think you sought to alter the --  
9 the -- the deposition transcript. I'd like to direct  
10 you to Exhibit 264 and ask you if Exhibit 264 shows  
11 any corrections or changes for pages 121 or 122.

12 A. Exhibit 264 is what? Is that the errata  
13 sheet?

14 Q. That's the errata sheet, yes.

15 A. No, it does not.

16 MR. DOTTHEIM: Thank you. Thank you,  
17 Mr. Rainwater. You've been very patient?

18 JUDGE WOODRUFF: Mr. Dottheim, would you  
19 like to offer --

20 MR. DOTTHEIM: Yes, I'd like to offer --  
21 well, should we wait on that for Mr. --

22 JUDGE WOODRUFF: I'll show it as offered  
23 and I'll rule on it when -- later on when we consider  
24 the entire deposition.

25 Thank you, Mr. Dottheim. And for

1 cross-examination we begin with Public Counsel.

2 MR. MILLS: Good morning, Mr. Rainwater.

3 THE WITNESS: Good morning, Mr. Mills.

4 MR. MILLS: Judge, as a preliminary  
5 matter, I'd like the Commission, if I may, to take  
6 official notice of Exhibit 80 in Case No. EO-2004-0108.  
7 It's been marked by Staff as Exhibit 263, I believe.

8 It's the testimony of Craig Nelson in  
9 that FERC case. It was also admitted in a Public  
10 Service Commission case which means that the Public  
11 Service Commission can take official notice of it.  
12 Many portions of this testimony -- or some portions  
13 of this testimony have been quoted in the testimony  
14 of Ryan Kind. I think the record would be more  
15 complete if we have the entire piece of testimony and  
16 addition context.

17 JUDGE WOODRUFF: Do you know what  
18 Commission case it was?

19 MR. MILLS: EO-2004-0108. That's what  
20 we commonly refer to as the Metro East case.

21 JUDGE WOODRUFF: Okay. Any objection to  
22 that occurring?

23 MR. CYNKAR: No, your Honor.

24 JUDGE WOODRUFF: All right. Then the  
25 Commission will take administrative notice of that

1 filing in an earlier Commission case, which was  
2 Exhibit 263, you indicated?

3 MR. MILLS: I believe so. Mr. Dottheim,  
4 is that correct?

5 MR. DOTTHEIM: That is correct.

6 JUDGE WOODRUFF: All right. Thank you.

7 (ADMINISTRATIVE NOTICE WAS TAKEN WITH  
8 RESPECT TO EXHIBIT NO. 263.)

9 MR. MILLS: And before I get into my  
10 questions, I mean, I'm not quite sure how to address  
11 this, but I think if Mr. Rainwater's deposition is  
12 not going to be entered into the record in its  
13 entirety, my cross-examination is going to be  
14 somewhat different, considerably lengthier.

15 So, I mean, what I would propose is to  
16 proceed as though the deposition was going to be  
17 entered into the record, but --

18 JUDGE WOODRUFF: In fact --

19 MR. MILLS: -- reserve the right to  
20 recross Mr. Rainwater at considerable length if it is  
21 not. And I --

22 JUDGE WOODRUFF: What I propose to do  
23 is -- we had this discussion on Friday, as a little  
24 background for whoever wasn't here on Friday -- about  
25 the entry of the wholesale depositions into the

1 record. One of the parties who is not here this  
2 morning indicated he would have -- he voiced an  
3 objection to that, and I want to give him a chance to  
4 further voice an objection when we deal with all the  
5 depositions.

6                   However, we've already admitted one  
7 other deposition over that objection. At this point  
8 I'll take up Mr. Rainwater's deposition, 258, as well  
9 as 264, and ask if anyone here has an objection to  
10 their receipt?

11                   (NO RESPONSE.)

12                   JUDGE WOODRUFF: And hearing none,  
13 those -- 258 and 264 will be admitted, and we'll deal  
14 with the other depositions later.

15                   (EXHIBIT NOS. 258 AND 264 WERE RECEIVED  
16 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

17 CROSS-EXAMINATION BY MR. MILLS:

18           Q.       Okay. Thank you. Okay. Mr. Rainwater,  
19 how did you come to be a witness in this hearing?

20           A.       I was asked to testify.

21           Q.       By whom?

22           A.       By Staff.

23           Q.       Did you more or less volunteer to  
24 testify in your deposition?

25           A.       I was asked during the deposition and I

1     agreed.

2           Q.       Okay.  You have no -- I mean, you're not  
3     here under duress, are you?

4           A.       No, I'm not.

5           Q.       And you were deposed in connection with  
6     this case, were you not?

7           A.       Yes, I was.

8           Q.       Now, let me -- I'm gonna go just through  
9     a little background because you don't -- you're in a  
10    somewhat unusual position of not having filed direct  
11    testimony that would lay out your qualifications and  
12    background.  Are you an engineer by training?

13          A.       Yes, I am.

14          Q.       Okay.  And you have been with Union  
15    Electric for how long?

16          A.       Since 1979.

17          Q.       Okay.

18          A.       October '79.

19          Q.       And since that time you've had a variety  
20    of increasingly responsible positions throughout  
21    Union Electric and the Ameren family of companies --

22          A.       That's true.

23          Q.       -- is that correct?  Okay.  Now, up  
24    until approximately the first of this year, there was  
25    a group called the senior team; is that correct?

1           A.       That's -- that's right.

2           Q.       How many members -- and would you  
3 consider yourself part of the senior team?

4           A.       Yes, I would.

5           Q.       Okay. Other than yourself, how many  
6 engineers are there on the senior -- or were there on  
7 the senior team?

8           A.       I'd have to go back and add them up, but  
9 the engineers would have outnumbered the  
10 nonengineers.

11          Q.       Is the same true for the -- the -- the  
12 new entity called the executive leadership team?

13          A.       I think it is.

14          Q.       Okay. How many members are there on the  
15 executive leadership team approximately?

16          A.       Approximately seven. And I have not  
17 added them up.

18          Q.       Okay. So at least four of them are  
19 engineers then?

20          A.       If you would give me a piece of paper, I  
21 would write down all of them and itemize which are  
22 engineers for you.

23          Q.       Okay. I would be happy to give you a  
24 piece of paper.

25                   May I approach?

1 JUDGE WOODRUFF: Yes, you may.

2 THE WITNESS: It's hard to do it in my  
3 head. Could I have a pen also, please? Okay. There  
4 are eight members. Executive leadership team, four  
5 are engineers and four are not.

6 BY MR. MILLS:

7 Q. Okay. You can keep the paper, but I  
8 need my pen back. Thank you.

9 Now, you spent a few years as a board  
10 member of EEInc; is that correct

11 A. Yes, I did.

12 Q. When you were on the EEInc board, were  
13 there any independent directors?

14 A. No, there were not.

15 Q. Okay. Each of the directors were  
16 affiliated in some fashion with one of the sponsor  
17 companies?

18 A. Yes, they were.

19 Q. Okay. Now, at the present time, UE has  
20 how many directors on the EEInc board?

21 A. I believe it's seven.

22 Q. And Ameren has how many directors?

23 A. We have 13 currently.

24 Q. Okay. And do you know how many Kentucky  
25 Utilities has?



1           A.       I don't know.

2           Q.       Do you know what the total number of  
3 directors is?

4           A.       At Kentucky Utilities?

5           Q.       At EEInc.

6           A.       Now, are we talking about EEInc  
7 directors or Ameren directors?

8           Q.       We're talking about EEInc directors.  
9 Should I go back and ask those questions again?

10          A.       Well, when you said how many directors  
11 does Ameren have, I thought you were referring to the  
12 Ameren board.

13          Q.       No, I'm asking how many directors  
14 represent Ameren on the EEInc board?

15          A.       No one represents Ameren on the EEInc  
16 board. Ameren nominates directors for the EEInc  
17 board. They represent EEInc in serving on the EEInc  
18 board.

19                   Kentucky Utilities directors --  
20 directors nominated by Kentucky Utilities should have  
21 the same responsibility.

22          Q.       Okay. Now, Mr. Rainwater, would it  
23 surprise you if the EEInc board itself referred to  
24 directors as sponsor-company representatives?

25          A.       No, it would not.

1           Q.       Okay. So at least in the view of some  
2 members of the board or perhaps the board's  
3 secretary, the board members do, in fact, represent  
4 their sponsoring companies?

5           A.       I would not say that they -- they  
6 believe they represent the sponsoring companies'  
7 interest. They believe that they were appointed to  
8 the EEInc board by the sponsoring companies, and  
9 that's just a form of language that has been used  
10 down there to say the sponsoring companies'  
11 representatives on the board.

12          Q.       Now, when you were on the EEI board, you  
13 would meet with fellow UE and/or CIPS board members  
14 before EEI board meetings; is that not correct?

15          A.       Yes, I did.

16          Q.       What was the purpose of those meetings  
17 before the board meeting?

18          A.       To discuss EEInc issues, to discuss the  
19 agenda, to try to develop common positions to be sure  
20 we were together on those issues before we would go  
21 to the meetings. And we sometimes had those meetings  
22 by phone with KU directors as well, so it wasn't an  
23 attempt to somehow exclude directors, but it's simply  
24 directors discussing issues to be discussed at the  
25 board meeting ahead of time to understand the issues.

1           Q.       And were those meetings effective to  
2   that end?

3           A.       Uh-huh.  Yes, they were.

4           Q.       And did -- during the time you were on  
5   the EEInc board, was there ever -- did any of the  
6   Ameren representatives or UE representatives cast  
7   votes differently from the other ones?

8           A.       No, not that I can recall.

9           Q.       Do you know if that has happened since  
10  then?

11          A.       Well, I know that in one case, the KU  
12  directors cast votes different than the -- the  
13  KU-affiliated directors on EEInc cast votes  
14  differently than the other EEInc directors.

15          Q.       Okay.  And what occasion would that have  
16  been?

17          A.       The issue that Mr. Dottheim just pointed  
18  out to me, that KU representatives on the board took  
19  the position that the contract -- cost-based contract  
20  that expired in 2005 should have been extended on a  
21  cost basis.

22          Q.       And in that instance the Ameren  
23  directors and the UE directors all voted in the same  
24  way; is that correct?

25          A.       That is correct.

1           Q.       And do you know of any instances in  
2       which the Ameren director -- any of the Ameren  
3       directors or any of the UE directors voted  
4       differently from the other Ameren and UE directors?

5           A.       No, I do not.

6           Q.       Mr. Rainwater, do you consider that  
7       maintaining a positive relationship with regulators  
8       is part of your job responsibility?

9           A.       Yes, I do.

10          Q.       Now, do you consider the Office of  
11       Public Counsel to be a regulator or part of the  
12       regulatory framework?

13          A.       It's -- it's certainly related to that.

14          Q.       Do you consider that UE has a duty to be  
15       responsive to regulators?

16          A.       Certainly I would.

17          Q.       Okay. Do you consider that UE has a  
18       duty to be responsive to the Office of Public  
19       Counsel?

20          A.       Yes, I would.

21          Q.       Okay. Does UE have any sort of policy  
22       that governs the way in which UE employees respond to  
23       data requests in cases such as this one?

24          A.       I don't know if there is a specific  
25       policy in regard to that, but in general there's a

1 corporate policy to be responsive to -- to all  
2 parties. I mean, not just in rate cases, but for --  
3 in terms of any request to the company, to be  
4 responsive to it.

5 Q. Okay. So the general policy is tilted  
6 in favor of responsiveness rather than  
7 nonresponsiveness; is that correct?

8 A. Yes, it is.

9 Q. Okay. Is there any policy with regard  
10 to timeliness of responses to discovery?

11 A. Well, we certainly should respond within  
12 the time allowed.

13 Q. Okay. Would it surprise you to learn  
14 that on a large number of data requests submitted by  
15 Public Counsel that responses were not timely in this  
16 case?

17 A. Well, it wouldn't surprise me, depending  
18 on the nature of the data requests and the time it  
19 took to put them together. It sometimes may not be  
20 possible to answer within the allowed time.

21 Q. Okay. Do you know what the allowed time  
22 is --

23 A. No, I don't.

24 Q. -- in this case?

25 A. No, I don't.

1           Q.       Assume with me that for most of the case  
2   it's 20 days, and for the latter part of the case  
3   it's ten days.

4           MR. CYNKAR:   Your Honor -- excuse me,  
5   Mr. Mills.   I must object.   I think that there's no  
6   relevance here.   I mean, if we're getting into the  
7   rules concerning data requests, this witness  
8   certainly has no relevant testimony, if this is at  
9   all relevant to EEInc.

10          JUDGE WOODRUFF:   What is the relevance  
11   to EEInc?

12          MR. MILLS:   Well, it certainly is.  
13   We're going to be getting into some information that  
14   we received late Friday a third of the way through  
15   this case that we asked for way early on in the case.  
16   It was only because we finally filed a Motion to  
17   Compel and the Commission finally ruled on it that we  
18   got that information.

19          So a lot of what has -- a lot of the  
20   information that has to do with this issue is -- has  
21   been tied up by UE, and so I think I'm allowed to  
22   explain with this witness how we got to the point in  
23   this case.   That's the relevance.

24          MR. CYNKAR:   Your Honor, as your Honor  
25   knows, the information that we're talking about here

1 involved a data request back from November. The  
2 Motion to Compel was only filed a couple weeks ago  
3 that was resolved last week, and ultimately we had  
4 objected in part in our original response, so I don't  
5 think it's fair to suggest that there's some sort of  
6 improper behavior on the part of AmerenUE with  
7 respect to the timeliness of responding to that.

8 And I still come back to substantively,  
9 if Mr. Mills wants to ask Mr. Rainwater relevant  
10 questions about the substance of the material that  
11 was turned over appropriately after that  
12 adjudication, that's fine, but this whole timing  
13 thing is irrelevant.

14 JUDGE WOODRUFF: I'm gonna allow  
15 Mr. Mills some leeway on this. I'll overrule the  
16 objection.

17 BY MR. MILLS:

18 Q. Okay. Assume with me, if you will, that  
19 for most of the case, the DR response time is set at  
20 20 days, and for the latter part of the case when  
21 things start to heat up towards the hearing, it's set  
22 for ten days. Can you make those assumptions with  
23 me?

24 A. Uh-huh.

25 Q. Okay. In your view, should UE inform

1 parties if they are not going to be able to make  
2 responses within months of those days, of those  
3 deadlines?

4 A. You know, my general views --

5 MR. CYNKAR: Objection, your Honor. I'm  
6 sorry, but as I say, the November data request we  
7 objected to, so we did not, not inform people we  
8 weren't going to do something. We objected, provided  
9 a smaller amount of response than was requested for  
10 in the data response.

11 It was -- we didn't hide any balls. We  
12 objected and it wasn't resolved until last week.

13 MR. MILLS: There are certainly some  
14 data requests for which that is true. There are many  
15 for which it is not.

16 JUDGE WOODRUFF: I think this question  
17 really calls for speculation on behalf of the witness  
18 as to -- it's irrelevant as to what his views of what  
19 Ameren should do. I'm gonna sustain the objection.

20 MR. MILLS: Okay. Well, let me see if I  
21 can get to the substance of the dispute.

22 BY MR. MILLS:

23 Q. Is it -- is it AmerenUE's policy to sort  
24 through material that's requested to determine what  
25 is relevant to the DR and only respond partially?



1           A.       I think in all rate cases there are  
2 judgments made whether material is relevant and  
3 whether it really should be provided or not. It  
4 sounds like in the specific case that you're  
5 discussing with me, that judgment was made and that  
6 information was not relevant so we did not provide  
7 it.

8                   And I'm not gonna say that there should  
9 be a general policy that we never apply that  
10 judgment. That seems to me like good judgment.

11                 MR. MILLS: Okay. Your Honor, I'd like  
12 to get a couple of exhibits marked.

13                 JUDGE WOODRUFF: Okay.

14                 MR. MILLS: And with your indulgence, I  
15 have got some of those sort of numbered out of order,  
16 so can I skip ahead and mark 430 and 431? Then I  
17 will go back and fill in the numbers.

18                 JUDGE WOODRUFF: Okay. And are these  
19 highly confidential?

20                 MR. MILLS: Let me confer on that. They  
21 are marked highly confidential. I'm not entirely  
22 sure that they really are.

23                 MR. LOWERY: Your Honor, I believe these  
24 were marked highly confidential, but, in fact, we  
25 don't really believe that they are. And there were

1 some others that were discussed earlier so they don't  
2 need to be treated as highly confidential.

3 (EXHIBIT NOS. 430 AND 431 WERE MARKED  
4 FOR IDENTIFICATION BY THE COURT REPORTER.  
5 BY MR. MILLS:

6 Q. Mr. Rainwater, I've just handed you  
7 what's been marked as Exhibit 430 which is a response  
8 dated December 8th, 2006, to Public Counsel, data  
9 request 2005, and Public Counsel data request 2005,  
10 requested: "Please provide access to the Electric  
11 Energy, Inc. board of director meeting minutes, board  
12 of director committee meeting minutes and all related  
13 reports for the period covering January 1, 2003,  
14 through June 30th, 2006. Please provide notice to  
15 OPC on a going-forward basis as new information  
16 beyond June 30th, 2006, becomes available."

17 Is that an accurate reading of that data  
18 request?

19 A. Yes, it is, uh-huh.

20 Q. And what was the response from Union  
21 Electric?

22 A. Do you want me to read that?

23 Q. Please.

24 MR. CYNKAR: Your Honor, if I may, I  
25 would object. Mr. Rainwater has already testified to

1 his lack of involvement in the DR process. This OPC  
2 data request says it was prepared by Mr. Moehn who is  
3 going to be a witness, and so Mr. Mills' questions  
4 concerning this would seem to be inappropriate and  
5 it's a waste of time to ask this witness questions.

6 MR. MILLS: Well, my apologies for  
7 wasting time, but I believe that as the -- as the CEO  
8 of Ameren and AmerenUE at the time, that  
9 Mr. Rainwater may have some information about this.  
10 And if he doesn't, he can say no.

11 JUDGE WOODRUFF: All right. I'll  
12 overrule the objection. You can proceed.

13 THE WITNESS: The response was, "See  
14 attached minutes relating or pertaining to a power  
15 contract between EEInc and AmerenUE or to EEInc's  
16 decision not to contract with AmerenUE post 2005."

17 BY MR. MILLS:

18 Q. Now, is that -- is that exactly what the  
19 request was for? Was the request for meeting minutes  
20 for a specific period of time?

21 A. The request was for minutes over a  
22 specific period of time.

23 Q. And the response appears to say here are  
24 the minutes with respect to a certain topic; is that  
25 correct?

1           A.       That's what it appears to say.

2           Q.       Now, if I can get you to turn, if you  
3 would, please, to Exhibit 431. And have you had a  
4 chance to look at that?

5           A.       The front page, yes.

6           Q.       Okay. And without having you go through  
7 the whole thing, does it appear as though the  
8 attachment to that data request is, in fact, all of  
9 the board of director meeting minutes from January 1,  
10 2003, to June 30th, 2006?

11          A.       Well, I don't know without going through  
12 the whole package. It starts with the minutes of  
13 January 31, 2003. It ends with the minutes of  
14 October 27th, 2006. It looks like it could be, but I  
15 don't know.

16          Q.       Are you aware that the Commission issued  
17 an order last week that required AmerenUE to provide  
18 all of those minutes?

19          A.       No, I'm not.

20          Q.       Okay. If the Commission had done so and  
21 then if Wendy Tatro had provided a response in  
22 response to that order and I was to represent to you  
23 that this is that response, would you assume it to be  
24 a complete set of minutes?

25          A.       Yes, it would.

1                   MR. MILLS: Okay. Your Honor, I'd like  
2 to offer Exhibits 430 and 431 at this time.

3                   JUDGE WOODRUFF: And I know we said 430  
4 is not highly confidential. Is that true for 431?

5                   MR. MILLS: (Nodded head.)

6                   JUDGE WOODRUFF: They've been offered  
7 into evidence. Are there any objection to their  
8 receipt?

9                   MR. CYNKAR: No objection, your Honor.

10                  JUDGE WOODRUFF: All right. Thank you.  
11 Hearing no objections, it will be -- both 430 and 431  
12 are received into evidence.

13                  (EXHIBIT NOS. 430 and 431 WERE RECEIVED  
14 INTO EVIDENCE AND MADE A PART OF THE RECORD.)  
15 BY MR. MILLS:

16                  Q. Mr. Rainwater, I'm gonna turn to a  
17 somewhat different topic now. Did you read the  
18 stories that were in the St. Louis Post-Dispatch last  
19 week about the executive bonuses at AmerenUE?

20                  A. Yes, I did.

21                  MR. MILLS: Your Honor, I'd like to mark  
22 a couple of exhibits.

23                  JUDGE WOODRUFF: All right.

24                  (EXHIBIT NOS. 426 AND 427 WERE MARKED  
25 FOR IDENTIFICATION BY THE COURT REPORTER.)

1 BY MR. MILLS:

2 Q. Now, Mr. Rainwater, do you recognize  
3 both the new story and the Bill McClellan column from  
4 the St. Louis Post-Dispatch last weekend?

5 A. Yes, I do.

6 Q. Now, the reports are that adjustments  
7 were made to earnings per share and are moving almost  
8 70 million in expenses. Is that the way it was  
9 reported?

10 A. Uh-huh, that is correct.

11 Q. Okay. And is the -- okay. My question  
12 was, is that the way it was reported, and I think  
13 your answer was, "That's correct."

14 A. Well, I'd have to reread the article.  
15 Let me take a quick look.

16 Q. Okay.

17 A. I don't see a reference to 70 million  
18 dollars. Okay. I see where it is. 68 million.

19 Q. Okay. And is that an accurate reporting  
20 of what happened?

21 A. I think it is.

22 Q. Okay. Now, with the removal of those  
23 extraordinary expenses, did the EPS level exceed the  
24 lowest threshold for bonuses?

25 A. Yes, it did.

1 Q. Did it exceed it by a large amount?

2 A. No. By a relatively small amount.

3 MR. CYNKAR: Your Honor, I'm gonna  
4 interpose an objection here. I think questions about  
5 incentive compensation are really irrelevant in the  
6 context of this proceeding. Incentive compensation  
7 is not in Ameren's cost of services. Ratepayers  
8 don't pay a penny for that, and I just don't think  
9 it's a relevant question in this proceeding.

10 JUDGE WOODRUFF: What is the relevance  
11 of this line of inquiry?

12 MR. MILLS: Well, incentive compensation  
13 is relevant in that it's -- companies earn a certain  
14 amount of money, and what they choose to do with that  
15 is certainly relevant.

16 You have a company here who has decided  
17 to use some of its earnings to compensate executives.  
18 At the same time you have a number of customers, a  
19 large number of customers who claim that service has  
20 been suffering for years. We also have a company who  
21 claims that it needs hundreds of millions of dollars  
22 in increases, so I think it is relevant to this case  
23 how their earnings are spent.

24 In addition, I'm going to tie this issue  
25 of incentive compensation in with another issue,

1     which is the SO2 allowance issue in this case.  So I  
2     think it's relevant in at least two ways.

3                   MR. CYNKAR:  Your Honor, I think the  
4     questions of the company's performance and so forth  
5     is certainly relevant, but again, when you have an  
6     item like incentive compensation which has no impact  
7     whatsoever on ratepayers, the relevance of that  
8     particular question seems to me to be far removed  
9     from the substance of this proceeding.

10                   JUDGE WOODRUFF:  I'm gonna overrule the  
11     objection and you can go ahead and proceed.

12     BY MR. MILLS:

13             Q.     Was there a question pending?

14             A.     I don't think so.

15             Q.     I don't think so either.

16                   Now, isn't it correct that without  
17     making a large sale of SO2 allowances in the fourth  
18     quarter, that UE would not have reached the minimum  
19     threshold for bonuses.

20             A.     That is probably correct.

21             Q.     Okay.  Let me backtrack a little bit.

22     Is it true that UE sold a substantial amount of SO2  
23     allowances in the fourth quarter of 2006?

24             A.     I recall about a 30 million dollar sale.

25             Q.     Are you personally involved in approval



1 of large transactions like that?

2 A. Yes, I am.

3 Q. Okay. Were you involved in that  
4 particular transaction?

5 A. Yes, I was.

6 Q. Okay. And did you approve?

7 A. Yes, I did.

8 MR. MILLS: Okay. Your Honor, I'd like  
9 to mark a couple more exhibits, and they're both  
10 gonna be highly confidential, so we can either mark  
11 them and go in-camera or go in-camera and mark them?

12 JUDGE WOODRUFF: Let's mark them now and  
13 then go in-camera.

14 MR. MILLS: Okay. This will be HC.

15 MR. MICHEEL: Could you identify these  
16 again, Mr. Mills?

17 MR. MILLS: The graph is 425, and I'm  
18 going to impose on UE whether that's highly  
19 confidential.

20 MR. CYNKAR: I have a sense it is.

21 MR. MILLS: Okay. So that will be  
22 425HC, and the next will be 426HC.

23 MR. MICHEEL: We already have a 426HC.

24 MR. MILLS: I'm sorry. This is 424.

25 (EXHIBIT NOS. 424HC AND 425HC WERE

1 MARKED FOR IDENTIFICATION BY THE COURT REPORTER.)

2 BY MR. MILLS:

3 Q. Now, Mr. Rainwater turning to 424HC --  
4 are we in-camera?

5 JUDGE WOODRUFF: No, we're not yet. We  
6 are going to go in-camera at this point, and we are  
7 now in-camera.

8 (REPORTER'S NOTE: At this point, an  
9 in-camera session was held, which is contained in  
10 Volume 24, pages 1896 through 1900 of the  
11 transcript.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1                   MR. MILLS: I'd like to mark another  
2 exhibit, please. This will be No. 428.

3                   (EXHIBIT NO. 428 WAS MARKED FOR  
4 IDENTIFICATION BY THE COURT REPORTER.)

5                   MR. MILLS: And I apologize for the  
6 strange sequence of these. The order of the  
7 questions changed after I first prepared them.

8 BY MR. MILLS:

9           Q.       Mr. Rainwater, have you had a chance to  
10 look at Exhibit 428?

11          A.       Yes, I have.

12          Q.       And does this appear to be the first  
13 four pages and then page 36 of a filing that Ameren  
14 Corporation made last week with the SEC?

15          A.       Yes, it does.

16          Q.       And are you familiar with this SEC  
17 filing?

18          A.       Yes, I am.

19                   MR. MILLS: Your Honor, with that I'd  
20 like to offer Exhibit 428.

21                   JUDGE WOODRUFF: All right. Exhibit 428  
22 has been offered.

23                   MR. CYNKAR: Well, your Honor, we object  
24 on grounds of relevance. Again, this focuses solely  
25 on incentive compensation, and again, it's not in our

1 cost of service, ratepayers aren't affected by it,  
2 there's no discussion in here about performance or  
3 any of the other relevant issues in this proceeding,  
4 so we just feel this is simply not relevant.

5 JUDGE WOODRUFF: All right. Your  
6 objection's noted and the document will be admitted.

7 MR. MILLS: All right. Thank you.

8 (EXHIBIT NO. 428 WAS RECEIVED INTO  
9 EVIDENCE AND MADE A PART OF THE RECORD.)

10 BY MR. MILLS:

11 Q. Now, the last page of the exhibit, which  
12 is marked page 6 of 6, it's also marked as page 36.  
13 It was page 36 in the original file. Would you agree  
14 with me that the amounts listed in column G are the  
15 executive bonuses that were the subject of the column  
16 in the news story in last Friday's Post-Dispatch?

17 A. Well, they're -- they're -- they're the  
18 executive incentive compensation.

19 Q. Yes.

20 A. I wouldn't -- would not really  
21 characterize it as a bonus.

22 Q. Okay. Fair enough. Now, regarding  
23 column E, is that the dollar valuation of stock  
24 awards?

25 A. That's the dollar valuation of

1 restricted stock awards that vested in 2006 which  
2 were actually paid over a period of about five years.  
3 So the portions of those five years of restricted  
4 stock that vested in 2006 is reflected in column E.

5 Q. Okay. Did the stock awards shown in  
6 column E, are those tied in any way to the -- the  
7 earnings-per-share target --

8 A. Yes, they are.

9 Q. -- for 2006?

10 A. Actually, for the five years previous to  
11 that and -- but including 2006.

12 Q. Five years up to and including 2006?

13 A. Uh-huh.

14 Q. Okay. And would those amounts have been  
15 less had the EPS in 2006 not hit that target?

16 A. Yes, yes, they would have been slightly.

17 Q. Now, if I can get you to turn back to  
18 Exhibit 426 which is the Jeff Tomich newspaper  
19 article. About halfway down on the first page  
20 there's a quote from Susan -- do you pronounce it  
21 Gallagher?

22 A. Uh-huh.

23 Q. -- Gallagher saying, "It is normal for  
24 them to back out extraordinary items." Do you see  
25 that quote?

1           A.       Yes, I do.

2           Q.       And do you agree with that?

3           A.       Well, not necessarily extraordinary  
4 items, but it is normal for us to make adjustments  
5 that we need to make to ensure that the overall  
6 incentive system works in a way that's fair to  
7 employees.

8           Q.       And can you give me examples of that  
9 kind of treatment over the last five years?

10          A.       It would be primarily regulatory rulings  
11 either that worked more to our favor or less to our  
12 favor than we had expected them to, and adjustments  
13 could have been made in either direction.

14                   This particular year we have made  
15 adjustments that work in a positive way that increase  
16 incentive compensation. At other times we've made  
17 adjustments that -- that reduce incentive  
18 compensation depending on the nature of the factors.

19          Q.       And were the ones made just recently in  
20 response to regulatory treatment?

21          A.       Yes. Well, partly in response to  
22 regulatory treatment and partly to adjust for the --  
23 the cost of the severe weather we experienced in  
24 2006.

25          Q.       Okay. What particular regulatory

1 treatment was involved?

2 A. An agreement in Illinois late in the  
3 year to offer 15 million dollars of programs for  
4 low-income heating assistance and other programs as a  
5 part of a settlement of Illinois issues.

6 JUDGE WOODRUFF: Mr. Mills, if you're at  
7 a breaking point, it's almost time for lunch.

8 MR. MILLS: Okay. Yeah, this would be  
9 fine.

10 JUDGE WOODRUFF: At this time we'll  
11 break for lunch. We'll come back at one o'clock.

12 (THE NOON RECESS WAS TAKEN.)

13 JUDGE WOODRUFF: Welcome back from  
14 lunch. Before we get back into the testimony,  
15 there's another matter that we've put off for a  
16 moment this morning, and that's the admission of all  
17 the depositions of the parties.

18 Mr. Conrad, on Friday you indicated some  
19 objections to that so we waited until you could be  
20 here this morning to voice those objections.

21 MR. CONRAD: Sure.

22 JUDGE WOODRUFF: So at this point I'll  
23 assume that those depositions have all been offered  
24 and I'll ask for objections.

25 MR. CONRAD: If I might, your Honor, I

1 made a copy of Supreme Court Rule 57.07 and 56.01 for  
2 your convenience and benefit. I don't know if you  
3 have a set of rules back there.

4 JUDGE WOODRUFF: Not handy, so this  
5 helps.

6 MR. CONRAD: The -- the objection -- the  
7 nature of the objection is to just the wholesale  
8 admission of what are discovery depositions.  
9 Discovery depositions, if you look at 56.01, are  
10 taken pursuant to a different standard of relevance.

11 I'll direct your Honor to 56.01 (b) (1)  
12 and then the second paragraph wherein it says that  
13 "It is not ground for objection" -- obviously at the  
14 deposition or to the mechanism of discovery; this is  
15 a more general provision -- "that the information  
16 sought will be inadmissible at the trial if the  
17 information sought appears reasonably calculated to  
18 lead to discovery of admissible evidence."

19 So it seems to me almost beyond argument  
20 that the standards are different. There is a much  
21 lower standard of relevancy when you use discovery,  
22 and, indeed, that's the very purpose of it. It is  
23 not to be stopped.

24 The idea that, well, this won't be  
25 admissible at trial, well, that might be, but it



1 might lead to the discovery of admissible evidence,  
2 trial-admissible evidence. So I think the first  
3 point that I would make is the standards are  
4 different.

5               No. 2, 57.07 (a) does not, in my view,  
6 support the wholesale admission of a deposition. If  
7 you look at that rule, it says very plainly, "Any  
8 part of a deposition that is admissible under the  
9 rules of evidence applied as though the deponent were  
10 testifying in court."

11              So let's just stop there. What rule of  
12 evidence would apply to the admissibility of a  
13 deposition if the deponent is present in court? And  
14 the answer is only a rule of evidence that purports  
15 to allow admissibility of all or a portion of a  
16 deposition who -- when -- when the deponent has not  
17 been shown to be unavailable.

18              Then the rule goes on to say it can be  
19 used against any party who is present or had notice  
20 of the taking of a deposition. And then we get to  
21 the wonderful sentence: "Depositions may be used in  
22 court for any purpose."

23              Well, it's been some 30 years since I  
24 went to law school, but all this does is codify the  
25 rule of evidence that I learned at the knee of one

1 Elwood Thomas, and that is that when you have a  
2 witness who is on the stand and who testifies  
3 inconsistently with prior testimony in a deposition,  
4 that portion of the deposition may be used in the old  
5 style that we used to use, identifying the  
6 deposition, the witness's signature on it, "Do you  
7 recall the court reporter was taking stuff down? Do  
8 you recall that you were sworn? Were you asked and  
9 did you answer ..."

10 And if the answer is different than the  
11 witness's current testimony, the witness is  
12 impeached. End of story.

13 That means, and what this sentence  
14 means, and all it means is that -- let me give you a  
15 very simple example. Stoplight case. Plaintiff is  
16 deposing defendant's witness, Molly A:

17 "Molly, what color was the light?" at  
18 the deposition.

19 "The light was red."

20 Okay. We get to the trial. Molly's on  
21 the stand.

22 "What color was the light, Molly?"

23 "The light was green."

24 Oops. Go through the process: "Were  
25 you asked and did you answer that the light was red?"

1 If so, that answer is now admissible, not for the  
2 truth of what it says, but it is admissible because  
3 it shows that that witness speaks inconsistently, or  
4 out of both sides of their mouth, about the same  
5 fact, and therefore it goes to the credibility.

6 And all that that sentence says is the  
7 same thing that the law of evidence has held as far  
8 as I know for quite a while, is that once it is  
9 admissible and Molly's statement in the deposition  
10 that the light was red has now been used, it is now  
11 sufficient in the record to support a finding that  
12 the light was red.

13 And that's where -- that's, again, where  
14 it ends, and that's all that sentence says. Nothing  
15 in this rule that I can see, and certainly nothing in  
16 56.01 (b) or anything that I have seen tells me that  
17 the court, when it did whatever it did, said, oh, it  
18 doesn't matter anymore. You can do a wholesale  
19 admission. You can just take a chunk of testimony,  
20 as a deposition here, and just say I want to mark  
21 this and admit it.

22 And you say, well, that's an admission  
23 of a party opponent. No, that's 57.07. 57.07 says,  
24 no, you have to apply the rule, and it is admissible  
25 under the rules of evidence as though the witness

1     were present in court? And if the witness is present  
2     in court, it's not -- it's not, by itself, wholesale  
3     admissible.

4                     Certainly counsel can take one by one,  
5     question by question where they see it's appropriate  
6     to do so in their professional judgment, and impeach  
7     the witness. But it does not follow that you just  
8     mark -- you just mark a deposition and dump it in the  
9     record.

10                    Again, what my point on due process is  
11     very simple: Discovery depositions, not depositions  
12     to preserve testimony -- that's a different job --  
13     but discovery depositions are subject to a  
14     substantially different standard of relevancy. And  
15     you can look about objections in 57.07, form of the  
16     question and so on, what's waived and what's not, and  
17     relevancy is not waived even if you fail to object.

18                    So you have all of the issues that you  
19     would have since the witness is there and the  
20     evidence is to be treated and considered to be  
21     admissible only under the standard that would apply  
22     if the witness is present in court.

23                    I just -- to me it just seems -- it just  
24     seems patently obvious. It's not a change in the  
25     law. Everybody seems to say this is a change in the

1 law. I haven't seen any evidence of that.

2 JUDGE WOODRUFF: Well, thank you,  
3 Mr. Conrad.

4 MR. CONRAD: Somebody -- somebody can  
5 show me -- as I said this morning, I'm from Missouri.  
6 Show me. Show me I'm wrong.

7 JUDGE WOODRUFF: Right. Staff and  
8 Public Counsel -- or Staff and Ameren I believe are  
9 the parties that are asking to have the deposition  
10 submitted. Do you have a response?

11 MR. LOWERY: Steve, mind if I go ahead?

12 MR. DOTTHEIM: Go ahead.

13 MR. LOWERY: Your Honor, I think as the  
14 Commission knows, as your Honor knows, the Rules of  
15 Civil Procedures are made applicable to the  
16 Commission under Missouri Administrative Procedure  
17 Act, and the Missouri Administrative Procedure Act is  
18 also quite specific that the technical rules of  
19 evidence do not apply.

20 A Commission proceeding is, I think,  
21 very closely analogous to a bench trial. We have we  
22 might say six judges, but at least one judge and five  
23 quasi judges in that particular context.

24 These depositions are, I think, very  
25 clearly admissions of a party opponent. And the

1 Commission has had a practice. There are several  
2 cases in just the last three or four years where the  
3 Commission has admitted depositions essentially on a  
4 wholesale basis as Mr. Conrad characterizes it, and I  
5 think that's in recognition of the fact that a  
6 Commission proceeding typically is one that's based  
7 upon written testimony and then cross-examination.

8                   It is a different animal than a jury  
9 trial. And I would agree with Mr. Conrad that I  
10 don't think a trial court judge in a jury trial is  
11 going to allow the wholesale admission of a  
12 deposition.

13                   However, it is very common practice --  
14 and I'm sure Mr. Conrad knows this -- in a jury  
15 trial, for example, that admissions in a deposition  
16 very, very often and large amounts of them very often  
17 are admitted simply on that basis into the record.

18                   Now, as Mr. Mills' cross-examination  
19 indicated this morning, I suppose that we could  
20 elongate these hearings to be six weeks instead of  
21 three weeks and ask all of the questions that were  
22 asked in these depositions and have the witness  
23 confirm that that was their answer or see if they  
24 need to be impeached and then impeach them. But at  
25 the end of the day, I don't think we gain anything.

1                   And given that we're dealing with a  
2 bench trial and given that they are admissions of a  
3 party opponent, and given another fact that  
4 Mr. Conrad -- I'm not saying that he omitted it, but  
5 the facts are -- and we can get you the prior rule if  
6 that would -- if that would aid the bench.

7                   But in 2002 the rule -- Rule 57.07 was  
8 very substantially changed, and Rule 57.07 used to  
9 say -- and I can't cite it chapter and verse -- there  
10 used to be a number of restrictions on the use of  
11 depositions for any purposes, even admissions of a  
12 party opponent, unless that witness was not  
13 available, did not appear.

14                   Those restrictions were completely  
15 removed, and if you look at the new version and you  
16 look at the corollary Federal Rules of Civil  
17 Procedures, you'll see that they're now very similar.

18                   And in the federal practice the  
19 wholesale admission of depositions is much more  
20 common, happens all the time, certainly happens in  
21 bench trials. So the law in Missouri has changed in  
22 this regard, and given the fact that we are in a  
23 proceeding, an administrative proceeding where you do  
24 not apply the technical rules of evidence -- and I  
25 think that's what we're really talking about here --

1 given the Commission's practice and given the fact  
2 that we really are dealing with a bench trial for all  
3 practical purposes, I think the rule contemplates and  
4 it's perfectly appropriate that these depositions be  
5 admitted as admissions of a party opponent.

6 JUDGE WOODRUFF: Mr. Dottheim, did you  
7 wish to add anything?

8 MR. DOTTHEIM: Yes. Well, I myself have  
9 not spent time on this because of past history, which  
10 is -- and when I have spent time, it's been to no  
11 avail. I've previously argued, as Mr. Conrad, and --  
12 and -- and not prevailed. The Commission has ruled  
13 otherwise. The Commission has ruled to let  
14 depositions in in entirety.

15 In fact, as my -- as my memory serves  
16 me -- and I don't know if Mr. Mills' memory is  
17 similar -- but my -- my memory is that in the  
18 preceding AmerenUE case, that is, the Staff's excess  
19 earnings complaint case, EC-2002-0001, AmerenUE  
20 offered into evidence the depositions that AmerenUE  
21 had taken of the Staff, and the Commission received  
22 those into -- into evidence and that is not an  
23 isolated incident.

24 So I really have nothing more to offer  
25 because I frankly thought that the situation is



1 pretty much a fate a comple here at the Commission

2 JUDGE WOODRUFF: All right. I'm gonna  
3 go ahead and admit the documents -- or the  
4 depositions in this case mainly because it has been  
5 the practice of the Commission in the past years to  
6 do so. However, I'm not particularly enamored of  
7 that process, and perhaps the Commission in this  
8 Report and Order can further address that and create  
9 a firm rule for parties to follow in the future.

10 So at this moment, the opposition of  
11 the -- statements in opposition are overruled. Those  
12 documents will be admitted into evidence. And I  
13 believe for Staff they started on --

14 MR. CONRAD: Judge, since I don't want  
15 to bore you with making that speech 14 times, can  
16 that be a continuing objection to the use of these  
17 hearsay materials --

18 JUDGE WOODRUFF: It certainly can --

19 MR. CONRAD: -- under the GSD case?

20 JUDGE WOODRUFF: It certainly can be.  
21 And I'm going to admit all of the depositions at this  
22 point, so this would be the time to do it anyway.

23 For Staff it was Exhibits 94 through --  
24 or excuse me -- this is for AmerenUE. They were  
25 Exhibits 94 through 103, and those documents will be

1 received into evidence.

2 (EXHIBIT NOS. 94 THROUGH 103 WERE  
3 RECEIVED INTO EVIDENCE AND MADE A PART OF THE  
4 RECORD.)

5 JUDGE WOODRUFF: For Staff -- had Staff  
6 marked those depositions? We talked about them last  
7 night --

8 MR. DOTTHEIM: Yes, the Staff did mark  
9 the deposition that I'm looking for.

10 JUDGE WOODRUFF: Yeah. It's 258, 259,  
11 260, 261 and 262, and those documents will be  
12 received into evidence.

13 (EXHIBIT NOS. 258 THROUGH 262 WERE  
14 RECEIVED INTO EVIDENCE AND MADE A PART OF THE  
15 RECORD.)

16 MR. DOTTHEIM: And the Staff did not  
17 have as of last week all of the correction sheets of  
18 the deponents which it does now, and I assume, as  
19 with Mr. Rainwater, the other correction sheets will  
20 have separate exhibit numbers.

21 JUDGE WOODRUFF: All right. Thank you.

22 MR. MICHEEL: Your Honor, I just want to  
23 make sure that -- there were certain exhibits to all  
24 of these depositions, and I want to make sure if  
25 we're gonna be putting all these depositions in, that

1 the exhibits are also contained in with the  
2 depositions.

3 JUDGE WOODRUFF: I'll ask the parties,  
4 is that what's contained?

5 MR. DOTTHEIM: The -- the exhibits --  
6 there are two of the -- the Staff's depositions of  
7 AmerenUE witnesses that have exhibits, and they are  
8 separate. And in particular, one of them is quite  
9 voluminous. In fact, they're in the boxes that are  
10 outside the hearing room. So they will have to be  
11 separately distributed.

12 But the Staff does have copies of those  
13 exhibits, and they fully intended to provide those as  
14 part of the record.

15 JUDGE WOODRUFF: All right. Same for  
16 AmerenUE?

17 MR. LOWERY: Your Honor, to the extent  
18 that the prepared copies that we had prepared did not  
19 include the exhibits, we will make sure that that's  
20 done, and we'll also verify the appropriate errata  
21 sheets, and if they're not, we'll mark them  
22 appropriately and make sure they're in the record.

23 JUDGE WOODRUFF: All right. Very good.

24 MR. CONRAD: And, Judge, I don't know if  
25 that falls under the Fruit of the Poison Tree

1 Doctrine, but I would make the same objection with  
2 respect to the exhibits. And I understand that your  
3 ruling's gonna be the same.

4 JUDGE WOODRUFF: It will be the same.  
5 And we'll watch out for poison apples. All right.

6 MR. COFFMAN: If I could just inquire to  
7 make sure I'm clear. For those of us that weren't at  
8 every one of these depositions, are they being made  
9 available in hard copy or are they electronically?  
10 Either one would be fine.

11 MR. LOWERY: Well, I guess I could  
12 respond to that. They will, of course, be available  
13 on the Commission's system, but all parties -- and I  
14 think this is true of Staff's depositions as well --  
15 were properly noticed of the depositions, and under  
16 the rule, therefore, they're admissible despite that.

17 So I think we had prepared copies for  
18 everybody of ours. I don't know, John, if you were  
19 here when that was taken up Friday night or not, but  
20 I'm sure we can probably get those for you.

21 MR. COFFMAN: That's fine.  
22 Electronically through the EFIS system is fine.  
23 They're exhibits now so they're different than  
24 simply --

25 JUDGE WOODRUFF: They are exhibits and

1 they will appear in EFIS as exhibits.

2 MR. COFFMAN: Thank you very much.

3 JUDGE WOODRUFF: And they were all  
4 marked on Friday.

5 MR. DOTTHEIM: And the Staff otherwise  
6 has copies so the Staff should be able to provide  
7 Mr. Coffman with a copy of each of the depositions.

8 JUDGE WOODRUFF: All right. Well, now  
9 that that's out of the way, let's go back to  
10 Mr. Mills and his cross-examination of Mr. Rainwater.

11 MR. MILLS: Okay. May I approach?

12 JUDGE WOODRUFF: You may.

13 BY MR. MILLS:

14 Q. Mr. Rainwater, I just handed you a copy  
15 of Ryan Kind's direct testimony in this case. Have  
16 you read that testimony?

17 A. No, I have want.

18 Q. Have you read any of the testimony in  
19 this case?

20 A. I've read bits and pieces but not very  
21 much of it.

22 Q. Have the bits and pieces tended -- are  
23 there any issues in particular you've looked at?

24 A. Nothing in particular. I've read an  
25 executive summary of the testimony presented by our

1 company.

2 Q. Okay. Have you read any of the  
3 testimony of the other parties?

4 A. No.

5 Q. Okay. If I could get you to look at  
6 page 32 of that testimony, are you familiar with the  
7 periodical The Ameren Journal?

8 A. Yes, I am.

9 Q. And do you read that journal?

10 A. Yes, I do.

11 Q. You contribute articles to it?

12 A. Sometimes.

13 Q. Okay. In his testimony Mr. Kind  
14 includes quotes from several articles in The Ameren  
15 Journal in 2000 and 2001. Could you please read the  
16 first quote starting at line 10 on page 32?

17 A. Okay. It says, "We're competing with  
18 companies that have 30,000 to 40,000 megawatts of  
19 capacity, so we'll either have to move the AmerenUE  
20 plants to the Genco, Ameren's nonregulated generating  
21 subsidiary, at some point or gain control of  
22 additional capacity in other ways.

23 "We don't know if the State of Missouri  
24 will allow us to do that in the future, but that's  
25 the most critical issue we'll face in the years to

1     come."

2           Q.       Okay.  And then could you read the next  
3     quote that starts on line 29 on page 32 and continues  
4     onto the next page?

5           A.       "We've proposed legislation that would  
6     allow utilities to move their generating assets into  
7     affiliated companies.  Until legislation is enacted,  
8     AmerenUE could face years of growing dependence on  
9     purchased power.

10                  "The company currently plans to add a  
11     45-megawatt peaking unit at its AmerenUE Meramec  
12     plant next summer.  While Ameren's nonregulated  
13     generating subsidiary, Ameren Energy Generating, AEG,  
14     plans to add about 850 megawatts of capacity this  
15     summer alone."

16          Q.       Okay.  And did that generating station  
17     at Meramec get put into place?

18          A.       Yes, I believe it did.

19          Q.       Okay.  Now, in those quotes, is it  
20     correct that the Genco described was a reference to  
21     the generation that was formerly part of CIPS when it  
22     was a vertically integrated utility?

23          A.       Yes, it was.

24          Q.       Okay.  And at some point this CIPS  
25     generation was transferred to Ameren Energy

1     Generating Company; is that correct?

2             A.       That is correct.

3             MR. MILLS:   Your Honor, I'd like to mark  
4     another exhibit.

5             JUDGE WOODRUFF:   Okay.

6             (EXHIBIT NO. 429P WAS MARKED FOR  
7     IDENTIFICATION BY THE COURT REPORTER.)

8     BY MR. MILLS:

9             Q.       Mr. Rainwater, if you could just let me  
10    know when you've had a chance to look at that and  
11    familiarize yourself with it.

12            A.       Okay.   Well, I've thumbed through it.

13            Q.       Okay.   Does that appear to be a UE  
14    response to OPC's DR 2209 in this case?

15            A.       Yes, it does.

16            Q.       And is that -- does that DR in turn ask  
17    for UE's response to Public Counsel DR No. 508 in  
18    Case Number EC-2002-1?

19            A.       Uh-huh, yes, it does.

20            Q.       Okay.   Now, the main portion of the  
21    response to this data request consists of some  
22    printouts from -- some Excel files from Excel  
23    spreadsheets; is that your understanding?

24            MR. LOWERY:   Your Honor -- I'm sorry,  
25    Lewis, but are we gonna go in-camera?   Maybe we



1     aren't even gonna reveal any of the contents of the  
2     document, but ...

3                   MR. MILLS:   Well, yeah, we are gonna go  
4     in-camera, but not quite yet.

5                   MR. LOWERY:   Okay.   My apologies.

6                   MR. MILLS:   That's okay.

7     BY MR. MILLS:

8           Q.       And I'm gonna be focusing particularly  
9     on pages 5 and 6, if you want to just look at those  
10    two in particular.   Now, do you see that the name of  
11    the file for each of the sheets indicates that the  
12    file was titled GLR-2000B Capacity Excel S?

13          A.       Yes, I do.

14          Q.       Okay.   And the last sheet of the exhibit  
15    indicates the sheet name GLR Master, also included  
16    the initials GLR?

17          A.       Okay.   The last sheet being which page?

18          Q.       It would be page 15.

19          A.       Yes, I do.

20          Q.       Okay.   Do you recognize the initials  
21    GLR?

22          A.       Yes, I do.   I think that must refer to  
23    me.

24          Q.       Okay.

25          A.       However, I don't recognize these sheets.

1           Q.       Okay. In Case Number 2002-1, this  
2 response was provided by David J. Brugeman. Do you  
3 recognize the name David J. Brugeman?

4           A.       Yes, I do.

5           Q.       And who is he?

6           A.       He is an analyst or engineer, I think in  
7 corporate planning in the resource planning area.

8           Q.       Okay. And based on the titles of the  
9 file -- well, first of all, let me ask you this:  
10 What -- what type of work does the corporate planning  
11 department perform for UE?

12          A.       Well, resource planning is one of the  
13 things that it does, and they do a number of other  
14 things, but resource -- this is what -- this is  
15 resource planning. This is one of the things that  
16 they do.

17          Q.       Okay. And I believe we've heard from  
18 previous witnesses that one of the things they do is  
19 perform statistical numerical sorts of analyses for  
20 executives on request; is that true?

21          A.       Yes, they would.

22          Q.       Okay. Based upon the initials in the  
23 title of the file, do you believe that this -- that  
24 this analysis was performed for you at -- in the --

25          A.       It might have been, although I don't

1 recall asking for it, or it might have been something  
2 that someone else thought needed to be done given the  
3 issue of creating a generating company.

4 Q. Okay. Now, if I could get you to turn  
5 to page 6. And the particular sheet out of the Excel  
6 file in there is called "CIPS-Genco." Do you see  
7 that in the lower right-hand corner?

8 A. Yes, I do.

9 Q. And the upper part of the sheet appears  
10 to indicate that it's "Ameren CIPS Resource Plan,  
11 2000 to 2009, Genco model"?

12 A. Yes, it is.

13 Q. Okay. Now, on that sheet does that show  
14 that over the years, 2000 to 2009, the CIPS Genco is  
15 growing in size?

16 A. It appears to.

17 Q. With additional capacity in several of  
18 the years?

19 A. Yes.

20 Q. Okay. And as the real world turned out,  
21 was much of that capacity actually added in the CIPS  
22 portfolio?

23 A. As things turned out we -- it looks like  
24 we added most of this. I'm not sure if all of it was  
25 added.

1 Q. Okay. Now, if you look down to the year  
2 2006, do you see the line EEI?

3 A. Yes, I do.

4 Q. Do you believe that that's an  
5 abbreviation for Electric Energy, Inc.?

6 A. Yes, it is.

7 Q. Okay. Now, across the line from there,  
8 do we see that the EEInc purchased megawatts goes  
9 from 203 in 2005 up to 608 in 2006?

10 A. Yes, it does.

11 Q. Okay. And almost right in the middle of  
12 the page there's a note about EEI. Do you see that,  
13 where it says, "EEI, transfer 405 megawatts of EEI  
14 from UE to CIPS in 2006"?

15 A. Yes, I do.

16 Q. Okay. And did that actually happen?

17 A. No, it did not.

18 Q. Okay. But the 405 megawatts of capacity  
19 and energy that UE used to have entitlement to from  
20 Joppa is no longer with UE after the end of 2005; is  
21 that correct?

22 A. No. When the power contract expired, is  
23 that the entitlement you're referring to?

24 Q. Yes, exactly.

25 A. That's correct.

1           Q.       Okay. Now, if you look at the previous  
2 page, page 5, and the title of this file sheet is,  
3 "UE Genco" as opposed to CIPS Genco; is that correct?

4           A.       Yes, it is.

5           Q.       Okay. And does this indicate that it's  
6 a preliminary -- "Preliminary AmerenUE Resource Plan  
7 2000 to 2009, Genco Model"? Is that what the title  
8 at the top shows?

9           A.       That's what the title is, yeah. I'm not  
10 sure what it is meant to represent.

11          Q.       Okay. Now, does this show that from  
12 2000 to 2009, the only additional supply for AmerenUE  
13 is to extend AP&L in 2002?

14          A.       I don't see the AP& -- oh, okay, I do  
15 see that. Yes, that's correct.

16          Q.       Okay. And do you know what AP&L refers  
17 to?

18          A.       It refers to a power contract from AP&L  
19 to UE.

20          Q.       Okay. And was that, in fact, extended  
21 in 2002?

22          A.       I think that it was.

23          Q.       Okay. Now, if we look over to the "EEI  
24 purchase in Megawatts" column, does that show that  
25 UE's purchase of megawatts from EEI goes from 405 in

1 2005 to zero in 2006 and subsequent years?

2 A. Yes, it does.

3 JUDGE WOODRUFF: Mr. Mills, it just  
4 occurred to me you were asking specific questions.  
5 We're not in-camera at this point.

6 MR. LOWERY: Those numbers would not  
7 have been.

8 JUDGE WOODRUFF: Thank you.

9 MR. MILLS: Thank you. I appreciate  
10 that, and that's all I'm gonna do on that exhibit,  
11 and if that wasn't proprietary, we're basically done  
12 with that exhibit.

13 BY MR. MILLS:

14 Q. Mr. Rainwater, I've just handed you and  
15 your counsel a copy of the cross surrebuttal  
16 testimony of Ryan Kind in Case Number EC-2002-1.  
17 Does that appear to be the document that you have in  
18 front of you?

19 A. Yes, it does.

20 Q. Now, if I can get you to turn to page 59  
21 of that document. And this will actually be  
22 proprietary, so if you want to go in-camera for that.

23 JUDGE WOODRUFF: All right. Do you want  
24 to go in-camera now?

25 MR. MILLS: Yes, please.

1 JUDGE WOODRUFF: We're going to go  
2 in-camera.

3 (REPORTER'S NOTE: At this point, an  
4 in-camera session was held, which is contained in  
5 Volume 24, pages 1930 through 1933 of the  
6 transcript.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 BY MR. MILLS:

2 Q. Let me start that question over again so  
3 it's clear on this portion -- or hopefully clear on  
4 this portion of the transcript.

5 If you make the decision as the CEO of  
6 Ameren to pursue a particular type of new power  
7 supply agreement, would the board then accept that  
8 proposal because you control the board?

9 A. Well, I, first of all, would not make a  
10 decision to pursue a particular type of power  
11 contract for EEI. I would expect EEI to make that  
12 decision on its own.

13 Now, since I was an EEI director for a  
14 long time, I know that the thinking at EEI for a long  
15 time was that as power markets evolved and when it  
16 became possible to sell power into the wholesale  
17 market, that that was probably the best approach that  
18 EEI could take, and that ultimately was the decision  
19 that EEI made, although that happened a couple of  
20 years after I left the board.

21 So I wouldn't have had any reason to  
22 tell EEI how to sell power, and I certainly wouldn't  
23 tell EEI who to sell power to. My expectation would  
24 have been that EEI would act to maximize its own  
25 profit. It's the same expectation that I would have



1     for Union Electric, that it would act to exercise --  
2     maximize its own profit; the same for CIPS, IP, SILCO  
3     and our other subsidiaries, and to do that  
4     independently.

5                     And that is what ultimately happened, is  
6     that EEI took that approach. Now, where the EEI  
7     stock reports in the corporation, if it's a  
8     subsidiary of UE or if it's a subsidiary of Ameren, I  
9     don't really think that it matters that much.

10                    It would be neat, just from a neatness  
11    point of view of cleaning up the organization chart,  
12    if it were all a direct subsidiary of Ameren because  
13    it is an important part of our business. I'd prefer  
14    to see it as a primary subsidiary of Ameren.

15            Q.       Now, how are board members -- members  
16    nominated to serve on the EEInc board?

17            A.       They're nominated by their companies.  
18    KU has the right to nominate two directors, EEI has  
19    the right to nominate -- or excuse me. UE has the  
20    right to nominate directors, and AER has the right to  
21    nominate directors.

22                    And I'm not sure what the number of  
23    directors from each of those entities is now. I  
24    think the total is seven.

25            Q.       To your knowledge, has the board ever

1 refused to confirm or vote in a nomination from one  
2 of the sponsor companies?

3 A. I don't think that it has.

4 Q. Okay. Now, the question of renewing or  
5 replacing the power supply agreement that expired at  
6 the end of 2005, is that something that you would  
7 have taken to the Ameren board?

8 A. No, it's not a decision that -- it's not  
9 a decision that I would consider by itself going to  
10 the Ameren board. And when I say "by itself", what I  
11 mean is what would have been taken to the Ameren  
12 board is the strategy of selling power from all of  
13 our unregulated generating plants, and they, within  
14 the corporation, reside in about three different  
15 companies. Selling the power from all of those  
16 plants in the wholesale market at market prices when  
17 the markets allow that. And it is just in the past  
18 few years that the markets have matured to the point  
19 that markets now allow that.

20 Q. Okay. Would you have taken it to the UE  
21 board?

22 A. It would have been discussed at the UE  
23 board level as well.

24 Q. Okay.

25 A. You know, probably not in the -- when I

1 say that, not at a UE board meeting. We don't  
2 typically call UE board meetings, but it would have  
3 been discussed by all of the UE board members at  
4 routine company meetings. For example, at the senior  
5 team meetings.

6 Q. Okay. Does the UE board have a  
7 different function than the Ameren board and the  
8 EEInc board?

9 A. It -- I'd say the function is no  
10 different legally, but the operation is somewhat  
11 different. The operation is different because the  
12 members of the UE board are all internal board  
13 members. They're all AmerenUE or Ameren Services  
14 employees who meet regularly to discuss issues that  
15 would be considered at the UE board level --

16 Q. Okay.

17 A. -- would ultimately be approved at the  
18 UE board level. But those decisions that are large  
19 enough decisions that would also need to go to the  
20 Ameren board, we would typically -- now, once we've  
21 agreed at the UE level, take the decision to the  
22 Ameren board, have a resolution approved at that  
23 level to move ahead, and then also approve a  
24 resolution at the UE level.

25 And we do it that way to ensure that

1 they're -- we don't end up with disagreement among  
2 board members at the Ameren level and the UE level  
3 after the fact.

4 Q. But the UE board only makes perfunctory  
5 type decisions; isn't that correct?

6 A. Well, I call it perfunctory in the sense  
7 that we don't meet on a regular basis. But the UE  
8 board would make any decision that has to go to the  
9 Ameren board -- let's say a major decision like a  
10 major power plant -- would be made actually at the UE  
11 level.

12 Before we took the recommendation to the  
13 Ameren board, it would also need to be -- it's kind  
14 of a two -- you know, two-hurtle requirement. We  
15 would have to approve it at the UE level, and we  
16 would also have to approve it at the Ameren board  
17 level for large decisions.

18 Q. Now, do you have a fiduciary duty with  
19 respect to EEI?

20 A. Well, I -- I do not now since I'm not an  
21 officer of EEI or an officer -- or a director of EEI.

22 Q. And do you have a copy of your  
23 deposition there with you?

24 A. Yes, I do someplace.

25 Q. Could I get you to turn, please, to page

1 98? And I'm focusing specifically on the section  
2 that begins on line 9 where you talk about your  
3 fiduciary responsibility is to maximize the earnings  
4 of EEInc and thereby to maximize the earnings of  
5 AmerenUE and Ameren.

6 A. Uh-huh.

7 Q. Is it your testimony that you do or you  
8 don't have a fiduciary duty to EEInc?

9 A. Well, I was assuming when I answered  
10 that question, you were speaking during the time  
11 period that I was a director of EEInc. I felt I had  
12 a fiduciary duty to EEInc.

13 Now, as the CEO of Ameren, I certainly  
14 have a fiduciary duty to Ameren. Frankly from a  
15 legal -- technically legally point of view, I'm not  
16 sure if I have a fiduciary duty to all of the  
17 subsidiary companies of Ameren which -- for those  
18 that I'm no longer a board member of, and I think  
19 that would only be EEInc. Still a board member of  
20 all the others.

21 And that's the kind of question that I  
22 would, if confused about that, I would ask counsel.

23 Q. Okay. Now, can you -- can you explain  
24 your understanding of the concept of a below-the-line  
25 asset?

1           A.       I'm not sure whether or not this is  
2     technically correct, but my understanding is that a  
3     below-the-line asset is an asset that has not been  
4     included or is not included in the regulatory  
5     framework of a utility company.

6                    An above-the-line asset is an asset that  
7     would be included. And in EEInc's case, EEInc has  
8     been a separate company from Union Electric, legally  
9     separate for the entire history of its company. It  
10    has sold power to Union Electric.

11                   So EEInc and the EEInc assets, the Joppa  
12    plant, have never been included in the regulatory  
13    framework. The power sale agreement, though, has  
14    been a resource to Union Electric, and that has been  
15    a part of the regulatory framework.

16           Q.       Okay. And in that context, with respect  
17    to what you consider a below-the-line asset, do  
18    ratepayers get considered in deciding what to do with  
19    that asset?

20           A.       No, I don't believe they do.

21           Q.       Now, is it true that all of UE's costs  
22    are above the line?

23           A.       I don't believe they are. The costs  
24    that are included in rates are above the line.

25           Q.       Okay. At page 115, line 17 of your

1 deposition, you make the statement that all UE's  
2 costs are above the line. I'm not sure I understand  
3 the context of that.

4 A. Page 115, which line?

5 Q. Page 115, line 17.

6 A. Okay.

7 Q. And perhaps the following line, line 18  
8 it clarifies it somewhat.

9 A. Okay. Well, all of UE's costs -- UE's  
10 costs that it charges its customers are above the  
11 line. And when you said are all of UE's costs above  
12 the line, I would hope that all of UE's costs would  
13 be above the line, but I know that some costs are, in  
14 fact, excluded.

15 And the issue we were talking about a  
16 while ago on incentive compensation, for instance, I  
17 know is excluded, so I assume that means that that  
18 cost is below the line.

19 Q. Now, I think in response to questions by  
20 Mr. Dottheim, you talked about some -- the question  
21 had to do with whether or not UE considered canceling  
22 the EEI power supply agreement in the late '90s. And  
23 I'm not gonna ask you whether or not that was  
24 considered, but had that been considered at that  
25 time, would both UE and EEI have made more money,

1 more profits had that contract been canceled?

2 A. Well, UE never considered canceling the  
3 contract. EEI did consider canceling the contract.  
4 EEI certainly would have made more money -- probably  
5 would have made more money. I shouldn't say  
6 certainly, but probably would have made more money  
7 during the later years of the contract.

8 Q. And if EEI made more money because of  
9 the cancellation, would UE also have made more money?

10 A. And UE probably would not have made more  
11 money. UE probably would have made less money  
12 because UE would have had to replace that contract or  
13 that -- for that power.

14 In some other market they would have had  
15 to replace the resource, and it is likely that that  
16 cost would have been greater.

17 Q. But had that situation come up, would UE  
18 have been required to agree to cancellation of the  
19 contract because of its fiduciary -- the board  
20 members' fiduciary duties to maximize EEInc's  
21 profits?

22 A. Would UE have been required to agree to  
23 cancel the contract?

24 Q. Would UE's board members, the  
25 representatives of UE on the EEInc board, would they



1 have been required to vote to reduce, do you suspect,  
2 UE's profits?

3 A. To cancel the contract, UE would have  
4 required a board decision to cancel the contract.

5 Q. Okay.

6 A. UE did not cancel the contract and never  
7 considered canceling the contract.

8 Q. If EEI had proposed to UE cancellation  
9 of the contract, would UE board members have --  
10 because they thought that that would make more money  
11 for EEI, would UE board members -- I'm talking about  
12 representatives of UE on the EEI board. Are you with  
13 me?

14 MR. CYNKAR: Objection, your Honor.  
15 That calls for speculation.

16 JUDGE WOODRUFF: Overruled.

17 BY MR. MILLS:

18 Q. Would they have had to vote in favor of  
19 the cancellation because it would make more money for  
20 EEI?

21 A. Would EEI's board members vote in favor  
22 of the calculation --

23 Q. -- who were representatives of UE --

24 A. -- who were -- actually not  
25 representatives of UE. If they were EEI board

1 members, they're representing EEI, and they would  
2 have had to do what was right for EEI, and if they  
3 felt that that was in the best financial interest of  
4 EEI, they would have had a fiduciary duty to vote to  
5 cancel the contract, and I assume that's what they  
6 would do.

7 Q. Okay. Are any of the EEInc board  
8 members also UE board members?

9 A. Yes. And I'd have to take a look at the  
10 list to see how much overlap there is, but there are  
11 at least a couple.

12 Q. And assuming there were some overlap at  
13 that time, how would that -- how would a board member  
14 for EEI resolve that contract?

15 A. Well, from an EEI point of view, he  
16 would have to vote for the interest of -- on the EEI  
17 board, he would have to vote to cancel the contract.  
18 From a UE point of view, he would -- the director --  
19 UE director and officer would oppose that, but I'm  
20 not aware of anything that could be done, because  
21 that was a cancellation provision that could have  
22 operated from either direction.

23 It could have been canceled by UE. UE  
24 would not have done that. Could have been canceled  
25 by EEI. EEI might have done that. Did not, in fact,

1 do that, but might have.

2 Q. Now, when you were on the EEI board, did  
3 you understand what a fiduciary duty was?

4 A. Yes, I did.

5 Q. Now, if I can get you to turn in your  
6 deposition to page 123, lines 6 and 7. In those  
7 questions were you talking about when you were on the  
8 board and you say, "At the time I probably wouldn't  
9 have understood what a fiduciary duty was"?

10 A. When I made that statement, I was  
11 thinking of the early 1980's when I worked to  
12 negotiate the -- what is now or what became mod 12 to  
13 the contract. The previous questions were in terms  
14 of the 15 percent return on equity that we negotiated  
15 in the mid '90s became effective in 1987.

16 Q. Okay. And I shouldn't read your  
17 deposition there to say that engineers aren't capable  
18 of comprehending the question of fiduciary duty,  
19 should I?

20 A. No. It's a very simple concept and an  
21 engineer can understand it with one explanation.  
22 but -- even an accountant could understand it with  
23 one explanation, but -- perhaps even a lawyer.

24 But -- but at the time I was not  
25 familiar with the fiduciary duties.

1           Q.       All right. Now, is there any certainty  
2       that EEInc would make more money in the market than  
3       it would have by renewing the power supply agreement  
4       at the end of 2005?

5           A.       By renewing the power supply agreement?

6           Q.       Yes.

7           A.       Any certainty that EEI would make more  
8       money by renewing the power supply agreement?

9           Q.       Is it certain that by not renewing it,  
10       by instead moving to market base rates that they will  
11       make more money?

12          A.       That's fairly certain, just due to the  
13       difference in cost of power versus the price in the  
14       market.

15          Q.       Okay. Is there any risk at all there?

16          A.       There's some risk but it's not in the  
17       category that a reasonable business judgment would --  
18       would overrule the decision. It is a very clear  
19       decision.

20          Q.       Are you aware of any detailed analysis  
21       that shows the risks of going to market-based rates  
22       as opposed to a fixed-price contract?

23          A.       No, I'm not. And I was not on the board  
24       at the time the decision was made, so I'm not aware  
25       if any analysis was presented or not, but the -- just

1 to give you an idea of the analysis, the price of  
2 power at EEI is on the order of 20 dollars per  
3 megawatt hour. The current market is on the order of  
4 40 dollars per megawatts hour. To sell at a cost  
5 basis would mean selling at 20 dollars plus a return  
6 on equity, you know, that might maybe add another  
7 dollar.

8 So it seems fairly clear cut from a  
9 director's point of view, fiduciary duty means he  
10 needs to maximize the profit of that contract. There  
11 is only one choice that a director could make and --  
12 and honor his -- the fiduciary duty to that company.

13 MR. MILLS: Thank you. One second,  
14 please.

15 BY MR. MILLS:

16 Q. Now, the previous power supply  
17 agreements generally had a term of, what, 10, 15  
18 years or more; is that correct?

19 A. The 1987 agreement ran through 2005, so  
20 that was almost 20 years.

21 Q. Okay. And in your answer just a minute  
22 ago about risk, were you talking about risk over that  
23 kind of time horizon or were you talking about  
24 short-term risk?

25 A. Well, there certainly is risk over a

1 longer term period of time. There is no guarantee  
2 that EEInc will continue to enjoy the kind of margins  
3 that it sees today; that there is that risk.

4 Q. And you spoke just a little while ago  
5 about the preference I think for maintenance purposes  
6 of moving all EEI's stock to one Ameren entity. Why  
7 has that not been done?

8 A. I'm not sure.

9 Q. Is that something that UE would have to  
10 get approval from, from the Missouri Public Service  
11 Commission?

12 A. I don't know.

13 Q. Okay. Does the Ameren board ever direct  
14 the UE board to take certain actions?

15 A. The Ameren board doesn't direct UE to  
16 take actions that UE hasn't already determined it  
17 wants to make. The way that we work is we make  
18 decisions at the UE level, we take those decisions to  
19 the Ameren board. The Ameren board approves or  
20 disapproves, and it may disapprove actions that we've  
21 recommended at the UE level.

22 But ordinarily there is no conflict. We  
23 make a decision at the UE level, we take it to the  
24 Ameren board, it's approved at both the UE board  
25 level and the Ameren board level.

1                   MR. MILLS: Your Honor, I think I'm just  
2 about do done. I believe I neglected to offer  
3 Exhibit 429 and I would like to do that now.

4                   JUDGE WOODRUFF: All right. You also  
5 didn't offer 426 and 427 which were the stories from  
6 the Post-Dispatch.

7                   MR. MILLS: Okay. Then I'll do 429  
8 first.

9                   JUDGE WOODRUFF: Okay. 429P has been  
10 offered into evidence. Are there any objections to  
11 its receipt?

12                   (NO RESPONSE.)

13                   JUDGE WOODRUFF: Hearing none, it will  
14 be received into evidence.

15                   (EXHIBIT NO. 429P WAS RECEIVED INTO  
16 EVIDENCE AND MADE A PART OF THE RECORD.)

17                   MR. MILLS: And then I will offer 424  
18 and 425, were those the newspaper articles?

19                   JUDGE WOODRUFF: That was 426 and 427.

20                   MR. MILLS: 426 and 427.

21                   MR. CYNKAR: We do object to those, your  
22 Honor.

23                   JUDGE WOODRUFF: On what basis?

24                   MR. CYNKAR: They're hearsay. In the  
25 testimony I think that there was reference to the

1 68 million dollar number, but all the rest of this  
2 text is just hearsay, and I would object on that  
3 ground.

4 JUDGE WOODRUFF: Your response?

5 MR. MILLS: I'm not gonna respond.

6 JUDGE WOODRUFF: All right. And I will  
7 sustain the objection.

8 And Mr. Mills, you left 423 as -- you  
9 never offered anything for 423?

10 MR. MILLS: That's correct. That's  
11 correct. I didn't have -- I had that prepared to  
12 offer, but based on certain questions I didn't need  
13 to offer that one.

14 JUDGE WOODRUFF: I appreciate that. All  
15 right. Cross-examination from the State.

16 CROSS-EXAMINATION BY MR. MICHEEL:

17 Q. Good afternoon, Mr. Rainwater.

18 A. Good afternoon.

19 Q. Correct during the '80S you were in  
20 Union Electric's corporate planning department?

21 A. That is correct.

22 Q. And part of your duties in the corporate  
23 planning department were to negotiate power supply  
24 agreements; is that correct?

25 A. That is correct.



1           Q.       And is it correct that you helped  
2 negotiate the 1987 power supply agreement between  
3 EEInc and the sponsoring companies, one of those  
4 companies being Union Electric?

5           A.       That is correct.

6           Q.       We've had some talk today about the  
7 cancellation provisions of that contract. Let me --  
8 may I approach the witness?

9                   JUDGE WOODRUFF: You may.

10          BY MR. MICHEEL:

11          Q.       Let me show you Section 6.2, the  
12 cancellation of the agreement provisions, and why  
13 don't you take a minute and read that, sir, and  
14 refresh your recollection as to that. And let me  
15 know when you're ready.

16          A.       All right. I'm ready.

17          Q.       Now, that provision allows any of the  
18 parties to cancel the contract; is that correct?

19          A.       That's correct.

20          Q.       And we discussed that cancellation  
21 provision. When I say "we", I asked you questions  
22 about that cancellation provision in your deposition,  
23 did I not?

24          A.       I think you did.

25          Q.       And you've had your deposition taken

1 before; is that correct?

2 A. Yes, I have.

3 Q. And you understand that if there's  
4 something that you don't understand about a question  
5 in the deposition, you ask for clarification. Do you  
6 understand that?

7 A. I understand that I should do that.

8 Q. Okay. Now, is it correct that -- that  
9 AmerenUE considered canceling that contract on five  
10 years' notice?

11 A. No, it is not.

12 Q. Do you have a copy of your deposition  
13 there, sir?

14 A. Yes, I do.

15 Q. Could you turn to page 121, sir, and  
16 read the question and answer beginning on line 10 and  
17 ending on line 17 and let me know if you've done  
18 that, sir.

19 A. Yes, I have.

20 Q. Now, let me ask you the question again.  
21 Did AmerenUE ever consider canceling the PSA on five  
22 years' notice?

23 A. No, it did not.

24 Q. Does that question say, "There's a  
25 cancellation provision in this contract, if I

1 understand that, in Section 6. I think it's .02.

2 And do you know, did Union Electric ever consider  
3 canceling on the five years' notice?

4 "Answer: When you say Union Electric, I  
5 guess the thought crossed my mind."

6 A. That is correct. That is what I said.

7 Q. Now, which -- which part of that  
8 question is unclear to you, sir?

9 A. When I answered the question, I had in  
10 my mind EEInc. And I read the question, I can see it  
11 clearly says UE. However, we jumped around on a lot  
12 of different areas, and my mind was on EEInc.

13 Q. Okay. So now sitting there today -- let  
14 me ask you this: Did you have a chance to review  
15 this deposition?

16 A. Yes, I did.

17 Q. And did you provide an errata sheet to  
18 this deposition that was marked as Exhibit 264?

19 A. Yes, I did.

20 Q. Did you change your answer then?

21 A. No, I did not.

22 Q. So this is the first time we're hearing  
23 this change of answer; is that correct?

24 A. That is correct.

25 Q. So now sitting there today, it's your

1 testimony that you, on behalf of Union Electric,  
2 never thought about canceling that agreement; is that  
3 correct?

4 A. On behalf of Union Electric, I did not  
5 consider canceling the agreement. I was also an  
6 EEInc board member, and as an EEInc board member, I  
7 did consider canceling the agreement.

8 Q. Why don't I ask you to read the question  
9 and answer starting on line 18 of page 121, going  
10 through page 122, line 21. And let me know when  
11 you're done reading those.

12 A. Through which line is this?

13 Q. You can go through line 21 or line 24.

14 A. Okay.

15 Q. There's never any questions about EEInc  
16 in those questions and answers; isn't that correct?

17 A. These particular questions there are  
18 not.

19 Q. And for example, on page 122 the  
20 question is, "But at the time you didn't have a  
21 fiduciary duty to the shareholders to get as much  
22 value from EEInc assets as you could?" And you  
23 answered, "Yes, I've always had that fiduciary duty";  
24 is that correct?

25 A. Yes, that is recollect.

1           Q.       And that's talking about your capacity,  
2       Union Electric's fiduciary duty; is that correct, sir?

3           A.       No. I took the question to mean EEInc.  
4       It says EEInc.

5           Q.       Well, let me step back. Is it Union  
6       Electric's position in this case that Union Electric  
7       has a fiduciary duty to its shareholders to get as  
8       much value as it can from its investment in EEInc?

9           A.       Union Electric does?

10          Q.       Yes, sir.

11          A.       The directors and officers of EEInc have  
12       a fiduciary duty to get as much value from their  
13       interest in EEInc, and directors and officers of  
14       Union Electric have a fiduciary value to Union  
15       Electric to use the assets of Union Electric to  
16       maximize earnings for their shareholders.

17          Q.       And so one of those assets is what  
18       Ameren believes is the unregulated portion of EEInc;  
19       isn't that correct?

20          A.       One of those assets of who?

21          Q.       Of Union Electric.

22          A.       EEInc Joppa plant is not an asset of  
23       Union Electric. Union Electric has a stock ownership  
24       in EEInc. Joppa plant is an asset of EEInc.

25          Q.       And Union Electric has a fiduciary duty

1 to get the most value out of its stock assets; is  
2 that correct?

3 A. Yes, it does.

4 Q. And so if Union Electric could have  
5 canceled the contract with EEInc and allowed that  
6 energy to be sold on the open market, that would have  
7 been a benefit to the UE shareholder; is that  
8 correct?

9 A. Correct, it would have been, but it  
10 would have been a poor --

11 Q. And UE could have -- UE, pursuant to the  
12 provisions of 6.02, could have sought to terminate  
13 the power supply agreement; isn't that correct?

14 A. Yes, it could have.

15 Q. And it didn't do that; isn't that  
16 correct?

17 A. It did not do that.

18 Q. And Union Electric knew at the time that  
19 the prices in the power market, the return would have  
20 been higher than it was getting on the purchase (sic)  
21 supply agreement; is that correct?

22 A. That is correct.

23 Q. Just like EEInc's directors knew that;  
24 isn't that correct?

25 A. That is correct.

1           Q.       And so under your theory, Union Electric  
2     had a fiduciary duty, did they not, to cancel that  
3     contract?

4           A.       No, they did not.

5           Q.       And why didn't they?

6           A.       Because as an officer of Union Electric,  
7     officers of Union Electric, we made a reasonable  
8     business judgment that continuing that contract was  
9     in the best interest of our customers, and if we did  
10    so, we would be treated fairly in the regulatory  
11    process and that would offset the potential gain from  
12    canceling the contract and selling the power into the  
13    wholesale market.

14                    So it wasn't our choice to do that. It  
15    was an EEInc choice to do that.

16          Q.       Did you have a contractual right, sir,  
17    as part of Union Electric, to cancel that contract?

18          A.       Yes, we did.

19          Q.       And you made a choice not to exercise  
20    your contractual right; isn't that correct?

21          A.       Yes, we did.

22          Q.       Now, I'm not -- that was a decision, a  
23    corporate decision of Union Electric, correct?

24                    MR. CYNKAR: Your Honor, this has been  
25    asked and answered many times over now. I object.

1 JUDGE WOODRUFF: Overruled.

2 THE WITNESS: Go ahead.

3 BY MR. MICHEEL:

4 Q. The question's there, sir.

5 A. No, I didn't understand the question.

6 MR. MICHEEL: Okay. Would you read it  
7 back?

8 (THE COURT REPORTER READ BACK THE  
9 QUESTION.)

10 THE WITNESS: That was the last  
11 question, that was a corporate decision of Union  
12 Electric? What was a corporate decision of Union  
13 Electric?

14 Q. Not to cancel that contract.

15 A. That's correct.

16 Q. Now, you talked about a business  
17 judgment rule, did you not, sir, in responding to  
18 that -- one of my questions?

19 A. Yes, I did.

20 Q. And let me ask you the flip side.  
21 Assume that EEInc board of directors decided to enter  
22 into a PSA that provided for all of the costs and a  
23 15 percent return. That equally could fit under the  
24 business judgment rule, could it not?

25 A. It could if it provided a return



1 commensurate with a market rate return.

2 Q. Well, what return -- what market rate  
3 return on equity is Ameren seeking in this case, sir?

4 A. 12 percent.

5 Q. Is 15 percent higher than 12 percent?

6 A. Yes, it is. The point you're.

7 Q. Would you agree with me -- there's no  
8 question pending, sir. Would you agree with me that  
9 UE had rights to buy 40 percent of the capacity and  
10 had separate rights to buy various amounts of energy  
11 under the purchase supply agreement that you  
12 negotiated?

13 A. Yes, it did, until December 31st, 2005.

14 Q. Would you agree with me that the 1987  
15 purchase supply agreement with EEInc allowed recovery  
16 of all of EEInc's actual cost plus an after-tax  
17 equity return of 15 percent?

18 A. Yes, it did.

19 Q. Would you agree with me that those terms  
20 of the power supply agreement required the 15 percent  
21 return even if EEInc did not deliver the power?

22 A. No, I would not.

23 Q. Do you have your deposition there, sir?

24 A. Yes, I do.

25 Q. Could you turn to page 123, sir? And

1     could you read to yourself, sir, the question and  
2     answer that starts on line 23 and goes through line  
3     25, and the question and answer on the top of line --  
4     or page 124 through line 8 and let me know when  
5     you're finished, sir.

6             A.       Okay. I'm finished.

7             Q.       Does that answer indicate that UE had to  
8     pay for the power even if it didn't deliver -- even  
9     if it didn't receive the power?

10            A.       No, it doesn't. Here's what I said. I  
11     said that -- even if it didn't deliver the power was  
12     the question, and I said, well, there may have  
13     been -- that may have been the terms of the contract,  
14     but if it didn't deliver the power, my guess is the  
15     company would have just simply gone out of business  
16     and the stockholders would have lost their money and  
17     debt holders would have lost their money, and that  
18     would have been the end of it.

19                    From UE's point of view, if that had  
20     happened, UE would have refused to pay if power were  
21     not delivered.

22            Q.       If you could --

23            A.       If power were not delivered, this  
24     Commission would never have --

25                    JUDGE WOODRUFF: Mr. Rainwater --

1                   THE WITNESS:  -- allowed those costs to  
2   be recovered.

3                   JUDGE WOODRUFF:  -- please stop your  
4   answer.

5   BY MR. MICHEEL:

6           Q.       That wasn't my question.  My question  
7   was a simple one, and I think you answered it  
8   correctly in the deposition, Mr. Rainwater.  Did the  
9   contract that Ameren had entered into with EEInc  
10   require AmerenUE to pay the cost plus a 15 percent  
11   return irrespective of whether the power was  
12   delivered?  That was my question.  Does the contract  
13   require that?

14          A.       Okay.  I did not understand that to be  
15   your question.  But you're correct, the contract  
16   provided for that.

17          Q.       So UE had a contractual agreement that  
18   required them to do that; is that correct?

19          A.       That is correct.

20          Q.       And I think you testified -- does UE  
21   generally comply wits contractual agreements?

22          A.       Yes, it generally does.  However, we  
23   did --

24          Q.       In fact --

25          A.       -- discuss this in the deposition, and I

1 pointed out that under those kind of circumstances,  
2 UE would not have made the payments.

3 Q. And that brings in all sorts of  
4 different legal ramifications, because would you  
5 agree with me, then, that the EEInc board would have  
6 a fiduciary duty to sue Union Electric to perform on  
7 that contract?

8 A. Yes, I would. I would suspect there  
9 would have been a lawsuit.

10 Q. That didn't happen, did it?

11 A. No, it did not.

12 Q. And the entire time of the contract,  
13 AmerenUE paid all the costs plus a 15 percent return,  
14 did it not?

15 A. Yes, it did.

16 Q. Is it correct that Union Electric and  
17 its other affiliates always vote together on the  
18 EEInc board decisions?

19 A. It's been my experience that they have  
20 always voted together.

21 Q. And how do they know to do that?

22 A. They exercise their independent judgment  
23 and vote the way they believe they should vote.

24 Q. So let me posit this hypothetical.  
25 Assume that Mr. Naslund who was one of the UE

1 representatives on the board went and sided with the  
2 Kentucky Utilities gentleman, the Kentucky Utilities  
3 board director, and decided -- said, "I think the PSA  
4 is the way to go. Let's re-up it on the same terms  
5 and do modification 18."

6                   You with me? You got that hypothetical?

7           A.       Yes, I do.

8           Q.       Would Mr. Naslund be greeted with open  
9 arms back at UE?

10          A.       Our view would be that he did not follow  
11 his fiduciary duty.

12          Q.       And what would happen to him?

13          A.       I don't know.

14          Q.       Well, are you the CEO?

15          A.       Yes, I am.

16          Q.       What would you recommend happen to him?

17          A.       He would not likely be reappointed to  
18 the board.

19          Q.       And why is that?

20          A.       Because he did not follow his fiduciary  
21 duty.

22          Q.       And how does he know what his fiduciary  
23 duty is?

24          A.       That's a question asked Mr. Naslund.

25          Q.       Well, do you ever talk with Mr. Naslund

1 about, "Gee, there's a pretty big important vote on  
2 a -- on a affiliate we own that's contributing  
3 millions of dollars to UE's bottom line. How you  
4 gonna vote?"

5 A. Actually I have not. I have never  
6 directed him how to vote.

7 Q. Has anyone --

8 A. He's expected to act independently and  
9 vote in the interest of EEInc, which he did. And in  
10 corporate voting on boards, typically decisions are  
11 unanimous because boards deliberate until they arrive  
12 at the right decision. In the history of EEInc --

13 Q. And in this case they weren't unanimous,  
14 were they?

15 A. This was the first, I believe, in the  
16 history of EEInc in 50 years of operation that that  
17 was not unanimous.

18 Q. Has the EEInc board moved to oust those  
19 Kentucky Utilities directors for their failure to  
20 follow their fiduciary duties?

21 A. I don't believe we have.

22 Q. Are you contemplating doing that?

23 A. There was no consequence of their  
24 actions.

25 Q. Because they were shut out by the Ameren

1 group?

2 A. That's correct.

3 Q. So effectively Ameren controls that  
4 board; is that correct?

5 A. No, that's not correct. The directors  
6 control the board, the directors are nominated and  
7 elected by Ameren and Kentucky Utilities.

8 Q. So if Ameren nominates and elects 80 percent  
9 of the directors, does Ameren control that board? Do  
10 Ameren --

11 A. Well, in common language you would say  
12 we have a controlling interest in the company.

13 Q. And it's correct that UE owns 40 percent  
14 of EEInc's outstanding stock?

15 A. That is correct.

16 Q. And it's correct that Ameren Energy  
17 Development owns 40 percent of EEInc's outstanding  
18 stock?

19 A. Yes, it is.

20 Q. Would you agree with me that Ameren  
21 Energy Development is an nonregulated entity?

22 A. Yes, it is.

23 MR. MICHEEL: Thank you very much for  
24 your time, sir.

25 JUDGE WOODRUFF: Thank you, Mr. Micheel.

1 Next for cross-examination would be DNR? Or MIEC?

2 Or Commercial Group?

3 CROSS-EXAMINATION BY MR. CHAMBERLAIN:

4 Q. Good afternoon, Mr. Rainwater.

5 A. Good afternoon.

6 Q. Did I understand you to say that you are  
7 a director of Ameren Corporation?

8 A. Yes, I am.

9 Q. And as a director of Ameren Corporation,  
10 do you believe that you have a fiduciary duty?

11 A. Yes, I do.

12 Q. To whom is that fiduciary duty owed?

13 A. To Ameren Corporation.

14 Q. Not to the shareholders of Ameren  
15 Corporation?

16 A. To the shareholders of Ameren  
17 Corporation.

18 Q. Okay. And that fiduciary duty, I  
19 believe you indicated, speaking of -- -- let me ask  
20 it this way: Is that fiduciary duty owed to the  
21 shareholders of Ameren Corporation the duty to manage  
22 the assets so as to maximize the value of the  
23 shareholder investments?

24 A. Well, the duty is to manage the  
25 companies that Ameren owns so to maximize the



1 individual value of all of the companies. And if we  
2 do that, then we'll maximize the value to  
3 shareholders of Ameren Corporation.

4 Ameren -- Ameren Corporation doesn't own  
5 any assets. It's merely a holding company. It owns  
6 stock in other companies.

7 Q. I see. So then the fiduciary duty of  
8 the Ameren Corporation directors is to manage all of  
9 the affiliates of Ameren Corporation in such a way to  
10 maximize the shareholder value of the Ameren  
11 Corporation shareholders?

12 A. That is correct.

13 Q. And that would include, would it not,  
14 transactions between two Ameren Corporation  
15 affiliates?

16 A. Well, just as a matter of policy, we  
17 would do our best to avoid transactions between  
18 affiliates.

19 Q. Okay.

20 A. Transactions between affiliates are  
21 always subject to -- you know, from a regulatory  
22 point of view, the presumption of favoring one party  
23 over the other, we would prefer to avoid those.

24 In fact, in the case of the transaction  
25 that's been proposed in this case, a transaction

1 between an unregulated affiliate and Union Electric,  
2 the unregulated affiliate, to meet its fiduciary  
3 duty, must sell its power at market rates, but Union  
4 Electric, because of affiliate rules, is precluded  
5 from buying that power at a higher of market -- or  
6 cost. So effectively the affiliate rules preclude a  
7 transaction between the companies.

8 Q. But ultimately the fiduciary duty of the  
9 Ameren Corporation board of directors, the parent  
10 holding company dictates that those transactions be  
11 managed so as to maximize the profitability to Ameren  
12 Corporation; is that correct?

13 A. That is correct.

14 MR. CHAMBERLAIN: Thank you. That's all  
15 the questions I have.

16 JUDGE WOODRUFF: We're actually due for  
17 a break. We'll take a break now and come back at  
18 2:45.

19 (A RECESS WAS TAKEN.)

20 JUDGE WOODRUFF: All right. Let's come  
21 to order, please. Welcome back from lunch (sic).  
22 Before we get started, I did want to mention that  
23 we're going pretty slowly today, as everyone is no  
24 doubt aware, and that means we may need to go again  
25 this evening.

1                   If we do have to go this evening, I  
2     anticipate taking a dinner break from five to six,  
3     resuming at six and going no later than nine, which  
4     is what we did last Thursday if you-all recall.

5                   So with that, then we'll move onto  
6     further cross-examination. Noranda.

7                   MR. CONRAD: We do not have any  
8     questions, your Honor.

9                   JUDGE WOODRUFF: AARP?

10                  MR. COFFMAN: Thank you. I'll just have  
11     a couple.

12     CROSS-EXAMINATION BY MR. COFFMAN:

13                  Q.     Good afternoon, Mr. Rainwater.

14                  A.     Good afternoon.

15                  Q.     I'm John Coffman. I represent AARP as  
16     well as the Consumers Council of Missouri.

17                         Earlier when you were describing how you  
18     would approach the decision of the EEI contract,  
19     either expiring or being renewed, I believe you gave  
20     a different answer as if you were an AmerenUE board  
21     director or if you were an EEInc board director; is  
22     that correct.

23                  A.     That is correct.

24                  Q.     Doesn't that suggest that there would be  
25     a conflict of interest for any individual to serve in

1 both of those capacities at the same time?

2 A. No, it does not to me. It means that --

3 Q. Go ahead and explain.

4 A. -- when an individual is serving on  
5 behalf of EEInc, he represents EEInc's interest, and  
6 when he's serving on behalf of UE, he represents UE's  
7 interest. And, in fact, even on the Ameren board we  
8 have directors from corporations outside of Ameren  
9 who may at times have conflicts of interest.

10 We have a director from Anheuser-Busch,  
11 we have a director from Caterpillar, we have a  
12 director from Boeing, and some of those are customers  
13 of our company and --

14 Q. So when they -- when a board director of  
15 AmerenUE walks into the room of an EEInc board  
16 meeting, takes off his hat as a board director of  
17 Ameren and puts on a new hat and ceases to be a board  
18 director of AmerenUE, is that how you view it?

19 A. I was following that as Ameren because I  
20 was thinking still about the Ameren board. When a  
21 director from another company -- let's say  
22 Anheuser-Busch -- comes to an Ameren board meeting,  
23 he takes off his Anheuser-Busch hat and he puts on  
24 his Ameren hat and he represents Ameren's interest in  
25 that meeting.

1                   And I would say it's the same between UE  
2   and EEInc. That if a UE employee is a board member  
3   on EEInc, when he is a board member on EEInc, he  
4   takes off his UE hat, he puts on his EEInc hat and he  
5   represents EEInc. That is the purpose, that's the  
6   reason why he is there, to exercise his judgment on  
7   behalf of EEInc.

8                   And the people who we put on those  
9   boards are people who we think have the experience  
10  and the judgment to be good board members for EEInc.

11           Q.       Now, these are individuals on the EEInc  
12  board that you appoint, that you select.

13           A.       We nominate; they're elected, yeah.

14           Q.       So you expect them to cease being  
15  AmerenUE board members or members of any other board  
16  when they walk in there?

17           A.       Yes, I do. And it's because I believe  
18  that the way that Ameren Corporation is best served  
19  is for each of its independent subsidiaries to  
20  operate independently, to maximize their separate  
21  earnings, their separate profits.

22           Q.       Would it perhaps be a better policy to  
23  select individuals that would not have any potential  
24  conflict of interest appointed to these positions?

25           A.       It actually might be. And during these

1 proceedings that thought has crossed my mind. The  
2 way that we've done this is just based on convention.  
3 It's been done this way for a long time.

4 Q. So you think it might at least clear up  
5 some concern that others have --

6 A. I think --

7 Q. -- about how this process works?

8 A. I think that it might. I know that some  
9 other holding companies, companies like us, do put  
10 outside directors on subsidiary boards, and that is  
11 exactly what I'm thinking, that we may adopt that  
12 practice.

13 Q. But wouldn't you have to acknowledge  
14 that the practice of having individuals serve in  
15 those two -- two capacities, one as a board member of  
16 AmerenUE and one as a board member of EEInc, at least  
17 creates the appearance of a conflict?

18 A. Not if you understand fiduciary duty.  
19 But it -- but it does create the potential for  
20 confusion for people about the proper decisions for  
21 them to make.

22 Q. You don't think it would create the  
23 appearance for anyone that there might potentially be  
24 a conflict?

25 A. Well, okay. I will agree, it -- but

1     only if you don't understand fiduciary responsibility  
2     and corporate law. You know, from outside the  
3     business community, people might say that creates the  
4     appearance of a conflict.

5           Q.     Now, Ameren Corporation has a corporate  
6     compliance policy, does it not?

7           A.     Yes, it does.

8           Q.     And that policy prohibits Ameren  
9     officers from accepting directorships that would  
10    involve a conflict of interest or even appearance of  
11    a conflict of interest; is that correct?

12          A.     Yes, it does.

13          Q.     Okay. And is the current corporate  
14    compliance policy that Ameren has in place, how long  
15    has the current one been in place?

16          A.     I don't know but I suspect it's been  
17    there for a long time.

18          Q.     Okay. Well, I have a copy that is dated  
19    February 9 of 2007. Do you recall recently adopting  
20    one as early as last month?

21          A.     That's possible, at our February board  
22    meeting.

23          Q.     Okay. Do you recall if there were any  
24    significant changes made to the corporate compliance  
25    policy?

1           A.       No, I don't recall what -- what -- what  
2 changes were made.

3           Q.       Okay. Mr. Rainwater, have you read any  
4 of the transcripts from the local public hearings for  
5 which sworn public testimony was taken in this case?

6           A.       Yes, I have.

7           Q.       Have you read all of the, say, 12  
8 volumes of that testimony?

9           A.       I've read portions of all of the 12  
10 volumes.

11          Q.       How much of the -- how much would you  
12 estimate?

13          A.       Probably a couple hundred pages of them.

14          Q.       Okay. So you feel you have some sense  
15 of the tenor of the public comment regarding  
16 AmerenUE's recent quality of service?

17          A.       Yes, I do.

18          Q.       Have you reviewed suggestions made by  
19 various consumers that Ameren should reimburse them  
20 for certain expenses or provide some customer credits  
21 when they have been out of power for a certain number  
22 of hours or days?

23          A.       Well, let me explain what we're doing  
24 with those complaints that were raised at those  
25 hearings.



1           Q.       Well, first of all, my question is, have  
2   you read specific --

3           A.       Yes, I have.

4           Q.       -- testimony regarding?

5           A.       Yes, I have.

6           Q.       -- customer credits? Okay. And -- and  
7   is -- is Ameren -- has Ameren considered offering  
8   customer credits to customers in such a manner as to  
9   give them some type of refund or credit if they have  
10  been out of power for over, say, more than 48 hours?

11          A.       We might. And when I say "might", it  
12  depends on the nature of those credits. If credits  
13  are proposed as a form of penalty or fine or  
14  punishment for a utility company because customers  
15  were out of service for more than two days, that's  
16  one of the ways that it's been proposed.

17                 As a result of weather that was beyond  
18  the control of the utility company and that the  
19  utility company in actuality performed well in the  
20  storm, then I don't think that that is appropriate.

21                 However, if we want to provide credits  
22  as a form of insurance -- and insurance is probably  
23  the best way to analogize it, or to socialize the  
24  cost per customers, because there's no question that  
25  in severe weather when customers are out of service,

1 they are severely harmed. The harm is caused by the  
2 weather; the harm is not caused by the utility. But  
3 if we want -- we want to socialize that cost, you  
4 know, we could essentially create an insurance plan  
5 for customers that would pay them a credit if they're  
6 out of service for beyond a particular length of  
7 time, and that's something that we would not be  
8 opposed to.

9 Q. So are you saying you would not -- you  
10 would only be interested in a program that  
11 compensated customers for outages if they had signed  
12 up and paid a premium to be eligible for that credit?

13 A. Well, customers wouldn't -- there are a  
14 lot of different ways it could be done. Customers  
15 wouldn't necessarily sign up a pay a premium. It  
16 could be simply a mutual insurance plan provided by  
17 the utility. There would have to be some cost borne  
18 by all customers to create a pool of money that could  
19 be given to customers in the event of severe outages.

20 Now, let me make a distinction there  
21 that fines have also been proposed sometimes if -- if  
22 a utility makes a mistake that somehow causes, you  
23 know, an electrical problem in a home and it damages  
24 equipment, should the utility pay for that? And  
25 there's absolutely no question that when we make a

1 mistake and the fault is -- is the fault of the  
2 utility company, the utility company should pay. And  
3 that is our policy. We do our best to follow that  
4 policy. Sometimes it's hard to sort out, but we do  
5 our best to follow that policy.

6           If damage is caused by acts of nature,  
7 it has been the policy and it is the policy, I think,  
8 for virtually every utility in the United States that  
9 acts of nature are not compensated for by the utility  
10 companies.

11           We're not responsible for acts of  
12 nature. Homeowners should have homeowner's insurance  
13 and the insurance may cover them.

14           Now, not everybody has homeowner's  
15 insurance. So if, as a matter of policy, we wanted  
16 to put that kind of plan in place, you know, that's  
17 something that there may be a need for.

18           And, in fact, last year in 2006 when we  
19 had ten times the normal storm damage that we would  
20 have in a single year, there certainly was a much  
21 greater need for that kind of thing than there ever  
22 has been before. Under normal weather it's not  
23 generally an issue.

24           Q.     Okay. Putting aside any -- and I wasn't  
25 meaning to talk about blame or penalty at least with

1 this line of questions. So putting that aside,  
2 assuming -- just putting aside who was at fault --

3 A. Uh-huh.

4 Q. -- or what was at fault, is there any  
5 amount of outage, a duration of outage that you  
6 believe would be so long that a customer -- it would  
7 be unfair to charge that customer the customer  
8 charge, that is, the minimum portion of the bill?

9 A. To charge the customer, the customer  
10 charge?

11 Q. Yeah, uh-huh.

12 A. Well, the facilities are still there.  
13 Now, that's a question I haven't thought about, but  
14 that's one worth thinking about.

15 Q. What's your understanding of the purpose  
16 of a customer charge?

17 A. A customer charge is a cost for  
18 facilities that are there to serve the customer.  
19 It's kind of a caring charge whether the facilities  
20 are used or not.

21 Q. But in a hypothetical where someone was  
22 out of power for ten days during a month, that power  
23 was not available to them for, say, one-third of the  
24 month. Does it seem fair to charge them that  
25 customer charge during that month?

1           A.       Well, it has always been considered fair  
2     because that's the way that things have been done in  
3     the past. But what you're suggesting, I think, is  
4     something that needs to be debated in the context of  
5     how do we provide electric service in the future?  
6     Because it has been highlighted as an issue, and I  
7     personally would like to find a way to accommodate  
8     those kind of interest issues for customers.

9           Q.       And assuming, for instance, that there  
10    is a storm that is completely outside the control of  
11    AmerenUE and a major storm that takes out hundreds of  
12    thousands of customers, and many of those customers  
13    are out of power for more than 48 hours. Would it  
14    not be -- provide some incentive to reconnect most of  
15    the customers as quickly as possible to provide  
16    that those customers who are without power for more  
17    than 48 hours receive some nominal credit, such as  
18    \$25 a day?

19          A.       Would it provide an incentive?

20          Q.       Yes.

21          A.       I don't think that we needed any  
22    additional incentive to get customers back as quickly  
23    as humanly possible.

24          Q.       But would it be an additional incentive,  
25    provided that that credit was coming out of

1 shareholder funds, that is, below the line?

2 A. No, I don't believe it would have.

3 Because we were doing everything humanly possible.

4 We could not have done more.

5 Q. Would it provide an incentive in going  
6 forward to encourage better planning of distribution  
7 maintenance and upkeep to know that there was that  
8 additional financial --

9 A. I am all in favor of finding better ways  
10 to do things, and if we can do it with incentives,  
11 I'm in favor of incentives. Now, what we've heard  
12 from our customers is our customers were disappointed  
13 with the service even though we believe we performed  
14 very well in the storms. The Staff's study of our  
15 performance in the July storm indicated that we  
16 performed very well. And in the November storm and  
17 in the January storm we performed even better.

18 So I think that we did a very good job  
19 for customers. Again, as good a job as was humanly  
20 possible.

21 Q. Do you believe that in any way at all  
22 AmerenUE was contributorily (sic) negligent in the  
23 extent or duration of any of the outages in 2006?

24 A. In no way that I am aware of. Now --

25 Q. Do you -- you said that you had read a

1 significant portion of the local public hearing  
2 testimony. Have you read any of the four transcripts  
3 from the four St. Louis area local public hearings?

4 A. No. I thought that those were included  
5 in the hearings.

6 Q. They were.

7 A. And I've read some of all of them.

8 Q. Some of every local public hearing  
9 transcript?

10 A. Uh-huh.

11 Q. Okay. Do you believe that the  
12 Commission should take that sworn testimony into  
13 account as it issues its order in this case regarding  
14 the proper level of revenue requirement for your  
15 company?

16 A. Well, I have no objection to taking that  
17 testimony into account. The Commission, though,  
18 should recognize what that testimony represents. It  
19 is the opinion of a small cross-section of customers.  
20 We have other ways of getting the opinion of all of  
21 our customers through J.D. Power studies, through the  
22 University of Michigan study, through our own  
23 sampling, and what we hear or see in those studies is  
24 significantly different than what the Commission  
25 heard in those hearings.

1                   What we see in those studies is still  
2   that customers think our company provides pretty good  
3   service, not as good as they did a year ago. A year  
4   ago we were typically in the top quartile of the  
5   industry. Now we're in the second quartile.

6                   So customers continue to think we're  
7   better than average, but not as good as we were  
8   before.

9                   Now, if you followed only what you got  
10   from the hearings that you referenced, you would  
11   think we were the worst utility in the United States,  
12   because all you're hearing is a small cross-section  
13   of customers who are very vocal and have complaints.  
14   So it's not fair to take that as -- as the view of  
15   all of our customers.

16           Q.       Let me just ask one more question, and  
17   that gets specifically back to the issue of  
18   customers. Have you reviewed the proposal to  
19   institute a program similar to the so-called Safety  
20   Net Program of Pacific Gas & Electric?

21           A.       Well, when you mentioned a while ago a  
22   \$25 credit, I assume that's what you meant --

23           Q.       Yes.

24           A.       -- and that's why I commented. It  
25   depends on the characterization of that --



1 Q. So you've reviewed that program?

2 A. So -- no, not personally. I do believe  
3 we have people in the company looking at it. And  
4 again, if we want to create a program that would  
5 socialize the cost of customers being out of service  
6 during large storms, I personally think that's a good  
7 idea.

8 Q. Am I to understand in that answer that  
9 you're only interested in instituting a program of  
10 customer credits, provided that AmerenUE doesn't have  
11 to pay for it?

12 A. Let me ask you, why do you conclude that  
13 we should pay for it?

14 Q. I'm asking the questions here, and I  
15 just want -- first I want to understand. Are you  
16 opposed to any customer credit program for extended  
17 outages that would be paid for out of shareholder  
18 funds?

19 A. No, I'm not opposed to any customer  
20 credit program to pay for outages that were caused by  
21 our company or resulted in negligence caused by our  
22 company. I am opposed to paying for outages that  
23 were caused by weather that was beyond the control of  
24 our company when, in fact, our company performed as  
25 well as was humanly possible and far better than most

1 other utilities.

2 Q. So would it be clear --

3 A. So to be punished for good performance  
4 does not strike me as a fair and balanced kind of  
5 plan.

6 Q. So am I to understand that you would be  
7 opposed to a program such as the Safety Net which is  
8 indifferent as to the cause of the outage?

9 A. I'm not aware of how the Safety Net  
10 Program works. But again, I'm not opposed to a  
11 Safety Net kind of concept if utilities are made  
12 whole and not simply punished.

13 Q. Do you believe a program that simply  
14 provided a \$25 credit for any outage, that didn't  
15 delve into an exploration of causation and blame, but  
16 that simply provided a credit after 48 hours as a  
17 recognition of the inconvenience, regardless of  
18 blame --

19 MR. CYNKAR: Your Honor, I object. This  
20 has been asked and answered.

21 MR. COFFMAN: I don't know that he's  
22 actually specifically answered with regard to the  
23 details of the Safety Net Program.

24 JUDGE WOODRUFF: I'll let you clarify  
25 your question with your questioning. I'll overrule

1 the objection.

2 BY MR. COFFMAN:

3 Q. This is my last question. I just want  
4 to --

5 A. Okay.

6 Q. And you don't have to take my word for  
7 it, but the program I'm describing is -- would be one  
8 that would be similar to the Safety Net Program,  
9 would not involve any assessment of who was to blame,  
10 but would simply provide a \$25 credit up to \$100 for  
11 each day after 48 hours that the customer was out.

12 A. Uh-huh.

13 Q. Is that a program that you believed  
14 would be punishing AmerenUE and that you would be  
15 opposed to that?

16 A. Well, no, it is not necessarily a  
17 program that would punish AmerenUE. And I have to  
18 apologize because I don't know the details of the  
19 Safety Net Program. I do know that it's a PG&E  
20 program. It is the only program like that in the  
21 United States.

22 I do not know if it was done in a way  
23 that is fair and balanced to PG&E. I don't know if  
24 PG&E stockholders pay for it, I don't know if there  
25 is a fund created to pay for it, I don't know if it

1 was taken into account from a risk point of view.  
2 And what I would mean by that is if a Commission were  
3 to impose an additional risk like you've suggested on  
4 a utility, another way of compensating would be to  
5 award a higher return on equity to compensate for the  
6 higher risk being assumed.

7 I mean, there are different ways to skin  
8 a cat, different ways to design that kind of a  
9 program. And I'm not opposed to a concept of a  
10 program like that, because, again, I know customers  
11 are severely harmed in severe weather, and if we can  
12 find a way to offset some of that damage for them, I  
13 am in favor of it.

14 MR. COFFMAN: I'll leave it at that.  
15 Thank you.

16 JUDGE WOODRUFF: Thank you. Missouri  
17 Retailers?

18 MR. OVERFELT: No questions.

19 JUDGE WOODRUFF: Mo-Kan? MASW?  
20 Laclede? Aquila? Joint Bargaining? We get down to  
21 Ameren. Do you have any questions?

22 MR. CYNKAR: Yes. Yes, your Honor.

23 CROSS-EXAMINATION BY MR. CYNKAR:

24 Q. Mr. Rainwater, you recall the questions  
25 that you were getting concerning the incentive

1 compensation program of Ameren?

2 A. Yes, I do.

3 Q. And during the course of that  
4 questioning, do you recall that you deferred using  
5 the word "bonus" to describe that program?

6 A. Yes, I do.

7 Q. And why did you do that?

8 A. Well, the questioning referred to  
9 articles in the St. Louis Post-Dispatch which said  
10 that we had gotten big bonuses, and, in fact, no  
11 management employee of our company got a bonus for  
12 performance in 2006.

13 And the reason I'd explained it that way  
14 is that our incentive compensation works like this:  
15 We pay a combination of base pay and variable pay  
16 that when you put the two together at what we call a  
17 target level of performance for the company, the  
18 total is market pay.

19 And, in fact, management employees --  
20 and this applies to all management employees of the  
21 company from engineers all the way up to the CEO of  
22 the company, have the ability to make somewhat more  
23 than market pay if the company performs really well,  
24 or they also put pay at risk and have the ability to  
25 lose some of their pay if the company doesn't at

1     least perform up to its target expectations.

2                     In 2006 we fell below the target  
3     expectations so everyone in the company was paid  
4     below market. All managers were paid below market.  
5     What was reported in the newspaper as a bonus was the  
6     piece of incentive compensation which actually was --  
7     was far below market. So no one was paid for all of  
8     the extra work that they did associated with the  
9     storms.

10                    Now, we did make adjustments, and we  
11     started to get into some questions on the  
12     adjustments. One of the adjustments was that we  
13     adjusted earnings for the financial impact of the  
14     storms.

15                    And the reason that we did that is that  
16     we want to be as fair as possible to employees.  
17     Employees worked very hard during the storm; they've  
18     worked very effectively. We did a good job during  
19     the storms.

20                    We didn't necessarily reward employees  
21     for the storms. In fact, I do believe that we should  
22     have but we didn't. We didn't have the capability  
23     under our incentive comp plan to reward them, but we  
24     did not punish them either. By making that  
25     adjustment we simply neutralized the effect of the

1 storm so that they were not punished for the effect  
2 of the storms.

3           The big shortfall in earnings last year  
4 was due to Taum Sauk which our company caused. It  
5 was very disappointing, unacceptable performance on  
6 the part of the company, and everyone in the company  
7 suffered a financial penalty because of Taum Sauk.  
8 We all were paid below market essentially for that  
9 reason.

10           Q.       Thank you. In another part of your  
11 examination by one of my colleagues, you used the  
12 expression "fully mature wholesale market." What  
13 does that mean?

14           A.       Well, the market has evolved over a long  
15 period of time. If you go back to 1992 -- again, I  
16 think I started talking about this. But 1992 the  
17 Energy Policy Act was passed which created the  
18 potential for a wholesale market.

19                    But it took various rule makings and  
20 evolution for the market to really fully evolve. You  
21 know, FERC order 889, FERC order 888, which opened up  
22 access to the transmission system, were steps in that  
23 process. Formation of RTOs, though, were the final  
24 steps, and the regional RTO, or regional transmission  
25 organization that our company chose to join was the

1 Midwest Independent Transmission System Operator  
2 which we joined in early 2004.

3           So it wasn't really until 2004 that the  
4 market was fully evolved. And in fact, we didn't  
5 begin Day 2 operations of that market until 2005. So  
6 you could say that the market wasn't completely  
7 evolved and effective until 2005.

8           Q.     Now, do you recall the questions you got  
9 from several counsel concerning the ability of  
10 participants in the purchased power agreement between  
11 EEInc and Ameren to terminate that contract? Do you  
12 recall those questions?

13          A.     Yes, I do.

14          Q.     And are you familiar with the  
15 termination provisions of the PSA, as it's known?

16          A.     Yes, I am.

17          Q.     And is there a notice period of any  
18 sort?

19          A.     Uh-huh. Five-year notice.

20          Q.     And that means that termination occurs  
21 five years after you get notice?

22          A.     That is correct.

23          Q.     Now, with respect to the -- the business  
24 judgment of when to exercise that right, how does  
25 what you just described about the development of a



1 fully mature wholesale market affect the exercise of  
2 that judgment?

3 A. Well, what it means is that to cancel  
4 the contract, for EEInc to have canceled the  
5 contract, it would have had to cancel prior -- five  
6 years prior to December 31, 2005. So by the end of  
7 2000 -- at the end of 2000, there was not clearly a  
8 wholesale market that had developed which would allow  
9 EEInc to price power at wholesale and make any more  
10 money than it did selling power under its current  
11 retail contract.

12 So it -- there was just too much  
13 uncertainty for EEI to take action to cancel the  
14 contract until about 2004; maybe, though, a couple  
15 years before that, but within the five-year window,  
16 and by then it was too late to take action.

17 Q. Now, do you recall you were asked some  
18 hypothetical questions about if the Joppa plant blew  
19 up and EEInc couldn't deliver power to UE and UE  
20 refused to pay and you conceded that UE would  
21 probably be sued. Do you remember that exchange?

22 A. Yes, I do.

23 Q. All right. Let's say that lawsuit was  
24 brought and UE lost it. What would happen?

25 A. Well, then, UE would have to pay.

1     However, that still does not mean that UE's customers  
2     would pay, because if the power were not being  
3     delivered, we would not ask for recovery in our  
4     retail rates. And if we did -- and I'm speaking for  
5     myself -- I wouldn't ask for recovery in our retail  
6     rates. If someone else had decided to do that, I am  
7     confident that this Commission would not have allowed  
8     recovery in the retail rates.

9                     So in any case the stockholders would  
10    have borne the loss of the power plant failing.

11            Q.     And do you recall -- I think you were --  
12    you were cut off at one point when you were asked  
13    about the comparison between the 12 percent ROE that  
14    AmerenUE is asking for in this case and the 15  
15    percent that was in that contract, and you wanted to  
16    explain. What did you want to explain?

17            A.     Well, a 15 percent return on what?  
18    EEInc is not a heavily capitalized company. It's  
19    originally had only a small amount of equity in the  
20    company, and I don't recall exactly how much. But 15  
21    percent of a small number is a small number.

22                     The implication was that a 15 percent  
23    return at EEInc is much better than a 12 percent  
24    return for Ameren. But the fact is, we have billions  
25    of dollars in equity in Ameren and maybe tens of

1 millions of dollars of equity in EEInc. So 15  
2 percent return at EEInc is fairly meaningless. It is  
3 much better and much clearer, completely clear that  
4 EEInc should sell its power in the wholesale market  
5 where it can get a larger margin and a larger return  
6 on its investments than simply operating even on a  
7 15 percent return on equity.

8 Q. Thank you. And finally, do you recall  
9 being questioned by several of my colleagues again  
10 about the cost that UE paid in the power contract  
11 with EEInc? Do you recall a whole line of different  
12 questions about that subject?

13 A. Yes. Although I'm not sure but -- by  
14 the cost, you mean the cost components as outlined in  
15 the contract and the fact that UE paid all of the  
16 cost plus return on equity?

17 Q. Correct. Do you recall that exchange?

18 A. Yes.

19 Q. Is it true that those costs were only  
20 associated with power and capacity that UE actually  
21 received from EEInc?

22 A. Yes, that's correct.

23 MR. CYNKAR: Thank you. Those are all  
24 the questions.

25 JUDGE WOODRUFF: All right. Thank you

1 very much. That completes cross so we'll come up for  
2 questions from the bench. Commissioner Gaw?

3 QUESTIONS BY COMMISSIONER GAW:

4 Q. Good afternoon, Mr. Rainwater.

5 A. Good afternoon.

6 Q. It's been a long day for you, I  
7 understand. I have -- I have several questions.

8 A. Okay.

9 Q. I guess my first set of questions will  
10 have to do with this fiduciary duty topic that's been  
11 discussed quite a bit today, okay?

12 A. (Nodded head.)

13 Q. In regard to the individuals who are  
14 board members of AmerenUE -- and I'm gonna refer to  
15 that company as EEI and not EEInc if you don't mind,  
16 just for brevity's sake.

17 A. That's fine.

18 Q. Could you tell me who they currently are  
19 from the UE representatives?

20 A. I'll try to. Tom Voss, Alan Kelley,  
21 Andy Serri, Dan Cole, I think, and there's one other  
22 I can't recall.

23 Q. Does someone have those names, please,  
24 that knows them that can provide a list? I see no  
25 reason for us to be speculating on this.

1           A.       Uh-huh.

2                   MR. LOWERY:  I don't have it at the  
3 ready, but we can find that out.

4                   MR. BYRNE:  Yes.

5                   COMMISSIONER GAW:  Is that something we  
6 can do pretty quickly so we can -- Mr. Byrne, do you  
7 have access of that?

8                   MR. BYRNE:  Yes.

9                   COMMISSIONER GAW:  Thank you.  And if  
10 you have anything historical, that would be helpful  
11 too, while you're on your way.

12                   THE WITNESS:  Chuck Naslund is also on  
13 the board, so I think that is the complete list.

14 BY COMMISSIONER GAW:

15           Q.       Okay.  Has that list changed in the last  
16 couple of years?

17           A.       It's changed just in the last couple of  
18 months, in fact.

19           Q.       Is that part of the reorganization, the  
20 January 6th reorganization?

21           A.       Not strictly due to the organization,  
22 but one of our board members at EEInc left; Dave  
23 Whiteley left the company a month or so ago, and we  
24 replaced Dave with Andy Serri.

25           Q.       Okay.

1           A.       So I hope I have given you the right  
2 names.

3           Q.       Okay. Now, in regard to those  
4 individuals, would you tell me what other positions  
5 they hold within the Ameren company? And you can  
6 start with Naslund?

7           A.       Chuck Naslund is senior vice president  
8 of nuclear for AmerenUE. Alan Kelley is president of  
9 Ameren Energy Resources.

10          Q.       And again, Ameren Energy Resources in  
11 the corporate structure is a subsidiary of which --

12          A.       He's really the president of our  
13 nonrate-regulated generation business segment, so it  
14 really is three subsidiaries: It's Ameren Energy  
15 Generating, Ameren Energy Resources Generating and  
16 EEInc.

17          Q.       Okay. But he is an AmerenUE  
18 representative on the board of EEI?

19          A.       No, he's no longer an employee of  
20 AmerenUE, but he is -- I call him an Ameren Energy  
21 Resources employee.

22          Q.       Okay. And let me make sure that we're  
23 on the same page here. I'm asking you for UE  
24 representatives on the EEI board.

25          A.       UE representatives. Well --

1                   MR. CYNKAR: Your Honor, if I may just  
2     interpose an objection. I take my life in my hands  
3     objecting when a Commissioner is asking question.  
4     But just so that we don't -- I'd just like to  
5     reiterate the point with this use of words.

6                   I think that earlier Mr. Rainwater made  
7     the point that Ameren doesn't have representatives,  
8     or AmerenUE doesn't have representatives on the  
9     board. And I don't want to quibble about words, but  
10    it can be an important point. So I just want to make  
11    sure that we have that point.

12                  It's common speech to refer that way, so  
13    I don't want to -- to in any way stop you from using  
14    it, but just so we understand that's a point that's  
15    been made in testimony already.

16                  COMMISSIONER GAW: Okay.

17                  JUDGE WOODRUFF: Your objection is noted  
18    for the record. Go ahead and answer the question.

19                  THE WITNESS: Okay. The AmerenUE --  
20    well, Tom Voss is president of AmerenUE and is an  
21    EEInc board member. Chuck Naslund --

22    BY COMMISSIONER GAW:

23                  Q.     Right.

24                  A.     -- UE, is an EEInc board member. Andy  
25    Serri is not UE. Alan Kelley is not UE. And who is

1 the other person on the list?

2 Q. You mentioned Dan Cole, I believe.

3 A. Dan Cole is not UE, and Dan is Ameren  
4 Services Company.

5 Q. Okay.

6 A. So we have two EEInc board members  
7 affiliated with AmerenUE.

8 Q. Do you know the total number of board  
9 members?

10 A. Seven at EEInc.

11 Q. There is seven? Okay. And the  
12 breakdown on the others and who they generally are  
13 affiliated with? Do you have two with UE?

14 A. We have two with UE, we have two  
15 affiliated with Kentucky Utilities and we have three:  
16 Andy Serri, affiliated with Ameren Energy Marketing  
17 Company; Alan Kelley, affiliated with Ameren Energy  
18 Resources and Dan Cole, affiliated with Ameren  
19 Services Company.

20 Q. Are all of those, AEM, AER and AES, are  
21 they -- do they all work on the unregulated side of  
22 those unregulated entities of Ameren?

23 A. Alan Kelley and Andy Serri are on the  
24 unregulated side. Dan Cole is in the service company  
25 which really provides -- well, it provides services



1 for both the regulated and the unregulated businesses  
2 with the exception of EEInc which is more  
3 self-contained.

4 Q. And do each of those board members have  
5 one vote?

6 A. They would normally have one vote.  
7 Although, at annual meetings they would essentially  
8 vote the stock ownership of their companies.

9 Q. But on board decisions they have each  
10 one vote?

11 A. Yes.

12 Q. And how was the decision made as to who  
13 got to -- how were the board of directors elected?  
14 Let me ask you that.

15 A. Nominees -- nominations are made from  
16 each of the companies, and an annual meeting is held  
17 at EEI. An election is held and the members vote  
18 their stock to elect the directors.

19 Q. And how does AmerenUE vote its stock?  
20 How does it do that?

21 A. No. We would vote to elect the  
22 directors that we nominated.

23 Q. Are you only entitled to elect two? Is  
24 that correct?

25 A. I think that is the current rule.

1           Q.       And how much -- what percentage of stock  
2   in EEI does UE possess?

3           A.       40 percent.

4           Q.       And what percentage of stock does  
5   Kentucky Utilities possess?

6           A.       20 percent.

7           Q.       Explain to me why you only have the same  
8   number of directors as KU -- as Kentucky Utilities.

9           A.       No, I don't understand that.

10          Q.       Does that seem odd to you?

11          A.       Seems odd to me, although ultimately if  
12   decisions can't be made by directors, they're made by  
13   a vote of shareholders in which case UE would  
14   essentially control 40 percent of the shareholder  
15   votes.

16          Q.       How long has UE only had two votes on  
17   the board of directors?

18          A.       As long as I've been associated with the  
19   EEInc board. It does seem logical UE would have  
20   more, but that's how it's always been done. Each  
21   company -- when I was first associated with EEInc, we  
22   had -- UE is the IPS. Illinois Power and Kentucky  
23   Utilities, we each had two directors. So we had a  
24   total of eight directors, two from each company.  
25   Even though UE had a 40 percent share, we had only

1 two directors.

2 Q. When is the -- I believe you said  
3 earlier that the first time you recall an EEI board  
4 meeting and having a split vote was in regard to the  
5 renewal of the contracts of EEI in 2005; is that  
6 correct?

7 A. That is correct. Normally issues are  
8 discussed until there is unanimous agreement. And  
9 decisions are typically not made if there's not  
10 unanimous agreement. So in my experience this was  
11 the only time -- and I guess I had worked with EEInc  
12 for a period of about 20 years -- the only time that  
13 I've ever seen a decision that was not unanimous.

14 Q. Is it the view of the shareholders'  
15 interest of UE and EEI that it should protect UE's  
16 corporate interest?

17 A. If I understand your question, is it the  
18 view of EEI that its shareholders --

19 Q. No. Is it the view of AmerenUE that  
20 its -- that its shares -- that as the shareholder of  
21 EEI, that its shareholding interest should be voted  
22 in the interest of AmerenUE?

23 A. No, it is not.

24 Q. It is not.

25 A. Not.

1 Q. What is its view?

2 A. It's the view that UE should act in the  
3 interest of UE. UE should nominate directors to EEI  
4 who will act in the interest of EEI to maximize the  
5 earnings of EEI.

6 Q. Well, okay. I'm trying to understand  
7 how what you said -- other than adding to the answer  
8 that I didn't ask, the question that I didn't ask,  
9 how is it that you disagree with my -- with my  
10 presumption in the question?

11 A. Well, I'm getting tied up in the circle  
12 of logic here. Can we go back and read back your  
13 question again?

14 Q. Let me try to ask it again. Is it your  
15 view that UE should vote its shares of EE's stock in  
16 AmerenUE's best interest?

17 A. Yes.

18 Q. I guess my first question, then, is why  
19 does AmerenUE not vote to ensure that it has a  
20 correct percentage of representation on the EEI  
21 board?

22 A. Well, we have a representation based on  
23 the bylaws of the companies, and whether you define  
24 that as correct or not -- should the directors be in  
25 proportion to the stock ownership, is that what

1     you're suggesting would be correct?

2             Q.       Well, wouldn't it be in UE's interest to  
3     have its full percentage interests represented on the  
4     board or not?

5             A.       Well, not if you operate under the --  
6     you know, the -- the -- the fiduciary duty premise  
7     that we've been discussing all day, that when you  
8     elect a director to a company, you've elected that  
9     director to act independently in the best interest of  
10    that company.

11            And the analogy that I would use is very  
12    much like the Governor electing a Commissioner to  
13    this Commission; that he selects someone who he feels  
14    has the expertise, the judgment, the experience, to  
15    act independently, to make good decisions which are  
16    in the interest of the State.

17            And we elect directors who have those  
18    attributes to act in the best interest of EEInc, and  
19    by acting in the best interest of EEInc, that -- that  
20    acts in the best interest of our stockholders which  
21    ultimately goes all the way up to Ameren stockholders  
22    since Ameren owns 80 percent of EEInc.

23            Q.       So you don't think that it is at all  
24    against the interest of UE's stockholders to have  
25    less of an influence on the EEI board than what your

1 percentage of ownership is in the stock? That's not  
2 a problem?

3 A. Well, maybe it should be. Maybe it  
4 should be equal. That's not an issue that I've  
5 thought through. I do know that if things come to an  
6 impasse, they can be resolved by voting the EEI share  
7 ownership. So whether, you know, we have an equal  
8 number of directors to shares I don't think  
9 ultimately matters. We have a 40 percent ownership  
10 vote.

11 Q. Let me give you this scenario. Let's  
12 assume that EEI has a decision to make, and its  
13 choices have equal -- equal profit to it; choice A  
14 and choice B have equal profit to it.

15 But one choice, choice A, is more  
16 beneficial to Ameren's unregulated affiliates. The  
17 other choice, choice B, is more favorable to  
18 AmerenUE. In that scenario, does not the choice --  
19 or the problem that you have in regard to the numbers  
20 of representatives on the board of directors have a  
21 negative impact on AmerenUE's shareholders -- or  
22 excuse me -- EEI's shares of stock that are held by  
23 AmerenUE?

24 A. Yeah. And you're proposing a  
25 hypothetical where the earnings of EEInc would be the

1 same in both cases?

2 Q. Yes.

3 A. Okay. So in this case EEInc, then,  
4 would be required to sell power to UE at the same  
5 rate it would have sold power to someone else.

6 Q. I didn't get to that level of --

7 A. Well, I was just gonna point out --

8 Q. -- qualification. But what I was  
9 suggesting to you is, choice A, it's more beneficial  
10 to Ameren's unregulated affiliates; choice B is more  
11 beneficial to AmerenUE; and the outcome and profits  
12 to EEI are the same, choice A and choice B.

13 Is that not an issue that comes to a  
14 head and to AmerenUE's detriment in that it is not  
15 represented at the 40 percent level that it owns its  
16 shares?

17 A. Well, it's not the issue that we were  
18 faced with.

19 Q. I didn't suggest to you one way or  
20 another whether it was. Just asked whether or not it  
21 was an issue in that scenario.

22 A. Yeah. And from a fiduciary duty point  
23 of view, it's an interesting hypothetical. It's one  
24 that I personally would want to go to a lawyer to ask  
25 what the proper thing to do was. But my

1 interpretation of my fiduciary duty if I were a  
2 director there, is that I might as well flip a coin  
3 in terms of choosing option A or B. If they're  
4 equally beneficial, I am indifferent.

5 Q. You're indifferent even if you work or  
6 are on the board as UE's representative to the  
7 shareholding interest of UE and EEI?

8 A. Yeah, I should be. I should be.

9 Q. Indifferent?

10 A. I should be indifferent.

11 Q. You think that's reflective of the real  
12 world, Mr. Rainwater?

13 A. Well, in a case like this, if I were  
14 affiliated with UE and I had two options, both make  
15 the same amount of money for EEInc, I would favor the  
16 option for power to go to UE. Now, that is not at  
17 all the situation that we're faced with.

18 Q. I'm not getting into that situation yet.

19 A. Yeah, and we're not even close to that  
20 situation.

21 Q. But, in fact, with that as your  
22 analysis, because of the fact that you do not own --  
23 or excuse me. Because of the fact that you do not  
24 have representatives on the board that are up to the  
25 level of your shares of ownership, presumably, if



1 Ameren's affiliates voted their interest and UE's  
2 affiliates voted their interest, Ameren's unregulated  
3 affiliates would win the vote, assuming that the  
4 votes of Kentucky Utilities were not effective in the  
5 outcome, correct?

6 A. That's correct.

7 Q. So why would UE as a shareholder of EEI  
8 want to put itself into that position? What is it  
9 that -- what is the process of thought that has come  
10 about in UE to allow itself to be put in that  
11 weakened position?

12 A. Uh-huh. I really don't know. It has  
13 been that way for as long as I've been associated  
14 with EEI for more than 20 years, so -- and I don't  
15 know why it was decided that way originally.

16 Q. Let me ask you this question: When the  
17 individuals who are employed as employees of UE and  
18 are also board of directors of EEI come into a  
19 situation where the outcome of a vote has -- has the  
20 potential of a positive or a negative impact on  
21 AmerenUE, that's the scenario.

22 In that -- in that event, what is the  
23 appropriate thing for a board member to do that has  
24 that conflict of interest?

25 A. To make the best decision for EEI.

1           Q.       Let me ask this question: Let's move  
2 this out to a different situation where the companies  
3 are not affiliated. Let's say company A has a board  
4 of directors which is composed of a number of  
5 individuals, one of whom is a corporate employee/CEO  
6 of company B.

7                   Company B's CEO has a board member of  
8 company A, has in front of them a vote of company A's  
9 board.

10          A.       You're suggesting an interlocking board  
11 relationship?

12          Q.       Let me finish and I'll let you back up.

13          A.       A --

14          Q.       Let's assume that there is an issue of  
15 whether company A should engage in a contract in  
16 which company B is one of the bidders.

17          A.       Uh-huh.

18          Q.       What should the CEO of company B who is  
19 a board member of company A do in that situation?

20          A.       He should recuse himself from the  
21 deliberation.

22          Q.       And why would that be?

23          A.       Well, because he has a conflict of  
24 interest.

25          Q.       All right. When your individuals who

1 are employees of AmerenUE are board members of EEI  
2 and are faced with a decision that could negatively  
3 impact AmerenUE, are they under some different rules  
4 of ethics with regard to whether or not they should  
5 vote or disqualify themselves on that issue?

6 A. Well, they have a fiduciary duty to make  
7 the right decision for EEInc. Now, the situation  
8 you're describing is a little different, because the  
9 way I took it, when you have a board member of  
10 company B on the board of company A, does that board  
11 member try to drive a deal in the favor of his  
12 company? Does he try to drive it that way, or does  
13 he simply not make a decision?

14 If he doesn't recuse himself and think  
15 back that maybe that wasn't a right decision, maybe  
16 he makes the decision purely for the interest of the  
17 companies whose board he's sitting on. If he tries  
18 to drive the decision in the other way, he's clearly  
19 violating his fiduciary responsibility.

20 Q. To whom?

21 A. To the board that he's sitting on. To  
22 the board he's sitting on.

23 Q. So now is he supposed to vote or not  
24 vote in that scenario?

25 A. I don't know.

1           Q.       Did you change your decision or is it  
2 still the same?

3           A.       Under advice of counsel, I may have to  
4 change my decision before I go to jail.

5           Q.       So you think he should vote on that  
6 issue?

7           A.       You know, I'm not clear. I think it's  
8 possible that in that situation, he might need to  
9 recuse himself, and it's possible he may be able to  
10 vote. If he votes in a way that there is no conflict  
11 of interest, I don't see a reason why he shouldn't  
12 vote.

13          Q.       Mr. Rainwater --

14          A.       If he votes in a way that he votes in  
15 favor of his home company rather than his board, then  
16 he should have not voted or he should have voted the  
17 other way because he's violated his fiduciary duty.

18          Q.       To whom again?

19          A.       To the board that he's sitting on.

20          Q.       Does he owe a fiduciary duty as CEO of  
21 company B?

22          A.       When he's CEO of company B, he does.

23          Q.       Does he somehow go on vacation from his  
24 CEO status with company B while he's sitting on that  
25 board?

1           A.       Absolutely. Absolutely.

2           Q.       Really?

3           A.       Yeah. He has an absolute duty of

4 loyalty to the company whose board he is on in making

5 decisions for that company.

6           Q.       And he does not have an absolute duty to

7 the company of which he is CEO?

8           A.       Yes, he does, when he's operating as CEO

9 of that company.

10          Q.       And he's -- he's -- is there -- do you

11 have some provision in your contract as CEO of Ameren

12 that says that when you sit on the board of another

13 company, that you are relieved of your fiduciary

14 responsibilities as CEO of Ameren?

15          A.       Well, those -- those responsibilities

16 are there all the time.

17          Q.       They are, aren't they?

18          A.       They're --

19          Q.       24/7.

20          A.       They are there all the time. However,

21 that doesn't mean that I exercise those

22 responsibilities over the responsibility that I have

23 when I'm a member of the board of company B.

24          Q.       In fact, when you have a --

25          A.       This is a very interesting argument.

1           Q.       In fact, when you have a conflict,  
2 Mr. Rainwater, this is a conflict which needs to be  
3 addressed, doesn't it?

4           A.       If there is a conflict, it's a conflict  
5 that needs to be addressed.

6           Q.       Let me ask you -- let me ask you this:  
7 Let's assume that EEI's -- that UE's interest in EEI  
8 were not in shares of stock, but rather EEI was a  
9 joint venture, a partnership in which UE was a 40  
10 percent partner.

11          A.       Okay. So if -- let me -- to be sure I  
12 understand what you're saying, if UE had owned 40  
13 percent of the Joppa power plant.

14          Q.       In a partnership.

15          A.       In a partnership?

16          Q.       Yes.

17          A.       Okay. So separate from Union Electric.  
18 So EEInc had a 40 percent interest in a partnership.  
19 The partnership owned the Joppa power plant.

20          Q.       Let's -- hold on. Let me make sure  
21 we're on the same page.

22          A.       Okay.

23          Q.       Let's say that EEI were a partnership  
24 and that UE owned 40 percent of that partnership.

25          A.       Okay.

1           Q.       Are we on the same page basically?

2           A.       Uh-huh.

3           Q.       Any others that are entities that own

4 shares of stock would be the same in my scenario.

5           A.       Okay.

6           Q.       Do you think that the partners' voting

7 interests in that situation would be under any

8 different set of guidelines in regard to voting

9 interests?

10          A.       Logically it would not. Although when

11 you say partnership, I know nothing about the law

12 regarding partnerships. I know my fiduciary

13 responsibility within a corporation and corporate

14 boards, and I would assume that partnerships are the

15 same, but, in fact, I don't know if they are or not.

16          Q.       Okay. I believe you said at some point

17 in time something to the effect that there was a

18 fiduciary duty that exists to maximize profits for

19 shareholders.

20          A.       Uh-huh.

21          Q.       Is that sort of basically your

22 framework?

23          A.       Yes.

24          Q.       When the Ameren affiliates -- well, let

25 me -- let me -- just a second. Who in AmerenUE would

1 have made the decision to enter into the joint  
2 dispatch agreement?

3 A. That goes back to 1998.

4 Q. Okay.

5 A. It would likely have been Chuck Miller.  
6 At least Chuck -- Chuck would have been the ultimate  
7 decision maker.

8 Q. What was his position at the time?

9 A. He was CEO.

10 Q. Of?

11 A. Of AmerenUE.

12 Q. Okay. Now, during the course of time  
13 that the JDA was in effect, was AmerenUE's income  
14 impacted by the JDA in a positive, negative or  
15 neutral way as opposed to not having it in effect?

16 A. It was impacted in a positive way for  
17 the first couple of years of the JDA, and then it was  
18 impacted in a negative way I think in every year  
19 thereafter. And the reason was the markets changed  
20 materially.

21 1998 and 1999 was an extremely volatile  
22 market for peak power with prices going into the, you  
23 know, \$5,000-per-megawatt-hour range, and UE had no  
24 peaking power. And since CIPS did have significant  
25 peaking capacity so there were huge -- tens of



1 millions of dollars of transfers from CIPS to UE.  
2 After the market and volatility stabilized in about  
3 2000, 2001, then the transfers shifted the other way.

4 Your point on the JDA, though, is an  
5 interesting point, because the JDA is a contract that  
6 was intended to have mutual benefit.

7 Q. Well, let me -- keep going.

8 A. And it didn't work out that way. It  
9 didn't work out that way, and it clearly needed to be  
10 eliminated.

11 Q. All right. Let --

12 A. And we have eliminated it. And in  
13 general, my view on affiliate contracts is we should  
14 have none or we should have as few as possible so  
15 there is no possibility of affiliate abuse and there  
16 is no possibility of one affiliate subsidizing  
17 another. We don't want to operate that way.

18 Q. And what -- at what point in time, then,  
19 did you say that it became detrimental to UE to be in  
20 the JDA?

21 A. Personally I came to that conclusion in  
22 about 2002.

23 Q. 2002. At what point in time do you  
24 think it became detrimental? Not when you came to  
25 the conclusion that it was detrimental, but at what

1 point in time do you think it became detrimental?

2 A. Probably 2000.

3 Q. Okay. And --

4 A. And I said I came to the conclusion a  
5 couple of years later because for two years it had  
6 operated, you know, grossly in favor of UE. Then for  
7 two years it had operated against UE. And we didn't  
8 know if it was gonna swing back the other way or  
9 stabilize. We didn't know how it was gonna work.

10 But it continued to subsidize the  
11 Illinois side of the business at the expense of the  
12 Missouri business. And that was not something we  
13 wanted to continue.

14 Q. Okay. And you're familiar with the  
15 Metro East transfer case that was in front of this  
16 Commission, correct?

17 A. Yes, I am.

18 Q. And AmerenUE had, as a part of that  
19 Metro East transfer case, the issue of the JDA placed  
20 in front of it, did it not?

21 A. By "placed in front of it" --

22 Q. Was that issue not teed up in front of  
23 the Commission in the Metro East transfer case?

24 A. Do you mean that we proposed to continue  
25 it or did we propose to discontinue it?

1           Q.       That parties in the case proposed to see  
2   it discontinued.

3           A.       I think that's the case.

4           Q.       Was it also the case that UE resisted  
5   terminating the JDA in that case?

6           A.       That's possible.

7           Q.       So explain to me why that was in UE's  
8   best interest to take that position at that time  
9   considering your earlier testimony that it became  
10   detrimental in the year 2000?

11          A.       Well -- yeah, my understanding of the  
12   argument was in the settlement in 2002, we agreed to  
13   freeze rates for a four-year period, you know,  
14   through at least mid 2006. So continuation of the  
15   JDA had no practical impact as long as rates were  
16   frozen. It didn't affect any cost to any customer.

17                   Our operating people believe that the  
18   JDA still had some operating benefit and some  
19   operating economy and it should be continued until  
20   rates were changed and at that point terminated.

21          Q.       Do you know whether or not AmerenUE  
22   filed a motion for rehearing in the original order,  
23   the Metro East case?

24          A.       I don't recall, but you probably do.

25          Q.       Perhaps others might recall the position

1     that AmerenUE took in regard to whether or not it  
2     would refuse to accept the original order in that  
3     case. But we can pull it up a little later and look  
4     at it together.

5                     But in regard to the fiduciary duty that  
6     UE had into itself, those officers of UE, if they  
7     were to have done their fiduciary duty to maximize  
8     the profits of UE subsequent to 2000, would it not be  
9     your testimony then that termination of that JDA  
10    would have been -- would have allowed UE to have  
11    better profits than it would have if the JDA were  
12    continued?

13            A.     I'm not quite following your question.  
14    You said if the EEInc directors affiliated with UE  
15    and exercised their fiduciary duty to --

16            Q.     No, I wasn't talking about EEI. EEI is  
17    off -- off to the side right now.

18            A.     Uh-huh.

19            Q.     Just talking about the JDA and  
20    AmerenUE's corporate officials doing their fiduciary  
21    duty to AmerenUE. If I understood your testimony  
22    correctly, subsequent to 2000 it would appear to have  
23    been in AmerenUE's best interest in maximizing its  
24    profits for that JDA to have been terminated?

25            A.     Uh-huh. Clear by about 2002.

1 Q. Okay. Okay. Let me ask you this:  
 2 Prior to January, I think -- was it 1st when there  
 3 was this reorganization?

4 A. Uh-huh.

5 Q. I want to make sure I've got my dates  
 6 right.

7 A. That's right. January 1st.

8 Q. Of this year?

9 A. Yes.

10 Q. You held a position of -- tell me what  
 11 positions you held with UE and with Ameren the  
 12 holding company?

13 A. Okay. President and CEO of Ameren and  
 14 chairman. Chairman, president and CEO of AmerenUE.  
 15 Chairman and CEO of our three Illinois utility  
 16 companies, and chairman and CEO of AER, Ameren Energy  
 17 Resources, our unregulated generation business.

18 Q. Okay. In the position that you held  
 19 with Ameren, the holding company, and AmerenUE, did  
 20 you ever get into decision making that resulted  
 21 wherein maximization of the profits of UE and  
 22 maximization of the profits of Ameren the holding  
 23 company came into conflict?

24 A. I don't think so.

25 Q. Okay. When the JDA was in effect, was

1 Ameren the holding company in any way harmed by the  
2 JDA being in existence?

3 A. I don't think so.

4 Q. And explain why that would have been the  
5 case. Because I think I agree with you, and I want  
6 to make sure we're on the same page again.

7 A. Well, because even though the JDA may  
8 have had the effect of moving money from one company  
9 to another, rates were frozen in Missouri, rates were  
10 frozen in Illinois, it had no practical effect in  
11 terms of revenues ultimately generated by either  
12 company, no practical effect on charges to customers  
13 for either company.

14 So while there was still some  
15 possibility that there were operating benefits from  
16 the JDA, there was no reason, either for customers'  
17 or stockholders' point of view, to cancel the JDA and  
18 give up those operating benefits.

19 Now, that was the logic. But when we  
20 got to the point that rates should change, which is  
21 now, then we canceled the JDA.

22 Q. Why did you do that?

23 A. It was an anachronism at this point. I  
24 mean, we -- we -- we have joined MISO. MISO does  
25 much of what the JDA was intended to do, only on a

1 broader scale. The JDA was intended to, you know,  
2 combine the generation of UE and our Illinois  
3 companies so we could operate it more efficiently,  
4 you know, minimize spending reserve, minimize  
5 dispatch cost and all those things. We do that now  
6 through the broader system of MISO.

7 So MISO should, theoretically, you know,  
8 capture the benefits that we had before.

9 Q. Well, let me -- let's just talk about  
10 money for a little bit here and about specific  
11 numbers.

12 A. Uh-huh.

13 Q. Let's say you left the JDA in effect and  
14 asked this Commission to determine rates based upon  
15 the JDA being in effect. If that were to have  
16 occurred, would the impact on rates for Missouri  
17 ratepayers, all other things being equal, have been  
18 greater or less, do you think?

19 A. The impact would have been greater. But  
20 to come back to your question, suppose we had left it  
21 in effect --

22 Q. Well, just --

23 A. -- we -- we -- we could not leave that  
24 agreement in effect because the agreement simply was  
25 not working correctly.

1 Q. All right. Let me --

2 A. And it would --

3 Q. Let me --

4 -- subsidize one --

5 Q. Let --

6 A. -- company at the expense of the other,  
7 and it --

8 JUDGE WOODRUFF: Sir, if you'd just  
9 wait -- answer only the questions that are asked.

10 THE WITNESS: I'm sorry.

11 BY COMMISSIONER GAW:

12 Q. I know -- I know you're -- you're --  
13 you're -- you're fulfilling your fiduciary duty right  
14 now to someone, although I've yet to determine who  
15 the ultimate someone is, but maybe we'll figure that  
16 out before we get done.

17 But in regard to the JDA, I understood  
18 your answer, if it had been left in effect, the rates  
19 would have -- everything else being equal -- have  
20 been higher, correct?

21 A. In Missouri.

22 Q. In Missouri?

23 A. Uh-huh.

24 Q. And that is because -- and if you would  
25 explain that just very generally -- very generally.



1           A.       Okay. The way the joint dispatch  
2     agreement works is it allows both UE and our  
3     unregulated generation company to use its own  
4     generation first for its own load. But when it gets  
5     to a position where it is short of generation, rather  
6     than go to the market to buy more power at market  
7     prices, it has the ability to tap the generation of  
8     the other company and purchase that at cost.

9                   And the intent was for that reciprocal  
10    kind of relationship to be a mutual-support agreement  
11    and provide mutual benefit, and we had hoped the  
12    benefits would be roughly equal so that there would  
13    not be a problem with the agreement.

14                   Well, it didn't turn out that way. The  
15    benefits turned out to be lopsided, and the benefits  
16    were flowing primarily from UE to the unregulated  
17    generating company.

18           Q.       And why do you suppose that was?

19           A.       It's primarily the change in the market  
20    that valued base-load generation greater than the  
21    market had in the past, which happened due to a  
22    run-up in natural gas prices.

23           Q.       Because of the fact that natural gas  
24    prices were going up, the base-load plants that were  
25    a substantial portion of the portfolio of AmerenUE

1     became significantly more value, correct?

2             A.       That's correct. And in the first couple  
3     of years of the contract, the reason it went the  
4     other way was CIPS had significantly greater peaking  
5     generation while UE did not have that, and when  
6     prices went to 5 to \$10,000 per megawatt hour, UE  
7     provided the peaking to UE at \$25 a megawatt hour  
8     rather than buying it at 5,000.

9             Q.       Now, let's keep going here for a moment.  
10    If the JDA had remained in effect -- and we're still  
11    under that presumption that the rates would have been  
12    based upon the JDA and all other things were equal --  
13    if that would have occurred, what would have happened  
14    to the bottom line of Ameren, the holding company, in  
15    all of its various sources of -- of income?

16            A.       It would have been a roughly neutral  
17    effect.

18            Q.       And that's because those -- those other  
19    profits that wouldn't have been coming to UE would  
20    have been going to Ameren's affiliates, correct?

21            A.       Uh-huh, correct. But again, that's not  
22    something that we would have allowed.

23            Q.       Well, let me --

24            A.       We want to maximize the value of each  
25    company.

1 JUDGE WOODRUFF: Please, just answer the  
2 questions that are asked.

3 COMMISSIONER GAW: Thank you, Judge.

4 BY COMMISSIONER GAW:

5 Q. Now, if you get, then, to the question  
6 of the decision that was made to terminate the JDA,  
7 the other Ameren affiliates that were partners in  
8 that JDA, did they favor terminating the JDA?

9 A. Well, the other Ameren affiliates being  
10 the generating company or do you mean the Illinois  
11 utilities?

12 Q. Those that were members of the joint  
13 dispatch agreement.

14 A. No, they would not have favored  
15 terminating the JDA.

16 Q. And how is it that that contract, that  
17 agreement, was done? Was it a term of years? Did it  
18 have a provision in it that allowed the companies to  
19 get out of it on so many days' notice, do you know?

20 A. I don't remember. There was some sort  
21 of termination provision. I don't know what it was.

22 Q. Do you know -- do you know how you --  
23 again, you don't know how it would have been  
24 exercised then?

25 A. No, I don't.

1                   COMMISSIONER GAW: I'll just ask the  
2 parties whether that JDA is a part of the record or  
3 that provision for termination is? Anybody know? Is  
4 that something that maybe could be supplied?

5                   MR. DOTTHEIM: You're asking,  
6 Commissioner, whether it's part of the present record  
7 in this case?

8                   COMMISSIONER GAW: Yes.

9                   MR. DOTTHEIM: I don't believe it is.

10                  COMMISSIONER GAW: I know it's not teed  
11 up as an issue -- an issue in regard to this overall  
12 umbrella issue of fiduciary responsibility, and I  
13 would like to know if I could see how those  
14 provisions apply.

15 BY MR. COMMISSIONER:

16                  Q.       Mr. Rainwater, do you know, did you, as  
17 CEO of Ameren, give any direction in regard to the  
18 termination of the JDA?

19                  A.       Direction may be too strong a word, but  
20 I argued that it should be eliminated. And I like  
21 people who are responsible for decisions to make the  
22 decisions, but I let my view be known that it needed  
23 to go.

24 BY COMMISSIONER GAW:

25                  Q.       Okay. And what was the primary --

1 again, you've already said that it really was a  
2 neutral as far as Ameren was concerned.

3 A. It was offensive to me because --

4 Q. Tell me why.

5 A. -- it created a subsidy from one company  
6 to another, and agreements between affiliates should  
7 not exist unless they work to the benefit of both  
8 affiliates. And we're never -- we will never  
9 willingly set up an agreement that subsidizes one  
10 affiliate at the expense of another intentional. And  
11 when we created the JDA, we did not create the JDA  
12 with that intention. It was supposed to work to the  
13 benefit of both affiliates. It did not and it should  
14 have been terminated.

15 Q. Do you believe that AmerenUE's corporate  
16 officials have a fiduciary duty or a duty to their  
17 ratepayers -- to the ratepayers --

18 A. Well, they don't have a fiduciary duty  
19 to ratepayers.

20 Q. What kind of duty do they have?

21 A. But they certainly have a duty to  
22 ratepayers. To be successful as a business, we need  
23 to deliver for our ratepayers, for our customers. We  
24 need to provide good service at low cost.

25 And the business judgment there is that

1 if we deliver in that way, then we'll be treated  
2 fairly in the rate process and earn a fair return on  
3 investment. And some companies even have earned a  
4 superior return on investment because they've  
5 delivered well for their regulated customers.

6 So we recognize that that is a basic  
7 business philosophy for us to operate in the interest  
8 of the customer in the regulated business in order to  
9 make money in that business.

10 Q. Was that a consideration in regard to  
11 your decision to be in favor of terminating the JDA?

12 A. Well, my consideration in the -- well,  
13 yes, in part. Although the real driving factor was  
14 the contract was not working fairly for both  
15 companies. It was working in favor of one at the  
16 expense of the other. And there's the possibility it  
17 could have switched back to the way it worked the  
18 first couple of years.

19 Q. So the answer to the question is yes, it  
20 was a factor, but it wasn't the major factor?

21 A. The major factor was the contract simply  
22 was a contract that should be eliminated because it  
23 was not achieving the purpose it was designed to  
24 achieve.

25 Q. Okay. Now, in regard to a decision that

1 comes in front of a corporate officer of UE, if a  
2 decision will benefit the bottom line of UE but be to  
3 the detriment of the ratepayers or vice versa, what  
4 decision should be made in that case?

5 A. A decision to benefit the bottom line of  
6 UE --

7 Q. Yes.

8 A. -- but be detrimental to ratepayers?

9 Q. Yes.

10 A. I'm having a hard time --

11 Q. -- imagining that?

12 A. -- imagining one of those. My answer,  
13 though, would be find the best balance, find a point  
14 where we can be properly caring for customers but  
15 reasonably caring for stockholders also.

16 We don't like to find ourselves in a  
17 place where it's an either/or situation. We try to  
18 manage the business in a way that it's clearly, that  
19 if we take care of customers, stockholders will also  
20 benefit.

21 Q. And what happens if those things are in  
22 conflict with one another? Who wins?

23 A. Then we end up here debating the issue  
24 with you and we probably lose. Which is why we push  
25 it so hard toward satisfying the customer, because we

1 recognize that that is, in this business, the best  
2 approach to be successful.

3 Q. I kind of lost you on that last comment.  
4 What is it that you mean, "We push it so hard"? What  
5 are you referring to?

6 A. We clearly operate in a way that  
7 benefits customers. And I'll give you a couple of  
8 examples. In some of our resource planning  
9 decisions, when we sold our Iowa service territory  
10 years ago, when we sold that territory --

11 Q. When you say "we", who are you referring  
12 to, since there are a number of different entities  
13 here?

14 A. Yeah. Union Electric. This is before  
15 any of the mergers that took place. So we were just  
16 Union Electric at that time. We had a small Iowa  
17 service territory. We sold the service territory,  
18 and by selling the service territory, there was a  
19 small amount of generating capacity, about 300  
20 megawatts, basically a slice of the UE system which  
21 we could have used in various ways.

22 We could have dedicated that to the  
23 wholesale market and kept it in the wholesale market,  
24 used it there, earned a return there. Over time as  
25 the wholesale market evolved into a market-based



1 market, possibly made more money there, we chose,  
2 instead, to dedicate that capacity to our Missouri  
3 retail market, knowing that by doing that, we would  
4 lower the cost because we would avoid the need to  
5 build 300 megawatts of new capacity at some point, we  
6 would lower the cost for our Missouri customers.

7                   And the theory was -- my concept,  
8 because I drove it in this direction -- was that if  
9 we make those decisions and that way in a way that  
10 clearly benefits Missouri customers, we will  
11 ultimately be rewarded for that.

12                   We made the same kind of decision when  
13 we transferred our East St. Louis territory, 600  
14 megawatts, which -- 600 megawatts and with reserves  
15 it's around 700 that was formerly allocated in  
16 Illinois. UE-generated capacity allocated in  
17 Illinois. We could have kept that capacity for the  
18 wholesale market, used it in the wholesale market,  
19 and by then the market was maturing to the point that  
20 within a few years, we would likely be able to make a  
21 lot of money with that.

22                   We chose, instead, to bring it back to  
23 Missouri, to dedicate it to Missouri to help keep  
24 Missouri rates low in the hope that when we get into  
25 proceedings like this, it would be recognized that we

1     were operating in a way that favored customers, and  
2     therefore we were doing the things the Commission  
3     felt we should be doing. We should be rewarded with  
4     a fair return on our assets in a rate case.

5           Q.       So is it your testimony --

6           A.       It's not clear to me that it's worked.

7           Q.       Is it your testimony that when there is  
8     a decision in which the interest of the ratepayer and  
9     the interest of AmerenUE's bottom line come into  
10    conflict, that the decision is not clearly one in  
11    which AmerenUE's bottom line wins?

12          A.       Well, I'm suggesting that the answers  
13    are not always clear.

14          Q.       Okay.

15          A.       And as an executive of the company and  
16    in exercising my fiduciary duty, I have some latitude  
17    to apply business judgment consistent with the  
18    company strategy which I believe will in the end  
19    result in higher earnings than maybe taking the  
20    short-term approach to raise earnings in the short  
21    term.

22          Q.       Okay. Then in regard to the decisions  
23    that are made by UE holding shares of EEI, does UE  
24    ensure that it elects members to the board that will  
25    guard the interests of UE as they -- as they serve on

1 the board or not?

2 A. No.

3 Q. Okay.

4 A. No. It's a separate company. It is not  
5 part of UE. It is a separate company. It is a part  
6 of the Ameren system and Ameren subsidiary,  
7 independent in an entirely different business.

8 Q. How much did it cost to build EEI, do  
9 you know?

10 A. I can guess. It was around 2 to 300  
11 million dollars. Built in the early 1950s. The cost  
12 then would have been maybe 300 dollars per kilowatt.  
13 It's a thousand-megawatt plant. So 300 million  
14 dollars would be a reasonable guess.

15 Q. And there's been testimony back and  
16 forth, and I'm trying to make sure I understand this  
17 about whether or not there was obligation under the  
18 contracts that UE had, or the arrangements UE had  
19 regarding capacity at that plant.

20 A. Uh-huh.

21 Q. Did UE -- did UE have a contract for  
22 capacity or energy or both, if you know?

23 A. Well, capacity and energy together are  
24 what we call power. UE had a contract to buy power  
25 from the Joppa power plant. I mean capacity and

1 energy in the way they were typically described in  
2 contracts of that vintage is that in the contract,  
3 you broke the cost down into fixed costs and variable  
4 costs.

5 Q. Yes.

6 A. Fixed costs were called capacity costs.  
7 Variable costs were called energy costs.

8 Q. Okay.

9 A. All of it together is what keeps the  
10 lights on. You've got to have both the capacity and  
11 the energy to make the system operate.

12 Q. Do you know what the capacity charges  
13 were to UE during the -- during the terms of the  
14 early days of the contract?

15 A. The capacity charges throughout the life  
16 of the contract, as long as it was a cost-based  
17 contract --

18 Q. Yes.

19 A. -- were a formula-based approach that  
20 included all costs plus a return on equity.

21 Q. Okay.

22 A. So it was a relatively low-risk  
23 contract, although not a riskless contract.

24 Q. I'm sorry. Was the percentage -- the 15  
25 percent applied to the book value of that plant, the

1 original cost less depreciation? Is that how it  
2 worked?

3 A. It was applied to the net equity in the  
4 plant, which actually I think it was the original  
5 book equity, and I don't think any other equity was  
6 added. So it was a relatively small amount of  
7 equity, and I can't give you an exact number, but in  
8 the order of tens of millions of dollars, not  
9 hundreds of millions of dollars.

10 Q. I'm a little confused by that and I'm --  
11 I'm trying to understand how that would work. When  
12 you say there was -- there was a small percentage of  
13 the -- of the actual cost of the plant was equity, is  
14 that because it was highly leveraged with debt; is  
15 that what you're referring to?

16 A. Well, it's two things. It is because it  
17 was highly leveraged with debt, but it's -- the  
18 debtors would be reluctant to provide that much debt  
19 at low interest rates unless the contract was --

20 Q. The debtors or the creditors?

21 A. The creditors --

22 Q. Okay.

23 A. -- would be reluctant to provide the  
24 money unless it were backed by solid contracts. And  
25 so the power was backed primarily by contracts to the

1 Department of Energy.

2 Q. In the early days anyway?

3 A. Yeah, in the early days. And, in fact,  
4 over the life of the plant, the Department of Energy  
5 has taken 75 or 80 percent, a very high number, a  
6 very large amount of the money. And, in fact, in the  
7 mid 1980's when we negotiated mod 12 to the contract,  
8 the Department of Energy made exactly the same  
9 argument that Staff is making now: The fact that  
10 we've paid for this plant all of these years. We now  
11 have a continuing right to the plant as if we owned  
12 it because we've paid your return on equity; it's all  
13 been done in a formula, and we allowed our lawyers to  
14 get together and argue about that for two days. And  
15 the Department of Energy guys came back and said,  
16 "Okay, we agree we don't have that right.

17 Q. Uh-huh.

18 A. And then they negotiated the new  
19 contract.

20 Q. It was contemplated from the beginning  
21 that UE would be able -- would be required to be  
22 responsible for the use or sale of capacity of the  
23 generating facilities in the event the Atomic Energy  
24 Commission would terminate its purchased power  
25 agreement with EEI, correct?

1           A.       I missed part of that. I'm sorry.

2    Could you read it again?

3           Q.       It was contemplated from the beginning  
4    that UE would be responsible for its percentage share  
5    of the use or sale of the capacity of the generating  
6    facilities in EEI in the event that the Atomic Energy  
7    Commission would terminate its purchased power  
8    agreement with EEI, correct?

9           A.       That's probably true in the power  
10   contracts and another reason why the creditors  
11   would have been able -- are willing to lend at a low  
12   rate.

13                   Now, when I say that, that's an argument  
14   someone could use to say, therefore, the customers of  
15   Union Electric really backed that plant, didn't they?  
16   And that's not -- that's not true because the power  
17   would never have been used for the customers if it  
18   wasn't economical.

19                   If let's say the prevailing cost of  
20   power at the time was ten dollar a megawatt hour and  
21   Joppa power was \$25 a megawatt hour and UE tried to  
22   push that into its retail rates, would you have  
23   accepted that in the retail rates? I think it's  
24   unlikely that you would have, and the stockholders  
25   would have borne the risk, which is what the argument

1 is all about. The stockholders have always borne the  
2 risk of this plant. It's not a UE asset; it's always  
3 been an EEInc asset.

4 Q. But it is true that UE came to the  
5 Commission to get permission to acquire these shares  
6 of stock in EEI, correct?

7 A. EEInc came to --

8 Q. No, Union Electric.

9 A. Union Electric came to the Missouri  
10 Commission to acquire the shares of stock?

11 Q. Yes.

12 A. If you say so, I will accept that if  
13 it's written down somewhere. I didn't know that and  
14 I don't know why that would have been necessary.

15 Q. So you haven't seen the report and order  
16 in Case Number 12064, I would take?

17 A. I guess not.

18 Q. Okay. Who were the creditors for the --  
19 for the loans to EEI?

20 A. I don't know. Probably insurance  
21 companies, mutual fund companies, big lenders.

22 Q. Do you know whether Union Electric was a  
23 guarantor of those loans?

24 A. No, I don't.

25 Q. What was the order of dispatch of EEI in



1     regard to the units that were utilized by -- for  
2     AmerenUE's customers while the contract -- in recent  
3     years while the contract was in effect, do you know  
4     that?

5             A.       It's a low cost resource, so it would  
6     essentially have been dispatched all the time it was  
7     available.

8             Q.       And what replacement generation is being  
9     utilized by UE since the contract has expired?

10            A.       Peaking capacity.

11            Q.       And would it be accurate to say that  
12     that's more expensive energy than what was accessed  
13     through EEI?

14            A.       Certainly it would be gas-fired.

15            Q.       Would it be true, Mr. Rainwater, that  
16     one of Ameren's unregulated affiliates would show EEI  
17     as a part of this generation portfolio currently?

18            A.       Ameren Energy Marketing would show EEI  
19     as a contract purchase resource. It wouldn't show  
20     the Joppa plant as a resource.

21            Q.       What's the difference?

22            A.       It doesn't own the plant. Well, the  
23     difference is it's a contractual relationship rather  
24     than an ownership relationship.

25            Q.       If I look on the web site for, is it

1 AEM, is that who it would be or AEG? Who would be  
2 it?

3 A. It would be AEM.

4 Q. AEM, and looked at the generation that  
5 they had access to, EEI would then be listed as one  
6 of the -- one of the generation units or generation  
7 entities that it had access to sell?

8 A. Well, if it -- if it were -- well, it  
9 might be listed that way since through a contract, it  
10 has the right to buy EEI's output.

11 Q. How much of its output does it have the  
12 right to buy currently?

13 A. I think all of it; although I'm not  
14 certain of that, I think it's all of it.

15 Q. Okay.

16 A. I think it acts as the agent to sell the  
17 power for EEI. EEI did not have its own marketing  
18 trading people and we do in AEM, and so we can  
19 provide that service rather than their staffing up to  
20 do it themselves.

21 Q. And so the -- does -- is it also true --  
22 and I think it's established here, but just for my  
23 sake -- clarification, the -- there is no portion now  
24 that's held or utilized by Kentucky Utilities?

25 A. I think that's true.

1           Q.       Okay. Now, did I understand you in  
2     answering questions earlier that you believe that  
3     EEI's -- excuse me, that Kentucky Utilities' board  
4     members that voted to continue the contracts, that  
5     they were voting against or contrary, rather than --  
6     to their fiduciary interest?

7           A.       I think they clearly violated their  
8     fiduciary interest, voted incorrectly. There was no  
9     consequence since their position did not prevail.

10          Q.       What would the consequences have been if  
11     they had?

12          A.       It could have been a shareholder  
13     lawsuit.

14          Q.       By whom?

15          A.       By the shareholders of EEInc initially.

16          Q.       That would have included UE?

17          A.       It could have included UE, it could have  
18     included Ameren Energy Resources or it could have  
19     been done through what would be called a derivative  
20     lawsuit that would go back to the shareholders of  
21     Ameren and E.ON, the ultimate retail and  
22     institutional shareholders of those companies.

23          Q.       I don't -- you'll have to explain what  
24     that E.ON thing is.

25          A.       I'll have to have a lawyer -- well, E.ON

1 is a German holding company that owns LG&E; LG&E owns  
2 KU; KU owns EEInc. That's kind of the hierarchy  
3 there. And LG&E was purchased eight or ten years ago  
4 by E.ON so it's actually held by a foreign company,  
5 and their shareholders would be primarily in Germany.

6 Q. Do you think they would have perhaps  
7 joined in the lawsuit; is that what you're suggesting,  
8 or that they would have been sued?

9 A. They possibly could have joined in the  
10 lawsuit.

11 Q. Okay. AmerenUE's interest in joining in  
12 that lawsuit would have been what?

13 A. Well, to recover the value destroyed by  
14 making a decision that was not in the fiduciary  
15 interest of EEInc.

16 Q. What damage would AmerenUE have  
17 sustained if the contract would have continued?

18 A. If the contract had continued?

19 Q. Yes, if the contracts would have  
20 continued with Kentucky Utilities and with AmerenUE.

21 A. Well, by Staff's calculation, the cost  
22 is about 80 million dollars per year for UE's  
23 400-megawatt share, so by that -- and I don't know if  
24 that calculation is correct or not, but approximately  
25 80 million dollars.

1           Q.       AmerenUE is getting 80 million dollars  
2     in gain as a result of the termination of the  
3     contract with EEI; is that what you're testifying to?

4           A.       Ameren would get 80 million dollars in  
5     gain with the continuation of a subsidized contract,  
6     a contract below market, rather than going to market.  
7     So the difference between cost and market for  
8     400 megawatts was 80 million dollars, you know, for  
9     the whole thing, if that calculation is correct --  
10    and again, I don't know if it is -- it would be on  
11    the order of 200 million dollars.

12          Q.       Okay. So, again, my question is, what  
13    damage did UE shareholders sustain -- what would they  
14    have sustained if the contract would have continued?

15          A.       On a cost basis?

16          Q.       Yes.

17          A.       Approximately 80 million dollars  
18    annually.

19          Q.       I'm a little confused because if the  
20    contract would have continued, I thought you said  
21    that UE would have continued to receive some sort of  
22    subsidization which would have been to UE's  
23    shareholders' benefit?

24          A.       Well, no, it would have been -- the  
25    subsidy would have gone to the benefit of UE's

1 customers.

2 Q. Oh, not to their shareholders?

3 A. No.

4 Q. So --

5 A. The subsidy -- the continuation --

6 Q. -- in the event --

7 A. -- of the contract --

8 JUDGE WOODRUFF: Don't talk over each

9 other, please.

10 THE WITNESS: I'm sorry.

11 BY COMMISSIONER GAW:

12 Q. So if we assume that this Commission

13 does not count in or suggest that there was some

14 imprudence in regard to the discontinuous of access

15 to the EEI contract, then the shareholders would

16 benefit at the ratepayers' detriment?

17 A. Well, I don't like the way you said it,

18 but the shareholders --

19 Q. Isn't it true?

20 A. -- would benefit --

21 Q. Isn't it true?

22 A. -- at the ratepayers --

23 Q. That's a yes or no question, I think.

24 A. -- the ratepayers' detriment --

25 JUDGE WOODRUFF: Try and give your

1 explanation later perhaps, but right now the  
2 Commissioner asked you a yes or no question. Can you  
3 answer it yes or no?

4 THE WITNESS: And the answer is yes, but  
5 then it requires a qualifier.

6 BY COMMISSIONER GAW:

7 Q. I understand.

8 A. The qualifier --

9 Q. And I know that others will ask you that  
10 qualification. Now, in regard to this issue of  
11 protecting the ratepayers' interest, do you view this  
12 Commission as having some degree of duty in balancing  
13 the interest of the ratepayers and the shareholders  
14 of the company?

15 A. Certainly I do.

16 Q. Okay.

17 A. And I would -- if I may make a comment,  
18 I would hope that this Commission takes into account  
19 all of the other decisions that we've made in a way  
20 that is favorable that far more than balances the  
21 decision we made on EEInc, which we had no choice but  
22 to make, to honor our fiduciary duty. Remember, it  
23 is a separate company.

24 Q. Mr. Rainwater, I understand that you  
25 have made that statement multiple times as have

1 several predecessors. I appreciate the fact.

2 A. I just thought I might have missed it.

3 Q. Your advocacy is well noted. Okay. So  
4 when I get to -- let me move onto a couple other  
5 issues. I won't spend much time with this, but I do  
6 want to talk about Taum Sauk for a little while.

7 The issue in regard to that facility and  
8 its maintenance, you've already testified, and I know  
9 well you're an engineer. Prior it the time when the  
10 incident occurred down there, did you have occasion  
11 to look at that facility?

12 A. Uh-huh, yes I had.

13 Q. Was there anything that concerned you  
14 about that facility's construction in observation?

15 A. Not in the -- well, let me qualify this  
16 a little bit. I can recall the first time I ever  
17 visited the facility, and that would have been within  
18 a year or two after I started working for the  
19 company, and I saw the upper reservoir and --

20 Q. We need kind of a date, if you would.

21 A. Okay. Around 1981 or 2.

22 Q. That's fine. Gives me a perspective.

23 A. 25 years ago. And I -- I visited the  
24 upper reservoir. The upper reservoir was full. It  
25 was filled to within a couple feet of the top of the



1     reservoir. There was about an eight- or ten-foot  
2     concrete wall on the top of the upper reservoir, and  
3     it struck me that that looked precarious.

4                     And I even asked the question of the  
5     engineer giving the tour and he said, "Oh, no, this  
6     is the way we've always operated this, and it's  
7     totally safe; we've done the calculations, and  
8     nothing can go wrong."

9                     And maybe he didn't say it that way, but  
10    I talked to people about if it ever failed, what  
11    would actually happen? Would it -- would the whole  
12    reservoir fail? Would it cause a catastrophe? And  
13    the answer was, no, that can't possibly happen.

14                    If it failed, what would happen is it  
15    would begin as erosion at the top, and some erosion  
16    would occur, and as the erosion started, we would  
17    discover it, we would begin dispatching the plant, we  
18    would limit it, some water would roll down the hill,  
19    there would be some damage to the reservoir, but a  
20    catastrophic failure is impossible.

21                    Well, what actually happened was an  
22    event when the reservoir was overflowed, it  
23    undermined the parapet walls, which is this ten-foot  
24    concrete wall along the top. Panels of the parapet  
25    wall broke and cascaded over a length of about 600

1 feet, and a wall of water ran out of the upper  
2 reservoir and almost instantly eroded all the way  
3 down to the base rock.

4               That's a failure mode that geologically  
5 was not supposed to be able to occur, and the reason  
6 it did occur, we found later, was because the plant  
7 was not constructed properly originally. The plant  
8 should have been constructed on bedrock, and it  
9 should have been constructed as a rock-fill dam is  
10 supposed to be constructed with various size rocks  
11 but no dirt in the rock-filled dam.

12              Between the dam and the bedrock there  
13 was a layer of dirt which when it became wet, became  
14 movable, and the force of the water simply blew it  
15 out in a catastrophic kind of failure.

16              If it had been built right, that could  
17 not have happened. And then the other thing that was  
18 discovered, you know, once the wash-out had occurred,  
19 was looking at the inside of the dam, there was much  
20 more fine material than should have been in there and  
21 not as many large rocks.

22              So the fine material would allow water  
23 pressure, hydrostatic pressure to build up on the dam  
24 and allow it to blow out in the way that it did,  
25 which, again, should never have happened.

1                   So what we found was we actually had  
2   operated a dam for 40 years which could have gone at  
3   any time for 40 years. What triggered it was about  
4   one year before the failure took place, we replaced  
5   the control system on the dam.

6                   The control system was not well  
7   engineered and it was not well maintained and it was  
8   not well operated. All of those not-well issues were  
9   done by different people. So there was a series of  
10  mistakes made by various people which lead to  
11  overflowing the dam which then allowed the  
12  fundamental flaw to catastrophically destroy the dam.

13                  It's kind of a long to story, but the  
14  short story of it is, this happened on our watch, we  
15  were responsible for this, it never should have  
16  happened, it is absolutely unacceptable that it  
17  should have happened, and so our company has taken  
18  total responsibility for it.

19                  We haven't included any of the cost of  
20  the facility in this rate case. We do hope to  
21  rebuild the facility, and if we rebuild it, we will  
22  rebuild it in a way that absolutely guarantees it is  
23  safe. It will be safer than any facility in the  
24  world. And hopefully most of that cost will be  
25  covered by insurance, and then we'll be able to

1     operate the facility for, you know, another hundred  
2     years.

3           Q.     Mr. Rainwater, you brought up insurance,  
4     and I've asked this question earlier. I can't  
5     remember of which witness, perhaps Mr. Baxter.  
6     Whoever I asked didn't know, is my recollection.

7                     Will the insurance premiums that Ameren  
8     pays that include insurance on that that facility  
9     going forward be impacted, the rates be impacted by  
10    this incident, do you know?

11          A.     Oh, I don't know. You know, that's --

12          Q.     Is there a way of determining that?

13          A.     Well, we'll determine it before we get  
14    there.

15          Q.     Okay.

16          A.     But the typical -- of the way that  
17    insurance companies -- excuse me -- operate, I would  
18    expect there would be increased insurance rates.

19          Q.     That's my experience with them as well,  
20    so I thought I'd ask.

21          A.     Yeah.

22          Q.     Let me ask you. You said earlier that --  
23    I believe you testified that you had had a chance to  
24    look through some of the public testimony at the  
25    public hearings, correct?

1           A.       Yes, I did.

2           Q.       When did you do that?

3           A.       A couple weeks ago.

4           Q.       Okay. Do you know if anyone else in the

5 upper echelon of UE has done that?

6           A.       I think all of the senior officers of

7 the company have looked at the testimony. And beyond

8 that, what we've done is we've asked our customer

9 service department to follow up on every single

10 complaint that's in the testimony so we can answer

11 every single complaint and answer the people who

12 filed the complaints. The addresses are a part of

13 the testimony.

14          Q.       Well, if someone in your upper

15 management had failed to do that, would that be an

16 issue for you?

17          A.       Had failed to?

18          Q.       To actually look at that testimony.

19          A.       To actually look at it? Well, I think

20 it's an important input, but you may have been out

21 of the room when we were talking about this a while

22 ago.

23          Q.       No, I wasn't.

24          A.       It is very --

25          Q.       I was here.

1           A.       It is very important for us to  
2 understand what our customers are thinking. You  
3 know, that testimony provides one data point, it  
4 provides one point of reference from customers who  
5 are generally very angry and invited to come and  
6 voice their complaints.

7           Q.       Mr. Rainwater, in regard to some of that  
8 testimony that we see, I understand your  
9 qualification in regard to what -- that you think it  
10 ought to be discounted to some degree. Did you  
11 notice that some of that testimony was specifically  
12 referring not just to the storm outages but to other  
13 issues of reliability?

14          A.       Yes, I did.

15          Q.       All right. Well, I might just ask you,  
16 then, does someone besides me have this public  
17 testimony available that could provide it to  
18 Mr. Rainwater? I guess I'll just have to give it to  
19 you myself.

20                    If the ones I'm referring to aren't in  
21 there, just tell me, Mr. Rainwater. And  
22 unfortunately, it's a little more difficult for me  
23 when I don't have the copies in front of me.

24                    Look at -- pull volume 3 first if you  
25 would, if you can find it there.

1           A.       They don't all seem to be marked  
2 volumes. Only one has a volume number. That's  
3 volume 12.

4                   Okay. Yes.

5           Q.       Look at page 106, please. And lines 1  
6 through 6. Would you read them to us, please?

7           A.       Okay. "Well, I live in an area where  
8 it's commonplace to be without lights for periods of  
9 anywhere from two hours to two or three days. It's  
10 either on this side of the street or that side of the  
11 street. We have them at least four to seven times a  
12 year.

13                   "I moved there in 1994. It was the  
14 first time I became aware that we had power outages.  
15 It's because it's our -- excuse me. It's become so  
16 regular that I now worry about my house catching on  
17 fire because you have to keep a constant supply of  
18 candles. But I'm afraid of on supply because we're  
19 always without lights."

20           Q.       Okay. Turn to page 84, lines 19 through  
21 24 if you would.

22           A.       "I've had numerous outages. I've  
23 personally dealt with UE phone system which is  
24 notorious. After you finish pushing this button and  
25 pushing this button, then you get this disconnected.

1 Then at the end, maybe 10 or 15 minutes down the  
2 line, you might be able to talk to a customer service  
3 rep. And then eventually they'll tell you, 'Well, it  
4 should be on soon.'"

5 Q. Okay. Page 69. Lines 13 through 17.

6 A. "Exactly. It rained, I'm gone. Okay.  
7 Just a slight rain. It's over. You know it takes  
8 probably a day or two to get power. And I don't know  
9 about a lot of these people here, but it's expensive  
10 to keep putting food back in my house that I got to  
11 keep going and buying."

12 Q. Page 58, line 6 through 9, if you would.

13 A. "If you want to go out and look at these  
14 locations. I don't have the list today because the  
15 printer problem. There are something like 72  
16 pictures here, and I think you'll find them quite  
17 interesting."

18 Q. Thank you, Mr. Rainwater. I'm gonna  
19 hand you a set of pictures that go along with that.  
20 Just ask for you to leaf through them, see if you see  
21 anything in there that you think is problematic. And  
22 you may not. I'm just interested in your opinion.

23 A. Well, there are a lot of pictures.

24 Q. There are a lot of pictures.

25 A. Some certainly look like areas that need



1 to be fixed. There are a lot of leaning poles, there  
2 are some structures that look like they were  
3 temporarily replaced, and there are a lot of issues.

4 Q. Okay. Could you pull a microphone a  
5 little closer to you, Mr. Rainwater? I know that's  
6 inconvenient over there.

7 A. Uh-huh.

8 Q. And I apologize for taking you through  
9 this, but it's important from my standpoint that  
10 someone from UE acknowledge these people who have  
11 been testifying, and I don't know of any other way of  
12 doing it.

13 Last week Mr. Baxter was in here and I  
14 couldn't tell if he'd ever heard any of these  
15 comments other than perhaps being briefed and that  
16 was the extent of it. At least I'm hearing that you  
17 have read some of them, but I want to keep going for  
18 a little while.

19 A. Well, we will more than acknowledge, we  
20 will follow up on every single complaint, and if we  
21 have this list of pictures, we'll follow up on the  
22 pictures as well.

23 Q. Okay. Now, this list of pictures, by  
24 the way, just for your information, was provided as a  
25 part of that public testimony --

1           A.       Uh-huh.

2           Q.       -- and has been included in the list of  
3 things that are filed. So it's public -- public  
4 information at this point as I understand it, Judge?

5                   JUDGE WOODRUFF: That's correct.

6                   COMMISSIONER GAW: Okay. Let's look  
7 again -- to page 44 and look at lines -- just a  
8 second, let me see if I can minimize this.

9                   JUDGE WOODRUFF: Actually, Commissioner,  
10 it's time for a break, so you might have a chance to  
11 organize things.

12                  COMMISSIONER GAW: Sure, that would be  
13 great.

14                  JUDGE WOODRUFF: At this time we'll take  
15 a break for our dinner break and we'll come back at  
16 six o'clock and resume where we left off. All right.

17                   (THE DINNER BREAK WAS TAKEN.)

18                  JUDGE WOODRUFF: All right. Let's come  
19 to order, please. All right. Well, welcome back  
20 from dinner and we're ready to get started again.

21                  Commissioner Gaw, you can continue with  
22 your questions.

23                  COMMISSIONER GAW: Thank you. Did you  
24 have a chance to get dinner, Mr. Rainwater?

25                  THE WITNESS: Yes, I did.

1                   COMMISSIONER GAW: Good. Good for you.

2 BY COMMISSIONER GAW:

3           Q.       Let's pick up where we left off. And  
4 I'm gonna cut some of this out but it might not feel  
5 like that to some of those who are here. In regard  
6 to those transcripts that you have, do you still have  
7 them with you?

8           A.       Yes, I do.

9           Q.       Let's see. Why don't we skip to if  
10 you've got one there that's dated January the 8th,  
11 and I think there are actually two volumes that are  
12 dated January the 8th. I'm not talking about the one  
13 that has Volume 7 on it.

14          A.       Okay.

15          Q.       And I'm gonna see if I can give you a  
16 better designation.

17          A.       I have just one volume with January 8th  
18 so that narrows it down.

19          Q.       Okay. I have two for some reason, but  
20 one of them has Volume 7 and the other one doesn't  
21 have a volume on it, and it's the one that doesn't  
22 have it on it that I'm going to refer to.

23          A.       Okay.

24          Q.       Do you see anything that's saying  
25 Volume 7 on the front?

1           A.       Nothing on the front, but the first page  
2 says Volume 6.

3           Q.       Let's hope that's the same one. Why  
4 don't you take a look for me at pages 134 and 135.  
5 And beginning at line 25 at 134, if you could read  
6 through line 7 on the next page.

7           A.       Okay. "I've had four power outages  
8 lasting longer than 24 hours since July. That means  
9 I've thrown my refrigerator away four different times  
10 since July. Also my work has been out two days in  
11 July and two days over the ice storm. And that's  
12 something no one has brought up except that this is  
13 costing business money. You know, it affects your  
14 income. You don't get paid."

15          Q.       Okay. Now, turn to page 110. Now, I'm  
16 gonna have a few questions for you after I get  
17 through with this. I'm not just doing this to read  
18 this into the record.

19          A.       Okay.

20          Q.       In regard to lines -- look at line 6  
21 through 13.

22          A.       Okay. "The reliability aspect of  
23 AmerenUE has gotten so bad you've heard several  
24 people talk about emergency generators. We've put in  
25 the budget this year, and I've got bids out right

1 now, 130,000 in bids for emergency generators for  
2 police headquarters and the City Garage. And I've  
3 got other portable generators that we use around and  
4 about the city to help because AmerenUE has become so  
5 unreliable."

6 Q. Okay. Now, on the previous page, on 109  
7 there's an identifier of this individual and his  
8 position. Do you see there at line 11? If you could  
9 just read what his position is?

10 A. "I'm also the Director of Public Works  
11 for the City of Florissant."

12 Q. Okay. And he says, "I'm here on behalf  
13 of myself and Mayor Robert G. Lowery, Senior"; is  
14 that correct?

15 A. That is correct.

16 Q. Okay. And then look at page 86 if you  
17 would. I'll shorten this if I can. Hold on just a  
18 second. Could you read that page for me, 1 through  
19 24?

20 A. Okay. "In my neighborhood power outages  
21 have become so frequent and so lengthy that many  
22 members of many, many households in my neighborhood  
23 purchased generators prior to the outages of July  
24 2000 -- July '06.

25 "In July of 2000 there was a five-day

1     outage. In the years following there have been at  
2     least two outages per year of at least 48 hours'  
3     duration. In the summer of '05, one full year prior  
4     to this summer's bad storm, we had repetitive outages  
5     all involving a primary line that was running in the  
6     right-of-way between Moundale and Robin.

7                     "In discussing the nature of the ongoing  
8     repetitive outage, the linemen who were wonderful,  
9     they were helpful, they were informative, they were  
10    compassionate, unlike management of Ameren. And  
11    their comments to us were, 'We are really sorry.  
12    This equipment is antiquated; it is old. We are  
13    doing our best' -- and I use one of the repairmen's  
14    words -- 'Jerry (sic) rigging this to get it -- to  
15    get it to work.'

16                    "It worked for three days. The power  
17    went back out (sic). This is July of '05. They were  
18    back. The comments that time were, "It is the same  
19    problem. We do not know where we will find this  
20    particular piece of equipment."

21            Q.     Okay. Thank you. And if you look at  
22    page 52 real quick -- and we're getting close to the  
23    end of this. If you'll bear with me. 18 through 24,  
24    if you'd read that.

25            A.     "The problem that we had after the July

1     outage, we've had behind (sic) us, or an undeveloped  
2     park. They call it a number of things but we have  
3     this common area behind us and Union Electric used to  
4     have wires cleaned. They cleaned brush every two or  
5     three years it seemed like when we first moved in.  
6     And now we haven't had it cleaned for years.

7                     "So I think that something definitely  
8     needs to be done because we had so many vines growing  
9     over the wires that the vines, as they grew up and  
10    over and hung down, they looked like a waterfall.  
11    They killed trees that are back there."

12            Q.       Okay. And then pull one more volume for  
13    me if you would. This is Volume 9. If you can find  
14    that.

15            A.       Okay.

16            Q.       And I've just got -- have one more thing  
17    for you to read. Look at pages 46 and 47.

18            A.       Okay.

19            Q.       And this is a little longer, but not too  
20    long. It's lines 11 on 46 through the end of the  
21    page up through line 3 on 47.

22            A.       Okay. "We know that there are  
23    situations beyond anyone's control that can happen,  
24    and we can appreciate that. However, I would like to  
25    let you know that when the power blinks in a cotton

1     gin, it's not just a matter of flipping a switch and  
2     continuing work. When the power blinks and are  
3     ginning (sic), it takes a minimum of two hours and  
4     perhaps as long as six hours for us to recover. Take  
5     that times 15 to 20 workers and you can see a source  
6     that this is a source of concern for us.

7                     "On Saturday, November the 11th, 2006,  
8     the power blinked at least three times that day. We  
9     were down a total of about eight hours overcoming  
10    these outages.

11                    "The very next day it blinked again and  
12    we were down for another six hours. It's not just  
13    about the time, but there's also the risk of damage  
14    to machinery. Motors and computers can burn up if  
15    the situations are just right. Major expense there.  
16    Brownouts, I guess they're called, and surges  
17    devastating to our business.

18            Q.     Okay. Thank you. Now, Mr. Rainwater, I  
19    know that -- and if you've read through this, you  
20    know that these are just examples of many more  
21    comments regarding issues on vegetation management,  
22    issues dealing with infrastructure and concerns of  
23    reliability.

24            A.     Uh-huh.

25            Q.     So what I want to do is -- and first of



1 all, would you agree with that?

2 A. Yes, I would.

3 Q. Okay.

4 A. Uh-huh.

5 Q. Now, in regard to these issues that are  
6 raised in these public hearings, how important do you  
7 believe it is for Ameren's top-level management to  
8 inquire as to these complaints, concerns and to  
9 explore rectifying them?

10 A. Uh-huh. It's absolutely important. And  
11 we are in the process of inquiring and investigating  
12 every single one of them, and we will follow up on  
13 every single one.

14 Q. Okay.

15 A. And those that can be fixed we will fix.

16 Q. Okay. Who is responsible to see that  
17 that's done?

18 A. It's in Richard Mark's area. But if you  
19 want to -- if you want to really say who's  
20 responsible, it's Tom Voss. Tom is president and CEO  
21 of AmerenUE, and it's Tom Voss's responsibility to  
22 get it done.

23 Q. Now, is it accurate to say that Ameren  
24 has been behind schedule in its vegetation management  
25 program?

1           A.       No, I don't think so.

2           Q.       All right.

3           A.       And maybe I'm splitting hairs, but  
4   it's --

5           Q.       Could be, but I don't know yet.  Let's  
6   keep going.

7           A.       It is accurate to say that several years  
8   ago we were ordered to adopt a four-year trimming  
9   cycle from a -- in some areas we had a five-year  
10   cycle because we felt that's what was needed in those  
11   areas.  Other areas we had a four-year cycle.

12                   We were ordered to adopt a five-year  
13   cycle in all areas.  We are on schedule in  
14   transitioning from five years to four years, so we're  
15   on that schedule.  However, not all lines are being  
16   trimmed now on a four-year cycle.

17                   So maybe that's a matter of semantics.  
18   We're on the schedule that we set, but we're not  
19   quite up to the four-year cycle everywhere.

20          Q.       So if there are others who have  
21   represented to this Commission such as Staff or  
22   otherwise that Ameren was behind on its tree trimming  
23   over the course of the last five years or so, you  
24   would disagree with that?

25          A.       I'm not sure when we adopted the

1 four-year cycle. If you go back five years, that may  
2 be before we started. And maybe it was characterized  
3 as behind because we were in some places on five  
4 years and you felt we should be on four years  
5 everywhere.

6 Q. Do you believe that AmerenUE has been at  
7 any point in time in the last ten years behind  
8 schedule on its tree trimming?

9 A. We've always been on a schedule that we  
10 felt was the right schedule. Now, the schedule --  
11 whoops -- the schedule that Staff has suggested is  
12 the right schedule is -- is a more aggressive  
13 schedule.

14 Q. Now, when was this latest schedule that  
15 you're talking about approximately?

16 A. Now, I am not sure how far back that  
17 goes. I think it was -- I think that's -- that has  
18 occurred within the last five years. We may have  
19 someone here who would know.

20 Q. Do you believe that Ameren's tree  
21 trimming has been adequate over the last ten years?

22 A. It -- it could be better. Now, when you  
23 say adequate, let me ask: Do you mean adequate in  
24 the sense that it's adequate for providing everyday  
25 service, or adequate for preventing outages in

1 storms?

2 Q. First let me ask you whether it's  
3 adequate from the standpoint of reasonable and  
4 prudent practices of a utility company.

5 A. That's probably a broad range and I  
6 would say it is adequate within those standards.  
7 Now, if the Commission has more specific standards,  
8 it -- it did not meet the four-year standard if  
9 that's where you're going. Five years ago we would  
10 not have met the four-year standard, and we are, you  
11 know, on target to get to a four-year standard.

12 I have to add, though, that we have  
13 always spent a lot of money on tree trimming relative  
14 to other companies in the industry and relative to  
15 other companies even in Missouri. And looking at our  
16 tree trimming on a cost-per-circuit mile, over the  
17 past five years, we've spent more money every year  
18 than any other utility in the state.

19 And looking at -- we have a sample of  
20 about 40 companies. We've spent more money in recent  
21 years, at least, than any company in the sample but  
22 one. So we spend a lot of money on tree trimming.  
23 Just if you look at it from the money point of view,  
24 it doesn't look like we're shorting tree trimming.

25 Q. Can you tell me whether or not are doing

1 as much -- well, strike that.

2 Have your -- have your tree trimming  
3 efforts improved your reliability over the last ten  
4 years

5 A. Yes.

6 Q. And when you say yes, tell me what  
7 measures of reliability you're referring to when you  
8 say -- answer that question.

9 A. The one that I'm thinking of is the  
10 frequency of outages, the SAIFI index, system  
11 averaging interruption frequency index.

12 Q. And have you had other measures of  
13 reliability that you've looked at?

14 A. The SAIDI index, the system average  
15 interruption duration index. I don't know if there  
16 is as clear an improvement trend there. We --  
17 however, we measure that one as well --

18 Q. Okay. And do you --

19 A. -- but we have seen steady improvement  
20 in SAIFI and would attribute it primarily to tree  
21 trimming.

22 Q. So you think your tree trimming  
23 practices in the last -- well, tell me when your  
24 improvement you believe began so we can have some  
25 point of demarcation.

1           A.       Over about the last five years.

2           Q.       Do you think that's the way the public  
3 perceives your tree trimming, that it's improved in  
4 the last four or five years?

5           A.       No.

6           Q.       Okay.

7           A.       The public gets their view from the  
8 newspapers.

9           Q.       So you think because the newspapers tell  
10 the public how to think, that they just automatically  
11 believe that and --

12          A.       Many people --

13          Q.       -- they can't think for themselves; is  
14 that what you're testifying to?

15          A.       Many people get their information from  
16 the newspapers, and the newspaper have an impact on  
17 general public opinion. Not everyone, but many  
18 people form their opinions based on the newspapers.  
19 And the newspapers have not reported the issues  
20 accurately. The newspapers have said that the  
21 outages like we've had don't happen anywhere else in  
22 the United States.

23                   Now, they've neglected to look at  
24 Kansas, Nebraska, Oklahoma, Texas, the West Coast,  
25 the East Coast, southwest Missouri and everywhere

1     else it's occurred. But they've noted people in  
2     St. Louis that this doesn't happen anywhere else in  
3     the United States.

4           Q.     Mr. Rainwater, have you looked at --  
5     have you gone out and inspected the lines in  
6     St. Louis yourself, let's say before the storms in  
7     '06?

8           A.     Yes, before the storms in '06 but also  
9     during the storms in '06.

10          Q.     Let's talk about prior to the storms.

11          A.     Okay.

12          Q.     Personally was that part of what you did  
13     as CEO, go out and look at those lines?

14          A.     To do line inspections?

15          Q.     Yes.

16          A.     No.

17          Q.     Okay. How did you know the condition of  
18     the vegetation management efforts of Ameren? How did  
19     you come about that knowledge?

20          A.     I know how much money we're spending on  
21     it, and I know what our customer satisfaction numbers  
22     are, I know what the outage rates are. And based on  
23     those, we frankly looked pretty good.

24                     With customer satisfaction in the top  
25     quartile of the industry prior to the storms, that

1 indicates to me that service was pretty good. Not  
2 the very best in the industry, but better than about  
3 three-quarters of the utilities in the industry. And  
4 the numbers have changed, and the only -- we're not a  
5 different company, we're not doing anything any  
6 differently. The only thing that's different is the  
7 storms.

8                   And I've said this before and even said  
9 this today, but to be sure everybody understands it,  
10 the storms that we had last year were the most severe  
11 in the United States, and they were the most severe  
12 to ever hit St. Louis area.

13           Q.       Mr. Rainwater, how does that have  
14 anything to do with some of the testimony that you  
15 were reading earlier aside from that which applied to  
16 the storms?

17           A.       Do you mean people whose testimony  
18 said --

19           Q.       People who were complaining about  
20 reliability issues that occurred at different times  
21 of the year where there was no major storm activity.

22           A.       Well, I won't argue that we're perfect  
23 and we do have pockets of reliability that are bad.  
24 But I would also caution that we not jump to the  
25 conclusion that all of the reports that we have here



1 are accurate. We will investigate every one of  
2 these.

3 And one of the things that I found in  
4 the past when we've done customer surveys and gotten  
5 feedback from customers, the number one complaint  
6 from customers, if we go back a year prior to the  
7 storms, was that our rates were way too high and we  
8 raised rates way too often.

9 And the fact was, we had not had a rate  
10 increase in 18 or 19 years and our rates were almost  
11 the lowest in the United States. And customers  
12 weren't just making it up; they honestly believed our  
13 rates were way too high and we raised them way too  
14 often.

15 And I think the same phenomena, given  
16 the storms and the focus on outages can have a  
17 spillover effect that people perceive problems to be  
18 greater than they may really be.

19 Q. So do you --

20 A. And I'm not making an excuse. Again, we  
21 will investigate every single outage. And if you  
22 want a commitment from me or anyone in our company to  
23 do better, we will absolutely do better. The lesson  
24 that I'm preaching within our company, that we need  
25 to take away from this storm. We can make the excuse

1     that this was an act of God, it was beyond our  
2     control, we could not do anything about it, overhead  
3     distribution systems are simply vulnerable to these  
4     kind of outages.

5                     However, customers expect more and it is  
6     our job to find ways to do better for customers. And  
7     until our customers are satisfied, we're not going to  
8     give up. We're going to find ways to make them  
9     satisfied and find ways to provide service so that we  
10    don't have these kinds of problems in these outages.

11                    Now, I know from a practical point of  
12    view, the only ultimate solution, I think -- and I'm  
13    hoping that we find something different than this --  
14    but the only way to really prevent these kinds of  
15    outages is to underground most of the distribution  
16    system so that it's simply not exposed to the  
17    weather.

18                    Tree trimming makes a little bit of  
19    difference. It makes a big difference during  
20    day-to-day, normal reliable service. It reduces all  
21    those nuisance outages. But in 100-mile-an-hour  
22    winds when trees are blown down, it really doesn't  
23    make any difference whether the tree was just trimmed  
24    or it hasn't been trimmed for five years.

25                    One of the things I saw in the July

1 storms last year, entire sections of line that had  
2 just been trimmed were severely damaged from wind.  
3 Other sections of line that hadn't been trimmed in  
4 four years were also damaged. You couldn't tell any  
5 difference.

6                   So lines that had just been -- trimmed  
7 versus lines that had not been trimmed, no noticeable  
8 difference in damage.

9                   In the December storm, when I went out  
10 and looked at facilities that had completely been  
11 rebuilt during the July storms -- and we built  
12 hundreds -- rebuilt hundreds of miles of line in the  
13 July storms. Same areas were hit by the December  
14 storm. Poles were broken, crossarms were broken,  
15 wires were broken on brand new lines just as severely  
16 as poles, crossarms and wires on lines that were 50  
17 years old. There was no noticeable or measurable  
18 difference.

19                   So people who point to the fact that,  
20 well, your lines are old, that's the problem; you're  
21 not maintaining your lines, that's the problem;  
22 you're not trimming the lines, that's the problem, I  
23 hope that we can find ways to at least improve those  
24 things in -- in -- in some respects. But the real  
25 problem is the lines are above ground exposed to the

1 weather, and if we want fix it, they need to go below  
2 ground and not be exposed to the weather.

3 Q. Mr. Rainwater, in the -- in the storm --  
4 the ice storm of '06, are you telling me that that  
5 storm, that the damage from that storm was due to  
6 blown-over trees, not falling limbs on lines?

7 A. It was a combination.

8 Q. And are you telling me that if a tree  
9 limb had been trimmed back over -- from over the top  
10 of a line, that it would have made no difference in  
11 the number of lines down --

12 A. Yeah, and that --

13 Q. -- in that ice storm?

14 A. You are putting your finger on one area  
15 that will make a difference. In the ice storm, you  
16 know, we trim around the lines and we leave an amount  
17 of overhang above the lines. You're probably aware  
18 of that, that sagged down into the lines and that  
19 caused outages.

20 The reason we don't just simply trim  
21 vertically all the way right up the right-of-way --  
22 which would certainly be any easy thing to do, we  
23 could do that -- it does not meet normal, you know,  
24 good, arboreous tree-trimming practices. If you do  
25 that, you will kill the branches and eventually kill

1 the trees, and the trees will fall over.

2 Q. I see.

3 A. To do it properly --

4 Q. So we should -- so have you been out to

5 visit any of the tree-trimming practices of the

6 co-ops lately?

7 A. If the co-ops are doing that, they're

8 probably gonna kill trees. That may be in areas

9 where the farmers don't care.

10 Q. I see.

11 A. But if you do that in Clayton --

12 Q. If you look at the expenditures that

13 have occurred in tree trimming over the last ten

14 years -- do you have that information?

15 A. Yes, we do.

16 Q. Okay. Is that part of the record, do

17 you know?

18 A. In this case --

19 Q. Yeah.

20 A. -- I'm not sure. I don't know.

21 Q. And it might be interesting for us to

22 see that and come -- as it is adjusted for increases

23 in cost as we go along.

24 A. Uh-huh. When you say the co-ops are

25 trimming vertically, they may be doing it correctly,

1     because there's a correct way to do it. If you cut  
2     all the way back to the trunk of the tree -- you  
3     can't just trim straight up, say, ten feet out from  
4     the trunk. But if you remove branches all the way  
5     back to the trunk, then that is considered good  
6     arboreous practices and that won't kill the tree.  
7     But to do that in a residential neighborhood is  
8     usually not possible.

9           Q.     Mr. Rainwater, do you know the nature of  
10    the easements that you have in your territory in  
11    St. Louis?

12          A.     Well, they vary but they are typically  
13    ten feet wide, and it gives us the ability -- around  
14    ten feet. I don't know the exact dimensions -- gives  
15    us the ability to trim three or four feet out from  
16    the wires. Now, if you could trim 25 feet out from  
17    the wires, it would make a huge difference.

18          Q.     Are you trimming out to the edge of your  
19    easements?

20          A.     Yes. I mean, there's no reason why we  
21    shouldn't trim to the edge of the easements.

22          Q.     I'm sorry, I didn't mean to talk over  
23    you. Go ahead.

24          A.     I've heard the complaint and I've seen  
25    it in these notes that we don't trim to the edge of

1 the easements. Why would we not trim to the edge of  
2 the easements.

3 Q. Well, I don't know, but it's  
4 interesting. Have you looked at the transcript of  
5 the hearing that we had here in Jefferson City with  
6 your AmerenUE official who's in charge of tree  
7 trimming, what he was asked about how far back he  
8 was -- the policy was to cut?

9 A. No, I have not seen that.

10 Q. Would it -- would you be surprised if  
11 you looked at that and he couldn't tell this  
12 Commission what that policy was?

13 A. Yes, I would.

14 Q. I would have been too. Now, when we  
15 look at this going forward, what is the intention of  
16 AmerenUE in regard to tree trimming as far as  
17 expenditures are concerned and what your policy will  
18 be?

19 A. Our budget this year is \$50 million for  
20 Missouri. We're going to get on a four-year trimming  
21 cycle as quickly as we can, and we are going to trim  
22 as aggressively as possible. We will generate a  
23 great deal more complaints from tree trimming, but we  
24 will trim as aggressively as possible.

25 We -- if we've ever had a public --

1 degree of public support to do that, we certainly  
2 have it now. If we don't have it now, we'll never  
3 have it.

4 Q. How much difference is there in that  
5 policy and what has been being maintained by AmerenUE  
6 in the last ten years?

7 A. Some difference. And I can't quantify  
8 it for you in terms of are we gonna trim six inches  
9 farther or a foot farther. We'll trim more of the  
10 overhang, we'll trim the entire overhang where we  
11 can, where we're allowed to. If you would expect,  
12 though, that it will make a huge difference in a  
13 storm --

14 Q. Mr. Rainwater, I didn't ask that  
15 question. Just bear with me here.

16 A. I just wanted to set the expectation.

17 Q. I know you have already made the  
18 statement several times that you don't generally  
19 think it's gonna make a great deal of difference in a  
20 storm if you do improvements in your tree trimming.

21 A. Because our practices were reasonably  
22 good to begin with.

23 Q. Okay. And what was your cycle prior to  
24 this year?

25 A. I think -- excuse me. I think that the



1 rule was a four-year cycle on 12 KB lines, five-year  
2 cycle on four KB lines. And we are currently  
3 four-year cycle on all lines. Now --

4 Q. Now, where did you get that -- where did  
5 you get that policy?

6 A. In discussion with Tom Voss. And I have  
7 to give you the caveat I may not have that exactly  
8 right. We need to get it for you from our tree  
9 trimming people. We can give you the policy  
10 precisely.

11 MR. BYRNE: Your Honor, we do have Ron  
12 Zdellar testifying later on who will provide  
13 testimony on tree trimming.

14 COMMISSIONER GAW: Perhaps he has looked  
15 at the policy on easement since the last time he was  
16 here.

17 MR. BYRNE: Perhaps he has.

18 BY COMMISSIONER GAW:

19 Q. From the standpoint of vegetation  
20 management, how much difference was there in the  
21 vegetation management done in Missouri from what was  
22 done by the Ameren companies in Illinois?

23 A. In Illinois we're on a four-year cycle  
24 already. In Illinois there's not as many trees. We  
25 have about the same size system, and we spend 30

1 million dollars a year in trimming. There are 50  
2 million in Missouri.

3 Q. Because you don't have as many trees  
4 over there?

5 A. Density of trees is lower.

6 Q. Has a lot to do with -- does that have  
7 something to do with what this Commission should look  
8 at when they're ranking the expenditures on tree  
9 trimming between different companies?

10 A. It certainly makes a difference how  
11 wooded an area is.

12 Q. Okay.

13 A. Arizona is not gonna spend a lot of  
14 money tree trimming.

15 Q. Okay.

16 A. Don't need to tree trim many cornfields  
17 in Kansas or even Illinois.

18 Q. Yes, sir. Does Ameren have a policy on  
19 infrastructure replacement?

20 A. No, I don't think that we do.

21 Q. Why is that?

22 A. In terms -- well, because it is fairly  
23 common practice and may even -- now, this is -- this  
24 is -- this is my view as the CEO. And please talk to  
25 experts, because this may not be exactly right, but

1 this is my take -- is that decades of experience in  
2 this business we have learned that the lowest-cost  
3 approach to the business is to operate equipment to  
4 failure rather -- rather than, for example, replace  
5 transformers when they're 40 years old.

6                   And, in fact, people have told me that  
7 the probability of failure of a 40-year-old  
8 transformer is actually less than the probability of  
9 failure of a brand new transformer in part because  
10 old transformers were built better, but in part  
11 because any piece of new equipment is subject to a  
12 greater probability of failure in the first year or  
13 so of operation. So the best policy is simply allow  
14 equipment to operate until failure.

15                   Now, it does need to be inspected. We  
16 need to do line inspections, we need to do pole  
17 inspections. And where we find crossarms,  
18 insulators, poles that need to be replaced, we need  
19 to do that work.

20           Q.       Earlier you looked at some pictures that  
21 I had you examine from some of the public testimony  
22 that had poles that you were -- expressed concern  
23 about. Can you tell me whether or not those poles  
24 are the subject of any infrastructure replacement  
25 program of Ameren?

1           A.       I can't comment on those specific poles,  
2     but if we have those pictures and locations, we will  
3     inspect every single one and determine whether it  
4     needs to be replaced or if it's safe to operate as it  
5     is.

6           Q.       Can you tell me why that would not have  
7     already occurred?

8           A.       It actually may have, and I can't tell  
9     you if it has or not.

10          Q.       So --

11          A.       Very often --

12          Q.       Is it possible that those pictures that  
13     are in that group of pictures that you examined just  
14     appear to be bad and they're not truly bad?

15          A.       Well, it looks to me like many of the  
16     poles in the pictures are leaning, which may or may  
17     not mean it's bad. Depends on how --

18          Q.       Or extremely crooked?

19          A.       Or crooked.

20          Q.       Does that mean that they could have some  
21     cracks or breaks in them?

22          A.       I'm not enough of an expert to know. I  
23     do know that some leaning poles have been inspected,  
24     and even though they're leaning, they're perfectly  
25     structurally sound. They may not look good, but

1     there isn't a good structural reason to do anything  
2     about them.

3           Q.     You can't tell me about that with -- in  
4     regard to these poles?

5           A.     These poles we need to inspect every  
6     single one and tell you on every single one what the  
7     problem was.

8           Q.     But you don't have a current  
9     infrastructure replacement program other than, when  
10    it breaks, you replace it?

11          A.     When it breaks or if it is -- if -- if  
12    it doesn't just break instantly with no indication  
13    ahead of time, if a pole is leaning or crooked or  
14    partly cracked, those would be replaced. We -- we  
15    don't have a infrastructure replacement pole that  
16    operates in the way that some people have suggested,  
17    that when a facility is 40 years old, you should just  
18    replace it. We don't do that.

19          Q.     You don't either have an inspection  
20    system that has a deeper inspection of those items  
21    that are older; is that correct?

22          A.     I believe that that is correct, although  
23    that is one of the things that we are changing  
24    effective this year as a result of the storms.

25          Q.     Do you have reliability numbers for

1 individual circuits in your system?

2 A. I think that we do.

3 Q. Okay. Do you know what particular tests

4 on circuits you have or what -- what ratings are done

5 on circuit levels?

6 A. Do you mean -- I'm not sure what you

7 mean by tests.

8 Q. Well, for instance you mentioned SAIFI

9 and other things earlier. Do you have --

10 A. Oh, okay. That's just data collection.

11 Q. Yes.

12 A. We would had have SAIDI and SAIFI data,

13 I think, by circuit.

14 Q. Is that something that you could supply

15 to this Commission?

16 A. Yes, certainly.

17 Q. And when you have --

18 A. Whatever data we have.

19 Q. When you look -- when you gather that

20 data, if you show poor performing circuits, what is

21 the policy of AmerenUE in regard to these circuits?

22 A. The policy is to improve the reliability

23 of the worse performing circuits.

24 Q. Okay. And do you have a history of

25 showing how those poor performing circuits are

1 improved as in a time sequential manner?

2 A. We probably do but I am not familiar  
3 with that. And we will try to get that data for you  
4 as well.

5 Q. Okay. What I'm interested in is to see  
6 that there is some --

7 A. Uh-huh.

8 Q. -- improvement plan that's instituted  
9 and that there is some result-oriented bar that is  
10 required to ensure that those circuits are  
11 improved --

12 A. Uh-huh.

13 Q. -- and so that I can and the rest of the  
14 Commissioners can see what it is that's actually  
15 accomplished with that policy, okay?

16 A. Okay.

17 Q. In regard to that issue, are you  
18 personally briefed on where the poor-performing  
19 circuits or areas are within AmerenUE?

20 A. No.

21 Q. Were you when you were CEO of UE?

22 A. No. I'm personally briefed on overall  
23 parameters, system numbers and how they rank relative  
24 to the industry, so I know that overall we're  
25 roughly, you know, top quartile or close to top

1     quartile. But I've never gotten down to the level of  
2     looking at the pertinent -- obviously we're not the  
3     same across the whole system. Some are better, some  
4     are worse.

5           Q.     Well, it's very, very possible, isn't  
6     it, Mr. Rainwater, that the system could look better  
7     than average but that there would be individual areas  
8     within the Ameren territory that were very poor  
9     performing?

10          A.     Uh-huh, that is certainly possible.

11          Q.     And I guess what I want to know from you  
12     is, who is the top -- the highest level official that  
13     gets that information and has the authority to fix  
14     it?

15          A.     Uh-huh.

16          Q.     Can you tell me?

17          A.     It's likely Richard Mark or Tom Voss.  
18     But those are the kind of issues that normally would  
19     go to district managers, and I'm not sure that they  
20     would go above the district managers, but they would  
21     have that data on circuits in their -- in their  
22     areas.

23          Q.     Is Mr. Mark a part of what was called  
24     your senior team?

25          A.     No, he is not.



1           Q.       In the testimony that we were talking  
2   about earlier at the public hearings, would you agree  
3   with me that there were significant numbers of  
4   individuals who expressed support for the work of the  
5   AmerenUE line workers and others who were there  
6   engaged in the duty that they had during the storms?

7           A.       Yes, I would.

8           Q.       Would you agree with them --

9           A.       That the line workers did a good job?

10          Q.       Yes.

11          A.       Yes, they certainly did.

12          Q.       All right. Do you believe that they did  
13   a job that was less well done than what Ameren's top  
14   level management did in 2006?

15          A.       Absolutely not. I -- I believe that all  
16   employees of our company did a terrific job on all of  
17   the storms last year. And the rap that we've gotten  
18   in the newspaper -- and I'm sure that customers have  
19   repeated that because that's what they've read in the  
20   newspaper, that the line workers in the field are  
21   doing a great job, but still the people in the  
22   general office, the company, it's a bad company  
23   because -- and the logic is because if they had  
24   maintained the lines and trimmed the trees, this  
25   would not have happened in the first place, and

1 maintaining the lines and trimming the trees is not  
2 the problem. I'm not saying that we can't marginally  
3 improve performance in storms by doing better there,  
4 but it will be only marginal improvement.

5 Q. Mr. Rainwater, the testimony that you  
6 read a little earlier regarding the outages in the  
7 gin mills and the engineers that were down in  
8 southeast Missouri, do you think they would agree  
9 with you that the system is -- the reliability of the  
10 system is not the problem?

11 A. No, I don't, and I don't know what the  
12 problem is there, but that strikes me as a real  
13 problem.

14 Q. If reliability in the system in segments  
15 of UE's territory is a significant problem, who bears  
16 the responsibility for that?

17 A. Well, our company does.

18 Q. Well, the company is -- the company I  
19 understand.

20 A. Okay I do.

21 Q. And I'm not -- I'm looking for you to  
22 tell me who is it that's supposed to fix it. And if  
23 you don't know about it, who is it that was supposed  
24 to tell you?

25 A. Uh-huh.

1           Q.       I mean, I understand you can take the  
2     position here that this is my responsibility, the  
3     buck stops here and all of that, but what I'm looking  
4     for is, where did this fall apart?  If there was a  
5     breakdown in communication, where did that occur?

6                    If these complaints are legitimate and  
7     there are issues out there in regard to reliability,  
8     where did that break down?  If you know.

9           A.       I don't know, and that's --

10          Q.       Where do you find out?

11          A.       I'll take that as a to-do to find out.

12          Q.       Haven't you already taken that as a  
13     to-do as head of the company?

14          A.       Yes, I have.

15          Q.       What have you found so far?

16          A.       I have not found -- I haven't gotten  
17     that far with it.

18          Q.       Do you think that the officers who  
19     received the extra incentive pay as opposed to  
20     bonuses that you don't want to call it, do you think  
21     that it is -- was a good decision for Ameren to do  
22     that in light of all of the publicity that occurred  
23     in 2006, and particularly in light of the fact that  
24     the guys and the women that were out there trying to  
25     restore service got zip?

1           A.       Well, the guys and the women who were  
2 out there restoring service were paid double time 16  
3 hours a day and got a great deal more money for the  
4 work that they did.

5                    The guys and girls back at the office  
6 who were also working 16 hours a day all during that  
7 storm got less than their normal pay, did not get any  
8 extra pay, got less than their normal pay because of  
9 the performance of the company last year.

10          Q.       Would you trade?

11          A.       Would I trade? Well, no.

12          Q.       Would you trade salaries?

13          A.       Would I like to be a linemen?

14          Q.       Would you trade their salary?

15          A.       If I'd chosen to be a lineman, I would  
16 have been a linemen. But I didn't choose to be a  
17 lineman. I chose to be an engineer.

18          Q.       Most engineers make your salary?

19          A.       No, sir, they don't. But our linemen  
20 are well paid. They work hard, they deserve the pay  
21 they get. And if our company had met its performance  
22 targets, our linemen would get a bonus also. Our  
23 linemen get market pay whether the company does well  
24 or not, but they get -- they do also get a bonus if  
25 the company does better than the targets that we set,

1 so we try to treat them fairly.

2 Q. Try to treat them fairly as in -- as in  
3 treating them the same as the management that did get  
4 the incentive pay for 2006?

5 A. Yeah. Now, when management got  
6 incentive pay, they got an amount of incentive pay  
7 that is less than their market pay, so they did not  
8 even get the standard market pay.

9 Q. How do you define market pay?

10 A. Market pay is the median of the market  
11 for equivalent jobs across our industry. So an  
12 engineer in a power plant, we have a pretty good  
13 benchmark on what they make all across the industry.

14 And in our company we set his base pay  
15 at about 85 percent of the median. And if the company  
16 performs well, he can earn 100 percent; he can earn  
17 the median pay. If we perform exceptionally well, he  
18 can earn about 115 percent.

19 But if the company doesn't perform well,  
20 he has pay at risk. That's the key difference  
21 between management pay and union pay. His union --  
22 union folks have no pay at risk. Regardless of how  
23 the company performs, they get their market rate.

24 Q. I see.

25 A. And we set their market pay --

1 Q. What is the market rate for a lineman?

2 A. Our lineman make, for a 40-hour week,  
3 somewhere around 70 to \$80,000 a year. And in a year  
4 like this, many will make well over \$100,000.

5 Q. What's the market for a CEO?

6 A. The market rate for a CEO for a company  
7 of our size is about two million dollars.

8 Q. Was it appropriate to have a different  
9 cutoff set in regard to -- a change in the cutoff set  
10 in order to deliver incentive pay for '06, or was  
11 that an inaccurate report in the newspaper?

12 A. I'm not following your question.

13 Q. I guess we can get the newspaper.

14 A. Is this the Jeff Tomich article?

15 Q. Yes. Although you might prefer to look  
16 at the Bill McClellan article. I'm not sure.

17 A. Okay.

18 Q. Which one was -- which one was your  
19 favorite?

20 A. Well, Bill McClellan's always got a  
21 little humorous twist to it.

22 Q. There was a different setting, was  
23 there, in regard to the performance level in order to  
24 get the incentives -- incentives pay; is that  
25 accurate?

1           A.       Oh, what you're talking about is that we  
2       adjusted the company's earnings to reflect the amount  
3       of money that we had spent on storms, so that  
4       effectively raised the earnings and we were able to  
5       pay out under the plan versus not paying out under  
6       the plans.

7                       And the logic for that is to not adjust  
8       for storms. When people had done good work during  
9       the storms, had worked extraordinarily long hours, to  
10      not adjust for those storms would have penalized them  
11      for good performance during the storms, so it's only  
12      right to adjust for the storms.

13          Q.       Mr. Rainwater, how important is it for  
14      AmerenUE to have good public relations?

15          A.       Well, it's very important.

16          Q.       Is it as important as paying those --  
17      that incentive payout?

18          A.       Well, you're suggesting that we have  
19      roughly two or three thousand management employees  
20      that we pay unfairly low salaries to all of those  
21      people?

22          Q.       I'm not suggesting anything I'm just  
23      asking you -- I'm just asking you whether or not  
24      paying that incentive pay out was worth taking the  
25      hit on your public relations side. I guess the

1 answer to that is yes?

2 A. Paying the incentive pay was the right  
3 thing to do for the employees.

4 Q. Was it the right thing to do for  
5 AmerenUE?

6 A. Yes, it was.

7 Q. All right and was it the right thing to  
8 do to pay those -- those employees and not give any  
9 additional reward to the linemen that were out there?

10 A. We would have given additional reward to  
11 the linemen if we had met the targets set for the  
12 linemen.

13 Q. Didn't you adjust the target for those  
14 that were in management?

15 A. We adjusted the target for everyone.  
16 But those in management --

17 Q. But, gee whiz, the linemen just didn't  
18 happen to quite make it, even though the target got  
19 adjusted so that the others could.

20 A. We aren't quite communicating on how the  
21 plans work.

22 Q. Probably not.

23 A. The management people were in the  
24 category of losing money, not adding money.

25 Q. How much?



1           A.       We just lost less than we would have if  
2 we had not adjusted for the storms. We still lost  
3 money. We still were paid below market. Union  
4 people were paid at market plus overtime.

5           Q.       Mr. Rainwater, you're an engineer.  
6 You're also a historian?

7           A.       Well, I am chairman of the Missouri  
8 Historical Society.

9           Q.       I thought you were. How about history  
10 of Europe, do any of that?

11          A.       I do occasionally watch the History  
12 Channel.

13          Q.       History of France, for instance?

14          A.       I've been watching barbarians.

15          Q.       That's pretty good. That may be good  
16 lessons for you, I don't know. I just wondered if  
17 you would -- ever verified whether Marie Antoinette  
18 really did say, "Let them eat cake"?

19          A.       The story I've heard is that that is not  
20 an accurate comment.

21          Q.       Even though it wasn't --

22          A.       She was probably trying to explain her  
23 incentive compensation, which was a loser, I will  
24 guarantee.

25          Q.       She probably was. Do you think that

1     whether she said it or not, her public relations  
2     suffered?

3           A.       Evidently it did.  When I get home,  
4     though, I'm gonna give Bill McClellan a call and see  
5     if I can straighten him out.

6           Q.       And tomorrow he will probably write  
7     another article just for you?

8           A.       Very favorable, I'm certain of that.

9           Q.       He's good friends with your new hire, I  
10    think, too.

11          A.       He's good friends with all of us.  We're  
12    gonna take him out to a very expensive restaurant  
13    because that was his suggestion, is buy him a bottle  
14    of wine and things will be great.

15          Q.       He might respond to that, I don't know.  
16    Let me see if I can wind this up.  I want to real  
17    quickly ask you, if I could find it again, are you  
18    familiar with the EF-77-197 case involving EEI and  
19    AmerenUE in the request to modify the contract on --  
20    that UE had with EEI?

21          A.       No, I'm not.

22          Q.       Okay.  First, Mr. Rainwater, I want you  
23    to note there's a word underlined, and the only  
24    reason that's there is because I wanted you to read  
25    the sentence or two that follows that.

1           A.       Okay.

2           Q.       But if you would turn to the front page.  
3 And do you see any kind of a caption or something up  
4 there?

5           A.       Yes.

6           Q.       Do you want to take a look at it, tell  
7 me if it looks like a case involving EEI and UE?

8           A.       This was filed in 1977. Okay.

9           Q.       Yeah. Does it look like it pertains to  
10 EEI?

11          A.       Yes, it does.

12          Q.       Do you want to flip back over to that  
13 page that has the line underlined? And just read  
14 that sentence. And I can't remember if it's one  
15 sentence or two. If you want to keep reading, I  
16 don't care.

17          A.       "For the Court"?

18          Q.       Yes.

19          A.       "Said companies to make payments to EEI  
20 sufficient to enable EEI to pay its operating and  
21 other costs and expenses as aforesaid so that in the  
22 event that EEI is unable for any reason to generate  
23 or deliver any power or energy to the sponsoring  
24 companies, they will nonetheless be obligated to  
25 continue payments to EEI.

1                   "The obligations of the sponsoring  
2 companies are proposed to be so enlarged in order to  
3 induce the purchase of the eight and a half percent  
4 bonds by Metropolitan Life Insurance Company.

5                   "The enlargement of such obligations  
6 will give the purchaser assurance that EEI will have  
7 the necessary funds to meet its obligations with  
8 respect to all bonds outstanding under the mortgage."

9           Q.       Okay. Basically there was an approval  
10 in '77 of an additional obligation of Union Electric  
11 to secure and guarantee certain financial obligations  
12 of EEI; wouldn't that be the correct case?

13          A.       Yes.

14          Q.       And, in fact, there was an amendment to  
15 the intercompany agreement regarding EEI that  
16 reflected that, wasn't there?

17          A.       I think that's correct.

18                   COMMISSIONER GAW: Okay. And for the  
19 time being, then, I'm done. Thank you. And if --  
20 if, Judge, can we take notice of these cases if we  
21 haven't already done so?

22                   JUDGE WOODRUFF: Which case are you  
23 referring to?

24                   COMMISSIONER GAW: This one that  
25 Mr. Rainwater has a copy of. And then there's

1     also -- there's also the original case which I'm  
2     gonna have to -- I'm gonna have to find in a little  
3     bit.

4                   JUDGE WOODRUFF:  Is that the original  
5     case from the 1950s?

6                   COMMISSIONER GAW:  Yes.

7                   JUDGE WOODRUFF:  Correct me if I'm  
8     wrong.  Were those cases cited in anyone's prefiled  
9     testimony?

10                  MR. DOTTHEIM:  Yes, I think they're  
11     cited in a number of witnesses' testimonies.

12                  JUDGE WOODRUFF:  Are the orders  
13     themselves also attached to any of those testimonies?

14                  MR. DOTTHEIM:  No, I don't believe the  
15     orders themselves or -- and I think the orders from  
16     the '50s where -- excuse me -- where Union Electric  
17     Company sought -- applied for authorization to  
18     acquire the shares of --

19                  MR. MICHEEL:  Could you talk into your  
20     microphone, Steve?

21                  MR. DOTTHEIM:  I believe those are  
22     unreported cases.

23                  COMMISSIONER GAW:  They are unreported,  
24     as a matter of fact.  I have copies of them from our  
25     microfilm, if that's sufficient, Judge, to get them

1 off of our records. But there is an application and  
2 a report and order in Case Number 12064.

3 JUDGE WOODRUFF: Well, since it's part  
4 of our own records, we can certainly take  
5 administrative notice of them. If the parties would  
6 like, we can have them marked as exhibits as well.  
7 Commissioner?

8 COMMISSIONER GAW: Whatever works for  
9 everyone.

10 JUDGE WOODRUFF: We don't have to  
11 necessarily do it right now if you want to have  
12 copies made of them --

13 COMMISSIONER GAW: I can just give them  
14 to you, Judge. And Mr. Rainwater's got the only  
15 other copy of the other case that I have. If he'd  
16 send it back, that would be great.

17 JUDGE WOODRUFF: We can deal with them  
18 tomorrow. Anything else, Commissioner?

19 COMMISSIONER GAW: No.

20 JUDGE WOODRUFF: Commissioner Murray, do  
21 you have any questions?

22 COMMISSIONER MURRAY: Yes, I only have a  
23 couple of questions.

24 QUESTIONS BY COMMISSIONER MURRAY:

25 Q. Good evening, Mr. Rainwater.

1           A.       Good evening.

2           Q.       Do you feel like a punching bag after  
3 how many hours is it on the stand?

4           A.       It's just kind of a continuation of the  
5 past year.

6           Q.       I would like to ask you something which  
7 is probably going to be in-camera. Both of my  
8 questions, I believe, Judge, are likely to be  
9 in-camera.

10                   JUDGE WOODRUFF: At this point, then, we  
11 will go in-camera.

12                   (REPORTER'S NOTE: At this point, an  
13 in-camera session was held, which is contained in  
14 Volume 24, pages 2102 through 2107 of the transcript.)

15

16

17

18

19

20

21

22

23

24

25

1 JUDGE WOODRUFF: All right. We're back  
2 in public then.

3 BY COMMISSIONER CLAYTON:

4 Q. Okay. Now we're back on the air.  
5 Mr. Rainwater, I just wanted to ask you, you  
6 mentioned -- you mentioned that you had taken the  
7 time to read some of the testimony in the local  
8 public hearings. Did I hear that correctly?

9 A. Yes, you did.

10 Q. And I think your testimony was that you  
11 had read 100 pages, maybe 200 pages worth of  
12 testimony?

13 A. Yes, I did.

14 Q. And was that testimony associated with  
15 the public hearings held in this rate case?

16 A. There -- yes, it was. And I read  
17 portions of all of the volumes. There were about 12  
18 volumes.

19 Q. So it would have been -- each of the  
20 hearings that would have been conducted as part of, I  
21 guess, the rate case or the complaint case, no matter  
22 how you look at it. Do you recall the dates of those  
23 hearings? You said you looked at bits of each of  
24 them; is that correct?

25 A. I've looked at some of all of them.



1           Q.       Okay. Did you review any of the  
2 testimony from the local public hearings held  
3 following the storm outages in 2006?

4           A.       Not unless they were a part of the  
5 documents that I've reviewed recently.

6           Q.       You mean today or --

7           A.       No, I mean within the last couple of  
8 weeks.

9           Q.       Okay.

10          A.       And I had assumed that they were because  
11 a lot of the complaints were related to the storms,  
12 but it may have been just a part of the -- of the  
13 rate case.

14          Q.       Well, you mentioned that the specific  
15 complaints that were made as part of the testimony in  
16 the local public hearings were gonna be followed up  
17 on by your staff. Did I hear that correctly?

18          A.       That is correct.

19          Q.       And when was that decision made to  
20 follow up on those complaints?

21          A.       Last week. Well, actually that's when I  
22 got involved in it, and I think the decision had  
23 already been made, but I intended to insist that it  
24 be followed up on, and what I found is that we were  
25 already doing that.

1           Q.       Okay.  So -- well, you made the  
2   directive last week that you wanted -- you insisted  
3   that the complaints were followed up on.  But did  
4   someone tell you that they were following up with the  
5   specific complaints in the testimony prior to last  
6   week?

7           A.       But -- no.  When I said that I would  
8   like to have it done, I found out that it was already  
9   being done.

10          Q.       It was already being done.  And were you  
11   told any type of progress report on the specific  
12   complaints that were made?

13          A.       No, I have not.

14          Q.       Can you tell me whether someone is  
15   following up on the specific complaints made on the  
16   items listed in the testimony from the storm outage  
17   local public hearings?

18          A.       I'm not sure about that.

19          Q.       Those hearings were held, I believe, was  
20   it the month of September?  I don't have the exact  
21   date.  You would agree that those were held October  
22   2006.  Does that sound like the date when we held  
23   those hearings, do you know?

24          A.       I don't know.

25          Q.       You don't know?

1           A.       No.

2           Q.       Okay.  Would it be possible to have  
3 Ameren follow up on the specific complaint --  
4 complaints made part of those -- that testimony in  
5 those local public hearings?

6           A.       Absolutely.  We will follow up on all of  
7 those as well.

8           Q.       I think you said that you weren't for  
9 sure if you reviewed the testimony in those cases.  
10 Are you aware if anyone else in senior management has  
11 reviewed that testimony?

12          A.       I don't know but I'm sure that someone  
13 has.

14          Q.       You're aware that there were a number of  
15 state legislators who appeared at those hearings?

16          A.       Yes.

17          Q.       I can't say it was very positive  
18 testimony when they gave it.  It may be worthwhile  
19 for Ameren to follow up with those legislators from  
20 the storm outage hearings.

21          A.       Thank you.

22          Q.       Since you haven't reviewed or at least  
23 you don't think you've reviewed those, I was gonna  
24 ask you whether you saw any consistencies that  
25 occurred throughout that testimony.  Can you answer

1     that question?

2             A.       Well, I did see comments in the  
3     documents that I reviewed that were related to the  
4     storms.

5             Q.       Did you see any consistencies outside of  
6     storm outages, themes that came up in throughout  
7     different parts of the metropolitan area aside from  
8     problems with the storm?

9             A.       Some themes I noted were communications  
10    issues, the call-in problem with the automated  
11    system, timeliness of finding information on  
12    restoration times and those -- issues around  
13    communications more than anything else.

14            Q.       Would it surprise you if I told you that  
15    there was a consistent theme through much of that  
16    testimony regarding general reliability during  
17    regular weather condition periods?  Would that  
18    surprise you?

19            A.       No, it would not.

20            Q.       Okay.  Do you have an explanation for  
21    such consistencies of nonstorm-related reliability  
22    issues?

23            A.       Again, we'll look into all of them, but  
24    my suspicion is that it is more related to the storm  
25    even though people now have brought up more -- more

1 items that are outside the storm period, that they  
2 are likely related to the storm. Not necessarily  
3 caused by the storm; simply highlighted by the storm.

4           You know, the reliability data that we  
5 have, you know, prior to the storms indicates that  
6 we -- we do not have a general reliability problem.  
7 That reliability is better than the norm for the  
8 industry.

9           Q.       So do you believe -- do you believe that  
10 those individuals who testified on general  
11 reliability issues were just mistaken or misinformed?

12          A.       Or in areas where we do have reliability  
13 problems, because while the system in general is  
14 better than the norm, there certainly are areas that  
15 are below the norm.

16          Q.       What areas do you believe are in need of  
17 attention?

18          A.       The more rural areas are the areas that  
19 are typically cited. Areas around Potosi, for  
20 example.

21          Q.       And you say that those areas are in need  
22 of attention not based on testimony in the local  
23 public hearings, but because of what?

24          A.       Well, that's based on the testimony in  
25 the public hearings that I cite those.

1           Q.       Okay.  So you -- have you confirmed  
2   through the measurement, the reliability measurements  
3   made by Ameren, have you reviewed those to see if  
4   reliability problems do exist in those areas?  Have  
5   you confirmed that?

6           A.       No, I have not.  People are working on  
7   that.

8           Q.       Okay.  So you accepted the testimony  
9   that there are general reliability problems in those  
10  rural areas; is that a fair statement?

11          A.       Yes, I do.

12          Q.       Okay.  How about other places like in  
13  Spanish Lake or North County St. Louis?

14          A.       I did notice that Spanish Lake has been  
15  mentioned as well.

16          Q.       Okay.  Have you been able to compare  
17  reliability metrics for performance in North County  
18  to compare that testimony with what you-all are  
19  measuring?

20          A.       I have not, but we will determine if  
21  that's accurate.

22          Q.       Do you know if anyone has done that so  
23  far?

24          A.       People -- people are working on it.

25          Q.       Have they been working on it since the

1     hearings that were held in October of 2006?

2             A.       I'm not sure how long.

3             Q.       When do you think these problems will be  
4     addressed or at least analyzed to determine whether  
5     there's a problem?  If it's been six months, can you  
6     tell me when those problems will be addressed in  
7     those areas?

8             A.       I simply don't know the status of it.

9             Q.       Who would be the person that would be in  
10    charge of that that would be the right person to  
11    answer that question?

12            A.       Tom Voss.

13                    COMMISSIONER CLAYTON:  Is Mr. Voss on  
14    the witness list in this case?

15                    MR. BYRNE:  No.  We do have Ron Zdellar  
16    who is in that line that might be an appropriate  
17    person.

18    BY COMMISSIONER CLAYTON:

19             Q.       Okay.  Well, Mr. Rainwater, would you  
20    agree that six, seven months is a long time to pass  
21    if no one has, indeed, addressed the problems in  
22    those areas?

23             A.       Yes, it is.

24             Q.       You mentioned -- you mentioned that you  
25    thought some customers who are providing negative

1 testimony perhaps were providing that testimony  
2 because of anger over the storm or because of  
3 newspaper reporting; did I accurately characterize  
4 that statement?

5 A. Yes, you did.

6 Q. Okay. And do you believe that Ameren  
7 bears any responsibility for either improper action  
8 or inaction associated with the storm outages?

9 A. If you're asking did we perform  
10 perfectly and as well as could possibly be done, no  
11 one is perfect and we've made mistakes. If you're  
12 asking did we do well relative to other companies, my  
13 view is that we've done better than most other  
14 utility companies, probably better than three-  
15 quarters of other utility companies in response to  
16 the storms.

17 Q. If we were to go back prior to the first  
18 outage that I recall -- significant outage that I  
19 recall since being on the Commission which occurred  
20 this 2004, if we were to go back before that date, is  
21 there anything that Ameren could have done to reduce  
22 the severity, the duration or the frequency of the  
23 outages that were faced in '04, '05, '06 or even '07?

24 A. Well, certainly there are things that  
25 could have been done. We could have taken drastic



1 measures and undergrounded lines, we could have  
2 clear-cut trees over wide areas. But are there --  
3 are there reasonable things that fit in the standards  
4 of --

5 Q. You can use the word reasonable.

6 A. -- that fits good practices by utility  
7 companies? I do believe we were following good  
8 practices, practices, you know, among the best, in  
9 fact, among utility companies. And for the most  
10 part, the outages we experienced in all of the storms  
11 in 2006 were due to weather and were largely not  
12 preventable.

13 Q. Do you think their severity could have  
14 been reduced in some fashion? If you take away the  
15 preventable, is there any way that their severity  
16 could have been reduced?

17 A. Last year we spent \$50 million in tree  
18 trimming. If we spent \$100 million in tree trimming,  
19 we might have reduced the outages somewhat. It would  
20 not have eliminated them. It might have been reduced  
21 the outages 5 to 10 percent.

22 Q. Are you aware -- sorry.

23 A. So certainly there are some things that  
24 could have been done.

25 Q. Are you aware of how that figure -- did

1     you say 150 millin? 50 million.

2             A.       We spent 50 million -- well, just under  
3     50 million. About 47.

4             Q.       Do you know how that figure breaks down?  
5     Who was paid, who received the funds from that 50  
6     million dollars? Like how much was spent in-house by  
7     independent contractors?

8             A.       Oh, it was all spent by independent  
9     contractors. We don't do in-house tree trimming.

10            Q.       So 100 percent of that \$50 million was  
11    on external staff, so to speak?

12            A.       Uh-huh.

13            Q.       Okay. Do you know what percentage of  
14    that \$50 million was spent -- spent prior to the  
15    first outage in July?

16            A.       No, I do not.

17            Q.       Do you know, can you give me a breakdown  
18    of what percentage of that \$50 million was spent in  
19    storm -- storm reconnection or after-storm activities  
20    versus pre-storm activities?

21            A.       No, sir, I cannot. We can get those  
22    numbers for you if you like.

23                    COMMISSIONER CLAYTON: Is there a  
24    witness who will have that information, do you know?

25                    MR. BYRNE: Yes, your Honor.

1 Mr. Zdellar knows all that information.

2 COMMISSIONER CLAYTON: Mr. Zdellar.

3 Okay.

4 BY COMMISSIONER CLAYTON:

5 Q. You mentioned several times that -- that  
6 Ameren ranks high on customer service satisfaction.  
7 Is that -- did you say that earlier?

8 A. I mentioned that prior to the storms we  
9 ranked high on customer service satisfaction, and the  
10 numbers are lower now but still above -- above  
11 average.

12 Q. And how was that determination made that  
13 you ranked so highly on customer service  
14 satisfaction?

15 A. We relied on a couple of outside  
16 surveys. J.D. Powers is one of the surveys that we  
17 use, and we also use the University of Michigan  
18 studies. And we do internal surveys of our own as  
19 well.

20 Q. Is the University of Michigan, is that  
21 an independent survey or do you all pay for that?

22 A. We may pay for the results, but it's an  
23 independent objective study.

24 Q. And the J.D. Power, do you pay for that  
25 type of service?

1           A.       I think we do probably pay for that as  
2 well.

3           Q.       So do they -- when a survey is gonna be  
4 done, do you all bring them in and -- do you know how  
5 these surveys are done? Let me ask that before I get  
6 into the specifics.

7           A.       No, not personally. But people in the  
8 company know in detail how the surveys are done.

9           Q.       Well, is there any customer service  
10 survey that is done that AmerenUE does not pay for  
11 aside -- well, are there any that Ameren does not pay  
12 for?

13          A.       No.

14          Q.       None. Okay. Does Ameren design the  
15 questions for the surveys?

16          A.       I don't believe we do for J.D. Powers  
17 and Michigan. That's why those are considered  
18 objective. Even though we have to pay for the  
19 results, they're considered objective. And we do  
20 design the questions on our own internal customer  
21 surveys.

22          Q.       Okay. I want to ask you some questions  
23 about probably -- I want to ask you some questions  
24 about the incentive compensation which has been  
25 touched on today. Can you clarify for me just the

1 earnings-per-share targets that triggered the  
2 incentive compensation for senior management? What  
3 was that amount?

4 A. \$2.90 per share, I think.

5 Q. And what was the earnings per share to  
6 trigger, I suppose, everyone else or whoever else has  
7 been listed in newspaper reports? What was that  
8 earnings per share?

9 A. 3.15 per share.

10 Q. Per share. And if Ameren would have  
11 made earnings per share of \$3.15, who would have  
12 received incentive compensation or a bonus or  
13 whatever you call it, who would have received it  
14 then?

15 A. All of our employees, including union  
16 employees.

17 Q. Now, is it accurate to say that the  
18 management and the rest of the employees were all on  
19 the same track for earnings-per-share targets to  
20 receive incentive compensation at one time?

21 A. Well, they're all on the same track, but  
22 the union system is a bonus system where union  
23 employees are paid market rates whether the company  
24 meets its targets or not. If the company beats its  
25 targets, then the union employees get a bonus.

1 Management employees' market pay is set based on the  
2 presumption that we'll meet targets, and if we don't  
3 meet targets, then the variable part of that is  
4 reduced.

5 Q. Okay.

6 A. So pay this year for management people  
7 actually was reduced. What was reported as a bonus  
8 was actually a pay reduction below market pay. I  
9 mean, we received a portion of the variable  
10 component, but much less than the --

11 Q. Okay. I want to get to that. I want to  
12 clarify, though. Are normally, under normal  
13 circumstances, are the earnings-per-share targets the  
14 same for senior management as well as the rest of the  
15 employees?

16 A. Yes, they are.

17 Q. They're normally the same?

18 A. Uh-huh.

19 Q. Okay. And this year there was a  
20 reduction of 25 cents per share to trigger the senior  
21 management executive compensation package?

22 A. It was adjusted for the cost of the  
23 storms.

24 Q. Okay. For whatever reason, it was  
25 adjusted by 25 cents. Is that a regular occurrence?

1 Does that happen year after year? Is there a  
2 difference for management versus the rest of the  
3 employees?

4 A. Any adjustments that are made, are made  
5 for both management and union employees. We do not  
6 make adjustments every year, but when there are major  
7 factors beyond the control of the company, we make  
8 adjustments.

9 Q. When was the last time there were such  
10 an adjustment? Do you know in terms of years?

11 A. I think that we made an adjustment last  
12 year. And sometimes the adjustments go up and  
13 sometimes the adjustments go down. They don't always  
14 just go up.

15 Q. Has the earnings-per-share amount ever  
16 been higher than the earnings-per-share target for  
17 the rest of the employees?

18 A. Yes, it has.

19 Q. Okay. When was that -- when did that  
20 occur? Can you give me the year?

21 A. The past two years it has been.

22 Q. So 2005 and 2004?

23 A. I think 2004 and 5, I think that's  
24 correct.

25 Q. And what causes that difference in

1 earnings-per-share target? Why were they different  
2 in 2004/2005?

3 A. Why were the targets different?

4 Q. Between senior management and the union  
5 or the rest of the staff.

6 A. No, the targets were the same. The  
7 targets were the same --

8 Q. Oh, they were the same?

9 A. -- for management and the unions. I  
10 misunderstood the question. I thought what you meant  
11 was when was the last time we met the target. We met  
12 the target in 2004 and 2005.

13 Q. Let me ask the question this way. And  
14 I'm trying to go through these questions quickly and  
15 it's late and other Commissioners' questions wore me  
16 out.

17 So 2005 -- to trigger a bonus or  
18 incentive compensation for senior management and the  
19 rest of the employees, was the target the same in  
20 2005?

21 A. Yes, it was.

22 Q. Okay. There was no adjustment for  
23 either target?

24 A. I don't recall if we made adjustments or  
25 which way we made them, but if you want to know that,



1 we can find that information for you.

2 Q. Can you tell me the last year when an  
3 earnings-per-share target was adjusted because of  
4 some circumstance prior to 2006?

5 A. Well, it probably was in 2005. I don't  
6 recall if we made adjustments or what they were. I  
7 think the best thing -- I -- I -- I simply don't  
8 remember what we've done a year or two years ago. I  
9 can go back and look at this for the last five years  
10 if you'd like and show you what we've done every year  
11 for five years.

12 Q. Are there nonunion employees that are  
13 part of Ameren that would also receive incentive  
14 compensation by meeting these targets?

15 A. Yes.

16 Q. And the nonunion, nonsenior management  
17 employees would fall under the \$3.15-per-share plan?

18 A. Uh-huh. Yes.

19 Q. Okay.

20 A. The targets are the same for everyone,  
21 and the adjustments are the same for everyone. We  
22 don't make different adjustments for different  
23 people. We don't set different targets for different  
24 people.

25 Q. I thought there was a 25-cent different

1 target between senior management and the rest of the  
2 employees. Am I misunderstanding that?

3 A. I think you are. Target -- the targets  
4 are the same -- this, I think, will take some time.  
5 I need to give you a diagram to show you how the plan  
6 works, show you how the targets are set, where the  
7 targets are, what adjustments we've made, how the  
8 plans work for a union and for management employees.

9 We -- we honestly try to administer  
10 these plans as fairly as we can. We try to make the  
11 right kinds of adjustments and the adjustments go  
12 both ways.

13 And if we had not adjusted for the  
14 storms, we would have punished people for the effects  
15 of storms when, I think, it was unwarranted.

16 Q. Well, you said it was an adjustment for  
17 the storm, but didn't you earlier say it was an  
18 adjustment because of problems with Taum Sauk?

19 A. Well, the problems with Taum Sauk is the  
20 reason we did not make the targets.

21 Q. And it was an adjustment because --

22 A. There was no adjustment due to Taum  
23 Sauk. We simply lost money due to Taum Sauk, and  
24 that's the reason we fell short of the target. The  
25 effect of Taum Sauk was about 30 cents per share on

1 the company last year, and that's the reason we fell  
2 short of meeting our financial targets.

3 Q. So that 30 cents is what caused --  
4 without some adjustment, everyone wouldn't have  
5 received any type of incentive compensation?

6 A. That's true.

7 Q. That's kind of a double-negative, or I'm  
8 not asking it very well. If the reason why the  
9 target wasn't met because of Taum Sauk, why -- why  
10 were the union employees and nonsenior management  
11 employees not to receive incentive compensation if  
12 the problem was because of Taum Sauk? How was that  
13 their fault to not receive incentive compensation?

14 A. Because Taum Sauk was the fault of our  
15 company and everyone in the company suffers because  
16 of that. The incentive compensation program is  
17 funded based on earnings of the company, so when a  
18 major event happens that impacts earnings of the  
19 company negatively, everyone in the company loses  
20 money.

21 Now, many people had absolutely nothing  
22 to do with Taum Sauk, it wasn't their fault, but they  
23 work for the company so they're all impacted.

24 Q. I only have one question regarding the  
25 EEI discussion. I think, frankly, there's been more

1 discussion about fiduciary duties since I was in law  
2 school, and now I hear a former professor is gonna be  
3 here to testify, which causes me some concern anyway,  
4 considering my memories of law school were not that  
5 positive. Not because of him, just because it was  
6 law school.

7                   Regarding EEI and fiduciary duty, we've  
8 talked a lot about what board members have what  
9 responsibility and to whom. And I wanted to ask you  
10 where you thought our fiduciary duty was to the  
11 company or to the ratepayers or somewhere else in  
12 deciding this issue. Where do you think the  
13 Commission's fiduciary duty, our responsibility lies?

14           A.       Well, I don't know that this Commission  
15 has a fiduciary duty, but I believe the Commission  
16 has a duty to find the balance point to balance the  
17 interest between customers and stockholders. And  
18 virtually every single item that you're considering  
19 in this case is one that can be balanced.

20                   You know, what is the right return on  
21 equity number, how should the fuel adjustment clause  
22 work, how much in off-system sales should be included  
23 for customers, how much should be provided as an  
24 incentive for stockholders.

25                   It's a tougher question. Because

1     fiduciary duty is pretty clear-cut. It isn't a  
2     balance issue; it's we have a fiduciary duty to the  
3     stockholders of our company.

4                   COMMISSIONER CLAYTON: Well, I assure  
5     you that we have a duty to the taxpayer, the  
6     ratepayer and the companies that we regulate. May  
7     not be officially a fiduciary duty, but we have some  
8     duty.

9                   I think all of my other questions have  
10    been answered exhaustively so far, so I don't have  
11    any more. Thank you, Judge.

12                   JUDGE WOODRUFF: Thank you.  
13    Commissioner Appling.

14    QUESTIONS BY COMMISSIONER APPLING:

15           Q.     How you doing, sir?

16           A.     Good evening, Commissioner. Doing very  
17    well, even though it's 7:30.

18           Q.     The nice thing about being the junior  
19    guy on this team is that all the questions I wrote  
20    down, ten questions this morning and I've checked  
21    them all off. Commissioner Gaw took care of nine of  
22    them and Mr. Clayton took care of the rest.

23                   I don't have any questions, but I'm  
24    gonna say something because I think I can say it to  
25    you. You and I know each other pretty well.

1                   You have some concerns in your company,  
2   sir. You know that as well as I know it. And the  
3   only thing that I can ask you to do here tonight is  
4   give this Commission your word that you're gonna go  
5   back to St. Louis and fix those problems.

6           A.       Uh-huh.

7           Q.       If you don't fix them, this Commission  
8   probably is gonna send you a message that -- that --

9           A.       Uh-huh.

10          Q.       -- that won't be --

11          A.       Commissioner, if I don't fix them, there  
12   will be someone else here to fix them for me. And  
13   there is no one in the room more concerned about  
14   fixing the problems than I am.

15          Q.       Well, I didn't want to go as far as  
16   saying fix them or step down and give this job to  
17   somebody else that can fix them. But I'm -- I'm --  
18   I'm not saying that, I'm just echoing what you  
19   said.

20                   But the citizens of this state deserve  
21   the best. You have a great company, you have a lot  
22   of hard-working people in your company. And given  
23   the guidance that you need, you can put this company  
24   back on track, how you find it and how it should be  
25   run.

1                   I thank you for being here, and I thank  
2     you for your testimony, and I really thank you for  
3     being here all day. And I'm certainly appreciative.  
4     And take a message back to your employees that they  
5     done an excellent job for the July and the ice  
6     storms. Appreciate you being here and thank you and  
7     I won't hold you any longer, okay?

8                   THE WITNESS: I will do that and I  
9     appreciate your comments. And we will do more than  
10    fix it. One of the values in our company is one that  
11    we call stewardship, which means that everyone in our  
12    company has a duty to take whatever assets, whatever  
13    part of the company we're responsible for and to make  
14    it better.

15                  And in the past year we have not lived  
16    up to that duty. In the future we will. So we need  
17    to build on that. We need to get back on track, and  
18    we will do our best to do that.

19                  COMMISSIONER APPLING: Thank you very  
20    much.

21                  JUDGE WOODRUFF: Commissioner Davis?

22                  CHAIRMAN DAVIS: No questions.

23                  JUDGE WOODRUFF: All right. Recross  
24    based on questions from the bench, beginning with  
25    Public Counsel.

1 CROSS-EXAMINATION BY MR. MILLS:

2 Q. I've got just a whole disconnected  
3 series of questions based on questions from the  
4 bench, so don't -- don't look for any kind of a theme  
5 here or any connection between the two questions.

6 In questions from Commissioner Gaw, you  
7 didn't identify Dan Cole as a director of EEInc with  
8 a UE affiliation. Why is that.

9 A. Because Dan works for Ameren Services  
10 Company.

11 Q. Okay. Did he used to work for UE?

12 A. He may have at one time.

13 Q. Okay. Do you still have a copy of  
14 Exhibit 341? That's the full packet of the EEI board  
15 meeting.

16 A. I probably do. They don't all have  
17 numbers on them. What does it look like?

18 Q. It's a fairly fat packet. No.

19 A. Is it this?

20 Q. It should have been stapled. Now, I've  
21 just handed you Exhibit 431 opened to page 29. Does  
22 that show that that's the minutes from an October 29th,  
23 2004 board meeting?

24 A. Yes, it does.

25 Q. And if I can get you to flip through



1 those minutes up through to page 33. Does that  
2 appear to show Dan Cole as affiliated with Union  
3 Electric Company near the top of that page?

4 A. Yes, it does.

5 Q. But at some point since that time in  
6 2004, he is no longer affiliated with Union Electric;  
7 is that your understanding?

8 A. I don't think he was part of Union  
9 Electric even at this time.

10 Q. Okay.

11 A. But I'm not certain of that.

12 Q. Now, during your questions from  
13 Commissioner Gaw, you answered several questions  
14 about what I believe you considered interesting  
15 hypotheticals in terms of conflicts of interest and  
16 the behavior of board members. Do you recall those?

17 A. Yes, I do.

18 Q. Now, does EEI sell its power under  
19 contract to AEM currently?

20 A. Yes, it does.

21 Q. Okay. If AEM had no potential to make  
22 additional earnings for the power it obtained under  
23 the EEI contract, there would be no potential ethical  
24 conflicts for directors associated with AEM voting  
25 for that contract; is that correct?

1           A.       If AEM made no money --

2           Q.       If they had no potential to make money.

3           A.       No potential to make money.

4           Q.       There would be no conflict if they voted

5       for that -- no conflict if they voted for that

6       contract?

7           A.       If they voted for which contract?

8           Q.       The contract under which AEM sells the

9       power to Joppa.

10          A.       I don't see a conflict.

11          Q.       Okay. Now, if AEM does have the

12       potential to make additional earnings from the power

13       that it would obtain from the EEI contract, would

14       there be a potential conflict of interest for board

15       members that were both -- board members of both EEInc

16       and Ameren?

17          A.       EEInc and Ameren?

18          Q.       Yes.

19          A.       Or do you mean -- EEInc and Ameren?

20          Q.       If they were board members of both.

21          A.       And they're acting on behalf of whom?

22          Q.       Well, they would be voting on behalf of

23       EEInc to enter into a contract with AEM under which

24       AEM has the potential to earn additional margins for

25       Ameren.

1           A.       Uh-huh.

2           Q.       Is that a conflict?

3           A.       I don't see how that's a conflict.

4           Q.       Okay. Now, in response to another one  
5 of Commissioner Gaw's interesting hypotheticals about  
6 conflicts, I believe he said that if that situation  
7 arose to you as a board member, you would consult an  
8 attorney. Do you recall that response?

9           A.       Yes, I do.

10          Q.       Who -- who is the attorney for the EEInc  
11 board?

12          A.       I don't know.

13          Q.       Okay. When you were on the EEInc board,  
14 did you have any reason to consult attorneys about  
15 your responsibilities as a board member?

16          A.       No.

17          Q.       I think you said in response to  
18 questions by several of the Commissioners that you  
19 are and will continue to investigate each complaint  
20 raised by customers at the local public hearings; is  
21 that correct?

22          A.       Yes.

23          Q.       Will there be a filing in this case or  
24 some other case showing the Commission the results of  
25 those investigations?

1           A.       I don't know how we'll do that. We'll  
2 be glad to provide the information to whoever wants  
3 it.

4           Q.       Okay. What -- what sort of time frame  
5 do you anticipate those investigations will take?

6           A.       I don't know when that will be complete.

7           Q.       Months, probably, rather than years?

8           A.       Well, certainly months rather than  
9 years.

10          Q.       And I think in response to one of the  
11 Commissioners' questions, you identified a specific  
12 change as one of the changes in operating procedures  
13 that UE will be making as a result of the 2006  
14 storms. Do you recall answering that?

15          A.       Yes, I do.

16          Q.       Is there a comprehensive list somewhere  
17 of changes that UE is making in response to those  
18 storms?

19          A.       The response to Chairman Davis's letter  
20 that was filed with the Commission in January listed  
21 about a dozen, 12 to 15 changes that we would make.

22          Q.       Are you planning to make all of those  
23 changes?

24          A.       Yes, we are.

25          Q.       Regardless of the outcome of the case?

1           A.       Regardless of the outcome.

2           Q.       Okay. Now, I think you discussed -- and  
3   you may have indicated that you don't know a lot  
4   about it, but you discussed the new contract with  
5   DOE. Do you recall those questions?

6           A.       Yes.

7           Q.       Okay. And do you know whether or not  
8   that contract is for cost-based power or power on  
9   some other basis to DOE?

10          A.       To DOE? To DOE?

11          Q.       The sale to DOE.

12          A.       My understanding is it is on a market  
13   basis.

14          Q.       Okay.

15          A.       My understanding is that it was done  
16   under the heading of the old contract which was a  
17   cost-based contract, but all of the cost-based  
18   provisions of the contract were eliminated, and the  
19   only provision that remains is a provision where  
20   EEInc may buy power from the market at market rates  
21   and sell it to DOE with a markup of one dollar. So  
22   that would make that provision a market base  
23   provision.

24          Q.       Okay. And you sound as though you're  
25   fairly familiar with that contract. Have you looked

1 at it?

2 A. I have not read the contract, I have not  
3 seen it. I've just had a verbal description of it.

4 Q. And who gave you that verbal  
5 description?

6 A. One of our attorneys.

7 Q. Okay. Does EEI now pay dividends?

8 A. I assume that it does.

9 Q. Okay. Has it always paid dividends?

10 A. I think that it has.

11 Q. I think you said at one point in your  
12 testimony you'd been involved one way or another with  
13 EEInc for 20 years; is that correct?

14 A. Yes.

15 Q. And is it your testimony that all those  
16 20 years it's always paid dividends?

17 A. Yeah, I'm not certain that it's paid  
18 dividends every year, but I believe it has.

19 Q. Do you know whether the dividends have  
20 increased recently?

21 A. No, but I would guess that since 1987  
22 the dividends have been, you know, on the order of  
23 the same amount.

24 Q. And that hasn't changed in the last  
25 year?

1           A.       I would not expect -- well, in the past  
2   year?

3           Q.       2006.

4           A.       2006 I would guess the dividends have  
5   increased.

6           Q.       And why would that be?

7           A.       With the expiration of the power  
8   contract in -- the cost-based contract and going to  
9   the market-base contract in 2006.

10          Q.       Now, I think in response to a series of  
11   questions from Commissioner Gaw you described the JDA  
12   as offensive to you; is that --

13          A.       Yes, that was the term I used.

14          Q.       Are you aware that members of the Staff  
15   and Public Counsel have taken that position with  
16   AmerenUE officials throughout the last several cases,  
17   going back to the 2002 case?

18          A.       I wasn't aware you'd used the same term,  
19   no.

20          Q.       Well, were you aware that Staff and  
21   Public Counsel advocated doing away with the JDA at  
22   least as far back as the 2002 case?

23          A.       Yes.

24          Q.       Okay. And why did UE not get rid of it  
25   in 2002?

1           A.       After the rate case was settled, rates  
2       were frozen and there were still operating  
3       efficiencies to be had from continuing to use the  
4       agreement, so we allowed it to run until a new rate  
5       case was in the works.

6           Q.       And what does the freezing of rates have  
7       to do with that analysis?

8           A.       Once rates were frozen, then operating  
9       the JDA would have no impact on the customers.

10          Q.       Okay.  Would operating the JDA have an  
11       impact on shareholders and the returns that they  
12       could earn?

13          A.       I don't think that it would because the  
14       rates were frozen in both states, the revenues were  
15       set in both states.  It would only have an impact to  
16       the extent that it actually saved some money to  
17       continue operating.

18          Q.       So it's your testimony that because you  
19       couldn't change rates, you could not have made a  
20       better return for UE shareholders without the JDA  
21       than with the JDA?

22          A.       Say that again.  It's late.

23          Q.       Is it your testimony that because rates  
24       were frozen, that doing away with the JDA in 2002 as  
25       opposed to 2006 would not have saved -- would not



1 have allowed shareholders to increase earnings in  
2 that period?

3 A. Doing away with it would not have  
4 allowed -- continuing it allowed the company to save  
5 more money which added marginally to shareholder  
6 return. So if you want to reverse that --

7 Q. And when you say the company, what  
8 company do you mean?

9 A. Well, Ameren overall. But continuing  
10 the JDA would -- -- well, would not impact Ameren  
11 overall.

12 Q. Would eliminating the JDA have increased  
13 earnings for UE had you done it in 2002?

14 A. Yeah, it possibly would have.

15 Q. And would not there have been a  
16 fiduciary duty to have done so in order to maximize  
17 profits to shareholders?

18 A. Hadn't thought of it that way at the  
19 time, and possibly that we should have done that.

20 Q. Now, in response to questions from  
21 Commissioner Gaw about Taum Sauk, I believe you said  
22 that you acknowledged responsibility and had done  
23 whatever it takes in this case to remove the costs  
24 from that incident from this rate case; is that  
25 correct?

1           A.       That is correct.

2           Q.       Do you know if appropriate adjustments  
3   have been made to make up for the foregone revenues  
4   from energy and capacity sales that would have been  
5   available had Taum Sauk been up and running?

6           A.       No, I do not.

7           Q.       Would you -- as CEO of the company,  
8   would you propose that those adjustments should be  
9   made in order to keep ratepayers harmless from the  
10   incident?

11          A.       To make up for what, again?

12          Q.       The foregone revenues from energy and  
13   capacity sales that could have been made had Taum  
14   Sauk been in operation?

15          A.       Well, if that's what holds customers  
16   harmless, that is what we should do.

17          Q.       Would you agree that that is what needs  
18   to be done to hold customers harmless?

19          A.       Actually I don't know. You know,  
20   someone would have to take me through the analysis  
21   because I have not seen it.

22          Q.       Are you aware that Ameren Energy is  
23   beginning to make sales of regulatory capacity?

24          A.       No, I was not.

25          Q.       Okay. If Ameren Energy is beginning to

1 make sales of regulatory capacity and Mr. Schukar  
2 acknowledged that it could make more sales of  
3 regulatory capacity if Taum Sauk was running, would  
4 you propose that those adjustments be made in this  
5 rate case?

6 A. I'd have to look at the analysis to make  
7 a decision.

8 Q. Now, I think you had some questions from  
9 Commissioner Gaw about whether or not every one in  
10 senior management had looked at the transcripts in  
11 the local public hearings. Do you remember those  
12 questions?

13 A. Yes, I do.

14 Q. Do you know whether any members of the  
15 senior -- I guess it was the senior team, at that  
16 point whether any members of the senior team attended  
17 any of the local public hearings?

18 A. I don't believe they did.

19 Q. Okay. Was it considered at any time  
20 that members of the senior team should attend any of  
21 the local public hearings?

22 A. Our understanding of the public hearings  
23 is that they were primarily for the public to testify  
24 to the Commission and we were expected to have people  
25 there who might address issues, and so we did not

1 understand that we were expected to have members of  
2 the senior group at those meetings.

3 Q. In retrospect do you think you should  
4 have?

5 A. We have been advised that we should, and  
6 I think that we should.

7 Q. Now, in response to some questions from  
8 Commissioner Clayton -- and I think he asked you this  
9 several times and I'm not sure I'm clear on what the  
10 answer is. Is there a different EPS benchmark for  
11 management and nonmanagement employees in 2006?

12 A. No, there's not.

13 Q. Okay. So the Bill McClellan article  
14 that says that the management target was 2.95 and the  
15 other target was 3.15 is incorrect?

16 A. Okay. Well, we're mixing up terms.  
17 When you say a different benchmark, I -- that -- I  
18 equate that to target. There is exactly the same  
19 target for management that there is for the unions.  
20 The unions are paid a bonus if we exceed the target.  
21 Management employees lose money if we fall below the  
22 target.

23 We fell below the target, so management  
24 salaries were reduced as a result of falling below  
25 the target. But there's a threshold below which the

1 variable component of management salary goes to zero.  
2 We exceeded the threshold and so management variable  
3 salary did not go to zero. There was an amount  
4 given.

5 I said I would not characterize that as  
6 a bonus because actually it's a reduction from normal  
7 pay, but Bill McClellan characterized it as a bonus.

8 Q. Is that -- in -- is that the way it's  
9 set up every year, that there is a threshold and then  
10 a target for management?

11 A. Yes, it is.

12 Q. Is there another level up above that?

13 A. Yes. There's a maximum as well.

14 Q. Okay.

15 A. And the maximum applies to both the  
16 union and management.

17 Q. And for 2006 what was the maximum, do  
18 you recall?

19 A. 3.35, I think.

20 Q. Okay. And that third level, the  
21 maximum, would that be considered a stretch goal?

22 A. Yes, it would.

23 Q. Okay. And, now, I think in response to  
24 a question by Commissioner Clayton, you stated that  
25 there are areas where the service is less reliable

1     than others and you mentioned specifically the Potosi  
2     area. Do you recall that?

3             A.       Yes, I do.

4             Q.       What specifically is being done in the  
5     Potosi area to remedy those problems?

6             A.       I do not know.

7             Q.       Okay. When -- when UE identifies  
8     problem areas in terms of reliability, is there a --  
9     is there a sort -- a metric that you use to decide  
10    how to remedy that? So for example, say if I numbers  
11    drop below a certain point, do you say within six  
12    months we've got to get them back or do you just take  
13    them all on an ad hoc approach?

14            A.       There is a process. Reports are  
15    produced on a regular basis and they're done on a  
16    by-feeder basis. There are groups of people who  
17    review those and decide what to do. I am not  
18    qualified to comment on how that works.

19            Q.       Now, in response to a question by  
20    Commission Clayton, I believe you said that the tree  
21    trimming budget from 50,000 to 100,000 last year  
22    would have only decreased either the number of  
23    outages or the length of outages -- I'm not sure  
24    which -- by 5 to 10 percent. Do you recall that?

25            A.       Yes, I did.

1           Q.       Was your 5 to 10 percent reduction  
2     talking about the number of outages or the length of  
3     outages?

4           A.       My 5 to 10 percent was not based on any  
5     analysis. It was not tied to length. It was meant  
6     to indicate that the problem is not primarily due to  
7     tree trimming. We can spend a great deal more on  
8     tree trimming and get very little additional benefit.

9           Q.       So that wasn't based on any analysis; it  
10    was just --

11          A.       No, it was not. It was just an example.

12                 MR. MILLS: Okay. That's all I have.

13                 MR. MICHEEL: For the State.

14                 CHAIRMAN DAVIS: Can I step back, before  
15     Mr. Mills leaves, and ask Mr. Rainwater one question?

16                 JUDGE WOODRUFF: Go right ahead.

17     QUESTIONS BY CHAIRMAN DAVIS:

18          Q.       Mr. Rainwater, for transparency purposes,  
19     how are we supposed to know the differences between  
20     Ameren's, what I would call their, quote, stretch  
21     targets and these other, quote, soft targets that  
22     appear to be out there that are supposed to be hit,  
23     and how are we -- how is somebody that's just picking  
24     this stuff up and looking at it supposed to know?

25          A.       Mr. Chairman, I'm not sure what you're

1 talking about when you --

2 Q. Well, we just got off on the issue of  
3 the executive compensation, and it appears to me  
4 that, you know, those -- those numbers were designed  
5 to be numbers that, you know, the company -- they're  
6 supposed to be at least the minimum level is the  
7 number that's supposed to be hit so to trigger some  
8 extra compensation; is that fair?

9 A. The minimum level is the number that if  
10 hit, provides a minimal level of variable  
11 compensation.

12 Q. All right.

13 A. The way that I've tried to describe the  
14 program is that there are three levels: Threshold,  
15 target and maximum. The target really is the budget.  
16 That's the primary target that the company is aiming  
17 at. That's what we consider a good level of  
18 performance.

19 And if we hit the target level, then a  
20 bonus above that level is actually paid. And at  
21 target level people are paid market rate of pay. And  
22 by market, we aim our pay at the median of the  
23 market.

24 Q. Okay. Okay. Well, let's -- let's --  
25 let's skip that and let's go to -- let's go to



1 threshold.

2 A. Okay.

3 Q. Okay. Threshold. That's a number that

4 is supposed to be a basic minimum number that is

5 supposed to be hit to trigger some compensation for

6 management employees; is that correct?

7 A. That is correct.

8 Q. Okay.

9 A. If we fall below the target, we start

10 losing a portion of the variable compensation.

11 Variable compensation is market based on target. We

12 start losing that. If we fall below threshold, we

13 lose all of it.

14 Q. Okay. All right. And so as we're all

15 aware, you, quote, adjusted the threshold?

16 A. Yes, sir, we did.

17 Q. Okay. Why isn't that just included in

18 employees' base compensation?

19 A. Because the system we use puts salary at

20 risk. If we don't hit a minimum level of pay, then

21 employees actually have salary at risk and they can

22 lose money.

23 It's a -- it's a way to magnify or

24 leverage the value you get from an incentive comp

25 system. Say it's a level more sophisticated than a

1     basic bonus system. Where base pay and a basic bonus  
2     system would be set at market so that no pay is at  
3     risk, and if you beat market, you actually get a  
4     bonus above a market pay.

5                     The system we have puts pay at risk, and  
6     if you don't meet market, you actually lose money  
7     relative to the market.

8             Q.       Okay.

9             A.       And last year our management folks lost  
10    money.

11            Q.       Well, they didn't --

12            A.       They were paid below market for their  
13    jobs.

14            Q.       Okay. They were paid below market  
15    for their jobs. Okay. Is there anywhere else out  
16    there in Ameren's budget that there are these,  
17    quote, threshold targets, market targets and then  
18    above- market targets, is there anything else out  
19    there that we need to be aware of that we may not be  
20    aware of?

21            A.       Not that I'm aware of. We have one  
22    incentive compensation system. It's based on  
23    threshold, target and maximums.

24            Q.       And is that approved by the compensation  
25    committee there on the board?

1           A.       Yes, it is.

2           Q.       And is there anyone on Ameren's board  
3       that has any experience with working with a regulated  
4       entity other than their service on Ameren's board?

5           A.       Only Chuck Miller, the former CEO, and  
6       he's not on the compensation committee.

7           Q.       Okay. And what experience does Chuck  
8       Miller have other than being the former -- the former  
9       CEO of Ameren? He's just -- that's -- his work for  
10      Ameren is his regulated experience?

11          A.       Yes, that's correct.

12          Q.       Okay. Now, are you familiar with  
13      Ameren's budget at all?

14          A.       Yes.

15          Q.       Okay. So are the numbers in Ameren's  
16      budget, are those numbers that this Commission can  
17      rely on?

18          A.       They're not always numbers that even we  
19      can rely on. I mean, they are our best estimate of  
20      the future based on when we do the budget at the end  
21      of a year. They're the numbers that we rely on as  
22      our -- as our best financial outlook for the  
23      following year.

24          Q.       And --

25          A.       But --

1           Q.       Do you amend that from time to time, or  
2   is it once you make it, you just --

3           A.       Once we've made the budget, the budget  
4   is the budget.

5           Q.       The budget -- the budget is the budget.  
6   Okay.

7           A.       And over the course of the year, some  
8   things can get pretty far off budget. For  
9   instance, our budget for off-system sales going into  
10  last year based on the forward price of the market  
11  going into the year, prices in the market dropped  
12  \$20 per megawatt hour, and our budget for off-system  
13  sales over the course of the year dropped by 200  
14  million dollars. So things can change over the  
15  course of a year sometimes significantly.

16          Q.       Okay. Now, can you -- can you estimate  
17  what Ameren's tree trimming budget was actually  
18  forecast for last year? I know you said you'd spent  
19  50 million.

20          A.       Uh-huh.

21          Q.       What was the actual budgeted number?

22          A.       I don't know what the budgeted number  
23  was. We spent 47 million. The budget for this year  
24  I know is 50 million.

25          Q.       Okay. But you don't recall what the

1 actual budget was for last year? Because I'm  
2 assuming --

3 A. I would guess --

4 Q. -- that would take into account some  
5 storms?

6 A. Yeah. I would guess it was about 35  
7 going into the year.

8 CHAIRMAN DAVIS: All right. No further  
9 questions. Thank you --

10 THE WITNESS: Thank you.

11 CHAIRMAN DAVIS: -- Judge. Thank you,  
12 Mr. Rainwater. Thank you, Mr. Mills, Mr. Micheel,  
13 for your indulgence.

14 JUDGE WOODRUFF: Before we get started  
15 with further cross, we're due for a break. We'll  
16 take a break now. We'll come back at 8:20.

17 (A RECESS WAS TAKEN.)

18 JUDGE WOODRUFF: Let's come to order  
19 again, please. Before we go to the State for  
20 cross-examination, Mr. Mills, did you have any  
21 further questions based on the Chairman's questions?

22 MR. MILLS: I don't, thank you.

23 JUDGE WOODRUFF: Mr. Micheel.

24 CROSS-EXAMINATION BY MR. MICHEEL:

25 Q. Mr. Rainwater, Commissioner Gaw and I

1 believe Commissioner Clayton were asking you about  
2 fiduciary duties. Do you recall those questions?

3 A. Yes, sir.

4 Q. There were some questions about possible  
5 conflicts of interest and hypotheticals relating  
6 to conflict of interest. Do you recall those  
7 questions?

8 A. Yes, I do.

9 Q. And just give me the analysis that you  
10 would go through or that you go through to determine  
11 whether or not there is a conflict of interest and  
12 how it would be resolved.

13 A. In what kind of situations?

14 Q. Well, in a board situation.

15 A. Well, I mean, can you give me an  
16 example?

17 Q. Well, let's say you own 40 percent of  
18 a -- of a steam generating station or 40 percent of  
19 the stock in the steam generating station and you  
20 have a really nice power supply agreement that's  
21 providing low-cost power and a 15 percent guaranteed  
22 return to the regulated, and you also have some  
23 unregulated interest there.

24 A. Okay. So you're talking about an EEInc  
25 director who is affiliated with Ameren?

1           Q.       I'm giving you a hypothetical.  You  
2   wanted a hypothetical.  I mean, I can boil it down  
3   to the EEInc -- I'm more interested in the analysis  
4   that you go through.  I don't want to get into  
5   that whole EEInc issue.  I might based on your  
6   answers, but I'm trying to give you -- so that's kind  
7   of -- do you need to know more facts than my  
8   hypothetical?

9           A.       My analysis in that situation would  
10  be as a director of EEInc, I look out for the  
11  interest of EEInc, and if there is a -- given  
12  option A and option B, if there is an option that  
13  is clearly better than the other, I have a  
14  fiduciary responsibility to support the better  
15  option.

16          Q.       And by better option, do you mean the  
17  option that produces the most revenue or what is --  
18  I'm trying --

19          A.       Most likely the option that produces the  
20  most earnings for the company.

21          Q.       And in that case what company are you  
22  talking about?

23          A.       Well --

24          Q.       The company that you're -- you  
25  represent, the company you're a board member for?

1           A.       The company you're a board member for.  
2   If you're there making a decision for that company,  
3   you make the decision with your loyalty to that  
4   company regardless of what other companies you may  
5   work for?

6           Q.       Even though it may hurt that other  
7   company that you work for?

8           A.       That's correct.

9                   MR. MICHEEL:  Thank you.

10                  JUDGE WOODRUFF:  Thank you.  DNR is not  
11   here.  MIEC, looks like she's left also.  MEG?  
12   Commercial Group has left.  Noranda?

13                  MR. CONRAD:  No questions.

14                  JUDGE WOODRUFF:  AARP has left.  
15   Missouri Retailers?

16                  MR. OVERFELT:  No questions.  Mo-Kan?  
17   MASW?  Laclede?  Aquila?  Joint Bargaining Committee?  
18   Ameren.

19   CROSS-EXAMINATION BY MR. CYNKAR:

20           Q.       Two questions:  Who terminated the JDA?

21           A.       Union Electric terminated the JDA.

22           Q.       Did the termination provisions for the  
23   JDA require both parties to agree?

24           A.       No, either party could terminate, so  
25   Union Electric terminated it unilaterally.



1                   MR. CYNKAR: Thank you. That's all the  
2 questions I have.

3                   JUDGE WOODRUFF: Thank you. Any  
4 redirect from Staff?

5 REDIRECT EXAMINATION BY MR. DOTTHEIM:

6           Q.       Mr. Rainwater, you had some questions  
7 from Commissioner Gaw regarding the JDA, and I think  
8 you indicated that in 2002 you concluded that the JDA  
9 was detrimental to Union Electric Company, and I  
10 think you also noted that the Staff had filed an  
11 earnings complaint case against Union Electric  
12 Company and -- in 2002.

13                   Union Electric Company filed a  
14 cost-of-service revenue requirement rebuttal case in  
15 that earnings complaint case, did it not?

16           A.       I don't recall. What time of the year  
17 were you talking about? I thought we had concluded  
18 the 2002 case by about the summer of 2002.

19           Q.       Okay. The -- the Staff filed, I believe  
20 it was, on July 1, approximately 2001, an earnings  
21 complaint case against Union Electric Company, and it  
22 took a while for a procedural schedule to be set, but  
23 ultimately Union Electric Company filed a rebuttal  
24 case, and you don't recall Union Electric Company  
25 filing in rebuttal a cost-of-service revenue

1 requirement case?

2 A. No. I recall settling the case in the  
3 summer of 2002, and that's the last thing I remember.

4 Q. So you don't recall Union Electric  
5 Company filing a cost-of-service revenue requirement  
6 case based on continuation of the JDA?

7 A. No, I don't.

8 Q. Okay. Mr. Rainwater, Commissioner  
9 Murray asked you some questions regarding Kentucky  
10 Utilities, and in part I think you responded  
11 referring to the Commission's affiliate transactions  
12 rules.

13 Do you still have a copy of what earlier  
14 today was marked as Exhibit No. 431? Mr. Mills  
15 earlier this evening, just a short while ago, gave  
16 you a copy of that document.

17 A. Is this it?

18 Q. Yes, sir. And that -- that document  
19 which was marked earlier today contains copies of the  
20 minutes of the EEInc board of directors minutes. I'd  
21 like to refer you to page 56 which is one of the  
22 pages in the September 8th, 2005 minutes of the  
23 special meeting of the board of directors.

24 And I'd like to refer you to, as I said,  
25 page 56, and I'd like to refer you to the first full

1 paragraph on page 56.

2 And I want to read a couple of  
3 paragraphs that, again, I think are relevant to  
4 questions that you received from Commissioner Murray  
5 in your response.

6 "The Chairman next discussed how these  
7 considerations related to possible future sales to  
8 AmerenUE. The Chairman noted that Missouri  
9 regulation requires that EEInc (as an affiliate of  
10 AmerenUE) sell any portion of its output to AmerenUE  
11 at the lower of cost or market.

12 "The Chairman again explained that since  
13 the company could not sell to AmerenUE without acting  
14 contrary to its own best interest and the board  
15 members could not vote for sales at cost without  
16 violating their legal obligation to the company, the  
17 chairman recommended that the company not offer  
18 AmerenUE any share of the company's power output  
19 going forward. Following a thorough discussion of  
20 the issue the board concurred with the  
21 recommendation.

22 The chairman then entered into a  
23 discussion of FERC requirements for affiliate  
24 transactions. The chairman noted that FERC has  
25 imposed increased scrutiny and shown increased

1 hostility with respect to the sale of power by  
2 unregulated affiliated generators, (such as the  
3 EEInc) to affiliated regulated utilities (such as  
4 AmerenUE and KU).

5               "The chairman further informed the board  
6 that FERC only permits such sales upon a showing that  
7 the buyer has not preferred its affiliate without  
8 justification. He stated that this proof is  
9 generally difficult to make, often involving large  
10 amounts of data analysis and independently  
11 administered RFP, a FERC hearing and an uncertain  
12 outcome.

13              "In addition, the process could last six  
14 to 12 months. It was concluded that this could be  
15 avoided if the company receives approval from FERC  
16 to sell power at market-based rates and then sold  
17 power to its unregulated affiliates; that is,  
18 affiliates without a franchised service territory.

19              "Based upon the preceding discussion, it  
20 was the consensus of the board that such a market  
21 based rate filing would be appropriate. The Chairman  
22 informed the board that the company would be filing  
23 for approval from FERC to sell -- to sell power at  
24 market-based rates within a week.

25              "A comment was made by Mr. Thompson that

1 at the time of the meeting, his company had not made  
2 a determination as to what entity it would choose to  
3 have -- it would choose to have contract for its 20  
4 percent of the job of plant output.

5 "He indicated that KU is still trying to  
6 pursue contracting for the power at the best possible  
7 price considering all of the points raised in the  
8 broad discussion."

9 Mr. Rainwater did I read that  
10 accurately?

11 A. Yes, you did.

12 Q. Mr. Rainwater, I'd also like to  
13 refer you to page 65 which is a page within the  
14 December 22, 2005 minutes of the board of directors  
15 meeting minutes, and I'd like to direct you on page  
16 65 to the paragraph after the blank signature line  
17 on the center of the page.

18 "Mr. Powers then summarized" --

19 JUDGE WOODRUFF: Mr. Dottheim, I believe  
20 these -- this information is already in the record,  
21 is it not?

22 MR. DOTTHEIM: Yes, it's just this one  
23 paragraph.

24 JUDGE WOODRUFF: Is it necessary to read  
25 it into the record?

1                   MR. DOTTHEIM: Well, again, I think  
2     it --

3                   JUDGE WOODRUFF: Or do you have a  
4     question about it?

5                   MR. DOTTHEIM: Judge, again, it -- it's  
6     relevant to the question that was raised earlier.  
7     It's the last paragraph and that's the end of my  
8     questions.

9                   JUDGE WOODRUFF: All right. Thank you,  
10    sir.

11   BY MR. DOTTHEIM:

12         Q.       "Mr. Powers then summarized the key  
13     points of the proposed power sales agreement between  
14     the company and the owners. Mr. Powers reported he  
15     received a letter indicating Kentucky Utilities  
16     Company did not wish to participate in the power  
17     sales agreement effective January 1, 2006.

18                 "Mr. Powers reported the counter-party  
19     to the agreement would be Ameren Energy Marketing  
20     participating at 100 percent."

21                 Did I read that accurately?

22         A.       That's correct.

23                 MR. DOTTHEIM: Thank you, Mr. Rainwater.

24                 JUDGE WOODRUFF: Thank you,  
25     Mr. Rainwater. And I believe that concludes your

1 testimony today.

2 THE WITNESS: Thank you.

3 JUDGE WOODRUFF: Thank you very much.

4 It's now 8:35. No, I'm not gonna call the next  
5 witness.

6 MR. CYNKAR: Bless you.

7 MR. MILLS: Can we get a Hallelujah?

8 JUDGE WOODRUFF: Hallelujah.

9 MR. MICHEEL: Amen.

10 JUDGE WOODRUFF: Strange things happen  
11 after eight o'clock at night. Anyway, that should  
12 take care of everything tonight. Is there anything  
13 else anyone needs to bring up while we're still on  
14 the record before we get to tomorrow?

15 MR. BYRNE: Your Honor, we were gonna  
16 have some union witnesses today. They didn't show  
17 up, and Mr. Rainwater took all day anyway. I talked  
18 to Mr. Micheel and the union witness, and they'd like  
19 to be rescheduled on the 29th. Would that be okay?

20 Mr. Micheel is the person who wanted to  
21 cross them and I think maybe the only person who  
22 wants to.

23 JUDGE WOODRUFF: That's fine, whenever  
24 we can squeeze them in, if that's okay with the  
25 parties.

1                   MR. BYRNE:   Okay.   Thank you, your  
2   Honor.

3                   JUDGE WOODRUFF:   All right.  
4   Mr. Dottheim.

5                   MR. DOTTHEIM:   One other thing.  
6   Commissioner Gaw, I believe, had requested a copy of  
7   the joint dispatch agreement.   Staff can provide a  
8   copy of the last joint dispatch agreement and have  
9   that marked as an exhibit.

10                  JUDGE WOODRUFF:   That would be fine.

11                  MR. DOTTHEIM:   If that meets what the  
12   Staff assumed Commissioner Gaw was looking for.

13                  COMMISSIONER GAW:   That would be  
14   helpful, yes.   Is it lengthy?

15                  MR. DOTTHEIM:   No, it is not a  
16   voluminous document.

17                  COMMISSIONER GAW:   I also asked for some  
18   other material that I think Mr. Rainwater was going  
19   to see that we received.   I was not necessarily  
20   anticipating that he would return personally with it  
21   unless he would like to.

22                  THE WITNESS:   I would hope someone was  
23   taking notes.

24                  MR. BYRNE:   I think I was taking  
25   notes, your Honor.   And Mr. Zdellar will be here



1     who is an operations reliability person and knows  
2     a lot of details about that. But I know you were  
3     asking about reliability measures by circuit and a  
4     showing how the circuits have improved over time.

5                     COMMISSIONER GAW: Yes.

6                     MR. BYRNE: I know those were some of  
7     the things you were asking for, where are we on  
8     following up on the local public hearings for both  
9     the rate case and the storm.

10                    COMMISSIONER GAW: I think levels of  
11    expenditures is adjusted by increases in cost for  
12    tree trimming.

13                    MR. BYRNE: For tree trimming are you  
14    talking about?

15                    COMMISSIONER GAW: Or for infrastructure  
16    replacement.

17                    MR. BYRNE: Okay.

18                    COMMISSIONER GAW: I think that was the  
19    other general area.

20                    MR. BYRNE: Okay.

21                    COMMISSIONER GAW: That's part of what I  
22    think they're getting back with us.

23                    COMMISSIONER CLAYTON: The data by  
24    circuit, is that gonna include the worst performing  
25    circuits?

1 MR. BYRNE: Yes, it will.

2 COMMISSIONER CLAYTON: All right. Thank  
3 you.

4 JUDGE WOODRUFF: All right. Then with  
5 that, we are adjourned until 8:30 tomorrow morning.

6 (WHEREUPON, the hearing of this case was  
7 recessed until March 20, 2007, at 8:30 a.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 I N D E X

2  
3 ISSUE:  
4 EEInc

5  
6 MINI OPENINGS

7 Opening Statement by Mr. Cynkar 1804  
8 Opening Statement by Mr. Dottheim 1814  
9 Opening Statement by Mr. Mills 1817  
10 Opening Statement by Mr. Micheel 1818  
11 Opening Statement by Mr. Chamberlain 1823

12  
13 GARY L. RAINWATER  
14 Direct Examination by Mr. Dottheim 1828  
15 Cross-Examination by Mr. Mills 1874  
16 Cross-Examination by Mr. Micheel 1950  
17 Cross-Examination by Mr. Chamberlain 1966  
18 Cross-Examination by Mr. Coffman 1969  
19 Cross-Examination by Mr. Cynkar 1986  
20 Questions by Commissioner Gaw 1994  
21 Questions by Commissioner Murray 2100

22 GARY L. RAINWATER (IN-CAMERA)  
23 Questions by Commissioner Murray 2102  
24 Questions by Commissioner Clayton 2106

25 GARY L. RAINWATER  
Questions by Commissioner Clayton 2108  
Questions by Commissioner Appling 2129  
Recross-Examination by Mr. Mills 2132  
Questions by Chairman Davis 2147  
Recross-Examination by Mr. Micheel 2153  
Recross-Examination by Mr. Cynkar 2156  
Redirect Examination by Mr. Dottheim 2157

|    |                      |        |          |
|----|----------------------|--------|----------|
| 1  | EXHIBITS INDEX       |        |          |
| 2  |                      | MARKED | RECEIVED |
| 3  | Exhibit No. 94       |        |          |
| 4  | Deposition of        |        |          |
| 4  | Edward F. Began      | *      | 1916     |
| 5  | Exhibit No. 95       |        |          |
| 6  | Deposition of        |        |          |
| 6  | Michael Brosch       | *      | 1916     |
| 7  | Exhibit No. 96       |        |          |
| 8  | Deposition of        |        |          |
| 8  | Jeremy Hagamayer     | *      | 1916     |
| 9  | Exhibit No. 97       |        |          |
| 10 | Deposition of        |        |          |
| 10 | Lisa K. Hanneken     | *      | 1916     |
| 11 | Exhibit No. 98       |        |          |
| 12 | Deposition of        |        |          |
| 12 | Ryan Kind            | *      | 1916     |
| 13 | Exhibit No. 99       |        |          |
| 14 | Deposition of        |        |          |
| 14 | Greg Meyer           | *      | 1916     |
| 15 | Exhibit No. 100      |        |          |
| 16 | Dr. Proctor's        |        |          |
| 16 | deposition           | *      | 1916     |
| 17 | Exhibit No. 101      |        |          |
| 18 | Deposition of        |        |          |
| 18 | Steve Rackers        | *      | 1916     |
| 19 | Exhibit No. 102      |        |          |
| 20 | Deposition of        |        |          |
| 20 | Michael Rahrer       | *      | 1916     |
| 21 | Exhibit No. 103      |        |          |
| 22 | Deposition of Robert |        |          |
| 22 | E. Schallenberg      | *      | 1916     |
| 23 | Exhibit No. 104      |        |          |
| 24 | FAC tariff           | *      | *        |
| 25 |                      |        |          |

|    |  |        |              |
|----|--|--------|--------------|
| 1  | EXHIBITS INDEX (continued)   |        |              |
| 2  |  | MARKED | RECEIVED     |
| 3  |  |        |              |
| 4  | Exhibit No. 258  |        |              |
| 5  | Gary Rainwater's deposition  | *      | 1874<br>1916 |
| 6  | Exhibit No. 259  |        |              |
| 7  | Deposition of Robert Downs   | *      | 1916         |
| 8  | Exhibit No. 260  |        |              |
| 9  | Deposition of Michael Moehn  | *      | 1916         |
| 10 | Exhibit No. 261  |        |              |
| 11 | Deposition of David A. Svanda  | *      | 1916         |
| 12 |  |        |              |
| 13 | Exhibit No. 262  |        |              |
| 14 | Deposition of Charles D. Naslund                                       | *      | 1916         |
| 15 | Exhibit No. 263  |        |              |
| 16 | Direct testimony of Craig D. Nelson                                    | 1845   | 1873         |
| 17 | Exhibit No. 264  |        |              |
| 18 | Errata sheet to Mr. Rainwater's deposition                             | 1870   | 1874         |
| 19 | Exhibit 341  |        |              |
| 20 | Full packet of the EEI board meeting                                   | *      | *            |
| 21 | Exhibit No. 421HC  |        |              |
| 22 | Ameren Corporation's fourth quarter strategic review, February of 2007 | *      | 1869         |
| 23 |  |        |              |
| 24 | Exhibit No. 424HC  |        |              |
| 25 | OPC data request 2086  | 1894   | 1898         |
| 26 | Exhibit No. 425HC  |        |              |

|    |  |      |      |
|----|--|------|------|
| 1  | Exhibit No. 426                                  |      |      |
| 2  | St. Louis Post-Dispatch                          |      |      |
|    | article (Jeff Tomich)                            | 1890 | **   |
| 3  | Exhibit No. 427                                  |      |      |
| 4  | St. Louis Post-Dispatch                          |      |      |
|    | article (Bill McClellan)                         | 1890 | **   |
| 5  | Exhibit No. 428                                  |      |      |
| 6  | First four pages and                             |      |      |
|    | page 36 of a filing that                         |      |      |
| 7  | Ameren Corporation made                          |      |      |
|    | with the SEC                                     | 1901 | 1902 |
| 8  | Exhibit No. 429P                                 |      |      |
| 9  | UE's response to                                 |      |      |
|    | OPC DR 2209                                      | 1922 | 1949 |
| 10 | Exhibit No. 430                                  |      |      |
|    | OPC data request 2005                            | 1887 | 1890 |
| 11 | Exhibit No. 431                                  |      |      |
| 12 | Highly confidential data                         |      |      |
|    | request No. OPC 2005                             | 1887 | 1890 |
| 13 |  |      |      |
| 14 |  |      |      |
| 15 | * Marked in a previous volume or not yet marked. |      |      |
| 16 | ** Offered but rejected by Judge Woodruff.       |      |      |
| 17 |  |      |      |
| 18 |  |      |      |
| 19 |  |      |      |
| 20 |  |      |      |
| 21 |  |      |      |
| 22 |  |      |      |
| 23 |  |      |      |
| 24 |  |      |      |
| 25 |  |      |      |

## 1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI )  
3 ) ss.  
4 COUNTY OF COLE )  
5

6 I, PAMELA FICK, RMR, RPR, CSR, CCR #447,  
7 within and for the State of Missouri, do hereby  
8 certify that the witnesses whose testimony appear in  
9 the foregoing hearing was duly sworn by me; that  
10 the testimony of said witnesses were taken by me to  
11 the best of my ability and thereafter reduced to  
12 typewriting under my direction; that I am neither  
13 counsel for, related to, nor employed by any of the  
14 parties to the action to which this hearing was  
15 conducted, and further that I am not a relative or  
16 employee of any attorney or counsel employed by the  
17 parties thereto, nor financially or otherwise  
18 interested in the outcome of the action.  
19

20 \_\_\_\_\_  
21 PAMELA FICK, RMR, RPR, CSR, CCR #447  
22  
23  
24  
25